
THE *LOBBYISTS REGISTRATION ACT*: ITS APPLICATION AND EFFECTIVENESS

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The *Lobbyists Registration Act* (LRA) was proposed by the Mulroney Government in September 1985, presented to Parliament in June 1987, received Royal Assent in September 1988, and came into force on September 30, 1989.¹ It was amended in 1995, 1996, 2003 and 2004.²

Although the first version of the Act was enacted as a Government Bill, the goal of bringing some form of regulation to the burgeoning lobbying industry had been a long-standing project of a group of backbench MPs.³ These took an active part in the formulation of the first version of the Act, and their successors have continued in their footsteps as the Act has gone through three periodic revisions. Perhaps because of this sustained backbench interest, the regulatory regime established by the Act has passed through a classic progression of incremental changes reflecting experience with its provisions and with the need to support

its stated goals with real legislative muscle. Refinements are still needed, but, as the following discussion will attempt to show, it is on improvements in the administration of the Act that its ultimate effectiveness depends.

This paper looks first at the legislative history of the *Lobbyists Registration Act*, then examines its strengths and weaknesses, and finally considers legislative and administrative improvements.

1 The Legislative History of the *Lobbyists Registration Act*

When he tabled the original version of Bill C-82, the *Lobbyists Registration Act*, the Minister of Consumer and Corporate Affairs, Harvie André, stated that it addressed the public's need to know who is talking to government, but avoided the pitfalls of attempting to regulate lobbyists.⁴ Accordingly, the preamble to the subsequent Act affirmed the importance of "free and open access to government" and the legitimacy of lobbying public office holders, but declared that public office holders and the public should be able to know who is engaged in lobbying activities. Employing the terms "openness" and "transparency" that had been a *leitmotif* of the two-year debate that had preceded introduction of the Bill, the Government proposed that "registration, but not regulation" should be the key feature of the legislation, seeking in simplicity a system that neither discouraged the general public from petitioning government nor created a process liable to become constipated by its own insatiable appetite for information.⁵

The principal features of the 1989 Act were its definition of a lobbyist, the requirement to register, the establishment of a registry, and the distinction it drew between consultant lobbyists and those working for corporations and non-profit organizations.

A lobbyist was defined as anyone who receives payment to represent a third party in arranging meetings with public office holders⁶ or in communications with them concerning the formulation and modification

of legislation and regulations, policy development, the awarding of grants or contributions, and the awarding of contracts (section 5). This was a major step in the direction of simplification, since it relieved both volunteers and businessmen representing their own interests from the obligation to register. Simplification was carried further by the decision to divide lobbyists into two categories (or tiers) and to limit the information required of some lobbyists. Tier I lobbyists were described as “professional lobbyists” who represented clients before government (section 5.1). Tier II lobbyists on the other hand were employees either of interest groups or corporations who spent a “significant part” of their employment representing their employer to government (section 6). Within ten days of undertaking to represent an interest on any one of a series of widely-defined activities, Tier I lobbyists would have to register with the Deputy Registrar General their own names, those of their client, and the subject matter of proposed meetings or communications with officials (section 5.2). Tier II lobbyists would provide, annually, even less information: simply their names and the name and address of the corporation or organization employing them (section 6). They would not be required to report the subject matter of their communications with officials. Neither was required to submit financial information.

Certain persons, activities and types of information were specifically excluded. Officials of other governments, Canadian and foreign, were not required to register if they were communicating with federal office holders in the course of their official duties (section 4.1). Presentations that are a matter of public record did not have to be reported, nor did representations made to office holders considering the interpretation or application of laws or regulations in relation to specific individuals or organizations (section 4.2). Information that might affect the safety of individuals was also exempted (section 4.3).

The Bill was much weaker than many had expected.⁷ Mapping services⁸—which were provided by some of the most influential firms—were not

covered, nor was registration extended to firms engaged in indirect lobbying. Those lobbyists required to register were asked to provide much less information than had been proposed by Parliamentary supporters of registration. The representatives of corporations and formal interest groups were not required to report their lobbying activities; interest groups were not required to file even minimal information concerning their objectives and supporters. Although Tier I lobbyists were required to register the undertakings they had entered into, it would be quite easy to avoid spelling out the real subject matter of meetings. The sanctions for failure to comply with the Act were less than compelling, incurring a fine of no more than \$25,000; but conviction of filing of false or misleading information could incur fines of up to \$100,000 and/or imprisonment for as much as two years (section 13). The proposed administrative arrangements were also flawed. The powers of the Registrar were insufficient. He or she would not be empowered to verify the information provided by lobbyists or to investigate it. Furthermore, as an employee of a government agency, the Registrar would be subject to government influence.

On September 9, 1985, when Prime Minister Mulroney had announced his intention to introduce legislation to “monitor lobbying activity and to control the lobbying process by providing a reliable and accurate source of information on the activities of lobbyists,” he promised to ensure that “persons who are approached by lobbyists for Canadian corporations, associations and unions, and by agents on behalf of foreign governments and other foreign interests, (would) be clearly aware of who is behind the representations.” Critics of the 1989 Act felt that the Government had put forward a Bill that required lobbyists to do little more than register their names and addresses. They dubbed the LRA the “business card Bill.”

The Act, however, did include one clause that was little noticed but that has had a significant influence on the evolution of lobbyist regulation. Section 14 provided that three years after the Act came into force, a

Parliamentary committee would review its “administration and operations” and recommend appropriate changes. This relatively unusual provision has ensured periodic examination of the Act so that many, but not all, of its initial weaknesses have been rectified.

The first of these reviews was ordered by the House of Commons in November 1992, and was conducted by the Standing Committee on Consumer and Corporate Affairs and Government Operations, chaired by Felix Holtmann, MP for Portage-Interlake. It held hearings in early 1993, and in June delivered a report that recommended a number of changes, some of them substantive. Although, in the melee of the 1993 election and the subsequent change of government, these might have been pushed to one side, ultimately they did bear fruit. During the election, all political parties committed to following up the report, and on June 15, 1994, the House of Commons Standing Committee on Industry appointed a subcommittee, chaired by Paul Zed, to study and report on amendments to the LRA, if and when they should be proposed to the House by the new Government. Subsequently, an amending Bill (Bill C-43) was presented, and in the fall of 1994, the Committee held hearings to consider it.⁹ Since both Bill C-43 and the Zed Committee built on and elaborated the work of the Holtmann Committee, the following comments will summarize their findings jointly.

Both Committees considered that the LRA had had a positive effect. In the view of the Holtmann Committee, it had:

...added a measure of transparency to the activities of lobbyists. The public now has an opportunity to know who, for pay, is attempting to influence certain government decisions. The act of lobbying has been legitimized and for the most part, institutionalized as part of the way in which our country is governed.¹⁰

Nevertheless, while being, according to the Zed Committee, “a step in the right direction,” weaknesses were identified. The Holtmann

Committee recognized that “not all lobbyists or all lobbying activities are covered by the Act,”¹¹ while the Zed report agreed with witnesses that its provisions were “insufficient.”¹²

Criticism, and the subsequent recommendations in both reports, focused primarily on the disclosure issue, but they also addressed questions related to the inclusiveness of the registration net, the investigatory powers of the Registrar, the Branch’s administrative independence, and the need to encourage professional standards amongst lobbyists.

On the disclosure issue, the Holtmann Committee suggested that the two-track registration system did not disclose sufficient information about the lobbying objectives of corporate and organization lobbyists, and recommended eliminating it. It proposed a uniform disclosure procedure for all registrants. In the same vein, the Committee criticized the reporting form adopted by the Lobbyist Registration Branch (LRB), calling for one that elicited more detail on the subject matter of lobbying and in the identification of the agencies to be approached. The Zed Committee was more sympathetic to the considerations that had inspired the two-tier approach, arguing that there were valid reasons for differentiating corporate and organizational lobbyists from their colleagues in the consulting business. It agreed that substantially the same information should be required of all lobbyists,¹³ but suggested that organization and corporate lobbyists should observe different filing deadlines. Instead of filing within 10 days of undertaking a program of representation, association and corporate lobbyists would be expected to file on a semi-annual basis. Organization lobbyists would have to file only one registration for their organization, not—as in the case of consultant and corporate lobbyists—separate registration for each employee engaged to a significant degree in lobbying.¹⁴

A theme in both disclosure discussions was the need to “keep it simple.” The Holtmann Committee emphasized the pains that had been taken to respect the principles of simplicity and ease of access.

It is an important goal of the Act to ensure that unnecessary barriers are not put in the way of those wishing to present their case to government. The Committee acknowledges that the Act has neither created such barriers nor impeded open access to government.¹⁵

Zed and his colleagues agreed, and incorporated in their report a test against which they measured every demand for increased disclosure, namely:

[I]s the information being requested from lobbyists genuinely needed to satisfy Canadians that lobbyists' activity is compatible with the public interest, and to help parliamentarians counterbalance the efforts of individual lobbyists with efforts on behalf of ordinary Canadians?¹⁶

Thus they agreed with the Holtmann Committee on expanding disclosure to include identification of the organization members of coalitions and to identify the techniques used in lobbying, particularly grass-roots campaigns, but there were differences in approach. The Holtmann Committee felt that only those coalition members contributing significantly to a joint lobby should be registered, whereas the Zed Committee was more inclusive.¹⁷ On the other hand, the Holtmann Committee proposed registering only those "professional lobbying efforts aimed at the 'grass-roots' which exceed a threshold amount" in order to avoid "needlessly complicating efforts by small groups to convey their concerns to government,"¹⁸ whilst the Zed Committee argued that lobbyists should be required to report the communications techniques—including grass-roots lobbying—that they would be using to influence government decisions, a less onerous and less revealing requirement.¹⁹ Similarly, Zed and his colleagues picked up on Holtmann's reference to the fact that "unpaid lobbyists do not have to register,"²⁰ but concluded that "on balance, we do not think that registration by volunteers is genuinely needed at this time, given the ultimate purpose of disclosure."²¹ On the more controversial issue of whether or not mapping services should be registered, they reached the same conclusion on the following grounds:

[A] number of consultant lobbyists...stressed the importance of aspects of their work that do not involve direct lobbying of public officials, and that rather function to help clients develop policy positions and communicate effectively with government. The importance to clients of this aspect of lobbying does not, however, necessarily create an issue of public trust. In our view, the fact that the clients of lobbyists may receive expert advice does not, in itself, cast doubt on the fairness of public decisions; a good portion of the content of this expert advice is available to any citizen who takes the time to become informed about government and the policy process. When the clients of a lobbyist put this knowledge to work by communicating with government, or engaging a consultant to do so on their behalf, they become subject to existing registration requirements. We think this achieves what is needed.²²

Finally, the Zed Committee argued that consultations initiated by government officials should be added to the list of exempt communications found in section 4(2) of the LRA, on the grounds that it would reduce paper burden for lobbyists, eliminate the collection of unnecessary information on the part of the Registrar, and “would ensure that government and outside groups work in partnership as much as possible, to meet the policy challenges of the nineties.”²³

On balance, though both Committees emphasized the need to streamline the collection of information while bolstering the public’s ability to learn what lobbying activity is in progress, the Holtmann Committee was more inclined to expand the information gathering role of the Registrar than was the Zed Committee, which argued that there was a danger:

...created...by a tendency apparent in many of the submissions we received to take the “transparency” of the lobbying process as the ultimate objective of this legislation. Once “transparency” is adopted as an objective, attention naturally focuses on things we do not yet

know about lobbying and by an entirely logical progression, expectations about what should be disclosed take flight.²⁴

Transparency was needed to restore public trust in government. It was not “an ultimate objective.”

These were relatively minor proposals for revision of the first version of the LRA. Far more significant were the changes both Committees, and the Government, proposed concerning the subject matter of lobbying and the identification of the agencies being lobbied. The 1989 Act required only that consultant lobbyists report “the proposed subject matter of the meeting or communication” (section 5(2)(d)). It was evident from the testimony at the Holtmann Inquiry that registrants were not being required to provide meaningful information about the exact nature of the Government decisions that they were attempting to influence.²⁵ Bill C-43 proposed to remedy this by requiring consultant lobbyists to disclose “particulars to identify the subject-matter in respect of which the individual has undertaken to communicate with a public office holder, or to arrange a meeting, and such other information respecting the subject matter as is prescribed.”

In endorsing the Government’s proposed clarification of the subject matter of disclosure, the Zed Committee noted that corporation and organization lobbyists would not be required to disclose lobbying directed at obtaining government contracts for their firms or organizations. We will return to this point later.

The absence of any requirement to report the names of departments or government agencies that were being lobbied was recognized as a major weakness in the first version of the LRA. As the Zed Committee put it, “virtually nothing is known about the third party in the lobbying relationship: government.”²⁶ There was, accordingly, unanimous endorsement of the provision in Bill C-43 that would “require lobbyists

to name the department or government institution with whom they had communicated or with whom they intend to communicate in an effort to influence policy.”²⁷ There was not, however, a unanimous view on whether or not the names of office holders should be disclosed, or whether the office holders themselves ought to be expected to record details of their meetings with lobbyists. The majority members of the Zed Committee, encouraged by the advice of the long-serving, erudite and deeply experienced Mitchell Sharp, held that requiring civil servants to file information with this degree of detail would clog the registry and thus create a barrier to the public’s ability to know what was going on in the decision-making process. In any case, the majority of the Committee argued, office holders would be expected to adhere to the strictures of the *Conflict of Interest and Post-Employment Code for Public Office Holders*, particularly section 23(2) of the Code, which expected that:

In the formulation of government policy or the making of decisions, a public office holder shall ensure that no persons or groups are given preferential treatment based on the individuals hired to represent them.

Accordingly, the Zed Committee declined to recommend that disclosure requirements go beyond simply naming the agencies of government that lobbyists were approaching or intended to approach. Opposition members of the Committee filed minority reports objecting to this position and insisted that the main report contain a recommendation that the next review of the Act take another look at this issue.²⁸

Amongst other issues, neither the Committee nor the Government Bill successfully addressed suggestions that the costs of lobbying be reported, and consequently made no attempt to impose such a requirement.²⁹ This issue will be discussed further, below. Calls for the banning of contingency fees were also unsuccessful, but the Zed Committee did recommend that Bill C-43 be amended to require lobbyists to disclose

contingency-fee accounts.³⁰ Concern about government funding of some lobbying organizations was treated with greater sympathy, and the Zed Committee recommended requiring organizations lobbying the Government to report such funding.³¹

Lobbyists' political connections and previous government employment were also commented on by a number of witnesses. As the Zed Committee put it, "for some, the suspicion that lobbyists use personal connections with office holders to obtain special favours from government lies at the heart of what disturbs them most about lobbying."³² Yet the Committee could not accept the view that these connections should disqualify individuals from engaging in paid lobbying. In its eyes, disqualification would conflict with the right of all Canadians to participate in political life. As for the possibility that lobbyists might trade on their previous government employment, the Committee felt that "past service with the Government does not constitute a secret that needs "disclosure." On the contrary, government experience on the part of lobbyists facilitates the conduct of public business. In any case, the Committee argued, "post-employment codes and other measures already in place are sufficient guarantees against potential wrong-doing."³³

In the cost-conscious environment of the first Chrétien mandate, it was understandable that the Zed Committee would emphasize the view that the Registry should be "commended for accomplishing much with relatively little," and that "proposed changes not inflate the size or budget of this office." Perhaps, however, it was stretching credulity to observe as well that "we heard no evidence to suggest that the Registry is not accomplishing its aims."³⁴ After all, only a few months earlier, the previous Government had been summarily dismissed by the voters very largely because investigative journalists had convincingly reported a number of highly questionable decisions that were linked to lobbying and influence peddling.³⁵ The fact of the matter was that the Registry's

aims were very modest, its powers limited and its resources sufficed only to pass on to the Canadian public such information as lobbyists chose to file. Furthermore, the Holtmann and Zed Committees heard primarily from participants in the policy community that had sprung up around the LRA and its enforcement. The lobbyist members of this community had no incentive to wash dirty linen in public, whilst academics and the few disinterested interest groups lacked the resources to investigate lobbying improprieties and hesitated to level charges that they could not substantiate. Opposition members of Parliament were less inhibited, however, and the Committees did acknowledge suggestions that “more individuals are lobbying than are registered,” and admitted that enforcement might therefore be “less than satisfactory.”³⁶ It followed that the powers of the Registrar had to be examined.

Bill C-43, reflecting the testimony before the Holtmann Committee, introduced a slight expansion of the Registrar’s duties, authorizing the office to seek clarification of information filed with it. Informally, the Registration Branch had been interpreting the Act for the benefit of registrants, and the Zed Committee proposed institutionalizing this activity by giving it explicit authority to issue interpretation bulletins.³⁷ More significantly, the Committee recommended giving the Registrar the authority to “conduct random audits of the information on file.”³⁸ It added that “evidence of non-compliance should be reported to the RCMP immediately.” To enhance the prospects for successful prosecutions, the Zed Committee recommended that the limitation period for laying charges in connection with summary conviction for contravening the Act be extended from six months to two years, and that the next review of the Act specifically enquire into the adequacy of this extension.³⁹ Finally, recognizing implicitly that these changes would secure only a moderate increase in compliance, the two committees emphasized the need for voluntary regulation, calling upon citizens to report suspected cases of non-compliance and harkening back to a

recommendation made by the first parliamentary committee to look at the lobbying issue by proposing that, “because lobbyists themselves have an interest in reinforcing the legitimacy of their activities,” they should be encouraged to organize themselves into a professional organization and adopt a code of ethics.⁴⁰

The Zed Committee’s decision not to accept the advice of some witnesses that the requirements of the LRA should be tightened and the position of the Registrar strengthened, was neither as disingenuous nor as complacent as it might initially appear. The newly-elected Government of Jean Chrétien had made ethics issues an important part of the 1993 campaign, and brought to office a clearly defined approach to preventing a recurrence of the problems that had troubled the Mulroney Government. In this approach, the LRA was seen as only one of several pieces of legislation and policies that, together, would set out standards of behaviour, establish advisory, monitoring and reporting structures, and where necessary, carry out investigations and prosecute infractions. Prior to 1994, the chief of these related measures was the *Criminal Code*, which, with its sanctions against influence peddling, bribery and corruption, warranted investigation by the RCMP, and the *Conflict of Interest and Post-Employment Code of Conduct for Public Office Holders*.

The new Government proposed that these loosely coordinated measures be tied together more securely through the appointment of an Ethics Counsellor who would have responsibility for developing a code of conduct for lobbyists and for monitoring both that and the *Conflict of Interest Code*. To that end, amendments to the LRA were introduced through Bill C-43, and revisions were incorporated in the *Conflict of Interest Code*. Accordingly, the LRA provided that the Ethics Counsellor would consult with the policy community to develop a lobbyists’ code of conduct and would monitor adherence to the Code, reporting to Parliament.⁴¹ In the latter capacity, the Ethics Counsellor would have the investigatory powers that had not been accorded the Registrar of

Lobbyists, particularly the power to “summon and enforce the attendance of persons, and to compel the giving of evidence and the production of documents and payment of records.”⁴² The Zed Committee noted witnesses’ concerns that these powers were insufficient, given the fact that the code of ethics did not have the status of law, but argued that:

[T]he consistent focus of the LRA...is on the disclosure of information about lobbying to Canadians. The Ethics Counsellor envisioned in Bill C-43 would reflect this focus, by advising Parliament of infractions of the Code of Conduct rather than undertaking the direct regulation of lobbyists. This underlying approach recognizes that an informed public, represented by an informed Parliament, provides stronger guarantees of the ultimate integrity of the political process than could be achieved by additional regulation, given that influence peddling and other criminal offences are already included with the *Criminal Code*.⁴³

The Zed Committee thus adhered to the distinction, articulated by both the Mulroney and Chrétien administrations, that lobbying should be monitored, but not regulated, and that public disclosure, not prosecution, would best preserve the integrity of the policy-making process. The Committee, as we have noted, was also highly conscious of the need to minimize the costs of administering the program, arguing that:

Providing the Ethics Counsellor with significantly increased powers to enforce the Code of Conduct would create a need for expanded procedural protections, and result in the establishment of an enforcement bureaucracy. It would thus inevitably involve increased costs.⁴⁴

The Committee did, however, recommend amendments to Bill C-43 that made investigation of breaches of the Code mandatory and required that reports to Parliament include the Counsellor’s “full investigatory findings, conclusions reached and reasons therefore.”⁴⁵ It also noted that

while it had rejected suggestions that the LRA require disclosure of the costs of lobbying, there were circumstances when “the magnitude of spending becomes an issue of special public concern when spending on behalf of one side of a public controversy so greatly exceeds spending on the other side as to threaten to distort public debate and decision-making.”⁴⁶ These circumstances, in the view of the Committee, warranted an amendment to Bill C-43 authorizing the Ethics Counsellor to “obtain as evidence and include in the report of an investigation any payment received, disbursement made or expense incurred by a lobbyist where this is seen to be in the public interest.”⁴⁷

Considerable debate surrounded the reporting relationships of the Ethics Counsellor. Under Bill C-43, the Ethics Counsellor would be an Order in Council appointment, reporting to the Registrar General in relation to his or her responsibilities under the LRA, but reporting to the Prime Minister, through the Clerk of the Privy Council, in relation to the *Conflict of Interest Code*. Critics took two positions. Some expressed concern that the role of guarding the public’s right to be informed about lobbying activity was incompatible with the role of advising the Prime Minister concerning the ethical conduct of ministers and officials. Others went further and argued that the Ethics Counsellor could not be an effective watchdog for the public whilst simultaneously serving the Government of the day. They believed that the Ethics Counsellor and the Registrar should be officers of Parliament, with the Prime Minister appointing an officer in the Prime Minister’s Office or the Privy Council Office to advise internally on ethics issues. The Zed Committee accepted neither of these positions, stating that:

[W]e do not think the duties of the Ethics Counsellor involve requirements for impartiality and good judgment radically different from those applying to a host of duties presently conducted to the apparent satisfaction of the public, by members of the public service.⁴⁸

As for the Lobbyists' Code of Conduct, the Government proposed and the Committee endorsed a persuasive rather than a prescriptive approach, arguing that strict regulation does not necessarily ensure compliance, but does guarantee considerable expenditure. The Committee found the testimony of a number of witnesses "persuasive on this issue," and added that:

[T]he code envisioned in Bill C-43 is consistent with the approach to lobbying taken elsewhere in the Bill: it would result in the disclosure of questionable behaviour rather than direct sanctions, and leaves members of the public, their representatives, and prospective employers of lobbyists free to respond according to the particulars of the situation.⁴⁹

The Committee did, however, amend the Bill to require lobbyists to comply with the Code and also required the Ethics Counsellor to seek Parliament's views as the Code was drafted.

The combined recommendations of the Holtmann and Zed Committees, together with proposals emanating from the public service, constituted a major revision of the LRA, essentially creating the administrative and regulatory regime that is in effect today. The Act, when it took full effect on January 31, 1996, did the following:

- Identified three classes of individuals—consultant, corporate and association lobbyists—who were required to register any paid undertaking that involved communicating with public officials with a view to influencing the development, or defeat, of legislative proposals, regulations, public policies and programs and the awarding of grants and contracts;
- Specified that registration should occur within defined time limits, and would include (a) the subject matter of their communications with public officials, (b) the names of the agencies lobbied, and (c) the communications techniques employed;

- Established certain exemptions, notably the official representations of employees of other governments; communications with officials concerning the routine application of regulations; and the presentations made by all interests before Commissions of Inquiry, Parliamentary committees and other hearings that are on the public record;
- Recognized that consultant, association and corporate lobbyists work in somewhat different circumstances and should therefore report their undertakings differently, though essentially the same information was required of each; and
- Created within the public service the positions of Ethics Counsellor and Registrar of Lobbyists whose responsibilities included the creation of a code of conduct for lobbyists; the monitoring of the code; the administration of the registry, including conducting audits of registrations; and, where necessary, investigating the information provided by lobbyists.

Further revisions came into force on June 20, 2005,⁵⁰ following the 2001 statutory parliamentary review of the Act, which was conducted by the House of Commons Standing Committee on Science, Industry and Technology.⁵¹ These were not as substantial as those brought into effect in 1995, but several were important.

What probably caused the most upheaval in lobbying circles was a further refinement of the procedures applied to corporate and association lobbyists. In 1995, the responsibility for the registration of association lobbyists had been fixed with the most senior paid official of each organization. While every in-house lobbyist employed by the organization had to be identified,⁵² it was this individual who signed off on the registration form. This procedure has now been extended to the registration of corporation lobbyists. The change is described as an attempt to “ease the administrative burden by eliminating the need for multiple filings,”⁵³ but its implications go beyond mere paperwork,

as it is intended to “underline the reality that the ultimate responsibility for government relations usually rests at the highest corporate level.”⁵⁴

Other modifications can be expected to have a significant impact. The role of the Ethics Counsellor (now the Ethics Commissioner) is limited, and the Registrar is given greater authority over the *Lobbyists’ Code of Conduct*.⁵⁵ Furthermore, he or she is required to report annually to Parliament and must send to Parliament the final report of any investigation carried out in relation to the Code. In a reversal of the position taken by the Government and the Zed Committee, it was now agreed that former public officials should disclose their previous employment and the positions they have held.⁵⁶ Semi-annual filings were now required of all lobbyists.⁵⁷ A loophole in the list of exemptions was closed by the revision of section 2(4)(c). The section had previously provided that the Act did not apply in respect of:

any oral or written submission made to a public office holder by an individual on behalf of any person or organization in direct response to a written request from a public office holder, for advice or comment in respect of any matter referred to in any of (the clauses relating to the subject matter of lobbying undertakings).

The new wording, which reduces the opportunity for collusion between lobbyists and office holders, applies the exemption only “if the communication is restricted to a request for information.”

Perhaps the most significant revision is a change in wording that removes the phrase “in an attempt to influence” and substitutes the phrase “in respect of.”⁵⁸ We will look at the reasons for this change, and its effect, later. Other changes in wording effect a general tightening of the Act.⁵⁹

1.1

Summary: The Legislative History of the LRA

The *Lobbyists Registration Act* came into force on September 30, 1989. Amendments in 1995, 1996, 2003 and 2004 introduced incremental changes that reflected experience with its provisions and with the need to support its stated goals with real legislative muscle. However, refinements are still needed.

The Act defined a lobbyist as anyone who receives payment to represent a third party in arranging meetings with public office holders or in communications with them concerning the formulation and modification of legislation and regulations; policy development; the awarding of grants or contributions; and the awarding of contracts (section 5). Its 1989 formulation recognized the legitimacy of lobbying, established a registry, and required consultant lobbyists to report the names of their clients, or employers, and the subject matter of their undertakings. Those working for corporations and non-profit organizations had to report their names and that of their employers. Penalties were set out for failing to register.

The aims of the Registry were modest, the powers of the Registrar limited, and the resources of the Lobbyists Registration Branch sufficed only to pass on to the Canadian public such information as lobbyists chose to file. All of this reflected the Mulroney Government's view that lobbying should be monitored, but not regulated, and that public disclosure, not prosecution, would best preserve the integrity of the policy-making process. As well, the costs of administering the program had to be minimal.

Since its inception, the Act has been reviewed three times, each review bringing new measures that addressed perceived problems with coverage, disclosure and the powers of the Registrar. In its current version, the Act creates the following regime:

- Three classes of individuals—consultant, corporate and association lobbyists—must register any paid undertaking that involves communicating with public officials with respect to the development, or defeat, of legislative proposals, regulations, public policies and programs, and the awarding of grants and contracts. Volunteer lobbyists are not required to register;
- Official representations by employees of other governments, communications with officials concerning the routine application of regulations, and the presentations made by all interests before Commissions of Inquiry, parliamentary committees and other hearings that are on the public record are exempted;
- Registration must occur within defined time limits, and in addition to identifying the lobbyist and lobbying firm, must disclose (a) the names of clients (or employers), (b) the subject matter of communications with public officials, (c) any official positions previously held by the lobbyist in the Government of Canada, (d) the names of the agencies lobbied, and (e) the communications techniques employed;
- Because consultant, association and corporate lobbyists work in somewhat different circumstances, they report their undertakings differently, though essentially the same information is required of each;
- A code of conduct is laid out and must be observed by lobbyists; and
- The Registrar of Lobbyists' responsibilities include monitoring of the code; the administration of the registry, including conducting audits of registrations; and, where necessary, investigating the information provided by lobbyists. The Registrar reports annually to Parliament and must also provide Parliament with the final report of any investigation carried out in relation to the Code.

From its inception, “registration, but not regulation” has been a key feature of the regime established by the *Lobbyists Registration Act*. Successive governments have attempted to create a system that neither discourages

the general public from petitioning government, nor creates a regulatory process bedeviled by excessive information and unenforceable reporting requirements. As we shall see, this approach has achieved some worthwhile results. It also, however, ensured that, until recently, those responsible for administering the Act could not effectively fulfill its stated objective of ensuring that “public office holders and the public be able to know who is attempting to influence government.”

2 Strengths and Weaknesses of the Current Act⁶⁰

Since the following paragraphs will catalogue its significant flaws, it is essential to emphasize that the *Lobbyists Registration Act* (LRA) makes an important contribution to efforts to identify and regulate lobbying activity. It may not achieve the goal, sometimes attributed to it by enthusiastic politicians, of ensuring that Canadians know who is influencing public policy decisions, let alone what influence is being brought to bear, but it does articulate the public’s right to that information and sets in place an agency that is authorized to discover it.

The Act’s preamble is not empty verbiage. It sets out the conflicting principles that determine the scope of the Act and the powers of the Registrar. In asserting that “free and open access to government is a matter of public interest,” the Act acknowledges the constitutional right of Canadian citizens to approach government. With the injunction that “it is desirable that public office holders and the public be able to know who is attempting to influence government,” it establishes that the act of communication should be open to public inspection. In other words, the right of access is affirmed, but the obligation on the part of government to ensure transparency is also asserted, as is the need to ensure that transparency is achieved with a minimum of interference with access. At the same time as the constitutional right to communicate with government is asserted, it is also recognized that citizens may require the assistance of intermediaries and that, therefore, the practice of lobbying is “a legitimate activity.” In recognizing the legitimacy of

lobbying, the Act brings that activity into the realm of regulation, though the preamble is careful to assert that the level of regulation introduced by the Act—registration—“should not impede free and open access to government.”

As we have seen, the principal virtue of the initial version of the Act was to acknowledge the influence of lobbying and to establish that some form of regulation, though at this stage only registration, was necessary. With the identification of a field of regulation, it became possible to determine the population of the lobbying community and to obtain some understanding of how lobbyists interacted with government. As a result, the second iteration recognized the need for a code of conduct and for providing officials with some authority, albeit limited, to monitor compliance with the Act and, through the Ethics Counsellor, to carry out investigations into lobbying behaviour. The third and most recent version of the Act has strengthened it further by clarifying the language of the Act and by setting out more extensively the powers of the Registrar to issue interpretations and to enquire into non-compliance.

Events occurring during the period that the second version of the Act was in effect revealed major weaknesses in it. By 2001, it had become clear that key wording of the Act was too imprecise to permit prosecution. Two years later, the Auditor General’s annual report, by drawing attention to what has become known as the “sponsorship scandal,” demonstrated that the Act was certainly not ensuring that “public office holders and the public...[would] know who [was] attempting to influence government.” The latest revision of the Act partially addresses the problems identified through these events, but the tightened language and the strengthened authority of the Registrar still leave significant weaknesses.

The chief of these relate to compliance, disclosure, investigation and the independence of the Registrar. They will be discussed individually and followed with a short review of other criticisms of the Act and its administration.

2.1 Compliance

During the public hearings of the Commission of Inquiry into the Sponsorship Program and Advertising Activities, so many witnesses revealed that they had not registered that the Commissioner commented wryly that he had “the impression that nobody registers as a lobbyist. ...I haven’t heard [of] one case so far.”⁶¹ One witness, Alain Renaud, explained that, “I didn’t do it because it was standard practice. In the communications field, most people were not registered. So I was not alone.”⁶² The task of raising compliance rates is a major challenge.

The LRA is a difficult Act to administer. As it is now written, the target population is extensive and does not automatically identify itself. The Act recognizes three classes of lobbyists: consultant lobbyists, corporate lobbyists located within companies, and organization lobbyists working in non-profit organizations. A considerable number of lobbyists in each of these three categories register, but an unknown number do not. They fall into three groups:

- Those who do not know that a lobbyist register exists;
- Those who do not understand that they themselves ought to register; and
- Those who evade registration.

2.1.1 Inadvertent Non-compliance

Interviews suggest that consultant lobbyists and in-house lobbyists associated with major corporations and non-profit organizations are well aware of the registration requirements, and generally do register. Compliance amongst these lobbyists seems to have increased since the revised Act, and its attendant regulations, came into force. Officials and observers agree that this heightened level of compliance is probably due

to the more rigorous monitoring of registrations that the current Registrar has initiated and to the tightened wording in the Act that enhances the probability of successfully laying charges (discussed below). However, consultant lobbyists and the in-house lobbyists in major corporations and non-profit organizations form a relatively small community, largely located in Ottawa, in which word of tougher procedures and new requirements spreads rapidly. Members of this community are well aware of the obligation to register.

Outside this community, the *Lobbyists Registration Act* is largely unknown, even though many businesses, universities, hospitals, social service organizations and other non-profit organizations have regular dealings with the federal government, often employing legal advisors and consultants who undertake activities that the Act describes as lobbying.⁶³ For representatives of many of these organizations, program officers will be their principal contacts with agencies, and therefore one might expect these officials to be aware of the LRA and ready to alert them to its requirements and to those rules that could impinge on the successful completion of a grant or contract proposal. At present, unless the officer has had particular experience with the Registry, this is unlikely. Evidence is impressionistic and scanty, but it does seem that program officers in general are not especially aware of the Act or of the Registry. The extent to which even public servants are unaware of the Act and of related Treasury Board rules was made apparent in September 2005, when the media reported that a probe was being conducted into payments made to lobbyists by a number of high-tech firms that had received financial assistance under the Technology Partnership program.⁶⁴ The investigation was looking into the possibility that some of the firms had employed unregistered lobbyists and/or paid them contingency fees, contrary to Treasury Board regulations.

The extent of and reasons for this lack of awareness are not entirely clear as no systematic study has been carried out, but plausible explanations

offer themselves. First, the Act has received minimal attention over the 16 years that it has been in effect. Second, the federal government has made few efforts to alert the affected public to the provisions of the Act. Third, professional bodies also appear to have paid little attention to the Act and its requirements. These will be discussed shortly.

2.1.2 Evasion

If it is difficult to estimate non-compliance; it is even harder to say how much non-compliance is inadvertent and how much is due to evasion. As we have seen, non-compliance seems to have been routine amongst a number of the lobbyists who appeared before the Commission of Inquiry. The problem is illustrated by a study of compliance prepared by the consulting firm KPMG for the Office of the Ethics Counsellor. Perforce, apart from 26 corporate counsel of major companies, most of the 150 informants for the study had to be drawn principally from the lobbyists already in compliance, and registered. These informants were asked to estimate the compliance rate of their colleagues. Not surprisingly, “a significant proportion (about a quarter) did not know the compliance rate... [and] of those who made an estimate about a fifth were only guessing.”⁶⁵ Presumably, the remaining four-fifths were accessing some divine database, because there is no way of knowing how many individuals are, at any one time, communicating with government with a view to influencing public decisions. Bearing in mind the methodological flaws in the KPMG study, its conclusions are still interesting:

The responses of those who made an estimate indicated that compliance... was perceived to be high, but with a significant margin of non-compliance, for 68% of consultant, 79% of organization, and 100% of corporate lobbyists surveyed.... [As well] 50% of consultant, 20% of organization, and 15% of corporate lobbyists indicated awareness of non-registered lobbying.)⁶⁶

Evasion does not necessarily result from a desire to subvert lawful processes. The KPMG study revealed that an attempt to avoid registration can be rooted in a wish to protect proprietary information. Within the professional lobbying community, the Registry is known as a source of information about the activities of competitors. Consequently, late registration, or a failure to register, can be a way to avoid alerting competitors to new corporate and organizational strategies.

Problems of congruence may also contribute to a reluctance to register, or to fully meet the disclosure requirements. Treasury Board's prohibition against contingency fees appears to fly in the face of the LRA requirement that lobbyists report contingency fee arrangements (section 5(2)(g)), and draws attention to Government's uncertainty over the legitimacy of charging contingency fees.⁶⁷ It seems incongruous that a lobbyist can receive a contingency fee if he or she has persuaded the Government to reverse its long-standing policy of opposing the weaponization of space, but not if he or she is successful in selling space weaponry to the Department of National Defence.

The issue of congruence also affects some of the organizations that must file lobbyist registrations. The lobbying activities of charities, for example, are highly regulated.⁶⁸ In particular, the Canada Customs and Revenue Agency does not permit them to allocate more than 10% of annual income to lobbying. Yet section 7(1) of the LRA requires these organizations to register when a significant portion of employees' time is occupied in communicating with public office holders concerning legislation, policies or grants, contracts and contributions. The threshold for reporting occurs when one individual devotes 20% of his or her time to lobbying, or when several employees carry out lobbying activities that "would constitute a significant part of the duties of one employee if they were performed by only one employee."⁶⁹ As one observer points out, "the metrics are not the same;" nevertheless, charities may find the 20% threshold disconcerting, and an incentive to understate employees' lobbying activity.

An understanding of why evasion occurs does not excuse it, though it may suggest ways in which lobbyists and the organizations they represent can be persuaded to register. By tackling problems of congruence, for example, the Office of the Registrar of Lobbyists (ORL) might make compliance more appealing and thus be able to devote resources to monitoring and investigating cases where evasion is intended to conceal illegal influence. Just how extensive that problem is, is unknown, and the ORL lacks the resources to shed light on it. This lack of resources is currently the most significant factor inhibiting the Office's attempts to track non-compliance.

2.1.3 Sanctions

Enforcement of the current Act has two aspects. Section 14 provides that, on summary conviction, a person who contravenes any part of the Act or its regulations (other than subsection 10.3 (1)), shall be liable to a fine of up to \$25,000. A similar penalty applies to individuals who, on summary conviction, are found to have filed misleading or false statements and documents, but in their case, the penalty could also include up to six months imprisonment. Where such a conviction has been arrived at through indictment, the penalty is higher: a fine of up to \$100,000, imprisonment for up to two years, or both. Section 14(3) limits the period for instituting proceedings by way of summary conviction to two years. Decisions to prosecute are the responsibility of the Attorney General, not the Registrar.

The second aspect of enforcement has to do with the Code of Conduct. Section 10.3(1) requires that individuals who must be registered shall comply with the Code. Where there are grounds for believing that a breach of the Code has occurred, the Registrar must investigate. In order to carry out the investigation, the Registrar has the same powers to subpoena persons and documents as a superior court of record. If the Registrar's investigation of a suspected breach of the Code uncovers evidence that the LRA itself has been contravened, the investigation of the Code must

be suspended until the latter breach is investigated and disposed of by other authorities. If the Registrar concludes that a breach of the Code has taken place, the findings, with supporting evidence, must be filed as a report to Parliament. The report constitutes the major penalty for breaching the Code, although it may be possible to request a prosecution under section 126 of the *Criminal Code*, which provides penalties for wilful breaches of federal laws where no other penalty has been prescribed.

It is important to remember that the Registrar's power to enforce compliance is strictly limited. Registrations can be verified and reviewed and breaches of the Code investigated. Prosecution decisions rest with the Attorney General. The only penalty that the Registrar can impose independently is to file a report of an investigation with Parliament. In the lobbying business, where reputation is an important asset, this can be a significant consequence.

In effect, other penalties may also be exacted by other branches of the federal government when lobbyists or their clients transgress. In the recent case involving the Technology Partnership program, payments to the companies concerned were frozen, and at least one firm agreed to pay back to the Government an amount equal to the contingency fee it had paid the lobbyist. The Government can cancel contracts tainted by failure to observe federal law and regulations, with potentially devastating consequences for the companies concerned. These penalties would not directly affect rogue lobbyists, though companies might seek to obtain damages from them, but it is possible that a reputation for skirting the law would make it difficult for a lobbyist to employ his or her most important asset, the ability to obtain access to decision-makers. Finally, the many lobbyists who are lawyers are subject to professional discipline.

Whether any of these penalties carry weight when lobbyists are considering the pros and cons of registration is difficult to say. At the Commission hearings, a number of lobbyists reported routinely avoiding

registration, but others associated with senior government relations and legal firms reported that they registered as a matter of course. Possibly, the latter are chiefly influenced by reputation and professional considerations, rather than by the penalties set out in the LRA. The former may not have been aware that there were penalties for failing to observe the Act. It may be true that sanctions encourage compliance, but only if they are known to exist. Alternatively, the lobbyists who evaded registration may have assumed that the Lobbyist Registration Branch (LRB) would not have the resources needed to investigate them or to enforce compliance.

2.1.4 Information and the Problem of Compliance

Ignorance of the LRA is understandable when we consider the limited publicity given the Act. Until recently, media interest in lobbying regulation has been almost non-existent, and even within government very little guidance has been provided either to public servants or to those doing business with federal agencies. Furthermore, lack of clarity in the Act, and the absence of interpretation, have been major weaknesses.

This study was not equipped to make extensive enquiries about how well public servants have been prepared, through training programs, to address lobbying issues, but information was obtained from the Department of Public Works, which, as the major procurement department, might be expected to pay considerable attention to these matters. There, discussion of lobbying issues is usually included in training modules that deal with ethics. Further guidance is available from the Department's Ethics Directorate.⁷⁰ Public Works, however, may be somewhat unusual in this regard. In her 2003 Report, the Auditor General noted that "agencies responsible for major procurements and for grants and contribution programs are making progress in developing and implementing comprehensive values and ethics initiatives." The Auditor General added, however, that "progress is still slow."⁷¹ In agencies responsible for smaller programs, progress may be slower still.

As far as business people and members of the general public are concerned, some information is available from government, but it is elusive. The lobbyists registration website provides useful and easily accessible information about the Act and the *Lobbyists' Code of Conduct*.⁷² Several interpretation bulletins and advisory opinions have been prepared, and are posted on the site. Helpful though the site is, however, it is most likely to be used by the professional lobbying community, and not by business executives, their general-practitioner legal advisors, or by organization representatives who are intermittently in contact with the federal government. It is only useful to the person who is aware of the Act and alert to the possibility that he or she may be lobbying. Sites that business people might be expected to consult do not lead readily to the LRA site and contain only cryptic references to conditions like the Treasury Board prohibition on contingency fees.⁷³

Nor are business and professional associations very helpful. The Government Relations Institute of Canada, an Ottawa-based organization representing lobbyists, holds seminars and conferences that contribute to the spread of information in the capital. Beyond that limited audience, the Canadian Society of Association Executives publishes a book on government relations which includes information on lobby registration, but the Canadian Chamber of Commerce reports only that it “makes references to the LRA for our members particularly when changes to the Act are made. We have not created a specific guide to the issue.”⁷⁴ A review of publications of the Canadian Federation of Independent Business since 1999 shows no reports on the subject. Public policies are the subject of many think-tank studies, but discussions of lobbying and its regulation are exceedingly rare.

Contributing further to the obscurity of the Act is the fact that its wording was, and to some extent still is, unclear, leaving considerable room for virtuosic interpretation. Until recently, the Registrar did little to interpret its provisions. In its first iteration, in fact, the Act did not

authorize the Registrar to do so, although efforts were made to provide informal advice to registrants.⁷⁵ The second version of the Act corrected this omission and the Branch issued two interpretation bulletins and a guide to registration.⁷⁶ By October 2005, there were three bulletins and two advisory opinions on the LRA website, but these by no means covered the gamut of issues raised by lobbyists.⁷⁷ Given the small staff of the Registrar's Office (the Registrar and seven members of staff), its limited, \$737,000, budget⁷⁸ and the complexity of issues such as those related to contract discussions, it is hardly surprising that the Registrar has been slow to meet these demands.

2.2

Disclosure

Successive revisions of the LRA have paid special attention to its disclosure requirements. In its earliest form, the Act demanded so little information of registrants that, as it passed through the Commons, it was derisively dubbed "the business card bill." Name, client and subject matter were all that consultant lobbyists had to report. In-house lobbyists simply had to file their names and that of their employer, once a year. Today the disclosure requirements of section 5(2), which consultant lobbyists must meet, runs to a dozen items, ranging from business card information to the identification of the techniques of communication that will be used, to the names of coalition members, to the previous public offices held by the lobbyists, and so on. Section 7(3), which stipulates the disclosure requirements for in-house lobbyists, is even longer.

This expansion of disclosure requirements illustrates the process of political learning that all those involved with lobbyist regulation have gone through since 1985. It particularly reflects the realization that it is not enough to identify who is communicating with government; the public needs to know a good deal more about the reasons for lobbying and the processes that are being used to exert influence. Duff Conacher

of Democracy Watch, the principal watch-dog organization concerned with lobbying, maintains that the current Act is misnamed and erroneously frames lobby regulation in terms of registration. He would like it to be renamed *The Lobbying Disclosure Act*, thus placing stress on disclosure of lobbying activity itself. In actuality, such a change of name would recognize a transformation that has largely occurred.

Despite the expansion of disclosure requirements, the public's knowledge of lobbying activity is still limited. The disclosure provisions do not offer members of the general public, or even press gallery journalists, meaningful information about the undertakings reported by lobbyists. Although consultants and specialist journalists can use the registrations to find out what is going on, they treat the information as a pointer, rather than as a direct indication of the purpose of a lobbying undertaking. They rely on background knowledge, experience and well-informed networks to interpret the cryptic listings in the registry. The general public, including non-profit watch-dog groups, has few of these aids to understanding.

There is, therefore, a sense of frustration that fuels calls for further disclosure. Amongst the items that have been suggested for disclosure are:

- The corporate affiliations of volunteer lobbyists;
- The offices lobbyists have held in political parties or work they have performed for candidates;
- Participation in consultations, hearings, roundtables, or like activities, even when such events are on the public record; and
- The cost of lobbying undertakings, or the time lobbyists and volunteers commit to an undertaking.

The call for disclosure of information concerning volunteers comes from Democracy Watch. In its view, the Act, by exempting volunteers from

registration, leaves a loophole for corporations to exert pressure on former executives to lobby on their behalf. It has not been possible to prove or disprove this criticism.

The demand for disclosure of the offices lobbyists have held in political parties and their party connections with politicians is more substantial and has been strongly supported by Opposition parties. It stems from the recognition that lobbyists often follow a career path linking the occupations of political operative, assistant to a Minister, and lobbyist, which gives heightened influence to those individuals who have followed that path. A volunteer, for example, who works in the election or leadership campaign of a prominent politician, can move, on the politician's election, to a position in a Minister's office, where he or she establishes a network of political and bureaucratic contacts and acquires knowledge of government processes and some policy fields. At the same time, he or she retains connections with the political party, perhaps occasionally undertaking short-term, full-time work to assist in an election campaign or a leadership bid. Eventually, the individual's experience and range of contacts are strong enough to warrant moving to a lobbying firm where knowledge of government and his or her ready access to influential public office holders is a significant asset.⁷⁹ None of this is illegal, but it does give the person or firm that can afford to buy the lobbyist's time preferential access to public office holders. It is, therefore, inimical to principles of democratic equality. Critics argue that it is equivalent to the preferential position of former public servants, and should, therefore, warrant disclosure.

The call for disclosure of participation in conferences, roundtables and similar events is as well-grounded as is the call for disclosure of political affiliation, but, as we shall see, more difficult to address. Reviewing the Registrar's recent bulletin entitled "Communicating with federal public office holders," Democracy Watch takes exception to the suggestion that "participation in consultations, hearings,

roundtables, or like activities” do not have to be reported “when the name of the participants, the Government participating organizations and the subject matters are readily available publicly.” It sees these meetings as opportunities for lobbying, and believes they should be disclosed.⁸⁰ This is a valid point. Conferences and similar smaller meetings do provide a place where lobbyists can meet public office holders and attempt to influence them. The suggestion that information about these meetings is on the public record is not satisfactory. Many can indeed be found, chiefly on the web, but only after a difficult and time-consuming search. Furthermore, the information supplied on conference websites is variable, depending on the priorities and perceptions of event organizers.

Finally, demands that the full costs of lobbying should be disclosed have been heard since back-bench members of Parliament first began calling for lobbyist regulation. Those who favour this type of disclosure maintain that the public should be aware of the extent to which interests are prepared to invest in securing public contracts or, more important, significant changes in public policy. Politicians have frequently raised the possibility of requiring lobbyists to report their fees; lobbyists have routinely replied that fees are proprietary information, and in any event, are not a good indication of the true costs of a lobbying undertaking. The latter point is plausible, but leads to the further suggestion that those costs could, and should, be reported. This, in turn, presents a conundrum: A major lobbying campaign is multi-faceted, and expenses will be deployed to a surprisingly wide range of firms and organizations. Payments will be made not only to lobbyists themselves, but to polling firms, advertising agencies, lawyers, accountants, non-profit organizations, and even to charities that espouse the same cause. If one has the skills and information available to a forensic accountant, it may be possible to look at the overall effort involved in a campaign, and arrive at a shrewd guess as to what it all

cost. Unfortunately, this assessment would itself be extremely expensive, and would be available to the public, and to policy decision-makers, only long after key decisions had been made.

Nevertheless, the lobbying that engulfs any important public decision is now so extensive that its cost is in itself a matter of public concern. An ordinary member of the public can be forgiven for feeling that industries that are prepared to spend very large sums of money in order to secure favourable public policies may well be expecting to recoup their expenditures at the expense of the taxpayer and consumer. Knowing something of the cost of those campaigns not only alerts the public to the stakes involved,⁸¹ but suggests that some effort should be expended, by the public service and relevant advocacy groups, in giving comparable weight to alternatives to those put forward through well-financed lobbying campaigns.⁸²

Closely related to these demands for further disclosure, are proposals, also made by Democracy Watch, that Ministers and senior public servants be required to report meetings between themselves and lobbyists, and that public servants in general must report lobbying and ethics rule violations to the Ethics Commissioner. The suggestion that lobbyists be prohibited from working for a department whilst lobbying its officials can also be treated as an ethics issue. Finally, the organization has pointed to a discrepancy that irks representatives of public interest groups: the inconsistency, and inequity, of the treatment of corporations and non-profit organizations, particularly the fact that associations must meet higher standards of disclosure than the former.

In their reviews of the LRA, House of Commons committees have looked at most of these suggestions. The opinion of the majority members of these committees was summed up by the Zed Committee, and has been quoted earlier. A fixation on “transparency,” the Committee pointed out, often “focuses on things we do not yet know about lobbying and by an

entirely logical progression, expectations about what should be disclosed take flight.”⁸³ The Committee weighed these demands against the following test:

[I]s the information being requested from lobbyists genuinely needed to satisfy Canadians that lobbyists’ activity is compatible with the public interest, and to help parliamentarians counterbalance the efforts of individual lobbyists with efforts on behalf of ordinary Canadians?⁸⁴

Part 3 of this study considers the same point.

2.3 Investigation

As we have seen, the first version of the LRA did not empower the Registrar to carry out investigations. Later versions authorized the verification of information registered, and extended the statutory limit for prosecutions for failure to comply with the registration requirements from six months to two years. Currently, the Registrar has the power within the statutory period to verify registration information, and to review any suspected breaches of the Act. Breaches of the *Lobbyists’ Code of Conduct* can be investigated without regard to a statutory limitation. Whether the Registrar is engaged in a review of a registration or investigating conduct regulated by the Code, the Registrar is obliged under certain circumstances to report inquiries to other authorities.

Under the second version of the Act, several investigations were attempted. One was taken to the point where prosecution was considered. However, the Crown Prosecutor reviewed the provisions of sections 5, 6 and 7 of the Act, which called for the lobbyist to disclose communications with public office holders made “in an attempt to influence” decisions, and concluded that:

[I]n light of the insufficiency of evidence establishing that an attempt to influence had taken place and given there was no probability of obtaining a condemnation, no criminal accusation would be filed....

The focus on the expression “attempt to influence” entails that in order to successfully obtain a prosecution under sections 5, 6 and 7 one must demonstrate beyond a reasonable doubt that an individual has attempted to influence a public office holder. The criminal nature of the offence requires a very high standard of proof, which is analogous to the standard required to prove the more serious offence of influence peddling under the Criminal Code thereby making it very difficult to secure a conviction under the LRA.⁸⁵

It was as a consequence of this determination that the references to attempts to influence were later deleted from the Act, and lobbying was described in terms of communications “in respect of” legislation, policies and so on.

As a result of these changes, the Registrar now appears to have adequate powers to carry out investigations into breaches of the Act and failure to observe the *Lobbyists’ Code of Conduct*. We must now ask whether the ORL has the capacity to do so.

2.4

The Resource Problem

As we have noted, the ORL currently has a staff complement of seven, excluding the Registrar. Successive parliamentary committees have noted with approval the efficiency with which the Branch carried out its responsibilities. Since the role of the Registrar has, until recently, been confined principally to maintaining a list of those lobbyists who have volunteered to register, such praise is empty and misleading. It is true that the Branch successfully mounted an accessible electronic registration system. Approximately 99% of registrations are performed

over the Internet. This was, however, the Branch's signal success. The capacity to ensure compliance was, and is, strictly limited.

The business of ensuring compliance encompasses a number of steps. One would, for example, expect the Registrar and the officials of the Branch to be assiduous in publicizing the Registry, taking their message to members of the public service, the broader lobbying community, and the public at large. In addition to establishing the on-line registration process that does exist, one would expect the Branch to verify registrations, scan the media for evidence of non-compliance, conduct inquiries into complaints, and carry out investigations into the more serious allegations of breaches of the Act and the *Code of Conduct*. These activities, of course, would be in addition to preparing documents interpreting the Act and in addition to the periodic presentations to parliamentary committees.

It is difficult to see how these functions can be effectively performed with the staff at hand. The most recent updating of the Registry has elicited 3,700 registrations.⁸⁶ While the great bulk of processing these is carried out electronically, staff must inevitably field a number of questions as lobbyists become familiar with the new registration requirements. Post-registration verification can be a time-consuming process, and is followed up with communications between officials and lobbyists as details and corrections are requested and provided. One can appreciate that investigating complaints and conducting inquiries—not to mention the preparation of interpretation bulletins and advisory bulletins, themselves activities that require research and consultation—puts the Office under considerable strain.

Consider, for example, the investigation of complaints. The LRB website provides two reports describing the Registrar's findings in relation to instances of alleged failure to register. In both cases, the Registrar's investigation consisted primarily of interviews with the lobbyists concerned, with their clients, and with the ministers with whom the

lobbyists communicated. In order to verify statements made to the Registrar, some further research was conducted into public records. It is not possible to tell from these reports whether or not the Registrar would have undertaken more extensive investigations if more resources had been available. One suspects, however, that the Registrar of the day was doing as much as she could with the resources at her disposal.⁸⁷

It is hardly surprising that the LRB was unable to fulfill the promise of the LRA that “public office holders and the public be able to know who is attempting to influence government.” One has to conclude that while the Registrar now has the legal authority to enforce compliance with the *Lobbyists Registration Act*, the Office still lacks the capacity to do so.

2.5

The Independence of the Registrar

Since its inception, critics of the LRA have argued that the Registrar should be independent of the government of the day. They have pointed out that locating the LRB in a government department compromises the independence of the Registrar. The appointment itself is subject to the will of ministers and the appointee, a career civil servant, is vulnerable to pressure from senior members of the bureaucracy, quite apart from the intimidation he or she might feel in the process of reviewing the behaviour of a member of cabinet. The Registrar’s officials are similarly vulnerable. The Office itself can be subjected to budget constraints that limit its effectiveness.

The present Registrar holds the rank of Assistant Deputy Minister in the Department of Industry, and is thus more senior than his predecessors. His previous responsibilities had to do with the corporate affairs of the Department. They included monitoring the Department’s observance of the *Values and Ethics Code for the Public Service* and management of the internal audit function, two responsibilities akin to the functions of the Registrar and ones that, he points out, did not

involve him with the lobbying community. Since the appointment in 2004 of Michael Nelson as Registrar, the position has been established as a full-time one. Mr. Nelson has relinquished the corporate roles that he formerly assumed in the Department. This has included leaving its management team. These steps were taken in the interests of creating “an organizational distance from the rest of Industry Canada.” The Office, in other words, must have the same relationship with all departments.⁸⁸ Isolation of functions has been taken a step further within the Office. The Registrar does not supervise the review of complaints; rather, the Office enquires into a suspected breach of the *Lobbyists’ Code* and reports to him the information needed to make a final decision and report. The Registrar does not report to the Minister of Industry, but rather to Parliament itself; the present Minister has disclaimed authority over the work of the ORL. The Office’s budget is expected to be protected and its staff expanded.

It may be that the recent changes will prove to be effective. On the other hand, the fact that the Registrar and the staff of the Office continue to be civil servants and that the Branch itself continues to be located within a department will inevitably create doubt whenever there is reason to look into complaints involving senior officials or Cabinet Ministers. Any Registrar has to be aware that, as a member of the public service, the holder of the position is vulnerable to internal organizational pressures. For example, performance pay could be used to discipline a Registrar perceived to be overly diligent. Again, in theory at least, a Registrar enquiring into the relationship between lobbyists and a senior colleague could be exposed to a conflict of interest.

2.6

Other Weaknesses

The foregoing has looked at the major weaknesses in the current version of the Act and with its administration. However, the most important

criticisms of the *Lobbyists Registration Act* and the regime it authorizes have more to do with matters outside its scope than with the provisions of the Act itself. In the interviews conducted for this study, respondents were asked to identify three major weaknesses in the Act. For the most part, they focused on general conditions, rather than on the shortcomings of the Act. A culture of entitlement, for example, was seen as a precondition for the rampant expansion of lobbying and a trend toward illicit lobbying techniques. In such a culture, public office holders are preoccupied with ostentatious displays of material marks of success and with comparisons with peers in the private sector. It is a culture in which self interest trumps the public interest. The politicization of the public service and of routine decision-making was frequently referred to. The revolving door problem was also cited as a serious issue, not only because former public office holders may exploit their knowledge of agency processes and their connections to senior officials for the advantage of their clients, but also because the public's perception of this exploitation undermines confidence in government. In its May 24, 2005, issue, *The Lobby Monitor* looked at the impact lobbying scandals are having on democracy and concluded:

[I]t is evident that many key actors in the sponsorship file did not bother to comply with the requirements of the *Lobbyists Registration Act*. The uncharitable among us might suggest that these people weren't lobbyists and what they were doing couldn't be called lobbying. Rather it was closer to influence peddling or political fixing. That may be the case, but it still leaves open the lax enforcement of whatever disclosure laws were in place, and the need to address that if similar situations are to be avoided in future.

In fact, many of the weaknesses identified in the Act and its operational regime are best addressed as part of a complex of laws, policies and programs, and because such a system of rules and processes creates the present regime and is integral to further reform, our discussion of

remedies to the current weaknesses in the LRA will begin with a short review of the legislative environment in which the Act is embedded.

2.7

Summary: Strengths and Weaknesses of the Act

This discussion has recognized that the *Lobbyists Registration Act* has some important strengths, particularly since its latest revision. The discussion, however, has focused on its current weaknesses, which it described as falling into five areas: (1) securing compliance; (2) providing clear instructions to lobbyists and officials; (3) defining an appropriate disclosure regime; (4) investigating infractions; and (5) ensuring the independence of the Registrar.

Although, as we explored these weaknesses, we identified some problems that can best be resolved through changes to the legislation, in general our discussion has suggested that the current version of the LRA provides a framework for effective registration, even regulation, so that what are needed now are administrative resources equal to the tasks set out in the Act. In this vein, we have referred to the difficulties created by the fact that the Registrar is not independent of the government of the day, and in the next section will suggest legislative changes to resolve that problem. For the most part, though, we have drawn attention to the fact that the public and officials are generally unaware of the requirements of the Act, and have implied that this is a problem best resolved at the administrative level. The same is true of the issues surrounding the investigation of non-compliance. The next section will elaborate on this suggestion.

3 Remedies

The public's business will be conducted with integrity if:

- There is a widespread expectation in society at large that office holders and those who do business with them will act honestly;

- This broad understanding is reinforced by a culture within the public service that encourages office holders at all levels to respect the public trust and to meet the highest ethical and professional standards;
- The means exist whereby the public can know what business is being conducted with and within government, and how that business is carried out; and
- Institutions exist that can dispassionately monitor the conduct of public business and, where necessary, enforce compliance with the ethical and professional standards expected by the public.

Interdependent, mutually reinforcing, these four elements can create an environment of probity. This study is not mandated to consider whether or not an environment of probity exists in Ottawa, but it does have to show how the *Lobbyists Registration Act* (LRA) fits into the complex of cultural forces, laws and policies that are implied by these four elements. For our purposes, the key point to note is that the LRA is one of a group of laws, policies and practices that define standards, dictate processes and provide for their monitoring and enforcement. The *Financial Administration Act*, which empowers Treasury Board to carry out its responsibilities as the Government's financial manager, regulating the awarding of contracts and grants and dictating procedures for handling public moneys, is one of the most important of these. The *Values and Ethics Code for the Public Service* sets out the standards of behaviour expected of public office holders, while the *Conflict of Interest and Post-Employment Code for Public Office Holders* does the same thing for elected officials and Order in Council appointees, and both are buttressed by the *Criminal Code*. The *Canada Elections Act*, by determining the extent to which individuals and organizations can provide support for candidates and parties, attempts to limit the influence of major interests on political leaders. The *Auditor General Act*⁸⁹ and the *Access to Information Act* reinforce this web of regulation, as would other measures that have

been proposed, such as whistleblower legislation. No one of these fully safeguards the public purse or guarantees integrity in the conduct of public business, but they express our aspirations for integrity in government and, taken together, work towards providing the honest and open prosecution of public business that Canadian society hopes for.

The LRA plays a modest role in this web of regulation. But it is a key strand in the web. Without it, it would be hard to identify the extent of the “revolving door” problem, and so, hard to know whether or not the *Values and Ethics Code for the Public Service* is accomplishing its purpose. Without it, as well, major contributors to and important officials of political parties would not be identified as lobbyists, so that it would be hard to establish a connection between the operations of our political parties and the exercise of influence. The LRA and our elections legislation thus work together to shed light on what has been a murky part of Canadian public life. Again, the provisions of the LRA help to operationalize Treasury Board rules regarding the letting of contracts, identifying, for example, instances in which lobbyists may have received contingency fees for their assistance in obtaining contracts, contrary to Treasury Board rules.

There are two points to make here. First, the LRA’s contribution to the regulation of influence is useful, even if modest. Therefore, the weaknesses in the Act that we have identified ought to be addressed, not simply as an attempt to improve an obscure area of regulation, but as part of an overall process of building an environment of probity. Second, the LRA should not express legislative aspirations that are beyond its proper compass. Even though the Act has grown beyond the limited role assigned to it by its earliest progenitors, and is close to becoming, in Duff Conacher’s terms, a “lobbying disclosure act,” it should not be burdened, for example, with provisions that require the Registrar to determine who can or cannot lobby. The core purpose of the Act is to

identify and disclose and, where disclosure is avoided, to review and initiate formal investigation. If the Registrar and the Office do that job well, the other laws, regulations and policies that provide for professional standards, financial probity, the punishment of influence peddling and the monitoring of public business, will work all the more effectively.

With this in mind, we can return to our discussion of the Act's strengths and weaknesses and look at some ways in which the Act and its administration can be enhanced, and so contribute to the overall improvement of the regulation of influence.

3.1 Compliance

In our discussion of the strengths and weaknesses of the Act, we concluded that the most important challenge confronting the Registrar and the Office of the Registrar of Lobbyists (ORL) is that of securing compliance. It is too soon to declare a trend, but there are signs that the recent changes in the LRA and in the Registry have already brought some improvement. These signs include a considerable increase in the number of registrations and the fact that at least one major law firm is warning clients that the new rules and more aggressive monitoring should not be taken lightly. There is also anecdotal evidence that corporate and organizational lobbyists have begun to recognize that “we have to register.”⁹⁰

If these are indeed indications of improved compliance, it is likely that the change can be attributed, first, to two amendments to the Act. The decision to substitute the words “communicate in respect of” for the phrase “attempt to influence,” has brought more precision to the definition of lobbying. The change in registration processes for in-house corporate lobbyists has placed greater responsibility on the shoulders of senior corporate management, a fact that has not escaped the attention of legal counsel to firms.

There have also been changes at the Lobbyists Registration Branch. Spurred on by the lacklustre image the Branch had acquired, and by the need to address the lack of confidence created by the sponsorship scandal, the staff at the Branch—now re-named the Office of the Registrar of Lobbyists (ORL)—has become more aggressive in reviewing registrations and in broadcasting information about the registration process. The recent investigation of lobbyists failing to conform to the Act has received considerable publicity and will doubtless reinforce these efforts.⁹¹

Although these steps appear to have brought about considerable improvement in the compliance rate, it seems that they have most affected consultant lobbyists and the representatives of large corporations and non-profit organizations. These constitute the lobbying community that is centred in Ottawa and has colonies in other major cities. It is unlikely that improved compliance in that community will significantly reduce involuntary non-compliance. There will still be many business people and employees of non-profit organizations who do not register because they are not aware of the obligation to register or do not believe that their communications with public office holders amount to lobbying.

It is doubtful that further changes to the LRA or to contiguous codes and legislation would address this problem. It is best addressed as an education issue. What is needed is a multi-faceted outreach program that starts within the public service itself and progresses to the broader lobbying community until, through the mass media, it touches the consciousness of the general public.

The Registrar has recently contacted senior officials across the federal service and offered briefing sessions for top managers. This is a start in the process of alerting public servants to the Act and its requirements. Ultimately, it should lead to automatic inclusion of a module on lobbying

and the LRA in training programs offered by individual agencies and by the Canada School of Public Service. The best location for such a module would be the various courses in public sector ethics and ethical decision-making. These courses have champions in departmental ethics officers. If those officers were to be provided with advanced courses on lobbying issues, they would be in a position to encourage development of appropriate modules. They would also be able to act as ambassadors for the ORL within departments.

In addition to a training program, officers and other public office holders need a source of on-going information concerning registration requirements. The LRA website⁹² is one such source. A page designed specifically for program officers would be a valuable addition. It would be a point at which attention could be drawn to issues of congruence, such as those we have referred to. Since the LRA is not a piece of legislation that springs immediately to mind when officials and representatives of corporations and organizations first discuss program availability, it would also be useful to ensure that there are hyperlinks between the LRA website and other sites that provide information on programs and on doing business with the federal government. As noted above, this information is far from readily apparent when one explores such websites as the Contracts Canada website or the Treasury Board website. Such sites should draw attention to the Government's commitment to ethical practices and to formal requirements, such as those relating to lobbying.

Finally, the information available to both public servants and the potential lobbying community should be expanded. The interpretation bulletins and advisory opinions posted on the LRA website are a good beginning, but there are still areas that need elucidation, particularly in relation to the exemption accorded to corporate lobbyists for reporting communications regarding the awarding of government contracts.

Given training and these sources of information, alert program officers will take greater care to ensure that the businesses and organizations that they deal with are complying with registration requirements. This should be taken a step further, however. A Treasury Board policy should require that all public office holders, senior officials, political figures and program officers, as a matter of routine, establish the lobbyist status of individuals communicating with them. This would be done by direct question and by verification through the Registry. It is currently possible to verify a registration electronically and there is no reason why such a practice could not become widespread and routine. Such a routine would do much to make representatives of firms and organizations aware of the LRA and to determine whether or not they should register. It would also identify inconsistent reports, which could be followed up by the ORL.

Policies and education programs directed at program officers would go a long way to reduce the apparently high level of inadvertent non-compliance. There is a need, however, to go beyond the public service and to extend knowledge of the LRA and its requirements to the public at large, particularly to enterprises and organizations interacting with the Government. An initial approach to this task would be to involve the specialist press—*The Lobby Monitor* and *The Hill Times*, for example—in feature articles on aspects of lobby registration and regulation, and then move on to the organs of organizations whose members have a special interest in lobbying. The Canadian Chamber of Commerce, the Canadian Federation of Independent Business and the Canadian Society of Association Executives come to mind.⁹³ These and other organizations would also provide platforms at the national and regional levels for presentations on the subject, and thus a link to the general media.⁹⁴

3.2

Evasion

Inadvertent non-compliance can best be addressed through outreach programs directed at key segments of the public service and at the appropriate communities in general society. A different approach is required if the ORL is to deal satisfactorily with evasion. The recent aggressive monitoring and auditing of registrations is believed to have persuaded some lobbyists to register, but a more direct approach to identifying non-compliance is called for. Currently non-compliance comes to the attention of the Office primarily through complaints originating with watch-dog organizations or members of the lobbying community. Public servants may also draw the attention of the Office to non-compliance. The complaints are reviewed by Office staff and a report is prepared for the Registrar, who decides whether further action is required within the Office or by other authorities.

The suggestions made above for encouraging program officers to routinely check lobbyists registration could be used to assist the Office to identify non-compliance. That is, if public office holders regularly notified the Office of inconsistencies in registration, Office staff could follow up with the lobbyists concerned. Democracy Watch has urged that the *Values and Ethics Code for the Public Service* require officials to report lobbying rule violations to the Registrar. This is a useful suggestion, which might also be effected by simply building a feedback mechanism for apparent inconsistencies into the electronic Registry.

Those who believe that tough sanctions encourage compliance will argue that better compliance might be brought about if sanctions for violations of the Act and the Code were to be increased. But there is little evidence that existing sanctions are having any effect. It is likely that more will be gained from vigorous monitoring, aggressive investigation of breaches of the Lobbyists' Code and increased public awareness than from beefing up current sanctions.

The watch-dog group, Democracy Watch, has noted the lack of an anti-avoidance clause in the Act, and a case might be made for incorporating one like section 246 of the *Income Tax Act*. However, experience with the anti-avoidance clause in the *Income Tax Act* has been “less than straightforward.” Introduced in 1988, its interpretation and application has been debated in Canadian courts ever since.⁹⁵ Section 246 authorizes the Government to assess the tax payable by a taxpayer without including the avoidance transaction. In effect, the penalty for an avoidance transaction is that the Government can withhold the tax benefit it was meant to create. It is difficult to see how a similar financial penalty could be made part of the *Lobbyists Registration Act*. An anti-avoidance clause, therefore, is not recommended.

Some commentators on the LRA have suggested that the Registrar should be authorized to deny or remove registrations where an investigation has shown that a lobbyist has contravened the *Lobbyists’ Code of Conduct*. In some circumstances, this would be a substantial penalty. At present, the Act does not give the Registrar an explicit power to refuse registrations. Were it to do so, further provisions would be needed to ensure that adequate procedures existed to protect the rights of lobbyists under investigation. In turn, these provisions would require administrative support. Given the possible legal and administrative ramifications of according the Registrar this additional power, it is recommended here only that the proposal be given further study.

There are two ways in which current patterns of behaviour that are related to sanctions could be exploited to encourage better compliance. The first has to do with the incentive of maintaining the lobbyist’s reputation, and builds on the current requirement that the Registrar report publicly to Parliament the outcome of any investigation into breaches of the *Lobbyists’ Code of Conduct*. At present, the subject matter of the Registrar’s reports is limited to investigations of breaches of the Code. Convictions resulting from breaches of the Act are not reported to Parliament, and

might not be included in the Registrar's Annual Report. In order to give greater force to the publication of investigatory reports and successful prosecutions, the LRA should be amended to increase the ambit of the information to be included in the Annual Report to Parliament. As well, further registrations on the part of the lobbyist should be linked to that Report and to any report made by the Registrar to Parliament which finds that the lobbyist has contravened the Code. This would require an amendment to the Act authorizing the Registrar to attach such information to a registration record.

The second suggestion reverts to a long-standing recommendation on the part of several House of Commons committees that the lobbying community establish a professional organization. The Government Relations Institute of Canada has attempted to fill that role, but has not been well supported by the lobbying community. Perhaps the time has come for the House of Commons to institute an inquiry of its own into lobbying practices, the disciplinary methods available to a professional body to secure acceptable practices, and the means whereby the lobbying community can be persuaded to establish an effective professional organization.

Helpful though these suggestions may be, they will not go far to address the fundamental problem affecting the Office's ability to identify non-compliance. Nearly all of them involve more work for the Office, and the labour pool at the Office, as we have seen, is minuscule. Unless staffing at the Office is considerably increased, significant non-compliance—intentional and inadvertent—will continue. Therefore, it is strongly recommended that budgetary resources and staffing levels be raised to a level that will enable the Office to effectively carry out the responsibilities assigned to it by the *Lobbyists Registration Act*.

3.3

Disclosure

Critics have welcomed the recent extension of disclosure requirements to include lobbyists' previous employment in the public service, but are dissatisfied with the failure to extend the same requirements to positions held in political parties.

Protagonists for democratic equality have taken two approaches to addressing this issue. Some believe that this chain of obligation and influence should be eliminated entirely, and that lobbyists should be barred from political activity and the politically active barred from lobbying. Others argue that transparency demands that lobbyists' connections to public office holders should be publicly known. Transparency, they point out, would not eliminate preferential political access, but it would put the public office holder on notice that the connection is generally known and that therefore he or she must take pains to hold the lobbyist at arm's length and to avoid favouring that person's clients.

The second of these positions appears to be the more feasible. Apart from the possibility that the former might violate fundamental civil rights, the task of enforcing a prohibition would generate complex problems of interpretation as party and Registry officials tried to establish what level of political activity, and which party positions, would render an individual ineligible for lobbying work, what exemptions would apply, and how evasion could be avoided. It is doubtful that the LRA would be the appropriate legislative tool for implementing this approach, and it is certainly out of the question that the ORL, with its current resources, would be able to carry it out. On these grounds, the transparency approach is more appealing, particularly as it would put political operatives on the same footing as former public office holders. However, it would not address the issue of preferential access. Perhaps that issue

could be resolved by aligning the *Lobbyists Registration Act* with the *Canada Elections Act*,⁹⁶ with the “Financial Administration” portion of the latter Act providing that the value of labour volunteered to a political party or candidate be assessed at a realistic rate and treated as part of the individual’s permitted annual contribution to that party. In this way, the extent of an individual’s contribution to a party or candidate would be limited and the chain of obligation and influence effectively broken. At the same time, the LRA could be amended to require disclosure of positions held in election, nomination and leadership campaigns and in local, regional, provincial and national party organizations.

Democracy Watch has drawn attention to problems with some exemptions, particularly the exemption for volunteer lobbyists, and has argued that there should be more disclosure of volunteer activity. If, as Democracy Watch maintains, some large corporations are drawing upon retired executives to lobby as volunteers, a remedy could lie in extending the obligation to register to those volunteers who have had previous employment in the firm or organization, with the requirement to disclose the nature of that employment. If, at present, these volunteers are, in fact, receiving some recompense for their efforts, then they are in violation of the Act, and their involvement should be investigated and appropriate penalties applied.

Democracy Watch has also urged that lobbyists be required to report attending conferences and other events that, theoretically at least, are on the public record. It is doubtful whether the disclosure provisions of the LRA could be used to achieve this, and the attempt to list the numerous meetings of this sort, and those who attend them, could truly create a glut of unmanageable information. Perhaps another way to make this information accessible is to require each agency to establish a conference sub-site on its website where the public could access records of all conferences supported in whole or in part by departments. Links could be provided to the sites of conferences attended by agency officials.⁹⁷

The issue of identifying the costs of lobbying vies for importance with the campaign to have political operatives disclose their connections to parties and politicians. As has been pointed out, however, it is extremely difficult to establish what the full costs of a campaign actually are. The conundrum, then, is that the public interest demands some form of disclosure, but that the necessary information cannot be obtained in an affordable or timely manner. The only suggestion that can be made here is that the problem be studied further with a view to devising a disclosure procedure that provides realistic and timely information.

In conclusion, we should revert to earlier discussions of the disclosure issue. The Zed Committee exaggerated when it claimed that “a good portion of the content of (lobbyists’) expert advice is available to any citizen who takes the time to become informed about government and the policy process.”⁹⁸ The Auditor General’s 2003 Report was closer to the mark when it pointed out those lobbyists’ services “may give... clients the advantage of access to information that is not readily available. This may compromise the public interest.”⁹⁹ The present study recommends some additions to the disclosure requirements. Care has been taken to avoid recommending disclosure that would create an unmanageable quantity of information. Together with the existing disclosure requirements, these additional items would provide knowledgeable observers with information that can be used to assist the public and lawmakers to know, to understand, and to publicize what lobbying is being done and for what purposes. It is, and always has been, through such observers that the public is alerted to wrongdoing, and it is up to the media and the public at large to make sure that they can be heard.

3.4

The Status of the Registrar

As we have seen, the status of the Registrar is a perennial issue. It was partially addressed through the recent amendments to the LRA,

providing that the Registrar shall report to Parliament. Furthermore, the current Registrar has been provided with a level of independence that is much greater than that enjoyed by his predecessors.

These are important steps and it is possible that, with the passage of time, they will institutionalize a degree of autonomy for the Registrar and his or her staff that is consistent with the tasks assigned to them. On the other hand the LRA instructs the Registrar and his or her staff to carry out some duties that are bound, at some point in time, to jeopardize the political standing of a Cabinet Minister, or even a government. The fact that there has been no such public embarrassment since the Act came into effect in 1989 speaks chiefly to the ineffectiveness of its initial provisions and the scanty resources assigned to the Registrar and the Lobbyist Registration Branch (LRB). There have, after all, been a number of political scandals since 1989, and though lobbying has featured in many, the LRA, as it has been articulated and administered, has done very little to carry out its stated purpose of enabling “public office holders and the public...to know who is attempting to influence government.”

Despite the improvements that have been made in the Act and in its administration, the Registrar remains a civil servant and the Office is located in the executive part of government. The Registrar is consequently ultimately subject to the pressures that Ministers, and other senior officials, can bring to bear, and the Office is vulnerable to budgetary, staffing and organizational decisions that can, subtly or not, severely limit its effectiveness.

The alternative is to place the Registrar and the Branch under the supervision of Parliament itself. This is an important step. It would certainly be more costly than the present arrangement, even if the same number of officers were to be employed directly on registration, interpretation and investigatory duties, simply because the Branch would require administrative support functions that are currently

supplied by its host Department. These extra costs, however, would have to be seen as the costs of ensuring genuine autonomy. The decision to incur those costs would be much less important than the decision on autonomy itself: Would autonomy ensure that the registry delivered information that would enable Canadians to more quickly grasp the significance of the lobbying activities under way? Would autonomy secure better compliance? Would it guarantee more timely verification and more effective and timely monitoring and investigation of lobbying?

The answer to all of these questions is “not necessarily.” As a creation of Parliament itself, the Registrar’s function would still be overlooked by politicians whose adversarial instincts would be bound to authorize some forms of disclosure and investigation, but whose collective sense of self-preservation would at other times constrain the gathering of information and the carrying out of investigations. For example, would any party, in government or opposition, enthusiastically support the suggestion made above that volunteer party labour be treated as the equivalent of financial donations? Parliamentary bodies can, like Treasury Board, limit resources, and they can review and curtail a mandate.

This being said, however, the great advantage of appointment and regulation by Parliament lies in the fact that the legislature itself is an open forum. It is a centre of media attention and it has an authority that cannot be gainsaid easily at all by agencies in the executive branch. Notwithstanding any proclivity individual MPs may have for secrecy or for protecting the perquisites of their party organizations, the competitive nature of the House and its underlying responsibility for the public interest will in the long run support an agency that is charged with promoting transparency and genuinely enabling “public office holders and the public...to know who is attempting to influence government.” For this reason, the Registrar and the Branch should be directly supervised by Parliament.

3.5

Concluding Summary

As one of a group of laws, policies and practices that define standards of probity, dictate processes, and provide for their monitoring and enforcement, the LRA's contribution to the regulation of influence is useful, but modest. Its core purpose is to identify lobbying, disclose its nature and, where evasion occurs, to review and initiate formal investigation. Therefore, in addressing its weaknesses, we should consider improvements that enhance this core purpose, and avoid legislative aspirations that are beyond its scope. Our assumption should be that, if the Act effectively meets the goals set out in its preamble, then the other laws, regulations and policies that provide for professional standards, financial probity, the punishment of influence peddling and the monitoring of public business, will in turn work more effectively.

The issue of non-compliance, especially inadvertent non-compliance, loomed large in our discussion of the weaknesses in the registration regime, and in the suggestions for addressing them. The interviews conducted for this study led to the conclusion that recent changes in the Act and a more aggressive monitoring of registrations on the part of the ORL had had an effect on the lobbying community that is centered in Ottawa, and that that community accounts for the bulk of the improvements in compliance that have occurred. Conversely, there will still be many business people and employees of non-profit organizations outside that community who will be unaware of the LRA.

It was suggested that this problem is best addressed through a multi-faceted outreach program. A number of suggestions were made for such a program, including training for public servants, better and more accessible information, and involving business groups and the media in putting more information about registration before the general public. Training and expanded public knowledge of lobbyist registration

should, however, be reinforced with policies that require public servants to be more alert to the registration process and oblige them to establish and, where necessary, report the lobbyist status of individuals communicating with them. We noted, however, that unless staffing at the Office is considerably increased, significant non-compliance—intentional and inadvertent—will continue. More staff is needed to verify registrations, monitor compliance and investigate non-compliance, on the one hand, and to put the outreach program into effect, on the other.

Several suggestions were made to improve disclosure, although, in general, the major challenge, here as elsewhere, lies in securing for the ORL the resources necessary for effective administration of the Act. In response to arguments that political operatives ought to be banned from participating in lobbying, it was suggested that a more effective approach might be to require disclosure of party positions held, and to introduce changes to election finance rules that would equate volunteer time donated to political parties to financial contributions given to the same cause. Other proposals for disclosure related to the previous employment of volunteers and to lobbyists' participation in conferences and meetings.

Finally, the study considered the issue of the Registrar's independence, and concluded, as many others have done, that because, at present, the Registrar is ultimately subject to the pressures that Ministers and other senior officials can bring to bear, and the Office is vulnerable to budgetary, staffing and organizational decisions that can, subtly or not, severely limit its effectiveness, both the Registrar and the Office should be placed under the supervision of Parliament itself.

The overall conclusion reached in this study is that the *Lobbyists Registration Act*, despite some continuing weaknesses, has the potential to contribute effectively to the web of regulation that expresses and attempts to meet Canadians' expectations for integrity in their national

government. To realize that potential, however, two principal recommendations are made. First, Parliament must secure the independence of the Registrar and the Office, by making them responsible to it. Second, Parliament must ensure that the Registrar and the Office have administrative resources equal to the tasks assigned to them by the Act.

4 Recommendations

In consequence of this overall conclusion, two principal recommendations are made:

- *First, Parliament should secure the independence of the Registrar and the Office of the Registrar of Lobbyists, by placing the Registrar and the Office under the supervision of Parliament itself; and*
- *Second, Parliament should ensure that budgetary resources and staffing levels be raised to a level that will enable the Registrar and the Office to effectively carry out the responsibilities assigned to them by the Lobbyists Registration Act.*

Other recommendations are as follows:

4.1 Compliance

The problem of inadvertent non-compliance is best addressed as an education issue. An outreach program should be launched to familiarize public servants, lobbyists and the general public with the requirements of the *Lobbyists Registration Act* and related codes and regulations. Within this program:

- Departmental ethics officers should be provided with advanced courses on lobbying issues, and encouraged to act as ambassadors for the ORL within departments;

- Modules on lobbying and the LRA should be included in training programs offered by individual agencies and by the Canada School of Public Service;
- The website of the ORL should be enhanced. A page should be designed specifically to alert program officers to LRA requirements and to related requirements of Treasury Board and other agencies;
- There should be hyperlinks between the ORL website and other sites that provide the public with information on programs and on doing business with the federal government;
- The information available to both public servants and the potential lobbying community should be expanded, through further interpretation bulletins and advisory opinions;
- The Registrar should go beyond the public service to extend knowledge of the LRA and its requirements to the public at large, particularly to enterprises and organizations interacting with the Government. A particular initiative would be to encourage the specialist press and the organs of organizations whose members have an interest in lobbying to carry feature articles on aspects of lobby registration and regulation; and
- This initiative should include speaking engagements by the Registrar to business associations and other organizations whose members may have an interest in lobbying.

4.2

Combating Evasion

In addition to encouraging the recent more aggressive monitoring, verification and investigation activities of the ORL, the study recommends that:

- A Treasury Board policy should require that all public office holders, senior officials, political figures and program officers, as a matter

of routine, establish the registration status of lobbyists communicating with them, and the status of the undertakings that are the subject of their communication;

- The same policy should provide that, where inconsistencies in registration occur, public office holders must notify the Office of the Registrar of Lobbyists;
- The LRA should be amended to increase the ambit of the information to be included in the annual report to Parliament;
- Where enquiry by the Registrar has established that a lobbyist has contravened the Act or the Code, and has been reported to Parliament, the ORL website record of further registrations on the part of the lobbyist should be hyper-linked to that report;
- Given the possible legal and administrative ramifications of according the Registrar an explicit power to refuse or remove registrations, the proposal should be given further study; and
- The House of Commons should institute an enquiry into lobbying practices, the disciplinary methods available to a professional body to secure acceptable practices, and the means whereby the lobbying community can be persuaded to establish an effective professional organization.

4.3

Disclosure

- The LRA should be amended to require disclosure of party positions held in election, nomination and leadership campaigns and in local, regional, provincial and national party organizations;
- The *Canada Elections Act* should be amended to provide that the value of labour volunteered to a political party or candidate be assessed at a realistic rate and treated as part of each individual's permitted annual contribution to that party;

- Volunteer lobbyists who have had previous employment in a firm or organization in whose interest they are communicating with public office holders, should be required to disclose the nature of that employment;
- Government agencies should be required to provide websites for the records of all conferences and similar events that they have supported in whole or in part. Links should be provided to the sites of conferences attended by agency officials; and
- The ORL should conduct a study to devise a disclosure procedure that would provide realistic and timely information about the costs of reported lobby undertakings.

Appendix: Terms of Reference, Method and Acknowledgements

The study was commissioned to address the issues of (1) the independence of the Registrar, (2) the Registrar's powers of investigation, (3) the time limitation on prosecutions, (4) the need to provide meaningful information to Parliament on lobbying activities, and (5) the need for stronger sanctions.

In view of the short time available for the study—about six weeks—it was agreed that no new major research would be undertaken and that there would not be time for any significant investigation of comparative approaches to lobbyist regulation. Research therefore focused on the more recent development of the Act itself and its administration. Interviews were conducted in Ottawa and by telephone with the Registrar and his officials and with a small number of informed observers. Considerable use was made of websites, a number of which were suggested by informants.

The cooperation of officials, particularly the Registrar and his staff, is much appreciated. John Chenier, editor and publisher of *The Lobby Monitor*, generously shared his extensive knowledge of the lobbying scene. Sean Moore, as always, gave excellent advice with patience and good humour. At the Commission of Inquiry, Donald Savoie, Research Director, understood as he smoothed the way for interviews and received drafts, one section at a time. I especially want to thank Anne Hooper, Librarian to the Commission, for her efficient and determined efforts to meet my requests for information, and Laura Snowball, Legal Counsel, for the lucid and precise guidance that she provided as I tried to understand the implications of key phrases in the *Lobbyists Registration Act* and the legal ramifications of proposals for reform. If she, and the others I have mentioned, failed in their efforts to help me “get it right,” it is my fault, not theirs.

Endnotes

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- ¹ *The Lobbyists Registration Act*, originally 35-36-37 Elizabeth II c.53, and later, R.S. 1985, c. 44 (4th Supp.).
- ² The informal version of the current Act will be found at the website of the Lobbyist Registration Branch (<http://strategis.is.gc.ca/epic/internet/inlobbyist-lobbyiste.nsf/en/nx00101e.html>). The present Act is a consolidation of the *Lobbyists Registration Act*, R.S. 1985, c. 44 (4th Supp.); *An Act to Amend the Lobbyists Registration Act and to make related amendments to other Acts*, S.C. 1995, c. 12, July 25, 1995, January 31, 1996, and the remainder from Bill C-15 on June 11, 2003; and *An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence*, Bill C-4, which came into force on May 17, 2004.
- ³ A recurrent debate over the regulation of lobbying had taken place since the late 1960s as a group of backbenchers, from the Liberal, Progressive Conservative and NDP parties, had proposed 19 private members' bills on the subject to the House. Mr. Mulroney's 1985 statement that the time had come to "monitor lobbying activity and to control the lobbying process by providing a reliable and accurate source of information on the activities of lobbyists," prompted the production of a discussion paper (Consumer and Corporate Affairs Canada, *Lobbying and the Registration of Paid Lobbyists* (Ottawa: Supply and Services Canada, 1985)), which was used by the House of Commons Standing Committee on Elections, Privileges and Procedure as the point of departure for hearings on the subject. (See The Committee's "First Report to the House," *Minutes of Proceedings and Evidence* 1/33, 1985-86, 1:26. House of Commons. Standing Committee on Elections Privileges and Procedure, and "First Report to the House regarding Lobbyists and the Registration of Paid Lobbyists," *Minutes of Proceedings and Evidence*, 2/33, 1986-7, 2:21). An account of the debate over the lobbying issue from its inception to 1989 will be found in A. Paul Pross, "The Rise of the Lobbying Issue in Canada: The Business Card Bill," in Grant Jordan, *The Commercial Lobbyists* (Aberdeen: Aberdeen University Press, 1991), pp. 76-95.
- ⁴ *Notes for Remarks by the Honourable Harvie André, Minister of Consumer and Corporate Affairs Canada...to the Press Conference on Lobbying Legislation.* (Ottawa: CCAC, mimeo., June 30, 1987).
- ⁵ André, *Notes for Remarks*. The Committee visited Washington and Sacramento, where it discussed U.S. federal and California regulation of lobbyists with federal and state officials and with lobbyists and legislators, and came away impressed with the problems that arise when the registration system demands too much information of lobbyists. Their conviction that information overkill smothered analysis has been shared by all those involved in subsequent revisions of the Act.
- ⁶ Section 2(f) of the Act defines a public office holder as "any officer or employee of Her Majesty in Right of Canada" and adds that it includes Parliamentarians and staff members working for them, Order in Council appointees (other than judges), members of federal tribunals, boards and commissions, and members of the armed forces and of the RCMP. One has to be careful not to assume that this definition is used in the ethics codes that apply across the federal government. The *Conflict of Interest and Post Employment Code for Public Office Holders*, which is administered by the Ethics Commissioner, defines public office holders as Order in Council appointees; ministers and individuals working for them who are not public servants; lieutenant governors; judges; RCMP officers (except the Commissioner); and certain other designated persons. The *Values and Ethics Code*, which is administered by Treasury Board, does not cover public office holders, as defined by the *Conflict of Interest...Code*. It applies to public servants working in departments and agencies covered by the *Public Service Staff Relations Act* and to individuals working under contract who are deemed, under the *Income Tax Act*, to be employees of the Government. In other words, the coverage of the *Lobbyists Registration Act* is broad, embracing virtually anyone who can be said to be an employee of the federal government.
- ⁷ The recommendations of the Standing Committee on Elections Privileges and Procedure had been more rigorous. They suggested that those engaged in "indirect" lobbying (such as "mapping," advertising and

mass mailing) should be required to register; that non-profit organizations provide the same level of information expected of consultant lobbyists; that contingency fees be banned; that the Registrar have adequate powers of investigation; and that sanctions be such as to “make compliance a desirable and necessary goal on the part of lobbyists.” See “First Report to the House regarding Lobbyists and the Registration of Paid Lobbyists,” *Minutes of Proceedings and Evidence*, 2/33, 1986-7, 2:21.

- ⁸ Public Affairs International (PAI), one of the leading lobbying firms, had suggested that the lobbyist’s knowledge is brought to bear in one or other of three ways: by representing interests to government, by providing a “dating” service, or by “mapping” decision processes for clients. Representation is the best known of these activities and involves articulating to officials, politicians and sometimes the general public the needs and views of particular interests. The dating service puts clients in touch with appropriate officials and advises them on how best to present their case. Mapping services help clients develop a strategy for taking the proposal through the entire decision process, basing their advice on the service’s familiarity with the structure and personnel of agencies and their ability to keep abreast of changes in decision-making processes and regulatory procedures. PAI, and some other lobbyists, had argued that mapping and dating services should not be covered by the Act since they merely provided clients with advice about their lobbying strategies. Critics of this position argued that in the process of collecting information for clients, lobbyists were in a position to bring some influence to bear on officials.
- ⁹ House of Commons, *Minutes of Proceedings and Evidence of the Sub-Committee on Bill C-43, An Act to amend the Lobbyist Registration Act and to make related amendments to other Acts of the Standing Committee on Industry*. See particularly Issue 20, which contains its report.
- ¹⁰ House of Commons. *Minutes of Proceedings and Evidence of the Standing Committee on Consumer and Corporate Affairs and Government Operations*. Issue No. 61, June, 1993, p. 1. The issue contained the 9th report of the Committee which was entitled *A Blueprint for Transparency: Review of the Lobbyist Registration Act*. Future references will be to *A Blueprint for Transparency*
- ¹¹ *A Blueprint for Transparency*, p. 1.
- ¹² *Sub-Committee on Bill C-43*, p. 20:15.
- ¹³ Thus corporate and consultant lobbyists would be required to report the names of the corporate affiliates of their employers that would expect to benefit from the successful prosecution of a lobby, and they would also be expected to provide a general description of the business activities of the employing corporations. (*Sub-Committee on Bill C-43*, pp. 20:38-9.)
- ¹⁴ *Sub-Committee on Bill C-43*, p. 20:34.
- ¹⁵ *A Blueprint for Transparency*, p. 1.
- ¹⁶ *Sub-Committee on Bill C-43*, p. 20:18.
- ¹⁷ *A Blueprint for Transparency*, p. 17, *Sub-Committee on Bill C-43*, p. 20:21.
- ¹⁸ *A Blueprint for Transparency*, p. 16.
- ¹⁹ *Sub-Committee on Bill C-43*, p. 20:24.
- ²⁰ *A Blueprint for Transparency*, p. 1.
- ²¹ *Sub-Committee on Bill C-43*, p. 20:23.
- ²² *Sub-Committee on Bill C-43*, p. 20:24.
- ²³ *Sub-Committee on Bill C-43*, p. 20:25. This does not address the possibility that consultations might be prompted by collusion between officials and lobbyists.
- ²⁴ *Sub-Committee on Bill C-43*, p. 20:19.
- ²⁵ *A Blueprint for Transparency*, p. 15.
- ²⁶ *Sub-Committee on Bill C-43*, p. 20:30.
- ²⁷ *Sub-Committee on Bill C-43*, p. 20:30.

- ²⁸ *Sub-Committee on Bill C-43*, p. 20:31. See also Appendices A and B.
- ²⁹ *Sub-Committee on Bill C-43*, pp. 20:34-35.
- ³⁰ *Sub-Committee on Bill C-43*, pp. 20:37-38.
- ³¹ *Sub-Committee on Bill C-43*, p. 20:51.
- ³² *Sub-Committee on Bill C-43*, p. 20:35.
- ³³ *Sub-Committee on Bill C-43*, pp. 20:35-36.
- ³⁴ *Sub-Committee on Bill C-43*, p. 20:41.
- ³⁵ Although the best known of these, Stevie Cameron's book *On the Take: Crime, Corruption and Greed in the Mulroney Years* (Toronto: Macfarlane, Walter and Ross), was published in 1994, her commentaries, and those of other journalists, had focussed on the theme of corruption and lobbying for months before the 1993 election. As John Crosbie stated bitterly, the organizers of the Progressive Conservative bid for re-election were "spooked by the polls" and "believed that the legacy of Brian Mulroney would be an election liability, that our government's record would pave the way to defeat." (*No Holds Barred: My Life in Politics* (Toronto: McLelland and Stewart, 1997), pp. 259-260.)
- ³⁶ *Sub-Committee on Bill C-43*, p. 20:45.
- ³⁷ *Sub-Committee on Bill C-43*, p. 20:45.
- ³⁸ *Sub-Committee on Bill C-43*, p. 20:46.
- ³⁹ *Sub-Committee on Bill C-43*, p. 20:47.
- ⁴⁰ *A Blueprint for Transparency*, p. 2, and *passim*.
- ⁴¹ *Sub-Committee on Bill C-43*, p. 20:52.
- ⁴² *Sub-Committee on Bill C-43*, p. 20:54.
- ⁴³ *Sub-Committee on Bill C-43*, p. 20:55.
- ⁴⁴ *Sub-Committee on Bill C-43*, p. 20:55.
- ⁴⁵ *Sub-Committee on Bill C-43*, pp. 20:55-56.
- ⁴⁶ *Sub-Committee on Bill C-43*, p. 20:56.
- ⁴⁷ *Sub-Committee on Bill C-43*, p. 20:56.
- ⁴⁸ *Sub-Committee on Bill C-43*, p. 20:57.
- ⁴⁹ *Sub-Committee on Bill C-43*, p. 20:59.
- ⁵⁰ Lobbyist Registration Branch. *New Regulations (June 2005)*, 'General Information' at <http://strategis.ic.gc.ca/epic/internet/inlobbyist-lobbyiste.nsf/en/nx00105e.html>. As of 8/26/2005 at p. 1/2.
- ⁵¹ "Regulations Amending the Lobbyists Registration Regulations" *Canada Gazette*, vol. 138, no. 51 (December 18, 2004), p. 1/16.
- ⁵² Section 7(1) of the LRA requires organizations to register employees when a significant portion of employees' time is occupied in communicating with public office holders concerning legislation, policies or grants, contracts and contributions. The threshold for reporting occurs when one individual devotes 20% of his or her time to lobbying, or when several employees carry out lobbying activities that "would constitute a significant part of the duties of one employee if they were performed by only one employee."
- ⁵³ *Canada Gazette* 138/51 p. 3/16.
- ⁵⁴ *Canada Gazette* 138/51 p. 3/16.
- ⁵⁵ LRA, s. 10.4.
- ⁵⁶ LRA, s. 5(2)(h.1).

⁵⁷ LRA, s. 5 (1.1).

⁵⁸ In the Preamble and the disclosure sections.

⁵⁹ As, for example, in provisions clarifying the investigatory roles of the Registrar and police.

⁶⁰ The intense media and political interest in the *Lobbyists Registration Act* during the fall of 2005 led both the Government and the Opposition parties to propose changes to the Act at the time Parts II and III were being written. Some administrative changes were also introduced. As the first draft of the study had to be submitted in early October, and as it was not possible to carry out major revisions after that, it was decided that the study would not consider any events occurring after November 1, 2005.

⁶¹ Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Public Hearing* (Translation), Vol. 110, p. 20193.

⁶² Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Public Hearing* (Translation), Vol. 96, p. 17136.

⁶³ To test this statement, in mid-October 2005, the Registry was checked to see whether five of the country's leading universities were registered. Only one had registered its president and senior officials whose duties would include spending a significant part of their time communicating with the federal government. Only one of three national environmental organizations appeared to have registered. Corporate registrations were more difficult to check.

⁶⁴ "Dingwall at centre of probe into lobby payments," *Globe and Mail*, Sept. 25, 2005, A1 and A9.

⁶⁵ KPMG Consulting, *Study on Compliance under the Lobbyists Registration Act. Final Report* (Prepared for Office of the Ethics Counsellor. Ottawa, September 14, 2001), p. 1.

⁶⁶ KPMG, *Study on Compliance*, p. 1.

⁶⁷ A useful discussion of the contingency fee issue is found in the October 5, 2005 edition of *The Lobby Monitor*, vol. 16, no. 19.

⁶⁸ These are discussed in A. Paul Pross and Kernaghan R. Webb, "Embedded Regulation: Advocacy and the Federal Regulation of Public Interest Groups" in Kathy L. Brock (ed.), *Delicate Dances: Public Policy and the Nonprofit Sector* (Kingston, Ont.: Queen's University. School of Policy Studies. Public Policy and the Third Sector Series, 2003).

⁶⁹ Section 7(1)(b). The 20% rule is expounded in the LRB Interpretation Bulletin, "A Significant Part of Duties."

⁷⁰ Personal communication, 04/10/05. I am grateful to officials at Public Works for providing me with a summary of the steps the Department takes to educate staff on lobbying issues.

⁷¹ Auditor General of Canada, *Report* (Ottawa, November 2003), Chapter 2: "Accountability and Ethics in Government," s. 2.82.

⁷² References to the website do not take into account any changes that may have been made after November 1, 2005.

⁷³ [Http://www.contractsCanada.gc.ca/en/busin-e.htm](http://www.contractsCanada.gc.ca/en/busin-e.htm) states simply that contracts must "stand the test of public scrutiny, increase access, encourage competition and reflect fairness," and the only reference to lobbying in the Treasury Board policy statement on contracts is to the ban on contingency fees.

⁷⁴ E-mail. M. Murphy to P. Pross. Oct. 7, 2005.

⁷⁵ The Registrar's early annual reports note considerable numbers of telephone enquiries about the mechanics of registration and the requirements of the Act.

⁷⁶ See the Lobbyists Registration Branch, *Annual Report 1995-96*, Section 5.

⁷⁷ *The Lobby Monitor* for March 29, 2005 reported, for example, that the Government Relations Institute of Canada, which represents the professional lobbying community, has been pressing for further

interpretations, especially in relation to the new disclosure requirements regarding previous public sector employment and the stricter view of communications with public office holders. This stricter view has had an impact on the mapping activities of lobbyists, which one described as being “the bulk” of lobbying in Ottawa. It is common for lobbyists who are seeking information about policies and contracts to insert into their queries questions that hint at possible policy directions. (“What is the Government thinking about....?” or “Has the Government thought of....?”). Where such interviews deal with highly sensitive issues, cautious lobbyists will register as a matter of course. Not all will do so, however, and doubtless there will ultimately be a need for further interpretation bulletins on such points. The bulletins on the LRA website as of October 18, 2005, dealt with the meaning of the phrases “a significant part of duties” of corporate and organization employees; “communicating with public office holders;” and disclosure of previous public offices. Advisory opinions were also available for those interested in the role of members of boards of directors and the registration requirements applicable to individuals in the academic world.

⁷⁸ Personal communication. M. Nelson, Registrar of Lobbyists, to P. Pross. Nov. 1, 2005.

⁷⁹ Although this description is hypothetical, Beryl Wajzman, in testimony before the Commission, describes a similar pattern. See Commission of Inquiry into the Sponsorship Program and Advertising Activities *Public Hearing* (Translation), vol. 119 (May 13, 2005).

⁸⁰ Democracy Watch. “Federal lobbying law still has loopholes and the enforcer of the *Lobbyists Code of Conduct* still lacks needed independence and resources.” Letter by Duff Conacher to the *Hill Times*, July 4, 2005. Also located at <http://www.dwatch.ca/camp/OpEdJul0405.html>.

⁸¹ John Chenier, editor of *The Lobby Monitor*, noted in testimony before the House of Commons Standing Committee on Industry, Science, and Technology that recent U.S. state legislation has begun to include “a component to identify the expenditures involved in lobby campaigns in order to provide some measure of (the) intensity of the campaign, as well as who is involved” (*Proceedings and Evidence*, April 24, 2005). The *Monitor* frequently cites U.S. data on lobbying activity. Its October 2003 issue commented on a study by the Annenburg Public Policy Center at the University of Pennsylvania which looked at lobby advertising. It reported that in 2001 and 2002 lobbies spent \$105 million in the Washington, D.C. area alone on advertising relating to issues before the President and Congress. Eleven organizations spent 40% of this amount. In addition to drawing attention to the big spenders, the study found a correlation between heavy spending on advertising and policy success. It warned that “organizations that are spending large amounts regularly to influence public policy may be of greater concern than the occasional large spender because this could indicate that a small sector of the public is consistently having more influence on issues of public policy.” *The Lobby Monitor* 15 (October 29, 2003) 1, pp. 6-7.

⁸² This issue, like the argument that public interest groups are discriminated against by the LRA, impinges on a concern that has troubled supporters of public interest groups for a number of years. That is, that commercial enterprises can treat the costs of lobbying as legitimate business expenses. Since such expenses reduce corporate taxes, the public is, in effect, paying part of the costs of lobbying its own government. This is offensive to public interest groups on several grounds. First, such groups are themselves required to report such sums as they receive from government. Second, charities—which constitute a large proportion of Canada’s active public interest groups—face strict regulations governing their expenditure on lobbying. However worthy their cause, no one charity can spend more than 10% of its annual income on lobbying. Furthermore, there are even stricter regulations prohibiting politically partisan advocacy and some forms of policy advocacy. Third, corporations’ capacity to raise funds for lobbying far exceeds that of public interest groups. Many such groups have registered as charities because the tax incentive for charitable donations does encourage donations. Those that have determined to remain as non-profit organizations in order to avoid the advocacy restrictions applied to charities, find that public financial support is quite limited. In short, neither group has the resources, or in many cases is permitted, to challenge corporate lobbying on anything like equal terms.

⁸³ *Sub-Committee on Bill C-43*, p. 20:19.

- ⁸⁴ *Sub-Committee on Bill C-43*, p. 20:18.
- ⁸⁵ Letter. Diane Champagne-Paul, Registrar, Lobbyists Registration, to Richard Dupuis, Clerk, House of Commons Standing Committee on Industry, Science and Technology. April 30, 2001.
- ⁸⁶ Personal communication. Michael Nelson, Registrar of Lobbyists, to P. Pross. Nov. 1, 2005.
- ⁸⁷ Attempts to speak with Ms. Champagne-Paul were unsuccessful.
- ⁸⁸ Interview. September 21, 2005.
- ⁸⁹ Consolidated Statutes and Regulations. 1976-77. c. 34.
- ⁹⁰ Interviews. September 20 and 21, 2005.
- ⁹¹ "Dingwall at centre of probe into lobby payments," *Globe and Mail*, Sept. 25, 2005, A1 and A9.
- ⁹² [Http://strategis.ic.gc.ca/lobby](http://strategis.ic.gc.ca/lobby).
- ⁹³ The Canadian Society of Association Executives has shown interest in lobbying issues in the past, often commenting on them in its journal and publishing *A Guide to Government Relations for Directors of Not-for-Profit Organizations*, by Huw Williams and Lou Riccoboni, which includes a section on the LRA.
- ⁹⁴ In fact the Branch has begun doing this at the national level. Pierre Ricard-Desjardins, Deputy Director of the ORL, recently made a presentation on "The Amended Lobbyists Registration Act" at an Ottawa conference entitled "Risky Business," September 15, 2005. The need, however, is for information to reach beyond Ottawa.
- ⁹⁵ The Supreme Court of Canada released its first two decisions dealing with section 246 on October 19, 2005 (*Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54; *Mathew v. Canada*, 2005 SCC 55).
- ⁹⁶ Consolidated Statutes and Regulations, 2000, c. 9.
- ⁹⁷ Such sub-sites would not only assist lobbying watchdogs, they would be a boon to individuals, within and outside government, interested in the substantive topics covered by conferences.
- ⁹⁸ *Sub-committee on Bill C-43*, p. 24.
- ⁹⁹ Auditor General, *Report*, 2003, para. 2.76.

