



Office of the Commissioner
of Lobbying of Canada

Commissariat au lobbying
du Canada

Report on Investigation

The Lobbying Activities of Keith Beardsley

June 2012

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Commissioner of Lobbying



Commissaire au lobbying

Ottawa, Canada K1A 0R5

The Honourable Noël A. Kinsella
Speaker of the Senate
The Senate
Ottawa, Ontario
K1A 0A4

Dear Mr. Speaker:

Pursuant to section 10.5 of the *Lobbying Act*, I have the honour of presenting to you a Report on Investigation on the lobbying activities of Mr. Keith Beardsley for tabling in the Senate. The investigation was conducted in accordance with the provisions of section 10.4 of the Act.

Sincerely yours,

A handwritten signature in black ink, consisting of a large, stylized 'K' followed by a horizontal line.

Karen E. Shepherd

Commissioner of Lobbying



Commissaire au lobbying

Ottawa, Canada K1A 0R5

The Honourable Andrew Scheer, M.P.
Speaker of the House of Commons
Room 316-N, Centre Block
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Mr. Speaker:

Pursuant to section 10.5 of the *Lobbying Act*, I have the honour of presenting to you a Report on Investigation on the lobbying activities of Mr. Keith Beardsley for tabling in the House of Commons. The investigation was conducted in accordance with the provisions of section 10.4 of the Act.

Sincerely yours,

A handwritten signature in black ink, consisting of a large, stylized 'K' followed by a horizontal line.

Karen E. Shepherd

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Commissioner's Comments

As Commissioner of Lobbying, I have the responsibility to investigate allegations of activities that might be in breach of laws and rules surrounding lobbying at the federal level. This case came to my attention as a result of a referral to my Office by a public office holder in November 2009. The Investigations Directorate of my Office carried out an administrative review following the referral. At the conclusion of the administrative review, I decided to open an investigation under subsection 10.4(1) of the *Lobbying Act*.

Issue

Lobbyists have certain legal and professional obligations to follow when they work on behalf of clients or employers. Individual consultant lobbyists are required to file a return with the Commissioner if, for payment, they undertake to arrange meetings or communicate with public office holders in respect of: the development of any legislative proposal; the introduction, passage, defeat or amendment of any Bill or resolution; the making or amendment of any regulation; the development or amendment of any policy or program; the awarding of any grant, contribution or financial benefit; or, the awarding of any contract.

Since the legislative changes to the *Lobbying Act* came into effect on July 2, 2008, certain former public office holders, known as designated public office holders, have been subject to a post-employment five-year prohibition on lobbying activity. That prohibition is set out in section 10.11 of the *Lobbying Act*. It applies to former ministers and ministers of state, and their staff, former deputy ministers and assistant deputy ministers or equivalent senior executives in federal government institutions, along with a limited number of positions designated by regulation. Since September 20, 2010, this category has included all members of the Senate and the House of Commons.

It was alleged that Mr. Keith Beardsley, a consultant associated with True North Public Affairs (TNPA), an Ottawa-based consulting firm, engaged in lobbying activity. This was during a period when he was prohibited from registering as a consultant lobbyist, as he was subject to the five-year prohibition on lobbying set out in section 10.11 of the *Lobbying Act*.

Investigation

An administrative review concerning the allegations under the *Lobbying Act* and the *Lobbyists' Code of Conduct* was initiated in November 2009. It involved interviews, a review of correspondence and other materials and an examination of Mr. Beardsley's work as a consultant with TNPA. In May 2010, I opened an investigation based upon information provided to me in an Administrative Review Report. I immediately referred this matter to the Royal Canadian Mounted Police (RCMP) in May 2010, as I had reasonable grounds to believe that a breach of the *Lobbying Act* had occurred.

In November 2010, the file was returned to my Office by the RCMP, with an indication that no charges would be laid in the matter. I determined that I had sufficient grounds to continue with a *Lobbyists' Code of Conduct* investigation. Upon completion of the investigation, Mr. Beardsley was provided with an opportunity to present his views and, after considering his comments, I prepared this Report to Parliament.

Conclusions

In this Report, I conclude that Mr. Beardsley attempted to arrange a meeting with a public office holder on behalf of a client that was paying for his services. As a result, he engaged in registrable lobbying activity under subsection 5(1) of the *Lobbying Act*. However, as a former designated public office holder, he was prohibited from engaging in lobbying activities requiring registration as a consultant lobbyist at the time. Section 10.3 of the *Lobbying Act* provides that persons who are required to register under the Act are subject to the *Lobbyists' Code of Conduct*. I have concluded that Mr. Beardsley was in breach of the Principle of Professionalism in the *Lobbyists' Code of Conduct* as a result of his actions.

The *Lobbyists' Code of Conduct*

Lobbying is a legitimate activity. When carried out ethically and transparently, and in conformity with the highest standards of conduct, it can provide a useful dialogue between government and Canadians.

The *Lobbyists' Code of Conduct* came into effect on March 1, 1997, as a complement to the former *Lobbyists Registration Act*. It was instituted to assure Canadians that the lobbying of federal public office holders is carried out in a manner that ensures public confidence and trust in the integrity, objectivity and impartiality of government decision-making. Individuals who engage in activity deemed registrable under the *Lobbying Act* must also comply with the *Lobbyists' Code of Conduct*. The *Lobbyists' Code of Conduct* has remained unchanged since its introduction.

Individuals paid to communicate with federal public office holders concerning the subjects listed in the relevant registration sections of the *Lobbying Act*, or arrange meetings with federal public office holders, are required to register their activities in the Registry of Lobbyists. The definition of “public office holder” in the legislation is broad, and includes virtually anyone occupying a position in the Government of Canada, including members of the Senate and the House of Commons and their staff, as well as employees of federal departments and agencies, members of the Canadian Armed Forces and members of the Royal Canadian Mounted Police.

The *Lobbyists' Code of Conduct* establishes mandatory standards of conduct for individuals who engage in activity deemed registrable under the Act. Like most professional codes, the *Lobbyists' Code of Conduct* begins with a preamble that states its purpose and places it in a broader context. Next, a body of overriding principles sets out, in positive terms, the goals and objectives to be achieved, without establishing precise standards. The principles of Integrity and Honesty, Openness and Professionalism are set out as goals that should be pursued by lobbyists and are intended as general guidance to the profession.

The principles are followed by a series of eight rules that place specific obligations and requirements on lobbyists. The rules are organized into three categories: Transparency; Confidentiality; and Conflict of Interest. Under the rules of Transparency, lobbyists have an obligation to provide accurate information to public office holders, and to disclose the identity of the person or organization on whose behalf their representation is made, as well as the purpose of the representation. They must also disclose to their client, employer or organization their obligations under the *Lobbying Act* and the *Lobbyists' Code of Conduct*. Under the rules of Confidentiality, lobbyists may not divulge confidential information, nor use insider information to the disadvantage of their client, employer or organization. The Conflict of Interest rules prohibit lobbyists from representing conflicting or competing interests without the consent of those whose interests are involved or placing public office holders in a conflict of interest by proposing or undertaking any action that would constitute an improper influence.

Investigations of Alleged Breaches of the *Lobbyists' Code of Conduct*

Lobbyists have a legal obligation to comply with the *Lobbyists' Code of Conduct*. Under the *Lobbying Act*, the Commissioner is required to conduct an investigation if the Commissioner has reason to believe that an investigation is necessary to ensure compliance with the Act or the Code, as applicable.

Breaches of the *Lobbyists' Code of Conduct* do not result in sanctions of a penal nature, as they do not carry fines or jail sentences. However, the Commissioner is required to table a report of the investigation, including the findings, conclusions, and reasons for those conclusions, in both Houses of Parliament. A breach of the Code can occur as a result of a breach of either a principle or a rule. There is no limitation period for investigating breaches of the *Lobbyists' Code of Conduct*.

The following Report on Investigation concerns the activities of an individual who, I have concluded, engaged in registrable lobbying activity under the *Lobbying Act*. When a person engages in registrable lobbying activity, that person becomes subject to the *Lobbyists' Code of Conduct*. However, Mr. Beardsley, as a former designated public office holder, was subject to the five-year prohibition on lobbying set out in section 10.11 of the *Lobbying Act* and is thus prohibited from engaging in lobbying activities until July 5, 2013.

Background

History of the Case Prior to the *Lobbyists' Code of Conduct* Investigation

On November 20, 2009, the Director of Operations at the Office of the Commissioner of Lobbying (OCL) received a telephone call from Mr. Guy Giorno, then Chief of Staff in the Prime Minister's Office. The purpose of the call was to report a possible breach of the *Lobbying Act* involving Mr. Keith Beardsley.

Mr. Giorno advised that his executive assistant had received a voicemail message from Mr. Beardsley on that day. The message indicated that Mr. Beardsley was attempting to organize a meeting between Mr. Giorno and a representative of DAVE Wireless, a cellular telephone company. The voicemail message from Mr. Beardsley had been followed later that same day by a written request for a meeting from Mr. Mark Ruban, a consultant lobbyist with True North Public Affairs (TNPA), an Ottawa firm representing DAVE Wireless.

As a former designated public office holder, Mr. Beardsley was subject to the five-year prohibition on lobbying found in section 10.11 of the *Lobbying Act*. The information brought to my attention indicated that he appeared to have engaged in lobbying activities when he contacted a public office holder to arrange a meeting between Mr. Giorno and Mr. John Bitove. Mr. Bitove was the Executive Chairman of DAVE Wireless, a mobile telephone and internet service provider that had commenced operating as Mobilicity.

Mr. Beardsley is a former employee of the Prime Minister's Office. In that Office, he held a position that was defined as a position occupied by a "designated public office holder" when the amendments to the *Lobbyists Registration Act*¹ came into effect on July 2, 2008.

The Investigations Directorate conducted an administrative review and submitted a report to me on May 21, 2010. The Investigations Directorate concluded that Mr. Beardsley had engaged in registrable lobbying activity under the *Lobbying Act* while subject to the five-year prohibition on lobbying. Based on the report, I determined that an investigation should be initiated to ensure compliance with the *Lobbying Act* or the *Lobbyists' Code of Conduct*.

¹ The amendments to the *Lobbyists Registration Act* were contained in the *Federal Accountability Act*, S.C. 2006, c. 9. Those amendments also changed the name of the *Lobbyists Registration Act* to the *Lobbying Act*. The definition of "designated public office holder" is set out in subsection 2(1) of the *Lobbying Act*.

On May 28, 2010, I referred this matter to the RCMP in accordance with subsection 10.4(1) of the *Lobbying Act*, as I had reasonable grounds to believe that Mr. Beardsley had committed an offence under the *Lobbying Act*. I followed my practice of providing a copy of the Administrative Review Report and supporting documentation to the RCMP. I then suspended my investigation in accordance with subsection 10.4(9) of the *Lobbying Act*, which requires that I may not continue an investigation until any investigation or charge regarding the same subject-matter has been finally disposed of.

The RCMP advised me, in a letter received on December 13, 2010, that they had decided not to lay charges, as they did not have sufficient evidence to determine payment. Despite the RCMP's decision not to proceed, I determined that I had sufficient grounds to continue with a *Lobbyists' Code of Conduct* investigation.

The *Lobbyists' Code of Conduct* Investigation

The *Lobbyists' Code of Conduct* investigation of Mr. Beardsley covered his activities on behalf of DAVE Wireless during the period of the engagement of True North Public Affairs (TNPA) by DAVE Wireless. It involved an examination of materials obtained, as well as information provided by Mr. Beardsley and his partners at TNPA, including the contractual arrangement between DAVE Wireless and TNPA. The investigation also included an examination of invoices for services rendered, correspondence with federal public office holders and interviews with federal public office holders, the partners of Mr. Beardsley and the clients of TNPA.

The Subject

Mr. Beardsley is a partner in the Ottawa-based consulting firm True North Public Affairs (TNPA). The firm's website indicates that he "...has been active in politics from the municipal to the federal level for over 30 years. He is known for his strategic sense and his ability to develop and implement complex advocacy campaigns, using a wide variety of tactics and being simultaneously engaged on a number of fronts."

His work experience in the federal government has included assignments as ministerial Chief of Staff and senior advisor in three federal departments, as well as Deputy Chief of Staff to Prime Minister Stephen Harper. He also served as the head of research for the Progressive Conservative Party and was a senior adviser in the Office of the Leader of the Opposition, where he was involved in the areas of "...issue management and rapid response teams..."

Mr. Beardsley is a designated public office holder by virtue of his appointment under subsection 128(1) of the *Public Service Employment Act* to a position as a person employed in a minister's office, commonly referred to as exempt staff. He was employed by the Prime Minister's Office until July 4, 2008. As a result, he became subject to the five-year prohibition on lobbying that was enacted by Parliament when the *Lobbying Act*

came into force on July 2, 2008. Mr. Beardsley is prohibited from engaging in registrable lobbying activity until July 5, 2013.

Mr. Beardsley has not been registered as a lobbyist since he left his position in the Prime Minister's Office.

The Clients

Data & Audio-Visual Enterprise Wireless Inc. (DAVE Wireless)

Data & Audio-Visual Enterprise Wireless Inc. (DAVE Wireless) is a cellular telephone company operating under the Mobilicity brand name. The company's Executive Chairman is Mr. John Bitove.

In 2008, DAVE Wireless participated in an auction of wireless spectrum organized by the Government of Canada along with other telecommunications companies. The company paid \$243 million for airwave licences to operate in what were described as "10 of Canada's 13 biggest markets," and was due to begin offering service in the spring of 2010, in competition with Rogers, Bell, Telus and Globalive's WIND Mobile.

From November 23, 2009 to June 3, 2010, DAVE Wireless engaged the services of a consultant lobbyist to lobby on its behalf. The following subject matter was listed in the registration: "Legislation – *Telecommunications Act*, Section 16 – governing ownership of companies competing in Canada's wireless telecommunications sector."

DAVE Wireless had an active in-house corporation lobbyist registration from November 25, 2009 until April 19, 2010. The subject matter listed included "*Radiocommunications Act* with respect to Canadian control of a Canadian telecommunications company" and "*Telecom Act* with respect to Canadian control of a Canadian telecommunications company." A search of the Registry of Lobbyists indicated that the corporation had several communications with designated public office holders between November 30, 2009 and December 10, 2009. DAVE Wireless re-activated their in-house corporation lobbyist registration on November 18, 2011.

Process

The *Lobbyists' Code of Conduct* investigation of Mr. Beardsley by the Investigations Directorate covered his activities at True North Public Affairs on behalf of DAVE Wireless during November and December 2009. These events took place during the period of the engagement of True North Public Affairs (TNPA) by DAVE Wireless. The investigation involved an examination of materials obtained, as well as information provided by Mr. Beardsley and his partners at TNPA, including the contractual arrangement between DAVE Wireless and TNPA. The investigation also included an examination of invoices for services rendered, correspondence with federal public office holders and interviews with federal public office holders, the partners of Mr. Beardsley and the clients of TNPA.

Following the investigation, a copy of the Investigations Directorate's report was sent to Mr. Beardsley to give him an opportunity to present his views. He provided his response in a letter dated April 24, 2012.

The report of the Investigations Directorate and Mr. Beardsley's views were taken into consideration, and form the basis of my Report on Investigation.

Lobbyist Registration

The Requirement to File a Return (Consultant Lobbyists)

Subsection 5(1) of the *Lobbying Act* sets out the requirement for consultant lobbyists to register their lobbying activities. It provides as follows:

5. (1) An individual shall file with the Commissioner, in the prescribed form and manner, a return setting out the information referred to in subsection (2), if the individual, for payment, on behalf of any person or organization (in this section referred to as the "client"), undertakes to

(a) communicate with a public officer holder in respect of

- (i) the development of any legislative proposal by the Government of Canada or by a member of the Senate or House of Commons,
- (ii) the introduction of any Bill or resolution in either House of Parliament or the passage, defeat or amendment of any Bill or resolution that is before either House of Parliament,
- (iii) the making or amendment of any regulation as defined in subsection 2(1) of the *Statutory Instruments Act*,

- (iv) the development or amendment of any policy or program of the Government of Canada,
- (v) the awarding of any grant, contribution or other financial benefit by or on behalf of Her Majesty in right of Canada, or
- (vi) the awarding of any contract by or on behalf of Her Majesty in right of Canada; or

(b) arrange a meeting between a public officer holder and any other person.

(1.1) An individual shall file the return referred to in subsection (1) not later than 10 days after entering into the undertaking.

The Elements of Registrable Activity for Consultant Lobbyists

The following two elements were considered in the analysis of whether an activity deemed registrable under subsection 5(1) of the *Lobbying Act* took place:

- An individual undertook to:
 - communicate with a public officer holder in respect of subjects listed in paragraph 5(1)(a) of the *Lobbying Act*; or
 - arrange a meeting between a public officer holder and any other person.
- The individual did so for payment and on behalf of any person or organization.

Restriction on Lobbying Activity

Section 10.11 of the *Lobbying Act* establishes the five-year prohibition on lobbying activity. It provides as follows:

Five-year prohibition — lobbying

10.11 (1) No individual shall, during a period of five years after the day on which the individual ceases to be a designated public office holder,

(a) carry on any of the activities referred to in paragraph 5(1)(a) or (b) in the circumstances referred to in subsection 5(1);

(b) if the individual is employed by an organization, carry on any of the activities referred to in paragraph 7(1)(a) on behalf of that organization; and

(c) if the individual is employed by a corporation, carry on any of the activities referred to in paragraph 7(1)(a) on behalf of that corporation if carrying on those activities would constitute a significant part of the individual's work on its behalf.

Exception

(2) Subsection (1) does not apply in respect of any designated public office that was held only because the individual participated in an employment exchange program.

Findings

Report of the Investigations Directorate

The Investigations Directorate examined whether Mr. Beardsley engaged in activities that required registration as a lobbyist, and whether he was subject to the five-year prohibition on lobbying under the *Lobbying Act*. Evidence was obtained from various sources, including federal public office holders, Mr. Beardsley, his partners and his clients, supporting the following findings.

Documents obtained by the Investigations Directorate indicated that True North Public Affairs (TNPA) and DAVE Wireless entered into an agreement on November 20, 2009, when a proposal submitted by TNPA was approved by the Vice President of Marketing at DAVE Wireless, Ms. Sara Moore.

In the proposal provided by TNPA to DAVE Wireless, TNPA agreed to “...provide consulting services to DAVE Wireless in respect of its efforts to communicate with Government of Canada officials regarding the recent CRTC decision concerning Globalive.”

The Canadian Radio-television and Telecommunications Commission (CRTC) decision on Globalive

In 2007, the Minister of Industry announced the terms of an Advanced Wireless Services auction to set aside certain radio frequency spectrum exclusively for new entrants into the wireless telephone market. This was intended to foster greater competition in the Canadian wireless market, which was then comprised primarily of three companies.

Companies bidding for spectrum, including DAVE Wireless and Globalive Wireless Management Corporation (operating as WIND), were required to comply with a test of Canadian ownership and control required by the *Telecommunications Act*. During the 2008 spectrum auction, Globalive won 30 licences at a cost of \$442 million. Industry Canada completed a Canadian ownership review and issued spectrum licences to Globalive in March 2009.

In July 2009, the Canadian Radio-television and Telecommunications Commission (CRTC) announced that it was reviewing Globalive’s Canadian ownership in order to determine if it had complied with the requirement of the *Telecommunications Act*. On October 29, 2009, the CRTC announced that Globalive did not meet the requirements of the *Telecommunications Act* and that it could not be established as the fourth national cellular telephone company, primarily because the corporation’s debt was controlled by a foreign company. On October 30, 2009, the Minister of Industry announced that he would review the CRTC decision.

During the period of the review by Industry Canada, from October 30 to December 11, 2009, the media reported that DAVE Wireless and Rogers Communications Inc. were potential “buyers and partners” for Globalive. Media reports indicated that Globalive had been approached by potential investors interested in helping that company finance its planned network and address the issue of Globalive’s foreign owned debt that had arisen as a result of the CRTC review following the spectrum auction.

On December 11, 2009, however, a Government of Canada news release announced that the CRTC decision would be varied, enabling Globalive to “...enter the wireless telecommunications market without delay.” The Minister of Industry stated: “Globalive is a Canadian company, and meets Canadian ownership and control requirements under the *Telecommunications Act*.”

The True North Public Affairs Undertaking

The proposal by True North Public Affairs (TNPA) to DAVE Wireless described the proposed scope of work as follows: “Given DAVE Wireless’ intention to reach key government influencers and decision-makers quickly in order to communicate the company’s position regarding the CRTC decision and the prospect of related Government action, TNPA’s effort will focus on:

- identifying the Government officials that DAVE Wireless should meet;
- arranging meetings with those officials; and,
- preparing collateral material for the meetings.”

The proposal indicated that Mr. Beardsley would act as the account manager and that he would be assisted by two other TNPA partners, Mr. Casey and Mr. Ruban. The fees proposed for this contract were \$4,875.

A contract between TNPA and DAVE Wireless was agreed upon on November 20, 2009. DAVE Wireless engaged TNPA to arrange meetings with various public office holders, as early as November 23, 2009. As the account manager for the file, one of Mr. Beardsley’s responsibilities included overseeing the execution of the contract and taking care of the processing and the administrative aspects of the file. Mr. Beardsley was also involved in identifying the public office holders that DAVE Wireless should concentrate its communications efforts upon.

TNPA’s efforts on behalf of DAVE Wireless started on November 20, 2009 and lasted approximately two weeks. TNPA compiled a list of public office holders for DAVE Wireless to speak to or meet with and contacted dozens of public office holders. TNPA succeeded in arranging one meeting with the Director of Policy in the Office of the Minister of National Revenue. Mr. Beardsley’s colleagues at TNPA, Mr. Casey and Mr. Ruban, were responsible for contacting public office holders and were properly registered as consultant lobbyists representing DAVE Wireless.

In addition to the work done on its behalf by TNPA, DAVE Wireless hired a consultant lobbyist who arranged at least one meeting for the company. DAVE Wireless also arranged meetings on its own behalf and registered its activities with the Office of the Commissioner of Lobbying.

Alleged arrangement of a meeting

On November 20, 2009, shortly after the contract by TNPA and DAVE Wireless had been approved by his clients, Mr. Beardsley telephoned Mr. Renze Nauta, who worked in the Prime Minister's Office (PMO). Mr. Beardsley knew Mr. Nauta from his previous employment at the PMO. At the time of the phone call, Mr. Nauta was the executive assistant to the Prime Minister's Chief of Staff, Mr. Giorno. Mr. Nauta was not available, and the call was answered by his voicemail system. Mr. Beardsley left the following message:

“Renze, Keith Beardsley here [telephone number and extension]². I have John Bitove, B-I-T-O-V-E, former owner of the Raptors, and he would probably be well-known to Guy due to his Tory background and so on. Anyways, he is in Ottawa on Monday looking to talk about Globalive, the telecom issue and the CRTC. So because of his connections in Toronto, I just wanted to know if Guy wanted to meet with him quickly. He is obviously going to bring up the issue if he does meet with him but if you could get back to me and let me know. They are in the process of registering; they have not yet registered officially under the *Lobbyists Registration Act*. They are doing that today but that takes a couple of days to process, just so you are aware of that side of it. Anyway get back to me [telephone number and extension] or my cell [telephone number] talk to you later, bye bye.”

When he was interviewed by the Investigations Directorate, Mr. Beardsley explained that his message was not an attempt to arrange a meeting. He explained that he was giving a “heads up” to Mr. Giorno that Mr. Bitove would be in Ottawa and that he would try to contact Mr. Giorno to discuss Globalive. Mr. Beardsley stated that, in his view, if his actions did constitute setting up a meeting, he had not done so intentionally or knowingly.

Mr. Beardsley indicated that he does not lobby, and that he had made every effort to stay away from controversy by respecting the five-year prohibition on lobbying. He stated that he had never set up meetings while engaged in his consulting work and that he does not call public office holders on his clients' behalf.

No other information indicating that Mr. Beardsley attempted to arrange meetings with other public office holders, or that he engaged in other registrable activities, was obtained during the investigation.

² Telephone numbers and extensions have been removed by the Office of the Commissioner of Lobbying for reasons of privacy.

The Investigations Directorate determined that neither Mr. Giorno nor Mr. Nauta responded to the requests from Mr. Beardsley. In addition, it was found that the meeting proposed in the voicemail message did not occur.

At the time, Mr. Nauta and Mr. Giorno were “public office holders” as defined in subsection 2(1) of the *Lobbying Act*. As a result, the Investigations Directorate concluded that Mr. Beardsley undertook to arrange a meeting between a public office holder and Mr. Bitove, his client. This activity, when performed for payment and on behalf of a client, is a registrable lobbying activity under paragraph 5(1)(b) of the *Lobbying Act*.

The issue of payment

In 2008, Mr. Beardsley joined True North Public Affairs as a Senior Consultant to provide strategic advice. He was described by TNPA in biographical notes at the time of the undertaking in November 2009, as a partner in the firm and Mr. Beardsley identified himself as a partner at True North Public Affairs in correspondence sent to his client. He had the responsibilities of an account manager for the undertaking with DAVE Wireless and he was responsible for overseeing the execution of the contract.

As the Commissioner of Lobbying, I take the view that all members of a firm, whether they are partners, employees, or persons engaged under contract for services benefit from revenue generated by the firm. Therefore, any activity conducted on behalf of a client of the firm is deemed to be performed for payment.

The Investigations Directorate obtained a copy of the invoice sent by TNPA to DAVE Wireless and proof that payment was received by TNPA. The documents obtained indicate that, on December, 17, 2009, TNPA received a payment of \$5,118.75 (\$4,875.00 + taxes) for services that were provided to DAVE Wireless.

On November 20, 2009, the date that Mr. Beardsley contacted Mr. Nauta seeking to arrange a meeting between Mr. Giorno and Mr. Bitove, he was employed at True North Public Affairs as a partner of the firm, and as an account manager for TNPA’s undertaking on behalf of DAVE Wireless. In view of this, the Investigations Directorate concluded that when Mr. Beardsley undertook to arrange a meeting on behalf of DAVE Wireless, he did so for payment.

The five-year prohibition on lobbying activity

The Investigations Directorate examined whether Mr. Beardsley was subject to the five-year prohibition on lobbying activity in the *Lobbying Act*. On July 2, 2008, when the *Lobbying Act* came into force, Mr. Beardsley was employed in the Prime Minister’s Office as a staff member. The position is one captured within the definition of designated public office holder in subsection 2(1) of the Act.

Mr. Beardsley ceased employment at the Prime Minister’s Office on July 4, 2008. As a result, from that date he was subject to a five-year post-employment prohibition on

lobbying activity under subsection 10.11(1) of the *Lobbying Act*. Therefore, he is subject to the prohibition on lobbying activity until July 5, 2013.

Conclusion

The Investigations Directorate concluded that, on November 20, 2009, Mr. Beardsley, for payment, contacted a public office holder in the Prime Minister's Office in an effort to arrange a meeting between the Chief of Staff in the Prime Minister's Office and Mr. John Bitove, the Chairman of DAVE Wireless. DAVE Wireless was a client of True North Public Affairs. In view of this, the Investigations Directorate concluded that Mr. Beardsley engaged in an activity deemed registrable pursuant to paragraph 5(1)(b) of the Act, while he was subject to the five-year prohibition on lobbying.

Registration

When the activities described in this Report took place, Mr. Beardsley was prohibited under the *Lobbying Act* from registering as a consultant lobbyist.

Mr. Beardsley's Views and my Perspective on those Views

Subsection 10.4(5) of the *Lobbying Act* provides that, before finding that a person under investigation has breached the *Lobbyists' Code of Conduct* (the Code), the Commissioner must give that person a reasonable opportunity to present their views. On March 26, 2012, I sent a copy of the report of the Investigations Directorate to Mr. Beardsley and requested that he provide written comments within 30 days.

Mr. Beardsley replied in a letter I received April 26, 2012. The letter addressed the issues raised in the report of the Investigations Directorate.

I have reviewed and considered the arguments raised by Mr. Beardsley. My perspective follows.

Procedural Issues

Mr. Beardsley raised a number of concerns regarding the content of the Investigation Report that had been prepared by the Investigations Directorate and provided to him for comments. One concern he had was that the report he received was a draft of the report to be tabled in both Houses of Parliament.

The document that Mr Beardsley received under cover of my letter of March 26, 2012, was the Investigation Report prepared by the Investigations Directorate of my Office. It was not my draft Report on Investigation. Under subsection 10.4(5) of the *Lobbying Act*, there is a requirement to provide the subject of an investigation with an opportunity to present views. I have adopted the process of sending a copy of the report of the Investigations Directorate to disclose information obtained during an investigation and provide the subject of the investigation with an opportunity to present their views. In preparing my Report on Investigation, I consider both the report of the Investigations Directorate and the comments that are provided to me by the person who has been the subject of an investigation.

My Report on Investigation reflects the concerns that Mr. Beardsley raised.

Voicemail message to Mr. Nauta – Arranging a meeting under paragraph 5(1)(b) of the Lobbying Act

Mr. Beardsley has argued that, in attempting to contact Mr. Nauta, he did not engage in registrable lobbying activity under section 5 of the *Lobbying Act*. His view is that he was not trying to arrange a meeting on behalf of his clients when he left a message on the voicemail system for Mr. Nauta. That message is reproduced earlier in this Report under the heading "Report of the Investigations Directorate."

The Investigations Directorate concluded that the voicemail message left by Mr. Beardsley was an attempt to arrange a meeting between Mr. Giorno and Mr. Bitove. The Investigations Directorate concluded that this was registrable lobbying activity, conducted for payment, on behalf of a client, despite the fact that Mr. Beardsley was prohibited from registering as a consultant lobbyist.

Mr. Beardsley argued against this conclusion, on the basis that he was not trying to arrange a meeting between his client, Mr. Bitove and the Prime Minister's Chief of Staff, Mr. Giorno. Rather, Mr. Beardsley indicated that he "...saw the call as a political 'heads up', not as an attempt to arrange a meeting."

From my perspective, I must look at the content of the communication in question. I take the view that the central point of the message is clear. The words that were recorded are evidence of an attempt to arrange a meeting between Mr. Giorno and Mr. Bitove, in particular, the following: "...[Mr. Bitove] is in Ottawa on Monday looking to talk about Globalive, the telecom issue and the CRTC. So because of his connections in Toronto, I just wanted to know if Guy wanted to meet with him quickly. He is obviously going to bring up the issue if he does meet with him but if you could get back to me and let me know."

Mr. Beardsley's role at True North Public Affairs (TNPA)

Mr. Beardsley provided a detailed explanation of his role at TNPA, describing it as a strategist and a communications consultant, assisting clients with their messaging, including drafting letters, press releases, briefing notes or presentations to a Parliamentary committee. In the case of TNPA's work on behalf of DAVE Wireless, Mr. Beardsley was the account manager, responsible for assigning duties and preparing invoices and tracking billable hours. Mr. Beardsley emphasized that his activities did not include communicating with public office holders, because he was subject to the five-year prohibition on lobbying activities. As a result, he normally assigned activities requiring registration as a lobbyist on behalf of TNPA's clients to other associates at TNPA.

I believe that Mr. Beardsley is sincere in his view that his actions were meant as a 'heads up'. Mr. Beardsley has been subject to the five-year prohibition on lobbying activity for nearly four years. I appreciate that he made efforts to structure his activities in order to comply with that prohibition.

However, with respect to the voicemail message in question, I disagree with Mr. Beardsley's view that this was not a registrable lobbying activity. I regard his phone call as evidence of an attempt to arrange a meeting with a federal public office holder on behalf of his client, for payment. I note that Mr. Beardsley cooperated with the Investigations Directorate during the course of this investigation.

Conclusions

Companies and other organizations attempting to put forward their views on federal laws, regulations and policies, or to obtain licences and certifications required under federal law, sometimes hire lobbyists to assist them through the process. These individuals may also arrange meetings between the company or organization and government officials or communicate with government officials to clarify the details of a company's proposal or to negotiate the terms of an agreement.

These are legitimate actions on the part of companies and organizations and those they hire. The *Lobbying Act* acknowledges this legitimacy but imposes certain obligations of disclosure and behaviour on those who, for payment, undertake to assist companies in this way.

I have taken both the report of the Investigations Directorate and the views of Mr. Beardsley into consideration in reaching my conclusions. I have determined that Mr. Beardsley, while engaged in the activities of True North Public Affairs (TNPA) on behalf of its clients at DAVE Wireless, left a voicemail message with a public office holder, with the objective of arranging a meeting on behalf of his client. He did so for payment by DAVE Wireless to TNPA. This is an activity that requires registration by consultant lobbyists under the *Lobbying Act*. However, Mr. Beardsley was subject to the five-year prohibition on lobbying activity under the Act.

This chapter summarizes my conclusions regarding the activities of Mr. Beardsley on behalf of his clients, and my reasons for reaching these conclusions.

1. Whether Mr. Beardsley communicated with a federal public office holder in respect of subjects listed in paragraph 5(1)(a) of the *Lobbying Act*

The evidence indicates that Mr. Beardsley's role at True North Public Affairs on behalf of his clients at DAVE Wireless was to provide them with strategic advice and guidance in obtaining access to key federal public office holders. The goal of this activity was to communicate the perspective of DAVE Wireless regarding the CRTC decision and the prospect of related government action in order to facilitate a positive outcome for DAVE Wireless.

However, there is no indication that the work undertaken by Mr. Beardsley on behalf of his clients involved communications with federal public office holders of a nature that falls within the definition of registrable lobbying activity in the *Lobbying Act*. As a result, based on the information before me, I take the view that Mr. Beardsley was not required to register as a lobbyist under the provisions of paragraph 5(1)(a) of the *Lobbying Act*.

2. Whether Mr. Beardsley arranged a meeting between a public office holder and any other person

The evidence obtained during the course of this investigation indicates that on November 20, 2009, Mr. Beardsley left a message on the voicemail system of Mr. Nauta, seeking to arrange a meeting between a federal public office holder and his client, DAVE Wireless.

I have concluded that Mr. Beardsley, on behalf of DAVE Wireless, sought to arrange a meeting between a public office holder and his client. This is a registrable lobbying activity if performed for payment and on behalf of a client pursuant to paragraph 5(1)(b) of the *Lobbying Act*

3. Whether Mr. Beardsley did so for payment

Evidence obtained during the course of the investigation demonstrates that the work performed by True North Public Affairs on behalf of DAVE Wireless was for payment. Mr. Beardsley was a consultant engaged by TNPA, and managed the DAVE Wireless account on behalf of TNPA.

TNPA was engaged by DAVE Wireless on November 20, 2009. The contract was to "...provide consulting services to DAVE Wireless in respect of its efforts to communicate with Government of Canada officials regarding the recent CRTC decision concerning Globalive." TNPA received payment for the services rendered on behalf of DAVE Wireless on December 17, 2009. I take the view that when a company or organization, such as a consulting firm, is paid by clients to perform activities on its behalf, the employees or members of the company or organization performing those activities receive payment for the services that they provide.

4. Whether Mr. Beardsley engaged in registrable lobbying activity under the *Lobbying Act*

Based on the information before me, I have concluded that Mr. Beardsley engaged in activity requiring registration as a consultant lobbyist pursuant to paragraph 5(1)(b) of the *Lobbying Act*. That activity was an attempt to arrange a meeting with a federal public office holder on behalf of his client, for payment. However, he was subject to the five-year prohibition on lobbying at the time and as a result, prohibited from engaging in this lobbying activity.

5. Whether Mr. Beardsley was in breach of the Principle of Professionalism

Individuals who conduct activities requiring registration as a lobbyist must comply with the *Lobbyists' Code of Conduct*, which is based on a body of overriding principles, one of which is the Principle of Professionalism.

Professionalism

Lobbyists should observe the highest professional and ethical standards. In particular, lobbyists should conform fully with not only the letter but the spirit of the *Lobbyists' Code of Conduct* as well as all the relevant laws, including the *Lobbying Act* and its regulations.

By engaging in registrable lobbying activity while prohibited from lobbying under the *Lobbying Act*, Mr. Beardsley engaged in activity on behalf of DAVE Wireless that was in breach of the Principle of Professionalism in the *Lobbyists' Code of Conduct*.

I take the view that individuals who are engaged in registrable lobbying activity, whether registered or not, must comply with the *Lobbyists' Code of Conduct*.

Appendix A – *Lobbyists' Code of Conduct*

Preamble

The *Lobbyists' Code of Conduct* is founded on four concepts stated in the *Lobbying Act*:

- Free and open access to government is an important matter of public interest;
- Lobbying public office holders is a legitimate activity;
- It is desirable that public office holders and the public be able to know who is engaged in lobbying activities; and,
- A system for the registration of paid lobbyists should not impede free and open access to government.

The *Lobbyists' Code of Conduct* is an important initiative for promoting public trust in the integrity of government decision-making. The trust that Canadians place in public office holders to make decisions in the public interest is vital to a free and democratic society.

To this end, public office holders, when they deal with the public and with lobbyists, are required to honour the standards set out for them in their own codes of conduct. For their part, lobbyists communicating with public office holders must also abide by standards of conduct, which are set out below.

Together, these codes play an important role in safeguarding the public interest in the integrity of government decision-making.

Principles

Integrity and Honesty

Lobbyists should conduct with integrity and honesty all relations with public office holders, clients, employers, the public and other lobbyists.

Openness

Lobbyists should, at all times, be open and frank about their lobbying activities, while respecting confidentiality.

Professionalism

Lobbyists should observe the highest professional and ethical standards. In particular, lobbyists should conform fully with not only the letter but the spirit of the *Lobbyists' Code of Conduct* as well as all the relevant laws, including the *Lobbying Act* and its regulations.

Rules

Transparency

1. Identity and purpose

Lobbyists shall, when making a representation to a public office holder, disclose the identity of the person or organization on whose behalf the representation is made, as well as the reasons for the approach.

2. Accurate information

Lobbyists shall provide information that is accurate and factual to public office holders. Moreover, lobbyists shall not knowingly mislead anyone and shall use proper care to avoid doing so inadvertently.

3. Disclosure of obligations

Lobbyists shall indicate to their client, employer or organization their obligations under the *Lobbying Act*, and their obligation to adhere to the *Lobbyists' Code of Conduct*.

Confidentiality

4. Confidential information

Lobbyists shall not divulge confidential information unless they have obtained the informed consent of their client, employer or organization, or disclosure is required by law.

5. Insider information

Lobbyists shall not use any confidential or other insider information obtained in the course of their lobbying activities to the disadvantage of their client, employer or organization.

Conflict of interest

6. Competing interests

Lobbyists shall not represent conflicting or competing interests without the informed consent of those whose interests are involved.

7. Disclosure

Consultant lobbyists shall advise public office holders that they have informed their clients of any actual, potential or apparent conflict of interest, and obtained the informed consent of each client concerned before proceeding or continuing with the undertaking.

8. Improper influence

Lobbyists shall not place public office holders in a conflict of interest by proposing or undertaking any action that would constitute an improper influence on a public office holder.