



Office of the Commissioner  
of Lobbying of Canada

Commissariat au lobbying  
du Canada

# ANNUAL REPORT

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 general public be able to know who  
is attempting to influence government;

The system for the registration of paid  
lobbyists should not impede free and open  
access to government.

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Commissioner of Lobbying



Commissaire au lobbying

Ottawa, Canada K1A 0R5

June 2009

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

Dear Mr. Speaker:

Pursuant to section 11 of the *Lobbying Act*, I have the honour of presenting to you the first annual report of the Commissioner of Lobbying for tabling in the Senate.

This report covers the fiscal year ending March 31, 2009.

Yours sincerely,

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

Karen E. Shepherd  
Interim Commissioner of Lobbying



Commissioner of Lobbying



Commissaire au lobbying

Ottawa, Canada K1A 0R5

June 2009

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

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Karen E. Shepherd  
Interim Commissioner of Lobbying



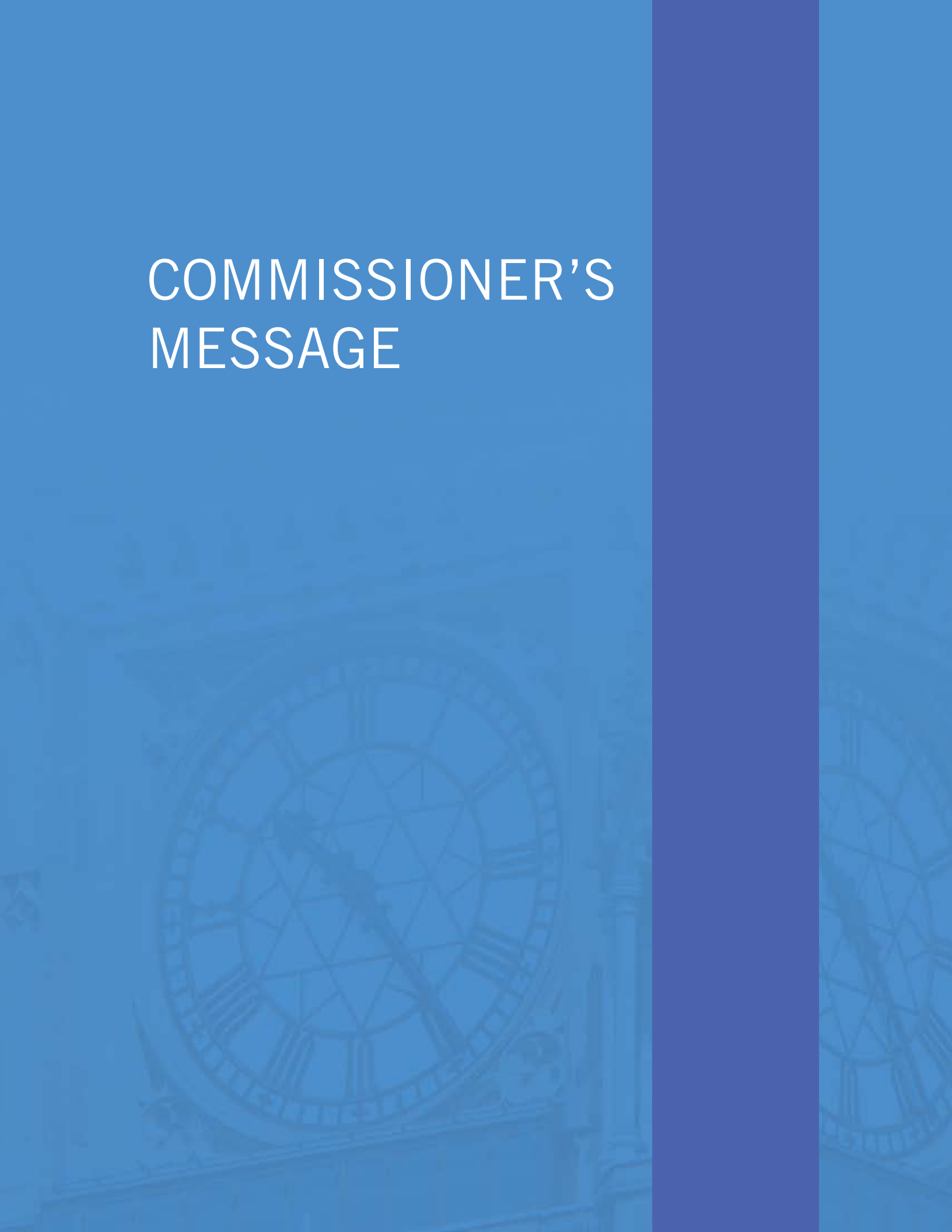
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# COMMISSIONER'S MESSAGE



# COMMISSIONER'S MESSAGE

On July 2, 2008, the *Lobbying Act* (the Act) came into force, creating the position of Commissioner of Lobbying and the Office of the Commissioner of Lobbying (OCL). My appointment as Interim Commissioner of Lobbying took effect on that date. In this capacity, it is my privilege to produce the first Annual Report for the Office of the Commissioner of Lobbying. This report highlights the Office's priorities, challenges and accomplishments in preparing for the coming into force and the implementation of the Act.

Canada's federal lobbying legislation and the institution responsible for administering it have evolved considerably since they first came into force in 1989. With each amendment brought forward by Parliament, the Act has been strengthened and the transparency in lobbying activities and government decision-making have improved through such means as enhanced disclosure requirements, enforcement measures and a *Lobbyists' Code of Conduct*. The body responsible for administering the Act has grown from a small unit operating within a large department to the truly independent office it is today, reporting directly to both Houses of Parliament.

Transparency in government decision-making has improved markedly by requiring lobbyists to register all of their activities and to file monthly communication reports when they meet with certain types of public office holders. In addition, the Act's enhanced disclosure requirements allow Parliamentarians and Canadians to determine who is communicating with senior public office holders and on what issues.

For several years now, Canadians have had internet access through our online Registry to information regarding who is carrying out

lobbying activities at the federal level. The Registry was improved this year to make it more adaptable and responsive to users. It can now process greater amounts of data and provide users with better information, more quickly. I am pleased to report that the changes required to the Registry of Lobbyists were made on time, within budget and with no major difficulties, thereby allowing lobbyists to fulfill their disclosure obligations with no significant breaks in service. I take pride in the fact that our Registry is at the forefront of electronic registration and is considered to be a model for similar offices around the world.

The *Lobbying Act* provides the Commissioner of Lobbying with a clear mandate for education and outreach so that Parliamentarians, citizens, departments and agencies and lobbyists have a better understanding of the Act. As such, one of my objectives during this reporting year was to improve the understanding of lobbyists, public office holders with whom they communicate, and others interested in lobbying activities, about the rationale and requirements of the Act. In this respect, various means of communication, such as information sessions and on-line multimedia tutorials, were used to achieve this ongoing objective. I believe that it is just as important to educate people regarding the Act and its requirements than to rely exclusively on enforcement measures to achieve compliance.

It is just as important to educate people regarding the Act and its requirements than to rely exclusively on enforcement measures to achieve compliance.

Although education is an important priority, actual enforcement cannot be ignored. In this respect, the Commissioner's enforcement powers have been enhanced under the *Lobbying Act*. These include: the extension of the period during which possible summary conviction infractions may be investigated and/or prosecuted; the doubling of monetary penalties available upon conviction under the Act; and the fact that the Commissioner may conduct investigations in order to ensure compliance with the *Lobbyists' Code of Conduct* as well as the *Lobbying Act*.

Given all of these legislative changes, the office was required to amend its current enforcement approaches and processes and to develop new ones in order to be consistent with the new Act. In this regard, I am proud that we were able to achieve continuity with the office's previous work and open new files, while amending or re-building our internal systems and processes.

The success of what we were able to achieve is largely attributable to the dedication, professionalism and hard work of our entire staff.

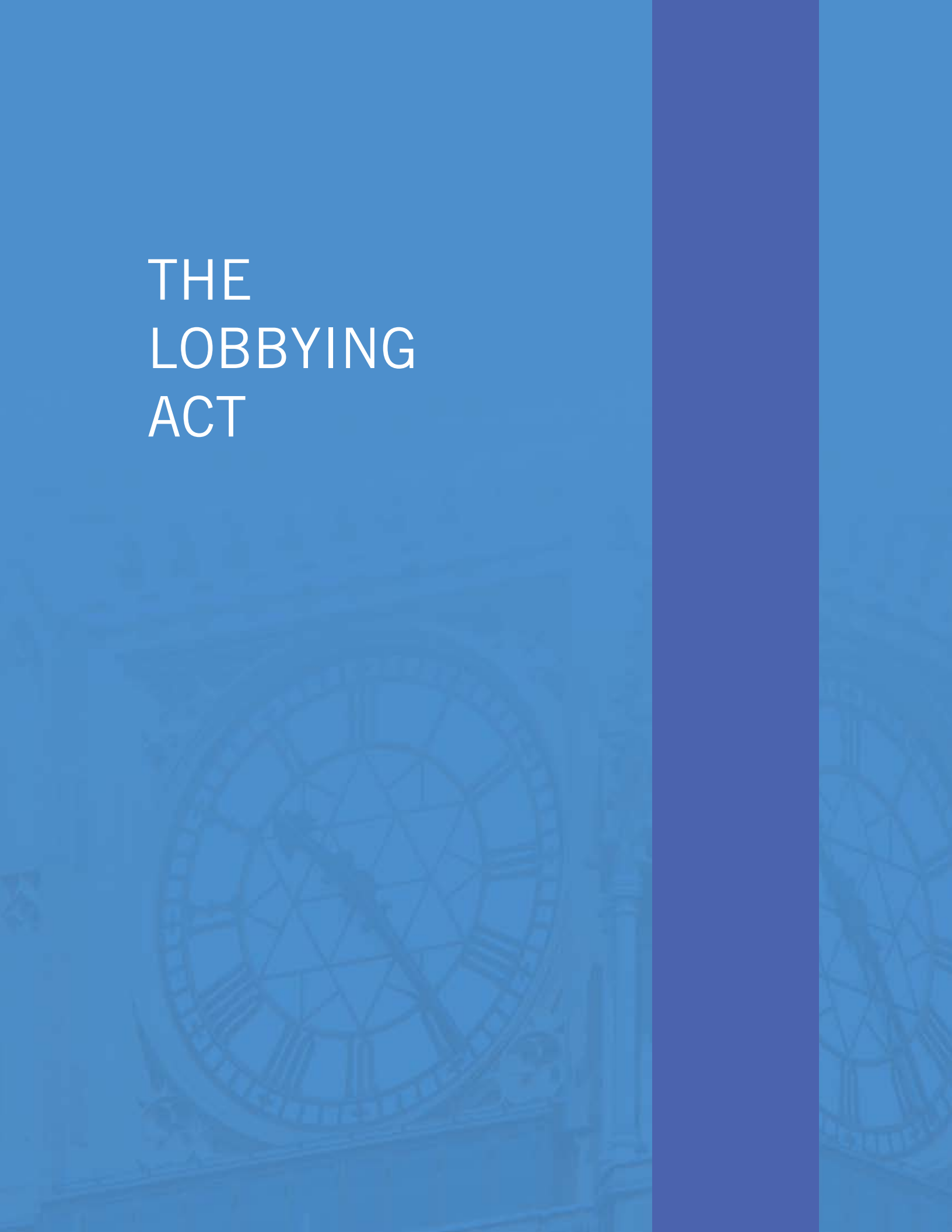
This past year has truly been challenging and exciting. The success of what we were able to achieve is largely attributable to the dedication, professionalism and hard work of the entire staff. My goal has been to implement and administer this Act in a way that generates and builds the trust of Canadians by working always to ensure transparency and integrity in government decision-making through a well-functioning and independent office of Parliament. It has been an honour to work with this team and to serve Parliament and Canadians in this regard.



**Karen E. Shepherd**  
Interim Commissioner of Lobbying



# THE LOBBYING ACT



# THE LOBBYING ACT

## A. PURPOSE AND DESCRIPTION

The *Lobbying Act* provides for the public registration of those individuals who are paid to communicate with public office holders (POHs) with regard to certain matters as described in the legislation. Public office holders are defined in the Act as virtually all persons occupying an elected or appointed position in the Government of Canada, including members of the House of Commons and the Senate and their staff, as well as officers and employees of federal departments and agencies, members of the Canadian Forces and members of the Royal Canadian Mounted Police.

The preamble to the Act sets out four basic principles pertaining to the registration of lobbyists:

- 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 attempting to influence government;
- A system for the registration of paid lobbyists should not impede free and open access to government.

Individuals must be registered if they lobby, i.e., if they communicate with federal POHs, for payment, whether formally or informally, with regard to:

- the making, developing or amending of federal legislative proposals, bills or resolutions, regulations, policies or programs; or
- the awarding of federal grants, contributions or other financial benefits; and

- in the case of consultant lobbyists, the awarding of a federal government contract and arranging a meeting between their client and a POH.
- The *Lobbying Act* provides for the following three categories of lobbyists:

### CONSULTANT LOBBYISTS

Consultant lobbyists are individuals who are paid to lobby on behalf of a client. Consultant lobbyists may be government-relations consultants, lawyers, accountants or other professional advisors who provide lobbying services for their clients. They must file a registration for each individual undertaking (i.e., for each mandate).

### IN-HOUSE LOBBYISTS (CORPORATIONS)

In-house lobbyists (corporations) are employees of corporations that carry on commercial activities for financial gain and who lobby as a significant part of their duties. These employees are usually full-time officers who devote a significant part of their duties to public affairs or government-relations work. As the registrant, the most senior paid officer must register the corporation if the total lobbying activity of all employees equals 20 percent or more of the duties of one equivalent full-time employee. The registration must include the names of all senior officers (the most senior officer and all its direct reports) who engage in any lobbying activity, as well as the name of any employee who individually devotes a significant part of his or her duties to lobbying activities.

## IN-HOUSE LOBBYISTS (ORGANIZATIONS)

In-house lobbyists (organizations) are employees of non-profit organizations, such as associations, charities and foundations. As the registrant, the most senior paid officer of such an organization must register the names of all employees engaged in lobbying activities if the total lobbying activity of all such employees equals 20 percent or more of the duties of one equivalent full-time employee.

All three categories of lobbyists are required to disclose certain information within time limits specified in the Act. This information includes:

- names of their clients, or corporate or organizational employers;
- names of the parent or subsidiary companies that would benefit from the lobbying activity;
- organizational members of coalition groups;
- specific subject matters of lobbying;
- names of the federal departments or agencies contacted;
- sources and amounts of any public funding received; and
- communication techniques used, such as meetings, telephone calls or grass-roots lobbying.

Although their reporting requirements slightly differ, corporations and organizations must also provide general descriptions of their business or activities.

## B. NEW REGULATIONS

The *Lobbying Act* authorizes the Governor in Council to make regulations to set out the measures necessary to enable lobbyists to comply with the registration requirements of the Act, to assist the Commissioner in his or her mandate to oversee the enforcement of the Act, and to ensure adherence to all aspects of the lobbyists' registration regime.

The *Designated Public Office Holder Regulations* prescribed various positions in the Canadian Forces and the Privy Council Office, as well as the Comptroller General of Canada, so that the persons occupying the positions would be included as "designated public office holders" (DPOHs) under the *Lobbying Act*. The *Lobbying Act* defined DPOHs to include ministers, ministers of state and certain staff members, deputy heads, associate deputy heads and assistant deputy ministers and those of comparable ranks throughout the public service. The Regulations extended this definition to include eleven further positions or classes of positions.

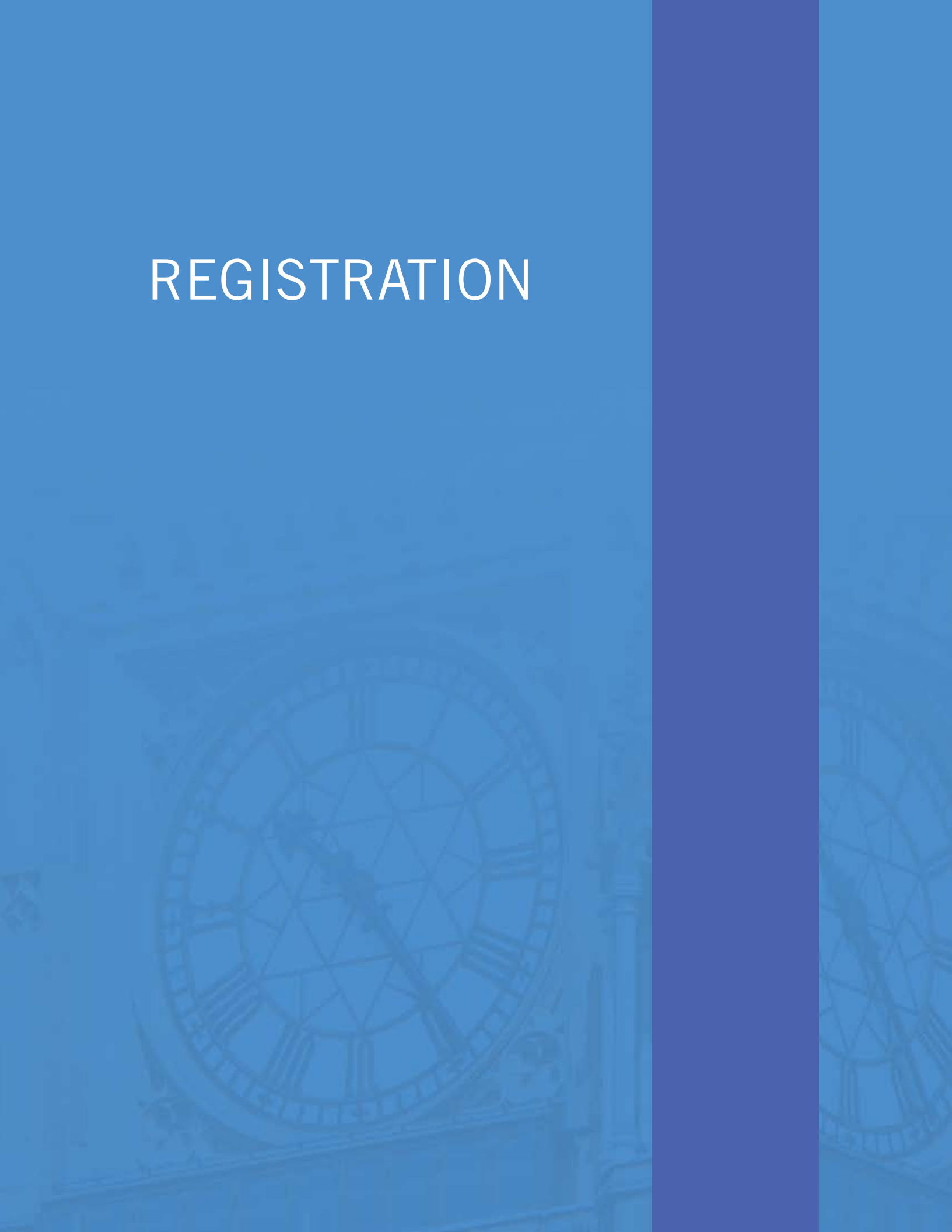
- Chief of the Defence Staff
- Vice Chief of the Defence Staff
- Chief of Maritime Staff
- Chief of Land Staff
- Chief of Air Staff
- Chief of Military Personnel
- Judge Advocate General
- Any position of Senior Advisor in the Privy Council to which the office holder is appointed by the Governor in Council
- Deputy Minister (Intergovernmental Affairs) Privy Council Office
- Comptroller General of Canada
- Any position to which the Office holder is appointed pursuant to paragraph 127.1 (1) a) or b) of the *Public Service Employment Act*.

The *Lobbyists Registration Regulations* set the form and manner in which lobbyists must file returns required by the *Lobbying Act*. Returns disclose information regarding their lobbying activities. The Regulations also set out additional information to be disclosed in returns, beyond what is required by the *Lobbying Act*. They set the time frames to respond to a request by the Commissioner for correction or clarification of information submitted in returns. The Regulations also describe the type of communication that will trigger monthly returns.





# REGISTRATION



# REGISTRATION

## A. PRIORITIES

The *Federal Accountability Act* had a considerable impact on the registration requirements set out in the *Lobbyists Registration Act*, which was replaced by the *Lobbying Act* on July 2, 2008. Under the new Act, lobbyists are required to disclose additional or different information. As a result, the Office of the Commissioner of Lobbying (OCL) needed a registration system that incorporated those new legislative and regulatory registration requirements.

## B. WHAT WE DID

### LOBBYISTS REGISTRATION PROCESS

The Lobbyists Registration System (the Registry) is the primary tool used by the OCL to ensure transparency in lobbying activities conducted at the federal level.

More specifically, the Registry consists of a database coupled to a web-based software application that lobbyists must use to disclose their lobbying activities and to complete related registration transactions such as modifications, updates and terminations. It is accessible 24 hours a day, seven days a week, via our website. In addition to lobbyists, it is increasingly visited by journalists, public office holders, the Canadian public and others interested in lobbying issues.

The Registry is our primary tool for ensuring transparency in federal lobbying activities... a key 24/7 resource for whoever wishes to obtain information about organizations, corporations and individuals who actively lobby the federal government.

All the statutory information contained in the Registry collected under the Act and the *Lobbyists Registration Regulations* is a matter of public record. The objective of the Registry is to ensure that Canadians and public office holders know who is being paid to communicate with federal public office holders and on what subject matters. As such, it is a key resource for whoever wishes to obtain information about organizations, corporations and individuals who actively lobby the federal government.

The Registry is an interactive system that validates basic data, such as names and addresses, reminds lobbyists to complete all required information and permits them to easily edit their disclosures. Once verified by our staff, the data is moved to the Registry database. The information contained in the Registry is searchable using a full-text keyword search engine. As well, certain standard reports can now be produced through the web-based interface.

Registry users may search and retrieve information about:

- who lobbies for which firms, corporations, organizations or associations;
- which parent and subsidiary companies or corporations benefit from lobbying activities;
- the organizational members of coalition groups;
- the activities that corporations and associations are engaged in (a general description);
- which Government of Canada departments or agencies are being contacted;
- the names or descriptions of the specific legislative proposals, bills, regulations, policies, programs of interest and grants, contributions or contracts sought;

- the positions former public office holders have held within the Government of Canada before they started lobbying; and
- the oral and arranged communications that took place with designated public office holders.
- Users can produce print copies of individual registration forms directly from the Registry. It is also possible to access a list of recent registrations that includes new registrations, amendments and terminations that have been processed over the previous 30 days, as well as monthly communications reports about oral and arranged communications with designated public office holders. Users who search and retrieve data directly from their own computers may do so free of charge.

## NEW LOBBYISTS REGISTRATION SYSTEM

Setting up the new Lobbyists Registration System proved to be a major undertaking as the previous version of the Registry was not designed to accept the significantly increased volume of transactions resulting from the new requirements of the *Lobbying Act*. The complexity of these new reporting requirements called for a complete overhaul of the Registry's business processes. A major upgrade was required to allow for efficient processing of significantly larger numbers of transactions. Additional functions were also added to the Registry to improve its usability and efficiency.

Although the early planning work dates back to 2006-2007, all of the development work was done during fiscal year 2007-2008 and over the first four months of fiscal year 2008-2009. The total capital costs of the new Registry totalled up to slightly less than \$2 million, which included contingencies, testing and start-up. The renewal project was completed on time, within budget, and with no major technical difficulties.

The major changes and improvements brought to the Registry in 2008-2009 were as follows:

- streamlined user interfaces with additional reference features;
- on-line multimedia tutorials describing most often used transactions;
- new functionality to input, manage and search monthly communications reports;
- new user dashboards to facilitate the management of multiple registrations;
- new security and data integrity features;
- new automated termination process for overdue registrations;
- more coherent data relationships between lobbyists and their clients;
- enhanced administrative and document exchange capabilities; and
- enhanced search and reporting capabilities.

One of the changes of the Act was a new requirement for lobbyists to disclose on a monthly basis, subject to certain conditions, oral and arranged communications with designated public office holders. Unlike initial registrations, which are examined for completeness before being published in the Registry, monthly communication reports are directly published in the Registry when certified by the registrants. Of the approximate 600 reports that are filed monthly, we have noticed that a small percentage of the reports contained errors, such as wrong meeting dates or meetings with non-DPOHs, which do not require monthly reporting. These errors needed to be corrected. Therefore once the registrant confirmed in writing that an error has been made, the office ensured that the change was reflected in the Registry.

In order to increase the quality of data disclosed in monthly communication reports, we rely on direct verification of entries with designated public office holders and on internal data verifications conducted by our personnel. We expect the number of incorrect monthly reports to diminish as registrants become more familiar with the requirements of the Act.

## REGISTRATIONS

| INDIVIDUAL LOBBYISTS – ACTIVE AS OF MARCH 31, 2009    |           |           |
|---|-----------|-----------|
|   | 2008-2009 | 2007-2008 |
| Consultant lobbyists                                  | 873       | 867       |
| In-house lobbyists (corporations)                     | 1,454     | 1,754     |
| In-house lobbyists (organizations)                    | 2,217     | 2,439     |
| Total registered individual lobbyists, all categories | 4,544     | 5,060     |

| REGISTRATIONS – ACTIVE AS OF MARCH 31, 2009        |           |           |
|--|-----------|-----------|
|  | 2008-2009 | 2007-2008 |
| Consultant lobbyists (one registration per client) | 2,253     | 2,857     |
| Corporations                                       | 303       | 283       |
| Organizations                                      | 487       | 442       |
| Total active registrations, all categories         | 3,043     | 3,582     |

On March 31, 2009, 873 active individual consultant lobbyists were registered compared to 867 registered the previous year. These consultant lobbyists work primarily for firms active in areas such as government relations, law, accounting, strategic advice and other professional services that provide lobbying services for their clients.

As of March 31, 2009, a total of 1,454 individual in-house lobbyists (corporations) were registered in the Lobbyists Registration System, representing the interests of 303 different corporations. This reflects a decrease of 17.1 percent compared to the 1,754 individual in-house lobbyists (corporations) registered in the previous year. During the same period, however, the number of corporations registered by their most senior officers went up 7.1 percent from 283 to 303.

The number of organizations registered by the most senior paid officers of non-profit organizations and interest groups, as well as business, trade, industry and professional organizations or associations, was 10.2 percent higher than in the previous year, increasing from 442 to 487. On the other hand, the number of individual in-house lobbyists (organizations) decreased by almost 9.1 percent from 2,439 to 2,217 over the same period.

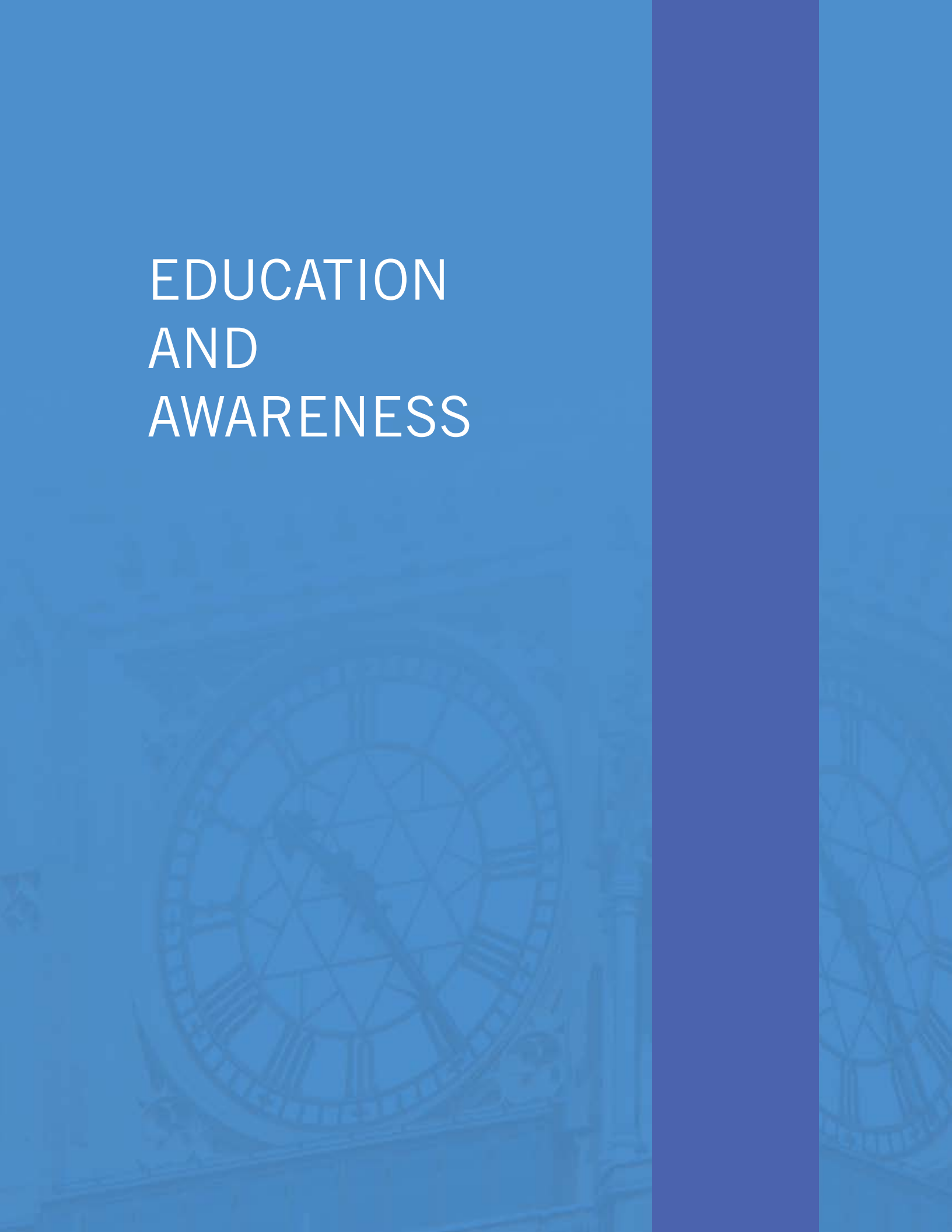
Despite the fact that the number of individual corporations and organizations registered rose, when all categories were included, the number of registered lobbyists decreased over last year from 5,060 to 4,544, largely as a result of smaller numbers of in-house lobbyists per individual corporation and organization. This may be the result of a certain rationalization that took place within corporations and organizations, where the number of employees actually involved in lobbying was reduced, even if the corporations or organizations remained registered. This result may be in response to the *Lobbying Act*'s more stringent disclosure requirements.

## C. LESSONS LEARNED

The transition to the *Lobbying Act* posed many challenges. The registration changes brought about by the Act put pressure on registrants to comply with the new disclosure requirements. These changes also put pressure on our staff to provide timely advice and processing of registrations. We expect, however, that registrants will become increasingly familiar with their reporting requirements of the Act, which should diminish the difficulties in filing initial returns and the number of incorrect monthly reports. To facilitate the correction of future incorrect monthly reports, we plan to implement, in fiscal year 2009-2010, a new Registry functionality that will allow registrants to modify incorrect monthly communications reports themselves.



# EDUCATION AND AWARENESS



# EDUCATION AND AWARENESS

## A. PRIORITIES

The *Lobbying Act* provided the Commissioner of Lobbying with an explicit mandate to develop and implement educational programs meant to foster awareness of the requirements of the Act. As a first step in fulfilling this mandate, the OCL developed awareness and training materials to assist public office holders, designated public office holders (DPOHs), lobbyists, their clients, parliamentarians and others in better understanding the reporting obligations of the *Lobbying Act*.

## B. WHAT WE DID

### DEVELOPMENT OF AN EDUCATION AND AWARENESS STRATEGY

Over the past year, efforts and resources have been devoted to the development and the implementation of a comprehensive education and awareness strategy that would enhance and maximize our outreach efforts prior to and following the coming into force of the Act.

### INFORMATION MATERIAL

We developed information material pertaining to provisions of the *Lobbying Act*. This material was distributed to all registered lobbyists, heads of federal departments and agencies and made available on our website so that they were readily accessible to other interested parties.

Information materials included:

- Implementation Notices that explained key elements of the Act as well as provided concrete examples;
- Interpretation Bulletins on sections of the Act that are not easily interpreted were developed, distributed and posted on our website. For example, the Interim Commissioner issued interpretation bulletins

on the issue of “comparable rank”; “Communications with Federal Public Office Holders and Designated Public Office Holders” and Disclosure of Previous Public Offices held;

- An explanatory booklet that summarized the key modifications to the federal lobbyists registration regime;
- We created and regularly updated new website sections, such as “What’s new” and the “Coming into force of the *Lobbying Act*” in an effort to continuously improve it and ensure it remained user-friendly; and contained up-to-date and readily accessible information;
- PowerPoint presentations aimed at targeted audiences to familiarize them with their new reporting obligations under the *Lobbying Act*.

### ISSUANCE OF ADVISORY LETTERS

Over the past year, we continued to monitor publicly-available information to ensure that individuals or firms who may be conducting lobbying activities at the federal level were aware of and in compliance with the Act. We issued advisory letters to individuals who appeared to be conducting unregistered lobbying activities and encouraged them to visit our website or to contact us for additional information on the Act’s registration requirements. During this reporting period, a total of 20 advisory letters were issued. Six resulted in new registrations and 14 determined that there was no need to register.

### DIRECT COMMUNICATIONS

The *Lobbying Act* and issues pertaining to federal lobbying activities continued to garner significant interest. Much of our effort was aimed at ensuring that reporting requirements



were clearly communicated and understood by registrants. During 2008-2009, 39 outreach and information sessions were held with lobbying firms, in-house lobbyists and various stakeholder groups.

## **MEDIA RELATIONS**

A great deal of media attention during this reporting period was directed at the coming into force of the Act, various allegations of breaches of the Act and ongoing court proceedings. We responded regularly to media inquiries and often provided clarifications on the Act.

## **CONFERENCES, LEARNING EVENTS AND PRESENTATIONS**

We believe that holding discussions and sharing information and best practices contributes to increasing awareness of existing lobbying legislation. Over the past year, we participated in and made presentations to a number of national and international organizations interested in the Canadian federal lobbying regime. Some examples are the Interim Commissioner co-hosting the Annual Lobbyist Registrars and Commissioners Conference, the annual presentation of the update on the federal Canadian lobbying situation at the Council on Governmental Ethics Laws (COGEL) conference; presentations to the Government Relations Institute of Canada (GRIC); presentation to a Russian delegation interested in anti-corruption measures; and meetings held with various organizations, including the Canadian Chamber of Commerce, the Association of Universities and Colleges of Canada, the Canadian Labor Congress, and others.

Holding discussions and sharing information contributes to increasing awareness of existing lobbying legislation.

## **BRIEFINGS TO FEDERAL GOVERNMENT INSTITUTIONS**

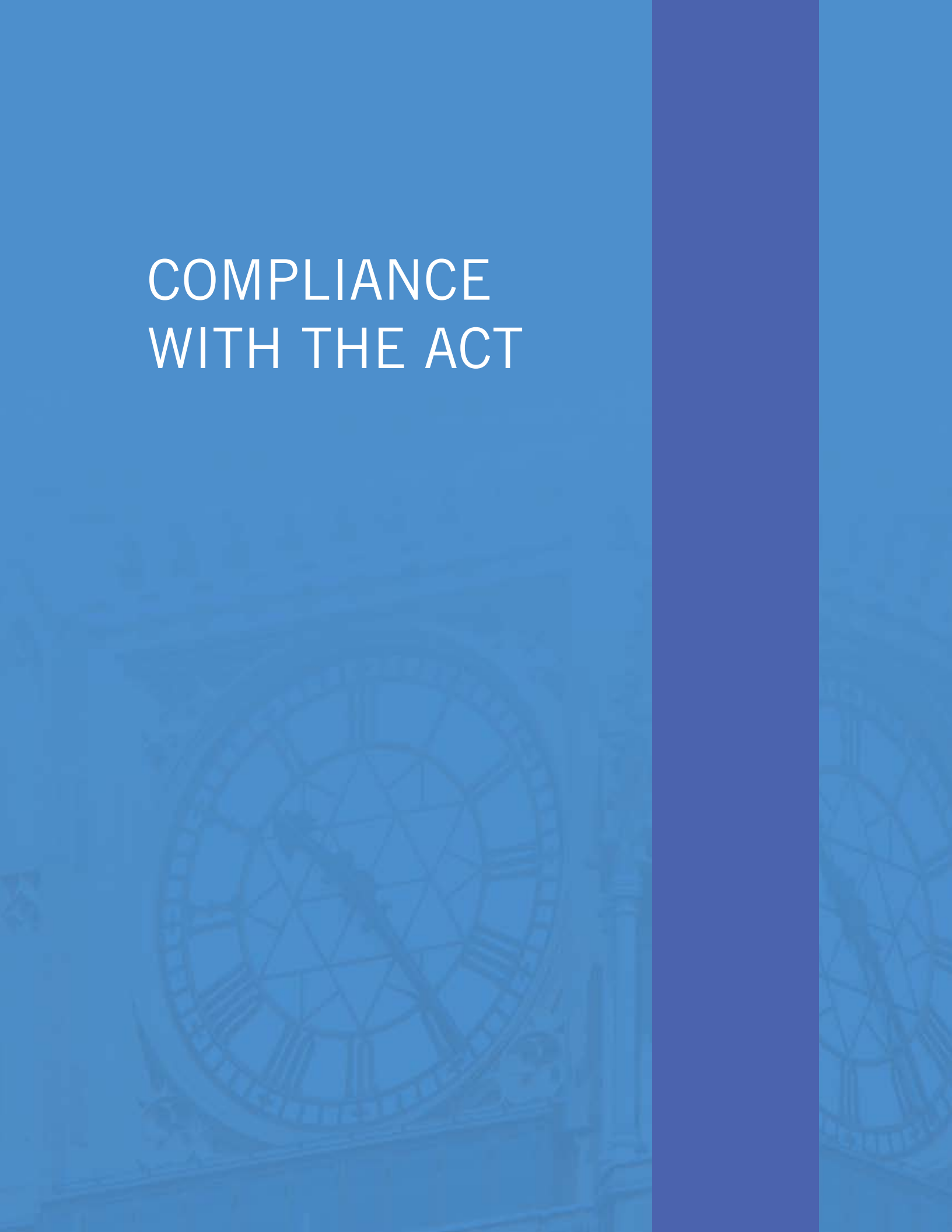
We held meetings and briefing sessions with senior officials from various departments and agencies on the *Lobbying Act*. We helped familiarize them with the new requirements of the Act and addressed any issues regarding lobbying activities facing their departments or officials.

## **C. LESSONS LEARNED**

The *Lobbying Act* provides the Commissioner of Lobbying with an explicit mandate to develop and implement educational programs meant to foster awareness of the requirements of the Act. While we have successfully implemented the first step in fulfilling this important mandate by developing and distributing targeted communications and educational products, there is still more to do. In the year ahead, we will further implement our outreach and education strategy by working with various parties to address their specific issues and needs. It is hoped that even greater compliance will be achieved through enhanced educational material.



# COMPLIANCE WITH THE ACT



# COMPLIANCE WITH THE ACT

## A. PRIORITIES

The *Lobbying Act* changed a number of things for the OCL in terms of compliance. It expanded the Commissioner's investigative powers to include investigation of non-compliance with the Act and changed the standard of proof required to initiate investigations from "reasonable grounds" to "reason to believe." The Act also provided the Commissioner with the authority to cease investigations for a number of reasons including, the matter would be better dealt with under another Act of Parliament; it is not sufficiently important; dealing with it would serve no useful purpose due to elapsed time; and any other valid reason for not dealing with the matter.

Although education is an important priority, actual enforcement cannot be ignored.

The priority this year was to incorporate these compliance changes into our established processes and develop new ones to deal with such things as the exemption process from the five-year prohibition on lobbying.

## B. WHAT WE DID

### MONITORING

Hardly a day goes by when lobbying activities aimed at federal institutions are not mentioned in the news. We monitor the media and conduct research of publicly available information, verifying that those who are identified as having engaged in potentially registrable lobbying activity are doing so in accordance with the registration requirements of the Act. In some cases, the activity described in news reports as lobbying may not require registration. In some cases it does. When appropriate, we inform individuals and organizations by advisory letter about the requirement to register certain lobbying activity. However, an increasing majority of individuals, organizations and corporations who are described in media reports as "lobbying" are properly registered in our Registry of Lobbyists.

In 2008-2009, we looked at 354 individuals, organizations and corporations as a result of references in the media to their lobbying activities. After taking into account unpaid lobbyists (7), and those lobbying only provincial or municipal governments (14), who are not subject to federal registration requirements, an overwhelming 93% are accounted for in the Registry of Lobbyists. The rest will be the subject of compliance measures such as education, monitoring, review or investigation.

The following table summarizes our monitoring efforts over the past several years:

| Year      | Corporation/Organization/<br>Individuals Verified | Registration<br>Not Required | Registered | Compliance<br>Measures |
|-----------|---|------------------------------|------------|------------------------|
| 2006-2007 | 115   | 12                           | 54 (52%)   | 49                     |
| 2007-2008 | 219   | 31                           | 121 (64%)  | 67                     |
| 2008-2009 | 354   | 21                           | 313 (93%)  | 20                     |

## COMMUNICATION VERIFICATION

Lobbyists are now required to declare certain oral and arranged communications with designated public office holders, which are referred to as monthly communications reports. Their entries, submitted to the Registry on a monthly basis, provide the public with current information about the date, subject matter and designated public office holders (DPOHs) who have participated in the meetings. The Act also requires that, at the request of the Commissioner, a current or former designated public office holder, confirm the accuracy and completeness of monthly communication reports identifying them as participants in a registrable communication.

To ensure that information contained in the Registry is valid, we have initiated a verification process. Every month, we send letters to a sample of DPOHs, asking that they verify and confirm the accuracy of the information contained in the Monthly Communication Reports entries.

During the period from July 2008 to March 31, 2009, we verified 327 communication entries through correspondence with 58 designated public office holders. The following table outlines the results:

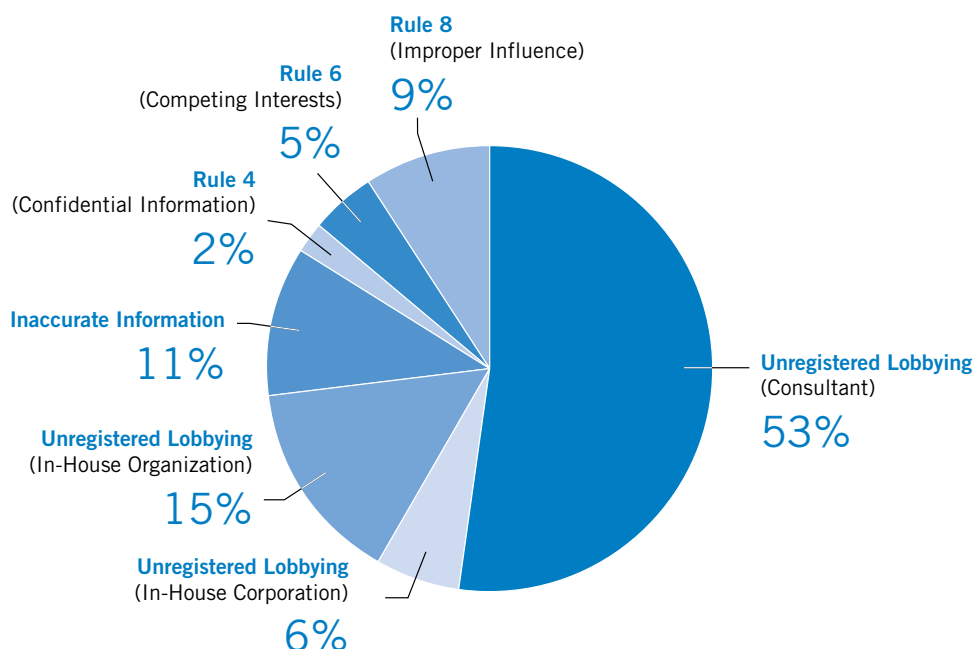
| Period  | Communication<br>Entries Submitted | Letters<br>Sent | Entries<br>Verified | Entries<br>Identified as<br>Accurate | Corrections or<br>Clarifications<br>Required | Accuracy |
|---|------------------------------------|-----------------|---------------------|--------------------------------------|--|----------|
| July 2008 –<br>March 31 <sup>st</sup><br>2009 | 5,074                              | 58              | 327 (6%)            | 298                                  | 29   | 91%      |

## ADMINISTRATIVE REVIEWS

When allegations of non-compliance with the Act are brought to our attention, we conduct a preliminary information-gathering exercise, which is called an administrative review. An Administrative Review Plan is developed, research of the Registry and other publicly available information is undertaken, witnesses (public office holders, lobbyists and their clients) are interviewed and a recommendation report is then submitted to the Commissioner. The report summarizes the allegation, provides sufficient background information on the subject-matter, assesses the elements of the transgression and submits a recommendation to the Commissioner to assist with his or her determination of whether or not there is reason to believe an investigation is necessary to ensure compliance with the Act or the Code. These reviews are not formal investigations and they vary in complexity and duration.

In 2008-2009, 13 Administrative Reviews were initiated and 8 recommendation reports were sent to the Commissioner. The following graph summarizes the administrative review caseload by file type since 2005:

### ADMINISTRATIVE REVIEW CASELOAD BY FILE TYPE (2005-2008)



### INVESTIGATIONS

The Commissioner may initiate formal investigations if he or she has reason to believe an investigation is necessary to ensure compliance with the Act or the Code. The Act requires that investigations be conducted in private. Once an investigation is undertaken, the Commissioner has the authority to summon attendance and to compel information. The subject of an investigation is provided with an opportunity to present their views. A report of the Commissioner's findings and conclusions, following a completed investigation, are tabled before both Houses of Parliament.

A transitional provision set out in the *Federal Accountability Act* regarding pending investigations gave authority to the Commissioner to continue conducting investigations initiated by the Registrar prior to July 2, 2008. In the past year, six investigations initiated by the Office of the Registrar of Lobbyists were transferred to

the Commissioner of Lobbying. One investigation report has been submitted for the Commissioner's consideration, with the remaining five still under review. The Commissioner now has the authority to refuse to conduct or cease any investigation that he or she believes would serve no useful purpose in pursuing because of, among other things, the amount of time that has elapsed since the matter arose.

### EXEMPTION REVIEW

The *Lobbying Act* introduced a five-year prohibition on lobbying on former designated public office holders. This prohibition was designed to prevent them from using knowledge and contacts acquired during their public service to benefit a career as a paid lobbyist. However, the Act also gave the Commissioner the authority to exempt individuals from application of the ban, for reasons that would not conflict with the purposes of the Act.

An internal review process was developed to ensure that the Commissioner is provided with sufficient information to render a decision whether or not to grant an exemption. The process involves the research and analysis of the applicant's submission, and provides them with an opportunity to review and comment on reports provided to the Commissioner.

Since the coming into force of the *Lobbying Act*, two exemptions from the five-year prohibition on lobbying have been granted. The exemption review process and details of the exemptions that have been granted are made public, in accordance with Act, and can be found on our website.

## COURT CHALLENGES

### 1. FEDERAL COURT OF APPEAL DECISION IN ATTORNEY GENERAL OF CANADA AND MAKHIJA, DECEMBER 15, 2008

In March 2007, the Registrar of Lobbyists completed four investigation reports concerning allegations of unregistered lobbying by Mr. Neelam Makhija. The reports, which were tabled in the Senate and the House of Commons, concluded that Mr. Makhija contravened the former *Lobbyists Registration Act* when he failed to register his activities on behalf of four corporations, and that his activities were in breach of the *Lobbyists' Code of Conduct*.

Mr. Makhija applied to the Federal Court for a judicial review of the Registrar's decisions, as set out in the four reports, claiming that he was not a lobbyist and that the Registrar had made a legal error. He asked that the decisions be overturned and that the reports be withdrawn from Parliament.

A hearing took place in Federal Court and on March 10, 2008 the Federal Court rendered a decision that placed into question the Registrar's ability to table findings regarding a breach of

the Act; or to initiate a Code investigation of those who fail to register as lobbyists. The Registrar's decisions were overturned and an order was made to remove the four Investigation Reports that were tabled in Parliament.

The Attorney General appealed the Federal Court decision to the Federal Court of Appeal (FCA), requested a stay of the judge's order to remove the document from Parliament, and the Registrar instructed that certain Administrative Reviews and Investigations be placed on hold, pending the FCA decision. On July 25, 2008, after reviewing submissions from both parties, the FCA granted the stay and recommended that an appeal hearing be set at the earliest possible date. Work recommenced on the files that had been put on hold.

The appeal of the decision was heard on November 25, 2008 and on December 15, 2008; the FCA quashed the decision of the Federal Court that questioned the Registrar's jurisdiction to investigate. The three judges on the FCA were unanimous in concluding that the Registrar was entitled to conduct an investigation once he had reasonable grounds to believe that a breach of the Code had occurred, even if the person under investigation had not registered as a lobbyist. Their decision resolved the jurisdiction issue raised by the Federal Court.

However, the court case is ongoing. The FCA has directed that the application for judicial review be sent back to the Federal Court to make a decision based on the merits of Mr. Makhija's application for judicial review. In other words, now that the legal issue regarding the Registrar's jurisdiction to investigate has been resolved, the Federal Court must still decide whether the Registrar's decision was procedurally fair and reached a reasonable conclusion. In addition, Mr. Makhija has sought leave from the Supreme Court of Canada to appeal the decision of the FCA. The application for leave to appeal remains outstanding.

## 2. FEDERAL COURT OF APPEAL DECISION IN DEMOCRACY WATCH V. BARRY CAMPBELL AND THE ATTORNEY GENERAL OF CANADA, (2009 FCA 79)

On October 10, 2006, the Registrar of Lobbyists completed an Administrative Review of an allegation by the public interest group Democracy Watch that Barry Campbell, a registered lobbyist, had breached Rule 8 of the *Lobbyists' Code of Conduct* when he hosted a fundraising dinner in September 1999 on behalf of Jim Peterson, a Liberal Member of Parliament who was running for re-election. At the time, Mr. Peterson was Secretary of State (International Financial Institutions), a cabinet member with responsibilities in relation to the Department of Finance, and Mr. Campbell had registered as a lobbyist in relation to a number of undertakings, one of which involved Mr. Peterson and the Department of Finance.

Rule 8 of the *Lobbyists' Code of Conduct* states:

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.

The Registrar concluded that Mr. Campbell had not violated Rule 8 and he determined that an investigation under the Act would not be initiated. His decision took into account advice that had been provided to lobbyists by the former Ethics Counsellor, which suggested that improper influence would require putting a public office holder in an actual, rather than an apparent, conflict of interest. The Registrar noted in his decision that it would be unfair to retroactively apply a new approach to enforcement of the *Lobbyists' Code of Conduct*.

In November 2006, Democracy Watch applied to the Federal Court for judicial review of the Registrar's decision. The Federal Court dismissed the application in a decision released on February 19, 2008 (*Democracy Watch v. Campbell*, 2008 FC 214). Democracy Watch appealed the

decision and, on March 12, 2009, the Federal Court of Appeal released a unanimous decision that allowed the appeal and set aside the decision of the Federal Court. In doing so, the Federal Court of Appeal, among other things, concluded that the interpretation of conflict of interest used by the Registrar, which was based upon the advice that had been provided to lobbyists by the former Ethics Counsellor, was too narrow. The decision outlined a number of principles to be applied in determining a conflict of interest and instructed the Registrar (now the Commissioner of Lobbying) to develop a new approach to the interpretation and application of Rule 8 that would reflect the Court's decision. In doing so, the Court affirmed the Commissioner's authority to provide guidance regarding the *Lobbyists' Code of Conduct*.

Acknowledging the length of time that has passed since the events occurred that gave rise to the Democracy Watch complaint, the Federal Court of Appeal declined to return the complaint to the Federal Court for a new hearing. As a result, the complaint regarding Mr. Campbell has lapsed and the Office of the Commissioner of Lobbying must reconsider its guidance to lobbyists regarding the application of Rule 8 of the *Lobbyists' Code of Conduct*.

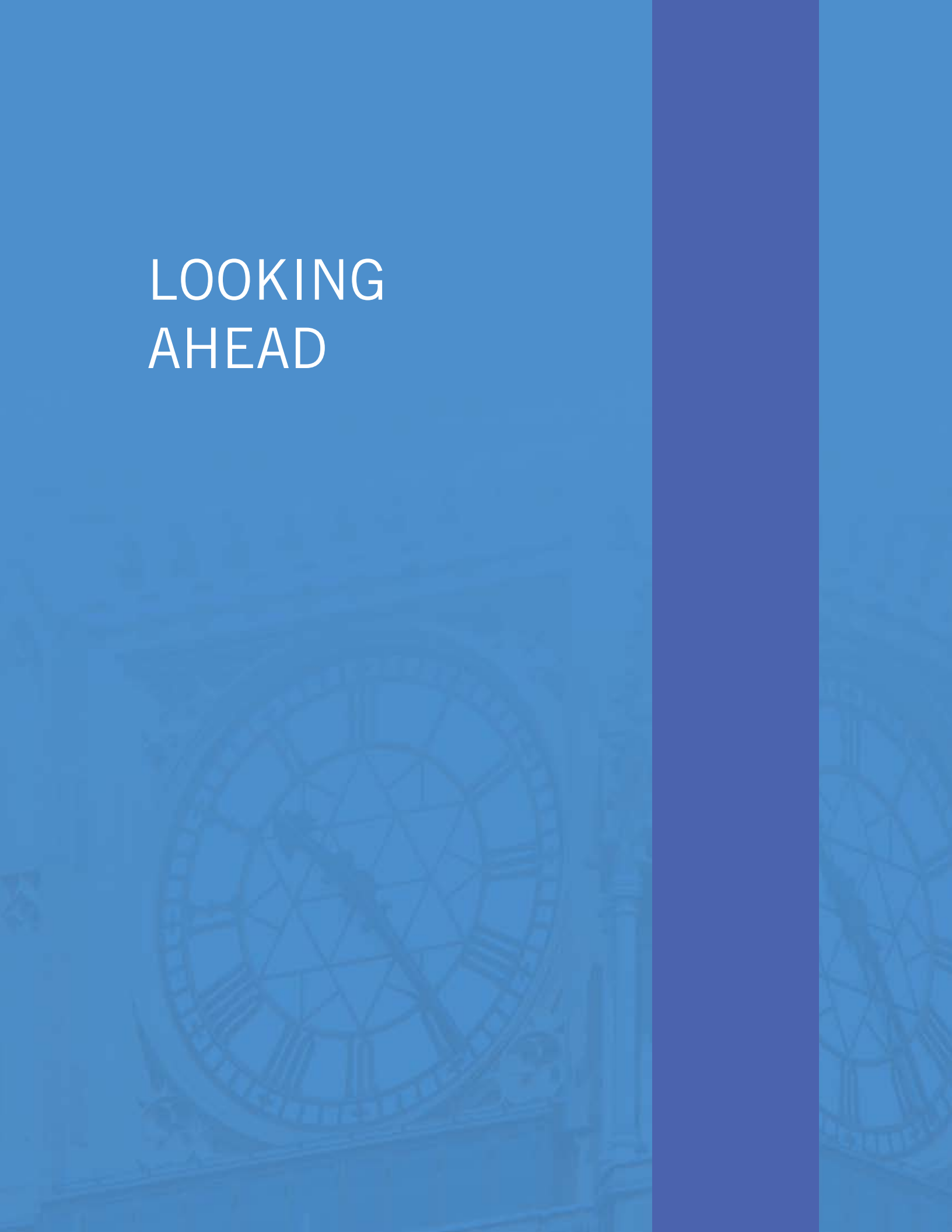
## C. LESSONS LEARNED

During the past year, decisions made in the Federal Court and Federal Court of Appeal have resulted in us reexamining our processes with a view to modifying as required.

Advice given by the Federal Court of Appeal with respect to the conflict of interest will assist us in providing clear guidance regarding Rule 8, and in our review of other allegations involving conflict of interest.



# LOOKING AHEAD

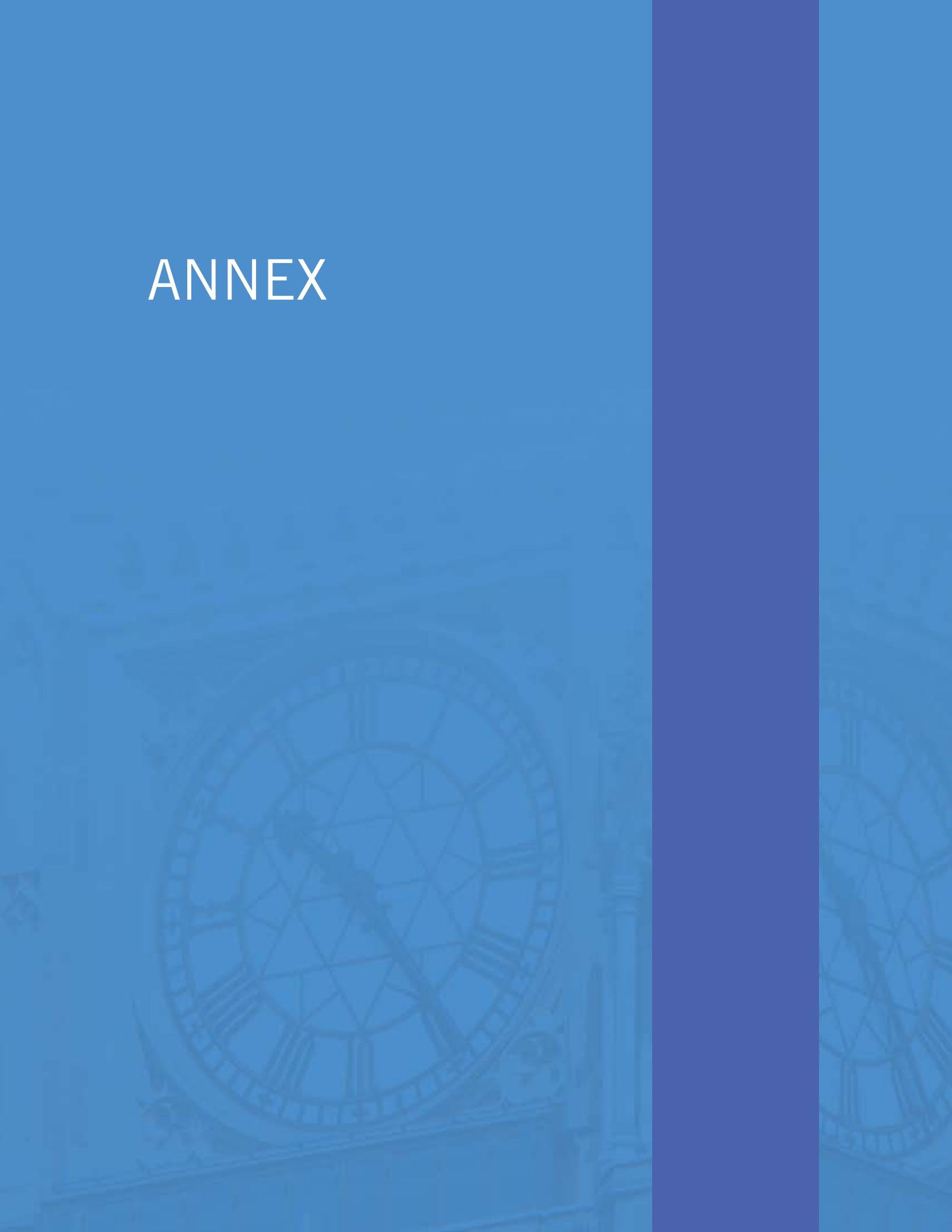


## LOOKING AHEAD

As noted throughout this report, the Office of the Commissioner of Lobbying made significant progress in preparing for and implementing the Lobbying Act. However, there is still work to be done. Over the next year, we will focus our work on:

- Improving the functionalities of our Registry of Lobbyists to make it more user-friendly and to ensure that it remains at the forefront of electronic registration systems;
- Implementing our communications and outreach strategy and developing new and innovative educational tools and products aimed at enhancing and maximizing our outreach efforts with various audiences. Assisting registrants to better understand their reporting requirements; thus minimizing their difficulties when filing initial returns, disclosures and monthly reports;
- Monitoring the monthly reporting of communications between lobbyists and federal officials and moving forward with ongoing administrative reviews, investigations and exemption requests;
- Monitoring compliance with the Act and its disclosure requirements and pursuing those who do not comply; and,
- Reviewing and refining our case management of new and outstanding compliance files in order to be more efficient in administering the Act.

# ANNEX



# REGISTRATION ACTIVITY

During fiscal year 2008-2009, 11,220 registrations were processed, of which 8,493 were consultant lobbyist registrations, 1,111 were in-house lobbyist (corporations) registrations and 1,616 were in-house lobbyist (organizations) registrations. In 2007-2008, 10,110 registrations had been processed, including 8,129 consultant lobbyist registrations, 783 in-house lobbyist (corporations) registrations and 1,198 in-house lobbyist (organizations) registrations. This represents an increase of 11% for all three categories of lobbyists combined. For each type of lobbyist, the increases from last year were 4% for consultant lobbyists, 42% for in-house lobbyists (corporations) and 35% for in-house lobbyists (organizations).

The OCL's Registration Unit handled 6,309 calls during the fiscal year, representing a 25% increase from the 5,045 calls received in 2007-2008. This was expected due to the coming into force of the *Lobbying Act*. A surge of calls was observed during the months following the July 2, 2008 coming into force. Special measures were taken to handle the temporary increase in calls. The callers were divided by category as follows:

|  |     |
|--|-----|
| Lobbyists, registrants and their representatives | 82% |
| Federal public office holders                    | 3%  |
| General public                                   | 15% |

The majority of the calls in 2008-2009 were about using the Lobbyists Registration System and the lobbyist registration process. Calls were divided by topic as follows:

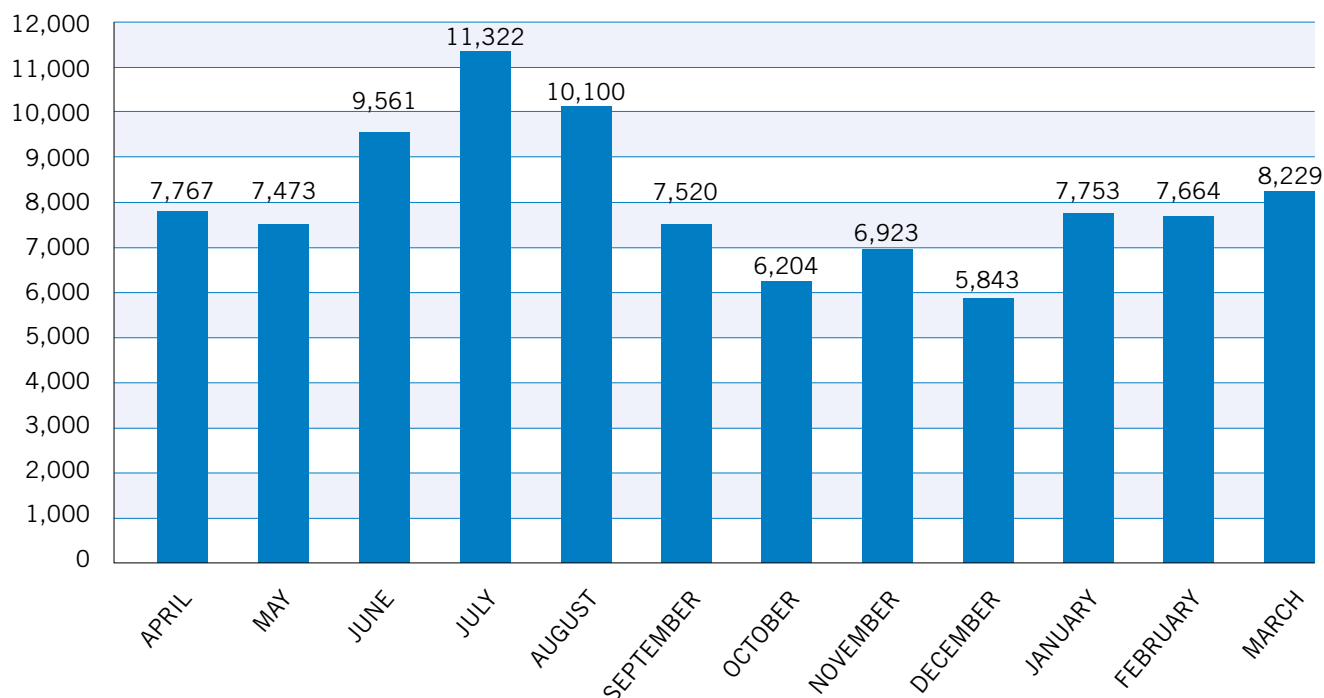
|  |     |
|--|-----|
| Utilization of the Lobbyists Registration System | 37% |
| Registration processing                          | 12% |
| Act and Regulations                              | 18% |
| Other reasons                                    | 33% |

Overall, 84 % of the callers used English in their communications with the Office, while 16% used French. All were answered in the official language of their choice.

As in the previous reporting period, although the overall number of registrations added to the Registry decreased slightly during the year, the complexity of calls received by the Registration Unit was greater, with the result that the Unit's overall workload increased significantly over the course of the fiscal year.

As well, the following graph shows that the highest levels of activity on our website were recorded during the months of June, July and August of 2008. We attribute this increase in website visits to interest generated by the coming into force of the *Lobbying Act* and by federal lobbying activities in general.

#### OCL WEBSITE – VISITS – FISCAL YEAR 2008-2009



## ANNEX B

# SUBJECT MATTER OF LOBBYING ACTIVITIES (AREAS OF CONCERN)

The following table shows, in rank order, the 20 subject areas most frequently identified by lobbyists in their registrations for this fiscal year. The remaining two columns show the rank ordering of subject matters for the two previous fiscal years. This information is based on the registrations that were active on March 31, 2009.

| Subject Matter of Lobbying  | 2008-2009 | 2007-2008 | 2006-2007 |
|-----------------------------|-----------|-----------|-----------|
| Industry                    | 1         | 1         | 1         |
| Environment                 | 2         | 3         | 3         |
| Taxation and Finance        | 3         | 2         | 2         |
| International Trade         | 4         | 4         | 4         |
| Health                      | 5         | 5         | 5         |
| Science and Technology      | 6         | 6         | 6         |
| Transportation              | 7         | 7         | 7         |
| Consumer Issues             | 8         | 8         | 8         |
| Energy                      | 9         | 10        | 10        |
| Employment and Training     | 10        | 9         | 9         |
| Regional Development        | 11        | 11        | 11        |
| Infrastructure              | 12        | 13        | 14        |
| Government Procurement      | 13        | 12        | 12        |
| Agriculture                 | 14        | 15        | 19        |
| International Relations     | 15        | 14        | 13        |
| Intellectual Property       | 16        | 18        | 15        |
| Aboriginal Affairs          | 17        | 17        | 16        |
| Defence                     | 18        | 16        | 17        |
| Justice and Law Enforcement | 19        | –         | –         |
| Internal Trade              | 20        | 19        | 18        |
| Financial Institutions      | –         | 20        | 20        |

## ANNEX C

# GOVERNMENT INSTITUTIONS

The following table shows, in rank order, the 20 institutions most frequently identified by lobbyists in their registrations for this fiscal year. The remaining two columns show the rank ordering of institutions for the two previous fiscal years. This information is based on the registrations that were active on March 31, 2009.

| Government Institutions                        | 2008-2009 | 2007-2008 | 2006-2007 |
|--|-----------|-----------|-----------|
| Industry Canada                                | 1         | 1         | 1         |
| Finance Canada                                 | 2         | 2         | 2         |
| Privy Council Office                           | 3         | 4         | 3         |
| Prime Minister's Office                        | 4         | 8         | 13        |
| Foreign Affairs and International Trade Canada | 5         | 5         | 4         |
| Environment Canada                             | 6         | 6         | 6         |
| Health Canada                                  | 7         | 7         | 7         |
| House of Commons                               | 8         | 3         | 5         |
| Transport Canada                               | 9         | 9         | 8         |
| Natural Resources Canada                       | 10        | 11        | 10        |
| Treasury Board of Canada Secretariat           | 11        | 10        | 9         |
| Agriculture and Agri-Food Canada               | 12        | 14        | 16        |
| Senate of Canada                               | 13        | 19        | NIL       |
| Public Works and Government Services Canada    | 14        | 13        | 12        |
| Indian and Northern Affairs Canada             | 15        | 16        | 15        |
| Department of National Defence                 | 16        | 17        | 17        |
| Canada Revenue Agency                          | 17        | 12        | 11        |
| Department of Canadian Heritage                | 18        | 18        | 18        |
| Human Resources and Social Development Canada  | 19        | 15        | 14        |
| Department of Justice                          | 20        | 19        | 19        |

N.B. Changes in the ranking of federal institutions may often be related to developments or modifications in programming, policy, regulatory or legislative activity levels. For instance, in 2008-2009, federal institutions such as the Privy Council, the Prime Minister's Office and the Senate of Canada were mentioned more often than in the previous year by registered lobbyists. Other institutions, such as the House of Commons and the Canadian Revenue Agency, were cited less frequently.

