



Office of the Commissioner
of Lobbying of Canada

Commissariat au lobbying
du Canada

ANNUAL REPORT

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For a print copy of this publication, please contact:

Office of the Commissioner of Lobbying
255 Albert Street
10th Floor
Ottawa, Ontario K1A 0R5

Tel: 613-957-2760

Fax: 613-957-3078

Email: **QuestionsLobbying@ocl-cal.gc.ca**

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For the fiscal year ending on March 31, 2010

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.

A SYSTEM FOR THE REGISTRATION OF PAID
LOBBYISTS SHOULD NOT IMPEDE FREE AND OPEN
ACCESS TO GOVERNMENT.

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

This report covers the fiscal year ending March 31, 2010.

Yours sincerely,

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

Karen E. Shepherd

Commissioner of Lobbying



Commissaire au lobbying

Ottawa, Canada K1A 0R5

The Honourable Peter Milliken, 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 11 of the *Lobbying Act*, I have the honour of presenting to you the second annual report of the Commissioner of Lobbying for tabling in the House of Commons.

This report covers the fiscal year ending March 31, 2010.

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Karen E. Shepherd

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MESSAGE FROM THE COMMISSIONER OF LOBBYING



I am pleased to present the Annual Report for the Office of the Commissioner of Lobbying for 2009-2010.

My activities focus on the administration of the *Lobbying Act*, which regulates certain communications between lobbyists and

federal public office holders. The Act ensures that lobbying activities are transparent and contributes to increasing Canadians' confidence in the integrity of government decision-making. My mandate is stated in the legislation and covers three activities: maintaining a registry of lobbyists that is accessible to citizens; fostering greater awareness of the Act through education and outreach; and monitoring and enforcing compliance with the legislation and the *Lobbyists' Code of Conduct*.

The *Lobbying Act* came into force in July 2008 creating the position of Commissioner of Lobbying and an Office to support me in administering the Act. During its first year, I focused on developing and implementing the processes necessary to meet the new legislative requirements. This year, much effort was devoted to refining these processes and aligning resources to better administer the Act. I created the position of Deputy Commissioner in February 2010 to consolidate the corporate functions that I must undertake as the Deputy Head of a small agency. As a result, I revised the roles and responsibilities of the other executive positions thereby allowing them to concentrate more fully on the management of the registry and investigation activities.

In 2008, the *Lobbying Act* required all lobbyists to comply with new registration provisions. Because there were no transitional provisions included in the Act, there was an influx of new and updated registrations that created a backlog. I am pleased to report that my Office eliminated this backlog, while continuing to process new registrations. Although registrations are now processed promptly contingent upon the receipt of all relevant information from registrants, next year we will further improve our operations by establishing and communicating service standards.

Our web-based registration system is a model for lobbyists' registries. I remain committed to further improving the Lobbyists Registration System and ensuring it is simpler for lobbyists to use, and easier for Canadians to access and browse for information.

I believe that awareness of the *Lobbying Act's* requirements leads to greater compliance. In this respect, I have focused my efforts on informing and educating lobbyists, public office holders, Members of Parliament and the Canadian public about the *Lobbying Act* and the *Lobbyists' Code of Conduct*. My outreach activities have focused on key groups, including Ministers and senior officials of the 20 most-lobbied federal government institutions. I was pleased to note that among those groups, awareness of the *Lobbying Act* and of their role in supporting compliance is well established.

I believe that awareness of the *Lobbying Act's* requirements leads to greater compliance.

The *Lobbying Act* also affords me the ability to enforce the Act including investigating alleged breaches of either the Act or the Code. My Office monitors lobbying activities and conducts reviews and investigations in order to verify and ensure compliance. In 2009-2010, I continued my efforts to encourage compliance with the Act through administrative reviews, investigations, and referrals to the Royal Canadian Mounted Police. In addition, I continued to review applications for exemption from the five-year prohibition on lobbying for former designated public office holders.

As you will note in this report, much has been accomplished this year, particularly with respect to refining the operations of my Office. I am looking forward to the challenges in the coming year as I continue to raise awareness of the Act and facilitate the creation of a more transparent lobbying regime in Canada. In 2010, the *Lobbying Act* is eligible for legislative review in

which case I will work with Parliament, if and when called upon, to provide insights into changes that might be considered by the Government.

My goal remains to ensure that the Act is administered in a way that supports greater transparency and high ethical standards in lobbying activities.

My goal remains to ensure that the Act is administered in a way that supports greater transparency and high ethical standards in lobbying activities. I am pleased to work with my capable staff who believe, as I do, in the transparency and integrity of the lobbying regime. I know I can continue to rely on their dedication and professionalism.



Karen E. Shepherd
Commissioner of Lobbying

TRANSPARENT LOBBYING

THE REGISTRY

Transparency in lobbying activities is a key principle of the *Lobbying Act* (the Act). Public office holders and the public should know who is engaged in lobbying activities with the federal government. By establishing and maintaining a Registry of Lobbyists (the Registry), which is accessible 24 hours a day, seven days a week on the website of the Office of the Commissioner of Lobbying, the Office ensures that Canadians can easily access this information.

The Lobbyists Registration System (the LRS) is the tool used by lobbyists to register their lobbying activities conducted at the federal level. The LRS consists of a database coupled with a web-based interface application that lobbyists use to disclose their lobbying activities and meet the requirements of the Act. The LRS also enables users to perform other registration-related transactions, such as modifications, updates and terminations.

The LRS is an interactive online system that validates basic data, such as names and addresses, reminds lobbyists to complete all required information and permits them to easily edit their information. All the data contained in the LRS and collected under the *Lobbying Act* is a matter of public record. Once verified by the Office of the Commissioner of Lobbying, the data on lobbyists and their activities is moved to the Registry.

The Registry ensures that Canadians know who is being paid to communicate with federal public office holders and on what subject matters. It is a key resource to obtain information about organizations, corporations and individuals who lobby the federal government.

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The information contained in the Registry is searchable using a full-text keyword search engine. Certain standard reports can be produced through the web-based interface. The publicly available information in the Registry may be searched to find 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;
- a general description of the subject matter of lobbying activities, as well as additional particular details;
- which Government of Canada departments or agencies are being contacted;
- the names and 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
- certain details regarding oral and arranged communications with designated public office holders.

The public can produce print copies of individual registration forms directly from the Registry. It is also possible to obtain a list of recent registrations that includes new registrations, updates and terminations that have been processed during the previous 30 days. Data can be searched and retrieved at no cost from any personal computer connected to the Internet.

There has been a decrease in the number of registered lobbyists since the coming into force of the *Lobbying Act* in 2008. Some in-house lobbyists have indicated that the additional reporting requirements introduced in 2008 led corporations and organizations to rationalize their approach and reduce the number of employees engaged in lobbying activities. In addition, the reporting requirements have caused some corporations and organizations to reassess whether they meet the “significant part

of duties” threshold set out in the Act. The “significant part of duties” threshold has been interpreted to be equivalent to 20 percent of one employee’s overall duties. Once lobbying activities constitute 20 percent of an employee’s duties, the corporation or organization must register. Some organizations and corporations, upon examination of time spent lobbying, have decided not to register. This, combined with the impact of the economic downturn, may explain the reduction in the number of registered lobbyists.

The following tables indicate the number of individual lobbyists listed on all active registrations for the three types of lobbyists, as well as the total number of active registrations for the three types of lobbyists, over a three year period.

Individual Lobbyists — as of March 31, 2010	2009-2010	2008-2009	2007-2008
Consultant lobbyists	753	873	867
In-house lobbyists (corporations)	1,081	1,454	1,754
In-house lobbyists (organizations)	1,724	2,217	2,439
Total registered individual lobbyists (all categories)	3,558	4,544	5,060

Active Registrations — as of March 31, 2010	2009-2010	2008-2009	2007-2008
Consultant lobbyists (one registration per client)	2,229	2,253	2,857
Corporations	291	303	283
Organizations	434	487	442
Total active registrations (all categories)	2,954	3,043	3,582

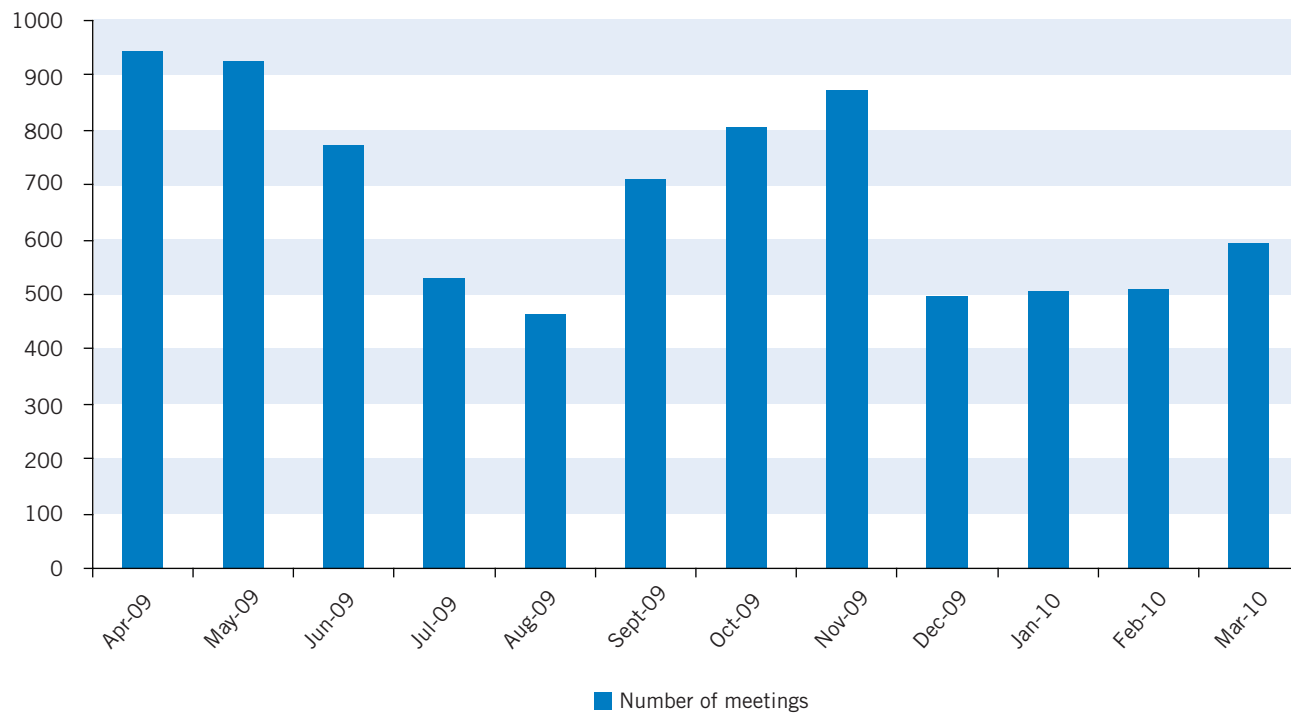
On March 31, 2010, 753 active individual consultant lobbyists were registered compared to 873 registered the previous year. These consultant lobbyists work primarily for firms active in areas such as government relations, law, accounting, strategic advice and other professional services that provide lobbying services for their clients.

For in-house lobbyists, a total of 1,081 individual corporate in-house lobbyists were registered in the Lobbyists Registration System, representing the interests of 291 different corporations. 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 434. These organizations listed a total of 1,724 individual in-house lobbyists.

In accordance with the Act, registrants must file a monthly communication report listing all meetings with designated public office holders. The following table shows the number of meetings with designated public office holders that were filed each month in 2009-2010.

NUMBER OF MEETINGS LISTED IN MONTHLY COMMUNICATION REPORTS, PER MONTH



* Note about graph – the number of meetings listed in this graph per month is presented as reported up to April 15, 2010. Meetings must be reported by the 15th day of the following month in which they took place. Numbers are approximate as monthly totals fluctuate slightly as pending registrations are processed (along with any monthly communication reports that have been submitted), and registrants respond to requests for correction following the Office’s verification process.

UPGRADES TO THE LOBBYISTS REGISTRATION SYSTEM

This year, the Office continued implementing the changes in reporting requirements that resulted from the 2008 amendments to the Act. Lobbyists are required, under the Act, to disclose more information than was required under the previous legislation. This increase in disclosure requirements has resulted in an increase in volume and complexity of returns. In order to support registrants in filing complete and accurate disclosures, the Office invested considerable effort to provide guidance to registrants to enhance the quality of their returns.

The Office continued to update the LRS to meet the needs of registrants and to make the Registry as user-friendly as possible. This year, various corrective and adaptive maintenance initiatives were implemented to fine-tune the system's operation.

The major improvements made to the Lobbyists Registration System this year include the following:

- integrated user interface for correcting or deleting monthly communication reports;
- complete overhaul of the Office's online multimedia tutorials that give step-by-step instructions on how to use the LRS;
- easier process for changing the responsible officer for corporations and organizations; and
- more efficient process for switching between official languages.

In addition, analysis began this year to determine ways to optimize the LRS to achieve improved management and monitoring of submitted disclosures. Work has also begun to improve how the Office measures the system's performance.

CLIENT SERVICE

The Office takes pride in the professional client service provided by its staff in responding to registrants' questions and facilitating the filing of registrations. The influx of new and updated disclosures created a backlog of registrations with the coming into force of the Act. This backlog was fully eliminated this year.

Technical and other support to registrants is provided by telephone assistance, direct correspondence, online Registration Tips, on-site training and web documentation to reduce the number of filing mistakes in their registrations and monthly reports. Registrants also receive support through self-guided online tutorials which walk them through the steps needed to complete transactions in the LRS. In the coming year, a call distribution and management system will be implemented to better manage telephone information requests.

While the numbers of registered lobbyists have decreased, the number of transactions within the LRS has increased this year. Transactions include the filing of initial registrations, making modifications, inputting monthly reports, and terminating registrations.

Overall transactions in the Registry in 2009-2010 reached 27,760. This figure captures all transactions related to registrations such as approvals, requests for corrections, modifications and rejections, as well as certifications and modifications of monthly communication reports. Of those, 12,513 registration transactions were completed, including 8,587 related to consultant lobbyist registrations, 1,556 to in-house lobbyist (corporations) registrations and 2,680 to in-house lobbyist (organizations) registrations. Registration transactions include all actions related to registrations that would usually require the intervention of a Registration Advisor for analysis, correction and approval of a registration.

The Office handled 6,483 calls during the fiscal year, a slightly higher number than was reported for 2008-2009 (6,309). The callers were divided by category as follows:

Lobbyists, registrants and their representatives	81%
Public office holders	4%
General public	14%

The majority of the calls received this year concerned the Lobbyists Registration System and the lobbyist registration process. Calls were divided by topic as follows:

Registration process (general)	30%
Requests for corrections	27%
<i>Lobbying Act and Lobbyists' Code of Conduct</i>	13%
Monthly communication reports	11%
Passwords and usernames	5%
Utilization of Registry	1%
Other	13%

Overall, 82% of the callers used English in their communications with the Office, while 18% used French. All were answered in the official language of the caller's choice.

BUILDING AWARENESS

The *Lobbying Act* (the Act) provides the Commissioner of Lobbying with an explicit mandate to develop and implement educational programs to foster public awareness of the requirements of the Act, on the part of lobbyists, their clients and public office holders (POHs).

Communicating the rationale and requirements of the Act leads to better compliance. This past year the Office's education efforts focused on four main groups through:

- providing an overview of the rationale and requirements of the Act to public office holders;
- exchanging information with lobbyists and ensuring they understand the legislative requirements;
- connecting and sharing with international and provincial counterparts; and
- raising awareness among Canadians about the objectives of the Act.

Communicating the rationale and requirements of the Act leads to better compliance.

SUMMARY OF OUTREACH ACTIVITIES

PUBLIC OFFICE HOLDERS

Federal public office holders, whether public servants or elected officials, have a key role to play in ensuring a better understanding of the *Lobbying Act* and its requirements. When public office holders understand the potential implications of their communications with lobbyists, they can contribute to greater transparency by disseminating information to those lobbyists and public office holders they meet.

In 2009-2010, the Commissioner undertook a range of outreach activities to work towards her goal of educating public office holders.

- She met with the senior official in each of the 20 most-lobbied federal government institutions (See Annex F for a list of the government institutions). The objectives of these meetings were to outline the requirements of the Act, share views on its implementation to date and determine future outreach and information needs. The Commissioner was pleased with the level of understanding about the Act. Many have taken proactive steps to ensure greater awareness and understanding of the Act among the senior ranks of their departments.

- The Commissioner has started a second round of meetings with Ministers responsible for the 20 most-lobbied government institutions.
- She reached out to the Assistant Deputy Minister (ADM) community by giving a presentation to new ADMs at an orientation session organized by the Canada School of Public Service, and by providing information to ADMs attending the 2009 ADM Forum.
- The Commissioner gave a presentation to the Federal Regional Council Chairs at a national meeting in Ottawa. This was an excellent opportunity to meet with senior federal officials from across the country. At this meeting, the possibility of working together to reach potential registrants around the country who may not be aware of the requirements of the Act was discussed.
- Along with other Officers of Parliament, the Commissioner attended an information session for newly appointed Senators to describe the key features of the Act and her role as Commissioner of Lobbying.

Over the course of her outreach, many expressed the need for several informational documents related to the Act. The Office is working to develop two documents:

- a brochure entitled “Ten Things You Should Know About Lobbying” to help Parliamentarians understand the *Lobbying Act*. This document will be distributed to all Parliamentarians; and
- an overview of the *Lobbying Act* to be used in departmental orientation binders. This document will be shared with all departments and agencies as a low-cost way to educate public office holders.

LOBBYISTS

This year, the Office devoted significant efforts to exchanging information with lobbyists, industry groups and government relations practitioners on the *Lobbying Act*. Communicating directly with registered lobbyists is an important part of the outreach program, whether through meetings, email or telephone. The following are highlights of this work:

- Registered or potential lobbyists contacted the Office daily to inquire about registration obligations under the Act, obtain technical assistance relating to the Lobbyists Registration System (LRS), or provide informal feedback on the system. The Office is available during regular business hours and is continually resolving issues, as well as educating those who wish to register or search the database.
- Multimedia tutorials are available online to provide step-by-step instructions on the LRS, including how to complete and submit a registration form. These tutorials are updated regularly to reflect changes to the LRS.
- The Commissioner and other staff members met with industry groups, including the Government Relations Institute of Canada, the Canadian Public Relations Society, and the Canadian Chamber of Commerce to offer information and answer questions on the Act. The Commissioner was pleased to note that participants were aware and interested in meeting the requirements of the Act.
- Registered lobbyists are contacted periodically to inform them about specific registration requirements, with a view to further improving compliance. Usually done via email, this correspondence serves to inform them of changes to the system or offer tips about a range of issues related to registration (e.g., over-reporting, how to reactivate a registration). The tips are simultaneously posted on the Office’s website.

- Potential registrants are contacted through advisory letters inviting them to visit the Office's website so that they may determine if they should be registered under the Act. This year, 12 such letters were sent, resulting in three new registrations. The remaining organizations indicated they were not conducting activities that would require a registration at this time. The process related to advisory letters is discussed further in the Compliance section of this report.

CONNECTING WITH COUNTERPARTS

The community that works to ensure that lobbying is conducted in an ethical and transparent manner is relatively small. It is therefore important to establish a network to connect with provincial and international counterparts and learn about best practices, share experiences and discuss ways to address existing and emerging challenges. The Commissioner engaged with her counterparts through several activities this year.

- The Commissioner met with her provincial counterparts at the Annual Lobbyists Registrars and Commissioners Conference in Victoria, British Columbia. This was the third meeting bringing the group together to strengthen relationships, share best practices, and exchange information about successes and challenges.
- The Commissioner and other members of her staff met with representatives from the provincial lobbyist registration offices from British Columbia, Quebec and Ontario to discuss issues and compare experiences.
- The Commissioner met with representatives of the Embassy of the United States in Ottawa to inform them of recent changes to the *Lobbying Act*.

- The Commissioner participated as part of a panel at the annual Council on Governmental Ethics Laws (COGEL) conference, where she presented key amendments to the lobbying regime in Canada. COGEL is an international professional organization for government agencies, organizations and individuals with responsibilities or interests in governmental ethics, elections, campaign finance, lobbying laws and freedom of information.
- The Commissioner met with the U.S. Senate Ethics Committee and the Committee on Standards of Official Conduct, which provided her with an opportunity to network and share views on the Canadian and American federal legislative environments. She also met with her counterparts at the Senate and House of Representatives to compare American and Canadian legislative requirements and disclosure databases.

REACHING OUT TO CANADIANS

The website of the Office of the Commissioner of Lobbying continues to be a powerful tool for disseminating information to lobbyists, public office holders and the general public. The website was visited 89,603 times this year, where the most visited pages were: the Registry; the *Lobbying Act* and the *Lobbyists' Code of Conduct*; interpretation bulletins and advisory opinions; and the page describing the Office.

The Office will continue to use electronic and web-based approaches to reach various audiences very cost-effectively. The educational material the Office produces is made available on its website and updated regularly. This year, it is worth mentioning the following documents:

- PowerPoint presentations that provide an overview of the *Lobbying Act* for consultant lobbyists, in-house lobbyists (corporation), in-house lobbyists (organization) and designated public office holders;

- five interpretation bulletins and advisory opinions, intended to explain various aspects of the *Lobbying Act*, including: the applicability of the Act to Crown corporations, shared governance organizations and departmental corporations; acting appointments in designated public office holder positions; and registration requirements related to tax credits; and
- revised guidance about the application of Rule 8 (“Improper Influence”) of the *Lobbyists’ Code of Conduct*. This guidance includes a suite of documents that explains conflict of interest and provides advice to lobbyists on how to avoid the creation of a real or apparent conflict of interest.

The Commissioner also gave several other presentations to members of the public to provide an overview of the *Lobbying Act* and to demystify lobbying. The following are worth mentioning.

- The Commissioner participated in two panels – one organized by the Canadian Study of Parliament Group and the other organized by the Canadian Political Science Association – to discuss the requirements of the Act.
- She gave a presentation to the Rotary Club of Mississauga West to discuss the Act.
- She and members of her staff gave presentations to university students to further their knowledge of the Act.

COMPLIANCE WITH THE ACT

As mentioned earlier, education and outreach activities are key components of the mandate of the Commissioner of Lobbying to ensure greater compliance with the *Lobbying Act* (the Act) and the *Lobbyists' Code of Conduct* (the Code). However, these activities must be complemented with a rigorous program of monitoring, reviewing and investigating to ensure compliance.

MONITORING

The Office monitors publicly available information to identify individuals or firms who may be conducting lobbying activity and determine if they are registered in accordance with the requirements of the Act. In most cases, they are. If they are not registered, advisory letters may be sent to corporations and organizations advising them of the requirement to register should they engage in registrable lobbying activity, and where to find information about the Act. This year, the Office sent 12 advisory letters to potential registrants, suggesting that they visit the website, or contact the Office for additional information about the Act's registration requirements. Three of the letters resulted in new registrations, and the remaining recipients advised the Office that they were not conducting activity requiring registration at this time.

This year, 293 individuals, corporations and organizations were subject to compliance verification after the Office learned that they were lobbying federal public office holders. The vast majority (90%) had filed returns in the Lobbyists Registration System. The rest were subject to further monitoring, or were educated about federal lobbyist registration in advisory letters. In some cases, registration was not required, as the lobbyist was a volunteer, or the

lobbying activity was directed at provincial officials. The following table demonstrates the Office's monitoring activity over the past four years, and highlights the proportion of corporations, organizations or individuals who were found to be registered.

COMPLIANCE VERIFICATION (MEDIA MONITORING)		
Year	Number of Corp/ Org/Individuals Verified	Number Registered
2006-2007	91	54 (59%)
2007-2008	193	121 (63%)
2008-2009	332	274 (83%)
2009-2010	293	264 (90%)

COMMUNICATION VERIFICATION

The *Lobbying Act* requires lobbyists to disclose oral and arranged communications with designated public office holders (DPOHs) on a monthly basis, subject to certain conditions. By submitting these reports, registrants contribute to transparency, providing the public with information about the date and subject matter of the communication, as well as the name and title of the DPOH with whom the communication took place.

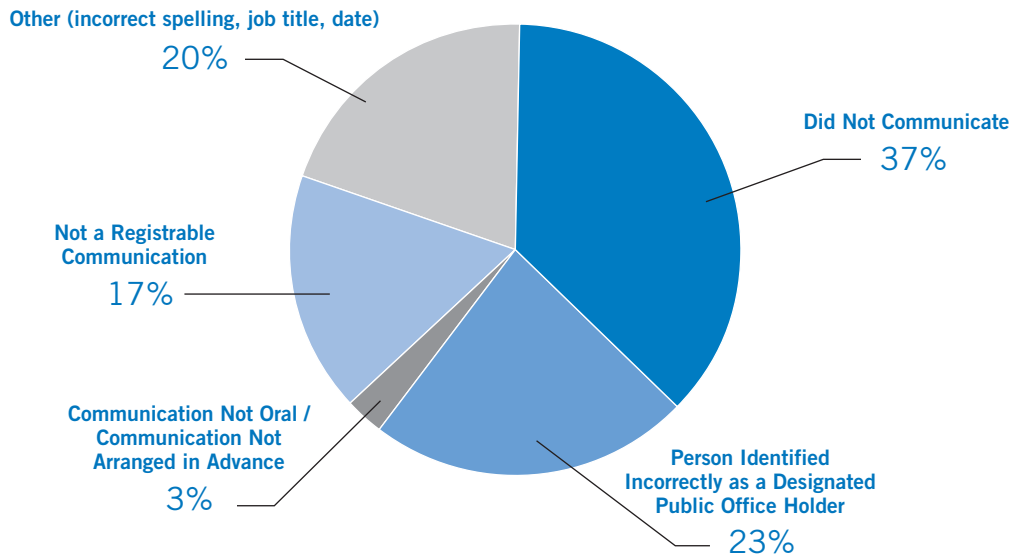
Monthly communication reports are published directly in the Registry. The Office ensures that information submitted by lobbyists in communication returns is valid by corresponding in writing with DPOHs listed in a sample of monthly communication reports. The Office requests that they verify the accuracy

and completeness of returns. The following table highlights the types and frequency of errors reported by the DPOHs contacted.

This year, the Office sent 87 letters to DPOHs requesting that they confirm the accuracy of 429 communication entries. Respondents have identified a total of 60 errors.

The Office also received unsolicited requests from DPOHs for corrections to monthly returns. In most cases, the DPOH informed the Office that a communication was either not oral or arranged and, therefore, not subject to the requirement to file a monthly communication return.

TYPES OF ERRORS REPORTED DURING COMMUNICATIONS VERIFICATIONS PROCESS



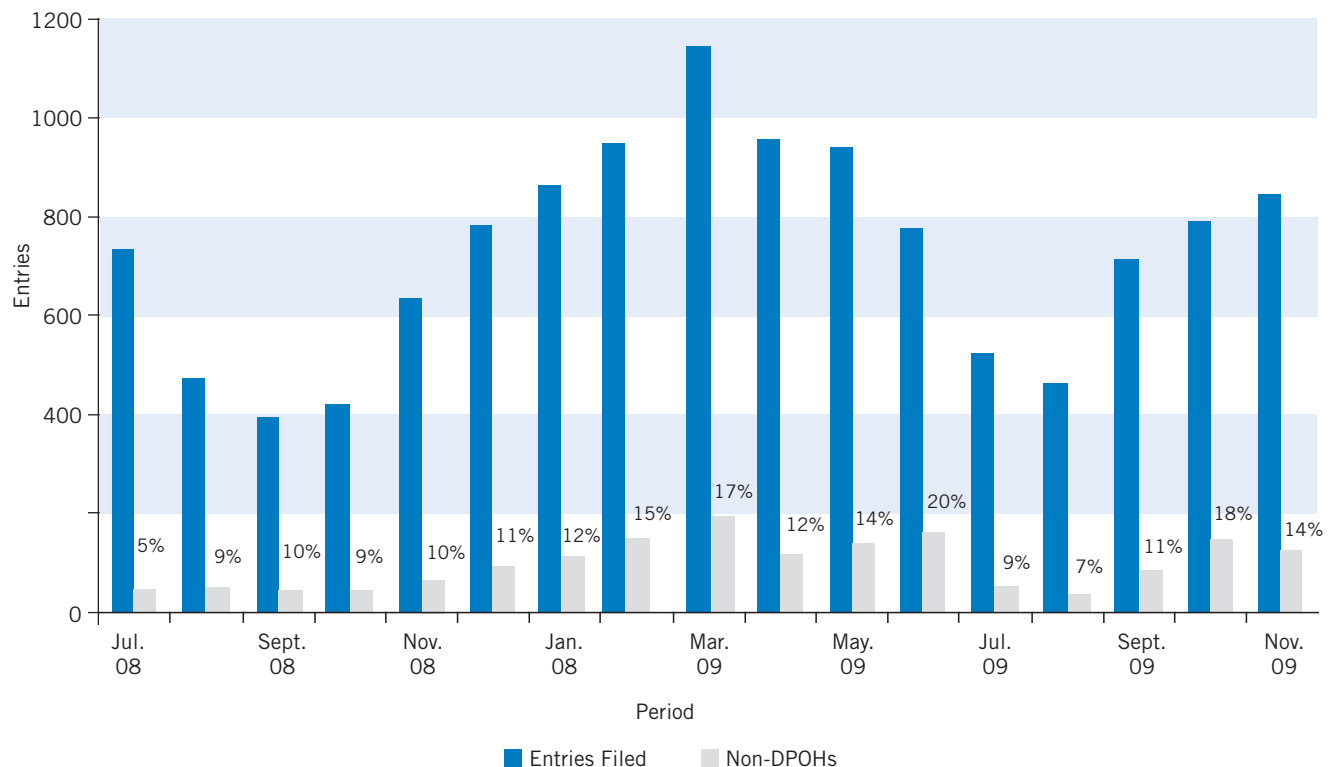
OVER-REPORTING

In September 2009, the Office conducted a review of errors found in the reporting of monthly communications by registrants. In an effort to improve the accuracy of information contained in monthly communication reports, and reduce unnecessary reporting, the Office sent electronic reminders to registrants explaining the requirements of the Act. Common errors leading to over-reporting were listed, such as: filing a monthly return when communicating with a public office holder who is not a “designated” public office holder (DPOH); filing a monthly return for a written communication; and filing a return for a communication that was not arranged in advance.

In addition, efforts have been made to target specific errors. In January 2010, an internal study was conducted on over-reporting by

registrants who incorrectly filed returns about communications with Members of Parliament (MPs) and Senators who are not Ministers or Ministers of State. Approximately 200 registrants were found to have filed monthly communications that were not required. Although MPs and Senators are public office holders, unless they hold a ministerial portfolio, they are not “designated” public office holders as defined in the *Lobbying Act*. Therefore, lobbyists do not need to file monthly reports in respect of any communications with these individuals. The Office is contacting registrants who have made such reports, requesting that corrections be made to the returns. It is anticipated that this effort will raise awareness of who is, and who is not defined as a DPOH under the Act.

OVER-REPORTING: ENTRIES FILED IN RESPECT OF COMMUNICATION WITH PERSONS INCORRECTLY IDENTIFIED AS A DPOH (JULY 2008-NOVEMBER 2009)



ADMINISTRATIVE REVIEWS

The Commissioner will review any suspected, alleged or known contravention of the *Lobbying Act* or the *Lobbyists' Code of Conduct* that is brought to her attention through monitoring or a complaint. The objective of an administrative review is to provide the Commissioner with a summary of the allegation, background information, and an analysis of the alleged contravention to determine a suitable means of ensuring compliance. Administrative reviews are fact-finding efforts, involving background research, in-depth interviews, and searches of the Registry and other publicly available information. At the conclusion of a review, the Commissioner is provided with a comprehensive report including recommendations to assist her in administering the Act. Possible recommendations include:

- the allegation is unfounded;
- the allegation is well-founded, and compliance is best achieved by educating the subject; and

- the allegation is well-founded, and there is reason to believe an investigation is necessary to ensure compliance with the Act or Code.

In some cases, compliance is promoted by requesting that an individual correct or amend information in their registration; in other cases, a formal investigation may be initiated.

At any point in time, the Office carries a caseload of about 40 administrative review files. This year, the Office received 11 new complaints of non-compliance with the Act and the Code. An additional five administrative reviews were opened as a result of internal monitoring and compliance verification efforts. Additionally, 10 reports were submitted to the Commissioner to assist her in administering the *Lobbying Act*.

The table below highlights the types of files that constitute OCL's new caseload of administrative reviews in 2009-2010.

Type of File	Number of Files
Unregistered Lobbying	8
Unreported Communication	3
False/Misleading Communication	2
Improper Influence (Rule 8)	3

INVESTIGATIONS

The Commissioner has the authority to initiate a formal investigation under the *Lobbying Act* if 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, and that the subject be given an opportunity to present their views. The Commissioner may also refuse to conduct, or cease, an investigation if she determines that pursuing the matter would serve no useful purpose because of, among other things, the amount of time that has elapsed since the matter arose.

The Commissioner has the authority to initiate a formal investigation under the *Lobbying Act* if she has reason to believe an investigation is necessary to ensure compliance with the Act or the Code.

This year, the Commissioner initiated three new investigations. Once completed, a report of the investigations will be submitted to the Speaker of the Senate and the Speaker of the House of Commons for tabling in Parliament, as required by the Act.

REFERRALS TO A PEACE OFFICER

The Commissioner of Lobbying is mandated to review complaints of alleged breaches of the *Lobbying Act* or the *Lobbyists' Code of Conduct*. The Office prioritizes files according to: the nature and gravity of the contravention; the length of time that has elapsed; the subject's degree of negligence or intent; and their compliance history. If, during the course of an administrative review or investigation, the Commissioner believes on reasonable grounds that a person has committed an offence under the *Lobbying Act* or any other Act of Parliament, or of the legislature of a province, she must advise a peace officer having jurisdiction to investigate the alleged offence.

This year, four administrative reviews under the *Lobbying Act* have resulted in referrals to the Royal Canadian Mounted Police. Since the coming into force of the *Lobbying Act*, no charges have been laid.

EXEMPTION REVIEWS

The *Lobbying Act* seeks to ensure that designated public office holders (DPOHs) do not use advantages and personal connections derived from their government positions for lobbying purposes, by making these officials subject to a five-year prohibition on lobbying the federal government after leaving office. However, on application, the Commissioner may exempt an individual from the five-year prohibition if to do so would not be contrary to the purposes of the Act.

Any former DPOH may apply for an exemption from the five-year prohibition, and every application is subject to a thorough review and analysis. The Commissioner has taken a strict view, choosing to use her authority to provide exemptions only in the most exceptional circumstances.

During 2009-2010, two reviews were ceased after the applicant declined to provide additional information; another request was rejected because the applicant had left office prior to the July 2, 2008 coming into force of the Act. The Commissioner denied three applications on the basis that the granting of an exemption would be contrary to the purposes of the Act. In March of 2010, the Commissioner granted an exemption because the applicant had been a DPOH for a short period of time.

The Act requires the Commissioner to make these decisions public without delay and she has chosen to do so by posting the information on the Office's website.

COURT CHALLENGES (2009-2010)

This section will report upon each of the two matters that have been before the courts and that have been referred to in Annual Reports in previous years.

1. FEDERAL COURT OF APPEAL DECISION IN *DEMOCRACY WATCH V. BARRY CAMPBELL AND THE ATTORNEY GENERAL OF CANADA*, (2009 FCA 79) AND COMMISSIONER'S GUIDANCE ON CONFLICT OF INTEREST - RULE 8 OF THE *LOBBYISTS' CODE OF CONDUCT*

In October 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. 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 in February 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. The Federal Court of Appeal 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 of Lobbying'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. The Commissioner provided guidance to lobbyists regarding the application of Rule 8 of the *Lobbyists' Code of Conduct* in November 2009. The Guidance may be summarized as follows:

A lobbyist may be in breach of Rule 8 if:

- the lobbyist's actions create a real conflict of interest for a public office holder; or
- the lobbyist's actions create the appearance of a conflict of interest for a public office holder.

The full text of the Guidance, along with background and other relevant information regarding the reasoning underlying the Commissioner's Guidance, is available on the Office's website.

2. FEDERAL COURT DECISION IN *MAKHIIJA V. ATTORNEY GENERAL OF CANADA*, (2010 FC 141)

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. In March 2008, the Federal Court overturned the Registrar's decisions and ordered that the four investigation reports that were tabled in Parliament be withdrawn. This decision placed into question the Registrar's ability to table findings regarding apparent breaches of the Act and to initiate an investigation under the *Lobbyists' Code of Conduct* of those who fail to register as lobbyists.

The Federal Court decision was appealed to the Federal Court of Appeal (FCA) by the Attorney General. In December 2008, the FCA quashed the decision of the Federal Court, 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. That decision resolved the question of the Registrar's jurisdiction raised by the Federal Court. Mr. Makhija sought leave to appeal the decision of the FCA from the Supreme Court of Canada, but the application for leave to appeal was denied.

The FCA 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. The Federal Court decision was issued on February 11, 2010. The Court declared that the Registrar's conclusions regarding the breaches of the *Lobbyists' Code of Conduct* were reasonable and thus valid and legal in the circumstances. With respect to the Registrar's conclusion that Mr. Makhija had breached the *Lobbyists Registration Act*, the Court declared that the Registrar was not entitled to reach that conclusion under the Act and quashed the portion of each of the four investigation reports by the Registrar.

As of March 31, 2010, Mr. Makhija had indicated his intention to appeal the Federal Court's decision. The Attorney General of Canada will be responding to this appeal.

ANNEX A

LIST OF ACRONYMS AND ABBREVIATIONS USED IN THIS REPORT

The Act	The <i>Lobbying Act</i>
ADM	Assistant Deputy Minister
The Code	The <i>Lobbyists' Code of Conduct</i>
COGEL	Council on Governmental Ethics Laws
DPOH	Designated Public Office Holder
FC	Federal Court
FCA	Federal Court of Appeal
The LRS	The Lobbyists Registration System
MPs	Members of Parliament
The Office	The Office of the Commissioner of Lobbying
POH	Public Office Holder
The Registry	The Registry of Lobbyists
RCMP	Royal Canadian Mounted Police

ANNEX B

ABOUT THE OFFICE

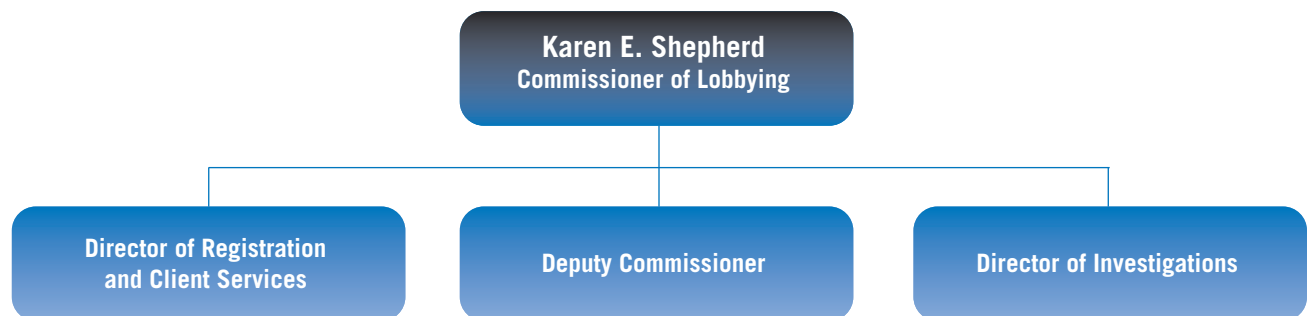
WHO WE ARE

The Commissioner of Lobbying is an independent Officer of Parliament, appointed by Parliament under the *Lobbying Act* (the Act) for a term of seven years. The purpose of the Act is to ensure transparency and accountability in the lobbying of public office holders in order to contribute to confidence in the integrity of government decision-making. The Commissioner administers the Act by:

- maintaining the Registry of Lobbyists, which contains and makes public the registration information disclosed by lobbyists, as well as their monthly communications with designated public office holders;

- developing and implementing educational programs to foster public awareness of the requirements of the Act; and
- conducting reviews and investigations to ensure compliance with the Act and the *Lobbyists' Code of Conduct* (the Code).

The Commissioner is supported in her work by the Office of the Commissioner of Lobbying, which was established in 2008 under the *Lobbying Act*. The Commissioner reports annually to Parliament on the administration of the Act and the Code and is required to table reports on any investigations conducted in relation to the Code.



WHAT WE DO

Maintain the Registry

The Office strives to ensure that the Lobbyists Registration System is an easy-to-use tool for lobbyists to register their lobbying activities. To this end, the system is refined on an ongoing basis. In addition, systems and processes are in place to ensure that interruptions and downtime are kept to a minimum. This allows Canadians access to the Registry of Lobbyists 24 hours a day, seven days a week.

Deliver an Education and Awareness Program

The Office undertakes many activities to ensure public office holders, lobbyists, their clients, and Canadians are aware of the requirements of the *Lobbying Act* (the Act). We have strategically focused our efforts on key activities to reach the most people in the most cost-effective way possible.

Ensure Compliance

The Office has a mandate to ensure lobbyists are compliant with the Act and the *Lobbyists' Code of Conduct* (the Code). A system that includes administrative reviews and investigations has been developed to examine alleged breaches of the Act or the Code. Rigorous monitoring and verification processes also contribute to compliance.

Maximize Office Resources

The Office, when fully staffed, has 28 full-time employees and an overall budget of about \$4.5 million. It is divided into four groups.

- **The Office of the Commissioner** includes the Commissioner, Legal Counsel and an Executive Assistant. The Commissioner has the rank and powers of a deputy head of a federal department. This group provides legal advice and opinions to the Office, as well as financial oversight to fulfill all statutory requirements and to uphold central agency policies.

- **The Office of the Deputy Commissioner** is responsible for integrated strategic and operational planning, including the coordination and implementation of performance measurement, risk management, and human resources management. This group also provides strategic policy and communications advice, and coordinates all outreach activities. Financial and administrative services for the organization are handled by this unit, which also works to address all corporate needs relating to security, facilities management and workplace safety.
- **The Registration and Client Services Directorate** is responsible for developing and maintaining the Lobbyists Registration System (LRS) and the online Registry of Lobbyists. The LRS allows lobbyists to register their lobbying activities and perform transactions, such as amendments, renewals and terminations. The Registry allows Canadians to search for lobbyists and lobbying activity. Employees of the Registration and Client Services Directorate process lobbyists' registrations and offer client service to registrants, public office holders, and the general public.
- **The Investigations Directorate** is responsible for ensuring compliance with the *Lobbying Act* and the *Lobbyists' Code of Conduct*. Employees in this directorate monitor lobbying activity, verify information submitted to the Lobbyists Registration System, review and investigate allegations of non-compliance, and review applications for exemptions to the five-year prohibition on lobbying for former designated public office holders.

ANNEX C

LOBBYING ACT

PURPOSE AND DESCRIPTION

The *Lobbying Act* (the 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 engaged in lobbying activities.
- 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;

- 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 conduct commercial activities for financial gain and who lobby as a significant part of their duties. These individuals are usually full-time employees 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 who engage in any lobbying activity, as well as the name of any employee (senior officer or otherwise) 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.

DISCLOSURE REQUIREMENTS

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

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* prescribe 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 ministerial staff, 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 paragraphs 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 the lobbying activities of registrants. 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. The form and manner of registration set out in the *Lobbyists Registration Regulations* are reflected in the Lobbyists Registration System interface that is provided to users of the system.

ANNEX D

LOBBYISTS' CODE OF CONDUCT

As per the *Lobbying Act*, the Commissioner of Lobbying is responsible for developing a lobbyists' code of conduct. The current *Lobbyists' Code of Conduct* (the Code) is the result of extensive consultations with a large number of people and organizations with an interest in promoting public trust in the integrity of government decision-making. The Code, which came into effect on March 1, 1997, is not a statutory instrument. The Commissioner is, however, responsible for enforcement of the Code.

The purpose of the Code is to assure the Canadian public that lobbyists are required to adhere to high ethical standards with a view to conserving and enhancing public confidence and trust in the integrity, objectivity and impartiality of government decision-making. In this regard, the *Lobbyists' Code of Conduct* complements the disclosure and registration requirements of the *Lobbying Act*.

The Code is based on the same four basic principles 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.
- A system for the registration of paid lobbyists should not impede free and open access to government.

The Code is made up of the following three overriding principles followed by eight specific rules:

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.

COMMISSIONER'S GUIDANCE

From time to time, the Commissioner may offer guidance on aspects of the Code. This past year, she issued guidance relating to Rule 8. This guidance may be viewed on the Office's website.

ANNEX E

SUBJECT MATTER OF LOBBYING ACTIVITIES

The following table shows, in rank order, the 20 subject matters most frequently identified by lobbyists in their registration for this fiscal year. The remaining three columns show the rank ordering of subject matters for the three previous fiscal years. This information is based on the registrations that were active on March 31, 2010.

Subject Matter of Lobbying	2009-2010	2008-2009	2007-2008	2006-2007
Industry	1	1	1	1
Taxation and Finances	2	3	2	2
Environment	3	2	3	3
International Trade	4	4	4	4
Health	5	5	5	5
Science and Technology	6	6	6	6
Transportation	7	7	7	7
Consumer Issues	8	8	8	8
Infrastructure	9	12	13	14
Energy	10	9	10	10
Employment and Training	11	10	9	9
Government Procurement	12	13	12	12
Regional Development	13	11	11	11
Agriculture	14	14	15	19
Aboriginal Affairs	15	17	17	16
International Relations	16	15	14	13
Defence	17	18	16	17
Justice and Law Enforcement	18	19	-	-
Intellectual Property	19	16	18	15
Internal Trade	20	20	19	18

ANNEX F

GOVERNMENT INSTITUTIONS

The following table shows, in rank order, the 20 institutions most frequently identified by lobbyists in their registration for this fiscal year. The remaining three columns show the rank ordering of institutions for the three previous fiscal years. This information is based on the registrations that were active on March 31, 2010.

Subject Matter of Lobbying	2009-2010	2008-2009	2007-2008	2006-2007
Industry Canada	1	1	1	1
Finance Canada	2	2	2	2
Prime Minister's Office	3	4	8	13
Privy Council Office	4	3	4	3
Foreign Affairs and International Trade Canada	5	5	5	4
Environment Canada	6	6	6	6
Health Canada	7	7	7	7
Transport Canada	8	9	9	8
Senate of Canada	9	13	19	-
Natural Resources Canada	10	10	11	10
House of Commons	11	8	3	5
Treasury Board Secretariat	12	11	10	9
Public Works and Government Services Canada	13	14	13	12
Agriculture and Agri-Food Canada	14	12	14	16
Department of National Defence	15	16	17	17
Indian and Northern Affairs Canada	16	15	16	15
Department of Canadian Heritage	17	18	18	18
Justice Canada	18	20	19	19
Human Resources and Skills Development Canada	19	19	15	14
Revenue Canada	20	17	12	11