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LOBBYISTS' CODE OF CONDUCT

ANNUAL REPORT

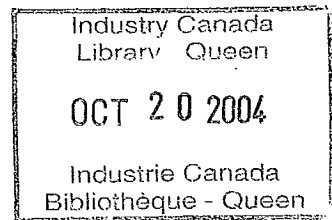
for the year ended March 31, 2004

Canada

LOBBYISTS' CODE OF CONDUCT

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Registrar, Lobbyists Registration Branch

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August 23, 2004

The Honourable David Emerson, P.C., M.P.
Registrar General of Canada
House of Commons
Ottawa ON K1A 0A6

Dear Sir:

I have the honour of presenting to you the ninth Annual Report on the *Lobbyists' Code of Conduct* for transmission to Parliament and in accordance with section 10.6 of the *Lobbyists Registration Act*. The Act, as amended by *An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence* [S.C. 2004, c. 7], which came into force on May 17, 2004, requires the Registrar, Lobbyists Registration Branch to table a report on the exercise of the Registrar's powers, duties and functions under the *Lobbyists Registration Act*. The report covers the period from April 1, 2003 to March 31, 2004.

Yours sincerely,

Michael Nelson
Registrar

Canada

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INTRODUCTION

This is the ninth Annual Report on the exercise of the powers, duties and functions set out under the *Lobbyists Registration Act* in relation to the *Lobbyists' Code of Conduct*. This report covers the period from April 1, 2003 to March 31, 2004. During this period, those powers, duties and functions were the responsibility of, and exercised by, the Ethics Counsellor.

BACKGROUND

Under the *Lobbyists Registration Act*, a code of conduct was developed for lobbyists. After extensive consultations, the code was referred to the House of Commons Standing Committee on Procedure and House Affairs and subsequently published in the Canada Gazette on February 8, 1997. The *Lobbyists' Code of Conduct* entered into force on March 1, 1997.

LEGISLATIVE CHANGES

Parliament passed two bills during 2003–04 that will affect the lobbyists registration system in future years, although neither was in effect during 2003–04.

Bill C-15, *An Act to amend the Lobbyists Registration Act*, received royal assent on June 11, 2003, as S.C. 2003, c. 10. It is expected to be proclaimed and come into force once amendments to the Regulations under the Act are made and changes to the electronic filing system that supports the administration of the Act have been made.

Bill C-15 responds to lessons learned with the current legislation and the recommendations of the House of Commons Standing Committee on Industry, Science and Technology.

It sets out a clearer definition of “lobbying.” It does so by removing the expression “attempt to influence” from the existing Act to make clear that all communications covered by the legislation constitute lobbying and therefore require registration. It clarifies the Act to establish that registration is not required for simple enquiries or administrative requests for information. It removes the exemption from the requirement to register in the current Act that applies when it is a public office holder who initiates contact with anyone who could be lobbying the public office holder, or his or her organization.

The new legislation introduces stronger enforcement provisions that require notification of the appropriate police authorities if the Registrar, Lobbyists Registration Branch has

reasonable grounds to believe that a criminal offence has been committed while he or she is conducting an investigation into an alleged breach of the *Lobbyists' Code of Conduct*.

The new legislation simplifies the registration requirements and strengthens the deregistration requirements set out in the Act. It does so by requiring all lobbyists to update or renew their filings every six months and by implementing a single filing approach for the registration of corporations and non-profit organizations. This single filing system is intended to provide consistent treatment for all types of lobbyists established under the Act and ensure that responsibility for the actions of lobbyists dealing with public office holders rests at the highest corporate level.

Bill C-15 also makes minor wording changes to the Act to correct discrepancies that have been discovered between the French and English versions, and to address similar problems.

In January 2004, the Government tabled Bill C-4 (*An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence*) in the House of Commons. The House of Commons and the Senate passed the legislation as S.C. 2004, c. 7, and Royal Assent was granted on March 31, 2004. The Act came into force on May 17, 2004.

The new legislation changes the reporting structure under the *Lobbyists Registration Act*. As of May 17, 2004, the position of Ethics Counsellor ceased to exist. For the purposes of the *Lobbyists Registration Act*, the Registrar, Lobbyists Registration Branch will now report to Parliament directly through the Registrar General (currently, the Minister of Industry), rather than through the Ethics Counsellor. Complaints and requests for advice regarding the *Lobbyists Registration Act* will now be the direct responsibility of the Registrar.

As Bill C-4 was not in force during the 2003–04 fiscal year, this report covers only activities for which the Ethics Counsellor was responsible.

PURPOSE AND DESCRIPTION OF THE LOBBYISTS' CODE OF CONDUCT

The purpose of the *Lobbyists' Code of Conduct* (the Code) is to assure the Canadian public that lobbying is done ethically and with the highest standards, with a view to conserving and enhancing public confidence and trust in the integrity, objectivity and impartiality of government decision making.

The Code establishes mandatory standards of conduct for all lobbyists communicating with federal public office holders and forms a counterpart to the obligations that federal

officials must honour in their codes of conduct when they interact with the public and with lobbyists.

Like most professional codes, the *Lobbyists' Code of Conduct* begins with a preamble that states its purpose and places it in a broader context. Next comes a body of overriding principles that set out, in positive terms, the goals and objectives to be attained without establishing precise standards. They are intended as general guidance. The principles of integrity and honesty, openness and professionalism thus represent goals that should be pursued.

The principles are then followed by rules that set out specific obligations or requirements. The rules are in three categories: transparency, confidentiality and conflict of interest. Under the rule of transparency, lobbyists have an obligation to provide accurate information to public office holders and to disclose the identity of the person or organization on whose behalf the representation is made and the purpose of the representation. They must also disclose to their client, employer or organization, their obligations under the *Lobbyists Registration Act* and the Code itself. Under the rule of confidentiality, lobbyists cannot divulge confidential information nor use insider information to the disadvantage of their client, employer or organization. Finally, under the rule of conflict of interest, lobbyists are not to use improper influence nor represent conflicting or competing interests without the consent of their clients.

The *Lobbyists' Code of Conduct* is also an integral part of the registration kit distributed to all lobbyists, and printed copies can be obtained from the Lobbyists Registration Branch or from the Branch Web site.

COMPLAINTS

Lobbyists have a legal obligation to comply with the Code. Under the legislation in force in 2003–04, and where, on reasonable grounds, the Ethics Counsellor believes that the Code has been breached, the Act requires that the Ethics Counsellor investigate the situation. A report of an investigation must be tabled in Parliament.

During the year, the replies to four complaints were completed: three from complaints received during the year, and one from a complaint received in previous years.

All three complaints received and replied to in 2003–04 were substantially the same; each raised concerns that lobbyists who had made financial contributions to the campaign of a specific Minister to seek the leadership of his or her political party may have been in violation of Rule 8 of the *Lobbyists' Code of Conduct*. In his decisions, the Ethics Counsellor indicated his previously established position that "Fundraising is an important

part of the political process, including for leadership campaigns and is generally viewed as legitimate, particularly in circumstances where full public disclosure is provided". The Ethics Counsellor concluded that, on the basis of the information provided, there was no basis to believe on reasonable grounds that a breach of the *Lobbyists' Code of Conduct* had occurred.

The other complaint replied to in 2003–2004 covered allegations that were originally raised in 1999–2000. It was alleged that a breach of the *Lobbyists' Code of Conduct* (on inaccurate or misleading information) had occurred when a lobbyist released a document criticizing a Ports Canada decision in principle to extend a lease to operate a mixed cargo facility in New Brunswick. A lengthy investigation revealed no evidence that the document had ever come to the attention of a public office holder; on that basis there was no breach of the *Lobbyists' Code of Conduct*. It was also alleged that the same lobbyist had used confidential information to the disadvantage of his client in communications about an issue. That investigation determined that there was no confidential information involved and thus no basis to believe on reasonable grounds that a breach of the *Lobbyists' Code of Conduct* had occurred.

Work on three complaints received during 2000–01 was continuing as of March 31, 2004. These complaints allege breaches of the *Lobbyists' Code of Conduct* as a consequence of a registered consultant lobbyist organizing a fundraising event for a public office holder; the involvement of political party officials and non-elected people in the review of federal grant applications; and an alleged placement of public office holders in a conflict situation by virtue of a department's membership in an organization that makes representations to that same department.

Work on one complaint raised in 2002–03 was also continuing. It concerns a charitable golf tournament where private sector participants, for a fee, could golf with a Cabinet Minister.

COURT CHALLENGE

In 2001 and 2002, Democracy Watch, a public interest group, filed applications for judicial review with the Federal Court of Canada on: a decision made by the Ethics Counsellor; specific aspects of the processes used by the Ethics Counsellor; and the institutional scheme that was set out under the *Lobbyists Registration Act* as it existed at that time. The decision of the Court and subsequent actions by Democracy Watch were reported in the Annual Report for 2002–03.

In May 2003, Democracy Watch dropped its outstanding actions and commenced four new applications for judicial review. Those applications challenged two specific decisions of the Ethics Counsellor, the publication by the Ethics Counsellor of guidelines regarding Rule 8 of the *Lobbyists' Code of Conduct* (Lobbyists and Leadership

Campaigns) and his position regarding donations by lobbyists to the political campaigns of Ministers.

The applications for judicial review were heard by the Federal Court in May 2004, and the Court reserved its decision on the applications.

ADDITIONAL INFORMATION

The full text of the *Lobbyists' Code of Conduct* and the annual reports on the Code are available on the Internet at <http://strategis.gc.ca/lobbyist>

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