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A BLUEPRINT FOR TRANSPARENCY:

REVIEW OF THE LOBBYISTS REGISTRATION ACT

REPORT OF THE STANDING COMMITTEE ON CONSUMER AND CORPORATE AFFAIRS AND GOVERNMENT OPERATIONS

FELIX HOLTMANN, M.P.
Chairman

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Chairman: Felix Holtmann

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Le jeudi 25 mars 1993
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Président: Felix Holtmann

Minutes of Proceedings and Evidence of the Standing Committee on

Consumer and Corporate Affairs and Government Operations

Procès-verbaux et témoignages du Comité permanent de la

Consommation et des Affaires commerciales et de l'administration gouvernementale

RESPECTING:

Order of Reference from the House dated Thursday, November 19, 1992—a comprehensive review of An Act respecting the registration of lobbyists

—Consideration of a Draft report

CONCERNANT:

Ordre de renvoi de la Chambre daté du jeudi 19 novembre 1992—un examen détaillé de la Loi sur l'enregistrement des lobbyistes

—Considération d'une ébauche de rapport

INCLUDING:

The Ninth Report to the House: A Blueprint for Transparency: Review of the Lobbyists Registration Act

Y COMPRIS:

Le neuvième rapport à la Chambre : Sur la voie de la transparence : Révision de la Loi sur l'enregistrement des lobbyistes

Third Session of the Thirty-fourth Parliament,
1991-92-93

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1991-1992-1993

25699

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CLERKS OF THE COMMITTEE

Danielle Belisle
Elizabeth Kingston

RESEARCH STAFF OF THE COMMITTEE (RESEARCH BRANCH, LIBRARY OF PARLIAMENT)

Brian O'Neal
Margaret Smith

The Standing Committee on Consumer and Corporate Affairs and Government Operations

has the honour to present its

NINTH REPORT

In accordance with its Order of Reference from the House of Commons dated Thursday, November 19, 1992, your Committee was empowered, pursuant to Section 14 of An Act respecting the registration of lobbyists, Chapter 44, Fourth Supplement, Revised Statutes of Canada, 1985, to undertake a comprehensive review of the Act and to submit a report to the House no later than one year after the review was undertaken. After hearing evidence, the Committee has agreed to report to the House as follows:

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1. The distinction between Tier I and Tier II lobbyists be eliminated.

2. The *Lobbyists Registration Act* define a lobbyist as an individual who for payment, and on behalf of a client, undertakes the lobbying activities listed in the Act, or an individual who, as a significant part of his or her duties of employment, engages in lobbying activities on behalf of his or her employer.

3. The disclosure requirements for all lobbyists be made uniform and include all of the elements currently found in section 5 of the *Lobbyists Registration Act*.

4. Firms engaged in lobbying activities on behalf of a client and organizations who employ individuals to lobby on their behalf be able to register under the *Lobbyists Registration Act*. The registration would list the individual lobbyists who are lobbying for the client or who are employed by the organization, as the case may be, as well as any other information that such individuals may be required to disclose.

5. If the distinction between Tier I and Tier II lobbyists is maintained under the *Lobbyists Registration Act*, the term "professional lobbyists" found in the heading and marginal notes relating to section 5 of the Act be deleted and replaced by the term "consultant lobbyists", and the term "other lobbyists" found in the heading and marginal notes relating to section 6 of the Act be deleted and replaced by the term "in-house lobbyists."

Chapter 5 - What should be Disclosed

6. The *Lobbyists Registration Act* and the *Lobbyists Registration Regulations* be amended to require lobbyists to disclose:

(a) more detail on the subject-matter of their lobbying activities such as the name of the bills, legislation, amendments to current Acts, grants, contributions, regulations, policies, programs, contracts and legislative proposals that they are seeking to influence;

(b) the name of the government department including any branch thereof, parliamentary office, or agency with which they have communicated or arranged a meeting; and

(c) the exact nature of the activities in which they will engage when seeking to influence public policy.

7. Subject-matter reporting requirements equally apply to all lobbyists.

8. In the event that the current tier system is retained, subject-matter reporting requirements equally apply to both consultant lobbyists and in-house lobbyists.

9. Professional lobbying efforts aimed at the "grass-roots" which exceed a threshold amount within a specified period of time be registrable. The threshold amount and the period of time be prescribed by regulation after consultation with interested parties.

10. Lobbyists be required to register the names of members of the coalitions they represent where the coalition member has made a financial contribution to the coalition at or above a threshold amount within a specified period of time. The amount and period of time be established by regulation following consultation with interested parties.

11. The *Lobbyists Registration Act* be amended to provide for the disclosure of the name and address of any corporation that controls a client of a lobbyist, where the client is a corporation, and any subsidiary of the client or other entity that supervises, controls, directs, finances or subsidizes the activities of the client or has a direct interest in the outcome of the lobbying activity.

Chapter 6 - Administration, Enforcement and Compliance

12. The Registrar be appointed by the Governor in Council subject to approval of a committee of Parliament.

13. The Registrar report annually to Parliament on the administration and operation of the Registry of Lobbyists as well as any other matters pertaining to the *Lobbyists Registration Act.*

14. The limitation period applicable to summary conviction offences under the *Lobbyists Registration Act* be increased from six months to two years.

15. Lobbyists be required to file information with the Registry of Lobbyists within ten days of undertaking their lobbying activities.

16. Where a lobbying undertaking is to last less than ten days, information should be filed with the Registry of Lobbyists before or at the same time as the lobbying activity is undertaken.

17. Lobbyists be required to inform the Registrar in writing of any changes in the information contained in the Registry of Lobbyists within 30 days after the changes have taken place.

18. Lobbyists be required to advise the Registrar in writing of the termination of a lobbying undertaking within 30 days after the undertaking has been completed.

19. The Registry of Lobbyists establish a system that would permit lobbyists to file information by electronic means.

20. The Government take all possible steps to encourage the Lobbyists Registration Branch to continue its work in informing lobbyists, public office holders and the Canadian public about the *Lobbyists Registration Act.*

21. In order to ensure that lobbyists adhere to the object and spirit of the *Lobbyists Registration Act,* the Act contain a general anti-avoidance provision to encompass abusive or artificial schemes designed to circumvent the registration provisions.

Chapter 7 - A Professional Association and a Code of Ethics for Lobbyists

22. Lobbyists proceed immediately to establish a professional association with an industry-wide code of ethics.

Chapter 8 - General Matters

23. There be a comprehensive review of the *Lobbyists Registration Act* by a committee of Parliament three years after amendments to the Act come into force.

INTRODUCTION

The *Lobbyists Registration Act* (the "LRA" or the "Act") was passed by Parliament in 1988 and came into force on 30 September 1989. The purpose of the Act, as stated in its preamble, is to make transparent the activities of paid lobbyists without impeding access to government. The Act attempts to accomplish this by providing for the registration of paid lobbyists who engage in certain lobbying activities.

Lobbying can be generally defined as attempting to influence government decisions either directly or indirectly. Not all lobbyists or all lobbying activities are covered by the Act, however. As mentioned above, the Act is concerned with the activities of paid lobbyists; unpaid lobbyists do not have to register. Similarly, the statute is framed to cover only direct attempts to influence certain government decisions. Thus, a lobbyist has to register only if there has been some form of direct contact or communication with a person holding public office.

The Act can be best characterized as an information disclosure statute; it seeks to disclose who is lobbying government on whose behalf. It does not attempt to regulate lobbyists or the manner in which they conduct their activities.

The Committee was charged with the task of studying the *Lobbyists Registration Act* by an Order of Reference of the House of Commons dated 19 November 1992. This Order has its origin in the Act itself, which provides that, three years after coming into force, the Act is to be referred to a committee of Parliament for a comprehensive review of its administration and operation.

Our Committee held public hearings in Ottawa from 2 February 1993 to 25 February 1993, during which time the Minister of Consumer and Corporate Affairs appeared before us and we heard testimony from several witnesses. We pursued our task with great enthusiasm realizing that the review would require us to examine not only the *Lobbyists Registration Act* itself but also a number of the principles upon which our system of democratic government is based.

Fundamental to the Committee's review of the Act, are two beliefs: first, that the public has a right to know who is attempting to influence government decisions; second, that everyone has the right to make his or her views known to government.

The principles of transparency, clarity, access to government, and administrative simplicity have served as guideposts for the development and administration of the Act. At an early stage, it became evident that our review would require us to evaluate the Act against these often competing principles.

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

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

The objectives of clarity and administrative simplicity, although not specifically mentioned in the preamble of the LRA, have served to reinforce transparency and access. Thus, the Act and the regulations have been drafted in a manner so as to make clear to whom they apply. The Lobbyists Registration Branch has

clarified certain points through issuing information kits and interpretation bulletins. Administrative requirements have been kept to a minimum so that lobbying will not be discouraged and there will be no need for a large bureaucracy to administer the Act.

The Committee believes there is room for improvement to the Act. The LRA is a good first step but it does not reveal enough about the activities of lobbyists. We are therefore proposing the disclosure of additional information about lobbyists and their activities. While favouring more disclosure, we have been mindful of the need to ensure that access to government is maintained, the information collected is meaningful, and the administrative requirements are reasonably simple.

The Committee was told time and time again that more information is not necessarily better information. We agree and have kept this in mind in formulating our recommendations. We have also aimed for the creation of a disclosure system that is easy to comply with and simple to consult.

The disclosure of lobbying activities is intended to increase public understanding of, and faith in, the operation of government. Ensuring that there is less secrecy surrounding lobbying activities will have the added benefit of discouraging lobbyists from engaging in unseemly behaviour and will give others a chance to react to lobbying efforts.

Because lobbyists themselves have an interest in reinforcing the legitimacy of their activities, they should be encouraged to establish a professional association and a code of ethics. Asking lobbyists to take responsibility for the governance of their profession recognizes that they have a stake in enhancing its image and in maintaining public confidence in the institutions of government.

The Committee was particularly mindful of the past contributions made by parliamentarians to this issue. The first initiatives towards the registration of lobbyists came from backbench Members of Parliament long before the issue became a matter of public concern. The government's first proposals for a registration system were built upon ideas generated by MPs, who were enthusiastic participants in the efforts to create legislation. We hope that the findings of this Committee, built upon the past work of our colleagues, will contribute to the creation of the next generation of lobbyists registration legislation.

CHAPTER I

Historical Background

The Committee began the task of reviewing the *Lobbyists Registration Act* in the knowledge that lobbying is neither a new phenomenon in Canada, nor alien to our system of government. Our parliamentary democracy is anchored in British traditions of law and government, whereby, those who govern do so with the consent of the governed. Thus the right of citizens to free and open access to those in positions of public authority is an integral — and indispensable — part of our custom and practice of government. Without this interaction our system of government would quite simply cease to function.

Lobbying was a feature of the Canadian political landscape both before and after Confederation. Until recently, however, it involved relatively few individuals and was conducted on a fairly small scale. Apart from those occasions when political scandal focused attention on lobbying's worst excesses, this activity was accomplished in private and without public scrutiny. As a consequence, there was little discussion or opinion on lobbying and its impact on policy-making in Canada. In the absence of any thorough examination, the notion that lobbying did not exist in Canada became embedded in our national political mythology.

In the rapid change that has characterized the post-war environment, however, lobbying has taken on new dimensions. What began as a small-scale activity has now evolved into a full-fledged and highly sophisticated component of the policy-making process at virtually all levels of government in Canada. This change, which began in earnest in the late 1960s and 1970s, was driven by a number of factors. The most important involved a major evolution in the role played by the state in Canadian society. The size and scope of government expanded as it became involved in a myriad of new responsibilities. As it did so, it became more complex and its actions began to directly affect the lives of a growing number of Canadians. The relationship between Canadians and their government, once fairly simple, now became at the same time more complicated and more vital. As a result, a need arose for independent sources of knowledge and advice capable of guiding outsiders through the intricacies of the modern state apparatus.

While the scope and practice of government was changing, Canadian society was changing as well. Canada, in the years following the Second World War, was becoming increasingly pluralistic. Peoples from diverse backgrounds and cultures arrived to make use of the opportunities afforded by our free and democratic society — and to make valuable contributions to it. Others long denied their rightful place in decision-making processes also demanded that they be able to contribute more actively to the governance of their country. And all Canadians, increasingly affected by the decisions of government, found themselves drawn into a new relationship with their state institutions which demanded greater direct involvement in, and knowledge of, the workings of government. Thus new mechanisms were required to facilitate the interactions between public officials and citizens.

The need for expert advice in dealing with government was acutely felt by four broad segments of Canadian society: the business community, labour, organizations representing the interests of definable segments within the general populace, and groups providing various kinds of social services. Each one of these segments was being increasingly affected by the regulatory and budgetary decisions of government and needed now, more than ever, to make its voice heard by those in authority.

It was precisely in response to these needs that the lobbying industry in its present form began to take shape. Government was becoming more complex; the needs of Canadians more diverse. By the early 1980s, the government relations industry (lobbying) had become a well-established feature of the policy-making process at the federal level.

A. THE IMPETUS FOR REFORM

In the past, when lobbying became the subject of public attention, the result was almost always reform or attempted reform. One of Canada's first public controversies, the Pacific Scandal, involved the granting of political favours in return for money. A subsequent public enquiry led to the downfall of the governing Conservatives and the election of Sir Alexander Mackenzie's Liberals on the basis of promises to restore honesty to government. The Beauharnois Scandal of the 1930s, which also involved the exchange of money for political favour, did not result in electoral defeat for the party involved, but did produce an attempt (admittedly unsuccessful) to introduce reforms to campaign financing and spending. In the 1970s, a spillover effect from the Watergate scandal in the United States was partly responsible for a series of measures adopted in Canada aimed at regulating campaign spending and political contributions. Behind all these initiatives lay a desire to strengthen public confidence in Canada's political system at the federal level. The efforts that eventually produced the *Lobbyists Registration Act* were no different in that they were motivated by the desire to achieve greater transparency and honesty in government.

As the government relations industry began to emerge in the late 1960s, its growth was matched by a number of attempts to introduce legislation to regulate lobbying. These early efforts took the form of approximately 20 Private Member's bills which were tabled in 1969, 1974, 1976 and 1985. Each of these efforts came from a desire to foster a more open, democratic form of government. The Canadian public, it was reasoned, deserved to know who was attempting to influence the decisions of government and for what purpose.

Efforts to deal with lobbying, however, did not enjoy any success until the issue became a government priority. In fact, there was virtually no significant public debate over the issue of regulating lobbying until the Progressive Conservative government raised the matter in 1985. The stage for this public debate was set during the 1984 federal election, when probity in governing became a campaign issue. Public awareness of lobbying activity was further heightened following the election, in large part because a change of those in power brought about widespread alterations in what had become well-established patterns of political influence, thus bringing to light activities which had previously taken place out of the public eye. In the aftermath of the 1984 election campaign and changes in the patterns of political influence, Canadians expected their government to introduce greater transparency into the policy-making process.

Upon entering its second year, the government planned to respond to these expectations by focusing its attention on the issues of integrity in government and public-sector ethics. Initiatives were launched to develop conflict-of-interest guidelines for government members and senior public servants, and to register individuals seeking to influence the actions of government. Speaking in Vancouver in August 1985, Prime Minister Mulroney announced his government's intention to establish a registration system for lobbyists.

The Prime Minister pursued this objective when Parliament reconvened in the fall, informing parliamentarians of his intentions and instructing the then Minister of Consumer and Corporate Affairs, Michel Côté, to prepare legislation on the registration of lobbyists. The Department of Consumer and Corporate Affairs issued a discussion paper intended to stimulate debate on the issue in December of 1985. Entitled *Lobbying and the Registration of Paid Lobbyists*, the paper enumerated the basic principles which it was felt should guide efforts to register lobbyists. These principles formed the foundation for Bill C-82, which eventually became the *Lobbyists Registration Act* and consisted of the following elements:

1) **Openness**: There should be a publicly available record of paid lobbyists, their clients and any other additional information considered desirable to "...demonstrate the Government's commitment to transparency and integrity in its relations with the public."

2) **Clarity**: In order to reinforce the principle of openness, the regulations should be clear and precise; there should be no doubts regarding who should and who should not register.

3) **Access to Government**: The requirements which paid lobbyists must fulfil should not act as a barrier impeding access to government.

4) **Administrative Simplicity**: The administrative requirements contained in the system of registration should be held to the minimum needed to accomplish the system's goals. "It would not be the intention to make registration so onerous as to discourage lobbying by anyone with modest means or create a bureaucratic system requiring substantial resources."

Following the release of the discussion paper, the matter was referred to the House of Commons Standing Committee on Elections, Privileges and Procedure.

B. HOUSE OF COMMONS COMMITTEE STUDY

The Standing Committee on Elections, Privileges and Procedure (hereafter cited as the "Standing Committee"), chaired by Albert Cooper, M.P., began study of the Consumer and Corporate Affairs' discussion paper in November 1986.

After a series of hearings on the subject of lobbying, the Standing Committee issued its report at the end of January 1987. The report revealed that those arguing against a registration system asserted that it would involve too much paperwork, high administrative costs, and would interfere with client confidentiality. The lobbying industry suggested that a system of self-regulation would be a more cost-effective and less objectionable means of achieving standards of ethical behaviour. The Standing Committee, however, sided with the proponents of a registration system, who contended that such a system would dissipate much of the mystery surrounding lobbying and thus remove the harmful atmosphere of conjecture and innuendo which sometimes attends the activity. Indeed, it was suggested that registration would endow lobbying with a badly needed sense of legitimacy. The most convincing argument from the Standing Committee's perspective, however, was that registration was an important aspect of the overall effort needed to ensure an informed public, and thus the health of Canadian democracy.

In its report to the House, the Standing Committee stated that the public's right to know and be informed about who is trying to influence government policy was paramount. It attempted to strike a balance by recommending that reporting procedures required of registered lobbyists be kept to a minimum in keeping with the principles of access to government, clarity and administrative simplicity.

C. BILL C-82: THE *LOBBYISTS REGISTRATION ACT*

Six months after the Standing Committee had tabled its report, the government introduced legislation on the registration of lobbyists. The purpose of the bill was quite clear: the creation of a registration system for paid lobbyists so that government officials and members of the public would know who is attempting to influence government.

Bill C-82 did not reflect all of the recommendations found in the Standing Committee's report. However, it contained a major new feature which was not mentioned in either the report of the Standing Committee or in the Consumer and Corporate Affairs' discussion paper. Lobbyists were to be divided into two categories, Tier I, or "professional" lobbyists, and Tier II, or "other" lobbyists, each with its own set of reporting rules.

On 14 March 1988, following second reading, Bill C-82 was referred to a House of Commons legislative committee chaired by Keith Penner, M.P. Despite criticisms made of the bill during committee study, it was returned to the House with only minor modification. The bill was subsequently given third

reading and sent to the Senate, where it was studied by the Standing Senate Committee on Legal and Constitutional Affairs and then passed without amendment on 8 September 1988. On 13 September 1988, the bill was given Royal Assent and, on 30 September 1989, the *Lobbyists Registration Act* came into force.

CHAPTER 2

The Role and Perception of Lobbying in the Canadian System of Government

Before turning to a discussion of the *Lobbyists Registration Act*, the Committee wishes to confirm that it has uncovered no specific evidence of wrongdoing by the government relations industry in Canada nor has it discovered any contravention of the Act by registered lobbyists. Furthermore, it wishes to reaffirm that lobbyists can perform a useful and legitimate role in the complex system of contemporary government.

Many witnesses acknowledged that lobbying makes a contribution to effective policy development; it improves communication with departmental policy makers and ensures that opposing viewpoints are heard. Indeed, lobbying is a necessary part of modern public policy making. More basic, however, is the fact that the right to lobby is a fundamental right in a democracy.

A number of lobbyists asserted that their work improves public policy decisions. They described their role as interpreting the public interest and persuading their clients to adapt their needs accordingly. Thus lobbyists see themselves as "offering ideas for public policy, discussing the general philosophy of government, providing advice to politicians and public servants, participating in the policy process ..., promoting the "public interest", and also seeking advice from government."

Although lobbying is a legitimate activity, the general public perception of lobbying is a negative one. Lobbyists are sometimes perceived as having undue influence as a result of their power to mould and influence public policy. Some point out that certain aspects of lobbying and the way it is conducted give rise to public scepticism.

One witness noted that much of the lobbying activity in Canada occurs at the bureaucratic level in private meetings between lobbyists and public office holders; this creates opportunities for improper behaviour and allows lobbyists to exert influence in ways that would not be possible if the activities were open to public scrutiny. Public office holders are able to exercise their discretion in response to arguments by lobbyists which could not be supported in public. When lobbying is conducted away from the public view, there is a greater opportunity for decisions that undermine the public interest.

Greater disclosure will ensure that the public will know who is attempting to influence whom, how, and on what issues. Encouraging lobbyists to establish and adhere to a code of ethics will allow members of the profession to shoulder responsibility for improving their image.

CHAPTER 3

Summary of the *Lobbyists Registration Act*

The purpose of the *Lobbyists Registration Act* as set out in its preamble is to make transparent the activities of paid lobbyists without impeding free and open access to government. The Act purports to achieve this by requiring the registration of individuals who undertake certain lobbying activities for pay; thus, the public and public office holders can know who they are and on whose behalf they are working.

The Act divides lobbyists into two categories: Tier I and Tier II. A Tier I lobbyist (sometimes referred to as a "professional lobbyist") is an individual who, for payment and on behalf of a client, undertakes to arrange a meeting or communicate with a public office holder in an attempt to influence: (a) the development of a legislative proposal by the Government of Canada or by a member of the Senate or the House of Commons; (b) the introduction, passage, defeat, or amendment of any bill or resolution before Parliament; (c) the making or amending of any regulation; (d) the development or amendment of any government policy or program; or (e) the awarding of any federal monetary grant, contribution, financial benefit or government contract (section 5(1)). A "public office holder" is broadly defined as any officer or employee of the federal government, including members of the Senate and the House of Commons and their staff, Governor in Council or Ministerial appointees, officers, directors or employees of federal boards, commissions or other tribunals, members of the Canadian Armed Forces and the Royal Canadian Mounted Police.

Within ten days of commencing their lobbying activity, Tier I lobbyists must register under the Act. They are required to file a registration for each of their undertakings to lobby on behalf of a client and must disclose: their names and business address; the name of the lobbying firm (if applicable); the name and address of the client; the subject-matter of the meeting or communication; and, if the client is a corporation, its subsidiaries and parents.

A Tier II lobbyist (sometimes referred to as an "in-house" lobbyist) is an individual who, as a significant part of his or her duties of employment, communicates with public office holders on behalf of his or her employer for the purpose of attempting to influence the same types of activities referred to above, except the awarding of government contracts.

Tier II lobbyists have less stringent registration requirements. They must register within two months of undertaking their duties and annually thereafter and must give their name as well as the name and address of their employer. Tier II lobbyists do not have to disclose the subject-matter of their communications.

Both Tier I and Tier II lobbyists must advise the Registrar of any changes in the information filed as soon as it is practicable to do so.

Certain persons and activities are exempt from the Act. It does not apply to any of the following persons when acting in their official capacity: members and the staff of members of provincial legislatures; provincial government employees; members of municipal councils, their staff and municipal employees; Indian band council members, their staff and council employees; diplomats and official representatives of foreign governments; and officials of specialized agencies of the United Nations in Canada and certain other international organizations.

The Act also excludes certain kinds of communications. For instance, it does not apply to oral or written submissions in proceedings that are a matter of public record made to Parliamentary committees or to persons or bodies having jurisdiction or powers conferred on them by an Act of Parliament. In addition, it does not

apply to submissions made to public office holders on behalf of a person with respect to the enforcement, interpretation, or application of any federal law or regulation by that office holder in relation to that person. Finally, disclosure of the name or identity of any individual is not required where the safety of the individual could be threatened.

The Act provides for the creation of a position of "Registrar", who is to establish and maintain a "Registry of Lobbyists" in which is kept a record of all information submitted under the Act. The Registry is open to public inspection.

The Registrar is to submit annual reports to the Registrar General of Canada, who is also the Minister of Consumer and Corporate Affairs. These reports are tabled by the Registrar General before both Houses of Parliament.

Offences are set out in section 13 of the Act. Any contravention or failure to comply with the Act is a summary conviction offence subject to a fine not exceeding $25,000. Knowingly making a false or misleading statement in connection with any information to be filed under the Act is punishable by summary conviction or indictment. A conviction in proceedings by way of summary conviction is subject to a fine not exceeding $25,000 or to imprisonment for a term not exceeding six months or to both; proceedings by way of indictment carry a fine not exceeding $100,000, imprisonment for up to two years, or both. The principal enforcement authority for the law is the Royal Canadian Mounted Police.

The *Lobbyists Registration Regulations* set out the type and form of the information to be filed by Tier I and Tier II lobbyists. They also establish the fees applicable for services provided by the Registry of Lobbyists.

CHAPTER 4

Who should Register

A. THE DISTINCTION BETWEEN TIER I AND TIER II LOBBYISTS

The LRA provides for the registration of lobbyists — individuals who, for pay, engage in certain types of lobbying activities. As mentioned earlier, the Act divides lobbyists into two categories, each with its own reporting requirements.

Many commentators on the LRA have been highly critical of the division of lobbyists into two tiers. Indeed, one identified the two tier system as the most serious weakness in the Act. When the *Lobbyists Registration Act* was before Parliament in 1988, the then Minister of Consumer and Corporate Affairs justified the two-tier approach on the basis of administrative simplicity. It was felt that subject-matter disclosure for Tier II lobbyists would overload the Registry with unnecessary information. Those who favoured more disclosure by Tier II lobbyists, however, argued that one could not discern all the matters of interest to a Tier II lobbyist merely by knowing the name of the lobbyist's employer.

The current Minister of Consumer and Corporate Affairs told the Committee that it would be reasonable to require Tier II lobbyists to disclose the subject-matter of their lobbying. While a few witnesses wanted the current Tier II provisions maintained, several supported the Minister's suggestion. Still others, however, advocated the abolition of any distinction between the Tier I and Tier II disclosure requirements. One Tier I lobbyist felt that merging the two categories of lobbyists would make the Act easier to administer and enhance transparency.

The current disclosure requirements for Tier II lobbyists are, in the Committee's view, clearly inadequate. The requirement to report only the name of the lobbyist and the name and address of the organization does not provide insight into the types of issues that might be of concern to that organization. Many interest groups and corporations have diverse interests and one cannot assume that these are transparent. We support the proposal that Tier II lobbyists should be required to disclose the subject-matter of their lobbying efforts. Such disclosure would enhance transparency and reduce the incentives for organizations to hire Tier II lobbyists in order to circumvent the more stringent Tier I disclosure requirements.

We would go further, however, than merely requiring Tier II lobbyists to report the subject-matter of their lobbying activities. Tier I and Tier II lobbyists perform many of the same functions and the distinction between the two is largely artificial. We believe the differentiation between the tiers should be eliminated and the registration requirements for all lobbyists made uniform.

In order to continue to register lobbyists who are hired under contract and those who are employees, the current definitions of lobbyists in the LRA should be maintained, but they should be amalgamated into one. Collapsing the two-tier structure of the current Act and creating uniform disclosure requirements would significantly improve transparency. The Committee recognizes that its proposals would increase the paper burden for in-house lobbyists and require them to file information with the Registrar more frequently than they do now; however, we believe that the additional requirements will not be particularly costly or burdensome. Moreover, they should not impair administrative simplicity or require an increase in the size or budget of the Lobbyists Registration Branch.

The Committee recommends that:

The distinction between Tier I and Tier II lobbyists be eliminated.

The *Lobbyists Registration Act* define a lobbyist as an individual who for payment, and on behalf of a client, undertakes the lobbying activities listed in the Act, or an individual who, as a significant part of his or her duties of employment, engages in lobbying activities on behalf of his or her employer.

The disclosure requirements for all lobbyists be made uniform and include all of the elements currently found in section 5 of the *Lobbyists Registration Act*.

B. REGISTRATION BY FIRMS AND ORGANIZATIONS

Under the current Act, individual lobbyists rather than the firm with which the lobbyists are employed or associated are required to register. If more than one lobbyist from a firm is engaging in lobbying activities for the same client, each lobbyist must file a form on behalf of the client. Searches of the Registry of Lobbyists reveal that lobbying firms often have more than one lobbyist, in some cases four or more, registered for the same client. As a result, numerous forms are filed with identical information except for the name of the individual lobbyists. In the same way, where an organization employs more than one in-house lobbyist, each must file a return with the Registrar indicating his or her name and the name and address of his or her employer. These requirements result in additional and unnecessary paperwork. The Registry is overburdened with superfluous information and the principle of administrative simplicity suffers.

The Committee believes that both lobbyists and the Registry would be better served if the Act permitted each firm or organization to register rather than individual lobbyists. This would decrease the number of forms filed with the Registry and reduce the burden of compliance with the Act.

Registration by firm or organization, would not, however, mean that the names of individual lobbyists would no longer be revealed or the type of information required to be disclosed under the Act would be altered. Each registration would still disclose the individual lobbyists who are lobbying on behalf of the client or who are employed by an organization as well as any other information that such lobbyists might be required to disclose.

The Committee therefore recommends that:

Firms engaged in lobbying activities on behalf of a client and organizations who employ individuals to lobby on their behalf be able to register under the *Lobbyists Registration Act*. The registration would list the individual lobbyists who are lobbying for the client or who are employed by the organization, as the case may be, as well as any other information that such individuals may be required to disclose.

C. THE CLASSIFICATION OF LOBBYISTS INTO PROFESSIONAL AND OTHER LOBBYISTS

The heading and marginal notes relating to section 5 of the LRA classify Tier I lobbyists as "professional lobbyists." Tier II lobbyists, on the other hand, are referred to as "other lobbyists." One witness felt that it was misleading and erroneous to describe Tier I lobbyists as "professional lobbyists" since Tier II lobbyists were also professionals in their fields. The Committee agrees. It is clear from the Act and the literature issued by the

Lobbyists Registration Branch that a Tier I lobbyist is a consultant hired under contract while a Tier II lobbyist is an employee who undertakes lobbying activities as part of his or her employment duties. If the distinction between Tier I and Tier II lobbyists is maintained under the Act, the Committee believes that it would be more appropriate to refer to Tier I lobbyists as "consultant lobbyists" and Tier II lobbyists as "in-house lobbyists." The Committee therefore recommends that:

If the distinction between Tier I and Tier II lobbyists is maintained under the *Lobbyists Registration Act*, the term "professional lobbyists" found in the heading and marginal notes relating to section 5 of the Act be deleted and replaced by the term "consultant lobbyists", and the term "other lobbyists" found in the heading and marginal notes relating to section 6 of the Act be deleted and replaced by the term "in-house lobbyists."

CHAPTER 5

What should be Disclosed

The subject of disclosure lies at the very heart of the *Lobbyists Registration Act*. The fundamental principles underlying the original Act sought to balance the need for transparency with the need for open access to government and administrative simplicity. This was accomplished by requiring Tier I and Tier II lobbyists to disclose only information deemed necessary to reveal who was lobbying for whom and Tier I lobbyists to disclose the subject-matter.

It is worth stressing that the *Lobbyists Registration Act* clearly opts for disclosure over regulation as a means of dealing with lobbying at the federal level. At least one witness emphasized that disclosure is preferable as being the most useful approach for controlling "excesses" in efforts to influence public policy — an observation with which the Committee is in full agreement.

During the course of our hearings, the Committee heard from several witnesses who felt that the current disclosure requirements were sufficient and argued that they should not be extended. Concerns were expressed that, were more information required, the Registry would become overburdened. From the perspective of many of these witnesses, more stringent enforcement of the existing rules was required. Of those who supported the status quo, only a few stated that they found present requirements burdensome or unnecessary.

Critics have, however, argued that the Act's disclosure requirements are insufficient, and some witnesses spoke in favour of enhancing current disclosure requirements.

The Committee looked at the areas of disclosure deemed to be unsatisfactory by witnesses in an attempt to determine whether improvements were necessary and if so, how they might be achieved.

A. SUBJECT-MATTER REPORTING

1. How the Current System Works

An important goal of the *Lobbyists Registration Act* is public disclosure of the issues which lobbyists are paid to represent before public office holders. The present Act assumes that because it is clear whose interests Tier II lobbyists represent, specifics regarding their lobbying issues are not required. Tier I lobbyists, however, who represent the interests of several clients on a variety of issues, must disclose the subject-matter of their lobbying efforts. In order to facilitate subject-matter disclosure, the *Lobbyists Registration Regulations* specify 52 subject-matter areas from which Tier I lobbyists must choose when registering.

The 52 areas of concern relate to broad subjects such as agriculture, human rights, defence, and regional economic development, each of which is assigned a numerical code to facilitate registration. In addition, Tier I lobbyists are required to report on six types of activities which specify the purpose of their communications with office holders with respect to any one of the 52 subject-matter categories. These activities are given alphabetical codes for the purposes of registration. Thus, Tier I registrants must indicate whether the purpose

of a communication with an office holder is to influence the development of a legislative proposal (category A); the introduction, passage, defeat or amendment of any bill or resolution before Parliament (category B); the making or amending of any regulation within the meaning of the *Statutory Instruments Act* (category C); the development or amendment of any policy or program of the Government of Canada (category D); the awarding of any monetary grant or contribution or any other financial benefit by or on behalf of Her Majesty in right of Canada (category E); and the awarding of any contract by or on behalf of Her Majesty in right of Canada (category F). Lobbyists must also specify whether the activity involved arranging a meeting with a public office holder (category X). Tier I lobbyists are required to disclose this information no later than ten days after entering into an undertaking on behalf of a client.

2. Problems With Current Subject-Matter Disclosure Requirements

The Committee heard from a number of witnesses who claimed that the present Act does not disclose sufficient information about the exact nature of lobbying efforts. Another concern focused on the difficulty of using the data produced by this system. Anyone consulting the Registry with the intention of discovering the nature and purpose of a given lobbying effort is confronted by a bewildering array of numbers and letters which must be carefully deciphered. Yet, even after this effort has been made, the information extracted is so general as to be relatively meaningless. No information is provided as to the exact nature of legislation, amendments to current Acts, grants, regulations, policies, contracts, programs, and legislative proposals that lobbyists seek to influence. In addition no information is provided with regard to the identity of the departments or agencies of government contacted during lobbying efforts.

While on one hand the subject-matter disclosure provisions fail to provide sufficient detail, they offer a potential for obfuscation on the other. Although the Registrar informed the Committee that the average number of subjects registered by Tier I lobbyists is four and that no lobbyist has registered all 52 subjects, this does not, in itself, prove that abuses — intentional or otherwise — have not occurred. One witness asserted that some forms have been filled out deliberately so as to disguise the true intent of the lobbying. Other lobbyists may be tempted to fill in a wide range of categories simply to avoid being in non-compliance with the Act.

The Committee feels that the current method of facilitating subject-matter disclosure is clearly unsatisfactory and fails to meet the needs of office holders, lobbyists, and, most importantly, the Canadian public. As a result, the Act leaves much to be desired when it comes to promoting transparency in the public policy-making process. The Canadian people have a right to know in the clearest terms possible precisely which policies and programs of government have been the object of lobbying efforts, which departments and agencies of government have been contacted during lobbying efforts and what methods lobbyists have used in the pursuit of their objectives.

Therefore, in order that the *Lobbyists Registration Act* help ensure greater transparency in the policy-making process, the Committee recommends that:

The *Lobbyists Registration Act* and the *Lobbyists Registration Regulations* be amended to require lobbyists to disclose:

(a) more detail on the subject-matter of their lobbying activities such as the name of the bills, legislation, amendments to current Acts, grants, contributions, regulations, policies, programs, contracts and legislative proposals that they are seeking to influence;

(b) the name of the government department including any branch thereof, parliamentary office, or agency with which they have communicated or arranged a meeting; and

(c) **the exact nature of the activities in which they will engage when seeking to influence public policy.**

Furthermore, in keeping with our earlier recommendation that the present tier system be eliminated, we recommend that:

Subject-matter reporting requirements equally apply to all lobbyists.

In the event that the current tier system is retained, subject-matter reporting requirements equally apply to both consultant lobbyists and in-house lobbyists.

B. GRASS-ROOTS LOBBYING

One of the concerns brought to the Committee's attention by several witnesses was that the current Act contains no reference to grass-roots lobbying. Ranging from organized mass letter-writing and phone-in campaigns to media advertising and public demonstrations, these methods are used to create the impression that a substantial community of interest exists favouring one policy outcome or another. While these communities of interest may indeed exist, there is no doubt that they are often manufactured in order to bolster the arguments made by those who favour certain outcomes. This activity *per se* is not registrable under the current Act.

Because the Act does not address grass-roots lobbying specifically, it fails to provide full transparency concerning an aspect of organized representation to government that is growing in scope and in sophistication. Indeed, the Committee learned from a witness that grass-roots lobbying campaigns now constitute a large portion of the lobbying effort in this country. The conclusion to be drawn from this observation is clear; the Act contains a major deficiency.

In studying the issue, the Committee recalled the work and recommendations of the Cooper Committee with respect to grass-roots lobbying. Our predecessors were of the belief that this form of lobbying activity should be registrable. We concur.

An increasingly sophisticated array of technological resources and marketing techniques are being employed to bring pressure to bear on policy outcomes ... efforts which constitute an activity whose purpose is to influence the decisions of government; in other words, lobbying. We therefore believe it is imperative that the Act specify, with regard to this particular form of lobbying, that it should be registrable.

While we are anxious that the Act be amended to provide transparency regarding grass-roots lobbying, we are also quite concerned that the normal discourse which occurs between office holders and Canadian citizens not be impeded. The Committee is also anxious that one additional concern be addressed. In an earlier recommendation, we have proposed that "consultant" and "in-house" lobbyists alike be required to adhere to the same disclosure requirements. While it is our desire to see grass-roots lobbying campaigns designated as a registrable activity, we do not wish to impose this new requirement upon those who are devoting only minimal resources to efforts of this sort. Apart from creating an unnecessary administrative burden for the Registry, such a move would have the effect of needlessly complicating efforts by small groups to convey their concerns to government and would not necessarily add to the store of relevant knowledge on lobbying. We feel that this problem can be avoided while ensuring that the Act provides transparency surrounding large, well-funded grass-roots campaigns, by specifying an expenditure threshold before registration is required. Therefore, having considered this matter carefully, the Committee recommends that:

Professional lobbying efforts aimed at the "grass-roots" which exceed a threshold amount within a specified period of time be registrable. The threshold amount and the period of time be prescribed by regulation after consultation with interested parties.

C. COALITION MEMBERSHIP

A significant amount of the lobbying being conducted in Canada today is carried out by or on behalf of coalitions of groups and individuals. Coalitions are formed around a single issue and are dissolved once that issue is resolved. They offer the advantages of pooling numbers and resources and provide an opportunity for members to come to a consensus on an issue, despite possible disagreements in other areas. Thus coalitions offer a convenient and often very effective means of mobilizing interests to bring about changes in public policy. It is for this reason that coalitions are quickly becoming one of the preferred vehicles for lobbying government in Canada.

Under the terms of the current Act, Tier I lobbyists do not have to register the names of coalition members. They must merely list the coalition's name and address as their client. While the Registrar currently encourages lobbyists to list the membership of coalitions which they represent, and one Tier I lobbyist told the Committee that she does so as a matter of course, there is no requirement for this.

Given that a primary purpose of the Act is to make public the identities of those behind lobbying efforts, this lack represents a major shortcoming in the legislation. Witnesses pointed out that the absence of a requirement for disclosure of coalition membership makes it possible for those behind lobbying efforts to conceal their identities.

Many witnesses who addressed this issue favoured disclosure of coalition memberships and others recognized that this was an area in which the Act could be improved. One witness, while supportive of the idea, indicated that there might be problems in keeping the registration of coalition members current. Membership in coalitions often fluctuates as new members join while others depart. Concerns were also voiced about how to establish the criteria for registering members. Should all members be registered? What of the coalitions which are composed of thousands of individual Canadians or smaller groups seeking a collective voice for their concerns? Should their names and addresses be registered? Would this encumber the Registry with unnecessary information and impair its ability to fulfil its mandate?

In attempting to answer some of these important concerns, the Committee was very much interested to see how this issue was approached in lobbying legislation currently before the U.S. Congress. The *Lobbying Disclosure Act of 1993* would require the disclosure of coalition members only when they act as *de facto* clients of lobbyists. In order to determine which coalition members fit this description, the legislation proposes a number of tests, one of which involves levels of financial contribution. Thus the disclosure of a coalition member's name would be required if there was a substantial financial contribution made to the coalition's efforts.

The Committee is of the opinion that this is a sound general guideline to follow for disclosure of the identities of coalition members. It would eliminate the necessity to register the names of those who support the goals of a coalition but whose financial contribution to its activities has been slight; only those with a significant stake in a coalition's activities would be listed with the Registry. In addition, we feel it is important that only the names of recent contributors be disclosed. We therefore recommend that:

Lobbyists be required to register the names of members of the coalitions they represent where the coalition member has made a financial contribution to the coalition at or above a threshold amount within a specified period of time. The amount and period of time be established by regulation following consultation with interested parties.

D. CORPORATE PARENTS AND SUBSIDIARIES

The *Lobbyists Registration Act* requires Tier I lobbyists to disclose the parents and subsidiaries of corporate clients. This prevents corporations from masking the identity of the actual beneficiary of the lobbying.

A number of witnesses felt that the requirement to report all subsidiaries and update the information when changes take place is too onerous. Some lobbyists have had difficulty in obtaining the information. Others noted that they were probably unknowingly violating the Act because their clients had not informed them of changes to their corporate structure. Several witnesses questioned the importance of reporting subsidiaries, particularly where large corporations were concerned. They wondered whether a list comprising numerous subsidiaries would be useful to anyone wanting to know the true beneficiary of a lobbying effort.

Various witnesses made suggestions as to how the subsidiary-reporting provision could be simplified and made workable. The Canadian Bar Association went a step further and called for repeal of the provision, arguing that it was redundant because the LRA already requires registrants to disclose details of the person on whose behalf the lobbying is undertaken.

The Committee believes it is necessary to have a corporate disclosure provision in the Act. It ensures that the identity of the entity which controls a corporation is revealed and discourages the creation of shell corporations to circumvent the disclosure requirements. The Act aims to ensure that the ultimate beneficiary of a lobbying activity is known and in this way helps to achieve the objectives of openness and transparency. In the case of a corporate client of a Tier I lobbyist, this beneficiary may be the corporation's parent or one or more of its subsidiaries.

We realize, however, that where corporations have many subsidiaries, a list of these may be of little value in determining the beneficiary of a lobbying undertaking. It is the Committee's view that the Act could better achieve the objectives of openness and transparency if it required the disclosure of related corporate entities with a significant stake or direct interest in the outcome of a lobbying undertaking. This would simplify the disclosure requirements and ensure the identification of those benefiting from the lobbying activity.

We note with interest that the United States *Lobbying Disclosure Act of 1993,* now before Congress, calls for the disclosure of any entity that holds at least 20% equitable ownership in the client of a lobbyist; supervises, controls, directs, finances or subsidizes the activities of the client; or is an affiliate of the client with a direct interest in the outcome of the lobbying activity.

We believe there is considerable merit to the U.S. proposal; it would ensure that only those corporate entities with a stake in the outcome of the lobbying undertaking were disclosed. The Committee believes that this proposal could be readily adapted to the Canadian environment and recommends that:

The *Lobbyists Registration Act* be amended to provide for the disclosure of the name and address of any corporation that controls a client of a lobbyist, where the client is a corporation, and any subsidiary of the client or other entity that supervises, controls, directs, finances or subsidizes the activities of the client or has a direct interest in the outcome of the lobbying activity.

CHAPTER 6

Administration, Enforcement and Compliance

The *Lobbyists Registration Act* provides for the creation of the position of a "Registrar" who is responsible for establishing and maintaining the operation of the Registry of Lobbyists which records all information submitted under the Act.

The Registry is located within the Department of Consumer and Corporate Affairs as the Lobbyists Registration Branch. For the 1991-92 fiscal year, its expenditures were $375,190 including salaries and operating costs. During this period some 7,500 registrations were processed and nearly 800 Tier I lobbyists and approximately 2,000 Tier II lobbyists maintained active registrations with the Branch.

The Registrar has no powers to investigate wrongdoings under the Act. All matters requiring investigation are turned over to the RCMP. Branch staff, however, examine filings for completeness, inconsistencies, and obvious omissions. Problems in this regard are communicated to lobbyists for correction or with requests for the submission of additional information.

A. INDEPENDENCE OF THE REGISTRAR

As mentioned earlier, for administrative purposes, the Registry of Lobbyists is currently located within the Department of Consumer and Corporate Affairs, an arrangement which has thus far proven quite satisfactory. Throughout the course of our hearings, not a single witness criticized the way in which the Registry has been doing its job; lobbyists, office holders and academics alike were satisfied. For its part, the Committee was impressed with the range of services provided by the Registry and by the fact that, in spite of growing numbers of registrations, it provides services at minimal cost to the federal treasury.

This being said, however, several witnesses suggested that the Registry should be moved out of the Department of Consumer and Corporate Affairs and placed under the authority of Parliament. They argued that as a departmental official, the Registrar is vulnerable to political pressure. These witnesses reasoned that even if such pressure is never exerted, the fact that the possibility exists diminishes the Registry's effectiveness from the perspective of the Canadian public. Placing the Registry under Parliament's authority would remove the potential for interference and reinforce the public's faith in the registration system. Parliament, one witness argued, is the best "watchdog" for overseeing the administration of the Act.

We listened with great interest to the arguments presented by these witnesses. However, the Committee heard no evidence that the Registrar has been hindered in the execution of her duties. Nevertheless, we are anxious that both the excellent performance and the public reputation of the Registry be maintained. We feel that this can best be accomplished by giving the Registrar an increased measure of independence and additional authority to report on matters pertaining to the Act. Apart from the obvious benefit of reducing the possibility of political interference, this would allow the Registrar to comment on deficiencies and problems with the operation of the Act. Therefore, the Committee recommends that:

The Registrar be appointed by the Governor in Council subject to approval of a committee of Parliament.

The Registrar report annually to Parliament on the administration and operation of the Registry of Lobbyists as well as any other matters pertaining to the *Lobbyists Registration Act*.

B. LIMITATION PERIODS

Offences are set out in section 13 of the LRA. Any contravention or failure to comply with the Act is a summary conviction offence. Knowingly making a false or misleading statement in connection with any information to be filed under the Act is punishable by summary conviction or indictment.

There have been no prosecutions under the LRA thus far. The Registrar told the Committee that two suspected violations had been turned over to the RCMP for investigation. In one case, charges were not laid because of a lack of evidence, in the other, there were no charges because the alleged offence had taken place outside of the six-month limitation period for laying charges in connection with summary conviction offences as set out in the *Criminal Code*. There was general agreement among the witnesses that the six-month limitation period applicable to the Act's summary conviction offences is too short. It leaves little time for conducting investigations and thus makes the Act difficult, if not impossible, to enforce. As a result, there is little motivation for lobbyists to take seriously the need to comply.

The Minister proposed to increase the limitation period to twelve months and many witnesses supported this proposal. One witness, however, recommended a two-year rather than a twelve-month period, noting that investigations often take longer than one year to complete.

The Committee supports a lengthening of the statutory limitation period for summary conviction offences under the Act. We feel, however, that an extension from six to twelve months may not provide sufficient time to investigate alleged offences. We therefore recommend that:

The limitation period applicable to summary conviction offences under the *Lobbyists Registration Act* be increased from six months to two years.

C. FILING INFORMATION WITH THE REGISTRY

The LRA provides that within ten days after entering into an undertaking to lobby on behalf of a client, a Tier I lobbyist must file an information return. Tier II lobbyists are required to register within two months of undertaking their duties and to renew their registrations within two months after the end of each calendar year if lobbying continues to be a significant part of their duties in the new year. Earlier in our report, we recommended that the same general disclosure requirements should apply to all lobbyists. Having established what information should be disclosed, we now turn to the question of when disclosure should take place.

The Committee believes that all lobbyists should be subject to the same time requirements for reporting information to the Registrar. The current annual reporting requirement for Tier II lobbyists produces a flood of Tier II registrations during the first two months of each year. Having all lobbyists file when they undertake various lobbying activities would spread registrations more evenly throughout the year and ease the burden on the Registry. As a result, administration of the Act would be simplified and those using the Registry would have better evidence of when lobbying was taking place. While some Tier II lobbyists may consider a move toward more frequent filings burdensome we would argue that a uniform approach to disclosure and filing is in the public interest and must be adopted if a revised Act is to address many of the criticisms levelled against it.

The Committee is of the view that the present ten-day filing requirement for Tier I lobbyists is appropriate and should be extended to cover filings by all lobbyists. We therefore recommend that:

Lobbyists be required to file information with the Registry of Lobbyists within ten days of undertaking their lobbying activities.

The Minister of Consumer and Corporate Affairs pointed out to the Committee that the present ten-day period during which Tier I lobbyists must register was put in the Act to make it possible to identify who is lobbying while the lobbying is under way. In situations where a lobbying effort lasts for less than ten days, information will not appear in the Registry until after the activity has ceased. He felt that the Act should address such short-term lobbying. The Committee agrees and recommends that:

Where a lobbying undertaking is to last less than ten days, information should be filed with the Registry of Lobbyists before or at the same time as the lobbying activity is undertaken.

The Act requires lobbyists to notify the Registrar of any changes in the information filed in the Registry as soon as it is practicable to do so. The Committee finds this requirement vague; it essentially asks lobbyists to let the Registrar know of any changes in their activities when it is convenient for them to do so. The Committee sees this as an invitation to procrastinate. Unless lobbyists are required to update information within a reasonable period of time, substantial amounts of irrelevant and inaccurate data will remain in the Registry and transparency will suffer.

To ensure that the Registry is up-to-date and accurate, we propose that all lobbyists be required to notify the Registrar of changes in information contained in the Registry within a specific period of time. The Committee therefore recommends that:

Lobbyists be required to inform the Registrar in writing of any changes in the information contained in the Registry of Lobbyists within 30 days after the changes have taken place.

Although the Act does not specifically state that lobbyists must file a termination notice when a lobbying undertaking has been completed, this is surely implied in the requirement to notify the Registrar of changes in the information filed. It would appear, however, that many lobbyists are not aware of the need to file termination notices.

The Committee believes that the Act must be clarified to ensure that lobbyists are obliged to notify the Registrar of a termination of their activities; otherwise, the Registry will contain information that is no longer pertinent. The Committee therefore recommends that:

Lobbyists be required to advise the Registrar in writing of the termination of a lobbying undertaking within 30 days after the undertaking has been completed.

The Committee is of the view that filings under the Act could be more timely and the information in the Registry could be more relevant if an electronic filing system were put in place. Such a system would also realize efficiencies and expedite access to information in the Registry. The Committee therefore recommends that:

The Registry of Lobbyists establish a system that would permit lobbyists to file information by electronic means.

D. EDUCATION

The Lobbyists Registration Branch seeks to promote awareness by advising lobbyists, public office holders and the general public about the Act. It also disseminates information through interviews, presentations, correspondence, and the distribution of information packages. The third Annual Report on the administration of the Act notes that an information campaign was undertaken to inform potential lobbyists of the registration requirements under the Act.

The Committee places great emphasis on the need to educate lobbyists, public office holders and the public about the Act. Heightening awareness in this way not only promotes compliance and prevents offences but also makes the public better informed about how government decisions are made and the pressures that are brought to bear on public officials. We commend the Lobbyists Registration Branch for its work in this regard.

The Committee believes that educating potential lobbyists and others about the Act should continue to be an important facet of the Branch's work. Achieving compliance through education is a cost-effective method of serving the public interest. The Committee therefore recommends that:

The Government take all possible steps to encourage the Lobbyists Registration Branch to continue its work in informing lobbyists, public office holders and the Canadian public about the *Lobbyists Registration Act*.

E. ANTI-AVOIDANCE

As noted earlier, we have not uncovered any wrongdoing by lobbyists or discovered any contravention of the Act; however, we wish to ensure that lobbyists adhere to the spirit as well as the letter of the law. We believe that this could be achieved through a general provision to catch cases that may not be covered by the specific reporting rules found in the Act. The Committee therefore recommends that:

In order to ensure that lobbyists adhere to the object and spirit of the *Lobbyists Registration Act*, the Act contain a general anti-avoidance provision to encompass abusive or artificial schemes designed to circumvent the registration provisions.

CHAPTER 7

A Professional Association and a Code of Ethics for Lobbyists

In its 1987 report to the House, the Standing Committee on Elections, Privileges and Procedure advocated the formation of an association of lobbyists in addition to a system of registration. The Standing Committee believed that government had an important role to play in this process. Committee members unanimously recommended:

> . . .that the government consult with members of the lobbying industry to discuss the formation of an association of lobbyists in addition to the system of registration. This will put the responsibility for day to day conduct of the lobbying industry squarely where it belongs, on the industry itself.

The establishment of an association would permit the lobbying community to become self-disciplining, a goal which this Committee views as highly desirable. This would be achieved through a code of ethics which the association — not government — would enforce. Adherence to the code, while a condition of membership in the association, would not constitute a licence to lobby. Those found to be in violation by their peers could continue to practise their trade but would be deprived of the advantages of membership in a professional association. It would be up to the clients of government relations firms to determine whether or not they wanted their interests represented by a company that failed to meet the standards of the industry's professional association. The Committee believes that this would constitute a powerful sanction against unethical behaviour. The Committee agrees with witnesses who advocated this approach, suggesting that self-discipline in addition to the existing registration system would ensure that potential abuses were further minimized.

The Committee strongly favours the establishment of an association for lobbyists with a code of ethics for its members and is very disappointed that to date the industry has failed to accomplish this task. We recognize that lobbyists face a number of difficulties in forming an association and crafting a code of ethics. In an enterprise as competitive as lobbying it is understandable that some have reservations with regard to a project that would require close cooperation with fierce rivals. There is considerable diversity within the lobbying community itself; practitioners come from a variety of backgrounds and disciplines and hold differing views on how to conduct their affairs. Consensus on establishing a professional association and crafting something as fundamentally important and binding as a code of ethics would certainly not be easy.

This being said, however, these factors do not detract from the need for an association and an industry-wide code of ethics. Lobbying has matured; it has, as this report has reiterated, become an important component of the policy process at the federal level. It has, in short, become a profession and practitioners have already established informal conventions surrounding the conduct of their trade. The Committee was impressed to learn that many of them have already created their own codes of conduct which are made available to potential clients and which could provide the foundations for an industry-wide standard. The Committee also notes that other professional associations in Canada have codes of ethics that might serve as models that the lobbying industry could modify to suit its own purposes. In short, there are no lack of examples — both among other professions and within the lobbying community itself — when it comes to the creation of a standard code of ethical practice.

The Committee does not see the impediments to the formation of an association as insurmountable. The incentives are already present. Benefits would include an enhanced public awareness of the role and utility of lobbying, greater legitimacy for the profession, an opportunity to develop and reinforce the skills of practitioners and a means of creating fairer competition among lobbyists by establishing a common set of rules.

Therefore, after careful consideration, the Committee strongly recommends that:

Lobbyists proceed immediately to establish a professional association with an industry-wide code of ethics.

The Committee will monitor closely the industry's progress toward the establishment of a professional association and a code of ethics. The Committee reserves the right to hold hearings on this issue at a later date.

CHAPTER 8

General Matters

Throughout our review of the Act, we became aware of rapid changes that are affecting lobbying in this country. These changes are certain to continue, fuelled by several factors.

Technological advances, a growing sophistication on the part of government relations practitioners, a refined understanding of how the policy process operates, and competitive forces all affect the way the lobbying industry operates. The Committee was impressed by the array of techniques and expertise already used by lobbyists in pursuit of their goals. These techniques show every indication of multiplying.

Canadian society has also changed in the short time since the Act was implemented. Canada's demographic composition is constantly being transformed as the population ages and new Canadians arrive to make their home in this country. As our economy is restructured to meet the demands of the twenty-first century, the career-patterns and educational backgrounds of Canadians are changing with it. Collectively, these societal changes are altering the mixture of needs and expectations of Canadians with respect to their federal government. Lobbying, which to a large extent serves as an intermediary mechanism between citizens and government, will change to reflect these altering patterns of demand.

Government and its structures and its role in Canadian society, will also change. Some of these changes will be in response to the new sets of demands just mentioned. Others will occur as governments adjust their policies to new understandings of their role. Global political, economic, and environmental conditions will equally play a role in influencing the shape of government in years to come.

Taken together, these factors are likely to ensure that lobbying in the future — how it is conducted, by and for whom, and for what purposes — will little resemble the phenomenon we now know. Thus, in the Committee's view, it is imperative that the *Lobbyists Registration Act* be the subject of periodic parliamentary review to ensure that its provisions keep pace with changes in lobbying. Lack of such review would jeopardize the Act's ability to fulfil the goals it was designed to meet. Moreover, we believe that parliamentarians, whose paramount responsibility is the protection of the interests of the Canadian people, must be guaranteed a continued role in overseeing the operation of this Act and the behaviour of the industry with which it is concerned. Future parliamentary review will ensure that this is the case.

The Committee therefore recommends that:

There be a comprehensive review of the *Lobbyists Registration Act* by a committee of Parliament three years after amendments to the Act come into force.

APPENDIX A

List of Witnesses

Associations and Individuals	Issue	Date
Aerospatiale Canada Inc.: Michel Troubetzkoy, President.	59	Thursday, February 25, 1993
Boyer, Patrick, Member of Parliament, Etobicoke—Lakeshore.	53	Tuesday, February 9, 1993
Canadian Bar Association: Melina Buckley, Senior Director, Legal and Governmental Affairs; and Ron Atkey, Member-at-Large.	59	Thursday, February 25, 1993
Canadian Broiler Hatching Egg Marketing Agency: Paul Jelley, General Manager.	59	Thursday, February 25, 1993
Canadian Egg Marketing Agency: Dr. Gerry Gartner, Chief Executive Officer.	59	Thursday, February 25, 1993
Corporation House Ltd.: Sam Hughes, Chairman; and Daniel Tessier, Director, Client Services.	56	Wednesday, February 17, 1993
Dairy Farmers of Canada: Richard Doyle, Executive Director.	59	Thursday, February 25, 1993
Daniels, Mark, Former Deputy Minister, **Department of Consumer and Corporate Affairs**	59	Thursday, February 25, 1993
Department of Consumer & Corporate Affairs: Corinne MacLaurin, Registrar, Lobbyists Registration Act.	51	Tuesday, February 2, 1993
Earnscliffe Strategy Group: Michael W. Robinson, Principal; William J. Fox, Principal; and Harry J. Near, Principal.	55	Tuesday, February 16, 1993
Eggertson, Bill.	58	Tuesday, February 23, 1993
Executive Consultants Ltd.: Stephen P. Markey, Vice-Chairman; and J. Richard Bertrand Vice-Chairman.	52	Thursday, February 4, 1993
Government Consultants International Inc.: Ramsey Withers, President and Chief Operating Officer; Scott Proudfoot, Vice-President; Gary Ouellet, Chairman and Chief Executive Officer; David MacDonald, Senior Consultant.	56	Wednesday, February 17, 1993

Government Policy Consultants Inc.: Patrick J. Ross, Senior Vice-President & Chief Operating Officer; and Torrance Wylie, Chairman.	54	Thursday, February 11, 1993
Hill and Knowlton Inc.: David MacNaughton, President and Chief Executive Officer.	58	Tuesday, February 23, 1993
Lobby Monitor, Lobby Digest and Public Affairs Monthly: Sean Moore, Editor; and John Chenier, Publisher.	51	Tuesday, February 2, 1993
Native Council of Canada: Daniel Ryan, Executive Director; Philip Fraser, Vice-President; and Bob Groves, Director of Intergovernmental Affairs.	52	Thursday, February 4, 1993
Parliamentary Agent: Ken Beeson, Managing Director.	55	Tuesday, February 16, 1993
Post, George, Policy Consultant.	53	Tuesday, February 9, 1993
Pross, A. Paul, Professor.	59	Thursday, February 25, 1993
Public Affairs Association of Canada: David McGown, Director, Ottawa Program	58	Tuesday, February 23, 1993
S.A. Murray Consulting Inc.: Susan A. Murray, President; and Richard Binhammer, Vice-President.	57	Thursday, February 18, 1993
Stanbury, William T., Professor.	57	Thursday, February 18, 1993
Union of B.C. Indian Chiefs: Chief Saul Terry, President.	54	Thursday, February 11, 1993
Vincent, Pierre H. (The Honourable), **Minister of Consumer and Corporate Affairs.**	53	Tuesday, February 9, 1993

APPENDIX B

List of Submissions

1. Booiman, S.H.
2. Broderick, Marinelli, Amadio, Sullivan & Rose
3. * Canadian Bar Association
4. Canadian Society of Association Executives
5. Canadian Jewish Congress
6. * Corporation House Ltd.
7. Crow, Stanley
8. * Daniels, Mark
9. * Earnscliffe Strategy Group
10. * Eggertson, Bill
11. * Executive Consultants Ltd.
12. * Government Consultants International Inc.
13. * Government Policy Consultants Inc.
14. * Hill & Knowlton Inc.
15. Howe, L.
16. Jones, M. Hugh A.
17. Laub, Wanda
18. * MacLaurin, Corinne, Registrar, Lobbyists Registration Act
19. * Native Council of Canada
20. * Parliamentary Agent
21. * Post, George
22. * Pross, A. Paul, Professor

23. * Public Affairs Association of Canada

24. Robinson, Walter J.

25. * S.A. Murray Consulting Inc.

26. Sepulchre, H. Etienne

27. * Stanbury, William T., Professor

28. * Union of British Columbia Indian Chiefs

29. * Vincent, Pierre H. (The Honourable), Minister of Consumer and Corporate Affairs

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* Please note that these associations or individuals have appeared

Request for Government Response

Your Committee requests that the Government table a comprehensive response to the Report within 60 days.

A copy of the relevant Minutes of Proceedings and Evidence of the Standing Committee on Consumer and Corporate Affairs and Government Operations (*Issues 51, 52, 53, 54, 55, 56, 57, 58, 59, and 61 which includes this Report*) is tabled.

Respectfully submitted,

FELIX HOLTMANN, M.P.
Chairman.

Minutes of Proceedings

THURSDAY, MARCH 25, 1993
(81)

[Text]

The Standing Committee on Consumer and Corporate Affairs and Government Operations met *in camera* at 9:34 o'clock a.m. this day, in Room 701, La Promenade, the Chairman, Felix Holtmann, presiding.

Members of the Committee present: Don Boudria, Felix Holtmann and John R. Rodriguez.

Acting Member present: Albert Cooper for Darryl Gray.

In attendance: From the Research Branch of the Library of Parliament: Margaret Smith and Brian O'Neal, Research Officers.

The Committee proceeded to the consideration of its future business.

At 9:57 o'clock a.m., the Committee adjourned to the call of the Chair.

TUESDAY, MAY 4, 1993
(82)

The Standing Committee on Consumer and Corporate Affairs and Government Operations met *in camera* at 9:46 o'clock a.m. this day, in Room 209, West Block, the Chairman, Felix Holtmann, presiding.

Members of the Committee present: Don Boudria, Dorothy Dobbie, Darryl Gray *(Bonaventure-Iles-de-la-Madeleine)*, Felix Holtmann, John R. Rodriguez and Scott Thorkelson.

In attentance: From the Research Branch of the Library of Parliament: Margaret Smith and Brian O'Neal, Research Officers.

In accordance with its Order of Reference from the House of Commons dated Thursday, November 19, 1992, the committee resumed consideration of a comprehensive review of the Lobbyists Registration Act. *(See Minutes of Proceedings and Evidence, Tuesday, February 2, 1993 - Issue No. 51.)*

The Committee proceeded to the consideration of options for a draft report.

At 11:36 o'clock a.m., the Committee adjourned to the call of the Chair.

WEDNESDAY, MAY 5, 1993
(83)

The Standing Committee on Consumer and Corporate Affairs and Government Operations met *in camera* at 3:43 o'clock p.m. this day, in Room 705, La Promenade, the Chairman, Felix Holtmann, presiding.

Members of the Committee present: Don Broudria, Darryl Gray (*Bonaventure-Iles-de-la- Madeleine*), Felix Holtmann, John R. Rodriguez and Scott Thorkelson.

In attendance: *From the Research Branch of the Library of Parliament*: Margaret Smith and Brian O'Neal, Research Officers.

In accordance with its Order of Reference from the House of Commons dated Thursday, November 19, 1992, the Committee resumed consideration of a comprehensive review of the Lobbyists Registration Act. (*See Minutes of Proceedings and Evidence, Tuesday, February 2, 1993 - Issue No. 51*).

The Committee proceeded to the consideration of options for a draft report.

At 5:35 o'clock p.m., the Committee adjourned to the call of the Chair.

TUESDAY, MAY 25, 1993
(84)

The Standing Committee on Consumer and Corporate Affairs and Government Operations met *in camera* at 9:37 o'clock a.m. this day, in Room 536, Wellington Bldg., the Chairman, Felix Holtmann,

Members of the Committee present: Don Boudria, Darryl Gray (*Bonaventure-Iles-de-la-Madeleine*), Felix Holtmann and John R. Rodriguez.

Acting Members present: Ken Monteith for Dorothy Dobbie and Barry Moore for Gabriel Fontaine.

In attendance: *From the Research Branch of the Library of Parliament*: Margaret Smith and Brian O'Neal, Research Officers.

In accordance with its Order of Reference from the House of Commons dated Thursday, November 19, 1992, the Committee resumed consideration of a comprehensive review of the Lobbyists Registration Act. (*See Minutes of Proceedings and Evidence, Tuesday, February 2, 1993 - Issue No. 51.*)

The Committee proceeded to the consideration of options for a draft report.

At 11:14 o'clock a.m., Darryl Gray took the Chair as Acting Chairman.

At 11:16 o'clock a.m., Felix Holtmam took the Chair as Chairman.

At 12:10 o'clock p.m., the Committee adjourned to the call of the Chair.

TUESDAY, MAY 25, 1993
(85)

The Standing Committee on Consumer and Corporate Affairs and Government Operations met *in camera* at 3:48 o'clock p.m. this day, in Room 536, Wellington Bldg., the Chairman, Felix Holtmann, presiding.

Members of the Committee present: Don Boudria, Darryl Gray (*Bonaventure-Îles-de-la-Madeleine*), Felix Holtmann and John R. Rodriguez.

Acting Members present: Benno Friesen and Ken Monteith for Scott Thorkelson.

In attendance: From the Research Branch of the Library of Parliament: Margaret Smith and Brian O'Neal, Research Officers.

In accordance with its Order of Reference from the House of Commons dated Thursday, November 19, 1992, the Committee resumed consideration of a comprehensive review of the Lobbyists Registration Act. (*See Minutes of Proceedings and Evidence, Tuesday, February 2, 1993—Issue No. 51.*)

The Committee proceeded to the consideration of options for a draft report.

At 5:05 o'clock p.m., the Committee adjourned to the call of the Chair.

THURSDAY, MAY 27, 1993
(86)

The Standing Committee on Consumer and Corporate Affairs and Government Operations met *in camera* at 8:44 o'clock a.m. this day, in Room 308, West Block, the Chairman, Felix Holtmann, presiding.

Members of the Committee present: Don Boudria, Dorothy Dobbie, Darryl Gray (*Bonaventure-Iles-de-la-Madeleine*), Felix Holtmann, John R. Rodriguez and Scott Thorkelson.

In attendance: From the Research Branch of the Library of Parliament: Margaret Smith and Brian O'Neal, Research Officers.

In accordance with its Order of Reference from the House of Commons dated Thursday, November 19, 1992, the Committee resumed consideration of a comprehensive review of the Lobbyists Registration Act. (*See Minutes of Proceedings and Evidence, Tuesday, February 2, 1993—Issue No. 51*).

The Committee proceeded to the consideration of a draft report.

At 11:35 o'clock a.m., the Committee adjourned to the call of the Chair.

THURSDAY, MAY 27, 1993
(87)

The Standing Committee on Consumer and Corporate Affairs and Government Operations met *in camera* at 4:01 o'clock p.m., this day, in Room 307 of the West Block, Felix Holtmann, Chairman presiding.

Members of the Committee present: Don Boudria, Dorothy Dobbie, Darryl Gray (Bonaventure-Iles-de-la-Madeleine), Felix Holtmann, John R. Rodriguez and Scott Thorkelson.

Acting Member present: Peter Milliken for Ron MacDonald.

In attendance: *From the Research Branch of the Library of Parliament*: Margaret Smith and Brian O'Neal, Research Officers.

In accordance with its Order of Reference from the House of Commons dated Thursday, November 19, 1992, the Committee resumed consideration of a comprehensive review of the Lobbyists Registration Act. (*See Minutes of Proceedings and Evidence, Tuesday, February 2, 1993 - Issue No. 51*).

The Comittee proceeded to consider its draft report.

It was agreed,—That the draft report, as amended, be adopted as the Committee's Ninth Report, and that the Clerk be authorized to make such typographical and editorial changes as may be necessary without changing the substance of the draft report to the House.

It was agreed,—That the Chairman be instructed to present the report, as amended, to the House at the earliest possible opportunity.

It was agreed,—That the Committee print in a bilingual tumbled format, 1000 copies of its Ninth Report to the House.

It was agreed,—That the Committee request that the Government table a comprehensive response to this report to this Report within 60 days.

It was agreed,—That a press conference be arranged immediately following tabling of the Report in the House.

It was agreed,—That a press release be prepared and sent upon tabling of the Report in the House.

At 4:59 o'clock p.m., the Committee adjourned to the call of the Chair.

Danielle Belisle
Elizabeth Kingston
Clerks of the Committee