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# **Standing Committee on Access to Information, Privacy and Ethics**

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**EVIDENCE**

**Thursday, February 3, 2005**

**Chair**

**Mr. David Chatters**

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## Standing Committee on Access to Information, Privacy and Ethics

Thursday, February 3, 2005

• (0905)

[English]

**The Vice-Chair (Hon. Ed Broadbent (Ottawa Centre, NDP)):**

Colleagues, I suggest we start. We're, as you will have noticed, short of a quorum, but following normal informal procedures, if we have unanimous agreement we can proceed. We won't adopt a motion. There is a motion that you have before you, a report from the subcommittee.

I'm told that we can adopt the report without the quorum, which seems a little bizarre to me, but if we can do that.... If you take a look at the third report, there are five items on it, but I would suggest that we deal with just the first item.

Wait. As I thought, we cannot adopt the report without a quorum. So I come back, full stop. We have an informal agreement. We ask our witnesses who are scheduled to appear to please come, and we will welcome them and proceed.

I would like to introduce them. There is Mr. Michael Nelson, who is the Registrar of Lobbyists. Welcome, Mr. Nelson. With him is Karen Shepherd, the director of the Lobbyists Registration Branch. Welcome, Karen. Next is Mr. Bruce Bergen, counsel, Industry Canada Legal Services. Welcome, all.

We'll now ask Mr. Nelson to launch into his statement.

**Mr. Michael Nelson (Registrar of Lobbyists, Lobbyists Registration Branch, Department of Industry):** Thank you, Mr. Chair. I do have a few remarks that I will make, and then I will be pleased to take questions.

I am grateful to the committee for its invitation and for providing us with an opportunity to address the 2003-2004 annual report on the Lobbyists Registration Act, as well as the 2003-2004 annual report on the Lobbyists' Code of Conduct.

As members know, these reports are tabled annually before both houses of Parliament, as required under sections 10 and 11 of the act. Mr. Chairman, I will focus my remarks on the legislative context for the reports, on Bill C-4, and on the proposed new regulations under Bill C-15, an act to amend the Lobbyists Registration Act, which were pre-published in the *Canada Gazette* on December 18, 2004.

[Translation]

The 2003-2004 report is the 15th annual report by the registrar on the administration of the information disclosure and public registry provisions of the Lobbyists Registration Act. This report covers the period from April 1, 2003 to March 31, 2004. As committee members no doubt know, the act provides for the public registration

of those individuals who are paid to communicate with federal public office holders in attempt to influence government decisions.

Under the act, public office holders are virtually all persons occupying an elected or appointed position in the federal government, including members of the House of Commons and the Senate and their staff, officers and employees of federal departments and agencies, members of the Canadian armed forces and the Royal Canadian Mounted Police.

The act aims at ensuring that lobbying is done in an open and transparent manner. It is based on the principle that lobbying of public office holders is a legitimate activity and that free and open access to government is an important matter of public interest.

Lobbying, or the activity that is subject to the requirements for registration as a lobbyist, is communicating with federal public office holders, whether formally or informally, in attempt to influence: the making, developing or amending of federal legislative proposals, bills or resolutions, regulations, policies, or programs; and the awarding of federal grants, contributions or other financial benefits.

The act provides for three categories of lobbyists: consultant lobbyists; in-house lobbyists (corporations); and in-house lobbyists (non profit organizations).

Specifically excluded from the registration requirements are public proceedings before parliamentary committees or other federal bodies; submissions to a public office holder with respect to the enforcement, interpretation or application of a federal law or regulation by that official; and submissions in direct response to written requests from a public office holder for advice or comment.

All lobbyists are required to disclose certain information within time limits specified in the act. The information includes the name of the client, corporate or organizational employer; the names of the parent or subsidiary companies that would benefit from the lobbying activity; the organizational members of coalition groups; the specific subject matters lobbied; the names of the federal departments or agencies contacted; the source and amount of any government funding received; and the communication techniques used, such as grass-roots lobbying. Corporations and organizations must also provide a general description of their business or activities.

The act is based on the principle of self-declaration. Therefore, the onus for registering correctly is on the lobbyists themselves, in the case of consultant and corporate lobbyists, and on the most senior officer in the case of non-profit corporations. The information they disclose is made publicly available via the online registry of lobbyists.

[English]

As members of the committee may already know the purpose of the Lobbyists' Code of Conduct, the code is to assure that Canadian public lobbying is done ethically and with the highest standards. Its objectives are to conserve and enhance public confidence and trust in the integrity, objectivity, and impartiality of government decision-making.

In a manner similar to other professional codes, the code establishes mandatory standards of conduct for all lobbyists communicating with federal public office holders. As such, it forms a counterpart to the obligations that federal officials must honour in their own codes of conduct when they interact with the public and with lobbyists.

The code sets goals in terms of integrity, honesty, openness, and professionalism that should be pursued by lobbyists. It also contains eight rules that set out specific obligations or requirements. The rules fall into three categories: transparency, confidentiality, and conflict of interest.

Lobbyists have a legal obligation to comply with the code. Under the current legislation, and where, on reasonable grounds, the registrar believes that the code has been breached, the act requires that the registrar investigate the situation. Following an investigation, a report is issued and must be tabled in Parliament.

• (0910)

Mr. Chairman, I'd like to say a few words about the entry into force of Bill C-4 and the development of the new regulations required under Bill C-15.

Bill C-4, which amended the Parliament of Canada Act, came into force on May 17, 2004. It created the separate positions of the Ethics Commissioner in the Senate and ethics officer under the Parliament of Canada. For the purpose of the Lobbyists Registration Act, that act was amended to replace the Ethics Commissioner with the Registrar of Lobbyists.

I was appointed Registrar of Lobbyists on July 29, 2004, by the Registrar General of Canada, pursuant to section 8 of the Lobbyists Registration Act. In this capacity, my responsibilities are to oversee the application of the Lobbyists Registration Act. These responsibilities were previously vested with the former Ethics Commissioner.

The legislation also led to the creation of a new lobbyists' registration branch within the Department of Industry. Because the registrar is not involved in the day-to-day operations of the branch, a new position of director was also created to oversee these operations.

In particular, the director of the branch is responsible for helping clients to register properly; for providing satisfactory answers to inquiries from lobbyists, the public, and other interested parties; and ensuring compliance with both the registration and the code of conduct.

The branch has developed new client service standards, which have been posted on its website. The standards are intended to ensure that users of the registry continue to receive quality service. I trust this new structure will ensure that the act is administered in an efficient and rigorous manner.

Bill C-15, an act to amend the Lobbyists Registration Act, is intended to enhance transparency, compliance, and enforcement of the act. Its provisions include the following important changes. First, Bill C-15 clarifies the definition of lobbying by substituting the concept that communications with public office holders must be made in an attempt to influence them, with the notion that communicating with public office holders constitutes lobbying.

As well, Bill C-15 removes the previous exception for communications made in response to requests by public office holders. This type of communication will henceforth fall under the act as an activity that is registered as though it's lobbying.

Further, the modified act will ensure that communication restricted to requests for information or with regard to a submission made to the Senate or a House of Commons committee, or a submission relating to the enforcement, interpretation, or application of an act or regulation, will not needlessly be subject to the act.

Another change is that all lobbyists will be required to file a return every six months, whereas currently in-house lobbyists for corporations are required to file only once a year. In fact, the modified act will impose most of the registration obligations that apply to in-house lobbyists for non-profit organizations on in-house lobbyists for corporations. Accordingly, the most senior officer will be responsible for filing applications on behalf of the corporation, rather than the individual employees of the corporation. This places responsibility for lobbying at the highest corporate level and will serve to reduce the administrative burden by eliminating the need for multiple filings by individual lobbyists for any given corporation.

Finally, Bill C-15 will introduce new disclosure requirements for former public office holders who become active lobbyists. The individuals will be required to disclose past employment with federal organizations.

[Translation]

The draft regulations arising from C-15 were pre-published in Part I of the Canada Gazette on December 18, 2004. We will receive comments for a 60-day period, ending February 16, 2005, after which we expect to initiate the process for final publication in Part II of the Canada Gazette. C-15 is expected to come into force in the first half of 2005, when the new regulations become effective.

The Lobbyist's Registration branch is working diligently to accommodate the changes to the legislation. Once Bill C-15 comes into force later this year, the branch will officially launch a new online registration system which will incorporate the changes required by the new legislation. The system will also be more user-friendly and will speed up the registration process.

[English]

I'll stop there, Mr. Chairman.

I would be pleased to try to answer questions.

**The Vice-Chair (Hon. Ed Broadbent):** Thank you very much, Mr. Nelson.

Mr. Tilson.

**Mr. David Tilson (Dufferin—Caledon, CPC):** Mr. Nelson, thank you for coming this morning to discuss this topic with us.

You indicated in your comments that you were appointed registrar on July 29 of last year. Can you tell us if are you still an assistant deputy minister for comptrollership and administration?

• (0915)

**Mr. Michael Nelson:** Yes, I am. That's exactly my title: assistant deputy minister, comptrollership and administration, for the Department of Industry.

**Mr. David Tilson:** Doesn't that cause a problem as to whether or not there's a conflict of interest in your position as assistant deputy minister and as Registrar of Lobbyists?

**Mr. Michael Nelson:** In my view, it does not cause a problem. What is required is total independence from my functions as assistant deputy minister.

I'll elaborate on that just a little. What is required is that, in my normal responsibilities as ADM, I report through the deputy minister, for example. I present reports to the deputy minister, to the minister.

**Mr. David Tilson:** But you investigate complaints of how lobbyists interact with the government, including and specifically the Ministry of Industry.

**Mr. Michael Nelson:** That's right.

**Mr. David Tilson:** That's called a conflict.

**Mr. Michael Nelson:** My view is that my obligation in that regard is to report with respect to the code of conduct, for example.

**Mr. David Tilson:** I understand that, sir. I'm just saying it seems like you're investigating yourself.

I'm saying this with due respect.

**Mr. Michael Nelson:** I understand.

**Mr. David Tilson:** It's not your fault. It's an issue in which we look at one website and see you as a deputy minister, and we look at another website and we see you as the Registrar of Lobbyists, who in turn could investigate yourself. It's very strange.

You may or may not agree with me. I think you have no choice but to agree with me, but that's up to you,

That said, the question to be considered is whether you should be removed from the government organizational structure and provided parliamentary status, in the same way that happened with the Ethics Commissioner.

**Mr. Michael Nelson:** My view on the appointment of the Registrar of Lobbyists is that as long as the conditions of independence from the ministry are respected—and every indication I have so far is that they have been—there's no need for that.

**Mr. David Tilson:** Okay. We'll let you think about that one.

Do you have an organizational chart showing all the positions and salary ranges of your office?

**Mr. Michael Nelson:** I'm not sure whether we have the salary ranges.

**Mr. David Tilson:** Could you undertake to provide that to us?

**Mr. Michael Nelson:** Absolutely.

I could describe the organization to you very quickly.

**Mr. David Tilson:** Could you do that, and also undertake to provide us a copy of it?

**Mr. Michael Nelson:** Absolutely.

The organization consists of four people at this point: Karen Shepherd, the director of the branch; a deputy director of the branch; an administrative-level individual, who actually interacts with the online registration system and provides advice to people on how to register, that sort of thing; and an administrative assistant to operate the office.

**Mr. David Tilson:** Are these people connected to Industry Canada as well?

**Mr. Michael Nelson:** Yes, they are.

**Mr. David Tilson:** What is their position with Industry Canada?

**Mr. Michael Nelson:** The lobbyist registration branch is like any other branch within Industry Canada.

**Mr. David Tilson:** Okay.

One of the issues in questioning the three commissioners who have come to us in the past is their budgeting process. Can you tell us the process you follow for your office budget?

**Mr. Michael Nelson:** My office budget is an appropriated budget, part of the appropriations of Industry Canada. In supplementary estimates (A) in the fall, \$313,000 was voted from the fiscal framework for the operations of this office, and there remains a residual amount from the operations of the former Ethics Counsellor that was within Industry Canada's budget, which I have access to.

So in total, for example, for this fiscal year, I expect to spend in the order of \$550,000—it's not the end of the fiscal year quite yet—on the operations of the office. That includes salaries and operations, creation of the new computer system, and so on.

• (0920)

**Mr. David Tilson:** Would you undertake to give us a copy of this office budget and a line-by-line breakdown?

**Mr. Michael Nelson:** I will, absolutely.

**Mr. David Tilson:** Thank you, sir.

Do you have any plans with respect to the—what do you call yourself—department?

**Mr. Michael Nelson:** The branch. Actually, the registration branch.

**Mr. David Tilson:** The branch. We're getting back to my first question.

Do you have any plans for the branch, like restructuring?

**Mr. Michael Nelson:** I've been in operation now since the end of July. My first priority was to ensure that I could administer the current act and to hire the staff in order to do that.

The second priority was ensuring that I could get ready for the amendments to Bill C-15, which included getting the computer system ready, because as you may be aware, the vast majority of our registrations are online, nearly 100%, so before the new regulations could come into effect, it was very important to make sure that was ready.

The third priority was actually the gazetting of Bill C-15, and the fourth priority will be cleaning up any cases that I've inherited from my predecessor. Then I do need to look to the future to determine exactly how I would operate under the new legislation and determine what new work might need to be done to ensure that the new act is put in place.

On restructuring, to answer that question specifically, the nature of the work, it strikes me, of the branch, on a day-to-day basis, requires a staff. The branch is primarily registrations online, but when you have an investigation, suddenly you have a jump in work, so the question is how best to staff that.

My preference right now is to have someone on my staff who would conduct investigations under the Lobbyists' Code of Conduct, for example, so that I wouldn't have to go outside to worry about other conflicts of interest. I would rather one of my staff did that. So the only restructuring I am looking at doing is how I would manage these spikes in work, if you will, and how best to do that efficiently.

**The Vice-Chair (Hon. Ed Broadbent):** Mr. Laframboise?

[Translation]

**Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ):** Thank you, Mr. Chairman.

I want to make sure I understand correctly. Section 10.1 of the act says that:

10.1 The governor in council may designate any person as the ethics counsellor for the purposes of this act.

Who is the ethics counsellor in your organization?

**Mr. Michael Nelson:** There used to be an ethics counsellor, but Bill C-4 divided those functions between the Office of the Ethics Commissioner and the registrar of lobbyists. The ethics commissioner, Mr. Bernard Shapiro, deals with certain aspects of ethics, and the registrar of lobbyists, myself, retained certain responsibilities that have only to do with lobbying.

**Mr. Mario Laframboise:** Fine. Any complaints about lobbyists should be directed to the ethics commissioner. Right?

**Mr. Michael Nelson:** Complaints that relate to the Conflict of Interest and Post-Employment Code for Public Office Holders are handled by the ethics commissioner. Complaints about the behaviour of lobbyists are handled by me under the Lobbyist Code of Conduct.

● (0925)

**Mr. Mario Laframboise:** On page 3 of your report, tabled March 31, 2004, you refer to the complaints that have been received. You say that in 2003-2004, four complaints were received and replied to: three from complaints received during the year and one from a complaint received in previous years. All three complaints received were substantially the same. They had to do with financial contributions to a minister's campaign for the leadership of his or her political party. Who replied to those complaints? On the basis of the

information provided, it was found that there were no reasonable grounds. Was it the ethics commissioner who replied to those complaints?

**Mr. Michael Nelson:** At that time, the ethics commissioner didn't exist. During that year, it was the ethics counsellor, Mr. Howard Wilson, who was responsible for dealing with complaints.

**Mr. Mario Laframboise:** At the bottom of page 4, it says that "work on one complaint raised in 2002-2003 was also continuing." Who replied to the pending complaints when Mr. Wilson was replaced by the ethics commissioner?

**Mr. Michael Nelson:** Complaints relating to the Lobbyists Code of Conduct are handled by me. I understand how that might be confusing. When Mr. Wilson was the ethics counsellor, he dealt with complaints relating to both aspects, the Code of Ethics and the Code of Conduct.

Now, if one of the previously existing complaints relates to the Lobbyists Code of Conduct, then it's for me to deal with. If it has more to do with the code of ethics, I send it to Mr. Shapiro.

**Mr. Mario Laframboise:** In that case, it says, in the last paragraph on page 4:

It concerns a charitable golf tournament where private sector participants, for a fee, could golf with a Cabinet minister.

On March 31, 2004, the reply to this complaint had not been completed. Did you complete it in 2004?

**Mr. Michael Nelson:** No. That complaint is actually under judicial review right now. It's currently pending before the court.

**Mr. Mario Laframboise:** When the case goes to court, you have to withdraw from the matter. Is that right?

**Mr. Michael Nelson:** Yes, for the time being. Afterward, we don't know. We are awaiting the legal results.

**Mr. Mario Laframboise:** Thank you.

**Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.):** The matter is on hold until the legal aspect, the court appearance, is settled once and for all. Then you can take another look at it and see whether there is anything you can do.

**Mr. Michael Nelson:** Exactly.

**Mr. Mario Laframboise:** So you never issue a report when a legal proceeding has been launched. In the end, all lobbyists have to do to get around you is to take the matter to court. Then you can no longer comment. Right?

● (0930)

**Mr. Michael Nelson:** If a matter is before the court, it's true that it's the court that deals with it. But in the fall, for example, there was a case where, on review by the Federal Court of Canada, the judge held that one of the case should be reviewed by me. I'll be doing that.

**Mr. Mario Laframboise:** The judge asked that you comment on whether you find it to be in line. He's going to examine the case afterwards. Is that right?

**Mr. Michael Nelson:** Yes.

**Mr. Mario Laframboise:** The court is really starting to make a lot of sense.

[English]

**The Vice-Chair (Hon. Ed Broadbent):** Thank you, Mr. Laframboise.

Mr. Powers.

**Mr. Russ Powers (Ancaster—Dundas—Flamborough—Westdale, Lib.):** Thank you, Mr. Chair.

Welcome, and thank you for attending. I would like to thank you and our Library of Parliament staff for providing us with all the background information. I will ask you some questions that perhaps should go into the public record.

The first is to take me through the process and the issue raised with regard to perceived conflict of interest. I'm sure that will have to be answered some time, so I won't go there.

Help me with the situating of your branch and why your jurisdiction, the lobbyist registration branch, is housed within the Department of Industry. My assumption would be that the bulk of lobbyists would have a relationship there. Is it a convenient place, or was there a rationale as to why your branch should be housed in the Department of Industry?

**Mr. Michael Nelson:** The act actually says that the Registrar General of Canada, who is the Minister of Industry, may appoint anyone in his or her office as the registrar. I am in the minister's office to that extent. When the Office of the Commissioner of Ethics was created outside that regime, the residual responsibilities under the Lobbyists Registration Act left the minister able to appoint someone in his office. So that's what he did.

That's my understanding of the way it would work. Is that correct, Bruce?

**Mr. Bruce Bergen (Counsel, Industry Canada Legal Services, Department of Industry):** That's my understanding as well, Michael.

**Mr. Russ Powers:** So the siting of your position is a direct placement as determined by the act and the responsibilities are vested with the Minister of Industry by extension.

**Mr. Michael Nelson:** Right. I can't speak to why the Minister of Industry is the Registrar General of Canada, but in this case, since he is and can appoint someone in his office, then logic would determine who it should be within that office and who the person is who seems to have the best ability to carry out that office.

**Mr. Russ Powers:** Mr. Chairman, I don't think there's any need for the minister to attend, but perhaps that question could be asked as to whether it's an historical placement or whether there was a logical rationale as to why it came down. Perhaps it's only a question that we pursue for information for the committee's assistance.

Once again, your documentation is excellent. How many registered lobbyists are there? We're talking not only on the Hill with the politicians, but obviously within all the departments, the crown corporations, and all that.

**Mr. Michael Nelson:** The figures are as of February 1. One of the nice things about having an online system is that it's going to get

even better for Canadians to be able to see who is a lobbyist. This is not a free commercial, but in terms of the success of something going online, it's pretty astounding. Nearly 100% of our registrations are online, so that means I can actually answer this question in real time for you.

There are 1,034 consultant lobbyists, 304 in-house lobbyists corporate—that's people who are within—and 330 in-house lobbyists for organizations.

There's a precision I would want to make to that. Because the act requires that you register for every engagement, if I look over time—and you can see this in the report—the actual numbers for consultant lobbyists appear to be about a factor of three. There are usually about three times as many actual registrations in the system as there are active lobbyists. In the world of 1,000 consultant lobbyists, we're probably in the world of 3,000 registrations.

• (0935)

**Mr. Russ Powers:** I'm certain that I'm not the only one who has gone online to look at that. For the three categories that you've laid out, are the definitions for each of those categories clearly defined within your web page or online scenarios for someone like me who can only guess at what the definitions are?

**Mr. Michael Nelson:** We do. I don't know whether we have the actual web page with us today, but we can certainly make it available to you. We try to be as clear as possible about that, because of course the clearer you are on the web, the fewer people you have to pay to answer the phone and address those questions. If it isn't sufficiently clear, then we need to make it quite clear.

We have the web page here. There are definitions. I could read them out for you, if you wish.

**Mr. Russ Powers:** No, that's fine. They're there. Thank you.

**Mr. Michael Nelson:** Okay. Really, if they aren't clear enough, then we need to make them more clear. For me, anyway, there's a very direct link between making your web page as wonderful as it can be and not having to hire more people to answer the phone.

**Mr. Russ Powers:** Could you reconfirm once again the date that your branch came into being?

**Mr. Michael Nelson:** Minister Emerson appointed me on July 29.

**Mr. Russ Powers:** I'll ask this question. In that brief period since you became the official branch, I'll call it—and obviously you can't or won't provide the details—has your division been investigating violations or perceived violations?

**Mr. Michael Nelson:** I'll make a precision here, and believe me, it's certainly not for the purpose of obfuscating at all. When we talk about investigations, it's almost with a capital *I*. In fact, what the act requires be done.... And I'll make another distinction. There are violations of the act—that is, people who aren't registered—and then there are breaches under the code of conduct, where people are registered but they're not behaving according to the rules.

**Mr. Russ Powers:** Mr. Chair, could we leave it at that? That was where my questions were going to go from there. If I get a chance to come back and go further later on in the meeting, we'll move on to those questions.

**The Vice-Chair (Hon. Ed Broadbent):** That's fine, Mr. Powers.

With the indulgence of the committee, I will now proceed as I would normally and take my turn at questioning.

I'd like to pick up on the conflict of interest issue too, for clarification. As was indicated by Mr. Tilson, this is obviously not intended in any way to question your personal integrity. We're talking about structures here.

**Mr. Michael Nelson:** I understand that, Mr. Chairman.

**The Vice-Chair (Hon. Ed Broadbent):** But can you elaborate on the initial answer you gave to the first questions? You indicated quite clearly that in the hierarchy of the Department of Industry, you're there in the line of responsibility up to the Minister of Industry. At the same time, I think you nodded in agreement that most of the lobbying is probably done within the Department of Industry itself. Is that true?

Let me ask that part of it a different way, if I may. Do you have a record of which departments had most of the lobbying done with them?

**Mr. Michael Nelson:** We have a very precise record. It's actually in the report on the act, and you're absolutely right, Industry Canada is number one on that list. It's a long list. What we do is publish the top 20. So the answer to your question is yes.

**The Vice-Chair (Hon. Ed Broadbent):** Roughly, off the top of your head, can you give us the percentage of all the lobbying? Would you say it's 50% with Industry or...?

It may be an unreasonable question. You would have to just look at your main numbers.

**Mr. Michael Nelson:** I don't think I could crunch those numbers. We can certainly get back to you with that answer.

**The Vice-Chair (Hon. Ed Broadbent):** If you can, get back to us, but you don't need to do that. If it's already published and you have the individual departments listed, we can easily figure that out, right?

• (0940)

**Mr. Michael Nelson:** Yes, we do.

**The Vice-Chair (Hon. Ed Broadbent):** Well, then it seems to me someone in your position—not you, but you hold the position—is in direct conflict of interest when dealing with issues that potentially lead to criticism of your own department on the one hand or lobbyists on the other.

You may not be able to answer this question, given your position, and if that's so, you can indicate it. But since you've assumed the position, have you been involved in any discussions as to why your function wasn't hived off, made completely independent the way the ethics commissioner's was, and made subject to a report to Parliament, say? Would you feel more comfortable if you had that degree of autonomy from the Department of Industry? It's that kind of issue.

**Mr. Michael Nelson:** There are a couple of questions there.

First, I haven't been involved in any discussions of that nature. The second question, though, is whether I would feel more comfortable. The job I have at Industry Canada is not one that runs any programs. I'm the senior financial officer for the department, so I have the financial functions of the department. I

have audit and evaluation, I have security, accommodation, and I have the lobbyists registration branch.

So the RPPs, the report on plans and priorities you all see.... I don't get lobbied. I am an administrative official, if you will—

**The Vice-Chair (Hon. Ed Broadbent):** If you'll permit me, I'll make a point. I don't think the issue is whether you're lobbied directly but whether you're investigating complaints about lobbying that was done with your department. That's the issue.

**Mr. Michael Nelson:** If I were doing that, and clearly if we're number one on this list here, that is something that could very likely happen.

The key thing for me, in my level of comfort, is that there is no expectation and no pressure by anyone within the department hierarchy, particularly above me—that would be my deputy minister, associate deputy minister, or the minister's office—to inquire into what I'm doing, to influence what I'm doing, Mr. Chair.

Having now been in the position since the end of July, I am appropriately isolated, if you will, within the department. I don't get calls from the minister's office. If I had my hat on as the ADM of comptrollership and administration and was being called before the industry committee, for example, the protocol within the department would say I had better ask before I agree to appear. When I got the call to come to this committee, I didn't ask anyone. I decided that I would accept the call.

I guess when I say I'm appropriately isolated, I feel very comfortable, as a career public servant, that this structure is going to allow me to do my job and that nobody is going to try to influence me. Certainly that's the indication so far.

**The Vice-Chair (Hon. Ed Broadbent):** I'll just make an observation and then go on to another issue.

I think that's the classic response of a person with integrity who finds himself maybe in a conflict of interest position. That is to say that you are a man of integrity—I have no reason to doubt that—but the issue is that your whole career line of responsibility is upward in the same department on which you are passing judgment, and that may present you with a conflict of interest.

I'm going to leave that. I want to go on to two other matters in my own time—I'm watching that time rigorously—and I'll ask both questions right now.

First, I think it would be a good idea—and I'll get your response—for ministers to keep a precise record of the time spent with individual lobbyists. They should have a record kept that should be made available maybe every six months, as to which lobbyists they've met with and how much time they spent with an individual lobbyist. I would welcome your comment on that.

The other thing is that it has been suggested by a number of people that lobbyists should be required to indicate how much they spend on a particular project for which they are lobbying.

Could you give me your response to both of those issues?



**Mr. Michael Nelson:** My response to the first is that I haven't put my mind to whether that would be something that would be, should be, or could be in legislation or in regulations. It sounds like a reasonable administrative practice.

A little while ago I asked, "What are my priorities?" I think one of my priorities is getting ready for the next review of the act. That's the sort of thing I would expect to put into the hopper.

On the second, there are American regimes that actually do require that sort of financial information—how much money you're spending on things—to be divulged. I note that in the act, if I'm doing an investigation, for example, I have the power to go get that information and to publish it in my investigation report that I table in Parliament. So we may be halfway there at least, in that if there's a code of conduct breach that I'm investigating, I have the power to require that those financial figures be brought forward and I can publish them.

• (0945)

**The Vice-Chair (Hon. Ed Broadbent):** Thank you very much.

Mr. Bains.

**Mr. Navdeep Bains (Mississauga—Brampton South, Lib.):** Thank you very much.

My question really is, first of all, with respect to the reason why I believe we're all here. We're all here essentially to get reassurance that the system and the structure in place really serve the public interest in terms of concerns they have with regard to lobbyists. I've received quite a few e-mails in the last few months with respect to this issue.

Some of the concerns that were raised were with respect to ministers, ex-ministers, former senior public officials, and the fact that there should be a law, an act, or a provision in place that says that after they complete their service as a minister or after they leave politics, they should have a timeframe of five to seven years before they can become official lobbyists. I want your comments on that.

Secondly, there are about 1,700 official lobbyists that we have indicated in total. You mentioned that it's roughly that number. I know there were questions raised by the chairperson with respect to the amount of money that the lobbyists spend. How effective and how appropriate would it be to have a practice in place that indicates the amount of money lobbyists spend and the amount of time they spend? Is this an administrative nightmare? Can it be achieved? Is it attainable? I know there was a non-profit public interest group that indicated that there should be fines for violations with respect to lobbyists if they exceed or break some rules.

I just want your comment and feedback on those matters.

**Mr. Michael Nelson:** First of all, in terms of what people can do after they leave public service, the post-employment code is within the realm of Mr. Shapiro. On the number of years, I suppose it should be a judgment of whoever is in place at the time as to what length that should be. It is not five to seven years now, and I'm not sure how one would come to a determination of—

• (0950)

**Mr. Navdeep Bains:** What would you consider reasonable?

**Mr. Michael Nelson:** I'm just not qualified to say. It would be a guess, depending on which person. But I think there is a relevant thread that I could help with on that answer.

Under Bill C-15, when that law comes into force, one of the new requirements is that lobbyists put on the registry the former public offices they've held. Now, one could interpret, by the absence of the word "all" in the legislation, that you could actually require them to list—and this is something I may have to have an interpretation on—every single public office they've ever held. Certainly that would go back more than five or seven years.

There's a real question in my mind as to how useful it might be to know, for instance, that I was an AS-04 in such-a-such a program in 1981. I don't know how useful that is. But I think that new provision could go at least some way toward helping with that particular concern of transparency about what this person used to do for a living and where their connections could have been.

**The Vice-Chair (Hon. Ed Broadbent):** I would just remind my colleagues that in this round, it's three minutes each.

I don't want to interrupt you, Mr. Nelson, if you're concluding your answer. Or have you finished it?

**Mr. Michael Nelson:** I finished that part of the answer, but there were a couple of other....

**Mr. Navdeep Bains:** I can come back to them, no problem.

**Mr. Michael Nelson:** Sorry for going on for so long. I was just trying to be helpful.

**Mr. Navdeep Bains:** No, not a problem, I appreciate it. Thank you.

**The Vice-Chair (Hon. Ed Broadbent):** Mr. Epp.

**Mr. Ken Epp (Edmonton—Sherwood Park, CPC):** Thank you, Mr. Chairman. And I would like to congratulate you for very adeptly handling your own conflict of interest there, while you were chairing yourself.

To the witness, I appreciate your being here. I'm very impressed with how well you work together as a team. I notice that you have really prepared well for your presentation here—everything's right at your fingertips—and that's very good to observe.

I don't know whether I'm even out of order asking this question, but I have a great curiosity to know this: how are you paid? You're an ADM in the department, and you have this role as registrar for the Lobbyists Registration Act. Are you apportioned, is this part of your job, or are you collecting two salaries?

**Mr. Michael Nelson:** I wish.

I'll try not to be at all facetious about this, but my pay did not increase whatsoever when I became registrar. Within the federal government, if you are assistant deputy minister in the corporate realm....

To sneak in a quick response to the chair's question, I just got to Industry Canada; I haven't been there all of my career.

**The Vice-Chair (Hon. Ed Broadbent):** You're there now, though.

**Mr. Michael Nelson:** I am very much there, sir.

I've been a corporate ADM before, and you find that there are other pieces that come into your ambit, if you will. This is one that was offered to me, and I took it on. It operates as a branch. I don't get paid more for doing it.

It's a good question, though, whether there should be an apportioning of my time. I'll see over the next year or so how much of my time is spent on this.

**Mr. Ken Epp:** That is in fact my next question. With respect to your registrar position, is that half of your time, three-quarters, one-quarter...?

**Mr. Michael Nelson:** I was asked that question a little while ago, and the answer that came to me was about 20%.

The way in which we organize our office is different from the way in which my predecessor organized his office. He had a full-time registrar, and questions of investigations and judgments came to the ethics counsellor. Because of the different organization here, and the fact that I do have other responsibilities, we've created the position of director of the registration branch, so that matters can be handled on a day-to-day basis. Decisions, judgment calls, are primarily what come to me.

**Mr. Ken Epp:** How many requests do you have? Let me ask first, how is an investigation initiated? Is it because somebody has to call you, or do you monitor this yourself, or your staff monitor it? And when that happens, if you're a 20% guy and you're doing the investigations, could it be that the investigations would suffer in terms of being handled expeditiously?

**Mr. Michael Nelson:** I'm not part of the original review, nor the investigation. Precisely to answer the question of how do we organize to do this, there are two types of investigations that could happen. One is under the act and one is under the code of conduct. The act has to do with whether people are registered or not and it's pretty simple: are you or are you not registered; are you or are you not lobbying?

The act is self-administered, in that I don't go out and police. It is a voluntary registration.

**Mr. Ken Epp:** So if someone is lobbying and hasn't bothered to register, how would you ever find out about it?

**Mr. Michael Nelson:** They have competitors who also—

**Mr. Ken Epp:** I see.

**Mr. Michael Nelson:** I suppose the point of the registry is that... May I continue just for a second, or am I—

**The Vice-Chair (Hon. Ed Broadbent):** We have to acknowledge that our colleague has been given an extra minute, I'll just point out, but—

**Mr. Michael Nelson:** I'll be really quick.

**The Vice-Chair (Hon. Ed Broadbent):** I know my Liberal colleagues will be upset by this, but I'll do my best to compensate.

**Mr. Michael Nelson:** I'll be really quick.

If lobbyist A has decided to do the right thing and register and his or her name is up there for everyone to see and finds that lobbyist B has not, then there is a tension there that might result in a phone call, at which point we get into action.

●(0955)

**The Vice-Chair (Hon. Ed Broadbent):** Thank you.

Ms. Jennings.

**Hon. Marlene Jennings:** Thank you, Mr. Chair.

I'm pleased I have four minutes to shed a little clarity for myself and possibly for other members. They may already be clear on this.

Under the Lobbyists Registration Act, your authority is, in the case of allegations of wrongdoing, to investigate complaints that allege that individuals either should have registered under the act and did not, or are registered and their conduct did not follow the Lobbyists Code of Conduct. Is that correct?

**Mr. Michael Nelson:** It's correct, but there are two different paths that it takes. If there is an infraction under the act and I find out that someone has been lobbying or they are lobbying and they're not registered, that's a matter for a peace officer as—

**Hon. Marlene Jennings:** No, I understand, but—

**Mr. Michael Nelson:** But under the other, yes.

**Hon. Marlene Jennings:** Yes, and that would go through the judicial.

**Mr. Michael Nelson:** That's right.

**Hon. Marlene Jennings:** The clarity I'm trying to bring is that there has been some question about the public office holder who's the object of the lobbying. If you received a complaint that said that a lobbyist who is registered violated the Lobbyists' Code of Conduct and in the course of your investigation you uncover evidence or proof that may put into question the conduct of the public office holder, you then would have the authority, I assume, to bring it to the attention of the ethics commissioner, who is the person who enforces the code of conduct or the code of ethics for public office holders. Is that correct?

**Mr. Michael Nelson:** It depends on the public office holder, and I'm not trying to be cute here.

**Hon. Marlene Jennings:** A public office holder whose conduct is regulated by the code of ethics for public office holders.

**Mr. Michael Nelson:** Right. There are two different codes of ethics, though. There is a code of ethics for public servants and one that the ethics commissioner...

My understanding is that if it was a public servant, the person who was being lobbied, then that would be a matter for the department under that code of conduct. If it was a public office holder under the ethics commissioner, yes, and that's what I would do. I would refer that to that office.

**Hon. Marlene Jennings:** Thank you.

On the issue of post-employment of public office holders, it has been suggested by my colleague that some Canadians are saying that former public office holders, instead of being denied the possibility of acting as lobbyists for one year—I believe it's one year at this point, and you can correct me if I'm wrong—should have that inadmissible period extended to somewhere in the neighbourhood of five to seven years. You offered a bit of an answer.

If I'm correct, if the former public office holder were a public office holder within the federal government, as the code of conduct for public office holders now stands, he or she is not able to be a lobbyist for one year post-employment with the federal government. However, nothing precludes him or her from acting provincially as a lobbyist, registered or otherwise, depending on the provincial legislation, and with municipal governments as well, because the federal government cannot legislate who can be a lobbyist with a provincial or municipal government. Is that correct?

**The Vice-Chair (Hon. Ed Broadbent):** If you can answer within 15 seconds, you'll be within the four-minute limit.

**Hon. Marlene Jennings:** Mr. Chair, I always invite the witnesses, if they don't have sufficient time to provide a fulsome answer, that they are more than encouraged to do so in writing, addressing their letter to the chair.

**The Vice-Chair (Hon. Ed Broadbent):** Okay, thank you.

**Mr. Michael Nelson:** My jurisdiction is federal, to give you the quickest answer that I can.

**The Vice-Chair (Hon. Ed Broadbent):** Thank you.

Mr. Laframboise.

[Translation]

**Mr. Mario Laframboise:** Thank you, Mr. Chairman.

I would like to understand. From what I read in the report on the lobbyists' Code of Conduct, complaints have been made. I am not saying that there is any conflict of interests. But I do see that the reply is always the same, the investigation was done and the case is never made out. There is no basis to believe on reasonable grounds that a breach of the lobbyists' Code of Conduct occurred.

Have you received any complaints since March 31, 2004, that you are currently dealing with? How many have you received?

• (1000)

**Mr. Michael Nelson:** From March 31 to the beginning of August, I wasn't in this position. I am referring to the period beginning with the date of my appointment to this position. I don't know exactly how many complaints there are. I have not received any complaints under the lobbyists' Code of Conduct. I have received calls for information. I checked whether a person is in fact registered under the lobbyists' Registration Act. There aren't many.

**Mr. Mario Laframboise:** It's just whether or not a person is registered. Is that what you are telling me?

**Mr. Michael Nelson:** Yes, that's right.

**Mr. Mario Laframboise:** Complaints in abeyance about the conduct of lobbyists are not settled by you. Who settles them? The ones that Mr. Wilson used to deal with, who settles them?

**Mr. Michael Nelson:** I am going to ask Mr. Bruce Bergen to answer.

[English]

**Mr. Bruce Bergen:** With respect to the complaints in abeyance, those complaints are in essence applications for judicial review where decisions taken by the previous ethics counsellor are under scrutiny and are before the Federal Court. There are two outstanding applications for judicial review that were commenced in the Federal

Court in May and June of last year, but they are what we call in abeyance. They're in essence on hold. That is, the complainant, the applicant, is not bringing the cases forward or is not taking any action at this point. That's where they stand now, so we don't know if a court date will be set at some point in the near future or if those complaints will stay there. I'm sure they will be dealt with shortly, and very likely at some point in 2005, but we don't really know the timeframe or how quickly they will be resolved. When Mr. Nelson says they're in abeyance, in essence they are there—they have been commenced in the court, there's an application in the court, but there's no proceeding at this time.

[Translation]

**Mr. Mario Laframboise:** If a citizen complains about an activity that could come under... Who decides whether the complaint goes to the ethics commissioner or to the registrar of lobbyists? Is there an organization? Would you please just sum up for me how that works.

**Mr. Michael Nelson:** If it's a registered lobbyist and, under the eight rules of the lobbyists' Code of Conduct, a citizen identifies objectionable conduct, the Lobbyists Registration Branch, which I run, does an administrative review to determine the facts. If an investigation under the Code of Conduct is recommended to me, my office will conduct that investigation.

[English]

**The Vice-Chair (Hon. Ed Broadbent):** Thank you, Mr. Laframboise.

Mr. Lee.

**Mr. Derek Lee (Scarborough—Rouge River, Lib.):** Thank you.

I didn't quite understand the lack of clarity or precision in the restriction period post-employment. You talked about one to seven years, or five to seven years. Are there not clear restrictions on how much time a former employee of the federal government must wait before engaging in lobbying activities?

• (1005)

**Mr. Michael Nelson:** Where I think that answer might have caused some confusion was that I was answering the question from your colleague for my view on whether or not, essentially, the current rules, which appear to me to be quite clear about the length of time, should be extended.

I don't have a view on whether they should be, but where I was coming from was that in Bill C-15, when it comes into force, there is a new requirement for transparency that says when you register as a lobbyist you have to put in the online registry all the public offices you've ever held. So that would extend that.

In my mind, the question there is do you go back to ground zero, if someone was a clerk at some point? So that's perhaps where I was confusing the answer. I'm sorry about that.

**Mr. Derek Lee:** You were just questioning the relevancy of the file to material in terms of the person's background, whether something that happened twenty years ago would be relevant to post-employment conduct now.

**Mr. Michael Nelson:** It might be. That's the problem. Sometimes if you have too much information, you lose transparency.

**Mr. Derek Lee:** Also, in terms of the legal requirement of registration, I haven't heard of any problems in the field, in the sense that all lobbyists simply accept the burden of registration. In fact, some of them want to be registered. It's part of their corporate CV. But are there any pockets of resistance? Are there categories or groups of those who should be registered that you have detected are out there skulking around avoiding registration because of lack of clarity in the requirements of the statute?

**Mr. Michael Nelson:** In my short time on the job, I would have to say no, I haven't detected any. You might be aware that there was actually a report done on compliance with the act. I believe it was tabled. I can certainly make a copy available.

The feeling there was that, to the extent that people are not complying with the act, for a large percentage of those it was a lack of understanding of whether what they were doing was actually lobbying.

So that goes again back to the website and the outreach program that I think we need to have. We need to make it incredibly clear what is and what is not lobbying. When we have the new act in place, which changes the definition to communicating as opposed to communicating in an attempt to influence, I think I'm going to have to put out an interpretation bulletin so that people really do understand.

The idea is that for pockets to exist, if they exist, only because there's a lack of clarity.... You can clarify things and they can no longer become a pocket.

**Mr. Derek Lee:** Vagueness left unaddressed in that would undermine the whole statute.

Thank you, Mr. Chairman.

**The Vice-Chair (Hon. Ed Broadbent):** Thank you.

Mr. Tilson.

**Mr. David Tilson:** Sir, you indicated in a question to Mr. Epp that you are really a registrar for 20% of the time, and 80% of the time you're back with the ministry.

**Mr. Michael Nelson:** I don't leave my office. That was a virtual—and changes on a day-to-day basis—assessment. There are some days when I do nothing but concern myself with registrar duties, and some days when we're not having one of those spikes, if you will, and very little comes by.

**Mr. David Tilson:** What other titles do you have with the Ministry of Industry?

**Mr. Michael Nelson:** As I said, I'm the senior financial officer, which is part of being the assistant deputy minister for comptroller-ship and administration. I had mentioned my other responsibilities earlier. I could go through those very quickly again in terms of what I had—

• (1010)

**Mr. David Tilson:** I'm interested in that, particularly when you indicated that you, to use your words, were appropriately isolated on issues where.... I at least am, and I think to a certain extent the chair is, suggesting a conflict of interest, so I'm interested in those other roles that you have, and what you do in those other roles.

**Mr. Michael Nelson:** The way an assistant deputy minister office generally works is you have directors general. I have a number of branches that report to me. About 200 people in total report to me as assistant deputy minister.

That would be all of the financial operations of the department; the security—physical security of the department, not information technology security; and the accommodation—that's relations with the public works department, for example, with respect to whether the elevators are working. That's sort of the facilities part. Audit and evaluation is another responsibility under me.

**Mr. David Tilson:** Sir, I'm only going to repeat that I hope you will consider with your colleagues, and perhaps people in the minister's office, this issue of conflict. I believe you have one, and I hope that is considered.

I have a question. My understanding is in December 2004 the Federal Court overturned eight cases, eight previous decisions made by the ethics commissioner, and that these complaints then came back to the ethics commissioner and the lobbyist registrar. If this is correct, and I believe it's correct, can you tell me where these complaints are now within your office?

**Mr. Michael Nelson:** With respect, it's not quite correct. Let me give you at least my understanding, and then I might ask Bruce to speak.

It was a little bit earlier than that, in the fall, and there were four cases. A number of issues were considered.

**Mr. David Tilson:** I guess I was looking at my crack research of the *Ottawa Citizen*. It must be correct.

**Mr. Michael Nelson:** One of the cases involved nine lobbyists, I am told, but I do recall that article, and I think it referred to.... In any event, the case that Justice Gibson did here involved four decisions of the former ethics counsellor. All four of those were quashed, and it was deemed that one needed to be reviewed again.

As I mentioned to you in my list of priorities, of things to do, reviewing that particular case—which was with respect to a Mr. Fougère—is going to be one of the things I am going to be doing. That's with me, and I expect that before the next time I'm in front of this committee I will have made my own determination on that case.

**The Vice-Chair (Hon. Ed Broadbent):** Thank you.

Mr. Powers.

**Mr. Russ Powers:** Thank you, Mr. Chair.

I'm just following up on my previous question. We're into violations now. First is a comment—looking at the report, there's no mention at all within the report about violations, investigations, or whatever. Perhaps that's on the web page. As you say, there's the up-to-date scenario of what's being investigated, but there's no mention at all about the number of violations, the number of investigations taking place. That's lacking in the report ending March 2004.

So just moving on that with regard to violations, could you bring us into the loop of...not the details, obviously, but the number of investigations, the number of violations that have been or are being dealt with since the inception of the new branch?

**Mr. Michael Nelson:** Your first observation is entirely correct; there have been no investigations under the Lobbyists' Code of Conduct, because an investigation requires that a report be tabled, and there have been no reports tabled, to my knowledge, under my predecessor.

We currently have no investigations under way. With respect to our office being informed, there is activity going on and we should be gathering some facts. There is one of those under way at this time. The act is quite clear—I say this with great respect to the committee—that the investigations be done in private. There are confidentiality requirements. It's also quite clear that when I make my report, it is a very public report and is tabled in the House.

**Mr. Russ Powers:** Do you—how should we say it?—proactively investigate situations? Usually, as you indicated, it's on a complaint basis. In other words, it's a competitor who brings the issue for your consideration, and obviously, with the limitations within your division, you proactively monitor your registry. I know there's a requirement to renew on at least an annual basis, and if indeed there are not renewals, you'll go back and indicate whether these people wish to continue as lobbyists or whatever the case is. Is there a proactive initiative?

• (1015)

**Mr. Michael Nelson:** The system automatically generates letters to people saying it is time to renew. One of the wonders of the e-world is that if somebody registers online, the system, before the time for re-registering comes back up, sends out a letter saying the registration date is coming up.

**The Vice-Chair (Hon. Ed Broadbent):** Thank you.

Mr. Laframboise.

[Translation]

**Mr. Mario Laframboise:** Thank you, Mr. Chairman.

I asked you earlier if you had any cases under review. You answered that the only complaints you had were complaints about people or lobbyists who weren't registered.

Earlier, you told us you had received notice from the court. From what I gather, it's about the Fugère case, a matter that you are going to be working on. There are two other cases before the courts that could come back to you. In the Fugère case, among others, do you start the investigation all over again? Have you begun the investigation, or do you do it all over again?

**Mr. Michael Nelson:** There are a lot of documents that I have not yet seen personally. I haven't examined the file and all of the documents, but from what I see, a lot of documents have been gathered.

First, I intend to review the file and examine everything that has been gathered by the ethics counsellor. I will then determine if there is enough evidence to at least make a decision.

**Mr. Mario Laframboise:** You seem to be more comfortable with the fact that the lobbyist isn't registered. In the other cases, you seem...

At any rate, I understand your predicament. That's more or less where the conflict of interests lies. Like my colleagues, I wonder whether all of these in-depth analyses, these problems of the ethics

commissioner over whether or not a lobbyist is registered, shouldn't be handled by someone other than you.

Do you feel comfortable analyzing these matters, these cases that come back from court?

**Mr. Michael Nelson:** In my opinion, it's not about conflict of interests, it's about jurisdiction. The issue is whether the case comes under Mr. Shapiro's jurisdiction as ethics commissioner, or under my jurisdiction as registrar. My office communicates with Mr. Shapiro to determine whose jurisdiction it comes under.

**Mr. Mario Laframboise:** Is there any chance that you'll be referring the Fugère case to Mr. Shapiro, or are you going to analyse it yourself?

**Mr. Michael Nelson:** I don't know whether that's a decision that was given to the people who made the decision. So, once I've read the documents, I am going to determine whether it comes under my jurisdiction 100% or whether I have to ask Mr. Shapiro to make a decision too. But I am the one who is going to read the documents first.

**Mr. Mario Laframboise:** I sense that you feel uncomfortable with those cases.

[English]

**The Vice-Chair (Hon. Ed Broadbent):** Merci.

Mr. Bains.

**Mr. Navdeep Bains:** Thank you very much.

I want to follow up with respect to my earlier questions. I'll be mindful of the time this time.

We were getting into the whole notion of there being about 1,700 lobbyists, whom we've indicated based on the figures you've presented to us. I wanted to ask whether we have any indication of how much money they spend, or where they spend that money.

**Mr. Michael Nelson:** Under our present legislation that's not a requirement. I was saying earlier I am aware that in the United States there are certain jurisdictions that require everything from a restriction on how much you're allowed to spend on lunch when you're lobbying someone to a full disclosure of how much you're spending on a given campaign. The only requirement under the current act is that if I'm carrying out an investigation, I can require them to give me all of that information if I feel it's pertinent. It's not part of what they register when they register online.

• (1020)

**Mr. Navdeep Bains:** They just indicate the type of lobbyist they are and the information?

**Mr. Michael Nelson:** There's actually a fair amount of information, but it's more with respect to whom they're going to be lobbying—in terms of which department—what lobbying techniques they're planning to use, and that sort of information. It's not financial information at this time.

**Mr. Navdeep Bains:** From an administrative perspective, how feasible is it to get this type of information online, and upon whom does the onus lie? Does it lie on the ministers, the government officials, or is it on the lobbyists?

**Mr. Michael Nelson:** Right now the burden of provision of information is on the lobbyist. If I were to think through from a financial perspective what would be required by way of an online system to do that, and how much of a burden it would be, I would say it's not a simple thing, and it would need to be audited.

**Mr. Navdeep Bains:** In terms of cost benefit, do you think implementing something of this nature would add value? Do you think it adds value and gives more transparency to the people?

**Mr. Michael Nelson:** I would put that into the hopper of the question whether it is something Parliament should consider when the act is reviewed again in five years.

**Mr. Navdeep Bains:** What's your opinion. If I asked for your feedback, what would your feedback be on that?

**Mr. Michael Nelson:** I don't have an opinion at this time. I apologize for not having an opinion, but I really don't.

**Mr. Navdeep Bains:** That's fine. I'm just trying to get some feedback from your experiences, from the administrative aspect, about how the logistical aspect would work. But also, in terms of the value added, is it worthwhile, and if it is, how would it be beneficial to people? I just want to get feedback.

**Mr. Michael Nelson:** My sense is that the former—how much value it adds—is almost more important than the cost benefit, in a sense. With on-line systems you actually can accomplish these things. The real question for me is, what does it really add to the transparency of what's going on? I think you're bang on: that is an important consideration.

**The Vice-Chair (Hon. Ed Broadbent):** Mr. Epp.

**Mr. Ken Epp:** Thank you again, Mr. Chairman.

I would like to ask a question about investigations. I get the impression you haven't had terribly many, so your workload has not been too big. There was some controversy not long ago about some of the legal assistance the ethics commissioner was getting by hiring outside law firms to do, basically, information-gathering—at a very high cost, I'm sure. I'm wondering whether you do any of that as well. Do you do all of your investigation in-house, or do you actually hire legal firms or other investigators to help you in your work?

**Mr. Michael Nelson:** You're right, it has not been a big business line. I'm very grateful for that, because I'm busy just trying to get the new act into place and that sort of thing. But it could be.

I spoke earlier about the spike in work, and the administrative question is, how much salary do you want to carry during the year on the expectation that you might get some work for that individual? My sense, though, is that I would like to have someone in-house to do that work. Of course, I can't comment on the circumstances you speak of with regard to outside law firms. With the type of work I feel I have to do, I would be more comfortable having someone in-house who has some experience on a day-to-day basis. That said, there may well be times when it just makes sense to get some kind of specialized expertise from outside.

My administrative challenge, while trying to spend as little money as I can in terms of making sure that the act is efficiently administered, is what other work I would have that person do while they're in between investigations, because it doesn't appear to be a huge business line for me at this time.

**Mr. Ken Epp:** An ancillary question has to do with the investigation itself. You said you had the ability to ask for more information than what is disclosed when they register. Do you have the ability to actually investigate the involvement of the public office holder? I'm wondering how you would handle that. You could end up investigating your own colleagues, people who answer to your boss, and if you found that person guilty of some offence, then your boss might not look kindly on you, and it could be a problem. I would like to have your response to that. That may not have come up yet, but it's a potential scenario, and I wonder if you are prepared to deal with it.

• (1025)

**Mr. Michael Nelson:** Here's the way I look at this. Obviously, because of the number of times it has come up in different ways, it is terribly important. The nature of the work I do as ADM, comptroller, has three different aspects: administrative work, whereby you have to be a pretty good administrator; investigative work, being in charge of security and audit and things like that; and judgment work.

It is not rare that in my capacity as the person responsible for internal audits in the department, I find myself in exactly the situation you have just described with regard to my colleagues. With regard to security matters—physical security, security clearances, and things of that nature—I could find myself very easily in the situation where I'm investigating my colleagues. So to the extent this is something unusual, that I have to set myself apart, in the way the office is constructed it is actually easier because I'm reporting under the code of conduct at least to Parliament. I'm not even going to my deputy minister with regard to security or audit matters to say, "Here's what I found. What do you think about this?" I'm going directly to Parliament. This is actually an easier circumstance of investigating my colleagues, should that ever come up, than my day job.

**The Vice-Chair (Hon. Ed Broadbent):** Thank you, Mr. Epp.

I'm very interested in this line of questioning myself, but I do have to turn to a colleague on the other side. You took four and a half minutes.

**Mr. Ken Epp:** I have a point of order. This committee should seriously consider increasing the time for the interventions to five minutes, because in three minutes you can't even state your case, and there's no time for answers. So I would like to suggest that. Thank you.

**The Vice-Chair (Hon. Ed Broadbent):** Thank you.

Mr. Powers.

**Mr. Russ Powers:** That was the process agreed to by all of us.

The process is that you register first and then you lobby. I have two questions with regard to logistics. How do they go about registering as a lobbyist within the time interval? What are the penalties for failure to register? We won't talk about violations while a lobbyist. Could you just take me through the logistics?

**Mr. Michael Nelson:** Sure. I may ask Karen Shepherd to step in on the exact logistics.

Can we use the online case, because that's almost 100%...? You go online, log into our site....

I'll tell you what, Karen, are you prepared to take over just for absolute precision on this?

**Mrs. Karen Shepherd (Director, Lobbyists Registration Branch, Department of Industry):** Just to be clear, with the three different types of lobbyists, there are different responsibilities in terms of time requirements. For example, with the consultant lobbyists, they have an undertaking to actually do a registration within ten days of taking an undertaking. With in-house corporations—correct me if I'm wrong—it's two months, and with in-house organizations, it's around three months. So there are different timeframes in terms of registering.

**Mr. Russ Powers:** Is that not the processing and application directly applied?

**Mrs. Karen Shepherd:** No. According to the act, the consultant lobbyist has within ten days. So if someone were to come to me and start lobbying, they have ten days within which to register indicating that they are doing so.

In terms of actually setting up the account, there are different requirements. For example, consultant lobbyists would have to indicate they set up a meeting, which is not a requirement for the others. In the current system, there are three different types of ways they will register: for consultants it is by undertaking; the in-house corporation is currently annual; while the in-house organizations are semi-annual.

In terms of registering, one of the things they have to do is set up an account with Strategis, which is the Industry Canada link. They need to do that because the database sits within the system. They then would create an account and print off what's called an e-agreement. The importance of the e-agreement is that it indicates the lobbyist's intention to register and it provides the branch with a certified password, which becomes the lobbyist's electronic signature. Think of it in terms of the importance and weight carried by your signing any of your documents. They would print off the agreement, sign it, and send it to their branch.

We would verify that the information contained in the agreement is in fact there. It indicates, for example, which of the three categories they're registering under. Is the full client address there, and so on, and is there a signature that validates the information? Once we've done that, we would sign it and send it back to them. They would then have access to putting their information into the system—in other words, which departments they are lobbying, their subject matter, and any of the particulars required, according to the category they're under.

Once we review the information, it's at that point—as the registrar was indicating—where there might be incomplete fields or where we want clarification. For example, maybe not all of the facts of the business address are there, or the subject matter isn't clear. If somebody writes in and indicates the subject matter is TPC, a lot of us would understand that TPC is Technology Partnerships Canada, but in the interests of transparency, we would call them up and verify that it's TPC and adjust that in the information.

Once we're satisfied that all the information is there, we would approve it, and it's instantaneous.

●(1030)

**The Vice-Chair (Hon. Ed Broadbent):** On the question of procedure, we have a subcommittee report to deal with. I would suggest, in taking the advice of the clerk, we may need up to 20 minutes to deal with that. If there's general agreement on that, I would say that we have about another six or seven minutes.

Mr. Tilson.

**Mr. David Tilson:** The legislation is reviewed every four years.

**Mr. Michael Nelson:** I believe the new bill, C-15, changes that to five.

**Mr. David Tilson:** Five years?

**Mr. Michael Nelson:** With Bill C-15 in force.

**Mr. David Tilson:** When does that come up?

**Mr. Michael Nelson:** Five years after the coming into force, which sounds like the spring of 2010, if Bill C-15, as we expect, comes into force this spring of 2005.

**Mr. David Tilson:** So at this point it hasn't come into being yet. It's still four years—

**Mr. Michael Nelson:** At this point, we're about to bring into force Bill C-15, which was approved in 2003. The new counting, as I understand it, will start from the coming into force of Bill C-15, so that would be 2010. I'm told that's correct.

**Mr. David Tilson:** The regulations that were put before us appear to be mainly administrative. Have you and your staff had any thoughts on these regulations, whether they need to be improved or changed?

**Mr. Michael Nelson:** Right now, in fact, that is exactly why, in the consultation process currently under way, we gazetted them. Those were gazetted on December 18, 2004, and there's a 60-day consultation period. In fact, you would note that it's normally about 30 days for consultation, but because we thought there actually could be some changes, some improvements to those, we wanted people to have longer to get back to us to see whether there should be any changes.

**Mr. David Tilson:** What do you think?

**Mr. Michael Nelson:** With the limited experience I have, I believe they require more transparency, more information. I don't think they're a burden. In some cases—for instance, with non-profit organizations—it's virtually the same information with the exception of that new requirement for identifying previous public office holders.

●(1035)

**Mr. David Tilson:** Democracy Watch published something in November, I think, of last year. I don't know whether you saw that or not. It listed some changes needed. Did you have an opportunity to look at that?

One of the changes it suggests, which has already been raised, is that the prohibition of ministers and senior officials be increased to five years. You commented and you said you weren't qualified to talk about what that period of time should be. I find that strange. You're the registrar; shouldn't you make some assistance to govern the people?

**Mr. Michael Nelson:** The amendments or the possible change he just talked about would be to the act, not to the regulations.

**Mr. David Tilson:** Yes. I'm on the act now.

**Mr. Michael Nelson:** Okay, on the act, I'm in the mode of listening at this point.

**Mr. David Tilson:** Okay.

They also commented that lobbyists should be required by law to disclose how much they spend on a lobbying campaign, and there should be high fines for code violations, as well as protection for persons who blow the whistle on violators. I'm sure that has been drawn to your attention. Do you have any comments?

**Mr. Michael Nelson:** At this time, I don't.

**The Vice-Chair (Hon. Ed Broadbent):** Thank you, Mr. Tilson.

Mr. Laframboise.

[Translation]

**Mr. Mario Laframboise:** I am going to pick up where I left off. I sense your discomfort. Wouldn't it be better for all complaints about lobbyists' conduct—apart from whether or not they are registered, which is clear—to be made directly to the ethics commissioner, who could decide whether some of them should be referred on to you? Because only 20% of your work is taken up by this task of registrar, whereas he does it full time. Wouldn't it be simpler and easier that way?

I am not saying that you're in a conflict of interests situation, but I get the feeling you're uncomfortable with everything that isn't strictly a matter of lobbyists' registration, which is clear cut. When it's not too clear, you don't seem to be comfortable. Furthermore, I am not sure you have the staff you need to deal with that. So it might be easier for the ethics commissioner to receive all of the complaints, might it not?

[English]

**Mr. Michael Nelson:** My experience with the act and the administration of that part of that act will demonstrate to me whether I am comfortable or uncomfortable. At this point, I'm not uncomfortable; what I'm acknowledging is that there are areas where we are going to have to perhaps sit down and determine whose jurisdiction those are within.

It's not something I'm uncomfortable with; it's something that I need to acknowledge. If there are jurisdictional issues, which may not be the case, then I'm going to have to deal with those with my colleague Mr. Shapiro.

[Translation]

**The Vice-Chair (Hon. Ed Broadbent):**

Thank you, Mr. Laframboise.

[English]

Thank you very much for coming before us and being as candid and frank in all those areas where you could be.

I would now ask my colleagues to turn their attention to other matters, namely the third report of the subcommittee on agenda and procedure. Maybe I could ask Mr. Lee, who chaired that subcommittee meeting, to move his own report.

**Mr. Derek Lee:** Thank you, Mr. Chairman.

I will move the draft report as distributed. From the point of view of the members at the subcommittee, everything in there is pretty self-explanatory. It's an agenda that takes us out short term and a bit longer term.

The only question I had was with regard to point 4, the reference to the Access to Information Act reforms and the Minister of Justice. It should be the Minister of Justice, but my recollection was that Treasury Board was undertaking the intra-governmental review of the Access to Information Act. I was curious why we would not go to the President of the Treasury Board for an update on that. Could I seek clarification from staff on that?

• (1040)

**Ms. Kristen Douglas (Committee Researcher):** The access to information review task force that was conducted through Treasury Board was completed some time ago. Most recently the topic has come out of the justice minister's office in the sense that he has commented publicly about the private member's bill that is still around and his intention to either endorse parts or all of that bill or come forward with a justice department access to information bill.

**Mr. Derek Lee:** So it's your belief that the Minister of Justice would carry any new legislation amending the ATI?

**Ms. Kristen Douglas:** Yes.

**Mr. Derek Lee:** Okay, that's fine.

I'm done. That's my little intro and I'll move that we adopt the report.

**The Vice-Chair (Hon. Ed Broadbent):** Before I ask for the vote on it, are there any amendments proposed by anyone? No?

(Motion agreed to)

**Mr. Derek Lee:** That wasn't 20 minutes.

**The Vice-Chair (Hon. Ed Broadbent):** Good.

Yes, go ahead.

**The Clerk of the Committee (Mr. Jean-Philippe Brochu):** I've been in contact with the three commissioners' offices and the Treasury Board as well to get them to appear next week. I just want to give you a little update on that.

[Translation]

There are two things I would like to tell you about. First of all, the Office of the ethics commissioner pointed out to me that its funding mechanism is not the same as the other two commissioners'. So I suggest to you that you judge whether or not you should meet with all three officers at the same time.



In addition, I suggested to the people from Treasury Board that they appear as witnesses on Thursday, February 10. They told me that there were discussions currently taking place with the offices of the commissioners, as well as within government, about the funding mechanism and that they would be in a position to give us fuller information on February 17. They added that the information they would give us at that time could change in the days to come.

[English]

**The Vice-Chair (Hon. Ed Broadbent):** Are there any questions or observations?

Mr. Tilson.

**Mr. David Tilson:** My only observation, Mr. Chairman, is that I think we're aware that the processes are different. I was certainly

aware of it when we suggested three of them appear. So I think there is hope still.

**The Vice-Chair (Hon. Ed Broadbent):** Yes, Mr. Powers.

**Mr. Russ Powers:** Mr. Chair, was the indication that they all appear together, or are we going to give them different time slots in the same session?

**The Clerk:** I suggested they appear as a panel.

**The Vice-Chair (Hon. Ed Broadbent):** Are there any other questions?

If not, we're adjourned.

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