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# Lobbyists' Code of Conduct

*Annual Report*  
*2004-2005*



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Code of Conduct  
*Annual Report*  
*2004-2005*

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June 30, 2005

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

Dear Minister Emerson:

I have the honour of presenting to you the tenth annual report on the *Lobbyists' Code of Conduct* for transmission to Parliament and in accordance with Section 10.6 of the *Lobbyists Registration Act*. The Act, as amended by *An Act to Amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and Other Acts in Consequence*, S.C. 2004, c. 7, which came into force on May 17, 2004, requires the Registrar of Lobbyists to table a report on the exercise of the Registrar's powers, duties and functions under the *Lobbyists Registration Act*. This report covers the period from April 1, 2004, to March 31, 2005.

Yours sincerely,



Michael Nelson  
Registrar of Lobbyists



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# Message from the Registrar of Lobbyists



Lobbying is a legitimate activity in our democratic system. When carried out ethically and transparently, in conformance with the highest standards of conduct, it can be a useful conduit of information between government and Canadians.

The *Lobbyists' Code of Conduct* was developed to assure Canadians that lobbying in our country is carried out in a manner that ensures public confidence and trust in the integrity, objectivity and impartiality of government decision-making. The Code first came into effect on March 1, 1997, to complement and support the application of the *Lobbyists Registration Act*. Individuals who must register as lobbyists in accordance with the requirements of the Act must also comply with the Code.

Lobbyists are defined in the legislation as individuals who are paid to communicate with public office holders in an attempt to influence government decisions. The latter category includes virtually anyone occupying a position in the Government of Canada, and includes members of the Senate of Canada and the House of Commons and their staff, as well as officers and employees of federal departments and agencies, members of the Canadian Forces and members of the Royal Canadian Mounted Police.

Prior to the coming into force of *An Act to Amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and Other Acts in Consequence* (Statutes of Canada 2004, c. 7), the powers to investigate alleged breaches of rules under the Code were with the former Ethics Counsellor. That responsibility is now with the Registrar of Lobbyists. Various responsibilities of the former Ethics Counsellor, particularly those relating to the conduct of parliamentarians and the enforcement of the *Conflict of Interest and Post-Employment Code for Public Office Holders*, are now under the purview of the newly created office of the Ethics Commissioner.

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The Lobbyists Registration Branch pays great attention to its advisory role, and Branch officials are available to comment or provide guidance on the application of the *Lobbyists' Code of Conduct*. I urge all individuals who are involved in, or considering participating in, lobbying activity to consult the Lobbyists Registration Branch website ([www.strategis.gc.ca/lobby](http://www.strategis.gc.ca/lobby)) for the latest information. The website is constantly being improved to enhance its user-friendliness and to provide up-to-date information on lobbyist registrations and rules. Any outstanding questions are welcome by telephone, email or fax.

I look forward to serving Canadians in my capacity as Registrar of Lobbyists.

Michael Nelson  
Registrar of Lobbyists

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# Introduction



This is the tenth annual report on the exercise of the powers, duties and functions set out under the *Lobbyists Registration Act* (the Act) in relation to the *Lobbyists' Code of Conduct* (the Code). This report covers the period from April 1, 2004, to March 31, 2005. During this period, those powers, duties and functions were the responsibility of, and exercised by, the Registrar of Lobbyists.

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# The Legislative Framework for the *Lobbyists' Code of Conduct*

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

## **Purpose and Description of the *Lobbyists' Code of Conduct***

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

The Code establishes mandatory standards of conduct for all lobbyists communicating with Government of Canada public office holders. Like most professional codes, the *Lobbyists' Code of Conduct* begins with a preamble that states its purpose and places it in a broader context. Next, a body of overriding principles sets out, in positive terms, the goals and objectives to be attained, without establishing precise standards. These principles of integrity, honesty, openness and professionalism represent goals that should be pursued, and are intended as general guidance.

The Code's principles are followed by rules that set out specific obligations and requirements. The rules are organized into three categories: transparency, confidentiality and conflict of interest. Under the rule of transparency, lobbyists have an obligation to provide accurate information to public office holders, and to disclose the identity of the persons or organizations on whose behalf the representation is made, as well as the purpose of the representation. They must also disclose to their clients, employers or organizations their obligations under the *Lobbyists Registration Act* and the Code itself. Under the rule of confidentiality, lobbyists cannot divulge confidential information, nor use insider information to the disadvantage of their clients, employers

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or organizations. Finally, under the rule of conflict of interest, lobbyists are not to use improper influence, nor to represent conflicting or competing interests without the consent of their clients.

The *Lobbyists' Code of Conduct* is an integral part of the registration kit distributed to all lobbyists. Printed copies can be obtained from the Lobbyists Registration Branch or from the Branch website.

## Recent Changes to the Legislation

Parliament passed two bills during 2003–2004 to establish a new operating framework for the lobbyists registration system.

*An Act to Amend the Lobbyists Registration Act* (Bill C-15) received Royal Assent on June 11, 2003, as Statutes of Canada (S.C.) 2003, c. 10. The Act and associated changes to the *Lobbyists Registration Regulations* are expected to come into force in June 2005.

The Act clarifies the definition of lobbying by removing the expression “attempt to influence” from the previous one. This means that all communications covered by the legislation constitute lobbying and, therefore, require registration. Registration is not required under the Act for simple enquiries or administrative requests for information. The revised Act removes the exemption from the requirement to register when a public office holder initiates contact with any individual who could be lobbying the public office holder, or with that individual’s organization.

*An Act to Amend the Lobbyists Registration Act* contains stronger enforcement provisions that require notification of the appropriate police authorities if the Registrar of Lobbyists, while conducting an investigation into an alleged breach of the *Lobbyists' Code of Conduct*, has reasonable grounds to believe that a criminal offence has been committed.

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

The revision to the Act also clarifies minor discrepancies that previously existed between the French and English versions of the legislation.

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

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

## **Boundaries Between the Duties of the Registrar of Lobbyists and Those of the Ethics Commissioner**

Subsequent to the legislative amendments brought to the *Lobbyists Registration Act* by *An Act to Amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and Other Acts in Consequence*, S.C. 2004, c. 7, the Registrar of Lobbyists is responsible for the application of the *Lobbyists Registration Act*, as well as for the *Lobbyists' Code of Conduct*.

Since these changes came into force on May 17, 2004, the Registrar of Lobbyists has assumed certain roles of the former Ethics Counsellor, including responsibility for overseeing compliance with the registration provisions of the *Lobbyists Registration Act* and with the *Lobbyists' Code of Conduct*.

*An Act to Amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and Other Acts in Consequence* also established the position of Ethics Commissioner, whose functions are separate from those of the Registrar of Lobbyists. The Ethics Commissioner is appointed under Section 72.01 of the *Parliament of Canada Act* and administers the *Conflict of Interest Code for Members of the House of Commons* and the *Conflict of Interest and Post-Employment Code for Public Office Holders*.

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# Enquiries and Formal Investigations Under the *Lobbyists' Code of Conduct*

## Administrative Reviews

Administrative reviews are initiated following requests or complaints received from the general public, the media, members of Parliament or organizations, or when officials of the Lobbyists Registration Branch believe there is a possible contravention of the *Lobbyists Registration Act* or the *Lobbyists' Code of Conduct*. An administrative review is not a formal investigation. Its sole purpose is to assemble and check factual evidence, with a view to determining if a formal investigation is required.

An administrative review typically involves reviewing all registration files in the custody of the Branch, available correspondence and other forms of communication between the Branch and the lobbyists; and confirming, through phone or in-person interviews with public office holders, that registerable activities have indeed taken place. The Branch may also decide to contact the lobbyist during the course of a review.

## Breach of the *Lobbyists' Code of Conduct*

Lobbyists have a legal obligation to comply with the Code. Breaches of the Code do not carry fines or jail sentences, but the report of an investigation conducted by the Registrar of Lobbyists must be tabled before both houses of Parliament. If the Branch has reason to believe there could be a breach of the *Lobbyists' Code of Conduct*, it will conduct an administrative review and inform the Registrar of Lobbyists of its conclusions. The Registrar of Lobbyists will then decide if the grounds are sufficient for a formal investigation, in which case the Branch will initiate such an investigation. As noted, a report citing the investigation's findings, conclusions and reasons for those conclusions will be tabled in a report before both houses of Parliament.

The *Lobbyists Registration Act* requires that investigations relating to possible breaches of the *Lobbyists' Code of Conduct* be conducted "in private." Consequently, the Registrar of Lobbyists will neither confirm nor deny the existence of any investigation. There is no limitation period for breaches of the Code.

|                                   |  |   |   |   |
|-----------------------------------|--|---|---|---|
| <b>Complaint or indications ➤</b> | <b>Review by Lobbyists Registration Branch ➤</b> | <b>Conclusions communicated to Registrar of Lobbyists ➤</b> | <b>If sufficient grounds, Registrar of Lobbyists asks Branch to conduct investigation ➤</b> | <b>Investigation report tabled before both houses of Parliament</b> |
|-----------------------------------|--|---|---|---|

## Complaints

There were no new *Lobbyists' Code of Conduct* complaints filed from April 1, 2004 to March 31, 2005.

The annual report for 2004 referred to work continued after March 31, 2004, for three complaints received during 2001. One of these complaints was finalized (the alleged placement of public office holders in a conflict of interest situation by virtue of their department's membership in an organization that makes representations to the same department), and a letter was sent to the complainant. Given the amount of time that had passed since the initial complaints were received, the Registrar of Lobbyists wrote the complainants regarding the other two files (one regarding a registered consultant lobbyist organizing a fundraising event for a public officer holder, and the other regarding the involvement of political party officials and non-elected people in the review of federal grant applications) to determine if there was a desire to continue the investigations.

## Court Challenges

In May 2003, Democracy Watch launched four applications for judicial review, challenging four decisions made by the former Ethics Counsellor in the Federal Court.

In addition to seeking judicial review of particular decisions by the former Ethics Counsellor, Democracy Watch sought a declaration from the Federal Court that the scheme of the *Lobbyists Registration Act*, insofar as it permitted the same person to administer the *Lobbyists' Code of Conduct* under the *Lobbyists Registration Act* and the *Conflict of Interest and Post-Employment Code for Public Office Holders*, raised a reasonable apprehension of bias, and as a result, should be struck down by the Court.



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On July 9, 2004, on the matter of *Democracy Watch v. The Attorney General of Canada (Office of the Ethics Counsellor)*, Justice J. Gibson of the Federal Court quashed four decisions made by the former Ethics Counsellor under the *Lobbyists Registration Act*.

The Court concluded that grounds existed to create a reasonable apprehension of bias on the part of the former Ethics Counsellor and his office against Democracy Watch. The Court also concluded that the dual roles of the former Ethics Counsellor with respect to the administration of the *Lobbyists' Code of Conduct* under the *Lobbyists Registration Act* on the one hand, and the administration of the Prime Minister's conflict of interest code on the other, created a constant state of potential conflict of interest. As a result, the Court found that the decisions rendered by the former Ethics Counsellor were not up to the applicable standard of reasonableness with regard to procedural fairness.

However, three of the four decisions under review were found by the Court to have been made in a reasonable manner. Following the legislative changes made in 2004 to separate the functions of the new Ethics Commissioner and the Lobbyists Registration Branch, the Registrar of Lobbyists assumed responsibility for decisions made under the *Lobbyists' Code of Conduct*. Accordingly, one of the four decisions was sent back to the Registrar of Lobbyists for redetermination. That case remains under review.

Two other applications for judicial review were launched in the Federal Court in 2004. These cases were put into abeyance while decisions were awaited for the four earlier cases. The Federal Court ordered both applications for judicial review dismissed for delay on February 22 and March 31, 2005, respectively.

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# Additional Information



The full text of the *Lobbyists' Code of Conduct* and the annual reports on the Code are available on the Internet ([www.strategis.gc.ca/lobby](http://www.strategis.gc.ca/lobby)).

For further information, please contact:

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