



Government  
of Canada

Gouvernement  
du Canada

# Lobbyists' Code of Conduct

*Annual Report*  
*2005-2006*



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Canada



Lobbyists'  
Code of Conduct  
*Annual Report*  
*2005-2006*

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June 30, 2006

The Honourable John Baird, P.C., M.P.  
President of the Treasury Board  
House of Commons  
Ottawa ON K1A 0A6

Dear Minister Baird:

I have the honour of presenting to you the eleventh annual report on the Lobbyists' Code of Conduct for transmission to Parliament in accordance with section 10.6 of the *Lobbyists Registration Act*. The Act 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, 2005 to March 31, 2006.

Yours sincerely,

Michael Nelson



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# Message from the Registrar of Lobbyists



The period covered by this report saw an unprecedented level of activity related to the *Lobbyists' Code of Conduct* (Code), including several reviews and the launching of the first investigations ever conducted in the nine-year history of the Code. There were a number of contributing factors to this level of activity.

First, allegations – and in some cases evidence – of unethical lobbying activities were present in the media on a frequent basis throughout the reporting period. For example, while the focus of the Gomery Commission was not primarily lobbying, the matter-of-fact admissions of unregistered lobbying made during public testimony indicated clearly that for some, compliance with the *Lobbyists Registration Act* (Act) was irrelevant. This period also saw politicians publicly alleging breaches of the Act by their political opponents, past and present. This carried on into the election campaign. Perhaps due to the profile that lobbying had maintained in the media during the reporting period, there was an increase in complaints made directly to the Office. The combined result was that many matters involving potentially unethical lobbying were brought to our attention.

The second contributing factor relates to two decisions made during the period regarding enforcement of the Code. The first decision was that the silence of the Act regarding a limitation period for investigations under the Code meant that there was none. The second related to expanding the pursuit of breaches of the eight Rules in the Code to include the pursuit of breaches of the Principles of the Code. The combined effect of these decisions was to open up the pursuit of breaches occurring more than two years in the past, and to allow for broader interpretation of what constitutes a breach. For example, although there is no specific rule in the Code that requires a lobbyist to register, there is a Principle of Professionalism under which the failure to register would fall. The Office can now pursue failures to register as a breach of the Code, beyond the two-year limit.

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A third factor contributing to the increased activity was an increase in staff to carry out administrative reviews and to conduct investigations. The establishment of the Investigations Directorate restored and even enhanced a capacity that was lost in 2004, when staff and resources were moved to the Office of the Ethics Commissioner.

Nonetheless, while a great deal of progress has been made, the Act remains very limited with respect to gathering the evidence required to commence an investigation. The powers available to the Registrar during the initial review of a case are very limited. Investigators are thus left to rely on voluntary cooperation from lobbyists and their clients, and from public office holders, to determine if an investigation is merited. This is a serious shortfall in the Act.

As this report was being written, Bill C-2 (the proposed *Federal Accountability Act*) was tabled. I look forward to contributing to the deliberations of Parliamentarians. I hope to see a legislative outcome that will help ensure that lobbying is carried out with the highest ethical standards.

Michael Nelson  
Registrar of Lobbyists

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



Under the *Lobbyists Registration Act* (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* (Code) came 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. 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 can neither divulge confidential information, nor use insider information to the disadvantage of their clients, employers or organizations.

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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 disclosure and ethical requirements that apply to all lobbyists. Printed copies can be obtained from the Office of the Registrar of Lobbyists or its website.

## **Legislative Amendments Affecting the Code (June 20, 2005)**

Amendments to the *Lobbyists' Registration Act*, which came into force on June 20, 2005, ensured that Canada would continue to have one of the most effective and transparent registration disclosure regimes in the world. The amendments affect both the Act and the administration of the *Lobbyists' Code of Conduct* by the Registrar of Lobbyists.

With respect to the Code, the Act now requires 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 an offence has been committed under the Act or another law of Canada or a province. Previously, such notification would have been discretionary.

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# Enforcement of the *Lobbyists' Code of Conduct*



## Creation and Establishment of the Investigations Directorate

The Investigations Directorate was formally established during this reporting year under the leadership of the new position of Director of Investigations and Deputy Registrar. The Directorate enforces the *Lobbyists Registration Act* (Act) by conducting administrative reviews, referring cases to the RCMP for investigation, conducting investigations under the Code, and preparing the final report for tabling in Parliament. The Directorate also carries out a monitoring program to identify lobbying activities that may involve non-compliance with the Act and the *Lobbyists' Code of Conduct* (Code). The Directorate provides overall strategic policy advice to the Office of the Registrar of Lobbyists (ORL), including developing proposals for changes to the Act and issuing interpretation bulletins.

The Investigations Directorate required immediate staffing to deal with its outstanding, urgent caseload. As with any new organization, particularly one which has no real counterpart elsewhere in the federal public service, setting up the infrastructure and making hiring choices were very important, given the sensitivity of the functions and responsibilities. Job descriptions were written to accommodate the hiring of three senior investigators with significant audit and investigative experience. In addition, a senior policy advisor position was described, classified, and filled.

The Directorate also saw the need for two compliance and review officers, and job descriptions were written for these positions. However, as the priority was to hire investigators to make progress on the investigations and administrative reviews, the compliance and review positions have not yet been filled. The Directorate was able to fill a six-month secondment position to assist the policy research function.

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## Processing Complaints

The Investigations Directorate developed a set of procedures to govern administrative reviews and investigations. Administrative reviews are initiated following requests or complaints received from the public, the media, Members of Parliament or organizations, or when officials of the Office of the Registrar of Lobbyists 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. All information gathered during either an administrative review or an investigation is retained in accordance with government information management practices.

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

If the review indicates that there are reasonable grounds to believe that a breach of the Code has occurred, the Registrar of Lobbyists is informed of the conclusions, so that appropriate action may be taken. There is no limitation period for breaches of the Code. Breaches do not carry fines or jail sentences, but a report of an investigation conducted by the Registrar of Lobbyists must be tabled before both Houses of Parliament. A summary of the process is presented in Figure 1.

**Figure 1**



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.

For more details pertaining to administrative reviews and investigations, see “Annex 1 – Overview of Administrative Review and Investigation Processes.”

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## Administrative Reviews

Subject to certain exceptions, section 8 of the *Privacy Act* provides that personal information shall not be disclosed without the consent of the individual to whom it relates. The following summary of administrative reviews and investigations undertaken by this Office respects the protection of personal information, in accordance with the *Privacy Act* and the restrictions associated with disclosure of personal information.

The Investigations Directorate continued with the two outstanding complaints related to the *Lobbyists' Code of Conduct* from the 2004–2005 reporting year. Progress was made through interviews and obtaining additional documents on both cases. The first case involved a registered consultant lobbyist organizing a fundraising event for a public office holder. The second case related to the involvement of political party officials and non-elected persons in the review of federal grant applications. At the end of March 2006 both cases were still ongoing.

In the present reporting period of 2005–2006, a total of nine administrative reviews were conducted, three of which are related to possible contraventions of the Code and summarized here. The remainder are discussed in the 2005–2006 *Lobbyists Registration Act* Annual Report. One review was initiated by this Office and the other two were prompted by external complaints.

One externally initiated review involved an allegation of unregistered lobbying by a member of an advocacy group and the other, an allegation of a possible breach of Rule 8, Improper Influence, in the Code. In the first review, the Office examined the advocacy group's mandate and activities to determine whether the activities of the organization in question might be considered lobbying. The Office found no reasonable grounds to believe that a breach of the *Lobbyists' Code of Conduct* had occurred, and therefore no requirement to investigate in accordance with subsection 10.4(1) of the Act.

The second review focussed on Rule 8, which falls under the general heading of Conflict of Interest of the Code, and states that a lobbyist shall not place public office holders in a conflict of interest by proposing or undertaking any action that would constitute improper influence on a public office holder. The issue of improper influence was assessed against several factors. First, had there been interference with the decision, judgement or action of the public office holder? Second, had there been wrongful constraint, whereby the will of the public office holder was overpowered? And third, had there been misuse of a position of confidence?

It was determined through a review of media articles, correspondence, and the Registry of Lobbyists that no action of the type set out above had taken place, and therefore there were no reasonable grounds to believe that Rule 8 had been breached.

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The office-initiated review involved the allegation that professional activities of a Member of Parliament, prior to being elected, were registrable under the *Lobbyists Registration Act*. The review entailed examination of media articles and documents, and interviews with public office holders and the individual in question. It was found that this individual had, indeed, met with public office holders but had not been paid to do so. Therefore, the activities did not require registration under the Act.

## Investigations Under the Code

The *Lobbyists' Code of Conduct* came into force in March 1997. Prior to this year, no investigations have been conducted under the Code. As a result, no reports have been tabled in Parliament.

In October 2005, the Registrar initiated eight investigations under the Code. At the end of March 2006, three investigative reports had been submitted to the Registrar for consideration.

Before finding that a person has breached the Code, the Act requires that the Registrar give the person a reasonable opportunity to present his/her views. Once the Registrar has reached a conclusion on the file, a report including the Registrar's findings, conclusions and reasons for them is prepared and tabled in Parliament.



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# Court Challenges



In May 2003, Democracy Watch launched four applications for judicial review, challenging four decisions made by the former Ethics Counsellor. On July 9, 2004, Mr. Justice Gibson of the Federal Court quashed the four decisions, concluding that grounds existed to create a reasonable apprehension of bias against Democracy Watch on the part of the former Ethics Counsellor and his office. However, Mr. Justice Gibson found that three of the four decisions made by the former Ethics Counsellor met the applicable standard of review of reasonableness, while one did not.

In 2004, the Registrar of Lobbyists assumed responsibility for the administration of the *Lobbyists' Code of Conduct* and, accordingly, commenced a redetermination of the fourth decision, as ordered by the Court. The case is still under administrative review and is awaiting information from a federal department before a final determination can be made.

The Federal Court dismissed two other applications for judicial review commenced by Democracy Watch in 2004, on February 22 and March 31, 2005, respectively.

The Registrar of Lobbyists and Democracy Watch have communicated regarding the four matters that were the subject of the applications for judicial review before Mr. Justice Gibson, as well as the two applications for judicial review that were dismissed for delay by the Federal Court. On July 22, 2005, the Registrar of Lobbyists offered to reconsider all six matters for which Democracy Watch had sought judicial review in 2003 and 2004. There was an exchange of correspondence involving the Registrar of Lobbyists and Democracy Watch and in April 2006, Democracy Watch accepted the Registrar's offer to reconsider all six matters.

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On September 20, 2005, Democracy Watch commenced legal action against the Registrar of Lobbyists in Ontario Superior Court contending that the Registrar of Lobbyists was in a position of inherent conflict of interest and bias, primarily because he was an Assistant Deputy Minister of the Department of Industry and that same department was the one most frequently lobbied.

On February 6, 2006, Prime Minister Harper announced that the Office of the Registrar of Lobbyists had been transferred from the Industry portfolio to the Treasury Board portfolio, as a stand-alone office, to increase its independence, while the Government was working to further revise and strengthen the *Lobbyists Registration Act*. This change in the reporting relationship of the Office of the Registrar of Lobbyists has mitigated the main concern identified by Democracy Watch of conflict of interest and bias. The legal action is still outstanding.

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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 website of the Office of the Registrar of Lobbyists at [www.orl-bdl.gc.ca](http://www.orl-bdl.gc.ca)

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# Annex 1

## Overview of Administrative Review and Investigation Processes

*Office of the Registrar of Lobbyists  
Investigations Directorate*  
**2006**

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## Administrative Review Process

1. The Administrative Review (AR) process is not a formal investigation – the purpose of the Administrative Review is to assemble, analyze, and verify factual evidence, in order to determine whether there are reasonable grounds to believe that a breach of the *Lobbyists Registration Act (Act)* or the *Lobbyists' Code of Conduct (Code)* has taken place, and whether a subsequent formal investigation is required.
2. All information gathered during the AR process is managed in accordance with government information policies and laws.
3. A review is triggered either by receipt of a complaint or by self-initiation on the part of the Office of the Registrar of Lobbyists (ORL).
4. A complaint can be made verbally or in writing from various sources (e.g., general public, media, Members of Parliament, etc.).
5. Once an AR file is opened, the start date of the two-year limitation period of the Act is noted, if appropriate.
6. An acknowledgement letter from the Director of Investigations is sent to the complainant within seven business days of the receipt of a complaint.
7. An AR plan involves:
  - a. A “risk assessment” of the case in terms of the reasons for the review; the timing of alleged events in relation to the limitation period; and any past history of non-compliance with the Act or the Code.
  - b. Review, research, and analysis of information from:
    - i. Internal sources of information, such as past and present registrations with the ORL Registry of Lobbyists; ORL history of lobbyists under review; and identification of any registration inconsistencies or omissions.
    - ii. External sources of information, such as information about the individual, organization or entity; media articles; Internet sources; reports from various sources; and information from government departments (if applicable).

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8. Complainant allegations in a review are examined by gathering information from the complainant; public office holders; and parties involved with the activities of the lobbyist under review, such as a client for whom the lobbying activities are undertaken.
  9. AR interviews are generally conducted by two ORL officers, if no audio or video recording device is used.
  10. Audio or video recording is only done with the informed consent and signed agreement of the interviewee. In circumstances where the interviewee is represented by another party, written consent is obtained prior to interviewing the said party.
  11. All information is organized and analyzed carefully, resulting in a summary report for the Director of Investigations, stating the need for a subsequent formal investigation by the RCMP or the Registrar, as required.
  12. Documentation is prepared for the Registrar making one of the following recommendations:
    - a. Suspend the Administrative Review and close the file due to a lack of available information.
    - b. Close the file due to a finding of no reasonable grounds to investigate.
    - c. Refer the matter to the RCMP for subsequent investigation. This option is subject to:
      - i. A finding of reasonable grounds to believe that there has been a breach of the *Lobbyists Registration Act*, which can be substantiated with documentary evidence that the lobbyist under review received payments for lobbyist activities.
      - ii. A two-year limitation period prescribed by subsection 14(3) of the Act.
    - d. Undertake an ORL investigation of an alleged breach of the *Lobbyists' Code of Conduct*.

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## Investigation Process

1. An investigation is warranted if there are reasonable grounds to believe that a breach of the *Lobbyists' Code of Conduct* has taken place – the process is an important measure to ensure compliance with the *Lobbyists' Code of Conduct*.
2. There is no limitation period for investigating breaches of the *Lobbyists' Code of Conduct*.
3. All information gathered during the investigation process is managed in accordance with government information policies and laws.
4. A Notice of Investigation is prepared by the investigator in accordance with the following:
  - a. Appropriate evidence allowing the Registrar to determine the “reasonable grounds” to believe a breach of the Code has occurred.
  - b. The Registrar is not required to disclose any information or advice received from ORL staff with regard to the matter.
  - c. The investigation is conducted in private.
5. Additional evidence and supplementary information are gathered through some or all of the following:
  - a. Interviews with witnesses;
  - b. Formal written requests for information;
  - c. Summonses; and
  - d. Subpoenas.
6. Investigation information is not disclosed unless:
  - a. The Registrar determines disclosure is necessary for the purposes of conducting the investigation, or establishing the grounds for any finding or conclusions; or
  - b. Disclosure is needed for purposes of a prosecution for perjury.
7. An Investigation Report is prepared and the Director of Investigations forwards the Report to the Registrar.
8. If the Registrar makes the determination that there is sufficient evidence to believe that a breach of the Code has occurred, the Registrar must give the person investigated a reasonable opportunity to present their views orally or in writing.

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9. After having provided the person investigated with a reasonable opportunity to present their views, the Registrar concludes the investigation and produces a Report to Parliament.
  10. The Registrar's Report to Parliament contains the following:
    - a. Names of lobbyists, interviewees, etc., as appropriate;
    - b. Issues or matters investigated and the resulting decisions;
    - c. Material facts relied;
    - d. Relevant sections of the Act and the Code; and
    - e. Conclusions and the basis for them.