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# INFLUENCING BC

A quarterly e-zine on lobbying, lobbyists, and transparency in public influence

# O-R-Loffice of the registrar of lobbyists BRITISH COLUMBIA

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# THE WAY FORWARD:

SAVE THE DATE - DECEMBER 2
ONE DAY CONFERENCE ON LOBBYING

The ratio of available enforcement resources of the ORL to the registered lobbyist community is roughly 850 to 1. This gap underscores the importance of a multi-pronged compliance strategy and one that supports and promotes critical dialogue.

An ongoing, critical and active dialogue amongst lobbyists, regulators, academics, public office holders and the public is essential to achieving compliance with the lobbying law. Why? Through critical conversation, we can examine and assess compliance approaches, identify barriers to compliance, share lessons learned, compare best practices and evaluate whether we are achieving the goals of the

legislation. And, more importantly, these conversations provide us with the opportunity to assess whether we are meeting the needs of the public for transparency in government decision-making and the lobbying process.

The establishment of our Lobbyists Advisory Committee is one way we have engaged in dialogue with the lobbyist community, as is the publication of this online periodical. As part of our continuing commitment to fostering critical dialogue, I am pleased to announce that, on December 2, 2011 we will be co-hosting with the SFU Institute for Public Governance a one day conference on lobbying and compliance in Vancouver, BC. Our intent is to stimulate discussion amongst a wide range of actors about lobbying, compliance challenges and opportunities. More details about the conference can be found in this edition of *Influencing BC*. Hope to see you in December.

- Elizabeth Denham, Registrar



See page 3 for more info

# THERE MUST BE A BETTER WAY:

THE PROBLEM OF LOCATING LOBBYING ACTIVITY BY PROFESSOR PAUL PROSS

Lobby regulators in this country face a simple, unyielding barrier to identifying lobbying activity. They don't know - and have no way of knowing - how many lobbyists are plying their trade in each of the Canadian jurisdictions that attempt to keep track of lobbying. They are blind-folded by the legislation they have to administer.

Yet there is a simple, costeffective way of overcoming much of this problem.

Effective regulation demands that regulators know a great deal about the people or companies they are monitoring. They must know who the players are, how and where they work, and where regulation can be applied most effica-

ciously. A regulator who doesn't have basic knowledge about the regulatory target is groping in the dark.

Yes, our lobby laws do require lobbyists to identify themselves by registering and, yes, there are penalties - sometimes stiff ones - for noncompliance. So many lobbyists do register.

Nevertheless, there is a good deal of evidence to suggest that a significant number don't register and don't comply with disclosure requirements.

"...Anyone who believes himself or herself capable of representing others to officials can start a lobbying enterprise ..."

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# THERE MUST BE A BETTER WAY:

THE PROBLEM OF LOCATING LOBBYING ACTIVITY (CONTINUED FROM PAGE 1)

Consider, for example, how often non-compliance surfaces as an issue in political scandals, most notoriously in the sponsorship scandal where the Gomery inquiry revealed that it was common practice in the communications business to ignore registration.1 In 2001 a KPMG study found that lobbyists themselves could not estimate how large a proportion of their colleagues were ignoring registration requirements.2 More recently Guy Giorno conducted a random survey of the registration practices of 20 leading Toronto law firms. He concluded that there were no registrations from nine of these firms, employing more than 1500 lawyers. Apparently none of these lawyers, he reports with astonishment, 'was engaged in making reportable representations to provincial government officials - not attending meetings, placing phone calls or sending correspondence.'3 In his annual report for 2009-10, the Commissaire au Lobbyisme du Quebec reported an analysis of registration data for firms in various sectors which revealed that surprisingly few were registered and even fewer were meeting on-going disclosure requirements.4

Were it possible to monitor the entrances to the lobbying world we would know a great deal about the size of the target community, but to date neither North American regulators nor alternative gatekeepers have been able to keep track of who is entering and leaving. Anyone who believes himself or herself capable of representing others to officials can start a lobbying enterprise. Unlike medicine, law, engineering and other professions there are no licensing bodies keeping track of who is practicing.

The effect of this structural condition is compounded by legislators' concern for the right of petition; a concern that seems to inhibit the introduction of lobbyist licensing and promotes provisions in North American lobby legislation that lobbyists should voluntarily enter the regulatory system. Most Canadian lobbying laws reiterate that concern in their preambles when they declare that 'a system for the registration of paid lobbyists should not impede free and open access to government.'

There are several ways of filling the gaps in regulators' knowledge. Lobbying folk-lore suggests that the most common source of information about non-compliance is the scuttle-butt that circulates within the lobbying community. Rival firms are believed to

while commissioners/registrars are putting considerable effort into meeting with officials, lobby associations and members of the public. In British Columbia the Registrar has set up an advisory panel representing consultant, corporate and organizational lobbyists which is expected to 'provide feedback concerning outreach and educational matters, sectoral and/or general concerns about the registration process from the lobbying community, feedback on the website and online services and comments on the ORL's policies, procedures and practices.'5

These are useful initiatives, but they consume a lot of effort for relatively little return. To me it seems perverse that the public service itself is not more fully engaged in monitoring lobbying. One

er of Lobbying to help public servants become familiar with lobby regulations. As the Commissaire au Lobbyisms du Quebec has pointed out, so long as public servants feel no obligation to carry out such elementary procedures it will be difficult for registrars to monitor lobbying.<sup>6</sup>

The 2006 amendments to the Lobbying Act partially addressed this gaping hole in the regulatory net by requiring cabinet ministers and senior public servants to confirm contacts reported by lobbyists, but the device is cumbersome and, as revelations in the Jaffer affair suggest, by no means covers off all the occasions on which lobbyists can approach influential officials. Extending the procedure to cover contacts with all M.Ps and Senators, will certainly increase information about lobbying activities, but it will also heighten the administrative costs of lobby regulation; render policy-making even more tortuous than it has become and add considerably to the mountain of data that must be analyzed in order to render policy communication processes more transparent. Surely there must be a simpler and more effective approach.7

The City of Toronto has come up with such an approach. The Bellamy inquiry into the computer leasing scandal there suggested that councillors and staff should be required to record basic information on their meetings with lobbyists in the lobbyist registry.'8 The City did not act on this recommendation when it adopted the Lobbyist Registration By-law, but in a subsequent revision of the Code of Conduct for Members of Council it did provide that Councillors should not discuss registrable Cont'd on next matters with page

# "...To me it seems perverse that the public service itself is not more fully engaged in monitoring lobbying..."

report non-complying competitors to the authorities or to the media and interested politicians. Whether or not this is the case, it cannot be considered a reliable source of information or incentive to register. Consequently, where resources permit, registry staff scan lobby communities, estimating where lobbying may be taking place. Unfortunately the resources needed for such monitoring exceed those available to most commissioners/registrars, so the majority have opted for public education strategies.

These strategies embrace the general public, lobbyists and officialdom. Websites are used as educational tools,

might expect public servants to provide informal support to the regulatory regime by ascertaining the status of individuals who communicate with them and alerting registry officials to potential cases of non-compliance. Both the sponsorship scandal and the recent Jaffer affair suggest that this does not happen. Few public servants appear to have been aware of the regulations concerning lobbying and totally unaware of any obligation to check on the registration status of individuals who might have been engaged in lobbying activities. This despite heightened efforts on the part of registry officials and the CommissionInfluencing BC Page 3



WHY THE ROAD EXISTS AND WHERE THE RUBBER HITS IT: A ONE DAY CONVERSATION ON LOBBYING

Please bookmark your calendar to attend our one-day dialogue on lobbying to be held on December 2, 2011 in Vancouver at the SFU Harbour Centre. This workshop is designed for lobbyists, industry associations, charitable organizations, government relations managers, public office holders, chambers of commerce, academics, and regulators. Learn from lobbying veterans best practices to keep onside of lobbying laws and how to assess whether your activities qualify as lobbying. Hear from regulators the challenges they experience in enforcing compliance and common mistakes that show up in registrations. Participate in dialogue and debate about the value of cooling off periods and whether it is time for BC to introduce a Lobbyists Code of Conduct.

This event is still in the planning stages, but if you would like more information on this event, please email us at <a href="mailto:in-fo@bcorl.ca">in-fo@bcorl.ca</a> and put in the subject line "SFU Conference."

## THERE MUST BE A BETTER WAY:

THE PROBLEM OF LOCATING LOBBYING ACTIVITY (CONTINUED FROM PAGE 2)

lobbyists who are not registered or who appear to be acting in violation of the bylaw and should report the matter to the Registrar.9

The Toronto approach puts in place four steps that go a long way to enhance the Registrar's knowledge of lobbying activity in the City. First, it requires officials to ascertain the registration status of individuals who appear to be lobbying. Second, it prohibits the discussion of registrable matters with non-compliant lobbyists. Third, it requires officials to report noncompliance to the Registrar. Finally, it enjoins officials to record basic information about their meetings with lobbyists.

These are not onerous requirements. Any official who

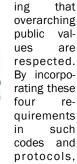
is truly professional should, as a matter of course, require staff to research the status and objectives of individuals who communicate with them.

Nor is it unreasonable to expect officials to insert in files short notes on meetings and chance discussions. Above all, it should be

obligatory for officials, who, after all, have sworn to uphold the laws of the jurisdiction that they serve, to respect lobbying laws by refusing to meet with non-compliant lobbyists and by reporting non-compliance to registrars.

Most public servants in Cana-

da are governed by codes of conduct and operational protocols which spell out their professional obligations and specify procedures for ensur-



Canadian governments would go a long way - at minimal cost - toward lifting the blindfolds from the regulators that they have appointed to monitor lobbying.

#### Paul Pross

Professor Emeritus Pross is the author, co-author or editor of a number of books and various articles on Canadian policy processes, natural resource administration, pressure group politics and government publishing. Dr. Pross is best known for his study of Canadian pressure groups, "Group Politics and Public Policy". He has served as Director of the Dalhousie School of Public Administration (1985-1990), Co-editor of the Canadian Public Administration Series (1991-1997) and Chair of the Nova Scotia Advisory Committee on the Constitutional Amending Process (1991).

Notes and References from this article are available on page 7.

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# 2010-2011 FEDERAL LOBBYING IN REVIEW

BY KAREN E. SHEPHERD, COMMISSIONER OF LOBBYING OF CANADA

On June 23, I tabled my third Annual Report for 2010–2011 in both Houses of Parliament. The report outlines the activities and accomplishments of my Office over the last year.

In 2010-2011, I streamlined the registration processes to expedite the registration of lobbyists, bringing the average processing times for initial registrations from more than 20 days to just three days. I also adopted the practice of requiring consultant lobbyists to disclose the client they ultimately represent rather than just the firm that may have sub-contracted them. In so doing, transparency of lobbying activities conducted at the federal level was improved.

A strong education and outreach program is key to greater compliance. I am pleased with the results of the past year: my staff and I met with nearly 1,500 individuals, including lobbyists, public office holders, parliamentarians and their staff, my counterparts, academics and university students. I also appeared on five separate occasions before two different parliamentary committees to inform parliamentarians of my activities and to hear their views about the administration of the Lobbying Act (the Act).

When the Lobbying Act came into force in July 2008, it introduced a new category of public office holders, known as 'designated public office holders'. This group of highlevel decision makers is defined in the Act, or by Regulation. Designated public office holders are subject to a fiveyear post-employment prohibition on lobbying. In addition, the Act requires that lobbyists disclose the details of certain oral and arranged communications with designated public office holders on a monthly basis. In September 2010, Members of Parliament and Senators became designated public office holders'. To ensure that they understood the implication of this designation, I provided them with a range of information and met with many parliamentarians to further explain and answer questions.

During the past year, there were many discussions about my interpretation and application of Rule 8 of the Lobbyists' Code of Conduct (the Code). This particular rule prohibits lobbyists from placing a public office holder in a conflict of interest. The discussions were primarily focussed on the political activities of lobbyists. In August 2010, I issued clarifications to supplement my guidance of November 2009. During the year, I took advantage of several opportunities to explain my position and urged lobbyists to exercise caution, especially during an election campaign.

In February 2011, I tabled my first three Reports on Investigation in Parliament. Two of them reported on lobbyists who engaged in political activities that, in my view, advanced the private interest of a public office holder whom they were also lobbying. The third one dealt with a case of non-registered lobbying. While reports to Parliament do not result in criminal convictions, fines or imprisonment. I believe however that by publicly exposing wrong doing they deter individuals from repeating the actions that I report upon and provide an incentive for others to ensure they are in compliance with both the Act and the Code.

In 2010-2011, the process for assessing allegations was streamlined and I adopted "Guiding Principles and Criteria for Recommending Compliance Measures". I published them on my Office's website to demonstrate how I plan to ensure that all allegations are treated in a fair and consistent manner.

Finally, this year marked the beginning of Parliament's legislative review of the Lobbying Act. At my March appearance before a Parliamentary Committee, I recommended a number of amendments to further increase the transparency of lobbying activities and enable me to enforce the legislation more decisively. My recommendations are contained in a report entitled "Administering the Lobbying Act - Observations and Recommendations Based on the Experience of the Last Five Years". This report is available

on my Office's website, at www.ocl-cal.gc.ca.

#### Karen Shepherd

Karen Shepherd has more than twenty years experience in the federal public service, where she has gained extensive administrative, policy and leadership experience. Mrs. Shepherd was appointed as Commissioner of Lobbying on June 30, 2009. She has been with the Office (and its precursor the Office of the Registrar of Lobbyists) since 2004. Mrs. Shepherd was instrumental in the creation of the Office of the Commissioner of Lobbying, as well as the Office of the Registrar of Lobby-

# EU CREATES TRANSPARENCY REGISTRY

The European Commission (the executive body of the EU) and the European Parliament (the elected representatives of the EU) have recently agreed to share responsibility for a Transparency Register for lobbyists. The new registry was launched June 11, 2011.

Registration is not mandatory, but anyone who wishes to enter the Parliamentary premises must register and apply for an access badge. The badge identifies individuals as registrants and gives them access to Parliament.

Applying for access requires, among other things, a criminal record check within the last three months and official documentation of the applicant's involvement with the organization they are representing. It takes six to eight weeks to process an application.

The previous registry, established by the Commission in 2008, already contained records on 4000 organizations. The new Transparency Register extends its coverage beyond traditional lobbyists to include bodies such as law firms, NGOs, think tanks, churches, and any other organization or body seeking to influence Parliament.

Additional compliance mechanisms introduced with this new Register include a code of conduct and an online complaint form for reporting non-compliance with the code.

To view the Register, follow this link:

http://europa.eu/transparency-register/index en.htm

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# ASK THE REGISTRAR

I am a consultant lobbyist, and have hired another person to lobby with me, and have listed that person on my registration. Does that person need to register separately?

If you have hired or engaged another person to lobby with you on an undertaking, you must list that person in your undertaking. In addition, the lobbyists that you have engaged to lobby with you must separately register the same undertaking, and declare their lobbying activities. The Lobbyist Registration Act defines consultant lobbyists as the "designated filers" for their own undertakings - meaning that you are the person legally responsible for registering every one of vour lobbying undertakings. So, although it might seem to be enough that you have listed the person you have hired in your registration, that doesn't fulfill their legal obligation to register.

I am a senior officer of an organization. When my organization registration expires, can't I simply resubmit my old registration?

No. An organization's registration expires after six months, and, if the organization continues to employ in-house lobbyists, they must register anew. In registering again, the ORL presents the old registration to be used as a working copy



only, and senior officers may copy or keep data that is current. For example, if, when registering again, the organization will be lobbying the Minister of Education, the senior officer may copy that information from the working copy. However, if the organization is not planning to lobby the Minister of Education that data must be removed before the new registration is submitted. Another example might be where the organization has lobbied a Minister that is no longer in cabinet. The new registration cannot list as a public office holder target, a Minister that no longer exists. This information must be purged before the new registration is submitted. The designated filer for an organization is legally responsible for certifying that the information in the organization's registration is accurate. If you are the designated filer for your organization, be sure to check your registration's information

> to make sure that it is accurate before you certify that it is and submit your registration. Many organizations are simply resubmitting old registrations without cleaning up the data, and these registrations are rejected (by our office). Please take care to ensure that before you

submit a new registration the data contained there is accurate--lists current lobbying subjects, intended outcomes, public office holder targets and in-house lobbvists.

I am the Executive Director of a non-profit. The Board of Directors sit on a voluntary capacity, but the Chair of the Board receives a small stipend for occupying that position. Is the Chair receiving "payment" for the purposes of being an inhouse lobbyist?

Yes. If the Chair of the Board communicates with a public office holder in an attempt to influence anything found under the definition of lobbying, his or her time would be included in determining whether the organization had hit the 100 hours of lobbying required for registration. However, if the members of board that sit purely on a voluntary capacity engage in the same activities, their efforts would not be lobbying under the Act and would not be included in the 100 hour calculation.

# CALENDAR OF EVENTS

September 11-14

Annual Meeting of the Registrars of Lobbyists Edmonton, Alberta

**September 28, 2011** 

International Right to Know Week

#### **September 29, 2011**

**BC Information Summit:** Transparency Turnaround Vancouver, BC Hosted by the BC Freedom of Information and Privacy Association

Details info@bcsummit.ca

#### October 13 & 14, 2011

PIPA 2011—Privacy: It's Your **Business** 

Vancouver, BC

Hosted by the BC and Alberta Offices of the Information and Privacy Commissioner

Details registration@verney.ca

#### November 14, 2011

Lobbyists Advisory Committee Meeting

Vancouver, BC

#### December 2, 2011

Why the Road Exists and Where the Rubber Hits It A One-Day Conversation on Lobbying Segal Centre, SFU Harbour Centre

Details: info@bcorl.ca

#### December 4-7, 2011

Annual Conference on Governmental Ethics and Law (COGEL)

Nashville, Tennessee

#### Websites of Interest

**BC Lobbyists Registry** www.lobbyistsregistrar.bc.ca

> The Lobby Monitor www.arcpub.com

Office of Commissioner of Lobbying of Canada

www.ocl-cal.gc.ca

**Policy Monitor Canada** www.policymonitor.ca

**Government Relations Institute of Canada** www.gric-irgc.ca

# WHEN DO YOU NEED TO HIRE A CONSULTANT LOBBYIST? BY GEOFF MORRISON, GLOBAL PUBLIC AFFAIRS

This may seem to be a straightforward question—you need to hire a consultant lobbyist when you have a problem with government. This may include a need to amend a legislative proposal, regulation, program, policy, directive, or guideline. Or, perhaps you want to see a contract or other grant or financial benefit awarded.

At least, this is what the BC lobbyist Act says. A less obvious answer to the question is: vou should hire a lobbyist when you don't need anything from government at all. At first blush, this may seem counterintuitive. But consider this: government sets all the rules that govern your profession, regulate your operations, tax your income and products, and impacts your success in countless other ways. Like it or not, the government is a partner in your enterprise and is also likely one of your greatest sources of uncertainty and risk. There are few relationships as critical to businesses today as the relationships they have with governments. Understanding government can be complicated. Governments, like many organizations, are pursing multiple objectives, all of which may not be clear to you. This is why you may want to hire a lobbyist before you need anything from government: to help build a relationship with one of your most important business partners.

Understanding government, its priorities, and the way people in government make decisions is paramount. You need to understand government and have a good relationship with government so they will understand how their actions impact your success. You need to understand the people making decisions and their motivations. There are

processes and personalities, and knowing how to navigate this is time consuming and complicated. This is why it pays to have a local guide.

This is why most professional lobbyists usually refer to what it is they do as "Government Relations". Government relationships take time to develop

"...you should hire a lobbyist when you don't need anything from government at all..."

and require constant upkeep. Government Relations professionals also spend time reading government studies, drafting input for government consultation processes, and understanding the government decision making process. Understanding how, when and what to say and to who - this is what a good lob-byist has to offer. A good Government relations specialist understands that governments seek good public policy that will be financially sustainable and manage the province's resources in the interest of the public.

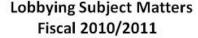
Beware of the lobbyist who offers access to people, short cuts to decisions and a quick fix. A good lobbyist cannot take a bad idea and make it sound like a good idea to government. A good lobbyist can help you understand government and help you define your issues and "asks" from the perspective of people in government to help you achieve your goals.

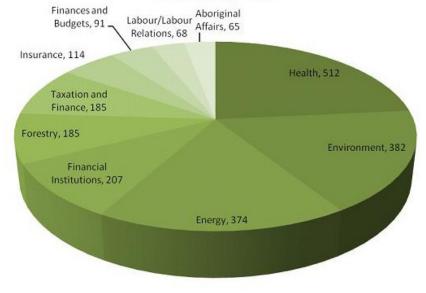
When you are looking for a consultant lobbyist you should look for someone who has a good track record, and actual experience in the way the government works. The lobbyist should take the time to understand you and your goals and issues. They should

have good contacts, credibility with government and a will-ingness to work toward resolving not only current problem but foresight to help you avoid future ones too.

#### Geoff Morrison

Geoff Morrison is the General Manager & Director, British Columbia for Global Public Affairs. Geoff leads Global's provincial office in Victoria. With more than 15 years of public affairs experience, Geoff has a deep understanding of the government and political landscapes in British Columbia and Western Canada. With his extensive government and business networks, he has provided clients with analysis and strategic government relations advice on medical, health, transportation, and technology issues. among others. Geoff is also a member of the BC Lobbyists Advisory Committee.





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### THERE MUST BE A BETTER WAY:

#### The problem of locating lobbying activity - Notes

- Commission of Inquiry into the Sponsorship Program and Advertising Activities Public Hearing (Translation) Vol. 96. p.17136 and Vol. 110, p. 20193
- 2. KPMG Consulting. Study on Compliance under the Lobbyists Registration Act. Final Report (Prepared for Office of the Ethics Counsellor. Ottawa. September 14, 2001.) p. 1.
- Pierre B. Meunier, Andre Turmel, Guy Giorno and Peter Hyndman. Lobbying in Canada/Lobbyisme au Canada Looseleaf (Toronto: Carswell, 2004, 2009) OM-E-48, fn. 208. See also Guy W. Giorno, 'Lobbyist? Just who are you calling a lobbyist?' Ontario Bar Association, Briefly Speaking (April 2006), Vol. 32, No. 2 at p.23.
- Rapport d'activitéé 2009-2010 du Commissaire au lobbyisme du Quéébec - ANALYSE DU REGISTRE DES LOBBYISTES. http://communiques.gouv.qc.ca/gouvqc/communiques/ GPQF/Juin2010/11/c4280.html Accessed 30/06/2010.
- Office of the Registrar of Lobbyists for British Columbia. Press Release: June 17, 2010. 'Advisory Committee of Lobbyists Established'. At http://www.lobbyistsregistrar.bc.ca/index.php?option=com\_content&view=article&id=154%

#### NEW REGISTRY MANAGER

As of August 3, 2011, the ORL has a new Registry Manager, Carol Searle. Carol comes to us from the Ministry of Finance and has worked for the Government of B.C. for 22 years in a variety of ministries.

Some of you may have already met Carol on the phone, if you've called the Registry Manager's number on the ORL website. As the new Registry Manager, Carol is learning about the registry and the computer system, and looking forward to her new challenges as she helps support members of the lobbying community with their registration processes.

The ORL is happy to have Carol join the ORL team as the full-time Registry Manager.

- 3Aadvisory-committee-of-lobbyists-established&catid=28% 3Anews&Itemid=80. Accessed 26/08/2010.
- 6. Commissaire au Lobbying du Quebec, *Rapport d'Activite 09-* 10, p. 25.
- See 'Regulations Amending the Designated Public Office Holder Regulations', Canada Gazette Vol. 144. No. 32. Part 1 Saturday, August 7, 2010, p. 2, and Steven Chase and Daniel Leblanc, 'Conservatives to tighten lobbying rules with or without opposition support' Globe and Mail -5/05/2010, p. A4
- 8. Denise E. Bellamy, Commissioner: Toronto Computer Leasing and Toronto External Contracts Inquiry. *Report* Vol. 2: <u>Good Government</u> September 12, 2005. Recommendation 121 at p. 94, quoted in Meunier, 2009, p. OM-E-34-5.
- 9. Meunier, 2009, p. OM-E-35-6.

#### ORL ANNUAL REPORT RELEASED

Registrar Elizabeth Denham released her office's 2010-2011 Annual Report on September 9<sup>th</sup>.

In her message, the Registrar acknowledged members of the lobbying community who have registered their lobbying activities, stating that those who have registered "are helping to support the goal of an open and transparent government for British Columbia."

The Registrar remarked that achieving full compliance has its challenges, and stated that individuals that should register often fail to do so because they do not understand the rules, or because they choose not to. As such, she stated "In the coming year we will intensify our investigation process and apply administrative penalties in deserving cases of non-compliance".

The full text of the report can be found at www.lobbyistsregistrar.bc.ca.

# We're Online!

## www.lobbyistsregistrar.bc.ca

#### Thanks for reading the third issue of Influencing BC!

To find out more about the Office of the Registrar of Lobbyists British Columbia, or to comment on any of the information contained in this e-zine, please visit our website at www.lobbyistsregistrar.bc.ca, or contact our office.

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