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GOVERNMENT RELATIONS AND PUBLIC AFFAIRS INC.

## “The Federal Accountability Act ~ Three Years On”

Canadian Study of Parliament Group

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Remarks by: Kim Doran

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### Check Against Delivery

Good morning,

I was really pleased to be asked to participate this morning. It is also refreshing to be part of an all-female panel. I know Peggy and Laura will agree that our profession tends to be dominated by men.

I want to begin by noting that lobbying is a profession and that it is recognized in law as a legitimate activity. Many of you in this room work for government and have an understanding of how policies, regulations and consultations are developed. However, to many companies and organizations in the private sector and in the NGO sector – government decision-making can look very opaque.

My colleagues and I sometimes say we act as a GPS guidance system and sometimes as translators of “what” government is saying and “how” the processes work.

We are problem solvers, we provide creative solutions and we work on a variety of ever-changing files. In addition to complying with the Lobbying Act and its regulations, we are self-regulated through the Government Relations Institute of Canada.

I have been a Tier 1 lobbyist since 1993 and it is a career that I very much enjoy. I have worked with many different government administrations over that time and I have had a front line view of the various changes to the reporting requirements for lobbyists.

When I first started all of the forms were paper, were filed and basically never seen again. Now the system has evolved to where I have my own personal website in the Office of the Commissioner of Lobbying and I can see the status of my files.

I would like to focus on two main areas:

- First, the “five year ban”.
- Second, lobbyists’ interaction with the Office of the Commissioner of Lobbying.

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## **The Five Year Ban**

I feel very lucky to be part of the “grandfathered” pool of Tier One lobbyists.

I came to lobbying after being a Legislative Assistant to a Member of Parliament. I was able to learn the system of government, first hand, and I realized early on that it is the system of government that is important not your individual access to a “blue” or “red” government.

The pool of potential lobbyists has been shrunk considerably by the new law. Many of you here today would make wonderful lobbyists because you have specific sector experience, you understand how regulations are drafted, you work in government advancing a program area; you know how government makes decisions; or you enjoy helping solve problems.

By your very natures you work in government because you like it and you are gathering a defined skill set to add to your personal toolbox.

From my perspective the ban limits the pool of people who can enter the business. I believe from a public policy perspective that there is a need to continually refresh the lobbyist pool with people who can bring additional energy and perspective.

Currently, you can leave the Hill and become an “advisor” or a “public affairs specialist” but the toolkit that you offer a client is limited if you cannot also cross the threshold to become a lobbyist on their behalf.

Turning the ban another way, I also believe that it limits the abilities of government to attract people to work for Ministers in Ottawa. Prior to the ban I believe that Ministerial offices and senior levels of the public service benefited from being able to attract people from the private sector who had specialized knowledge; or who had been in government before and had institutional memory and significant experience.

Yes there have been a couple of exceptions to the five year ban but the typical staffer or senior public servant will not apply for the exemption.

## **The Web of Rules**

What is crossing the threshold and what makes me a lobbyist on a file?

99.9 percent of my day I am a public affairs advisor.

The 0.1 percent is if I put in a meeting request on behalf of a client or if I have a conversation about my client's perspective with a designated public office holder (DPOH).

But the confusion about contact and conversation is endless in the lobbying community under the current web of rules.

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For example, I have never met Karen Shepherd before. However, I am standing before you advocating changes to policies that she implements – am I lobbying? Should I be filing a DPOH communication report by January 15, 2010?

A constituent of a Member of Parliament (M.P.) running into their M.P. over the holidays and complaining about the Harmonized Sales Tax (HST) is not required to register their lobbying.

M.P.s are exempt from the DPOH list. However, Ottawa is a small city and it is quite normal to run into a Minister, senior political staff, and ADM level bureaucrats at events and on the street. It is the holiday season and I know I have lots of invites in my in-box – I don't know "who" is attending these events. Casual conversation doesn't need a filing –but how is casual conversation defined and what happens if I am asked about my files, I respond, and a complaint is made by someone who overhears this conversation.

I will not focus on the recent Rule 8 ruling. But I will say that every official in the public service has the right to active participation in the democratic process – lobbyists should not be excluded from this Charter right.

The filing of meetings with Designated Public Office Holders has had two obvious effects:

- First, it is used by consultants as a marketing tool.
- Second, it is used to as intelligence to track activities by competitors on specific files and on specific issues.

Do these filings provide the average Canadian with greater transparency? Yes, in the sense that they know who is being met with. But recording meetings is just that - a record that a meeting took place with someone at a senior level of government.

### **Lobbyists and the Office of the Commissioner of Lobbying**

The web of rules imposed as a result of the Federal Accountability Act has added much complexity to lobbying.

Minister's offices want to know the Lobbyist registration number of a client when we call in.

Sometimes we have it – sometimes we don't.

Lobbyists are often added very quickly, and late, to an issue – the filing process with the Commissioner's office can take weeks if not months. Sometimes an email is received announcing the official registration on the same day as the requirement for the 6 month communication update is due. Conversely, by the time a lobbyist is registered they are then filing a deregistration.

Our answer to Minister's offices that we have filed is not a very useful one. They generally prefer to see proof. Therefore, having a slow registration system has a direct and negative impact on our business. Karen and her staff do not intend this. Let's call it unintended consequences of the web of rules.

I believe that the complex rules around filing actually impede my ability to do the best job I can for clients.

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The filing requirements itself leads to operational problems. The changes to the Federal Accountability Act have meant that an ever-expanding group of officials within the Office of the Commissioner of Lobbying are becoming educated as to terminology and policy development but how much information do they really need?

Three examples:

An official working in the OCL calls a lobbyist to ask for greater clarity under subject matter which concerns an issue featured in one of the recent Budgets. The lobbyist answers that they would love to give those details but can only work off what is provided in the budget. A bit of a stalemate ensues as the official tries to narrow the policy area and the lobbyist really does not know and is not in the world of guess work. We can be penalized for filing incorrectly, so we do not guess.

Second, calls go out from the Commissioner's staff to a private sector company asking for greater detail on a policy area, including what their objectives are. Great confusion on the part of the private company as they have registered their interest area but are not going to provide competitive information as to the specific intrinsic details of the policy changes sought.

Nowhere in the Lobbying Act does it say we have to reveal what our clients hope to achieve.

Three, great debate between officials and Tier 1 lobbyists as to "what" the regulation or policy involves. Explaining how a regulation is drafted and the various stages to finalization; or how a policy process is working can take some time. In the meantime, the lobbyist application has not been approved and the public is unaware of the activity.

Solutions – a conversation for another day but at a minimum a greater understanding by staff at the OCL of current public policy issues and the nature of regulations and policy making in Agencies and Departments.

Specifically on Rule 8 which is causing great anxiety amongst both Tier 1 and Tier 2 lobbyists, I hope the lobbying community can organize a general meeting with Karen and her OCL staff to hear our genuine concerns first-hand.

Thank you for your time this morning. I would be pleased to answer any questions you may have.

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