

February 24, 2011

Ms. Karen Shepherd  
Commissioner  
Commissioner of Lobbying Canada  
255 Albert Street  
Ottawa, Ontario  
K1A 0R5

Dear Ms. Shepherd,

On behalf of the Public Affairs Association of Canada (“the PAAC”), I am deeply concerned about the reports tabled in the House of Commons on February 16, 2011 involving the two lobbyists judged to have violated Rule 8 of the *Lobbyists’ Code of Conduct*. As the Chair of PAAC which represents over 150 public affairs professionals, including professional lobbyists, I would like to make the following points:

First, the retroactive nature of the decisions violates, in our opinion, the fundamental basis of justice in Canada. It is simply unfair to hold the two lobbyists in question accountable for your interpretation of the Federal Court’s March 2009 decision that occurred after the execution of the deemed offensive political activities. As you state in the one of the Reports “In fairness...lobbyists were placed in a position in which their obligations under Rule 8 of the *Lobbyists’ Code of Conduct* had changed”. Further, your argument that the Federal Court’s decision in March 2009, in striking down the previous interpretation of Rule 8, “intended that its decision should apply to events prior to that date” is flawed. It is one thing for the Court to set aside a previous interpretation of Rule 8, but it does not follow that the new interpretation should be applied retroactively in the absence of an official guidance from your office to all lobbyists about the new meaning of the rule.

We also find it disturbing that on the matter of guidance on Rule 8 you claim “There is no obligation on me to issue guidance respecting rule 8, nor the Code in general”, even though you also concede it is a “potentially difficult area of law”. On the contrary, you are the regulator of lobbyists in Canada and, in our view, owe a duty of publication and education on new rules (either enacted by you or through the courts). How else will lobbyists learn about their new obligations under the code?

The PAAC also finds your arguments in defense of two different standards of what constitutes a “conflict of interest” between public office holders and lobbyists seriously flawed. For public office holders the *Conflict of Interest Act* sets the criteria and meaning for a “real” conflict of

interests, whereas the *Lobbyists' Code of Conduct* “includes both real and apparent conflicts”. The driver of this more expansive notion of conflict of interest is the Federal Court decision. So, in other words, lobbyists are held to a higher standard of ethical conduct than public office holders since what constitutes an “apparent” conflict of interest is significantly more demanding than what constitutes a “real” conflict of interest. But this makes little sense given the types of responsibilities held by public office holders and lobbyists respectively. The practical effect too is that lobbyists are now prohibited from any form of interaction with public office holders that *may* create the perception of a conflict of interest, real or imaginary, whereas the same is not true for public office holders.

This leads to PAAC’s more substantial view that Rule 8 and the Commissioners Guidance in respect of political activities violates lobbyists’ Charter protected rights of freedom of expression. Specifically, we support the analysis conducted by the Canadian Bar Association for the Government Relations Institute of Canada on the constitutionality of Rule 8 (May, 2010). We believe that Rule 8, the Guidance of November 2009, and the February 16, 2010 rule 8 decisions, violate lobbyist’s right to meaningful participation in Canada’s political process as protected under section 2.(b) of the Charter of Rights and Freedoms. Given that the decisions from February 16 set the criteria for what would constitute a violation of Rule 8, lobbyists will not be permitted to express their democratic and Charter protected right to participate in the political process.

In conclusion, the PAAC believes that the findings of the Reports in the two cases involving Rule 8 represent a serious challenge to the practice of lobbying in Canada. It effectively bans lobbyists from engaging in any form of political activity that would involve communication to public office holders for fear of creating a perceived conflict of interest.

Sincerely,

**PUBLIC AFFAIRS ASSOCIATION OF CANADA**



John Capobianco  
Chair