



Office of the Commissioner
of Lobbying of Canada

Commissariat au lobbying
du Canada

Report on Investigation

The Lobbying Activities of René Fugère and André Nollet

November 2011

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Rapport d'enquête – Les activités de lobbying de René Fugère et André Nollet

Commissioner of Lobbying



Commissaire au lobbying

Ottawa, Canada K1A 0R5

The Honourable Noël A. Kinsella
Speaker of the Senate
The Senate
Ottawa, Ontario
K1A 0A4

Dear Mr. Speaker:

Pursuant to section 10.5 of the *Lobbying Act*, I have the honour of presenting to you a Report on Investigation on the lobbying activities of Mr. René Fugère and Mr. André Nollet for tabling in the Senate. The investigation was conducted in accordance with the provision of section 10.4 of the Act.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'K. Shepherd', with a long horizontal line extending to the right.

Karen E. Shepherd

Commissioner of Lobbying



Commissaire au lobbying

Ottawa, Canada K1A 0R5

The Honourable Andrew Sheer, M.P.
Speaker of the House of Commons
Room 316-N, Centre Block
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Mr. Speaker:

Pursuant to section 10.5 of the *Lobbying Act*, I have the honour of presenting to you a Report on Investigation on the lobbying activities of Mr. René Fugère and Mr. André Nollet for tabling in the House of Commons. The investigation was conducted in accordance with the provision of section 10.4 of the Act.

Sincerely yours,

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Karen E. Shepherd

Table of Contents

COMMISSIONER'S COMMENTS.....	2
ISSUE	2
INVESTIGATION	2
CONCLUSIONS.....	3
THE LOBBYISTS' CODE OF CONDUCT.....	4
INVESTIGATIONS OF ALLEGED BREACHES OF THE LOBBYISTS' CODE OF CONDUCT	6
BACKGROUND.....	7
HISTORY OF THE CASE PRIOR TO THE LOBBYISTS' CODE OF CONDUCT INVESTIGATION.....	7
INITIATION OF THE LOBBYISTS' CODE OF CONDUCT INVESTIGATION	9
THE SUBJECTS.....	9
THE CLIENT	10
THE FEDERAL INSTITUTIONS INVOLVED.....	10
PROCESS	11
LOBBYIST REGISTRATION	11
FINDINGS	13
REPORT OF THE INVESTIGATIONS DIRECTORATE	13
REGISTRATION	15
THE VIEWS OF MR. FUGÈRE AND MR. NOLLET AND MY PERSPECTIVE ON THOSE VIEWS.....	16
CONCLUSIONS.....	17
1. WHETHER MR. FUGÈRE OR MR. NOLLET COMMUNICATED WITH FEDERAL PUBLIC OFFICE HOLDERS IN AN ATTEMPT TO INFLUENCE SUBJECTS LISTED IN PARAGRAPH 5(1)(A) OF THE LOBBYISTS REGISTRATION ACT	17
2. WHETHER MR. FUGÈRE OR MR. NOLLET ARRANGED A MEETING BETWEEN A PUBLIC OFFICE HOLDER AND ANY OTHER PERSON ON BEHALF OF THEIR CLIENT	18
3. WHETHER MR. FUGÈRE OR MR. NOLLET ENGAGED IN REGISTRABLE LOBBYING ACTIVITIES FOR PAYMENT.....	18
4. WHETHER MR. FUGÈRE OR MR. NOLLET ENGAGED IN ACTIVITY REQUIRING REGISTRATION UNDER THE LOBBYISTS REGISTRATION ACT.....	18
5. WHETHER MR. FUGÈRE OR MR. NOLLET WERE IN BREACH OF THE PRINCIPLE OF PROFESSIONALISM	19
6. WHETHER MR. FUGÈRE OR MR. NOLLET WERE IN BREACH OF RULE 2 OF THE LOBBYISTS' CODE OF CONDUCT	19
7. WHETHER MR. FUGÈRE OR MR. NOLLET WERE IN BREACH OF RULE 3 OF THE LOBBYISTS' CODE OF CONDUCT	20
APPENDIX A – LOBBYISTS' CODE OF CONDUCT	21
PREAMBLE	21
PRINCIPLES.....	22
RULES	22

Commissioner's Comments

As Commissioner of Lobbying, I have the responsibility to investigate allegations of activities that might be in breach of laws and rules surrounding lobbying at the federal level. This case first came to the attention of the former Ethics Counsellor, who had responsibility for the *Lobbyists' Code of Conduct* before my immediate predecessor, the Registrar of Lobbyists. I decided to continue the investigation following my appointment as Commissioner.

Issue

Lobbyists have certain legal and professional obligations to follow when they work on behalf of clients or employers. Individual consultant lobbyists are required to file a return with the Commissioner if, for payment, they undertake to arrange meetings or communicate with public office holders in respect of: the development of any legislative proposal; the introduction, passage, defeat or amendment of any Bill or resolution; the making or amendment of any regulation; the development or amendment of any policy or program; the awarding of any grant, contribution or financial benefit; or, the awarding of any contract.

It was alleged that Mr. René Fugère represented a Quebec sawmill, Scierie Opitciwan Limited Partnership, engaging in lobbying activities, during a period of time when he was not registered as a lobbyist.

Investigation

This matter has a lengthy history. The former Ethics Counsellor¹ examined the application of the *Lobbyists' Code of Conduct* to the activities of Mr. Fugère and elected not to open an investigation. The decision not to open an investigation was challenged in Federal Court. An investigation was initiated by the Registrar of Lobbyists in 2006. During that investigation, the activities of Mr. André Nollet also came under scrutiny. I decided to continue the investigation into alleged breaches of the *Lobbyists' Code of Conduct*. Mr. Fugère and Mr. Nollet were provided with an opportunity to present their views. Mr. Nollet responded, but Mr. Fugère chose not to present his views. After considering the comments of Mr. Nollet, I prepared this Report to Parliament.

¹ The position of Ethics Counsellor was eliminated in 2004, by *An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer)*, S.C. 2004, c. 7. At that time, the Registrar of Lobbyists assumed responsibility under the *Lobbyists Registration Act* for administering the legislation and enforcing the *Lobbyists' Code of Conduct*.

Conclusions

In this report, I conclude that Mr. Fugère and Mr. Nollet both communicated with public office holders in an attempt to influence the awarding of a grant, contribution or other financial benefit, received payment for their services, and thus engaged in activities that required them to register as lobbyists. As a result, I conclude that they breached the *Lobbyists' Code of Conduct*, specifically the Principle of Professionalism, Rule 2 (Accurate information) and Rule 3 (Disclosure of obligations).

The *Lobbyists' Code of Conduct*

Lobbying is a legitimate activity. When carried out ethically and transparently, and in conformity with the highest standards of conduct, it can provide a useful dialogue between government and Canadians.

The *Lobbyists' Code of Conduct* came into effect on March 1, 1997, as a complement to the former *Lobbyists Registration Act*². It was instituted to assure Canadians that the lobbying of federal public office holders is carried out in a manner that ensures public confidence and trust in the integrity, objectivity and impartiality of government decision-making. Individuals who engaged in activity deemed registrable under the *Lobbyists Registration Act*, and now the *Lobbying Act*, must also comply with the *Lobbyists' Code of Conduct*.

During the period covered by this report, individuals paid to communicate, or arrange meetings, with public office holders in an attempt to influence them, were required to register in a registry of lobbyists. (The phrase “in an attempt to influence” has since been removed from federal lobbying legislation.)³ Public office holders are defined as being virtually anyone occupying a position in the Government of Canada, including members of the Senate and the House of Commons and their staff, as well as employees of federal departments and agencies, members of the Canadian Forces and members of the Royal Canadian Mounted Police.

The *Lobbyists' Code of Conduct* establishes mandatory standards of conduct for individuals who engage in activity deemed registrable under the Act. 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 achieved, without establishing precise standards. The principles of Integrity and Honesty, Openness, and Professionalism are set out as goals that should be pursued, and were intended as general guidance for lobbyists.

The principles are followed by a series of eight rules that place specific obligations and requirements on lobbyists. The rules are organized into three categories: Transparency; Confidentiality; and, Conflict of Interest. Under the rules of Transparency, lobbyists have an obligation to provide accurate information to public office holders, and to disclose the identity of the person or organization on whose behalf their representation is made, as

² The *Lobbyists Registration Act*, in effect during the period covered by this report, was amended and renamed the *Lobbying Act* by the *Federal Accountability Act*, S.C. 2006, c. 9. The amendments to the Act came into force on July 2, 2008.

³ The *Lobbyists Registration Act*, in effect during the period covered by this report, was amended by S.C. 2003, c. 10 in 2003. Those amendments to the *Lobbyists Registration Act* came into force on June 20, 2005.

well as the purpose of the representation. They must also disclose to their client, employer or organization their obligations under the *Lobbying Act* and the *Lobbyists' Code of Conduct*. Under the rules of Confidentiality, lobbyists may not divulge confidential information, nor use insider information to the disadvantage of their client, employer or organization. The Conflict of Interest rules prohibit lobbyists from representing conflicting or competing interests without the consent of those whose interests are involved, or placing public office holders in a conflict of interest by proposing or undertaking any action that would constitute an improper influence.

Investigations of Alleged Breaches of the *Lobbyists' Code of Conduct*

Lobbyists have a legal obligation to comply with the *Lobbyists' Code of Conduct*. During the period covered by this report, March 31, 1998 to February 22, 1999, the former Ethics Counsellor had the authority to initiate an investigation if he believed on reasonable grounds that there had been a breach of the *Lobbyists' Code of Conduct*. After May 17, 2004, the Registrar of Lobbyists had the same authority.

Breaches of the *Lobbyists' Code of Conduct* do not carry fines or jail sentences, but the Commissioner's Report on Investigation – including the findings, conclusions, and reasons for those conclusions – must be tabled before both Houses of Parliament. There is no limitation period for investigating breaches of the *Lobbyists' Code of Conduct*.

The *Lobbying Act* replaced the *Lobbyists Registration Act* on July 2, 2008. On that day, the Commissioner of Lobbying replaced the Registrar of Lobbyists. Transitional provisions in the *Lobbying Act* authorize the Commissioner to continue to conduct investigations initiated by the Registrar of Lobbyists under the previous legislation.

The following report relates to one of those investigations.

Background

History of the Case Prior to the *Lobbyists' Code of Conduct* Investigation

Original Complaint

The original complaint in this matter was made by the public interest advocacy group, Democracy Watch, on March 27, 2001. The former Ethics Counsellor opened a file in response to the complaint. The complainant requested a review of Mr. René Fugère's activities providing consulting services to Scierie Opitciwan Limited Partnership (Scierie Opitciwan). The complaint alleged a breach of Rule 3 (Disclosure of obligations) of the *Lobbyists' Code of Conduct*. At the time, the media also identified Mr. Fugère as a personal assistant to the Right Honourable Jean Chrétien. The complainant also requested the examination of a potential breach of Rule 8 (Improper influence) of the Code.

On March 21, 2003, the Ethics Counsellor informed the complainant that it would be very difficult to prove beyond a reasonable doubt that Mr. Fugère had been paid to communicate with a public office holder in an attempt to influence matters such as the awarding of grants and contributions. As a consequence, the Ethics Counsellor advised the complainant that since he was unable to prove that Mr. Fugère was required to register as a lobbyist pursuant to the *Lobbyists Registration Act*, he concluded that Mr. Fugère's activities were not subject to the Code.

Democracy Watch filed an application for judicial review of that decision in the Federal Court on April 23, 2003. The application contested the Ethics Counsellor's ruling in relation to Mr. Fugère, in addition to three other rulings made by the Ethics Counsellor regarding complaints made by Democracy Watch.

On July 9, 2004, the Federal Court overturned the four rulings made by the Ethics Counsellor. The decision was based upon a finding that there had been a breach of the principles of procedural fairness by the Ethics Counsellor.⁴ The Court made a finding of bias against the Ethics Counsellor.

Prior to the Court's decision, the government had introduced proposed legislative amendments, in part, to remedy the concern regarding procedural fairness raised by the application for judicial review. The legislation came into effect on May 17, 2004.⁵ The position of Ethics Counsellor was eliminated and the Registrar of Lobbyists assumed the responsibilities of that position under the *Lobbyists Registration Act*. The Registrar of

⁴ *Democracy Watch v. Attorney General of Canada (Office of the Ethics Counsellor)*, 2004 FC 969, at paragraph 49

⁵ *Supra*, footnote 1

Lobbyists initiated a review of the file regarding Mr. Fugère in accordance with the ruling of the Federal Court.

Mr. Fugère was the president of Quorum Corporation (Quorum). His business partner was André Nollet. In October 2006, the Registrar of Lobbyists found that he had reasonable grounds to believe that Mr. Fugère and Mr. Nollet had breached the Code in their undertakings on behalf of Scierie Opitciwan. In accordance with subsection 10.4(1) of the *Lobbyists Registration Act*, the Registrar of Lobbyists commenced an investigation.

The *Makhija* decision

In March 2007, four reports on investigation by the Registrar of Lobbyists were tabled before both Houses of Parliament concerning the lobbying activities of Neelam Makhija, a consultant who had not registered as a lobbyist.⁶ Mr. Makhija sought judicial review of those reports in Federal Court. In March 2008, the Federal Court ruled that the Registrar of Lobbyists did not have the authority to investigate alleged breaches of the *Lobbyists Registration Act* and consequently could not investigate breaches of the *Lobbyists' Code of Conduct* allegedly committed by persons who were not duly registered as lobbyists.⁷ As a result of the fact that the case involving Mr. Fugère and Mr. Nollet was similar to the *Makhija* case, as it also involved allegations of unregistered lobbying activity, the Registrar of Lobbyists suspended the investigation pending the appeal of the Federal Court decision. In December 2008, the Federal Court of Appeal overturned the decision⁸ and subsequently, I resumed the investigation in the case of Mr. Fugère and Mr. Nollet.

Rule 8

In 2002, the former Ethics Counsellor was asked to examine the application of Rule 8 (Improper influence) of the *Lobbyists' Code of Conduct*. Rule 8 reads as follows:

8. Improper influence

Lobbyists shall not place public office holders in a conflict of interest by proposing or undertaking any action that would constitute an improper influence on a public office holder.

That same year, the Ethics Counsellor issued guidelines on the application of Rule 8. The Registrar of Lobbyists applied those guidelines in deciding not to investigate the activities of a registered lobbyist. That decision was challenged by the public interest advocacy group, Democracy Watch, and in 2009, the Federal Court of Appeal considered

⁶ Those Reports on Investigation are available at: www.ocl-cal.gc.ca

⁷ *Makhija v. Attorney General of Canada*, 2007 FC 327

⁸ *Attorney General of Canada v. Makhija*, 2008 FCA 402

those guidelines in a judicial review of the decision of the Registrar of Lobbyists.⁹ In its ruling, the Federal Court of Appeal determined that it was unreasonable to interpret Rule 8 of the Code based on the guidelines issued in 2002. In November 2009, I published Guidance on Rule 8, advising lobbyists that they could be in breach of Rule 8 if their actions create a real or apparent conflict of interest for a public office holder.

In December 2010, I asked the Investigations Directorate of my Office to consider the court's decision when reviewing cases related to an alleged breach of Rule 8 of the *Lobbyists' Code of Conduct* committed prior to the Federal Court of Appeal decision of March 12, 2009. I considered the analysis and the Directorate's recommendation concerning the alleged breaches of Rule 8 in Mr. Fugère's case. I decided to stop investigating these alleged breaches because it would be unfair to apply the approach set out in the Federal Court of Appeal judgement, which changed the manner in which "conflict of interest" should be interpreted, to events that took place in 1998-1999. I asked the Directorate, however, to continue investigating alleged breaches of Rule 2 (Accurate information), Rule 3 (Disclosure of obligations) and the Principle of Professionalism.

Initiation of the *Lobbyists' Code of Conduct* Investigation

In October 2006, the Registrar of Lobbyists commenced a *Lobbyists' Code of Conduct* investigation into the alleged unregistered lobbying activities of Mr. Fugère pursuant to subsection 10.4(1) of the *Lobbyists Registration Act*. I continued that investigation upon assuming the position of Commissioner of Lobbying.

During the course of the Directorate's investigation into Mr. Fugère's alleged lobbying activities on behalf of Scierie Opitciwan, evidence was also uncovered of unregistered lobbying activity by Mr. Nollet on behalf of the same client.

This report covers the lobbying activities of both Mr. Fugère and Mr. Nollet on behalf of Scierie Opitciwan.

The Subjects

René Fugère (Quorum Corporation)

Mr. Fugère is the president of Quorum Marine Corporation and a consultant at the same company. The company is located in Mauricie, Quebec, and operates under the business name Quorum Corporation. Its head office is located in the municipality of Grand-Mère, Quebec. Mr. Fugère represents a number of clients in the Mauricie region.

⁹ *Democracy Watch v. Barry Campbell and Attorney General of Canada (Office of the Registrar of Lobbyists)*, 2009 FCA 79

André Nollet (Quorum Corporation)

Mr. Nollet was a manager at Quorum Corporation. He no longer works for Quorum Corporation.

The Client

Scierie Opitciwan Limited Partnership (Scierie Opitciwan)

Scierie Opitciwan is a softwood lumber sawmill located in the community of Atikamekw d'Obedjiwan, in Quebec. In February 1998, the Obedjiwan band council formed a partnership with Produits Forestiers Donohue, now Abitibi Consolidated, and created Scierie Opitciwan Limited Partnership.

The Federal Institutions Involved

Human Resources Centre of Canada, Mauricie

The Human Resources Centre of Canada in Mauricie was a division of Human Resources Development Canada that provided various business development programs, such as the Transitional Jobs Fund (TJF), on behalf of Human Resources Development Canada.

The Transitional Jobs Fund was designed to award grants and contributions, based on the specific requirements of the program, to promote innovation in the private sector. The TJF supported projects that created jobs. The former Human Resources Centre of Canada in Mauricie is now a division of the Department of Human Resources and Skills Development Canada.

Canada Economic Development for the Regions of Quebec

Canada Economic Development for the Regions of Quebec was formerly the Federal Office of Regional Development – Quebec, also known as FORD-Q. Canada Economic Development for the Quebec Regions was created in June 1991. It is part of the portfolio of the Minister of Industry.

FORD-Q administered the Innovation, development of entrepreneurship and access program for SMEs (IDEA-SME). This program was intended to provide consulting services and financial assistance in order to promote job creation and economic growth through partnerships and innovation.

Process

The *Lobbyists' Code of Conduct* investigation of the alleged lobbying activities of Mr. Fugère and Mr. Nollet covered their activities on behalf of the Scierie Opitciwan during the period of March 1998 to February 1999, and involved an examination of the following:

- correspondence between the representatives of Quorum and federal government employees;
- correspondence between the representatives of Quorum and their client, Scierie Opitciwan;
- contractual commitments between Quorum and Scierie Opitciwan;
- any information from the files of the Office of the Ethics Counsellor, Human Resources and Skills Development Canada and other relevant government information;
- interviews with public office holders and with Mr. Fugère, the president of Quorum; and
- the Registry of Lobbyists and other publicly available information.

Following the investigation, a copy of the report of the Investigations Directorate was sent to Mr. Fugère and to Mr. Nollet to give them an opportunity to present their views. Mr. Nollet provided his response in a letter received April 1, 2011. Mr. Fugère did not provide a response.

I took the report of the Investigations Directorate and Mr. Nollet's views into consideration, and they form the basis for this Report on Investigation.

Lobbyist Registration

The Requirement to File a Return (Consultant Lobbyists)

Subsection 5(1) of the *Lobbyists Registration Act*, in force during the period covered by this Report on Investigation, sets out the requirements for consultant lobbyists to register their lobbying activities. It provided as follows:

5. (1) An individual shall file with the registrar, in the prescribed form and manner, a return setting out the information referred to in subsection (2), if the individual, for payment, on behalf of any person or organization (in this section referred to as the "client"), undertakes to

(a) communicate with a public officer holder in an attempt to influence

- (i) the development of any legislative proposal by the Government of Canada or by a member of the Senate or House of Commons,

- (ii) the introduction of any Bill or resolution in either House of Parliament or the passage, defeat or amendment of any Bill or resolution that is before either House of Parliament,
- (iii) the making or amendment of any regulation as defined in subsection 2(1) of the *Statutory Instruments Act*,
- (iv) the development or amendment of any policy or program of the Government of Canada,
- (v) the awarding of any grant, contribution or other financial benefit by or on behalf of Her Majesty in right of Canada, or
- (vi) the awarding of any contract by or on behalf of Her Majesty in right of Canada, or

(b) arrange a meeting between a public officer holder and any other person,

An individual shall file the return referred to in subsection (1) not later than 10 days after entering into the undertaking.

The Elements of Registrable Activity for Consultant Lobbyists

The following two elements were considered in the analysis of whether an activity deemed registrable under subsection 5(1) of the *Lobbyists Registration Act* took place:

- Whether the individuals in question undertook to:
 - communicate with a public officer holder in an attempt to influence subjects listed in paragraph 5(1)(a) of the *Lobbyists Registration Act*; or
 - arrange a meeting between a public officer holder and any other person; and
- Whether the individuals did so for payment and on behalf of any person or organization.

Findings

Report of the Investigations Directorate

The Investigations Directorate examined whether Mr. Fugère and Mr. Nollet engaged in activities requiring registration as a lobbyist. Evidence supporting the following findings was obtained from various sources, including federal public office holders, Mr. Fugère and Scierie Opitciwan.

Contractual Agreement between Quorum Corporation and Scierie Opitciwan

Scierie Opitciwan applied for a grant under the Transitional Jobs Fund (TJF) program on February 12, 1998, but the application was denied by Human Resources Development Canada due to a funding shortfall.

Quorum Corporation, represented by Mr. Fugère and Mr. Nollet, was retained by Scierie Opitciwan on March 31, 1998, in order to develop a financing plan for the firm's proposed sawmill project. The goal was to obtain a grant from the Federal Office of Regional Development – Quebec (FORD-Q) and the Immigrant Investor Program of Human Resources Development Canada. On September 11, 1998, Scierie Opitciwan agreed to changes to Quorum's mandate. Following a review of the contractual agreement, the negotiation of funding required to carry out the project was added to the list of services to be provided by Quorum.

Quorum's revised mandate was to:

- define a strategy, lobby, coordinate file developments and negotiate optimal terms and conditions for FORD-Q's contribution to the project's financing plan;
- define a strategy, lobby, coordinate file developments and negotiate optimal terms and conditions for the contribution by Human Resources Development Canada to the project's financing plan; and
- conduct research and take the necessary steps to ensure that the sawmill project would be able to participate in the Immigrant Investor Program.

Scierie Opitciwan received a second refusal notice from Human Resources Development Canada, informing it that there were no funds available for its project under the TJF program, on July 16, 1998.

In October 1998, Human Resources Development Canada approved the funding application by Scierie Opitciwan. The final total government contribution was the award of a \$300,000 grant that was designated as a partnership agreement by Human Resources Development Canada under the TJF and a \$2,100,000 repayable contribution from

Canada Economic Development for the Regions of Quebec under the Innovation, development of entrepreneurship and access program for SMEs (IDEA-SME).

Payment of Quorum Corporation

Quorum Corporation was hired to engage in activities that involved communications with federal public office holders on behalf of the Scierie Opitciwan in order to obtain a grant or contribution to carry out a project under development by the firm. This arrangement was set out in contractual agreements dated March 31, 1998 and July 10, 1998. Those agreements provided for:

- performance fees calculated at 15% of the total amount of FORD-Q's contribution; and
- performance fees calculated at 15% of the total amount of Human Resources Development Canada's contribution under the Transitional Jobs Fund.

Quorum Corporation was paid over \$90,000 for consultation services provided to Scierie Opitciwan between June and November 1998.

The Investigations Directorate concluded that Mr. Fugère and Mr. Nollet were paid by Scierie Opitciwan for engaging in lobbying activities on behalf of the firm.

Communication with public office holders in an attempt to influence

Quorum Corporation's communications with public office holders on behalf of the Scierie Opitciwan included:

- a communication by Mr. Fugère with Human Resources Centre Canada Mauricie on August 3, 1998, asking for the disclosure of any project-related information to Quorum Corporation; and
- a letter from Mr. Nollet to the regional office of Canada Economic Development for the Regions of Quebec on August 20, 1998 that resubmitted the project funding application on behalf of the Scierie Opitciwan. In this letter, Mr. Nollet asked for a government contribution of \$2,150,000, \$350,000 more than the initial amount of funding that was requested.

Scierie Opitciwan acknowledged that Mr. Fugère's consulting services had been retained because of his expertise, reputation and, most importantly, his knowledge of government programs. His client considered that Mr. Fugère's expertise added value and increased the likelihood of obtaining a contribution. The retention of Mr. Fugère's professional services was regarded by his client as a means of increasing the likelihood that the government would pay special attention to its application. Scierie Opitciwan viewed Mr. Fugère's knowledge of government programs as an aid to efficiently and proactively addressing all of the concerns that might be raised by the government.

At the time, the *Lobbyists Registration Act* provided that registrable communications occurred when lobbyists communicated with public office holders in an “attempt to influence” them on various subjects, which included the awarding of a grant, contribution or other financial benefit.¹⁰ In the context of the legislation, the phrase “... communicate with a public office holder in an attempt to influence” means communications that have the goal or object of maximizing the likelihood of a positive outcome of a lobbyist’s undertaking on behalf of a client. The communications of Mr. Fugère and Mr. Nollet with public office holders to ensure a successful application process was a legitimate “attempt to influence” the awarding of a grant, contribution or other financial benefit. However, communication of this nature, when performed for payment, was registrable under subparagraph 5(1)(a)(v) of the *Lobbyists Registration Act*.

The Investigations Directorate concluded that Mr. Fugère and Mr. Nollet, working together at Quorum Corporation, engaged in lobbying activities on behalf of Scierie Opitciwan and that they did so for payment.

Registration

There are no registrations for Mr. Fugère or Mr. Nollet or any other representative of Quorum Corporation between March 31, 1998 and February 22, 1999.

Information obtained by the Investigations Directorate from the former Ethics Counsellor’s office indicates that Mr. Fugère communicated with the Office of the Ethics Counsellor on May 20, 1999, in order to obtain information on registration requirements. At that time, the Office of the Ethics Counsellor gave Mr. Fugère general information on the obligations of lobbyists to register their lobbying activities. In addition, Mr. Fugère was advised that a file concerning his lobbying activities had been sent to the Royal Canadian Mounted Police (RCMP) for their review and possible investigation. On June 8, 1999, Mr. Fugère’s lawyer communicated with the Office of the Ethics Counsellor to ask if it were possible for Mr. Fugère to register retroactively as a lobbyist. Mr. Fugère’s lawyer was also advised that the file had been sent to the RCMP.

¹⁰ The *Lobbyists Registration Act* was amended by S.C. 2003, c.10, to remove the requirement that lobbying consist of communicating “in an attempt to influence”. The changes to sections 5 and 7 of the *Lobbyists Registration Act* came into effect on June 20, 2005.

The Views of Mr. Fugère and Mr. Nollet and my Perspective on those Views

Subsection 10.4(5) of the *Lobbying Act* provides that, before finding that a person under investigation has breached the *Lobbyists' Code of Conduct*, the Commissioner must give that person a reasonable opportunity to present their views.

On February 18, 2011, I sent a copy of the Investigation Directorate's Report to Mr. Fugère and Mr. Nollet, requesting that they provide written comments within 30 days.

Despite a number of reminders, Mr. Fugère did not reply. Mr. Nollet's reply was received on April 1, 2011. In his letter, Mr. Nollet indicated that he had not worked as a consultant since March 2001, and that he had no documentation concerning the events detailed in this report, as so much time had elapsed. He also advised that he had not been aware of the requirements of the *Lobbyists Registration Act* and the *Lobbyists' Code of Conduct* at the time that the events set out in this report took place. He also indicated that he is now aware of the requirements contained in the *Lobbying Act* and the *Lobbyists' Code of Conduct*.

I believe that Mr. Nollet is sincere in his statements. I do not take the view that his intention was to mislead public office holders or his client, nor act as a lobbyist in breach of the Code.

Conclusions

Companies and organizations attempting to obtain licences and certifications required under federal law, or seeking to take advantage of federal programs, sometimes hire lobbyists to assist them through the process. These individuals may arrange meetings between their clients and public officer holders and communicate with those public office holders to clarify technical details of a company's proposal or application for a grant or contribution, or to negotiate the terms of an agreement.

These are legitimate actions on the part of companies and organizations and those they hire. The *Lobbying Act* and its predecessor, the *Lobbyists Registration Act*, acknowledge this legitimacy but impose certain obligations of disclosure and behaviour on those who, for payment, undertake to assist their clients in this way.

I have taken both the report of the Investigations Directorate and the representation of Mr. Nollet into consideration in reaching my conclusions. I have concluded that Mr. Fugère and Mr. Nollet were paid by their client to communicate with federal public office holders in respect of applications for grants and contributions and that they failed to register their undertakings as required under paragraph 5(1)(a) of the *Lobbyists Registration Act*. They also neglected to provide accurate information and inform their client of their obligations under the *Lobbyists' Code of Conduct*.

I have concluded that there is no evidence that either Mr. Fugère or Mr. Nollet attempted to arrange a meeting with a public office holder in breach of paragraph 5(1)(b) of the *Lobbyists Registration Act*.

This chapter summarizes my conclusions on those issues, and my reasons for reaching these conclusions.

1. Whether Mr. Fugère or Mr. Nollet communicated with federal public office holders in an attempt to influence subjects listed in paragraph 5(1)(a) of the *Lobbyists Registration Act*

Evidence obtained during the course of the investigation into this matter reveals that, on at least two occasions between March 1998 and February 1999, Mr. Fugère and Mr. Nollet communicated with federal public office holders regarding the applications by their client for grants and contributions, in an effort to ensure the success of those applications. I have concluded that this was a registrable lobbying activity pursuant to paragraph 5(1)(a) of the *Lobbyists Registration Act*, if done for payment, as it would be under the *Lobbying Act*.

2. Whether Mr. Fugère or Mr. Nollet arranged a meeting between a public office holder and any other person on behalf of their client

I have concluded that there is no evidence demonstrating that Mr. Fugère or Mr. Nollet attempted to arrange a meeting or meetings with public office holders on behalf of their client. As a result, I have concluded that Mr. Fugère and Mr. Nollet were not in breach of paragraph 5(1)(b) of the *Lobbyists Registration Act*.

3. Whether Mr. Fugère or Mr. Nollet engaged in registrable lobbying activities for payment

I have concluded that the work performed by Mr. Fugère and Mr. Nollet as consultant lobbyists at Quorum Corporation was work performed on behalf of Scierie Opitciwan, for payment.

Quorum Corporation was hired to engage in lobbying on behalf of the Scierie Opitciwan in order to obtain a grant or contribution to carry out a project under development by the firm. Mr. Fugère and Mr. Nollet were to perform this work. This arrangement was set out in contractual agreements between Scierie Opitciwan and Quorum Corporation. Quorum Corporation was paid over \$90,000 for consultation services provided to Scierie Opitciwan between June and November 1998.

4. Whether Mr. Fugère or Mr. Nollet engaged in activity requiring registration under the *Lobbyists Registration Act*

Both Mr. Fugère and Mr. Nollet engaged in activity requiring registration as consultant lobbyists pursuant to paragraph 5(1)(a) of the *Lobbyists Registration Act*. Their client paid them to communicate with federal public office holders in an attempt to influence the awarding of grants and contributions under certain programs operated by the federal government. They were, therefore, required to file lobbyist registration returns with the Registrar not later than 10 days after entering into their undertakings, but failed to do so.

5. Whether Mr. Fugère or Mr. Nollet were in breach of the Principle of Professionalism

Individuals who conduct activities requiring registration as a lobbyist must comply with the *Lobbyists' Code of Conduct*. The Code includes a set of overriding principles, one of which is the Principle of Professionalism.

Professionalism

Lobbyists should observe the highest professional and ethical standards. In particular, lobbyists should conform fully with not only the letter but the spirit of the *Lobbyists' Code of Conduct* as well as all the relevant laws, including the *Lobbyists Registration Act* and its regulations.*

By failing to file a lobbyist registration return within time limits prescribed in the *Lobbyists Registration Act*, Mr. Fugère's and Mr. Nollet's activity on behalf of the Scierie Opitciwan was in breach of the Principle of Professionalism.

6. Whether Mr. Fugère or Mr. Nollet were in breach of Rule 2 of the *Lobbyists' Code of Conduct*

Individuals who engage in activity requiring registration must also comply with a series of eight rules set out in the *Lobbyists' Code of Conduct*. In an effort to promote transparency, Rule 2 requires that lobbyists must provide accurate information.

Accurate information

Lobbyists shall provide information that is accurate and factual to public office holders. Moreover, lobbyists shall not knowingly mislead anyone and shall use proper care to avoid doing so inadvertently.

By failing to register activity deemed registrable under the *Lobbyists Registration Act*, Mr. Fugère and Mr. Nollet did not appropriately identify themselves as lobbyists and, therefore, did not provide accurate information to public office holders. As a consequence, individuals and organizations with an interest in the status of the activities of Scierie Opitciwan were misled about the existence of lobbying activity. Therefore, I have concluded that Mr. Fugère and Mr. Nollet were in breach of Rule 2 (Accurate information) of the *Lobbyists' Code of Conduct*.

* This version of the *Lobbyists' Code of Conduct* was in effect during the period covered by this Report (March 1998 to February 1999).

7. Whether Mr. Fugère or Mr. Nollet were in breach of Rule 3 of the *Lobbyists' Code of Conduct*

Transparency is also enhanced by requiring that lobbyists advise their clients of their obligations under the federal lobbying registration regime.

Disclosure of obligations

Lobbyists shall indicate to their client, employer or organization their obligations under the *Lobbyists Registration Act*, and their obligations to adhere to the *Lobbyists' Code of Conduct*.*

Scierie Opitciwan was unaware of Mr. Fugère's and Mr. Nollet's obligation to register as consultant lobbyists after retaining their services. It may be inferred that Mr. Fugère and Mr. Nollet did not disclose their obligations under the *Lobbyists Registration Act* and the Code. As a result, I have concluded that they were in breach of Rule 3 (Disclosure of obligations) of the *Lobbyists' Code of Conduct* with respect to this undertaking.

* This version of the *Lobbyists' Code of Conduct* was in effect during the period covered by this Report (March 1998 to February 1999).

Appendix A – Lobbyists’ Code of Conduct*

Preamble

The *Lobbyists’ Code of Conduct* is founded on four concepts stated in the *Lobbyists Registration Act*:

- Free and open access to government is an important matter of public interest;
- Lobbying public office holders is a legitimate activity;
- It is desirable that public office holders and the public be able to know who is attempting to influence the government; and,
- A system for the registration of paid lobbyists should not impede free and open access to government.

The *Lobbyists’ Code of Conduct* is an important initiative for promoting public trust in the integrity of government decision-making. The trust that Canadians place in public office holders to make decisions in the public interest is vital to a free and democratic society.

To this end, public office holders, when they deal with the public and with lobbyists, are required to honour the standards set out for them in their own codes of conduct. For their part, lobbyists communicating with public office holders must also abide by standards of conduct, which are set out below.

Together, these codes play an important role in safeguarding the public interest in the integrity of government decision-making.

* This version of the *Lobbyists’ Code of Conduct* was in effect during the period covered by this Report (March 1998 to February 1999).

Principles

Integrity and Honesty

Lobbyists should conduct with integrity and honesty all relations with public office holders, clients, employers, the public and other lobbyists.

Openness

Lobbyists should, at all times, be open and frank about their lobbying activities, while respecting confidentiality.

Professionalism

Lobbyists should observe the highest professional and ethical standards. In particular, lobbyists should conform fully with not only the letter but the spirit of the *Lobbyists' Code of Conduct* as well as all the relevant laws, including the *Lobbyists Registration Act* and its regulations.

Rules

Transparency

1. Identity and purpose

Lobbyists shall, when making a representation to a public office holder, disclose the identity of the person or organization on whose behalf the representation is made, as well as the reasons for the approach.

2. Accurate information

Lobbyists shall provide information that is accurate and factual to public office holders. Moreover, lobbyists shall not knowingly mislead anyone and shall use proper care to avoid doing so inadvertently.

3. Disclosure of obligations

Lobbyists shall indicate to their client, employer or organization their obligations under the *Lobbyists Registration Act*, and their obligation to adhere to the *Lobbyists' Code of Conduct*.

Confidentiality

4. Confidential information

Lobbyists shall not divulge confidential information unless they have obtained the informed consent of their client, employer or organization, or disclosure is required by law.

5. Insider information

Lobbyists shall not use any confidential or other insider information obtained in the course of their lobbying activities to the disadvantage of their client, employer or organization.

Conflict of interest

6. Competing interests

Lobbyists shall not represent conflicting or competing interests without the informed consent of those whose interests are involved.

7. Disclosure

Consultant lobbyists shall advise public office holders that they have informed their clients of any actual, potential or apparent conflict of interest, and obtained the informed consent of each client concerned before proceeding or continuing with the undertaking.

8. Improper influence

Lobbyists shall not place public office holders in a conflict of interest by proposing or undertaking any action that would constitute an improper influence on a public office holder.