



Office of the Commissioner
of Lobbying of Canada

Commissariat au lobbying
du Canada

Report on Investigation

The Lobbying Activities of Paul Ballard

November 2011

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Rapport d'enquête – Les activités de lobbying de Paul Ballard

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. Paul Ballard 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. Paul Ballard 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

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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 my 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. Paul Ballard engaged in activities on behalf of Intellivax Inc. (Intellivax) that required registration as a lobbyist, during a period when he was not registered as a lobbyist.

Investigation

An investigation concerning the allegations under the former *Lobbyists Registration Act*¹ and the *Lobbyists' Code of Conduct* was initiated by the Registrar of Lobbyists in October 2005. I decided to continue the investigation following my appointment as Commissioner. The investigation involved interviews and a review of correspondence and payments made to Mr. Ballard. Mr. Ballard was provided with a copy of the report prepared by the Investigations Directorate and given an opportunity to present his views on that report. After considering his comments, I prepared this Report to Parliament.

¹ The *Federal Accountability Act* (S.C. 2006, c.9) amended the *Lobbyists Registration Act*, creating the Office of the Commissioner of Lobbying. The statute was renamed the *Lobbying Act*. The changes to the *Lobbying Act* became effective on July 2, 2008.

Conclusions

In this report, I conclude that Mr. Ballard engaged in activities for which he received payment, which required him to register as a lobbyist. As a result, he 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*. 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, April 2000 to June 2001, individuals paid to communicate, or arrange meetings, with public office holders in an attempt to influence any of the subjects listed in the *Lobbyists Registration Act*, were required to register in a registry of lobbyists. (The phrase “in an attempt to influence” has since been removed from federal lobbying legislation.)² 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 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

² 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.

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, April 2000 to June 2001, the former Ethics Counsellor³ 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*. At the time that the allegations regarding Mr. Ballard's activities came to light, the Registrar of Lobbyists had assumed the responsibility for the investigation of alleged breaches of the *Lobbyists' Code of Conduct*.

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.

³ The Ethics Counsellor was the predecessor to the Registrar of Lobbyists for purposes of development and enforcement of the *Lobbyists' Code of Conduct*. The position was eliminated on May 17, 2004, by S.C. 2004, c. 7, which amended the *Lobbyists Registration Act*.

Background

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

In August 2004, following allegations that money received from the Industry Canada program known as Technology Partnerships Canada (TPC) had been used to pay lobbyists, Industry Canada hired the firm Raymond Chabot Grant Thornton Consulting Inc. to perform an audit on 47 different companies who were recipients of federal funding. The purpose of the audit was to verify if the companies had respected their contracts with TPC.

On October 3, 2005, the former Registrar of Lobbyists received a copy of the firm's interim findings from Industry Canada. On June 27, 2006, the firm produced a final report on the audit, including a finding that Intellivax Inc. (Intellivax) had used a portion of its TPC funding to pay an amount of \$229,771.89 in fees to a lobbyist. The report concluded that Intellivax was, therefore, in breach of its funding arrangement with TPC.

The audit prepared for Industry Canada in relation to the Technology Partnerships Canada program was the impetus for this investigation. My predecessor, the Registrar of Lobbyists, opened his investigation based primarily upon the information that he received from Industry Canada.

Initiation of the *Lobbyists' Code of Conduct* Investigation

On October 6, 2005, the Registrar of Lobbyists determined that he had reasonable grounds to believe that Mr. Ballard had breached the *Lobbyists' Code of Conduct*. He made this decision based on the information provided by Industry Canada with respect to Mr. Ballard's activities on behalf of Intellivax. The Registrar of Lobbyists directed the opening of an investigation pursuant to subsection 10.4(1) of the *Lobbyists Registration Act*.

The Registrar did not refer the matter to the RCMP for investigation pursuant to subsection 10.4(7) of the *Lobbyists Registration Act*, as the initiation of proceedings in respect of an offence under the *Lobbyists Registration Act* was subject to a two-year statutory limitation period at the time. That period of time had already passed.

The *Lobbying Act* replaced the *Lobbyists Registration Act* on July 2, 2008,⁴ and the position of Registrar of Lobbyists was replaced by the Commissioner of Lobbying. Transitional provisions in the *Lobbying Act* authorize the Commissioner to continue to

⁴ *Supra*, footnote 1

conduct investigations initiated by the Registrar under the previous legislation. I decided to continue to conduct this investigation following my appointment as Commissioner.

The Subject

Mr. Paul Alan Ballard was the President of Consultations Biocosme PBC Inc. (Biocosme), a corporation located in Baie d'Urfé, Québec. Biocosme offered management consultant services to businesses, along with a specialization in biotechnology. The corporation has since become inactive, and Mr. Ballard is now the President of Integrity Biosciences Capital Inc.

Mr. Ballard has never registered as a lobbyist.

The Client and the Application to Technology Partnerships Canada

Intellivax International Inc. (Intellivax) is based in Saint-Laurent, Québec. The company provides scientific research and development and commercialization of products and services promoting human health. At the time of the events described in this report, the company was involved primarily in the manufacturing and development of innovative vaccine products.

In June 1999, Intellivax was in the process of seeking funding from Technology Partnerships Canada (TPC) for a project involving vaccine production. TPC was established in 1996, as a special operating agency of Industry Canada. It had a mandate to provide funding support for strategic research and development, along with demonstration projects that produced economic, social and environmental benefits for Canadians. The Government of Canada provided strategic assistance to firms engaged in private-sector research and development projects on a risk and reward-sharing basis through the TPC program. The mandate of TPC also included working in collaboration with innovative companies across Canada, funding private sector research and development and prototypes in the early “pre-competitive” stage of projects. Once an applicant was accepted for financial support, TPC entered into an agreement with the successful applicant that defined acceptable uses for the funding along with repayment schedules.

On April 14, 2000, Intellivax hired Mr. Ballard as a consultant, to assist with the development of the proposal to be submitted to TPC.

On October 18, 2000, a contribution agreement was signed between TPC and Intellivax. Intellivax was awarded \$5,938,680 in funding from TPC. Mr. Ballard was compensated by Intellivax for his work on the file in an amount of \$229,771.89. This sum included a 3% “success fee” that was based upon the company successfully obtaining the contribution from TPC.

On March 27, 2001, ID Biomedical Corporation announced the purchase of Intellivax International Inc. On September 7, 2005, GlaxoSmithKline Inc. announced an agreement to acquire ID Biomedica Corporation.

Process

The *Lobbyists' Code of Conduct* investigation of Paul Ballard covered his activities on behalf of Intellivax during the period April 14, 2000 to June 1, 2001, and involved an examination of the following:

- materials provided by Industry Canada and publicly available information regarding the Technology Partnerships Canada (TPC) program;
- correspondence between federal public office holders, Mr. Ballard and Intellivax;
- consultancy agreements and other documents involving Intellivax and Mr. Ballard;
- the contribution agreement between Intellivax and TPC;
- interviews with public office holders from TPC, the President and Chief Executive Officer of Intellivax and Mr. Ballard; and
- the Registry of Lobbyists and other publicly available information.

Following the investigation, a copy of the Investigations Directorate's report was sent to Mr. Ballard to give him an opportunity to present his views. He provided his response in a letter dated April 18, 2011.

The Investigations Directorate's report and Mr. Ballard's views were taken into consideration, and 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*, which was in effect 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:

- An individual 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
- The individual did so for payment and on behalf of any person or organization.

Findings

Report of the Investigations Directorate

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

1. Whether Mr. Ballard communicated with a public office holder in an attempt to influence a matter described in paragraph 5(1)(a) of the *Lobbyists Registration Act*

In April 2000, Mr. Ballard was contacted by employees of Intellivax and asked to assist the company with its application for funding from Industry Canada's Technology Partnerships Canada (TPC) program. Mr. Ballard's role was to provide strategic and technical advice to Intellivax, and to interact with public office holders responsible for administering the TPC program.

Mr. Ballard communicated on several occasions with public office holders administering the TPC program, in particular with an investment analyst at TPC. During the process of applying for TPC funding, he communicated with the investment analyst by telephone and by e-mail, and participated in conference calls and meetings attended by TPC officials and employees of Intellivax. He was described during interviews as a primary TPC contact on the Intellivax file.

Mr. Ballard communicated with TPC officials to ensure that all information required for the funding proposal was provided by Intellivax and that the company used due diligence throughout the process of applying for funding from TPC. He ensured that terminology used in the proposal was understandable to the public office holders and assisted Intellivax by replacing scientific jargon with wording suitable for an application for government funding. Mr. Ballard ensured that the materials submitted to TPC by Intellivax were presented in a manner that "added value" for Intellivax. He also acted as a mediator, exchanging information between the President of Intellivax and TPC officials.

At the time that these events took place, the *Lobbyists Registration Act* provided that lobbyists were required to register their activities when they communicated with public office holders in an "attempt to influence" them on various subjects that included the awarding of a grant, contribution or other financial benefit.⁵ In the context of the

⁵ 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 Act came into effect on June 20, 2005.

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 Investigations Directorate concluded that Mr. Ballard's communication with public office holders to ensure a successful application process for his client was an "attempt to influence" the awarding of a grant, contribution or other financial benefit. Communication of this nature, when performed for payment, was registrable under subparagraph 5(1)(a)(v) of the *Lobbyists Registration Act*.

A search of the Lobbyists Registration System reveals that Mr. Ballard did not register his undertaking on behalf of Intellivax.

2. Whether Mr. Ballard arranged a meeting between a public office holder and any other person

None of the witnesses interviewed during the investigation conducted by the Investigations Directorate could recall whether Mr. Ballard had arranged any of the meetings between TPC officials and Intellivax.

The investigation uncovered an invoice from Biocosme to Intellivax dated May 19, 2000, containing a Time & Service Record listing activities performed by Mr. Ballard on behalf of his client between April 4 and May 18, 2000. The document demonstrates that Mr. Ballard spoke to a TPC official on April 26th, and the result was a conference call set for May 4th. In an entry on the document describing services performed on May 4th, Mr. Ballard described a conference call between his client and TPC officials. The Investigations Directorate determined that there was a basis to conclude, therefore, that Mr. Ballard arranged a conference call between his client, the President of Intellivax and a number of public office holders (TPC officials) employed by Industry Canada.

The Investigations Directorate drew conclusions based upon an e-mail message sent by Mr. Ballard dated May 29, 2000, in which he welcomed "the first opportunity to host a site visit to Intellivax..." by TPC officials and an agenda item in the TPC audit file that indicates that a site visit took place in Montreal on June 12, 2000. That site visit was attended by public office holders.

The Investigations Directorate determined that, on June 12, 2000, Mr. Ballard participated in a meeting with officials from TPC, the National Research Council and Industry Canada. The Directorate concluded that although there was no direct evidence that Mr. Ballard was involved in the scheduling or logistics of the meeting of June 12, 2000, by sending out an invitation to TPC officials, Mr. Ballard was involved in the planning or "arrangement" of the meeting.

3. Whether Mr. Ballard did so for payment

The consultancy agreement entered into between Intellivax and Biocosme Inc. provided for Mr. Ballard to be remunerated in the form of a per diem fee of \$1,000 plus applicable taxes; a fee of \$125 per hour plus applicable taxes; and, upon approval of government funding, a payment of 3% of the total gross amount of the funding.

Intellivax paid a cumulative total of \$229,771.89 to Biocosme Inc. for services rendered by Mr. Ballard during the period between April 14, 2000 and June 1, 2001. This is a clear indication that Mr. Ballard performed work on behalf of Intellivax for payment.

4. Conclusions

The Investigations Directorate concluded that Mr. Ballard communicated with one or more federal public office holders on behalf of his client, Intellivax, for payment, in an attempt to influence the awarding of a grant, contribution or financial benefit. The awarding of a grant, contribution or financial benefit is a subject matter listed in subparagraph 5(1)(a)(v) of the *Lobbyists Registration Act*.

The Investigations Directorate also concluded that Mr. Ballard, for payment, arranged a meeting on behalf of his client, an activity that was registrable under paragraph 5(1)(b) of the *Lobbyists Registration Act*.

Mr. Ballard's Views 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.

In March 2011, I sent Mr. Ballard a copy of the Investigation Directorate's report and requested that he provide written comments within 30 days. Mr. Ballard replied on April 18, 2011. In Mr. Ballard's letter to me, he disagreed that he had been in breach of the *Lobbyists' Code of Conduct* during the period of time that he was engaged as a consultant by Intellivax. Mr. Ballard indicated that he was concerned by a number of matters in the investigation report that he had received. He raised a number of arguments in relation to several issues. I have considered each of the arguments and wish to address them in a substantive manner in this Report on Investigation.

1. Impetus for the investigation

Mr. Ballard raised the concern that the audit prepared for Industry Canada in relation to the Technology Partnerships Canada program was the impetus for the investigation.

The decision of my predecessor, the Registrar of Lobbyists, to open an investigation was based in part, but not exclusively, upon that audit. I elected to continue the investigation when I assumed responsibility for the Office. The purpose of an investigation is to enable me to reach findings and conclusions based upon the material that is uncovered during an investigation. In that respect, the receipt of an audit or similar evidence from a government department by my Office is treated in the same manner as a complaint received by our Office.

2. The private nature of the investigation process

Mr. Ballard took issue with the manner in which the investigation was carried out, in particular, the private nature of the investigation. Subsection 10.4(3) of the *Lobbying Act* provides that investigations shall be conducted in private. That is why interviews are conducted in private, and why persons who are interviewed are asked to remain silent about the conduct of an investigation. The *Lobbying Act* provides that a person who has been the subject of an investigation shall be provided with a reasonable opportunity to present the Commissioner with their views. I take the view that this is best accomplished by providing the person who has been investigated with a copy of the investigation report that was prepared by the Investigations Directorate. Mr. Ballard received a copy of the report prepared by the directorate and was given 30 days in which to provide his views upon that report.

3. The meaning of the phrase "in an attempt to influence"

Mr. Ballard has argued that the interpretation of the phrase "...communicate in an attempt to influence" in section 5 of the *Lobbyists Registration Act* as meaning "communication that optimizes the likelihood of a positive outcome of an individual's undertaking on behalf of a client" is "...vacuous and meaningless as a result." As noted earlier in this Report on Investigation, Parliament has amended the legislation to remove the phrase "...in an attempt to influence" in sections 5 and 7 with respect to communications between lobbyists and public office holders. However, during the period of time when the events set out in this report occurred, that phrase was in the legislation. I have used an ordinary language meaning of the phrase, appropriate for the context of its use, in order to provide an interpretation of the words used in the legislation and apply the law as Parliament intended. I have concluded that, while engaged as a consultant by Intellivax, Mr. Ballard did communicate with public office holders at TPC, in an attempt to influence them by demonstrating that the proposal advanced by his client, Intellivax, was a worthy recipient of funding from the federal government, on the merits of his client's proposal.

4. Arranging a meeting between a public office holder and a client

Mr. Ballard has argued that the information obtained by the Investigations Directorate during the course of its investigation does not demonstrate that he scheduled meetings or conference calls while engaged as a consultant by Intellivax. I have concluded that the evidence is not definitive regarding this issue and, as a result, I can not determine that Mr. Ballard scheduled meetings or conference calls on behalf of his client, although he participated in them once they were arranged.

I believe that Mr. Ballard is sincere in the statements that he has made in his letter to me. 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. I note that Mr. Ballard did cooperate with the Investigations Directorate during the course of this investigation.

Conclusions

Companies and other organizations attempting to put forward their views on federal laws, regulations and policies, or to obtain licences and certifications required under federal law, sometimes hire lobbyists to assist them through the process. These individuals may also arrange meetings between the company or organization and government officials or communicate with government officials to clarify the details of a company's proposal or to negotiate the terms of an agreement.

These are legitimate actions on the part of companies 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 companies in this way.

I have taken both the report of the Investigations Directorate and the views of Mr. Ballard into consideration in reaching my conclusions. I have concluded that Mr. Ballard was paid to communicate with federal public office holders in an attempt to influence them on behalf of his client, Intellivax, and that he failed to register his undertakings as required under the *Lobbyists Registration Act*. As a consequence of this, he also neglected to provide accurate information and inform his client of his obligations under the *Lobbyists' Code of Conduct*.

This chapter summarizes my conclusions on the activities of Mr. Ballard on behalf of his client, and my reasons for reaching these conclusions.

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

The evidence obtained during the investigation shows that Mr. Ballard was actively communicating with public office holders on behalf of his client, Intellivax, during the period from April 2000 to June 2001.

His role on behalf of his client was to assist the company in applying for and obtaining a contribution agreement from the Technology Partnerships Canada (TPC) program of Industry Canada. This involved communicating with federal public office holders of that department, in order to ensure that the proposal put forward by Intellivax met the program requirements and was properly described and documented, as required.

The *Lobbyists Registration Act* specified types of communication that are not subject to the registration requirements. The following communication was not deemed to require registration pursuant to paragraph 4(2)(b) of the *Lobbyists Registration Act*:

any oral or written submission made to a public office holder by an individual on behalf of any person or organization with respect to the enforcement, interpretation or application of any Act of Parliament or regulation thereunder by that public office holder and with respect to that person or organization.

In my view, the oral and written communication between Mr. Ballard and various federal public office holders, on behalf of Intellivax, do not appear to have fallen into this category. Rather, the communication involving Mr. Ballard and federal public office holders was with respect to the application for a contribution under the TPC program. In my view, this falls within the subject matter listed in subparagraph 5(1)(a)(v) of the *Lobbyists Registration Act*, the awarding of a grant, contribution or other financial benefit.

I take the view that the guidance provided by the courts is very useful in considering this matter. The principles to be applied have been established by the Federal Court of Appeal. The role played by a consultant providing services for clients has been considered by the Federal Court of Canada and by the Federal Court of Appeal in relation to the TPC program run by Industry Canada. The case concerned a consultant who was retained by a number of companies seeking funding from the program. The person in question did not register as a lobbyist and took the view that his activities were not registrable lobbying activities under the *Lobbyists Registration Act*.

The case was considered twice by the Federal Court of Appeal. Each time, the Court concluded that the decision of my predecessor, the Registrar of Lobbyists, to investigate was a reasonable decision. This was because the Registrar's decision was made on the basis that there had been a breach of the *Lobbyists' Code of Conduct* when the individual in question engaged in lobbying activities without registering as required. I must be guided in my approach to the application of the law and the *Lobbyists' Code of Conduct* by those decisions of the Federal Court of Appeal.

In *Neelam Makhija v. Attorney General of Canada*, 2010 FCA 342, at paragraphs [2] and [6], the Court reached the following conclusions:

[2] Notwithstanding the able arguments of counsel for the appellant, we are satisfied, as the judge was, that there was sufficient evidence before the Registrar to support his conclusions that the appellant, for payment, engaged in communications with public office holders in an attempt to influence the awarding of a financial contribution by Technology Partnerships Canada, failed to inform the four companies he had an agreement with of his obligations under the Act and the Code, and signed with Infowave statements that he did not engage in lobbying, knowing that these statements would be relied on.

...

[6] What the appellant raised before the Registrar, the judge and us is not a mistake of fact, but an error of law. His submission is twofold: he did not know that the Act applied to him and he did not know that his acts were an attempt to influence the awarding of a grant, contribution of other financial benefit by or on behalf of Her Majesty in right of Canada. In fact, the appellant is mistaken as to the scope of the Act and the meaning or definition of “attempt to influence”. It is an error of law in both cases and an error of law is no excuse unless it is an officially induced error or one that is invincible such as when the law is not published: see *R. v Jorgensen*, [1995] 4 S.C.R. 55, *Lévis (City) v Tétreault*, 2006 SCC 12.

Therefore, I have concluded that Mr. Ballard communicated with a federal public office holder in an attempt to influence one of the subjects listed in paragraph 5(1)(a) of the *Lobbyists Registration Act*.

2. Whether Mr. Ballard arranged a meeting between a public office holder and any other person

The act of arranging a meeting on behalf of a client, when done for payment, is a registrable lobbying activity pursuant to paragraph 5(1)(b) of the *Lobbyists Registration Act*. This remains the case under the *Lobbying Act* as well.

The documentary evidence indicates that Mr. Ballard was in contact with officials at TPC in relation to a meeting involving Intellivax that took place on June 12, 2000 in Montreal. The purpose of the meeting was to discuss the application for funding from the TPC program by Mr. Ballard’s client, Intellivax. However, after considering the information obtained by the Investigations Directorate and the views of Mr. Ballard, I am unable to conclude that Mr. Ballard was responsible for arranging the meeting and, as a result, that he was required to register as a lobbyist under paragraph 5(1)(b) of the *Lobbyists Registration Act*.

3. Whether Mr. Ballard did so for payment

Evidence obtained during the course of the investigation demonstrates that the work performed by Mr. Ballard on behalf of Intellivax was for payment.

The consultancy agreement entered into between Intellivax and Biocosme provided for Mr. Ballard to be remunerated on the basis of a per diem fee combined with an hourly fee. Upon approval of government funding, the consultancy agreement provided for an additional payment based upon a percentage of the total gross amount of the funding obtained from TPC.

Intellivax paid a cumulative total of \$229,771.89 to Biocosme for services rendered by Mr. Ballard during the period between April 14, 2000 and June 1, 2001. Therefore, I have concluded that Mr. Ballard performed work on behalf of Intellivax for payment.

4. Whether Mr. Ballard engaged in activity requiring registration under the *Lobbyists Registration Act*

Mr. Ballard engaged in an activity requiring registration as a consultant lobbyist pursuant to paragraph 5(1)(a) of the *Lobbyists Registration Act*. His client paid him to communicate with federal public office holders in an attempt to influence the awarding of funding under a program of the federal government. Mr. Ballard did so on behalf of his client. He was, therefore, required to file a lobbyist registration return with the Registrar not later than 10 days after entering into his undertaking with his client, but he failed to do so.

5. Whether Mr. Ballard was 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 is based on a body 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 the time limit prescribed in the *Lobbyists Registration Act*, Mr. Ballard's activity on behalf of Intellivax was in breach of the Principle of Professionalism.

6. Whether Mr. Ballard was 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:

* This version of the *Lobbyists' Code of Conduct* was in effect during the period covered by this report (April 2000 to June 2001).

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 as a lobbyist, Mr. Ballard did not appropriately identify himself as a lobbyist and as a result, he did not provide accurate information to public office holders. As a result, individuals and organizations with an interest in the status of the Intellivax application for funding from TPC may have been misled about the existence of lobbying activity. Therefore, Mr. Ballard was in breach of Rule 2 (Accurate information).

7. Whether Mr. Ballard was 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*.*

Mr. Ballard's client, Intellivax, was unaware of his obligation to register as a consultant lobbyist acting on its behalf. During an interview, the President of Intellivax indicated that Mr. Ballard did not disclose an obligation to register under the *Lobbyists Registration Act*. It may be inferred that he did not disclose his obligations under the *Lobbyists Registration Act* and the *Lobbyists' Code of Conduct* with respect to this undertaking.

In view of this, I have concluded that Mr. Ballard was in breach of Rule 3 (Disclosure of obligations) with respect to this undertaking.

* This version of the *Lobbyists' Code of Conduct* was in effect during the period covered by this report (April 2000 to June 2001).

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 (April 2000 to June 2001).

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.