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Ending Secret, Unethical Lobbying by Strengthening the *Lobbying Act* and Enforcement

Submission to the Standing Committee on Access to Information, Privacy and Ethics
by the Government Ethics Coalition
(February 2012)

I. Summary of Needed Changes to *Lobbying Act* and *Lobbyists Code of Conduct*

NEEDED CHANGE #1 – Close loopholes that allow for unregistered, secret lobbying

NEEDED CHANGE #2 – Make the limitation on becoming a registered lobbyist after leaving office a sliding scale limitation on lobbying from one to five years, and close loophole that exempts "exchange program" participants from the cooling-off period

NEEDED CHANGE #3 – Clearly prohibit lobbyists from working with political parties, riding associations and candidates, and from becoming Cabinet ministers for a few years after they enter office

NEEDED CHANGE #4 – Require lobbyists to disclose past work with any government or political party, riding association or candidate

NEEDED CHANGE #5 – Require lobbyists to disclose amounts spent on lobbying efforts, and possibly limit spending

NEEDED CHANGE #6 – Require Commissioner of Lobbying to conduct regular, random audits and inspections

NEEDED CHANGE #7 – Require Commissioner of Lobbying and Director of Public Prosecutions to rule publicly within a reasonable time period on every situation that raises issues of violations, and to disclose the identity of all wrongdoers

NEEDED CHANGE #8 – Give Commissioner of Lobbying the power and mandate to impose penalties

NEEDED CHANGE #9 – Make appointment of Commissioner of Lobbying open, fair and merit-based, and for non-renewable term

NEEDED CHANGE #10 -- Make the *Lobbyists' Code* part of the *Act*, and make the Registry of Lobbyists fully searchable by any field

II. The History of Loopholes and Weak Enforcement from 1988 to 2012

(a) Loopholes have always existed allowing secret, unethical lobbying

The *Lobbying Act* (formerly the *Lobbyists Registration Act*) has, right back to 1988, always been full of loopholes that allow for secret, unethical lobbying. All the loopholes that existed in 1988 still exist. One loophole the Liberals put in the *Act* in 1995, specifically to increase secret lobbying during the Chretien government, allowed secret lobbying if the lobbyist received a written invitation to come and lobby the public office holder. Thankfully, that loophole was finally removed from the *Act* in 2005.

(b) Enforcement has always been almost completely ineffective

Since 1988, no one has ever been prosecuted for violating the *Lobbying Act*, and only about a dozen lobbyists have been found guilty of violating the *Lobbyists' Code of Conduct*. This negligent enforcement record has been rife with conflicts of interest, and incompetence.

Howard Wilson, the first Registrar of Lobbyists, did almost nothing to enforce the *Act* or the *Lobbyists' Code of Conduct* (the *Code*). Neither did his successor Michael Nelson, who took over in 2004 when Wilson "retired" after being found to be systemically biased (because he was under the control of Prime Minister Chretien) and specifically biased (against Democracy Watch) by the Federal Court in the case filed by Democracy Watch.

Michael Nelson "retired" in 2007, and in March 2009 the Federal Court of Appeal unanimously ruled that his and Wilson's interpretation of Rule 8 of the *Code* was "deeply flawed" in another case filed by Democracy Watch.

Current Commissioner of Lobbying Karen Shepherd was the Deputy Registrar of Lobbyists under Michael Nelson, and she did nothing to blow the whistle on Nelson's negligently weak enforcement record.

Commissioner Shepherd also did almost nothing to enforce the *Act* or the *Code* in her first year as Interim Commissioner, perhaps to ensure she received the appointment as full Commissioner for a seven-year term that pays about $200,000 annually. She continued to do almost nothing to enforce the *Act* or the *Code* until the Federal Court of Appeal ruling in March 2009 forced her to finally take action.

The annual reports of Wilson, Nelson and Shepherd from 1988 to 2010 contained so little, and such vague, contradictory information, that no one could tell what they were doing.

Finally, very likely scared by the fact that Integrity Commissioner Christiane Ouimet was shamed and fired in October 2010 for doing such a similarly bad job of enforcement, and also very likely aware that court cases filed by Democracy Watch had forced Howard Wilson, Michael Nelson, and former Ethics Commissioner Bernard Shapiro out of office, Commissioner Shepherd finally disclosed details in March 2011 about what she, and Michael Nelson, and the RCMP and Crown prosecutors had <u>not</u> been doing since 2004 in failing almost completely to enforce the *Act* and the *Code*.

(c) Commissioner Shepherd's disclosure shows details of negligent enforcement

Commissioner Shepherd's disclosure in March 2011 showed the following stunningly weak, ineffective and negligent enforcement record by her (from 2007 to March 2011) and her predecessor Michael Nelson (from 2004 to 2007) (NOTE: See details at: <http://dwatch.ca/camp/RelsFeb0912.html>):

- Since 2004, at least 17 lobbyists have been caught lobbying the federal government but all were let off the hook because of loopholes in the law;

- Secret rulings have let at least 32 lobbyists off the hook because the RCMP and Crown refused to prosecute – the Commissioner of Lobbying has failed to rule publicly in these 32 cases that the lobbyist violated the *Lobbyists' Code*;
- The Commissioner has also failed to rule publicly on more than 50 cases since 2004, and;
- As a result, at least 49, possibly more than 100 secret, unethical federal lobbyists have been let off the hook from April 2004 to March 2011.

Commissioner Shepherd has failed to disclose any updates of her caseload since March 2011, and as a result there could be many more cases in the past year in which lobbyists have been let off the hook because of negligently weak enforcement by the Commissioner, and the RCMP and Crown prosecutors.

III. The Negligence of All Federal Parties since 1988 in Allowing Secret, Unethical Lobbying

Many commentators pointed out the loopholes that allowed for secret lobbying in the original *Act* back in 1988, but the Mulroney government ignored them.

The Chretien Liberals' 1993 Red Book promised to "bring lobbyists out of the shadows." More than 18 years later, lobbyists are still allowed, legally, to remain in the shadows, lobbying in secret, and therefore lobbying unethically and allowed to have unethical relationships with public office holders. As noted above, the Chretien Liberals actually added a loophole to the *Act* in 1995, and only removed it in 2005. And the ineffectiveness of the *Lobbyists' Code of Conduct* was made clear soon after it was enacted in 1997, but it is still ineffective.

The NDP and Bloc have done nothing to close the loopholes other than complain. They have not introduced even one private member bill, or amendment to a government bill, since 1988 that addresses the loopholes in the *Act*, or that strengthens enforcement of the *Act*. Neither did the Reform Party, the Canadian Alliance or Conservatives when they were in opposition from 1993 to 2006, nor have the Liberals since 2006.

The Harper Conservatives' promised in their 2006 election platform to *"Require ministers and senior government officials to record their contacts with lobbyists."* Like the Liberals before them, this promise was a lie. Instead, all the Conservatives did was change the *Act* to require lobbyists who are required to register (and there are many loopholes in the registration requirements – see details below) to disclose only oral, pre-arranged communications with ministers and senior government officials. This measure was extended to cover communications with MPs and senior staff of the office of Leader of the Official Opposition in summer 2010.

IV. Conservatives Weak Actions on Open Government and OGP So Far

In the Government of Canada's March 2011 Backgrounder on Open Government -- <http://www.open.gc.ca/media/ogbg-digo-eng.asp> -- the clear attempt is made to limit the definition of "open government" to, essentially, "open data" and to, therefore, limit the government's agenda to a few open data changes. The Government's Open Government website -- <http://www.open.gc.ca> -- is similarly limited.

However, publishing more federal government datasets in open formats online, publishing summaries of completed requests under the *Access to Information Act*, and maintaining the Consulting with Canadians website that was established in 2004 and lists public

consultations, are actions that do nothing to solve the following ongoing federal government secrecy and ethics problems (all of which the government is required to commit to solving in order to be a member of the international Open Government Partnership):

- excessive secrecy is legal because of loopholes in the federal *Access to Information Act*, and lack of powers of the Information Commissioner;
- Cabinet ministers, their staff, senior government appointees and officials, MPs and senators, and their staff, are all allowed to be dishonesty and to take part in decisions that affect their secret financial interests because of loopholes in the *Conflict of Interest Act*, and MP and Senate ethics codes, and weak enforcement of the *Act* and codes by the Conflict of Interest and Ethics Commissioner, and Senate Ethics Officer;
- Cabinet ministers and parliamentary secretaries are allowed to hire each others' family members as staff or advisers and are allowed to intervene in the handing out of contracts to their family members by government institutions, because of loopholes in the *Conflict of Interest Act*;
- secret, unethical lobbying is legal (including by Cabinet ministers and senior government officials the day after they leave office) because of loopholes in the federal *Lobbying Act* and weak enforcement of the *Act* by the Commissioner of Lobbying, RCMP and Crown prosecutors, and weak enforcement of the *Lobbyists' Code of Conduct* by the Commissioner of Lobbying;
- secret, unlimited donations and loans to nomination race and party leadership race candidates are legal because of loopholes in the *Conflict of Interest Act*, the *Canada Elections Act*, and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*;
- sole source contracts are legal under the *Financial Administration Act*, and enforcement of that *Act* and Treasury Board policies is weak because the frontline enforcers are senior public servants who are in a conflict of interest as they are enforcing rules that apply to themselves and people they supervise;
- dishonesty in budgets and spending statements is legal because of weaknesses in the independence, mandate and powers of the Parliamentary Budget Officer;
- protection of public servants who disclose wrongdoing (whistleblowers) is very weak because of loopholes in the *Public Servants Disclosure Protection Act* and weak enforcement by the Treasury Board and the Integrity Commissioner, and;
- government institutions regularly violate the Treasury Board policies entitled the *Voluntary Sector Code of Good Practice on Policy Dialogue*, and the *Voluntary Sector Code of Good Practice in Funding* (Set out at: <http://www.tbs-sct.gc.ca/pol/index-eng.aspx?l=V>).

The federal government's current very limited open data agenda is completely inadequate to meet the requirements of being a member in the Open Government Partnership (OGP), which the government committed to joining in a September 19, 2011 letter from Minister John Baird to Hillary Clinton.

In order to fulfill the OGP membership requirements, and in order to be an actual open government agenda (instead of just a limited open data agenda), the Government of Canada's current agenda must be expanded to close the loopholes and correct the flaws in, and strengthen the enforcement of, all the laws and policies listed above.

It should also be noted that the Government of Canada failed to keep its OGP commitments (set out at: <http://www.opengovpartnership.org/consultation>) to give advance notice to the public of a broad public consultation on the OGP process; to undertake OGP awareness-raising activities to increase participation in the consultation; to initiate public consultation using a variety of methods (online, in-person meetings) soon after signing on to OGP in September, and; to use the results of that consultation to prepare and make public a draft action plan for the December 7-8, 2011 OGP meeting in Brasilia, Brazil.

Instead, the government finally initiated an online public consultation without any advance notice or advance awareness-raising activities on December 6, with submissions due by today, January 16. Given how busy many people are during the holiday season, and how many organizations of all types close their offices for a holiday period, the government chose one of the worst times of the year to consult with Canadians. As well, there is no evidence that the federal government has held any in-person meetings with civil society and private sector groups as part of the public consultation, which is also required by the OGP

Beyond consulting broadly before drafting an action plan, the Open Government Partnership (OGP) requires participating governments to go much further than a few open data changes, and to sign on to the Open Government Declaration (set out at: <http://www.opengovpartnership.org/open-government-declaration>) that commits them to uphold the value of openness in their engagement with citizens to improve services, manage public resources, promote innovation, and to create safer communities, and to embrace principles of transparency and open government with a view toward achieving greater prosperity, well-being, and human dignity.

OGP member governments are required to meet OGP commitments set out in the Declaration by including in their final OGP Action Plan (which is due April 9, 2012 for the April 16-18, 2012 first annual OGP meeting in Brasilia) clear, significant, measurable changes that will be made, benchmarks of change, and timelines for implementing the changes over a following two-year period, in the following areas A to D set out below.

Among other requirements, the OGP Declaration requires member governments: "To implement the highest standards of professional integrity throughout their administration

- to have robust anti-corruption policies, mechanisms and practices, ensuring transparency in the management of public finances and government purchasing, and strengthening the rule of law;
- to maintain or establish a legal framework to make public information on the income and assets of national, high ranking public officials;
- to enact and implement rules that protect whistleblowers;
- to make information regarding the activities and effectiveness of anticorruption prevention and enforcement bodies, as well as the procedures for recourse to such bodies, available to the public, respecting the confidentiality of specific law enforcement information;
- to increase deterrents against bribery and other forms of corruption in the public and private sectors, as well as to share information and expertise."

The federal government's current open government plans do not address any of these requirements.

V. Changes needed to end secret, unethical lobbying, strengthen enforcement, keep the spirit of the Conservative Party's promises, and to fulfill the Open Government Partnership requirements

To make secret, unethical lobbying clearly illegal, and to strengthen enforcement of the *Lobbying Act* and *Lobbyists' Code of Conduct*, and directly related laws, and to keep the spirit of the promises made by the federal Conservative Party in 2006, and to fulfill the international Open Government Partnership (OGP) Action Plan requirements of implementing the highest standards of professional integrity, having robust anti-corruption policies, mechanisms and practices, and increasing deterrents against various forms of corruption, the federal government must make the following changes to the *Lobbying Act* and *Lobbyists' Code of Conduct*, and the enforcement system for that *Act* and *Code*, and also strengthen rules in, and enforcement of, related federal laws, codes and policies.

(NOTE: To see a summary list of the loopholes and flaws in ethics and lobbying laws that the following recommendations are aimed at closing in part, please view the Democracy Watch news release at: <http://www.dwatch.ca/camp/RelsMay3110.html> and for another summary, as well as more details, see Democracy Watch's submissions to the Oliphant Inquiry at: < http://www.dwatch.ca/camp/RelsJul3109.html>):

(a) Changes needed to end secret, unethical lobbying

NEEDED CHANGE #1 – Close loopholes that allow for unregistered, secret lobbying

To close the loopholes in the *Lobbying Act* that allow for unregistered lobbying, the *Act* must be changed to require Cabinet ministers, their staff, appointees, senior government officials, MPs and Senators and their staff, and public servants with decision-making power to register in a searchable online database all of the details of the identity of anyone (and their actual client) connected with any lobbying effort who communicates (directly or indirectly) with them (no matter who initiates the communication), and the details of the communication (the bill, regulation, code, guideline, program, tax, subsidy, inspection, audit or other enforcement action).

Either the *Act* must be changed in that way, or the loopholes in the *Lobbying Act* must be closed that exempt from registration: unpaid lobbyists; in-house corporate lobbyists who lobby less than 20% of their work time, and; exempt lobbyists who are lobbying about the enforcement or administration of laws, regulations etc. (clause 4(2)(b)), and the loopholes must be closed to require all communications (not just oral, pre-arranged communications that are initiated by the lobbyist) to be disclosed and to require disclosure of the person or all the people doing the communications (currently only the identity of the senior officer of an organization who is at a meeting lobbying is disclosed, not the identities of anyone else at the meeting).

The Commissioner of Lobbying, and the Public Affairs Association of Canada, have also recommended removing the 20% exemption. The Commissioner has also recommended disclosure of the identity of everyone who participates in communications, and to require disclosure of all oral communications no matter who initiates the communication. The Commissioner has also recommended explicitly requiring disclosure by consultant lobbyists of their actual client (not just the firm or company that hires them).

NEEDED CHANGE #2 – Make the limitation on becoming a registered lobbyist after leaving office a sliding scale limitation on lobbying from one to five years, and close loophole that exempts "exchange program" participants from the cooling-off period

To end secret, unethical lobbying, the *Lobbying Act* must not be changed to reduce the five-year limitation on being a registered lobbyist after leaving office to one year, as

recommended by the Public Affairs Association of Canada (PAAC). Instead, the *Act* must be changed to make it a limitation on lobbying (registered or not) and to extend the limitation to senators and the staff of all politicians, and to all Cabinet appointees and public servants, on a sliding scale of one to five years depending on the decision-making power of the politician, political staff person, appointee or public servant.

As well, the Act must be changed to close the loophole in subsection 10.11(2) that exempts anyone participating in the federal government's "employment exchange program" (who are mainly people from large corporations) from the limitation on lobbying.

Instead, the *Act* must be changed to empower the Commissioner of Lobbying to reduce the time period of the ban, or comprehensiveness of the ban, depending on the role the person has played in the government, and to require the Commissioner to publicly disclose any reductions applied to any person.

NEEDED CHANGE #3 – Clearly prohibit lobbyists from working with political parties, riding associations and candidates, and from becoming Cabinet ministers for a few years after they enter office

To end secret, unethical lobbying, the *Lobbying Act* must also be changed to clearly prohibit lobbyists from working directly or indirectly, paid or volunteer, with government or opposition political parties, and in senior positions with political parties, riding associations or candidates, if they are lobbying or may lobby them in the future (as in Maryland and New Mexico). This prohibition is needed to prevent conflicts of interest caused by lobbyists assisting people and parties they are lobbying.

Democracy Watch's position is that the general conflict-of-interest Rule 8 of the *Lobbyists' Code of Conduct* prohibits lobbyists from doing such work, paid or volunteer, but this rule is not specific. The Federal Court of Appeal's March 2009 ruling in *Democracy Watch v. Barry Campbell and the Attorney General of Canada (Registrar of Lobbyists)* 2009 FCA 79 has clarified the rule somewhat, but left it to the discretion of the Commissioner of Lobbying to determine what activities of lobbyists Rule 8 actually prohibits on a case-by-case basis. However, the Commissioner has not been as clear as she can be in Interpretation Bulletins and Advisory Opinions concerning the scope of Rule 8.

As well, the *Lobbying Act* must be changed to prohibit lobbyists from becoming members of Cabinet for at least a few years after they are elected as a federal politician, especially to ensure that ministers do not become responsible for areas in which they lobbied during the previous five years because of the conflicts of interest that are likely in such situations.

NEEDED CHANGE #4 – Require lobbyists to disclose past work with any government or political party, riding association or candidate

To end secret, unethical lobbying, the *Lobbying Act* must be changed to require lobbyists to disclose on the online, searchable Lobbyist Registry their past work with any government, political party, riding association or candidate (currently, lobbyists are only required to disclose their past work with the federal government).

NEEDED CHANGE #5 – Require lobbyists to disclose amounts spent on lobbying efforts, and possibly limit spending

To end secret, unethical lobbying, the Lobbying Act must be changed to require lobbyists to disclose on the online, searchable Lobbyist Registry how much they spend on each lobbying campaign (as required in more than 30 U.S. states), including disclosure of any groups they fund as part of their lobbying effort. If this disclosure shows that corporate lobbyists have far more

resources to spend on lobbying than citizen lobbyists, then the Government must set limits on spending on lobbying campaigns (similar to the limits that have been established for advertising spending by lobbyists during election campaign periods).

(b) Changes needed to strengthen enforcement of the *Act* and *Code*

"It is essential, for deterrence, to have strong penalties that we all know will be enforced"
Prime Minister Harper, CTV National News, Feb. 26, 2009
<http://watch.ctv.ca/news/clip144359#clip144359>

NEEDED CHANGE #6 – Require Commissioner of Lobbying to conduct regular, random audits and inspections

To strengthen enforcement of the *Lobbying Act* and *Lobbyists' Code of Conduct*, the *Act* must be changed to require the Commissioner of Lobbying to conduct regular, random audits and inspections of the activities of people and government institutions covered by the rules.

Currently, the Commissioner sits back and waits for complaints, or at best monitors media to try to figure out who may be lobbying. Regular random audits are a basic, required technique of law enforcement, and the Commissioner must be required to do such audits.

NEEDED CHANGE #7 – Require Commissioner of Lobbying and Director of Public Prosecutions to rule publicly within a reasonable time period on every situation that raises issues of violations, and to disclose the identity of all wrongdoers

To strengthen enforcement, the *Lobbying Act* and the *Lobbyists' Code of Conduct* must be changed to require the Commissioner of Lobbying to investigate and rule publicly on every situation that raises an issue of a violation of the *Act* or *Code*.

At least 32, and possibly more than 80, lobbyists have violated the *Act* since 2004 and the Commissioner, RCMP and Director of Public Prosecutions have kept their identities secret. Since 1988, no one has ever been prosecuted for violating the *Act*, and only about a dozen lobbyists have been found guilty of violating the *Code*.

Currently, the Commissioner can give secret advice, and has discretion whether to investigate and/or rule publicly on situations of violations that the Commissioner becomes aware of, and often the Commissioner keeps the status of investigations and rulings secret.

The federal Conservatives slid changes in 2006 into the so-called *Federal Accountability Act* that undermines enforcement of the *Lobbying* Act and *Lobbyists' Code*. These changes makes it unlikely that a court would consider a judicial review application if the Commissioner refused to investigate a situation (no matter how clearly it involved a violation of the *Act* or *Code*), or a judicial review application of a ruling of the Commissioner of Lobbying (no matter how incorrect in law or fact the Commissioner's ruling was).

The changes are in subsection 10.4(1) – the Commissioner is only required to investigate if the Commissioner believes "it is necessary to ensure compliance", and; subsection 10.4(1.1) – several reasons are given that the Commissioner can use to end an investigation;

To end this secrecy that allows for negligently weak enforcement of key good government rules, subsection 10.4(1.1) must be deleted, and subsection 10.4(1) changed to require the Commissioner, whether the Commissioner receives a complaint, a request, or become aware of a situation on their own, to disclose regularly and publicly (at least twice each year) a summary of the situation, the date they became aware of the situation, the date they began investigating, the date they concluded their investigation, and their ruling.

And the Commissioner of Lobbying must, in every case, also be required to disclose the identity of any violator of any rule. Currently, the *Privacy Act* is invoked regularly to hide the identities of wrongdoers in federal politics, and either the Lobbying Act or the *Privacy Act* (or both) must be changed to clearly prohibit keeping the identity of a wrongdoer secret. No one in politics, paid for by the public or required to uphold the public trust, has a right to privacy when they violate the rules.

As well, the Director of Public Prosecutions must be required to issue a written, public explanation of the reasons why a Cabinet minister, staff, appointee or senior government official, MP, Senator, or their staff, or public servant or lobbyist is not prosecuted in every case in which allegations are made that one of these people has violated the *Act* or *Code*.

In addition, the *Lobbying Act* must be changed to require the Commissioner of Lobbying and Director of Public Prosecutions to rule publicly on every situation that raises issues of violations within a reasonable time period, and the Commissioner must rule publicly on violations of the *Lobbyists' Code* within 90 days after the Commissioner has referred a case to the RCMP for investigation, to ensure that timely rulings are made and that police investigations (which, again, have never resulted in a prosecution under the *Act*) do not delay justice.

NEEDED CHANGE #8 – Give Commissioner of Lobbying the power and mandate to impose penalties

To strengthen enforcement, the Commissioner of Lobbying must be given the power, and required, under sections 14.01 and 14.02 of the *Lobbying Act*, to penalize violators of the *Act* with significant fines, and also given the power, and required, to penalize violators of the *Lobbyists' Code* with fines (as in Quebec). The Commissioner of Lobbying has also recommended this change.

Some people, such as Joe Jordan and representatives of GRIC (Charles King and Jim Patrick), claim that the report to Parliament for a violation of the *Lobbyists' Code* is a serious penalty because no one would want to hire someone who has been reported as a violator. This is clearly a false claim. Being found publicly guilty of violating the *Code* has no effect at all on the career of a lobbyist. For example:

- Michael McSweeney was promoted by the Cement Association of Canada to be President and CEO even though he was found guilty by the Commissioner of Lobbying for violating the key ethics rule in the *Code* when he fundraised for a Cabinet minister, Lisa Raitt, whom he was lobbying at the same time, and;
- Will Stewart, who was found guilty by the Commissioner of violating the *Code* for also lobbying Lisa Raitt at the same time he was lobbying her, also continues to be a consultant lobbyist for all of the 10 clients he had before he was found guilty.

Some may point to the example of Rahim Jaffer. But this is misleading -- Mr. Jaffer was alleged to have violated the *Act*, and was alleged to have been involved in other highly questionable activities, and was only found guilty of violating the *Code* in December 2011. The negative effects of that finding are negligible because Mr. Jaffer had already suffered all the negative effects of the negative publicity since early 2009 concerning his and his wife's activities, and Prime Minister Harper's and the Conservatives' public reaction to those activities.

NEEDED CHANGE #9 – Make appointment of Commissioner of Lobbying open, fair and merit-based, and for non-renewable term

To strengthen enforcement, the *Lobbying Act* must be changed to require that the appointment process for the Commissioner of Lobbying be conducted by an independent Public

Appointments Commission which must be established (as the Conservatives promised in 2006) and mandated to conduct a public search for candidates.

The *Act* must also be changed to require that the person appointed as Commissioner be approved by a majority of the leaders of the recognized parties in the House of Commons and Senate, in addition to being approved by a majority of MPs and Senators.

In addition, as with the Ethics Commissioner under the *Conflict of Interest Act*, the Commissioner of Lobbying must be required to have legal expertise and experience given that the position is quasi-judicial in nature.

As well, the Commissioner of Lobbying should not be allowed to have a renewable term (under subsection 4.1(3)) because it creates an incentive to please the Cabinet in order to win appointment for another term in office.

NEEDED CHANGE #10 -- Make the *Lobbyists' Code* part of the *Act*, and make the Registry of Lobbyists fully searchable by any field

To strengthen enforcement, the *Lobbying Act* must be changed to make the *Lobbyists' Code* part of the *Act*, so that it is clearly enforceable, and so it can't be changed at the whim of a House of Commons committee.

As well, the *Act* must be changed to require the Commissioner of Lobbying to make the search page of the online Registry of Lobbyists searchable by any data field in the registry (currently, the database can only be searched by the name and client(s) or organization of the lobbyist, the department being lobbied and the subject matter, and the lobbying time period, which makes it difficult to determine, for example, the number of lobbyists who used to work for the federal government).

Making the Registry searchable by all field will assist the media, and the public, in monitoring lobbying activity (especially by former public office holders) – and this is clearly needed given the negligently weak enforcement of the *Act* and *Code* by the Commissioner of Lobbying, the RCMP and Crown prosecutors.

VI. Conclusion

Overall, to end secret, unethical lobbying effectively, changes similar to those set out above for the *Lobbying Act* and *Lobbyists' Code of Conduct* must also be made to the *Conflict of Interest Act*, *Conflict of Interest Code of Members of the House of Commons*, *Conflict of Interest Code for Senators*, *Public Sector Disclosure Protection Act*, *Canada Elections Act*, *Access to Information Act*, and the *Values and Ethics Code for the Public Service*.

All of these acts and codes overlap and work together, so if loopholes or flaws are in any of them, or any of them are enforced weakly or ineffectively, it undermines all of them.

Democracy Watch's Open Government Coalition, Government Ethics Coalition and Money in Politics Coalition will continue to push the federal government to make these changes, including by setting out meaningful commitments to make these changes in its two-year Open Government Partnership (OGP) Action Plan in April 2012.

We will appeal to the OGP Steering Committee not to accept the federal government's Action Plan if it does not include detailed, comprehensive commitments to make these key changes.

If the Government of Canada is accepted as a member of OGP, Democracy Watch and its coalitions will continue to push the Government to keep its commitments, and if it does not keep its commitments we will appeal to the OGP Steering Committee to remove the Government of Canada as a member of OGP.