



Office of the Commissioner
of Lobbying of Canada

Commissariat au lobbying
du Canada

Report on Investigation

The Lobbying Activities of Julie Couillard

October 2012

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For a print copy of this publication, please contact:

Office of the Commissioner of Lobbying

255 Albert Street

10th Floor

Ottawa, Ontario K1A 0R5

Tel: 613-957-2760

Fax: 613-957-3078

Email: **QuestionsLobbying@ocl-cal.gc.ca**

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Cat. No. Lo5-3/10-2012E-PDF

ISBN 978-1-100-21109-1

Aussi offert en français sous le titre

Rapport d'enquête – Les activités de lobbying de Julie Couillard

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 Julie Couillard for tabling in the Senate. The investigation was conducted in accordance with the provisions of section 10.4 of the Act.

Sincerely yours,

A handwritten signature in black ink, consisting of a large, stylized 'K' followed by a horizontal line.

Karen E. Shepherd

Commissioner of Lobbying



Commissaire au lobbying

Ottawa, Canada K1A 0R5

The Honourable Andrew Scheer, 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 Julie Couillard for tabling in the House of Commons. The investigation was conducted in accordance with the provisions of section 10.4 of the Act.

Sincerely yours,

A handwritten signature in black ink, consisting of a large, stylized 'K' followed by a horizontal line.

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 administrative review following my appointment as Commissioner. At the conclusion of the administrative review, I opened an investigation under subsection 10.4(1) of the *Lobbying Act*.

Issue

Lobbyists have certain legal and professional obligations to follow when they work on behalf of clients or employers. Individuals are required to file a return with the Commissioner identifying themselves as consultant lobbyists 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.

In June 2008, it was alleged that Ms. Julie Couillard, a real estate agent associated with Groupe Immobilier Kevlar Inc., a Montréal-based property development company, engaged in lobbying activity during the period of March 2007 to June 2008 when she was not registered as a lobbyist as required by the *Lobbyists Registration Act*¹.

Investigation

An administrative review concerning the allegations under the former *Lobbyists Registration Act* and the *Lobbyists' Code of Conduct* was initiated in June 2008 by my predecessor, the Registrar of Lobbyists. In July 2008, with the coming into force of the *Lobbying Act*, I assumed responsibility for the files opened by the Registrar of Lobbyists.

Subsection 10.4(8) of the *Lobbying Act* requires me to suspend an investigation if its subject-matter is the same as the subject-matter of an investigation being conducted by another organization. The Investigations Directorate of my Office communicated with the Royal Canadian Mounted Police (RCMP) in July 2008, in order to determine whether or not my Office could continue with the administrative review.

¹ 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 came into force on July 2, 2008.

In August 2008, the RCMP asked me to suspend looking into this matter until further notice. As a result, I suspended my administrative review. On October 26, 2010, the Investigations Directorate was informed by the RCMP that no charges would be laid against Ms. Couillard under the *Lobbying Act*.

The Investigations Directorate resumed the administrative review and in February 2011, I formed the opinion that I had sufficient grounds to open an investigation into alleged breaches of the *Lobbyists' Code of Conduct*. When the investigation regarding the activities of Ms. Couillard was complete, I provided Ms. Couillard with an opportunity to present her views. After considering her comments, I prepared this Report to Parliament.

Conclusions

In this report, I conclude that Ms. Couillard communicated with a public office holder, for payment, in respect of matters that required her to register as a consultant lobbyist and that she failed to register as required by the *Lobbyists Registration Act*. As a result, I conclude that she 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*. The *Lobbyists' Code of Conduct* has not changed since its introduction.

During the period covered by this report, March 2007 to June 2008, individuals paid to communicate with federal public office holders concerning the subjects listed in the relevant registration sections of the *Lobbyists Registration Act*, or arrange meetings with federal public office holders, were required to register their activities in the Registry of Lobbyists. The same requirements are in place today under the current *Lobbying Act*. The definition of “public office holder” in the legislation is broad, and includes 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 by lobbyists and were intended as general guidance to the profession.

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 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*. Under the *Lobbying Act*, the Commissioner is required to conduct an investigation if the Commissioner has reason to believe that an investigation is necessary to ensure compliance with the Act or the Code, as applicable.

Breaches of the *Lobbyists' Code of Conduct* do not result in sanctions of a penal nature, as they do not carry fines or jail sentences. However, the Commissioner's report of the investigation, including the findings, conclusions and reasons for those conclusions, must be tabled in both Houses of Parliament. There is no limitation period for investigating breaches of the *Lobbyists' Code of Conduct*.

The following Report on Investigation concerns the activities of Ms. Julie Couillard. I have concluded she should have registered her activities under the *Lobbyists Registration Act* and was, therefore, subject to the *Lobbyists' Code of Conduct*.

Background

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

In the spring of 2008, Ms. Couillard was the subject of news coverage regarding an incident involving the Honourable Maxime Bernier, the former Minister of Foreign Affairs.

Media reports in June 2008 alleged that Ms. Couillard had tried to influence Minister Bernier and Mr. Bernard Côté, a former policy advisor to the Honourable Michael Fortier, the former Minister of Public Works and Government Services Canada (PWGSC).

The media reports indicated that Groupe Immobilier Kevlar Inc. (Kevlar), which provides large-scale industrial, residential and commercial real estate services, was seeking a contract for a 200,000-square-foot development project by the federal government in the Saint-Roch district of Québec City. At the same time, the city's municipal government was encouraging the federal government to expand the original target location in Québec City to include the Estimaerville area, where the municipality owned a vacant lot. The media reported that Ms. Couillard was a certified real estate agent and that she had been engaged to obtain the contract for this development project by the federal government on behalf of Kevlar, which owned a property in Québec City in the area of Saint-Roch.

The president of Kevlar, Mr. René Bellerive, issued a news release on May 27, 2008, stating that Ms. Couillard was not an employee of Kevlar and indicating that he had assisted Ms. Couillard in his capacity as a real estate broker. He indicated that, under the provincial *Real Estate Brokerage Act*, an agent must be affiliated with a broker in order to conclude real estate transactions. A real estate broker has a responsibility to verify and confirm that concluded transactions have been carried out in accordance with the rules regarding real estate transactions.

The June 11, 2008, edition of the Montréal newspaper *La Presse* reported that Ms. Couillard "... [Translation] is putting pressure on Mr. Bernier to get the government to look kindly on Kevlar's proposal. She stressed to him that she stood to be paid a substantial amount of money if Kevlar's proposal was accepted. Mr. Bernier categorically refused to bow to this pressure, according to some close colleagues who spoke anonymously to *La Presse*." *La Presse* also reported that Ms. Couillard became affiliated with Kevlar as a real estate agent on April 7, 2007.

On June 11, 2008, the former Registrar of Lobbyists commenced an administrative review into the activities of Ms. Couillard. When the Office of the Commissioner of Lobbying was created in July 2008, I continued this administrative review.

Subsection 10.4(8) of the *Lobbying Act* requires me to suspend an investigation if the subject-matter of my investigation is the same as the subject-matter of an investigation being conducted by another organization. In this case, I asked the Investigations Directorate of my Office to contact the Royal Canadian Mounted Police (RCMP) to determine if they were investigating the activities of Ms. Couillard. On August 19, 2008, the RCMP asked me to suspend looking into the matter until further notice.

On October 26, 2010, the RCMP advised the Investigations Directorate that no charges would be laid against Ms. Couillard under the *Lobbying Act*. The Investigations Directorate then resumed its administrative review and, on February 18, 2011, I determined that I had sufficient grounds to open an investigation in relation to the *Lobbyists' Code of Conduct*.

The *Lobbyists' Code of Conduct* Investigation

The *Lobbyists' Code of Conduct* investigation of Ms. Couillard covered her activities on behalf of Kevlar during the period of the engagement of her company, ITEK Global Solutions Inc. (ITEK) by Kevlar. ITEK was a corporation registered in the corporations register of the Province of Quebec (*Registre des entreprises du Québec*) on February 23, 2005, by Ms. Couillard. The investigation involved an examination of various materials obtained by the Investigations Directorate, including: a contract between Ms. Couillard and Kevlar; a contract between ITEK and Kevlar; invoices for services rendered; correspondence with federal public office holders; and interviews with Ms. Couillard, federal public office holders and officers of Kevlar, the company that was the client of ITEK and Ms. Couillard.

The Subject

Julie Couillard possessed a real estate agent's licence issued by the association for real estate agents in the Province of Quebec, the Association des courtiers et agents immobiliers du Québec, during the period covered by the investigation (March 22, 2007 to June 25, 2008).

Ms. Couillard had also incorporated a company in the Province of Quebec for business purposes. That company, ITEK Solutions globales inc., was incorporated in the *Registre des entreprises du Québec* on February 23, 2005 by Ms. Couillard. Ms. Couillard was the sole shareholder, president, secretary and treasurer of the company. The company had not been discontinued during the course of this investigation. The English business name of the company is ITEK Global Solutions Inc. (ITEK). The company's business line is identified as high-technology security systems integration.

The Client

Groupe Kevlar Inc. / Investissements Immobiliers Kevlar Inc.

Groupe Kevlar Inc. is a corporation incorporated in the *Registre des entreprises du Québec*. It has been providing large-scale industrial, commercial and residential real estate services since 1996. Kevlar has invested hundreds of millions of dollars in a number of major construction, renovation and acquisition projects in Montréal and Québec City in the past decade. The company's head office is in Montréal. It also has an office in Québec City. Mr. René Bellerive is the founding president of Kevlar.

Investissements Immobiliers Kevlar Inc. is a real estate investment company incorporated in the *Registre des entreprises du Québec*. Groupe Kevlar Inc. is the principal shareholder of the company and Mr. René Bellerive is the president of Investissements Immobiliers Kevlar Inc. Mr. Philippe Morin is the co-president of the company. There is also a federally incorporated company known as Kevlar Real Estate Investments Inc. (Investissements Immobiliers Kevlar Inc.) with the same head office.

The name “Kevlar” will be used in this report to refer to the company that entered into the agreements with ITEK and Ms. Couillard.

Process

The *Lobbyists' Code of Conduct* investigation of Ms. Couillard covered her activities on behalf of Kevlar during the period from March 2007 to June 2008. The investigation involved an examination of the following:

- materials obtained by the Office of the Commissioner of Lobbying, including the consultancy contract between Kevlar and ITEK the commission agreement between Kevlar and Ms. Couillard, copies of correspondence and information regarding payments for services rendered by Ms. Couillard, and the autobiography of Ms. Couillard, entitled *Julie Couillard, My Story*, McClelland & Stewart, 2008;
- interviews and correspondence with federal public office holders;
- interviews and correspondence with the clients of Ms. Couillard; and
- an interview with Ms. Couillard.

Following the investigation, a copy of the Investigations Directorate's report was sent to Ms. Couillard to provide her with an opportunity to present her views. She provided her response in a letter from her lawyer, Mr. Denis Lapierre of Lalonde Geraghty Riendeau Lapierre, received on May 4, 2012.

The report of the Investigations Directorate and Ms. Couillard's views were taken into consideration, and form the basis of my 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, set out the requirement 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 respect of

- (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.

(1.1) An individual shall file a return

(a) not later than 10 days after entering into an undertaking referred to in subsection (1);
(....)

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 individual in question undertook to:
 - communicate with a public officer holder in respect of 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.
- Whether 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 Ms. Couillard engaged in activities requiring registration as a lobbyist and whether Ms. Couillard should have registered as a lobbyist under subsection 5(1) of the *Lobbyists Registration Act*. The Investigations Directorate gathered evidence that Ms. Couillard undertook to communicate, for payment, with a public office holder in respect of the subjects listed in subparagraphs 5(1)(a)(i) to (vi) of the *Lobbyists Registration Act*. Evidence was obtained from various sources, including federal public office holders, Ms. Couillard and her client, supporting the following findings.

Groupe Immobilier Kevlar Inc. / Investissements Immobiliers Kevlar Inc.

The Investigations Directorate determined that, in the period between March 22, 2007 and June 25, 2008, Kevlar entered into two agreements with Ms. Couillard and the company that she incorporated, ITEK Global Solutions Inc. The first of these agreements was a consultancy contract and the second was a commission agreement.

Consultancy contract

The consultancy contract between Kevlar and IGS Inc.² (registered as ITEK Global Solutions Inc.) (ITEK) was signed on March 22, 2007 and covered the period from March 22, 2007 to August 21, 2007. The terms and conditions of the contract provided, among other things, that:

- ITEK was to provide assistance to Kevlar in drafting a response to a request for proposals from PWGSC. This response was for the purposes of negotiations for the leasing of office space in a building that would be built on the property owned by Kevlar in Québec City, in the event that Kevlar was the successful bidder. The property is situated in a location currently known as Stationnement Dorchester;

² The company's name in the *Registre des Entreprises du Québec* is ITEK Solutions globales inc., while the English name is ITEK Global Solutions Inc. The consultancy contract uses the short-form name IGS Inc. This Report on Investigation uses the acronym ITEK for the sake of simplicity.

- The consultancy contract provided that Kevlar was to receive regular verbal updates on how the work was progressing;
- ITEK was to be paid monthly consultancy fees of \$7,500 plus applicable taxes, but including travel, accommodation and living expenses. Following the first three months of consultancy fees, all fees paid by Kevlar under the consultancy contract were to be considered as an advance payment on any commission payable to Ms. Couillard under the terms and conditions set out in the commission agreement between Kevlar and Ms. Couillard; and
- ITEK was to work exclusively for Kevlar during the term of the contract in respect of all transactions for real estate in the Québec City area.

In the consultancy contract, Kevlar acknowledged the existence of a commission agreement for the signing of an irrevocable contract of commitment and the proposed lease with PWGSC. Kevlar and ITEK agreed to link ITEK's consultancy contract with the commission agreement signed by Kevlar with Ms. Couillard, since Ms. Couillard was the principal party in both the consultancy contract and the commission agreement with Kevlar.

Commission agreement

The commission agreement entered into by Kevlar and Ms. Couillard was also signed on March 22, 2007. It covered the period from March 22, 2007 to March 21, 2008. The terms and conditions in the agreement provided, among other things:

- Ms. Couillard's mandate, as set out in the consultancy contract, was to represent Kevlar on behalf of ITEK in negotiations with PWGSC for the leasing of office space. This was in relation to the requirements of a request for proposals for a building to be built on the site owned by Kevlar in Québec City;
- the amount of commission to be paid to Ms. Couillard by Kevlar, along with the terms and conditions of payment, in the event that Kevlar obtained an irrevocable contractual commitment for a lease from PWGSC; and

- Kevlar’s agreement to pay commission fees for the signing of an irrevocable contractual commitment pursuant to the request for proposals, along with a lease for approximately 200,000 square feet of space in the new building, dependent upon the duration of the lease, in the following amounts:
 - \$100,000 for a 15–year contract and lease;
 - \$175,000 for a 20–year contract and lease; or
 - \$200,000 for a 25–year contract and lease.³

On March 14, 2008, Kevlar and Ms. Couillard signed an extension of the commission agreement that was originally signed on March 22, 2007. The term of the agreement was extended until March 21, 2009. On June 25, 2008, Kevlar terminated its affiliation with Ms. Couillard. This had the effect of terminating the commission agreement.

Payment

The Investigations Directorate obtained documentation providing evidence that Ms. Couillard’s company, ITEK, had been paid by Kevlar for services rendered to Kevlar, in accordance with the consultancy contract. Between March 26, 2007 and August 22, 2007, ITEK Global Solutions Inc. issued six invoices to Kevlar for services rendered to Kevlar by Ms. Couillard on behalf of ITEK. Each invoice was in the amount of \$7,500, plus applicable taxes, for a total of \$8,546.25. The six invoices together totalled \$51,277.50. The services rendered on each invoice are described as “consultancy fees for the RFP (request for proposals) file.”

The Investigations Directorate obtained proof of payments of those invoices. Kevlar’s records indicate that the supplier’s name on the statements is IGS ITEK Global Solutions Inc. Six payments, each in the amount of \$8,546.25, were made by Kevlar to ITEK between March 28 and August 22, 2007, for a total amount of \$51,277.50. The cheques issued by Kevlar, along with statements for Ms. Couillard’s commercial bank account, confirm the deposits of the cheques paid to ITEK for services rendered by Ms. Couillard, acting for ITEK, under the consultancy contract. This series of invoices and payments is confirmed by entries in Kevlar’s General Ledger – Financial Statements.

³ This sliding scale of fees may be construed as a contingency fee, since the commission payable under the agreement would have been dependent upon the duration of the lease obtained. Prior to the enactment of the *Lobbying Act* in July 2008, however, there was no prohibition against contingency fees in the *Lobbyists Registration Act*, only a requirement for a consultant lobbyist to identify that receipt of such a fee was expected (paragraph 5(2)(g)). Ms. Couillard did not do that, as she did not register as a lobbyist.

Communication

Ms. Couillard advised the Investigations Directorate that she had communicated with Mr. Bernard Côté, a former policy advisor to the Honourable Michael Fortier, the Minister of Public Works and Government Services at that time. The communications took place on a number of occasions between March 2007 and June 2008. Mr. Côté was a public office holder as defined in subsection 2(1) of the *Lobbyists Registration Act*.

Ms. Couillard indicated that she communicated primarily by telephone with Mr. Côté, and did not recall sending him any email messages. Ms. Couillard indicated that she initiated the communications regarding the request for proposals for a development proposal being pursued by PWGSC. She indicated that she had communicated regarding Kevlar's interest in the project.

Mr. Côté confirmed this information. He also indicated that Ms. Couillard told him about her client's concerns respecting the expansion of the selection area for the request for proposals. She inquired whether it was worthwhile for her client, Kevlar, to go to the trouble of submitting a bid, as Kevlar had concerns regarding the content of the request for proposals by PWGSC. Ms. Couillard indicated that, as a result of the expansion of the selection area, Kevlar took the view that there were too many potential bidders and that its costs of participating in the request for proposals process were rising as a consequence.

As a result of the information gathered during its investigation, the Investigations Directorate determined that Ms. Couillard was subject to the obligation to register as a consultant lobbyist found in subsection 5(1) of the *Lobbyists Registration Act*. The Investigations Directorate determined that Ms. Couillard was under an obligation to register her activities no later than 10 days after she signed the initial consultancy contract and commission agreement with Kevlar on March 22, 2007. The Investigations Directorate based its finding on the following premises: 1) Ms. Couillard undertook to communicate with a public office holder in respect of the awarding of a contract by or on behalf of Her Majesty in right of Canada; and, 2) she performed this service for payment on behalf of a client.

The Investigations Directorate did not uncover any evidence indicating that Ms. Couillard had engaged in communications with Minister Bernier or any other public office holder that would have required registration under paragraph 5(1)(a) of the *Lobbyists Registration Act*.

The Investigations Directorate did not uncover any evidence indicating that Ms. Couillard arranged or attempted to arrange a meeting with public office holders on behalf of her client that would have required registration under paragraph 5(1)(b) of the *Lobbyists Registration Act*.

After completing an investigation of the activities of Ms. Couillard on behalf of Kevlar, the Investigations Directorate determined that Ms. Couillard, for payment, engaged in

communications with a public office holder, Mr. Côté, in respect of the awarding of a contract by the Government of Canada and, therefore, engaged in activity requiring registration under subparagraph 5(1)(a)(vi) of the *Lobbyists Registration Act*. Subsection 5(1.1) of the *Lobbyists Registration Act* requires a consultant lobbyist to file a return not later than 10 days after entering into an undertaking on behalf of a client.

Registration

Ms. Couillard was not registered as a consultant lobbyist, with Kevlar as a client, when the activities described in this report took place.

Ms. Couillard'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. On March 5, 2012, I sent a copy of the Investigations Directorate's report to Ms. Couillard and requested that she provide written comments within 30 days.

Ms. Couillard's reply was provided by her lawyer, Mr. Denis Lapierre of Lalonde Geraghty Riendeau Lapierre, Avocats. I received it on May 4, 2012.

Ms. Couillard indicated that she did not contest the facts in the report of the Investigations Directorate regarding the events of March 2007 to June 2008. However, Ms. Couillard indicated that she never considered that she was subject to the *Lobbyists Registration Act*, as she did not regard herself as a lobbyist and did not consider that she had a duty to comply with the *Lobbyists' Code of Conduct*. She indicated that it was never her intention to mislead her clients, the public or public office holders. It was also not her intention to act as a lobbyist in contravention of the *Lobbyists' Code of Conduct*.

Ms. Couillard raised a number of arguments in support of her position that she was never subject to the *Lobbyists Registration Act*. Ms. Couillard stated that she never intended to act as a lobbyist on behalf of her client, Kevlar. According to Ms. Couillard, Mr. Côté did not have decision-making authority in relation to the contract. Ms. Couillard's perspective was that the contract could only be granted by the Treasury Board of Canada Secretariat.

Ms. Couillard further stated that her communications were performed to obtain information regarding the conduct and progress of the request for proposals process by Public Works and Government Services Canada. In addition, Ms. Couillard indicated that she was inquiring whether it would be worthwhile for her client, Kevlar, to submit a proposal. Ms. Couillard indicated this was done in order to determine how the tendering process was proceeding. Ms. Couillard's position is that her actions did not constitute communicating with a public office holder with respect to the awarding of a contract, which would constitute registrable lobbying activity within the meaning of subparagraph 5(1)(a)(vi) of the *Lobbyists Registration Act*. Rather, Ms. Couillard argued that her communications with Mr. Côté should be characterized as an effort to ensure that Kevlar's proposal was complete and up-to-date.

Legal Argument based upon the two agreements

Consultancy contract

Ms. Couillard explained her actions in relation to the two agreements that concerned Kevlar, ITEK Global Solutions Inc. (ITEK) and herself. The first of the two contracts, the consultancy contract, was entered into between Kevlar and ITEK Global Solutions Inc. (under the acronym IGS Inc.) on March 22, 2007. Ms. Couillard made the argument that the contract in this case was between two companies, each of which had a distinct legal personality. As a result, Ms. Couillard argued that it would be an error of law to hold her responsible for the actions of the corporation, since activities were performed on behalf of Kevlar by ITEK, and payments were made to ITEK by Kevlar in order to pay for those services. Ms. Couillard stressed that she was not paid by Kevlar for the services provided under the consultancy contract.

Ms. Couillard made the argument that section 5 of the *Lobbyists Registration Act* addresses the question of the responsibility to register, in the following manner (emphasis added):

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 office holder in respect of ...(subparagraphs 5(1)(a)(i) to (vi))

Ms. Couillard pointed to the mandate set out in the consultancy contract. She indicated that the specific tasks set out in the contract, in particular, the mandate to assist Kevlar in drafting a proposal in response to the request for proposals from Public Works and Government Services Canada for the purposes of negotiations for the leasing of office space, did not constitute a mandate to perform lobbying activities. In particular, she argued that the contract did not mandate her to lobby on behalf of Kevlar in relation to the awarding of a contract by the Government of Canada, as set out in subparagraph 5(1)(a)(vi) of the *Lobbyists Registration Act*.

Ms. Couillard argued that the mandate in the consultancy contract was for ITEK, not for her to “[Translation] ...assist Kevlar in drafting the request for proposal for the negotiations with Public Works and Government Services Canada for the leasing of office space in a future building to be constructed on its land located in Québec City.” This consulting mandate was remunerated on a monthly basis. Ms. Couillard indicated that the consulting mandate was a mandate to draft a request for proposals, and act as a “[Translation] ...liaison between Kevlar and the federal government.” As a result, Ms. Couillard argued that she cannot be held personally responsible for the actions of ITEK Global Solutions Inc., a corporation with a separate legal personality. She also

argued that this was not a lobbying activity in relation to the awarding of a contract as set out in subparagraph 5(1)(a)(vi) of the *Lobbyists Registration Act*.

Commission agreement

The second contract, the commission agreement, was entered into between Kevlar and Ms. Couillard personally. Ms. Couillard characterized the commission agreement as “[Translation] ...a real estate mandate designed to provide a client with representation in the office space leasing negotiations with Public Works.” Ms. Couillard argued that the mandate, which involved negotiations for the leasing of office space, concerned a future event. She also argued that since the decision had not been made to construct the federal government’s building on property owned by Kevlar and to give Kevlar the contract to manage the building, the result is that she could not have performed any work in relation to the mandate. In addition, the professional fees that Ms. Couillard was to receive for her work were based on a commission that was dependent upon the terms of the lease. As a result of this, Ms. Couillard argued that she did not receive any remuneration under the commission agreement, and that she had never started providing services under the agreement.

Ms. Couillard contended that she was never paid as a lobbyist because the mandate under which ITEK received payment did not concern lobbying activities. She also argued that there was only one contract under which she could have been considered to be lobbying, the commission agreement, because it was between Kevlar and Ms. Couillard personally. Ms. Couillard argued that it never took effect and that no payment was ever made directly to her under the commission agreement.

My perspective on the application of the law regarding the two agreements

In this case, Ms. Couillard has not denied the facts of the circumstances that occurred, and which are outlined in this report.

Ms. Couillard has argued that her communications with Mr. Côté were for the purpose of seeking information regarding the request for proposals being developed by Public Works and Government Services Canada and that, as such, her actions did not constitute communicating with a public office holder with respect to the awarding of a contract. Communications by a consultant lobbyist with a public office holder with respect to the awarding of a contract constituted registrable lobbying activity as set out in subparagraph 5(1)(a)(vi) of the *Lobbyists Registration Act*.

I disagree with Ms. Couillard’s assertion that the communications that she engaged in with public office holders did not constitute registrable lobbying activity. The *Lobbyists Registration Act* provided an exception from registration for certain communications in subsection 4(2), as follows:

4(2) This Act does not apply in respect of

...

(b) any oral or written communication 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 by that public office holder with respect to that person or organization; or

(c) any oral or written communication made to a public office holder by an individual on behalf of any person or organization if the communication is restricted to a request for information.⁴

From my perspective, the communications that Ms. Couillard engaged in on behalf of her clients were activities deemed registrable under subparagraph 5(1)(a)(vi) of the *Lobbyists Registration Act*. They were communications in respect of "...the awarding of any contract by or on behalf of Her Majesty in right of Canada." These communications were variously described as "...aimed at obtaining information regarding the tendering process, specifically, whether it was progressing well"; "...whether it was worthwhile to submit a proposal"; and to "...act as a liaison between Kevlar and the federal government." I take the view that those are registrable lobbying activities.

In addition, I am of the view that those who are engaged in registrable lobbying activity must comply with the *Lobbyists' Code of Conduct*. This is the manner in which subsection 10.3(1) of the *Lobbyists Registration Act*, and now, the *Lobbying Act*, addresses the issue of compliance with the Code.

Ms. Couillard provided an argument that her activities were not subject to the application of the *Lobbyists Registration Act*, based upon the nature of the undertakings found in the contracts. In her view, any registrable lobbying activities that she may have engaged in were not carried out pursuant to the commission agreement between Kevlar and Ms. Couillard, but rather under the consultancy contract between Kevlar and ITEK Global Solutions Inc.

I have a different perspective. I rely upon the rulings of the Federal Court of Appeal which confirm the application of the *Lobbyists' Code of Conduct* to individuals who engage in registrable lobbying activity without registering those activities as required.⁵ However, Ms. Couillard has made a legal argument which I must address.

Ms. Couillard raised the legal argument that, if her activities did indeed constitute registrable lobbying activities, they were made pursuant to the undertaking between Kevlar and ITEK Global Solutions Inc., not with Ms. Couillard personally.

In this respect, I rely upon the guidance that the Supreme Court of Canada has provided regarding statutory interpretation. The Supreme Court of Canada has clearly established

⁴ The same exceptions remain in the *Lobbying Act*.

⁵ *Attorney General of Canada v. Neelam Makhija*, 2008 FCA 402; and *Neelam Makhija v. Attorney General of Canada*, 2010 FCA 242.

the principle for statutory interpretation in Canada in a number of cases. Recently, the Supreme Court stated:

The proper approach to statutory interpretation has been articulated repeatedly and is now well entrenched. The goal is to determine the intention of Parliament by reading the words of the provision, in context and in their grammatical and ordinary sense, harmoniously with the scheme of the Act and the object of the statute.

Canada (Information Commissioner) v. Canada (Minister of National Defence) [2011] 2 S.C.R. 306

Section 12 of the *Interpretation Act* provides as follows:

Enactments deemed remedial

12. Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

There have been many court decisions and academic commentaries that address the question of statutory interpretation. In *Sullivan on the Construction of Statutes*, the Supreme Court of Canada's approach is referenced as follows:

Problems of statutory interpretation commonly arise, as in this case, when a court is presented with a question about a statute that Parliament has not expressly answered. The court must consider whether the answer is necessarily implied by relevant aspects of the statutory context and, if it is, answer the question accordingly. The answer must reflect an interpretation of the statute that is consistent with the accepted principles of statutory interpretation, and that the words of the statute can reasonably bear (*Ruby v. Canada (Solicitor General)*, 2002 SCC 75, [2002] 4 S.C.R. 3 at paragraph 58.⁶

From my perspective, Ms. Couillard has taken a narrow reading of the *Lobbyists Registration Act* provisions regarding consultant lobbyists in section 5. Like section 5, section 7, which addresses the registration requirements for in-house lobbyists (corporations and organizations), uses the word “individual(s)” when addressing registration requirements. This is because the law recognizes that the lobbying activity of communicating with public office holders is carried out by individuals who are retained on behalf of their clients, or who are officers and employees of corporations and organizations. The provisions of sections 5 and 7 were enacted by Parliament to apply to all lobbying activities carried out in relation to the federal government.

In my view, the use of the term “individual” in section 5 is for the purpose of placing the obligation to register a lobbying undertaking upon the individual who will be carrying out the registrable lobbying activities on behalf of a client. The person required to register could be a lawyer in a sole practice, a partner in a government relations firm or law firm that is structured as a partnership, an associate in such a firm or a larger law practice, or

⁶ R. Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham: LexisNexis, 2008) at page 163.

an employee of a corporation that is retained by a client to engage in activities that may include registrable lobbying activities.

In this case, the consultancy contract between Kevlar and ITEK Global Solutions Inc. was entered into on March 22, 2007. The commission agreement between Kevlar and Ms. Couillard was also signed on March 22, 2007. Kevlar acknowledged the existence of a commission agreement for the signing of an irrevocable contract of commitment and the proposed lease with PWGSC in the consultancy contract. Kevlar and ITEK agreed to link ITEK's consultancy contract with the commission agreement signed by Kevlar with Ms. Couillard, since Ms. Couillard was the principal actor in both the consultancy contract and the commission agreement with Kevlar. In addition, Ms. Couillard signed the consultancy contract in her personal capacity.

In my view, the two agreements, although entered into by Kevlar with two different parties, recognize that Ms. Couillard would be the individual providing the services on behalf of ITEK to Kevlar, and reporting upon her progress. The consultancy contract provided that Kevlar was to receive regular verbal updates regarding how the work was progressing. It is clear that those updates were to be provided by Ms. Couillard. ITEK was to be paid monthly consultancy fees of \$7,500 plus applicable taxes, but including travel, accommodation and living expenses. Following the first three months of consultancy fees, all fees paid by Kevlar under the consultancy contract were to be considered as an advance payment on any commission payable to Ms. Couillard under the terms and conditions of the commission agreement between Kevlar and Ms. Couillard.

In my view, the two agreements were to operate together, not separately. Separating the activities of Ms. Couillard from the mandate that ITEK received from Kevlar under the consultancy contract is an artificial construct that does not reflect the reality of the relationship between Kevlar, ITEK and Ms. Couillard. In light of that, I must disagree with the approach to interpretation of the consultancy contract and the commission agreement that Ms. Couillard has urged me to take. This approach would have the effect of allowing a person to contract out of the registration requirements of the *Lobbyists Registration Act* (and now, the *Lobbying Act*) by using a corporation as an intermediary. In my view, this is not the proper approach to the interpretation of the legislation, as it does not reflect the intention of Parliament in enacting the *Lobbyists Registration Act*.

Conclusions

Companies and other organizations attempting to put forward their views on federal laws, regulations and policies, or to obtain financial benefits or contracts, sometimes retain lobbyists to assist them through the process. Individuals may also be retained to 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 a contract or an agreement.

These are legitimate actions on the part of companies and organizations and those they retain to act on their behalf. 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 representations of Ms. Couillard into consideration in reaching my conclusions. I have concluded that Ms. Couillard was paid to communicate with federal public office holders at PWGSC in respect of a request for proposals process by PWGSC for the construction and leasing of an office building in Québec City, and that she failed to register her undertaking as required under the *Lobbyists Registration Act*. Ms. Couillard also neglected to provide accurate information and inform her clients of her obligations under the *Lobbyists' Code of Conduct*.

This chapter summarizes my conclusions regarding the activities of Ms. Couillard on behalf of her client, and my reasons for reaching these conclusions.

1. Whether Ms. Couillard engaged in activity requiring registration under the *Lobbyists Registration Act*

The evidence obtained during the course of this investigation reveals that Ms. Couillard, for payment and on behalf of her client, Kevlar, communicated with a public office holder in respect of the awarding of a contract for the construction and leasing of an office building in Québec City. As a result, she conducted activity that was identified as registrable lobbying activity in subparagraph 5(1)(a)(vi) of the *Lobbyists Registration Act*. As Ms. Couillard was engaged by her client in activity that required registration as a consultant lobbyist, she was required to file a lobbyist registration return not later than 10 days after entering into her undertakings with Kevlar, but failed to do so.

2. Whether Ms. Couillard did so for payment

Evidence obtained during the course of the investigation demonstrates that the work performed by ITEK Global Solutions Inc. (ITEK) and by Ms. Couillard on behalf of Groupe Immobilier Kevlar Inc. (Kevlar) was performed for payment.

ITEK was engaged by Kevlar under a consultancy contract to provide services from March 22, 2007 to August 21, 2007. The contract was for ITEK to provide assistance to Kevlar in preparing a response to a request for proposals by PWGSC. The contract for services provided that the fees paid to ITEK were to be linked to a commission agreement, also signed on March 22, 2007, between Kevlar and Ms. Couillard. The contract provided that Kevlar would pay a flat monthly fee based upon the services provided by ITEK and regular oral reports by Ms. Couillard. ITEK was paid a total of \$51,277.50, half of which was agreed to be advance payment to Ms. Couillard on her commission under the commission agreement.

3. Whether Ms. Couillard 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* that 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 time limits prescribed in the *Lobbyists Registration Act*, Ms. Couillard engaged in lobbying activity on behalf of Kevlar that was in breach of the Principle of Professionalism in the *Lobbyists' Code of Conduct*.

4. Whether Ms. Couillard 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.

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, Ms. Couillard did not appropriately identify herself as a lobbyist and, as a result, she did not provide accurate information to public office holders. As a consequence, individuals and organizations with an interest in the lobbying activities of Kevlar in respect of the request for proposals for the construction and lease of an office building in Québec City were misled about the existence of lobbying activity. I have concluded that Ms. Couillard was in breach of Rule 2 (Accurate information) of the *Lobbyists' Code of Conduct*.

5. Whether Ms. Couillard 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 obligation to adhere to the *Lobbyists' Code of Conduct*.

Ms. Couillard's client, Kevlar, was unaware of her obligation to register as a consultant lobbyist acting on its behalf. It may be inferred that she did not disclose her obligations under the *Lobbyists Registration Act* and the *Lobbyists' Code of Conduct* and, therefore, I have concluded that she was in breach of Rule 3 (Disclosure of obligations) of the *Lobbyists' Code of Conduct* with respect to these undertakings.

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 engaged in lobbying activities; 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.

* The version of the *Lobbyists' Code of Conduct* that references the *Lobbyists Registration Act* was in effect during the period covered by this Report (March 2007 to June 2008). The *Lobbyists' Code of Conduct* now references the *Lobbying Act*.

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.