



Office of the Commissioner  
of Lobbying of Canada

Commissariat au lobbying  
du Canada

# Report on Investigation

The Lobbying Activities of  
GPG-Green Power Generation Corp.  
and  
Patrick Glémaud and Rahim Jaffer

December 2011

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Cat. No. Lo5-3/8-2011E-PDF

ISBN 978-1-100-19675-6

Aussi offert en français sous le titre

*Rapport d'enquête – Les activités de lobbying de GPG-Green Power Generation Corp. et Patrick Glémaud et Rahim Jaffer*

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. Rahim Jaffer and Mr. Patrick Glémaud 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 blue ink, consisting of a stylized 'K' and 'S' followed by a long horizontal line.

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. Rahim Jaffer and Mr. Patrick Glémaud 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,

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

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 came to my attention as a result of media coverage of the activities of Mr. Rahim Jaffer, a former Member of Parliament, and Mr. Patrick Glémaud, who were the principals of GPG-Green Power Generation Corp. (also known as Green Power Generation or GPG). I commenced an administrative review in April 2010 and opened an investigation in May 2010.

### Issue

#### *Consultant lobbyists*

Lobbyists have certain legal and professional obligations to follow when they work on behalf of clients or employers. Under the *Lobbying Act*, 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.

#### *In-house (corporation) lobbyists*

Under the *Lobbying Act*, the most senior officer of a corporation or an organization has a duty to file a registration on behalf of the corporation or organization when a person or persons employed by the corporation or organization engage in lobbying activities that meet the requirements set out in the *Lobbying Act*. Those activities include communicating 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; and, the awarding of any grant, contribution or financial benefit.

The information received by my Office indicated that Mr. Jaffer and Mr. Glémaud may have been engaged in lobbying activities during a period of time when neither of them was registered as a lobbyist, and Green Power Generation was not registered as employing in-house (corporation) lobbyists.

## Investigation

I opened an administrative review on April 12, 2010. During April and May 2010, I received a series of disclosures from public office holders, in the form of copies of correspondence between GPG and various government departments. Much of that correspondence was also disclosed to media outlets and made public on the Internet. The correspondence concerned “project proposals” that GPG had forwarded to selected government institutions.

Three requests for investigation from Members of Parliament were received by my office. On April 12, 2010, I received a letter from the Honourable Marlene Jennings, P.C. (MP, Notre-Dame-de-Grâce – Lachine) requesting that I investigate possible violations of the *Lobbying Act* by Mr. Jaffer and Mr. Glémaud. On April 14, 2010, I received a letter from Mr. Mark Holland (MP, Ajax-Pickering), providing additional information and supporting Ms. Jennings’ request for an investigation. On April 27, 2010, I received a letter from Mr. Francis Valeriote (MP, Guelph), making further allegations regarding violations of the *Lobbying Act* by Mr. Glémaud.

A review of the requests for investigation, information reported by the media, and disclosures from public office holders received by my Office led to the identification of ten allegations for investigation. This included two allegations that concerned only Mr. Glémaud’s activities.

In May 2010, I opened an investigation because I had reason to believe one was necessary to ensure compliance with the *Lobbying Act* or the *Lobbyists’ Code of Conduct*. The Investigations Directorate of my Office conducted the investigation. The results of the investigation provided me with reasonable grounds to believe that in four of the ten allegations, Mr. Glémaud and/or Mr. Jaffer had engaged in unregistered lobbying activity on behalf of Green Power Generation. In another instance, I had reasonable grounds to believe that Mr. Glémaud engaged in unregistered lobbying as a consultant lobbyist. Subsection 10.4(7) of the *Lobbying Act* (Act) provides that if I have reasonable grounds to believe that a person has committed an offence under the *Lobbying Act* or any other Act of Parliament, I must immediately suspend the investigation and advise a peace officer having jurisdiction to investigate the offence. On October 29, 2010, I did so, sending a copy of the Investigations Directorate’s report and supporting documents to the Royal Canadian Mounted Police (RCMP).

In a letter received on March 29, 2011, the RCMP advised me that they had closed their file due to the potential limitations for prosecution under the *Lobbying Act*. On April 5, 2011, I determined that I had sufficient grounds to continue with a *Lobbyists’ Code of Conduct* investigation and I instructed the Investigations Directorate to resume the investigation of the activities of Mr. Glémaud and Mr. Jaffer.

In August 2011, Mr. Glémaud and Mr. Jaffer were provided with an opportunity to present their views on the reports of the Investigations Directorate. Each of them did so. After considering the comments of Mr. Glémaud and Mr. Jaffer, I prepared this Report to Parliament.

## Conclusions

In this report, I conclude that Mr. Glémaud and Mr. Jaffer both communicated with public office holders in respect of the awarding of a grant, contribution or other financial benefit on behalf of a corporation, GPG-Green Power Generation Corp. They did so as the principals of a corporation that Mr. Glémaud had incorporated to explore green power generation opportunities in Canada. Their lobbying activities on behalf of GPG constituted a significant part of their duties as performed on behalf of the corporation. In my opinion, GPG was a commercial enterprise created by Mr. Glémaud and Mr. Jaffer with the intention of generating revenue. As a result, they engaged in activities that required them to register as in-house (corporation) lobbyists.

Mr. Glémaud, as the most senior officer of GPG, was the officer responsible for filing lobbyist registration returns. Mr. Jaffer, as the only other employee of the corporation, had an obligation to ensure that any lobbying activity he performed on behalf of the corporation was properly registered by the responsible officer of the corporation. By neglecting to meet these responsibilities, I conclude that they breached the *Lobbyists' Code of Conduct*, specifically the Principle of Professionalism and Rule 2 (Accurate information) with respect to some of the allegations against them. I also conclude that Mr. Jaffer breached Rule 3 (Disclosure of obligations).

In addition, Mr. Glémaud, in carrying out certain activities when paid to act as legal counsel to RLP Energy Inc., engaged in activity requiring registration as a consultant lobbyist when he communicated and arranged meetings with federal public office holders on behalf of his client. I conclude that his failure to do so also placed him in breach of the aforementioned Principle and Rules of the *Lobbyists' Code of Conduct*.

## Key Lessons from this Report on Investigation

The activities of Mr. Glémaud and Mr. Jaffer were subject to much public scrutiny. Throughout this process, a number of statements were made by the subjects of the investigation and others, demonstrating misconceptions regarding the registration requirements under the *Lobbying Act* and the application of the *Lobbyists' Code of Conduct*. This Report on Investigation corrects some of those misconceptions about lobbying. Most notably, it clarifies the following:

- registration is required whether or not a lobbyist achieves the desired outcome;
- registration is required whether or not the lobbyist has been explicitly hired as a “lobbyist” by the client;
- registration is required whether or not a corporation or organization has generated revenue; and
- requests for government funding are considered to be “communication in respect of the awarding of a grant, contribution or other financial benefit” even if the requests are not lengthy and detailed proposals.

## 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*.<sup>1</sup> 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 engage in activity deemed registrable under the *Lobbying Act* must also comply with the *Lobbyists' Code of Conduct*.

Individuals paid to communicate with public office holders in relation to the matters specified in the *Lobbying Act* or, in the case of consultant lobbyists paid to arrange meetings with public office holders, are required to register in the Registry of Lobbyists. 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 *Lobbying 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 divulge confidential information, nor use insider information to the disadvantage of their client, employer or organization. The Conflict of Interest rules prohibit lobbyists from

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<sup>1</sup> The *Lobbyists Registration Act* was amended and renamed the *Lobbying Act* by the *Federal Accountability Act*, S.C. 2006, c. 9. The amendments to the Act came into force on July 2, 2008. The *Lobbyists' Code of Conduct* was not changed at that time.

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*. I have the authority to initiate an investigation if I have reason to believe that an investigation is necessary to ensure compliance with the *Lobbying Act* or 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*.

I commenced the investigation in this matter because I formed the belief that an investigation was necessary to ensure compliance with the *Lobbying Act* or the *Lobbyists' Code of Conduct*. The following Report on Investigation sets out my findings and conclusions and my reasons for those conclusions.

## Background

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

#### Media Reports and Information

The initial media coverage of the activities of GPG-Green Power Generation Corp. (Green Power Generation or GPG) and its principals, Mr. Glémaud and Mr. Jaffer, began on April 8, 2010. The *Toronto Star* published a report that Mr. Jaffer, a former Member of Parliament, had told prospective clients that he was an expert in obtaining government funding, and that he had "...access to a green fund." The newspaper reports contained details of business meetings in Toronto during which Mr. Jaffer and a local entrepreneur, Mr. Nazim Gillani, allegedly offered to arrange government loans and start-up financing for various businessmen. The newspaper also reported Mr. Gillani, the Chief Executive Officer of International Strategic Investments, had followed up a meeting on September 10, 2009, by sending an email to various clients boasting that "Mr. Jaffer has opened up the Prime Minister's Office to us."

The media reported various allegations of misconduct by Mr. Jaffer, including that he had conducted GPG business using an email account and an office belonging to the Parliamentary office of his spouse, the Honourable Helena Guergis, then Minister of State (Status of Women).

During the week that followed, my Office received information from the Chief of Staff to the Honourable John Baird, Minister of Transport, Infrastructure and Communities, advising that Mr. Jaffer had met with Minister Baird, and that a meeting had also taken place with the Minister's Parliamentary Secretary, Mr. Brian Jean, to discuss the federal Green Infrastructure Fund (GIF). Subsequently, Mr. Jean advised my Office that he had been given responsibility by the Minister of Transport concerning the GIF, had met with various people to discuss proposals for funding, and that his role was to make recommendations whether or not to fund technologies identified in their requests. He indicated that he had received three such proposals from Mr. Jaffer.

On April 14, 2010, the Halifax *Chronicle Herald* published an article containing a denial by Mr. Glémaud that he lobbied or tried to obtain funding from the government.

Mr. Glémaud and Mr. Jaffer have never registered lobbying activity performed on behalf of Green Power Generation, or any clients associated with GPG. The Registry of Lobbyists contains one entry for Mr. Glémaud, who registered as a consultant lobbyist acting on behalf of the International Centre for Infectious Diseases, a client unrelated to GPG, on February 19, 2009. That registration was effective for only one day.



## Requests for Investigation

I received three requests for investigation from Members of Parliament. On April 12, 2010, I received a letter from the Honourable Marlene Jennings, P.C. (MP, Notre-Dame-de-Grâce – Lachine), requesting that I investigate possible violations of the *Lobbying Act* by Mr. Glémaud and Mr. Jaffer. The complaint alleged that the principals of GPG had failed to register lobbying activities as required under sections 5 and 7 of the *Lobbying Act*<sup>2</sup>. The complaint also alleged that Mr. Glémaud was in breach of the Act when he failed to disclose that he was previously employed as a public office holder in a consultant lobbyist registration that he filed in February 2009, on behalf of a client, the International Centre for Infectious Diseases.

On April 14, 2010, I received a letter from Mr. Mark Holland (MP, Ajax-Pickering), supporting calls for an investigation into possible violations of the Act, and providing additional information. Mr. Holland alleged that the “green fund” referred to in media reports could be the Government of Canada’s Green Infrastructure Fund. He also alleged that Mr. Glémaud and Mr. Jaffer had met with Mr. Brian Jean, the Parliamentary Secretary to the Minister of Transport, Infrastructure and Communities, who had the delegated authority to approve projects eligible for the \$1 billion fund. Mr. Holland further alleged that their communication was in respect of the awarding of any grant, contribution or other financial benefit, and thus necessitated the filing of a return under the *Lobbying Act* if they were “... acting either as a consultant or on behalf of their corporation.”

I received a letter from Mr. Francis Valeriote, (MP, Guelph) on April 27, 2010, alleging that Mr. Glémaud may have violated the *Lobbying Act* when he failed to register as a lobbyist after communicating with staff employed by the Honourable Gary Goodyear, Minister responsible for the Federal Economic Development Agency for Southern Ontario. Mr. Valeriote alleged that Mr. Glémaud, acting on behalf of Sustainable Ventures Inc., had met with Minister Goodyear’s Director of Operations regarding proposals for funding. Mr. Valeriote also sought confirmation that Minister Goodyear had disclosed the communication to the Office of the Commissioner of Lobbying, as well as the status of any investigation of the matter.

## Initiation of the *Lobbyists’ Code of Conduct* Investigation

Based on the documents that I had received, preliminary findings from information collected by the Investigations Directorate, and publicly available information, I determined that an investigation under subsection 10.4(1) of the *Lobbying Act* was necessary to ensure compliance with the Act or the *Lobbyists’ Code of Conduct*. On May 19, 2010, I commenced an investigation into the alleged unregistered lobbying activities of Mr. Glémaud and Mr. Jaffer.

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<sup>2</sup> These sections of the *Lobbying Act* are described on pages 15 to 17.

This Report on Investigation covers ten allegations of lobbying activities concerning Mr. Glémaud and Mr. Jaffer as in-house lobbyists on behalf of Green Power Generation and as consultant lobbyists. Four of the allegations were determined to be unfounded and are dealt with briefly in this Report. The other six allegations are dealt with in a more comprehensive manner.

## The Subjects

### **Patrick Glémaud**

Mr. Patrick Glémaud is the founder of GPG-Green Power Generation Corp. Mr. Glémaud is a lawyer and a former employee of the federal Department of Justice. He has been an associate professor at the University of Ottawa, and delivered courses at the Canada School of Public Service.

### **Rahim Jaffer**

Mr. Rahim Jaffer joined Green Power Generation as a partner in April 2009. Mr. Jaffer is a former Member of Parliament. He represented the federal riding of Edmonton-Strathcona for approximately 11 years. Mr. Jaffer was the Conservative Party Caucus Chair from February 7, 2006 until November 2, 2008. He was not re-elected in the general election of October 14, 2008.

## The Corporation

### **GPG-Green Power Generation Corp. (Green Power Generation or GPG)**

GPG-Green Power Generation Corp. was federally incorporated on November 20, 2008. It was incorporated as a non-distributing corporation with fewer than 50 shareholders, and Corporations Canada records identify two directors, Mr. Glémaud and Mr. Jaffer. The corporation was dissolved on July 6, 2010 and is no longer in operation.

GPG was described on the company's website as "Canada's premier green energy development firm. ... We evaluate, develop, manage, and operate profitable green power generation facilities while demonstrating leadership and commitment to improving the environment."

The GPG website identified the company's specializations, services and experience as follows:

- bringing to market innovative technology solutions;
- advising commercial enterprises on the course of action to integrate and expand renewable energy capacity;
- providing an unparalleled combination of relationship, intellectual and financial capital in order to develop, finance, manage, and implement green power solutions;
- a world-class team of professionals with science, business and legal experience in renewable energy, and thorough knowledge of government policies and incentive programs;
- leaders with the experience, expertise and contacts to facilitate the successful implementation of projects; and
- leaders who have: advised the Government of Canada on over \$3 billion worth of renewable energy project funding; advised government on negotiations with the auto, oil, clean coal, wind power and solar power sectors; and, built long-term relationships with distributors, suppliers, the research and development community, and government agencies.

The company also advertised the following scope of services:

- assessment of your project and resources needed to implement it;
- identify and retain long-term partners willing to provide true value-added financing;
- execute your project efficiently and effectively;
- identify attractive green investment opportunities;
- corporate advisory and mergers and acquisitions;
- strategic environmental policy development;
- anticipate developments in the renewable energy field;
- monitor the green power markets and policies and legislations that influence it; and
- facilitate consultation between government and private sector.

On Mr. Jaffer's personal website, he described himself as one of the founders of Green Power Generation. It indicated that his focus was on business development for renewable and alternative energy technologies in North America and in developing countries. His involvement with GPG was described as follows:

"...Mr. Jaffer provides the company with business expertise in industry financing in order to help them secure support from the Canadian government and to obtain contracts abroad. He also plays a crucial role in business development and marketing through his countless relationships developed from his former career as a parliamentarian. In addition, Rahim is a key player in coordinating future policy between various branches of both the Canadian and US governments."

Mr. Glémaud's client

### **International Centre for Infectious Diseases**

The International Centre for Infectious Diseases Inc. is a Canadian organization headquartered in Winnipeg, Manitoba. It was incorporated in 2004. Its mandate is to provide innovative leadership and collaborative solutions for the global fight against infectious diseases.

## **The Allegations under Investigation**

### **Initial Analysis**

A review of the information reported by the media and requests for investigation, along with disclosures from public office holders received by my Office, led to the identification of the following ten allegations for investigation.

1. Whether Mr. Jaffer engaged in unregistered lobbying when he attempted to arrange a meeting between the former Minister of State (Small Business and Tourism) and the Chief Executive Officer for the Réseau de développement économique et de l'employabilité (RDÉE).
2. Whether Mr. Jaffer engaged in unregistered lobbying when he communicated with the Director of Parliamentary Affairs in the Office of the Minister of Industry regarding the Government of Canada's long-term space policy.
3. Whether Mr. Glémaud engaged in unregistered lobbying when he communicated with staff in the Office of the Minister of State (Science and Technology), to discuss the Southern Ontario Development Program (SODP).
4. Whether Mr. Glémaud and Mr. Jaffer engaged in unregistered lobbying when they communicated with public office holders at the Department of Public Works and Government Services in respect of the leasing of federal building rooftops for solar power generation facilities.
- 5.(a) Whether Mr. Glémaud and Mr. Jaffer engaged in activity requiring registration as in-house (corporation) lobbyists for Green Power Generation when they communicated with public office holders in respect of funding for a full-scale mercury capture test involving RLP Energy Inc. at the Keephills power facility in Alberta; and  
  
(b) Whether Mr. Glémaud engaged in activity requiring registration as a consultant lobbyist on behalf of his client, RLP Energy Inc.

6. Whether Mr. Glémaud and Mr. Jaffer engaged in unregistered lobbying when they communicated with public office holders in respect of contributions from the Green Infrastructure Fund for a solar photovoltaic electricity generation facility in Brockville, Ontario.
7. Whether Mr. Glémaud and Mr. Jaffer engaged in unregistered lobbying when they communicated with public office holders in respect of contributions from the Green Infrastructure Fund for a renewable electricity generation project based on a technology referred to as the Dragon Power System.
8. Whether Mr. Glémaud and Mr. Jaffer engaged in unregistered lobbying when they communicated with public office holders in respect of contributions from the Green Infrastructure Fund for an electricity generation/waste disposal infrastructure project based on technology referred to as the BioDryer.
9. Whether Mr. Glémaud was in breach of the *Lobbying Act* by failing to disclose previous public offices held in a consultant lobbyist registration filed in respect of an undertaking for the International Centre for Infectious Diseases.

## Process

The *Lobbyists' Code of Conduct* investigation of the alleged lobbying activities of Mr. Glémaud and Mr. Jaffer covered their activities during the period from February 2009 to March 2010. The investigation involved an examination of whether Mr. Glémaud and Mr. Jaffer failed to register activity deemed registrable under subsection 5(1) or 7(1) of the *Lobbying Act* when they communicated with federal public office holders in respect of the awarding of federal contracts and grants, and other matters, either on behalf of clients or as principals of Green Power Generation. The investigation also examined whether the alleged lobbying activity resulted in a breach of one or more of the principles and rules set out in the *Lobbyists' Code of Conduct*.

The investigation involved the following:

- an examination of correspondence involving Mr. Glémaud and Mr. Jaffer, actual or potential clients and stakeholders, and federal public office holders with whom the subjects communicated;
- interviews with Mr. Glémaud, Mr. Jaffer, federal public office holders and other individuals (listed in Appendix B);
- an examination of agreements, contractual commitments and other documentary evidence;
- a review of information provided by the complainants;
- a review of disclosures made by various public office holders; and
- a review of information obtained from publicly available sources, including the Internet, media reports and the Registry of Lobbyists.

Following the investigation, copies of the reports of the Investigations Directorate were sent separately to Mr. Glémaud and to Mr. Jaffer in August 2011, to give them an opportunity to present their views. Mr. Glémaud and Mr. Jaffer both responded in September 2011.

I took the reports of the Investigations Directorate and the views of Mr. Glémaud and Mr. Jaffer into consideration, and they form the basis for this Report on Investigation.

# Lobbyist Registration

## The Requirement to File a Return (Consultant Lobbyists)

Subsection 5(1) of the *Lobbying Act* sets out the requirements for consultant lobbyists to register their lobbying activities. It provides as follows:

### Requirement to file return

5. (1) An individual shall file with the Commissioner, 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,

### Time limit for filing return

(1.1) 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 elements were considered in the analysis of whether an activity deemed registrable under subsection 5(1) of the *Lobbying Act* took place:

- whether the individuals in question, for payment and on behalf of any person or organization, undertook to:
  - communicate with a public officer holder in respect of the subjects listed in paragraph 5(1)(a) of the *Lobbying Act*; or
  - arrange a meeting between a public officer holder and any other person.

## **The Requirement to File a Return (In-House Lobbyists)**

Subsection 7(1) of the *Lobbying Act* sets out the requirements for in-house lobbying activities to be registered on behalf of a corporation or an organization by the officer responsible for filing returns. It provides as follows:

### **Requirement to file return**

7. (1) The officer responsible for filing returns for a corporation or organization shall file with the Commissioner, in the prescribed form and manner, a return setting out the information referred to in subsection (3) if

(a) the corporation or organization employs one or more individuals any part of whose duties is to communicate with public office holders on behalf of the employer or, if the employer is a corporation, on behalf of any subsidiary of the employer or any corporation of which the employer is a subsidiary, in respect of

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

(v) the awarding of any grant, contribution or other financial benefit by or on behalf of Her Majesty in right of Canada; and



(b) those duties constitute a significant part of the duties of one employee or would constitute a significant part of the duties of one employee if they were performed by only one employee.<sup>3</sup>

#### Time limit for filing return

(2) The officer responsible for filing returns shall file a return not later than two months after the day on which the requirement to file a return first arises under subsection (1).

### **The Elements of Registrable Activity for In-house Lobbyists**

The following elements were considered in the analysis of whether an activity deemed registrable under subsection 7(1) of the *Lobbying Act* took place:

- whether the individuals in question undertook to communicate with a public officer holder in respect of the subjects listed in paragraph 7(1)(a) of the *Lobbying Act*;
- whether the individuals did so as employees of a corporation or organization; and
- whether the alleged lobbying activities constituted a significant part of the duties of one employee of the corporation or would have constituted a significant part of the duties of one employee if they were performed by only one employee.

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<sup>3</sup> The Commissioner of Lobbying has issued an Interpretation Bulletin defining a “significant part of duties” as constituting 20% or more of the overall duties of one employee, even if those duties are carried out by more than one employee.

## Findings

### Report of the Investigations Directorate

The Investigations Directorate examined whether Green Power Generation employed individuals whose duties included communicating with public office holders regarding the matters set out in subsection 7(1) of the *Lobbying Act*. The Investigations Directorate also examined whether Mr. Glémaud and Mr. Jaffer engaged in registrable lobbying activity as consultant lobbyists under subsection 5(1) of the *Lobbying Act*.

The Investigations Directorate identified ten allegations for investigation. Four of the allegations were determined to be unfounded.

### The Unfounded Allegations (1, 2, 3, and 4)

#### Allegation 1

*Whether Mr. Jaffer engaged in unregistered lobbying when he attempted to arrange a meeting between the former Minister of State (Small Business and Tourism) and the Chief Executive Officer for the Réseau de développement économique et de l'employabilité (RDÉE).*

On May 4, 2010, the Chief of Staff to the Honourable Diane Ablonczy, Minister of State (Seniors), informed me that Mr. Jaffer had communicated with the Minister's office. The communications occurred on September 1 and September 4, 2009, during Ms. Ablonczy's tenure as Minister of State (Small Business and Tourism). The information provided indicated that Mr. Jaffer attempted to arrange a meeting between the Minister and representatives of the Réseau de développement économique et de l'employabilité (RDÉE). The RDÉE is a not-for-profit organization that works with provincial and territorial governments to promote the economic development and employability of francophone and Acadian minority communities. Mr. Jaffer did not receive a response and no meeting was scheduled with the Minister or any of her staff.

#### *Analysis and Conclusion*

After completing a review of Mr. Jaffer's activities on behalf of the RDÉE, the Investigations Directorate concluded that Mr. Jaffer communicated with federal public office holders in respect of subjects listed in subparagraph 5(1)(a)(v) of the Act, that is, the awarding of any grant, contribution or other financial benefit by or on behalf of Her Majesty in right of Canada. He also undertook to arrange a meeting between public office holders in the Office of the Minister of State (Small Business and Tourism), and representatives of the RDÉE. However, the Investigations Directorate determined that Mr. Jaffer had been supportive of the RDÉE during his time as a Member of Parliament and concluded that his actions were performed as a personal favour. The Investigations

Directorate found no evidence that Mr. Jaffer performed those activities for payment, or with an expectation of payment.

The Investigations Directorate concluded that Mr. Jaffer did not engage in activity requiring registration as a consultant lobbyist acting on behalf of the RDÉE.

## Allegation 2

*Whether Mr. Jaffer engaged in unregistered lobbying when he communicated with the Director of Parliamentary Affairs in the Office of the Minister of Industry regarding the Government of Canada's long-term space policy.*

On April 20, 2010, the Chief of Staff to the Honourable Tony Clement, then Minister of Industry, informed me that Mr. Jaffer had communicated on two occasions with staff in the Minister's office. The communications occurred by means of email and telephone calls on March 16 and 17, 2010. Mr. Jaffer requested information regarding the easing of foreign ownership restrictions in the satellite sector announced in the 2010 Budget that had been tabled in the House of Commons on March 4, 2010 and regarding the Government of Canada's long-term space policy.

### *Analysis and Conclusion*

The Investigations Directorate found that Mr. Jaffer communicated with the Director of Parliamentary Affairs in the Office of the Minister of Industry, in an effort to gather information about the Government's long-term space plan, and the intentions of the Government with respect to foreign ownership of Canadian satellites. The *Lobbying Act* contains a restriction on application in paragraph 4(2)(c) which provides that the Act does not apply to 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.

The Investigations Directorate concluded that Mr. Jaffer's inquiry fell within the scope of paragraph 4(2)(c) of the *Lobbying Act* and was, therefore, not a registrable communication.

The Investigations Directorate also examined whether Mr. Jaffer undertook to arrange a meeting between a public office holder and any other person. The Investigations Directorate concluded that Mr. Jaffer asked for the name of public office holders who might be able to answer technical questions regarding the satellite and space sectors. He then undertook to arrange a meeting between a public office holder and another person.

However, the Investigations Directorate found no evidence that Mr. Jaffer performed the aforementioned activity for payment, or with an expectation of payment. The Investigations Directorate concluded that Mr. Jaffer's inquiry was made as a personal favour on behalf of an acquaintance.

The Investigations Directorate concluded that Mr. Jaffer did not engage in activity requiring registration as a consultant lobbyist under subsection 5(1) of the *Lobbying Act*.

### Allegation 3

*Whether Mr. Glémaud engaged in unregistered lobbying when he communicated with staff in the Office of the Minister of State (Science and Technology), to discuss the Southern Ontario Development Program (SODP).*

During the month of April 2010, the Chief of Staff to the Honourable Gary Goodyear, Minister of State (Science and Technology) provided documents disclosing information about communication between Mr. Glémaud and public office holders regarding the Southern Ontario Development Program (SODP). The documents indicated that Mr. Glémaud accompanied an associate, Ms. Anjali Varma, the Managing Partner of Sustainable Ventures Inc., to a meeting with staff in the Minister's office to discuss SODP funding administered through the Federal Economic Development Agency for Southern Ontario on November 13, 2009.

#### *Analysis and Conclusion – Consultant lobbying*

The Investigations Directorate examined whether Mr. Glémaud undertook to arrange a meeting between Ms. Varma and a federal public office holder. The Investigations Directorate concluded that Mr. Glémaud made the Director of Operations in the Minister's office aware of Ms. Varma's request to discuss the SODP. However, there is no basis to conclude that he arranged a meeting between Ms. Varma and federal public office holders in the Office of the Minister of State (Science and Technology).

The Investigations Directorate also examined whether Mr. Glémaud engaged in the alleged activities for payment and found no basis to conclude that Mr. Glémaud conducted any registrable lobbying activity for payment, or with an expectation of payment.

As a result, the Investigations Directorate concluded that Mr. Glémaud did not engage in activity requiring registration as a consultant lobbyist under paragraph 5(1)(b) of the *Lobbying Act*.

#### *Analysis and Conclusion – In-house (corporation) lobbying*

The Investigations Directorate examined whether Mr. Glémaud, on behalf of Green Power Generation, communicated with public office holders in the Office of the Minister of State (Science and Technology) in respect of subjects listed in paragraph 7(1)(a) of the *Lobbying Act*. The Investigations Directorate concluded that Mr. Glémaud met with public office holders to discuss the eligibility criteria for the SODP. However, his communication was limited to a request for information, and was subject to the restriction on application set out in paragraph 4(2)(c) of the *Lobbying Act*. The Investigations

Directorate concluded that Mr. Glémaud did not engage in activity requiring registration as an in-house (corporation) lobbyist pursuant to subsection 7(1) of the *Lobbying Act*.

## Allegation 4

*Whether Mr. Glémaud and Mr. Jaffer engaged in unregistered lobbying when they communicated with public office holders at the Department of Public Works and Government Services in respect of the leasing of federal building rooftops for solar power generation facilities.*

On April 20, 2010, I received a letter from the Chief of Staff to the Honourable Christian Paradis, Minister of Natural Resources, disclosing communication between the Minister and Mr. Jaffer that took place in August 2009. At that time, the Minister was responsible for the Department of Public Works and Government Services Canada (PWGSC). On April 28, 2010, the Honourable Rona Ambrose, Minister of Public Works and Government Services, provided additional information regarding this allegation.

The material indicated that Mr. Jaffer contacted Minister Paradis by telephone on behalf of his company, Green Power Generation, to determine the appropriate person with whom to discuss the possibility of installing solar panels on buildings owned or leased by the Government of Canada. Subsequently, staff employed by Minister Paradis arranged a meeting with public office holders in PWGSC. Mr. Glémaud was present at the meeting and presented a proposal to lease the rooftops of those buildings for the purposes of generating electricity with photovoltaic panels, for sale to the Ontario power grid.

### *Analysis and Conclusion*

The Investigations Directorate concluded that Mr. Jaffer and Mr. Glémaud contacted the Director of Parliamentary Affairs to the Minister of Public Works and Government Services to discuss their proposal to lease the rooftops of government buildings for the purpose of installing solar panels. On October 28, 2009, Mr. Glémaud gave a presentation to officials in the Department of Public Works and Government Services entitled “Turning Federal Buildings Rooftops into Renewable Power Generating Facilities.” During the presentation, he proposed a “...discussion and possible negotiation for the long-term lease(s) of Federal Government buildings within the province of Ontario.” Mr. Glémaud and Mr. Jaffer were advised that if PWGSC was interested in the proposal, it would be subject to a competitive bidding process.

The Investigations Directorate found no basis to conclude that Mr. Glémaud and Mr. Jaffer engaged in activity requiring registration as in-house (corporation) lobbyists under subsection 7(1) of the *Lobbying Act*. Communication by persons employed by a corporation or organization in respect of the awarding of any contract by or on behalf of Her Majesty in right of Canada is not listed in paragraph 7(1)(a) as an activity that is subject to the registration requirements of the *Lobbying Act*. This type of activity is only registrable when performed by a consultant lobbyist, in accordance with subparagraph 5(1)(a)(vi) of the *Lobbying Act*. As a result, the Investigations Directorate found no basis

to conclude that Mr. Glémaud and Mr. Jaffer had engaged in activity requiring registration as in-house (corporation) lobbyists.

## The Founded Allegations (5a, 5b, 6, 7, 8 and 9)

The Investigations Directorate concluded that, in four of the ten allegations under review (Allegations 5a, 6, 7 and 8), there was a basis to conclude that Mr. Glémaud and Mr. Jaffer had engaged in activity requiring registration as in-house (corporation) lobbyists employed by Green Power Generation. In one instance (Allegation 5b), the Investigations Directorate concluded that Mr. Glémaud had also engaged in activity requiring registration as a consultant lobbyist.

In addition, the Investigations Directorate concluded that Mr. Glémaud had failed to comply with the requirement to disclose previous public offices held in a registration that he submitted in respect of an unrelated undertaking on behalf of the International Centre for Infectious Diseases (Allegation 9).

Below are summaries of the founded allegations.

### Allegation 5

The following two allegations were assessed by the Investigations Directorate in the analysis of whether activity performed by Mr. Glémaud and Mr. Jaffer on behalf of RLP Energy Inc. required registration:

- (a) whether Mr. Glémaud and Mr. Jaffer engaged in activity requiring registration as in-house (corporation) lobbyists for Green Power Generation when they communicated with public office holders in respect of funding for a full-scale mercury capture test involving RLP Energy Inc. at the Keephills power facility in Alberta; and,*
- (b) whether Mr. Glémaud engaged in activity requiring registration as a consultant lobbyist on behalf of his client, RLP Energy Inc.*

### *Background*

On April 22, 2010, the Director, Regional Affairs, in the Calgary Office of the Minister of the Environment, the Honourable Jim Prentice, informed me that he had met with Mr. Jaffer in April 2009, and agreed to his request to speak with a representative of RLP Energy Inc., a company with which Mr. Jaffer indicated that he was associated. The Director and another employee in the Minister's regional office participated in a conference call with the President and CEO of RLP Energy Inc., Mr. Rick MacPherson, and Mr. Jaffer on May 12, 2009.

The purpose of the call was to discuss a request by RLP Energy Inc. for government funding to conduct a mercury capture test at the Keephills coal-fired power plant in Alberta. During the call, the Director recommended that RLP Energy Inc. contact the Assistant Deputy Minister of the Department of Western Economic Diversification with responsibility for the Province of Alberta.

#### *Federal Agency*

The Department of Western Economic Diversification (Western Economic Diversification or WD) is a federal department established to promote the development and diversification of the economy of western Canada and to advance the interests of western Canada in national economic policy, program and project development and implementation.

#### *RLP Energy Inc. and the Energy & Environmental Research Center (EERC)*

RLP Energy Inc. is a private company incorporated in 2008. It is involved in commercializing technology developed by the Energy & Environmental Research Center (EERC). The EERC is a high-tech, non-profit branch of the University of North Dakota, which is located in Grand Forks, North Dakota. RLP Energy Inc. acquired an exclusive technology licence from the EERC Foundation for a process regarding mercury capture.

#### *Investigation*

The documentation that was provided to my Office included an email sent from Mr. Jaffer on April 27, 2009 describing the RLP Energy Inc. project, along with a briefing note written following the May 12, 2009 conference call between Mr. Jaffer, Mr. MacPherson, the President and CEO of RLP Energy Inc. and public office holders who were staff in the Minister's office in Alberta.

Mr. Jaffer's correspondence explained that RLP Energy Inc. was seeking \$600,000 (US) from the Government of Canada through WD in order to conduct a mercury capture test at the Keephills coal-fired power plant in Alberta. The test would be in partnership with RLP Energy Inc., EERC and other partners. The briefing note, written following the May 12, 2009 conference call, identified Mr. Jaffer as a participant, while Mr. Glémaud is listed as a contact name along with Mr. MacPherson.

Certain documents indicated that Mr. Jaffer communicated further with WD in order to provide additional information regarding the proposal for RLP Energy Inc. Mr. Jaffer indicated that he and his business partner, Mr. Glémaud, sought funding of approximately \$700,000 (CAN) as the investment of WD in the program. WD did not provide the requested funding.



Mr. Glémaud communicated on several occasions with a public office holder in the Minister's regional office. He also helped to organize a conference call between Mr. Jaffer, Mr. MacPherson and public office holders in the regional office of the Minister of the Environment. Mr. Jaffer participated in the conference call with public office holders employed in the regional office of the Minister of the Environment and Mr. MacPherson. The request for funding was discussed during the conference call. Mr. Jaffer made a similar request for funding to the Assistant Deputy Minister at WD in emails sent May 27, 2009 and June 4, 2009.

#### *Analysis and Conclusion – In-House (Corporation) Lobbying*

The Investigations Directorate concluded that Mr. Jaffer and Mr. Glémaud communicated with federal public office holders in an effort to promote the idea of funding a full-scale mercury capture test involving RLP Energy Inc. Communicating with public office holders in respect of the awarding of any grant, contribution or other financial benefit by or on behalf of Her Majesty in right of Canada, is a potentially registrable activity under subparagraph 7(1)(a)(v) of the Act.

The Investigations Directorate considered whether Mr. Glémaud and Mr. Jaffer were employed to do so by Green Power Generation and concluded that there was no partnership or joint venture between RLP Energy Inc. and Green Power Generation, or between RLP Energy Inc. and Mr. Glémaud or Mr. Jaffer.

However, the Investigations Directorate concluded that GPG had an expectation of compensation if RLP Energy Inc. received funding from WD for the mercury capture test. The GPG activities were not performed as an act of kindness, or on a voluntary basis. Mr. Glémaud and Mr. Jaffer performed their activities on behalf of GPG as part of a commercial enterprise, in an effort to build, or advance their business relationship with RLP Energy Inc. In view of this, as the principals of GPG, they were deemed to have been employed by the corporation to communicate with public office holders on its behalf, and engaged in activity requiring registration as in-house (corporation) lobbyists employed by Green Power Generation.

Mr. Glémaud and Mr. Jaffer were the only persons performing activities on behalf of GPG. The company was a commercial enterprise created with a view to participating in the development of successful "green" energy enterprises. In view of this, the Investigations Directorate concluded that the time and effort spent in the preparation, participation and follow-up related to the aforementioned communications, and other GPG initiatives outlined later in this report involving communication with federal public office holders, comprised a significant part of the duties of Mr. Glémaud and Mr. Jaffer on behalf of GPG.



### *The Requirement to File a Monthly Communication Return*

The Investigations Directorate also examined whether communication between the principals of GPG and the designated public office holders that they communicated with required the filing of a monthly return under subsection 7(4) of the *Lobbying Act*.

The officer responsible for filing returns must file a communication report with the Commissioner of Lobbying if, during the previous month, an in-house lobbyist communicated with a designated public office holder in respect of registrable subjects, and the communication was oral and arranged in advance.

During the period of time under investigation, the following positions were defined in the *Lobbying Act* as designated public office holders (DPOH): Ministers of the Crown or Ministers of State, and their staff, as well as senior executives and assistant deputy ministers within federal departments and those of comparable rank.<sup>4</sup>

A conference call took place on May 12, 2009, involving Mr. MacPherson, the President and CEO of RLP Energy Inc., Mr. Jaffer and designated public office holders employed in the regional office of the Minister of the Environment. The call included a discussion of the request for funding for the mercury capture test. The Investigations Directorate concluded that the subject of this “oral and arranged” meeting necessitated the filing of a monthly communication return by Mr. Glémaud pursuant to subsection 7(4) of the *Lobbying Act*.

### *Officer Responsible for Filing Returns*

Pursuant to subsection 7(6) of the *Lobbying Act*, the “officer responsible for filing returns” means the employee who holds the most senior office in a corporation or organization and is compensated for the performance of their duties. The Investigations Directorate concluded that Mr. Glémaud, as the founder and principal director of GPG, was the officer responsible for filing returns on behalf of the corporation.

The Investigations Directorate concluded that Mr. Glémaud and Mr. Jaffer were employed by GPG to communicate with public office holders in respect of registrable subjects in an effort to obtain government funding for a mercury capture test at the Keephills power facility. The communication was made on behalf of GPG in an effort to build the business of GPG, and was not performed as a personal favour, or without an expectation of receiving anything of value. As a result, Mr. Glémaud and Mr. Jaffer were engaged in activity requiring registration as in-house (corporation) lobbyists under subsection 7(1) of the *Lobbying Act*. Mr. Glémaud, by virtue of his position as the “officer responsible for filing returns,” was responsible for registering the activity of those employed by GPG to communicate with public office holders.

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<sup>4</sup> Additional positions have been designated as DPOH in the *Designated Public Office Holder Regulations*, SOR/2008-117, as amended by SOR/2010-192.

### *Analysis and Conclusion – Consultant Lobbying*

Communication with a public office holder in respect of the awarding of any grant, contribution or other financial benefit by or on behalf of Her Majesty in right of Canada is a registrable activity under subsection 5(1)(a) of the *Lobbying Act*, when performed for payment. In addition, arranging a meeting between a public office holder and another person is a registrable activity under paragraph 5(1)(b) of the Act when performed for payment.

The *Lobbying Act* definition of payment found in subsection 2(1) of the *Lobbying Act* is “...money or anything of value and includes a contract, promise or agreement to pay money or anything of value.”

The Investigations Directorate concluded that Mr. Glémaud communicated with a federal public office holder in the regional office of the Minister of Environment in respect of the funding proposal for a mercury capture test at the Keephills power facility in Alberta and to coordinate a May 12, 2009 conference call involving Mr. MacPherson, the President and CEO of RLP Energy Inc.

The Investigations Directorate examined whether Mr. Glémaud did so for payment and on behalf of RLP Energy Inc. Mr. MacPherson stated that he never entered into a partnership or joint venture with Mr. Glémaud or Mr. Jaffer. However, Mr. MacPherson confirmed that Mr. Glémaud had acted as the lawyer for RLP Energy Inc. since February 2008, and that he handled all of the company’s legal matters. He confirmed that Mr. Glémaud had been paid a monthly retainer of \$5,000 by RLP Energy Inc. for several years.

The Investigations Directorate concluded that Mr. Glémaud had performed a registrable lobbying activity for payment, during a period of time when he was paid a monthly retainer by his client, RLP Energy Inc. The Investigations Directorate concluded that Mr. Glémaud engaged in registrable lobbying activities by communicating with federal public office holders in respect of the awarding of a contribution on behalf of his client and by arranging a conference call. As a result, he engaged in activity requiring registration as a consultant lobbyist pursuant to section 5 of the *Lobbying Act*.

## Overview - Allegations 6, 7 and 8

This section provides background information that applies to allegations 6, 7 and 8.

### *Background*

On April 8, 2010, the *Toronto Star* published a report that Mr. Jaffer had advised prospective clients that he was an expert in obtaining funding from the Government of Canada, and that he had "...access to a green fund." The article contained details of business meetings in Toronto during which Mr. Jaffer and a local entrepreneur, Mr. Nazim Gillani, offered to arrange government loans and start-up financing for various businessmen.

On April 9, 2010, the Chief of Staff to the Honourable John Baird, Minister of Transport, Infrastructure and Communities provided my Office with information that Mr. Jaffer had met with Mr. Brian Jean, Parliamentary Secretary to the Minister, to discuss the Green Infrastructure Fund (GIF), and that the communication by Mr. Jaffer was on behalf of Green Power Generation. In a letter received on April 20, 2010, Mr. Jean provided my Office with copies of the proposals.

In the letter received on April 12, 2010, the Honourable Marlene Jennings, P.C. (MP, Notre-Dame-de-Grâce – Lachine), requested that I investigate possible violations of the *Lobbying Act* by Mr. Glémaud and Mr. Jaffer. Ms. Jennings alleged that Mr. Glémaud and Mr. Jaffer, the principals of Green Power Generation, had failed to register lobbying activities as required under sections 5 and 7 of the *Lobbying Act*. Ms. Jennings provided a link to the GPG website that claimed that GPG had a thorough knowledge of the Government of Canada policies and incentive programs and the ability to assist clients in securing government grants and loans.

In addition, a letter received on April 14, 2010, from Mr. Mark Holland (MP, Ajax-Pickering), supported calls for an investigation and provided additional information. Mr. Holland alleged that the green fund referred to in media reports "may be the Government of Canada's Green Infrastructure Fund." He also alleged that Mr. Glémaud and Mr. Jaffer had met with Mr. Brian Jean, the Parliamentary Secretary to the Minister of Transport, Infrastructure and Communities, who had the delegated authority to approve projects eligible for the \$1 billion fund. Mr. Holland maintained that the communication was in respect of the awarding of any grant, contribution or other financial benefit, and necessitated the filing of a registration under the *Lobbying Act* if they were "acting either as a consultant or on behalf of their corporation."

### *The Green Infrastructure Fund (GIF)*

The 2009 federal budget, tabled on January 27, 2009, announced that the Government of Canada would spend \$12 billion over two years in new infrastructure stimulus funding, including \$1 billion over five years for a "Green Infrastructure Fund to support projects such as sustainable energy."

The Green Infrastructure Fund was officially launched on May 29, 2009, by Mr. Brian Jean, Parliamentary Secretary to the Minister of Transport, Infrastructure and Communities. The GIF was designed to "...create jobs, boost the economy through infrastructure investments, while also promoting long-term growth and improving the environment..." Funding from the GIF was to be used to support projects including energy transmission and wastewater treatment, and was to focus on green priorities such as green energy generation and transmission infrastructure, building and upgrading wastewater treatment systems, and improving solid waste management.

Mr. Jean advised that he had been given a mandate by the Minister of Transport, Infrastructure and Communities to administer the Green Infrastructure Fund and had met with various people to discuss proposals. He indicated that he was responsible for assessing proposals, performing due diligence and providing recommendations to the Minister on whether or not to fund technologies identified in project proposals, based upon whether a project met the criteria for GIF funding. The normal practice was that Infrastructure Canada would also conduct an assessment.

Mr. Jean stated that he had received three such proposals from Mr. Jaffer, and that he had met with Mr. Jaffer to discuss the GIF. Mr. Jean described the GIF proposals later submitted by Mr. Jaffer as relating to "solar photovoltaic," "kinetic renewable electric generation" and "BioDryer" technology. He indicated that only the BioDryer proposal had met the criteria for serious consideration, but that the proposal was rejected in September 2009. Mr. Jean provided documents relating to meetings and phone calls with Mr. Jaffer, as well as copies of the GIF proposals.

#### *Infrastructure Canada*

The following description of Infrastructure Canada is taken from the *2009-10 Departmental Performance Report*:

Infrastructure Canada is responsible for federal efforts to enhance Canada's public infrastructure through strategic investments, key partnerships, sound policies and practical research. The department ensures that Canadians benefit from world-class public infrastructure by supporting initiatives from coast to coast to coast. As a focal point for infrastructure issues and programs, the department is also a centre of expertise for federal infrastructure and a key funding partner for cities and communities across Canada.

The following three allegations were assessed by the Investigations Directorate in its analysis of whether Mr. Glémaud and Mr. Jaffer engaged in registrable lobbying when they submitted proposals for federal government funding from the Green Infrastructure Fund.

## Allegation 6

*Whether Mr. Glémaud and Mr. Jaffer engaged in unregistered lobbying when they communicated with public office holders in respect of contributions from the Green Infrastructure Fund for a solar photovoltaic electricity generation facility in Brockville, Ontario.*

### *Background*

On April 19, 2010, Mr. Jean provided me with copies of proposals submitted by GPG concerning “Solar Photovoltaic Electricity Generation, Brockville, Ontario.” The documents were submitted on GPG letterhead and described a project to develop a \$290 million, 50 megawatt (MW) solar power facility on 750 acres near Brockville, Ontario. The project required funding from the federal government in the amount of \$58 million to establish the facility. The proposals identified Mr. Glémaud as the contact for more information or questions, and listed Upper Canada Solar Generation Ltd. and Canadian Solar Incorporated as “project stakeholders.”

A handwritten note on the proposal indicated: “*Rec’d June 17 – RJ; From Rahim – submitted to dept.; K.*”

Mr. Jean also provided me with copies of email sent from Mr. Glémaud and Mr. Jaffer to his assistant with respect to their proposal.

On August 13, 2009, an email from Mr. Glémaud under the subject heading “Solar 50 MW: GIF”, sought “...to highlight certain point (sic) from our letter submitted to your office on the Solar Project...” by providing the following information:

- 1) The total cost of the 50MW Solar Project is \$290 million including assets of \$232 million
- 2) The project will be executed in one phase instead of two phases; and
- 3) The maximum share of funding required from the federal will be 25% of the total eligible cost, namely \$58 million

On August 26, 2009, Mr. Jaffer sent the following message by email to Mr. Jean’s office:

Have you had a chance to look at the proposal for our solar project and power systems. Our preference is for the solar if there needs to be a choice between the two. I would love to talk to you about it if you have some time. Thanks, Rahim.

### *The Project Stakeholders*

Upper Canada Solar Generation Ltd. is described on the company website as a “full service solar power solutions company” involved in, among other things, the development of commercial solar farms.

Canadian Solar Inc. is identified on its corporate website as a producer of solar modules. The company advertises having customers around the globe, including “solar project developers, solar power system integrators and installers, commercial property owners, independent power producers and utility leaders.”

### *Investigation*

The Investigations Directorate conducted interviews with Mr. Jean and his assistant, Mr. Glémaud, Mr. Jaffer and representatives of Upper Canada Solar Generation Ltd. and Canadian Solar Inc.

The Investigations Directorate determined that Mr. Glémaud and Mr. Jaffer had sent their proposal entitled “Solar Photovoltaic Electricity Generation, Brockville, Ontario” directly to Mr. Jean’s office. They followed up on the initial communication with Mr. Jean’s office. Mr. Glémaud and Mr. Jaffer identified Upper Canada Solar Generation Ltd. and Canadian Solar Incorporated as “project stakeholders.” However, both Upper Canada Solar Generation Ltd. and Canadian Solar Incorporated indicated that they had no contracts or other legal relationship with GPG, or with Mr. Glémaud or Mr. Jaffer.

The Investigations Directorate determined that Mr. Glémaud and Mr. Jaffer had communicated with public office holders regarding the potential for a contribution from the federal government for the proposed solar generation project. This was done with the expectation that GPG would have been able to obtain some type of consideration from the suppliers of the solar generation facilities for the implementation of any resulting arrangement with the federal government.

### *Analysis and Conclusion*

The Investigations Directorate concluded that Mr. Glémaud and Mr. Jaffer had engaged in activity requiring registration as in-house (corporation) lobbyists when they communicated with federal public office holders in respect of the funding of a solar photovoltaic electricity generation facility in Brockville, Ontario, for the following reasons.

- By submitting proposals on GPG letterhead requesting funding to develop a solar power plant, and following up on their request in email correspondence sent to the Office of the Parliamentary Secretary to the Minister of Transport, Infrastructure Communities, Mr. Glémaud and Mr. Jaffer both communicated in respect of the awarding of a government contribution. Communication in respect of the awarding of any grant, contribution or financial benefit by or on behalf of Her Majesty in right of Canada is a potentially registrable communication under subparagraph 7(1)(a)(v) of the *Lobbying Act*.
- Mr. Glémaud and Mr. Jaffer, as the principals of Green Power Generation, are deemed to have been employed by GPG to communicate on the company's behalf. The activities were not performed as a favour to anyone, or on a voluntary basis, but as a part of their commercial enterprise, in an effort to build their business and establish relationships with various project stakeholders.
- Mr. Glémaud and Mr. Jaffer are the only employees of Green Power Generation and, therefore, there is a basis to conclude that their time and effort expended in the preparation, presentation and follow-up related to the solar photovoltaic proposal, and other GPG initiatives that involved communications with public office holders, constituted a significant part of their duties.

## Allegation 7

*Whether Mr. Glémaud and Mr. Jaffer engaged in unregistered lobbying when they communicated with public office holders in respect of contributions from the Green Infrastructure Fund for a renewable electricity generation project based on a technology referred to as the Dragon Power System.*

### *Background*

On April 19, 2010, Mr. Jean provided a copy of a proposal submitted by GPG concerning the "Dragon Power System." The proposal, submitted on Green Power Generation letterhead, proposed the manufacture and installation of 40 locations for the Dragon Power Station technology at inter-provincial and international bridges, ports and highways at a cost of \$80 million. Mr. Glémaud was identified as the contact for more information or questions, and Renewable Energy Group Inc. and International Road Dynamics were listed as "project stakeholders."

A handwritten note on the proposal indicates that it was submitted in June 2009: "*Rc'd June 17 From Rahim – submit to dept.*"



Mr. Jean provided me with copies of email correspondence in which Mr. Jaffer and Mr. Glémaud made reference to their proposals. On August 26, 2009, Mr. Jaffer sent an email to Mr. Jean's office, asking:

Have you had a chance to look at the proposal for our solar project and power systems. Our preference is for the solar if there needs to be a choice between the two. I would love to talk to you about it if you have some time. Thanks, Rahim.

### *The Project Stakeholders*

Renewable Energy Group Inc. (REG) is an Ontario corporation based in Stoney Creek, Ontario, that owns the rights to distribute a technology called the Dragon Power Station. The system, developed in California by Alternative Energy Sources Technology Inc., generates power from kinetic energy created by vehicles driving over a series of plates. According to the President of Renewable Energy Group Inc., Mr. John Mogford, the system can be installed at border crossings and truck stops to harness the energy of trucks and create power at a cheaper rate than solar or wind energy.

### *The Investigation*

The Investigations Directorate conducted interviews with Mr. Jean and his assistant, Mr. Glémaud and Mr. Jaffer, and the President of Renewable Energy Group Inc., Mr. Mogford, as well as Mr. Nazim Gillani, CEO of International Strategic Investments.

Mr. Mogford provided the Investigations Directorate with documentation and correspondence detailing the relationship between his company and Green Power Generation. He indicated that neither Mr. Jaffer nor Mr. Glémaud was employed by Renewable Energy Group Inc., nor were they engaged by REG to lobby – that is, to communicate or arrange meetings – on the company's behalf. He stated that the company has never had a signed agreement with either of them, and that both REG and GPG paid all of their own expenses at all times. At one point, GPG provided REG with a backgrounder on the Green Infrastructure Fund, and he had discussed how participation by GPG in the Dragon Power Station project planned by REG would work with Mr. Glémaud and Mr. Jaffer.

Mr. Mogford stated that the intended result was that GPG would obtain financing for operations or projects, and debt financing in the future. In June of 2009, REG and GPG began to draft a memorandum of understanding whereby GPG would be responsible for providing initial working capital to secure a grant, private or debt financing, and then start developing different potential sites for the Dragon Power Station. In exchange, GPG was to receive common shares in REG, a position on the Board of Directors and a person on the Advisory Board. However, according to Mr. Mogford, the memorandum of understanding between REG and GPG never came to fruition.

A document provided by Mr. Mogford summarizing a June 22, 2009 meeting between REG and GPG contained the following description:



“GPG is submitting a 2 page document to the Federal government to see if they will commit to funding for a 2-phase green energy project with REG. The total project cost is \$80M and GPG is seeking a commitment letter for 25% of this amount. If received, GPG will leverage this letter with private funding sources...”

Mr. Mogford also provided an unsigned memorandum of understanding between GPG and REG dated June 18, 2009. The document describes GPG as “... [specializing] in financing, business development, strategies and consultancy services in the fields of Renewable Energy Generation...” It also contained the following elements:

“Under Article 1 (GPG Responsibilities), the company is to provide, among other things, initial working capital, and a Letter of Commitment (LOC) to secure a combination of grant, private financing or debt financing in the amount of not less than \$5,000,000.

Under Article 2 (REG Responsibilities) are: to transfer 30% of non diluted Voting Common Shares in REG to GPG; to appoint Patrick Glémaud as Chairman of the REG Advisory Committee; and, to involve GPG in the daily operations of REG as the Business Model evolves.

Under the heading “Independent Contractor” GPG is described as “an Independent Contractor, not a partner or joint venturer, and shall not act as an agent for REG, nor shall the GPG be deemed to be an employee of REG for any purpose whatsoever.”

Mr. Jaffer indicated to the Investigation Directorate that he thought the REG technology could provide GPG with opportunities in China and that, although there had been discussions and draft contracts prepared, none of them were ever executed. He stated that, had the Green Power Generation proposal for federal government funding been successful, GPG would have entered into negotiations with REG on how to proceed.

Mr. Glémaud recalled submitting the project proposal. He indicated, however, that it was not “... an undertaking from the company to try to influence any government decision or anything other than us trying to gather information to understand the program.”

Mr. Glémaud’s perspective was that no agreement or undertaking on behalf of REG had been entered into, and that the memorandum of understanding did not identify “...obtaining government funding” as being among the GPG responsibilities. He indicated that the memorandum of understanding related only to private sector funding and the provision of initial capital, and not the source of the capital.

### *Analysis and Conclusion*

The Investigations Directorate concluded that Mr. Glémaud and Mr. Jaffer had engaged in activity requiring registration as in-house (corporation) lobbyists when they communicated with federal public office holders in respect of funding for the manufacture and installation of 40 locations for the Dragon Power Station technology at inter-provincial and international bridges, ports and highways.

- Mr. Glémaud and Mr. Jaffer both communicated in respect of the awarding of a government grant, contribution or financial benefit. They submitted a proposal on GPG letterhead regarding an \$80 million project to install Dragon Power Station technology. Information obtained during the investigation demonstrated that they were seeking funding from the Government of Canada in the amount of \$20 million (25% of the total project cost). Communication in respect of the awarding of any grant, contribution or financial benefit by or on behalf of Her Majesty in right of Canada is a potentially registrable communication under subparagraph 7(1)(a)(v) of the *Lobbying Act*.
- Mr. Glémaud and Mr. Jaffer, as the principals of Green Power Generation, are deemed to have been employed by GPG to communicate on the company's behalf. The activities were not performed as a favour to anyone, or on a voluntary basis, but as a part of their commercial enterprise, in an effort to build their business and establish relationships with various project stakeholders.
- Mr. Glémaud and Mr. Jaffer are the only employees of Green Power Generation and, therefore, there is a basis to conclude that their time and effort expended in the preparation, presentation and follow-up related to the Dragon Power Station proposal, and other GPG initiatives involving communications with public office holders, constituted a significant part of their duties.

## Allegation 8

*Whether Mr. Glémaud and Mr. Jaffer engaged in unregistered lobbying when they communicated with public office holders in respect of contributions from the Green Infrastructure Fund for an electricity generation/waste disposal infrastructure project based on technology referred to as the BioDryer.*

### *Background*

On April 19, 2010, Mr. Jean provided me with a copy of a proposal received for Green Infrastructure Fund funding of a project to build renewable energy facilities using a technology called the BioDryer. The proposal, submitted on GPG letterhead, summarized the BioDryer technology and described a project to build 11 facilities in municipalities across Canada. The proposal stated that municipalities in Ontario, Alberta, Nova Scotia and British Columbia had been identified and assessed as potential locations for the project, which was described as “shovel ready.” The total cost of the project was estimated at \$480 million, with asset costs of \$400 million, and the proposal included a request for government funding in the amount of \$100 million. The proposal identified Mr. Glémaud as the contact for more information or questions, and listed Green Rite Solutions Inc. as a “project stakeholder.”

Mr. Jean provided copies of email correspondence sent from Mr. Glémaud to Mr. Jean's assistant in response to requests for more details about the proposal. On September 22, 2009, an email from Mr. Glémaud to Mr. Jean's assistant provided technical responses to her questions, and made the following remark:

Regarding your comment on the category, I agree with you that the project fit the Solid Waste Management category...Please let me know if you need more clarification.

On September 30, 2009, the following message was sent from Mr. Glémaud to Mr. Jean's assistant in response to questions about GPG's BioDryer proposal:

Yes The trees destroyed by Mountain pine Beetle could be used in conjunction with the biosolids or food waste. Trees will be chipped into smaller particle sizes and mixed with biosolids or food waste in the biodryer process. The end product will be a biomass type of biofuels that could be used in coal fired power plant. Warm regards Patrick

A handwritten note at the side of the email states: "*no areas are pine beetle...so not interested...Not Recommended. B.*"

### *The Project Stakeholders*

Wright Tech Systems Inc. (Wright Tech) is a company based in Richmond Hill, Ontario. It is involved in creating renewable energy from organic waste using a technology called the BioDryer. According to the Wright Tech website, the BioDryer is a fully enclosed tunnel that transforms waste into "biomass fuel" in 14 days or less. The technology has been installed in Orlando, Florida and Whistler, British Columbia. The chairman and sole shareholder of Wright Tech is Mr. Jim Wright. Mr. Wright is also a partner in Green Rite Solutions Inc., the marketing division of Wright Tech Systems Inc.

### *The Investigation*

The Investigations Directorate conducted interviews with Mr. Jean and his assistant, Mr. Glémaud, Mr. Jaffer, Mr. Wright and other representatives of Green Rite Solutions Inc., and Mr. Nazim Gillani, CEO of International Strategic Investments.

Mr. Wright advised the Investigations Directorate that he first met Mr. Jaffer at an August 25, 2009 meeting organized by Mr. Gillani. The meeting was attended by approximately 10 people, including four representatives from Green Rite, and other people associated with International Strategic Investments. Mr. Jaffer was introduced to him as someone who could provide "insight" on available government funds. The objective of the meeting was described as being "...fact-finding, and getting to know people." The participants all introduced themselves and described their respective businesses in an attempt to "...see how we could all fit together." Mr. Wright stated that Mr. Jaffer indicated that he was planning to determine if there was any federal money available from the Green Infrastructure Fund.

He contended that Green Rite and GPG had never entered into an agreement, and that he was never informed that GPG had submitted a proposal for government funding on behalf of Green Rite. Mr. Wright stated, however, that "...if anybody brings money, they want something for it", and, when asked, suggested that the two companies would have entered into a "finder's fee agreement" in the event that Green Power Generation had obtained federal government funding for the BioDryer.

Mr. Gillani advised the Investigations Directorate that GPG was part of his "pipeline of activities" and was responsible for conducting initial assessments of potential investment opportunities, and helping determine the best way to take the activities to market. He described GPG as a company that could source public funds, while International Strategic Investments could provide private funding. The two companies were involved together in a number of projects, including those involving Green Rite Solutions, RLP Energy Inc., Renewable Energy Group and a solar energy initiative.

Mr. Gillani described a "daisy chain" of relationships between the owner of a technology and the eventual funder, each expecting a piece of the financing based on their role in bringing the funder and the technology owner together. He stated that the fee is sometimes as much as 20% of the funding, and the chain could be "five-deep." He advised the Investigations Directorate that GPG spent the months of August and September 2009, conducting assessments of various technologies on his behalf, and that Mr. Glémaud had begun to work with International Strategic Investments' in-house counsel to draft an agreement.

Mr. Gillani provided the Investigations Directorate with copies of correspondence and other documentation, including a "Services Consulting Agreement" between GPG and International Strategic Investments dated September 21, 2009, that Mr. Glémaud had signed. The agreement refers to GPG as the "Consultant", and contains the following description under the heading "Nature of Services to be Rendered":

The Consultant warrants and represents that it is in ongoing dialogue with, and has valuable connections to and with, the government of Canada and various departments and ministries and wholly and partially owned entities thereof, all for the purposes of providing participatory and non-participatory government funding (and other incentives) as well as ongoing support for various prospective private sector projects, ventures and initiatives (the "**Prospective Projects**"), as well as existing private sector projects, ventures and initiatives (the "**Confirmed Projects**").

Under the heading "Compensation and Expenses", the agreement provides that "...On a project-by-project basis, the parties shall utilize their best efforts to agree to specific fee/profit-sharing arrangements and/or such further and other performance-based incentives and compensation as the Parties deem appropriate..."

## *Analysis and Conclusion*

The Investigations Directorate concluded that Mr. Glémaud and Mr. Jaffer had engaged in activity requiring registration as in-house (corporation) lobbyists when they communicated with federal public office holders in respect of funding to build renewable energy facilities using a technology called the BioDryer.

- By submitting the proposal on GPG letterhead requesting funding in the amount of \$100 million and responding by email to technical questions from Mr. Jean's assistant, Mr. Glémaud and Mr. Jaffer both communicated in respect of the awarding of a government contribution. Communication in respect of the awarding of any grant, contribution or financial benefit by or on behalf of Her Majesty in right of Canada is a potentially registrable communication under subparagraph 7(1)(a)(v) of the *Lobbying Act*.
- Mr. Glémaud and Mr. Jaffer, as the principals of Green Power Generation, are deemed to have been employed by GPG to communicate on the company's behalf. The activities were not performed as a favour to anyone, or on a voluntary basis, but as a part of their commercial enterprise, in an effort to build their business and establish relationships with various project stakeholders and venture capitalists.
- Mr. Glémaud and Mr. Jaffer are the only employees of Green Power Generation, and, therefore, there is a basis to conclude that their time and effort expended in the preparation, presentation and follow-up related to the BioDryer proposal, and other GPG initiatives, involving communications with public office holders, constituted a significant part of their duties.

## *Allegation 9*

The following allegation was assessed by the Investigations Directorate in its analysis of whether Mr. Glémaud failed to disclose previous public offices held in a consultant lobbyist registration.

*Whether Mr. Glémaud was in breach of the Lobbying Act by failing to disclose previous public offices held in a consultant lobbyist registration filed in respect of an undertaking for the International Centre for Infectious Diseases.*

## *Complaint*

On April 12, 2010, I received a letter from the Honourable Marlene Jennings, P.C. (MP, Notre-Dame-de-Grâce – Lachine), requesting that I investigate possible violations of the *Lobbying Act* by Mr. Glémaud and Mr. Jaffer. Ms. Jennings alleged that Mr. Glémaud was in breach of the Act when he failed to disclose that he was a public office holder employed by the Department of Justice in a consultant lobbyist registration filed in February 2009.

Pursuant to paragraph 5(2)(h.1) of the *Lobbying Act*, consultant lobbyists, who are former federal public office holders, must describe previous public offices held in the contents of their registration.

### *Registration History*

In February 2009, Mr. Glémaud signed an Office of the Commissioner of Lobbying of Canada Registrant User Agreement allowing him electronic access to the Lobbyists Registration System for the purpose of filing registrations, notices of changes and monthly returns in compliance with the registration requirements of the *Lobbying Act*. The Registrant User Agreement sets out various terms and conditions for use of the Lobbyists Registration System.

On February 19, 2009, Mr. Glémaud was registered for a period of one day as a self-employed consultant lobbyist, listing as his client the International Centre for Infectious Diseases. When submitting his registration, he certified that the information was correct.

Mr. Glémaud responded “No” in the section entitled “Former public office holder” when he completed section A of the registration (Registrant). This registration is the only reference to Mr. Glémaud in the Registry of Lobbyists.

### *Investigation*

The Investigations Directorate examined whether Mr. Glémaud was employed as a public office holder as defined in subsection 2(1) of the *Lobbying Act*.

Mr. Glémaud advised the Investigations Directorate that he was employed as legal counsel with the Department of Justice from January 20, 2002 until September 17, 2009. He indicated that he considered that the requirement to list previous public offices held in his lobbying registration applied only to designated public office holders<sup>5</sup>. According to Mr. Glémaud, when he responded “No” to the question of whether he had previously been a former public office holder, he indicated that he was responding to a question asking whether he was subject to restrictions applicable to former designated public office holders.

Mr. Glémaud also indicated he was under the impression that the work he had been asked to perform on behalf of the International Centre for Infectious Diseases was potentially a lobbying undertaking. As a result, he took steps to register as a lobbyist out of an abundance of caution. When the International Centre for Infectious Diseases advised Mr. Glémaud that the registration was not required, he terminated the registration.

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<sup>5</sup> Defined on page 25.

### *Analysis and Conclusions*

The Investigations Directorate determined that Mr. Glémaud was an employee of the Department of Justice from January 20, 2002 until September 17, 2009. As a result, he was an officer or employee of Her Majesty in right of Canada and captured by the definition of “public office holder” under subsection 2(1) of the *Lobbying Act*.

Mr. Glémaud did not provide a description of public offices held in his lobbyist registration return when he registered as a consultant lobbyist for an undertaking on behalf of the International Centre for Infectious Diseases. The registration was effective for a one-day period on February 19, 2009. In section A of the registration (Registrant), Mr. Glémaud responded “No” to the field entitled “Former public office holder.”

The Investigations Directorate concluded that Mr. Glémaud failed to comply with paragraph 5(2)(h.1) of the Act, when he did not describe public offices held in a consultant lobbyist registration filed in respect of an undertaking on behalf of the International Centre for Infectious Diseases.



## The Views of Mr. Glémaud and Mr. Jaffer 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 August 29, 2011, I sent a copy of the Investigations Directorate's Report regarding Green Power Generation to Mr. Glémaud and to Mr. Jaffer. In addition, I sent a copy of the Investigations Directorate's Report regarding RLP Energy Inc. and the International Centre for Infectious Diseases to Mr. Glémaud. In each case, I requested that they provide written comments within 30 days.

The replies from Mr. Glémaud and Mr. Jaffer were received in my Office on September 29 and 30, 2011, respectively. I have considered their views on the reports provided to them. I have considered their arguments and wish to address them in this section.

### Mr. Glémaud

#### 1. The "Letter and Spirit" of the Act

Mr. Glémaud indicated that from his perspective, the *Lobbying Act* is a relatively recent piece of legislation. He expressed the view that the *Lobbying Act* contains 'often ambiguous provisions' and that the Act and the *Lobbyists' Code of Conduct* are unclear and difficult to interpret and apply. I take an opposing view.

The first *Lobbyists Registration Act* was enacted in 1988 and came into effect in 1989. The current legislation has its origins in the amendments to the *Lobbyists Registration Act* that came into effect in 1996. The *Lobbyists' Code of Conduct* has been in place since 1997. The Principles and Rules governing the conduct of lobbyists have not changed since then. The basic registration requirements for both consultant lobbyists and in-house lobbyists have remained largely unchanged since 1996.

My perspective is that I interpret and enforce the *Lobbying Act* and *Lobbyists' Code of Conduct* fairly. I have taken a number of steps to help lobbyists comply with the Act and the Code. I have issued Interpretation Bulletins, Advisory Opinions and guidance regarding the Code which are available on my Office's website. My staff is also available to assist lobbyists who wish to register. Therefore, I disagree with Mr. Glémaud's assertion that the *Lobbying Act* contains 'often ambiguous provisions'.



## **2. “Preordained Conclusions”**

Mr. Glémaud questioned the manner in which the investigation of his alleged lobbying activities was carried out by my Office. In particular, Mr. Glémaud suggested that my referral of this matter to the RCMP meant that the opportunity presented to him to provide his views on the investigation report of the Investigations Directorate was not meaningful or fair. He argued that because I had concluded that I had reasonable grounds to believe that he had engaged in unregistered lobbying activity, the consideration of his views would not be fair.

In conducting investigations, I must follow the procedure set out in the *Lobbying Act*. My Office collects information regarding matters relating to lobbying activity that come to the attention of the Office of the Commissioner of Lobbying. Subsection 10.4(1) of the Act requires me to conduct an investigation when I have reason to believe that it is necessary to ensure compliance with the Act or the *Lobbyists’ Code of Conduct*. If, during the course of an investigation, I determine that there are reasonable grounds to believe that an offence has been committed under the Act, or any other Act of Parliament, I am required to advise the police in accordance with subsection 10.4(7), and suspend my investigation during the time that the police conduct their investigation and any subsequent activity. This is clearly set out in subsections 10.4(8) and (9).

The purpose of an investigation under the *Lobbying Act* is to enable me to reach findings and conclusions based upon the information that is uncovered during an investigation. A matter that I refer to the RCMP will be returned if no charges are laid under the Act. At that time, if I determine that I have sufficient grounds to continue the investigation regarding the *Lobbyists’ Code of Conduct*, the Investigations Directorate will complete the investigation. The *Lobbying Act* requires that a person who has been the subject of an investigation shall be provided with a reasonable opportunity to present the Commissioner of Lobbying with their views. In my opinion, this is best accomplished by providing the person who has been under investigation with a copy of the investigation report prepared by the Investigations Directorate.

That process was followed in this case.

## **3. “Factual & Legal Errors”**

Mr. Glémaud received reports regarding the alleged in-house lobbying activities of Green Power Generation and regarding his alleged activities as a consultant lobbyist. He raised issues regarding the content and findings set out in those reports. I have addressed each of them below.

Mr. Glémaud disagreed with some of the factual findings contain in the reports. He described his activities on behalf of RLP Energy Inc. as purely a matter of a solicitor-client relationship and not consultant lobbying. I disagree with Mr. Glémaud’s assessment that his activities were entirely covered by his solicitor-client relationship with RLP Energy Inc. Persons who are performing activities on behalf of clients, for

payment, may as part of this engagement perform activities that require registration under the *Lobbying Act*. When he communicated with federal public office holders in respect of the awarding of a contribution, and when he arranged a conference call, he performed activities which required registration as a consultant lobbyist under the Act.

Mr. Glémaud further indicated that the proposals submitted on behalf of GPG regarding the Green Infrastructure Fund were information gathering activities and not lobbying. I disagree. The proposals and subsequent communications were, in my view, communication with a public office holder in respect of the awarding of any grant, contribution or other financial benefit by the Government of Canada. This type of communication was therefore registrable under the Act because GPG had reached the “significant part of duties” threshold.

The registration of Mr. Glémaud as a consultant lobbyist on behalf of International Centre for Infectious Diseases that did not properly disclose his prior employment status as a public office holder was effective for one day. Mr. Glémaud explained his failure to disclose his previous status as a public office holder. I have accepted his explanation that he considered that the language of the Act required him to disclose whether he was a former designated public office holder. The requirement of the Act is to disclose previous public offices held, and to indicate which, if any, of those offices was a designated public office. Mr. Glémaud has been advised of this requirement. I take the view that this matter is at a satisfactory conclusion. This is an example of a case that I would normally address in a manner intended to educate the lobbyist regarding the applicable registration requirements of the *Lobbying Act* in order to ensure future compliance with the Act.

Mr. Jaffer

### **1. “For payment” and the Employer-Employee Relationship**

Mr. Jaffer expressed the view that my Report on Investigation must include definitions of key terms used in the Report. In particular, he had concerns regarding the interpretation of the phrase “for payment” in section 5, with respect to consultant lobbyists, and my interpretation of the employment relationship that is described in section 7 of the Act, as it relates to in-house lobbyists for corporations and organizations. I agree that it is important for my Reports to Parliament to provide clear explanations.

The *Lobbying Act* provides a definition of “payment” in subsection 2(1). That definition reads:

“payment” means money or anything of value and includes a contract, promise or agreement to pay money or anything of value.

I take the view that this definition covers situations in which remuneration has not actually taken place, but is expected in the future.

With respect to the “employer-employee relationship” contemplated in section 7 of the *Lobbying Act*, there is no statutory definition. I take the view that I must look to the general law for assistance. The legal characteristics of the employer-employee relationship have been elaborated upon by courts in many cases. It is clear that all relevant factors must be taken into consideration when making a determination regarding the existence of an “employer-employee relationship.”<sup>6</sup>

I have considered Mr. Jaffer’s arguments that GPG never made any money, that GPG never filed financial returns and, that although GPG was incorporated, the corporation had no bank account. In reviewing the information obtained during the Green Power Generation investigation, it is clear to me that Mr. Glémaud and Mr. Jaffer had embarked upon a commercial enterprise in establishing Green Power Generation.

In my opinion, they:

- were seeking to obtain federal government funding for a number of green power proposals that they had developed, using expertise and technologies from a variety of sources;
- expected to benefit financially from any successful applications for funding that they would be able to obtain;
- were in control of their own efforts and the results of those efforts; and
- may not have had a revenue stream at the early stage of development of the activities of GPG, but had an expectation that they could benefit financially in the future.

## **2. Investigation process and report of the Investigations Directorate**

Mr. Jaffer raised a number of issues regarding the content and findings set out in the report of the Investigations Directorate. Specifically, he addressed the analytical approach related to the summary proposals concerning the Green Infrastructure Fund and the interview process followed during the investigation.

Mr. Jaffer characterized the summary proposals as being an information gathering exercise “...in an effort to find out more information about the Green Infrastructure Fund.” He described them as conceptual summaries and suggested that real proposals

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<sup>6</sup> [1997] 1 SCR 1015, headnote. In *Pointe-Claire (City) v. Quebec (Labour Court)*, the Supreme Court of Canada identified some of the factors to be considered in determining whether an employer-employee relationship existed, in the context of a dispute involving an employment agency and the City of Pointe-Claire, Quebec. The factors listed included, among others:

To identify the real employer ... a comprehensive approach must be taken. The criterion of legal subordination, which basically encompasses the notion of actual control by a party over the employee’s day-to-day work, and the criterion of integration into the business must not be used as exclusive criteria for identifying the real employer. ... This approach requires a consideration of the factors relevant to the employer-employee relationship, including: the selection process, hiring, training, discipline, evaluation, supervision, assignment of duties, remuneration and integration into the business.

would require more detailed information. He also raised the argument that the proposals submitted were not successful and therefore not registrable activities. I take the view that proposals concerning government funding, regardless of their length, detail or outcome, are communications in respect of the awarding of grants, contributions or other financial benefits.

Mr. Jaffer raised the argument that interviews were not conducted that would support his position that he was not engaged in registrable lobbying activities. The Investigations Directorate conducts investigations in order to obtain the facts necessary to present a balanced view regarding the allegations received by my Office. This includes obtaining documents and conducting interviews that provide a factual basis for findings and conclusions regarding those allegations. That is the process that was followed during the course of this investigation. The information collected was sufficient to enable me to determine whether a registrable lobbying activity occurred. For that reason, I do not agree that the investigation process was incomplete or that undue emphasis was placed upon any particular information gathered during the investigation.

Mr. Jaffer questioned my motivation for pursuing this matter given that the RCMP had elected not to lay charges. In accordance with my mandate, I open an investigation when I have reason to believe that it is necessary to ensure compliance with the *Lobbying Act* and the *Lobbyists' Code of Conduct*. Once the matter was returned to me by the RCMP, I determined that I had sufficient grounds to continue with an investigation under the *Lobbyists' Code of Conduct*. The purpose of an investigation is to enable me to reach findings and conclusions based upon the information that is uncovered during the investigation. In carrying out an investigation and reporting to Parliament as directed by the *Lobbying Act*, I am fulfilling my mandate.

Mr. Jaffer raised a concern regarding the publication of the investigation report in the form that he received it. The report that Mr. Jaffer received was the Investigations Directorate's report. I am required under the *Lobbying Act* to table my Report on Investigation in both Houses of Parliament. My Report on Investigation contains my findings, conclusions and reasons for my conclusions. It takes into consideration the views of Mr. Glémaud and Mr. Jaffer as well as the reports of the Investigations Directorate.

Finally, Mr. Jaffer took issue with the application of the *Lobbying Act* regarding his activities in relation to Green Power Generation. In my view, the Act is clear. Persons who engage in activities described in sections 5 and 7 of the *Lobbying Act*, as applicable, are required to register as lobbyists. A failure to register as required by the law does not mean that they are not subject to the *Lobbyists' Code of Conduct*. In making this determination, I have been guided in my approach to the application of the law and the *Lobbyists' Code of Conduct* by decisions of the Federal Court and the Federal Court of Appeal.<sup>7</sup> I consider this to be the correct interpretation of the *Lobbying Act*.

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<sup>7</sup> *Neelam Makhija v. Attorney General of Canada*, , 2010 FC 141 and *Neelam Makhija v. Attorney General of Canada*, 2010 FCA 342, at paragraphs [2] and [6].

## Conclusions

Corporations and organizations may be engaged in registrable lobbying activities if they employ one or more individuals, any part of whose duties, is to communicate with federal public office holders in respect of the development of any legislative proposal; introduction, passage, defeat or amendment of any Bill or resolution; making or amendment of any regulation; development or amendment of any policy or program; or, the awarding of any grant, contribution or financial benefit.

Registration is required if the above-mentioned duties constitute a significant part of the duties of one employee, or would constitute a significant part of the duties of one employee if they were performed by only one employee of that corporation or organization. If that is the case, the most senior paid employee of the corporation or organization must file an in-house corporation or organization lobbyist registration return not later than two months after the day on which the requirement to file a return first arises and, thereafter, at intervals prescribed in the Act.

These are legitimate actions on the part of corporations and organizations and those they hire. The *Lobbying Act* acknowledges this legitimacy but imposes certain obligations of disclosure and behaviour.

After considering the facts and recommendations contained in the Investigations Directorate's reports, and the views presented to me by Mr. Glémaud and Mr. Jaffer, I have concluded the following in relation to the *Lobbyists' Code of Conduct*.

The Investigations Directorate concluded that the allegations against Mr. Glémaud and Mr. Jaffer in relation to Allegations 1, 2, 3, and 4 were unfounded, and did not disclose breaches of the *Lobbying Act* nor the *Lobbyists' Code of Conduct*. I am in agreement with those conclusions.

Allegation 9 is an example of a situation that I would address in a manner intended to educate the lobbyist regarding the applicable requirements of the *Lobbying Act* in order to ensure compliance with the Act. Therefore, this allegation is not addressed further in this Report.

The following summary of my conclusions and reasons for those conclusions concerns the five founded allegations: Allegations 5a, 5b, 6, 7 and 8.

### *In-House (Corporation) Lobbying*

- Mr. Glémaud, by failing to register and report in-house (corporation) lobbying performed by the principals of GPG, was in breach of the Principle of Professionalism, and Rule 2 (Accurate information) of the *Lobbyists' Code of Conduct*; and,

- Mr. Jaffer, by failing to ensure that he was properly registered as an in-house lobbyist, and by not indicating to Mr. Glémaud his obligation to register their lobbying activities, was in breach of the Principle of Professionalism, Rule 2 (Accurate information), and Rule 3 (Disclosure of obligations) of the *Lobbyists' Code of Conduct*.

#### *Consultant Lobbying*

- Mr. Glémaud, by failing to register consultant lobbying activity performed on behalf of RLP Energy Inc., and by failing to indicate to his client his obligation to register that activity, was in breach of the Principle of Professionalism, Rule 2 (Accurate information) and Rule 3 (Disclosure of obligations) of the *Lobbyists' Code of Conduct*.

Below is a summary of my conclusions on the above-mentioned statements, and my reasons for reaching these conclusions.

Whether Mr. Glémaud and Mr. Jaffer communicated with federal public office holders on behalf of Green Power Generation, in respect of subjects listed in paragraph 7(1)(a) of the *Lobbying Act*

Evidence obtained during the course of the investigation demonstrates that Mr. Glémaud and Mr. Jaffer communicated with federal public office holders in respect of the awarding of grants, contributions or other financial benefits. In my opinion, they submitted at least three proposals for Green Infrastructure Fund funding, seeking amounts ranging from \$20 million to \$100 million (totalling \$178 million) from the Government of Canada. They also sought a contribution in the amount of \$700,000 from the Government of Canada for a mercury capture test at the Keephills power facility in Alberta. The project proposal summaries were submitted to federal public office holders on GPG letterhead, and identified Mr. Glémaud as the contact person. Communications with public office holders concerning these project proposals took place orally and in writing.

Communication in respect of the awarding of any grant, contribution or financial benefit by or on behalf of Her Majesty in right of Canada is a potentially registrable communication under subparagraph 7(1)(a)(v) of the *Lobbying Act*.



Whether the lobbying activities performed by Mr. Glémaud and Mr. Jaffer on behalf of Green Power Generation constituted a “significant part of duties”

I have concluded that the communications with public office holders by Mr. Glémaud and Mr. Jaffer on behalf of Green Power Generation were sufficient to constitute, cumulatively, a “significant part of the duties” of one person.

Based upon my assessment of the activities of GPG, I have concluded that the time and effort expended in the preparation, presentation and follow-up related to the three proposals for GIF funding, along with the proposal regarding a mercury capture test at the Keephills power facility, constituted a significant part of the duties of Mr. Glémaud and Mr. Jaffer on behalf of Green Power Generation.

In addition, GPG was a commercial enterprise created with the intention of generating revenue. Mr. Glémaud and Mr. Jaffer were the only employees of Green Power Generation. I have concluded that submitting proposals to the Government of Canada seeking government funding for various green energy projects was an important component of the business of GPG. On this basis, their activities constituted a significant part of duties according to the Act.

Whether Mr. Glémaud and Mr. Jaffer engaged in activity requiring registration as in-house (corporation) lobbyists

Mr. Glémaud and Mr. Jaffer, as the principals of Green Power Generation, are deemed to have been employed by GPG to communicate on the company’s behalf. Their activities were not performed as a favour to anyone, or on a voluntary basis, but as a part of their commercial enterprise, in an effort to build their business and establish relationships with various project stakeholders and venture capitalists.

I have concluded that the lobbying activities of Mr. Glémaud and Mr. Jaffer, taken together, were sufficient to require the registration of Green Power Generation as a corporation that engaged persons to lobby on behalf of the corporation. Mr. Glémaud, as the officer responsible for filing returns on behalf of the corporation, had responsibility to register the lobbying activities of GPG.

Whether Mr. Glémaud engaged in activity requiring registration as a consultant lobbyist

Mr. Glémaud was paid a monthly retainer to act as legal counsel for RLP Energy Inc. However, in addition to providing legal services, Mr. Glémaud communicated with and arranged meetings with federal public office holders on behalf of his client in relation to funding for a mercury capture test at the Keephills power facility.

I have concluded that, notwithstanding the fact that Mr. Glémaud was paid a monthly retainer to work as legal counsel, the fact that he engaged in registrable lobbying activities on behalf of his client required him to register as a consultant lobbyist pursuant to subsection 5(1) of the *Lobbying Act*.

## Whether Mr. Glémaud and Mr. Jaffer were in breach of the Principle of Professionalism

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

### **Professionalism**

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

I have concluded that both Mr. Glémaud and Mr. Jaffer were in breach of the Principle of Professionalism. By failing to file a lobbyist registration return within the time limits prescribed in the *Lobbying Act*, the activities of Mr. Glémaud and Mr. Jaffer on behalf of Green Power Generation were in breach of the Principle of Professionalism.

In addition, by failing to register consultant lobbying activities performed on behalf of his client, RLP Energy Inc., Mr. Glémaud was in breach of the Principle of Professionalism.

## Whether Mr. Glémaud and Mr. Jaffer were in breach of Rule 2 of the *Lobbyists' Code of Conduct*

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

### **Accurate information**

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

By failing to register activity deemed registrable under the *Lobbying Act*, Mr. Glémaud and Mr. Jaffer did not appropriately identify themselves as lobbyists and, therefore, did not provide accurate information to public office holders. As a result of this, individuals and organizations with an interest in the status of the activities of Green Power Generation remained uninformed and were thus misled about the existence of lobbying



activity. I have concluded that Mr. Glémaud and Mr. Jaffer were in breach of Rule 2 (Accurate information) of the *Lobbyists' Code of Conduct*.

In addition, by failing to register consultant lobbying activities performed on behalf of his client, RLP Energy Inc., Mr. Glémaud was in breach of Rule 2. Mr. Glémaud did not appropriately identify himself as a lobbyist and, therefore, did not provide accurate information to public office holders. As a result of this, individuals and organizations with an interest in the activities of corporations and organizations seeking funding from Western Economic Diversification were misled about the existence of lobbying activity.

Whether Mr. Glémaud and Mr. Jaffer were in breach of Rule 3 of the *Lobbyists' Code of Conduct*

Transparency is also enhanced by Rule 3, which requires 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 *Lobbying Act*, and their obligation to adhere to the *Lobbyists' Code of Conduct*.

RLP Energy Inc. was unaware of Mr. Glémaud's obligation to register as a consultant lobbyist. It may be inferred that Mr. Glémaud did not disclose his obligations under the *Lobbying Act* and the *Lobbyists' Code of Conduct* to his client. As a result, I have concluded that Mr. Glémaud was in breach of Rule 3 of the *Lobbyists' Code of Conduct* with respect to this undertaking.

Mr. Glémaud and Mr. Jaffer both contended that they never performed lobbying activities. GPG was never registered by Mr. Glémaud as employing in-house (corporation) lobbyists. Therefore, I must infer that Mr. Jaffer failed to clearly indicate to his employer their obligation to comply with the *Lobbying Act* and the *Lobbyists' Code of Conduct*. As a result, I have concluded that Mr. Jaffer was in breach of Rule 3 of the Code.

## Appendix A – *Lobbyists' Code of Conduct*

### Preamble

The *Lobbyists' Code of Conduct* is founded on four concepts stated in the *Lobbying 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.

# 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 *Lobbying 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 *Lobbying 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.

## Appendix B – List of Individuals Interviewed by the Investigations Directorate

David Arenburg, Vice-President, Business Development, Canadian Solar Inc.

Garth Ballantyne, Principal of GreenRite Solutions Inc.

Nazim Gillani, Chairman, International Strategic Investments

Patrick Glémaud, Founder and Principal, GPG-Green Power Generation Corp.

Andrew House, Chief of Staff, Office of the Minister of Public Safety

Kathy Hulbert, Special Assistant, Minister's Regional Office (Calgary), Office of the Honourable Jim Prentice

Rahim Jaffer, Principal, GPG-Green Power Generation Corp.

Brian Jean, Parliamentary Secretary to the Minister of Transport, Infrastructure and Communities

Joe Jordan, Director, Upper Canada Solar Generation

Rick MacPherson, CEO, RLP Industries Inc.

Kimberley Michelutti, Parliamentary Assistant to the Minister of Transport, Infrastructure and Communities

John Mogford, President, Renewable Energy Group

Frank Saulnier, Executive Director, Réseau de développement économique et de l'employabilité

The Honourable Christian Paradis, Minister of Natural Resources

David Pierce, Director of Parliamentary Affairs, Office of the Minister of Industry

Sebastien Togneri, Director of Parliamentary Affairs, Office of the Minister of Natural Resources

Ravi Sundararaj, Manager, Real Property Branch, Public Works and Government Services Canada

Anjali Varma, Managing Partner, Sustainable Ventures Inc.

Scott Wenger, Director, Minister's Regional Office (Calgary), Office of the Honourable Jim Prentice

Jim Wright, Principal of GreenRite Solutions Inc.

Stephen Wright, Principal of GreenRite Solutions Inc.

Kaewan Yoon, Chief Financial Officer (unspecified company)