Federal Court  Cour fédérale

Date: 20100211

Docket: T-662-07

Citation: 2010 FC 141

Ottawa, Ontario, February 11, 2010

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

NEELAM MAKHIJA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Following an administrative investigation, Michael Nelson, Registrar of Lobbyists (the Registrar) concluded that the applicant, Mr. Neelam Makhija, had contravened subsection 5(1) of the *Lobbyists Registration Act*, R.S.C. 1985 (4th Supp.), c.44 (the Act), as well as Rules 2 and 3 of the *Lobbyists' Code of Conduct* (the Code). The applicant now challenges the legality of each and all the conclusions of breach of the Act and the Code contained in the four Investigation Reports dated February 2007 (the Decisions) submitted to Parliament by the Registrar.

[2] For the reasons hereinunder, the application is allowed in part. The Court declares that the Decisions are unlawful insofar as they conclude that the applicant was in breach of the Act. Moreover, the conclusions of breach of the Rules of the Code are valid and legal in the circumstances. As a result, the Court denies all other remedies sought by the applicant in this judicial review proceeding.

I BACKGROUND

[3] The applicant is an electronic engineer and President of NJM Initiatives Inc. (NJM). NJM is an Ontario registered corporation based in Oakville which advertises expertise in "Federal Technology and Financial Investment Qualifications" and "Proposal Advocacy and Company Representation." In October 2005, based on information provided by officials at Industry Canada, the Registrar determined that he had reasonable grounds to believe that the applicant had breached the Act and Code with respect to his activities on behalf of four high technology (high tech) companies in British Columbia, namely, TIR Systems Inc. (TIR), Infowave Software Inc. (Infowave), Intrinsyc Software Inc. (Intrinsyc) and Wavemakers Inc. (Wavemakers). I will refer to these four companies together as the Companies.

[4] Pursuant to subsection 10.4(1) of the Act, the Investigations Directorate of the Office of the Registrar of Lobbyists (the ORL) conducted four investigations with respect to the applicant's activities on behalf of the Companies. The ORL examined the following materials: correspondence among the Company in question, the applicant and federal government employees; internal federal government correspondence; agreements between the Company and the federal government;

contracts and agreements between the Company and the applicant or NJM; payments made by the Company to the applicant or NJM; the Company's annual and quarterly reports; government information related to the funding program at issue; the Registry of Lobbyists; and publicly available information from the Internet.

[5] In the spring of 2006, upon completion of the investigations, the Investigations Directorate submitted to the Registrar four preliminary Investigation Reports, each of which concluded that the applicant had breached subsection 5(1) of the Act by engaging in lobbying activities without becoming registered. Each Investigation Report also concluded that the applicant had breached certain Principles and Rules of the Code. On July 25, 2006, the applicant received copies of the preliminary Investigation Reports and was provided an opportunity to make representations in response to them. The applicant's counsel filed written representations on October 4, 2006. Between October and November 2006, the applicant's counsel requested on two occasions to be heard orally by the Registrar. His requests to present *viva voce* evidence were denied and the applicant was informed that upon completion of the Investigation Reports, they would be tabled in Parliament.

[6] In early December 2006, the applicant filed a motion for an interlocutory injunction to prohibit the Registrar from sending the final Investigation Reports to the Registrar General of Canada (the Registrar General). The motion was dismissed by this Court on December 18, 2006.

[7] The Registrar drafted four final Investigation Reports dated February 2007 (the Decisions). As was found in the preliminary Investigation Reports, the Decisions concluded that the applicant

had breached subsection 5(1) of the Act, Rule 3 of the Code, and in one instance, Rule 2 of the Code. The Registrar submitted the Decisions to the President of the Treasury Board, who acts in place of the Registrar General of Canada for the purposes of the Act, and they were tabled in the House of Commons and the Senate on March 19, 2007 and March 20, 2007, respectively. The Decisions were communicated to the applicant on March 21, 2007.

[8] On April 20, 2007, the applicant filed four separate applications for judicial review of the Decisions, alleging that the Registrar erred in law in holding that the applicant had breached the Act and the Code. The applicant seeks an order quashing the Decisions and causing the Registrar General of Canada to withdraw them from the Parliament of Canada. The applicant also seeks a declaration that he is not a lobbyist under the Act and that he has not infringed the Act or Code. This Court ordered that the four files be consolidated under the current Court file on May 14, 2007.

[9] On March 25, 2008, this Court granted the four applications for judicial review in *Makhija v. Canada (Attorney General)*, 2008 FC 327 (*Makhija I*), on the grounds that the Registrar did not have jurisdiction to investigate whether the applicant had breached the Act and that "the Registrar attempted to justify his investigation (which was in fact an investigation of a potential breach of the Act) under the guise of an alleged breach of the Code". Moreover, the Court also considered that "the applicant, by failing to register, was not subject to the Code". Having found that the Registrar had exceeded his jurisdiction, the Court quashed the Decisions and directed the Registrar to take all necessary steps with the President of the Treasury Board to have removed the Decisions tabled in Parliament.

[10] On December 15, 2008, the judgment of the Court was overturned by the Federal Court of Appeal in *Makhija v. Canada (Attorney General)*, 2008 FCA 402, leave to appeal ref'd [2009] S.C.C.A. No. 47 (*Makhija II*). The Federal Court of Appeal held that a person is subject to the Code if he or she engages in the lobbying activities described in subsection 5(1) of the Act. Therefore, the Registrar has jurisdiction to investigate such a person for breaches of the Code, regardless of whether the person has registered under the Act. Thus, the Federal Court of Appeal decided that the matter should be returned to the application judge for a new hearing on the merits of the application for judicial review "with a direction that [I] decide the application for judicial review on the basis that the Registrar had the jurisdiction to undertake an investigation as to whether a breach of the Code had occurred."

[11] The issue now before me is whether the conclusions that the applicant breached subsection 5(1) of the Act, Rule 3 of the Code, and in one instance, Rule 2 of the Code should be set aside. I invited the parties to make new written and oral submissions on the issue and both parties have done so. Counsel agreed that the new submissions were to be limited to matters that were not canvassed at the original hearing. A new hearing has taken place in Montreal on January 11, 2010. I have considered both the new submissions and the submissions from the original hearing in reaching this judgment.

II THE LEGISLATIVE AND ADMINISTRATIVE FRAMEWORK

[12] Before turning to the Decisions, it is worthwhile to briefly examine the purpose and legislative scheme provided by the Act, which has since been renamed the *Lobbying Act*, and the Code. Two different versions of the Act are relevant to this case. The Act and the Code as they read during the period of the applicant's activities on behalf of the Companies governs the applicant's obligations. The relevant provisions of the Act and of the Code as they read at that time are reproduced in Appendix I. The Act was subsequently amended several times. The Act as it read at the time the Registrar was conducting the impugned investigations governs the Registrar's jurisdiction and the relevant provisions of that version of the Act, which was in force from June 20, 2005 to July 2, 2008, are reproduced in Appendix II.

[13] The following four basic principles are set out in the preamble to the 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 Act does not define the term "lobbying." However, it does provide for the public registration of those individuals who are paid to communicate with "public office holders" with regard to certain matters described in the legislation. According to subparagraph 5(1)(a)(v), these matters include "the awarding of any grant, contribution or other financial benefit by or on behalf of Her Majesty in right of Canada." Meanwhile, subsection 2(1) of the Act defines "public office holder" as "any officer or employee of Her Majesty in right of Canada and includes (a) a member of the Senate or the House of Commons and any person on the staff of

such a member, (b) a person who is appointed to any office or body by or with the approval of the Governor in Council or a minister of the Crown, other than a judge receiving a salary under the Judges Act or the lieutenant governor of a province, (c) an officer, director or employee of any federal board, commission or other tribunal as defined in the Federal Courts Act, (d) a member of the Canadian Armed Forces, and (e) a member of the Royal Canadian Mounted Police."

[14] The Code complements the registration requirements of the Act. The purpose of the Code, as stated in its Introductory Message, is to assure the Canadian public that lobbying is done ethically and with the highest standards, with a view to conserving and enhancing public confidence and trust in the integrity, objectivity and impartiality of government decision-making. The Code establishes mandatory standards of conduct for all lobbyists communicating with "public office holders."

[15] In *Democracy Watch v. Canada (Attorney General)*, 2004 FC 969 at paragraph 23 (*Democracy Watch I*), Justice Gibson summarized the status of the Code as follows:

> Once again at all times relevant to the matters before the Court, the Lobbyists' Code, developed and adopted pursuant to section 10.2 of the Lobbyists Registration Act, is set out in full, including a related "message from the Ethics Counsellor", in Schedule III to these reasons. Its status would appear to be somewhat unclear. It is certainly not an enactment of Parliament, nor is it a statutory instrument for the purposes of the Statutory Instruments Act [citation omitted]. That being said, following its development by the Ethics Counsellor, a process which he indicates involved "...extensive consultation with a large number of people and organizations interested in promoting public trust in the integrity of government decision-making", it was reviewed by a Standing Committee of the House of Commons and was published in the Canada Gazette on the 8th of February, 1997. While counsel for the Respondent (the "Ethics Counsellor") referred to the Lobbyists' Code as "non-law", I am not satisfied that it is fully accurate to characterize it in that manner.

Although the legal status of the Code is not in issue before me, I agree with Justice Gibson's assessment that the Code is not accurately characterized as "non-law."

[16] Responsibility for the administration of the information disclosure provisions of the Act and the maintenance of the public registry (the Registry) rests with the Registrar (since renamed the Commissioner of Lobbying). The ORL (since renamed the Office of the Commissioner of Lobbying) assists the Registrar in carrying out these responsibilities. The Investigations Directorate of the ORL is responsible for the enforcement of the Act and Code, and has developed a set of procedures to govern its activities. Administrative reviews are initiated when requests or complaints are received from the general public, the media, Members of Parliament or organizations, or when officials from the ORL believe there is a possible contravention of the Act or Code. If an administrative review indicates that there are reasonable grounds to believe a breach of the Act or Code has occurred, the Registrar will be informed.

[17] Where there are reasonable grounds to believe the Act has been breached within the two-year limitation period provided by subsection 14(3) of the Act, the Registrar will refer the file to the Royal Canadian Mounted Police (RCMP) for an investigation. The Registrar and the ORL will not conduct an investigation themselves. Indeed, at the material time, the Registrar did not have jurisdiction to investigate breaches of the Act: see subsections 10.4(7) through (9) of the Act. It is noteworthy that since *Makhija I* was released, Parliament has amended the Act to expressly grant the Registrar jurisdiction to investigate breaches of the Act. The current subsection 10.4(1) of the

Lobbying Act, R.S.C. 1985 (4th Supp.), c.44, which came into force on July 2, 2008, reads as follows:

> The Commissioner [formerly the Registrar] shall conduct an investigation if he or she has reason to believe, including on the basis of information received from a member of the Senate or the House of Commons, that an investigation is necessary to ensure compliance with the Code or this Act, as applicable.

In my view, this supports my conclusion that the Registrar did not previously have jurisdiction to investigate breaches of the Act. Otherwise, the amendment would have been unnecessary.

[18] With regard to the Code on the other hand, where there are reasonable grounds to believe the Code has been breached, the Registrar will direct the ORL to conduct an investigation. There is no limitation period for investigating breaches of the Code. Pursuant to section 10.3 of the Act, the Code is binding on anybody who, *inter alia*, is required to register under subsection 5(1) of the Act. Accordingly, in investigating whether a person has breached the Code, the Registrar must first determine whether the person has engaged in lobbying activities that trigger the obligation to register. If so, the person is subject to the Code, and the Registrar may proceed to determine whether the Code had been breached. This interpretation is consistent with the Federal Court of Appeal's finding in *Makhija II* that the Registrar has jurisdiction "to see if the person had complied with the terms of the Code", regardless of whether the person concerned had filed a prescribed form with respect to the so called "lobbying activities" in question.

III THE STANDARD OF REVIEW

[19] Counsel for the applicant submits that this application for judicial review raises issues of statutory interpretation that were outside the Registrar's expertise. Therefore, counsel submits, the standard of review for the Decisions should be correctness. Counsel for the respondent, meanwhile, argues that the appropriate standard of review is reasonableness.

[20] In *Democracy Watch v. Campbell*, 2009 FCA 79 (*Democracy Watch II*), the Federal Court of Appeal held, at paragraph 23, that an interpretation of the Code by the Registrar, who has responsibility for enforcing the Code, "is an example of a tribunal interpreting a statute or other normative document with which it has a particular familiarity." Thus, in the absence of overriding considerations, the Registrar's interpretations of the Code should be reviewed on a standard of reasonableness: *Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 54 (*Dunsmuir*). As well, the Registrar's application of the Act and Code to the applicant's activities raises questions of mixed fact and law, which should also be reviewed on a standard of reasonableness: *Dunsmuir*, above. However, the interpretation of section 5 of the Act, as an "extricable question of law", will be reviewed on a standard of correctness (*Democracy Watch II*, above, at paragraph 22).

IV FINDINGS OF FACT MADE BY THE REGISTRAR

[21] Since the four Decisions are very similar, and in some respects identical, I will describe them together. In each one, the Registrar provides a detailed factual description of the interactions between the applicant, NJM and the Company in question.

[22] In the fall of 2000, the applicant was in contact with a number of high tech companies in British Columbia to determine if there was a match between their investment needs and the contribution arrangement that might be available through Technology Partnerships Canada (TPC). TPC is an agency of Industry Canada mandated to provide conditionally repayable contributions to companies in Canada in order to bring research and development in technology to the marketplace. TPC works with the National Research Council (NRC) and the Communications Research Council (CRC) to deliver its financing program.

[23] The applicant arranged a series of meetings in Vancouver in December 2000 between various companies, including the Companies, and federal government employees involved in the TPC funding process. Following these meetings, each of the Companies submitted funding proposals to TPC in January 2001. TPC held a meeting on February 6, 2001, at which Wavemakers' proposal was selected to be considered for immediate funding. TIR's, Infowave's, and Intrinsyc's proposals were not selected, but they remained in consideration for future funding.

[24] Shortly afterward, the applicant signed a memorandum of understanding (MOU) on behalf of NJM with each of the Companies. The MOU with TIR was signed on February 23, 2001; with Infowave, on April 12, 2001; with Intrinsyc, on March 26, 2001; and with Wavemakers, on February 23, 2001. All of the MOU's contained the same preamble, which stated, in part, that NJM was retained to assist in a planning process "with the object of qualifying for and securing financial support from government agencies," among other professional services. Each Company was to pay the applicant a fixed amount upon signing the MOU, as well as a stated percentage of the

government's financial contribution to the project if government funding was secured. The MOU's each contained the following caveat:

> The role of NJM concludes with the achievement of the stated objective, i.e. qualifying for government funding. However, as a complimentary service subsequent to approval of funding, ongoing liaison with funding source(s) will be provided, until completion or termination of the project.

[25] After the MOU's were signed, the applicant arranged and attended several meetings between the Companies and federal government employees involved in the TPC funding process.

[26] On April 6, 2001, the applicant met with a TPC Director and an employee of NRC to discuss TIR's proposal. A meeting was scheduled between TIR and TPC for May 2, 2001. The applicant was to be present at this meeting and was described by TIR as "TIR's representative in Ottawa (Consultant)." The applicant invited a CRC manager to this meeting. That same month, the applicant arranged other meetings between TIR, the investment officer of the TPC and another Industry Canada employee. In September 2003, the applicant met with the Executive Director of TPC concerning TIR. He also negotiated with a TPC investment officer regarding amendments to the financing provisions of the funding agreement that TIR ultimately signed.

[27] Similarly, during the period from 2001 to 2003 the applicant met with investment officers and other TPC officials to provide information about Infowave, Intrinsyc, Wavemakers, and their products. During that same time frame, the applicant arranged meetings between TPC, other Industry Canada employees, and each of the Companies.

[28] The TPC Executive Director (on behalf of the Minister of Industry) signed funding agreements with each of the four Companies. The agreement with TIR was signed on November 5, 2001, and provided maximum funding in the amount of $6,636,271. The agreement with Infowave was signed on December 8, 2003 with maximum funding set at $7,289,500. Intrinsyc's agreement was signed on August 9, 2002 with maximum funding set at $6,636,271. Finally, Wavemakers' agreement was signed on October 24, 2001 and maximum funding was set at $4,418,283.

[29] In all of these agreements, section 6.11 of Schedule 1 provided that any person lobbying for the Company in question in order to obtain the agreement and any of its benefits would register under the Act. In addition, prior to the signing of the agreement between TIR and TPC, TIR had signed a certification that it would advise if a lobbyist were used for the purpose of its investment proposal and that such a lobbyist would comply with the Act. During the relevant period, there was no registration of either the applicant or NJM in the Registry.

[30] Each of the Companies paid the applicant for his services, either directly or through NJM.

[31] On December 16, 2003, NJM, the applicant and TIR entered into a "Settlement and Release" agreement terminating the applicant. The applicant acknowledged receipt of payment in the amount of $1,065,121.50.

[32] Intrinsyc paid NJM the MOU signing fee of $2,000 and further payments totalling $393,367.93 throughout 2003. However, according to Intrinsyc's 2004 Annual Report, Industry

Canada found Intrinsyc in breach of its funding agreement due to improper use of an outside consultant. Intrinsyc was required to make financial restitution to the government.

[33] Wavemakers paid NJM the MOU signing fee of $2,000 plus G.S.T. and further payments totalling $291,136.03 from March 2002 to January 2004. The first of these cheques was made payable to the applicant himself, while the rest were made out to NJM.

[34] Infowave's relationship with the applicant was somewhat rockier. Infowave waived its right under the MOU for the complimentary service of ongoing liaison with funding sources, and requested NJM not to engage in such activities except at the request of the company. The applicant signed his acknowledgement and agreement to this waiver by letter dated November 4, 2003.

[35] By letter to NJM dated November 4, 2003, Infowave advised that the TPC funding agreement required the applicant to confirm that he did not solicit the agreement on behalf of Infowave. The applicant confirmed this. Infowave submitted a similar representation to TPC and requested that the applicant contact Infowave immediately if he had information "inconsistent with these representations."

[36] On March 24, 2004, the applicant, on his own behalf and on behalf of NJM, signed a "Compliance Certificate" to certify that he did not solicit the agreement between TPC and Infowave and that he did not engage in lobbying on behalf of Infowave. He acknowledged that Infowave was relying on this certificate in its dealings with TPC.

[37] Two days later, the applicant cancelled the MOU for "personal reasons" effective immediately. In its third quarter report for 2004, Infowave stated that TPC would reduce its funding by 15% or $1.1 million, which "equals the amount Infowave was to pay a consultant for assisting the development of Infowave's 'technology road map' and the application for TPC funding." Due to the cancellation of the MOU, NJM was paid the signing fee of $2,000 but no further payments were made.

V REASONS LEADING TO THE CONCLUSIONS OF BREACH BY THE REGISTRAR

[38] In all four Decisions, after making his findings of fact, the Registrar considered the submissions he had received from the applicant's counsel by letter dated October 4, 2006. This correspondence contained biographical information about the applicant, as well as descriptions of the work he carried out in the 1980s and 1990s. In the letter, the applicant's counsel argued that TPC was actively searching for projects in 2000 and that TPC contacted the applicant to aid it in its search. The applicant submitted that at the material time, the registration requirements of the Act did not apply if a public office holder made a written request to a lobbyist soliciting advice. Likewise, the applicant's counsel stated that the meetings in December 2000 were made at the request of TPC officers, were made for TPC's benefit (so it could see a variety of potential companies), and occurred at a time when the applicant was not yet under contract with any of the Companies. The applicant also argued that later meetings were arranged for the benefit of a TPC officer and not for the Companies. Finally, it was argued that the applicant never communicated with TPC officials in an attempt to influence the TPC funding process. The applicant's communication with public office holders was necessary for the funding process to function and was restricted to providing TPC with

information regarding the Companies and their applications. In short, the applicant did not believe he had carried out any activity that would have required registration under the Act.

[39] In all four Decisions, the Registrar analyzed the significance of his findings of fact and concluded that despite the applicant's counsel's submissions, the applicant had breached both the Act and the Code. The Registrar noted that it is not uncommon for companies seeking a repayable contribution from government organizations to hire individuals to assist them with the application process. In doing so, these individuals may arrange meetings and may communicate with officials on behalf of the company. The Registrar emphasized that such actions are legitimate; however, the Act imposes certain obligations on those who undertake to assist companies in this way and receive payment for doing so.

[40] The Registrar considered the wording of subsection 5(1) of the Act which, during the period of the applicant's activities on behalf of the Companies, read in part as follows:

5. (1) Every individual who, for payment, on behalf of any person or organization (in this section referred to as the "client"), undertakes to	**5**. (1) Est tenue de fournir au directeur, dans les dix jours suivant l'engagement, une déclaration, en la forme réglementaire, contenant les renseignements prévus au paragraphe (2) toute personne (ci-après « lobbyiste-conseil ») qui, moyennant paiement, s'engage, auprès d'un client, personne physique ou morale ou organisation :
(a) communicate with a public office holder in an attempt to influence	a) à communiquer avec un titulaire de charge publique afin de tenter d'influencer :

[…]	[…]
(v) the awarding of any grant, contribution or other financial benefit by or on behalf of Her Majesty in right of Canada, or	(v) l'octroi de subventions, de contributions ou autres avantages financiers par Sa Majesté du chef du Canada ou en son nom,
(vi) the awarding of any contract by or on behalf of Her Majesty in right of Canada, or	(vi) l'octroi de tout contrat par Sa Majesté du chef du Canada ou en son nom;
(b) arrange a meeting between a public office holder and any other person, shall, not later than ten days after entering into that undertaking, file with the registrar, in the prescribed form and manner, a return setting out the information referred to in subsection (2).	b) à ménager pour un tiers une entrevue avec le titulaire d'une charge publique.

[41] The Registrar conducted a thorough analysis of whether the applicant had engaged in activities described in subsection 5(1). He emphasized that the MOU's signed with each Company said that NJM had been retained to assist with "securing of financial support" from government agencies, and he noted that the list of services to be supplied by NJM included "proposal preparation, initial presentation, submission, discussion and defence." Further, all four MOU's provided that NJM would offer "ongoing liaison with funding source(s)" until completion or termination of the project. The Registrar concluded that this language illustrated the parties' intention to have NJM influence the awarding of a contribution, contract or financial benefit to the Companies.

[42] In all four Decisions, the Registrar concluded that from 2001 to 2003, the applicant met with investment officers and other TPC officials to provide information about the Company in question and its project. The evidence also demonstrated that the applicant's role included arranging meetings between the Companies and public office holders. In each Decision, the Registrar concluded the applicant "co-ordinated between government and [the Company in question's] representatives, determining the availabilities of those attending and setting or changing the time and date of the meeting." The Registrar noted that the meetings in December 2000 took place before any MOU's were signed, but he found that the applicant had arranged at least one additional meeting on behalf of each of the four Companies after the MOU's were signed.

[43] Finally, the evidence showed that in all four cases, NJM and/or the applicant received payment for their work.

[44] The Registrar, therefore, found that the applicant had contravened subsection 5(1) of the Act and stated as follows:

> For payment, he acted a consultant lobbyist. He arranged at least one meeting between public office holders and [the Company in question's] representatives. He communicated with public office holders in an attempt to influence the awarding of a financial contribution by TPC. [The applicant] was required under the [Act] to register as a lobbyist but failed to do so. At the latest, he should have registered within 10 days of the signing of the MOU with [the Company in question] . . . .

[45] The Registrar also considered whether the applicant's activities on behalf of the Companies breached any Principles or Rules of the Code. The principle of "Professionalism" requires lobbyists

to conform to the letter and spirit of the Code and to all relevant laws, including the Act and its regulations. The applicant, by breaching the Act, was found to have violated this principle in all four instances. Furthermore, the applicant's activities on behalf of Infowave were found to have breached the remaining two principles of "Integrity and Honesty" and "Openness." The Registrar noted, however, that at the relevant time, a breach of the Principles of the Code alone did not constitute a breach of the Code. Rather, the applicant could only be considered to have breached the Code if he breached one or more Rules of the Code.

[46] The Registrar concluded that Rule 3 of the Code, which provides that lobbyists shall indicate to their clients, employers or organizations their obligations under the Act and the Code, had been breached in each instance. These breaches were evidenced not only by the fact that the applicant had not registered in the Registry, but also by his submissions to the Registrar that his activities were not subject to registration under the Act. The Registrar reasoned that since the applicant believed his activities did not give rise to any obligations under the Act or the Code, he must not have informed the Companies about his obligations.

[47] With respect to Infowave, the applicant was also found to have breached Rule 2 of the Code. Rule 2 requires lobbyists to provide information that is accurate and factual to public office holders, and prohibits lobbyists from misleading anyone either deliberately or negligently. The Registrar emphasized that on behalf of NJM, the applicant provided Infowave with signed statements confirming that he did not solicit the agreement with TPC and that he did not engage in lobbying to obtain the TPC funding. The Registrar concluded that the applicant had signed these inaccurate

statements knowing that Infowave would rely on them in its dealings with TPC and others. Thus, the Registrar concluded that the Applicant had either deliberately misled Infowave, TPC and others, or had failed to take reasonable care to avoid misleading them.

[48] To summarize, the Registrar made the following mixed findings of fact and law:

a. The applicant had engaged in lobbying activities as described in subsection 5(1) of the Act on behalf of all four Companies, and was therefore required to register under the Act;

b. The applicant had breached subsection 5(1) of the Act with respect to his dealings with all four Companies by failing to register in the Registry;

c. The applicant had breached one or more Principles of the Code in its dealings with all four Companies, but this alone did not constitute a breach of the Code;

d. The applicant had breached Rule 3 of the Code with respect to all four Companies by failing to inform the Companies of his obligations under the Act and the Code;

e. With respect to his dealings with Infowave, the applicant had breached Rule 2 of the Code by signing statements that he did not engage in lobbying, knowing that these statements would be relied on.

VI LEGALITY OF THE DECISIONS MADE BY THE REGISTRAR

[49] The legality of the Registrar's Decisions will now be examined by the Court in light of the arguments initially made by the parties in this application. The Court has also considered the supplementary arguments made by the parties after the Federal Court of Appeal's decision.

A – Applicant's Requirement to Register

[50] In this judicial review, the applicant alleges the Registrar erred in his interpretation of the Act. Counsel for the applicant raises many of the same arguments that were considered by the Registrar in the Decisions.

[51] First, it is argued that the applicant never engaged in lobbying activities described in subsection 5(1) of the Act. The applicant has never communicated with a "public office holder" in an attempt to influence the awarding of any grant, contribution, contract or other financial benefit. Any communications that the applicant had with "public office holders" are characterized as "strictly limited to communicating the salient features of the project and to facilitate, within the companies, the response to questions raised by the TPC review process."

[52] Second, the applicant submits that he was not required to register by virtue of paragraph 4(2)(c) of the Act as it read at the material time, which allowed public office holders to seek advice without requiring the advisor to register. The applicant alleges that TPC solicited his assistance, exempting him from the registration requirement. In particular, the applicant alleges that TPC initially approached him for help in finding companies that would be appropriate for its funding program.

[53] Third, the applicant argues that changes to the Act, which came into force on June 20, 2005, reveal a legislative intent to target "direct attempts" to influence government officials. In this case,

all of the dealings the applicant had with TPC officials were incidental to the obligations he had to the Companies, and thus were not “direct attempts” to influence public office holders.

[54] Finally, the applicant argues that the Act is a penal statute and should therefore be interpreted strictly. The applicant emphasizes that the sanctions contemplated by the Act are not limited to fines and imprisonment. Rather, the Registrar’s power to present his final Investigation Reports to the Registrar General for tabling before Parliament “represents a level of personal humiliation for the Applicant that is very real […]”. Applying these strict rules of interpretation to the Act, it is submitted that the applicant was not “attempting to influence government” as set out in the Act.

[55] With respect to the able submissions made on behalf of the applicant, against the standard of review of reasonableness, the Court cannot conclude that the Decisions demonstrate any reviewable error.

[56] With regard to the applicant’s first argument, I conclude that the evidence before the Registrar clearly supports his findings that after the MOU’s were signed, the applicant arranged meetings between public office holders and representatives of each Company. This is a lobbying activity under paragraph 5(1)(b) of the Act. I also agree that the evidence clearly supports the finding that the applicant communicated with public office holders in an attempt to influence the awarding of a financial contribution by TPC, another lobbying activity under subparagraph 5(1)(a)(v) of the Act. While the applicant says he only informed TPC of the salient

features of the Companies' projects, I find it reasonable to conclude that he conveyed this information on behalf of the Companies in order to encourage TPC to fund the projects. I am bolstered in this conclusion by the MOU's, which contemplate that the applicant would assist with "proposal preparation, initial presentation, submission, discussion and defence" of the project with the objective of "securing of financial support." Further, I find that the evidence supports the conclusion that the applicant received payment for these services.

[57] The applicant's argument that he was not required to register by virtue of paragraph 4(2)(c) was rejected by the Registrar during the investigation process. In the Decisions, the Registrar states:

> [The applicant's] lawyer argues that [the applicant] was not required to register because he was contacted initially by TPC and asked to find companies. This is an incorrect interpretation of the former paragraph 4(2)(c) of the [Act], which was in effect during the period of [the applicant's] activities on behalf of [the Companies]. This part of the [Act] provided public office holders with the ability to seek the advice of a specialist without triggering the requirement for the individual or organization to register. It did not sanction a lobbyist to seek out clients and perform lobbying activities on their behalf without registering.

[58] I agree with the Registrar's assessment and I find that the exemption to registration in paragraph 4(2)(c) of the Act does not apply to the applicant. This exemption only applies to communications made in direct response to a written request for advice from a public office holder. TPC initially contacted the applicant to request assistance in finding companies that would be appropriate for TPC's funding program. However, in my view, the applicant's activities went well beyond providing a direct response to this request. Rather, for the reasons given above, the evidence shows that the applicant was clearly engaged in lobbying activities on behalf of the Companies.

[59] I also reject the applicant's argument regarding Parliamentary intent. First, I note there is nothing in the Decisions that would lead me to believe that the Registrar had difficulty interpreting the relevant provisions of the Act or the Code, nor did he find them to be ambiguous. Likewise, I cannot agree with counsel for the applicant that changes to the Act, which came into force well after the material time, reveal a legislative intent in 2003 to only target "direct attempts" to influence government officials.

[60] In any event, I am of the view that the applicant's activities were "direct attempts" to influence government officials. The applicant relies on a Legislative Summary of changes to the Act as evidence of Parliamentary intent. The Legislative Summary provides, in part, as follows:

> The statute covers only direct attempts to influence certain government decisions. Thus lobbyists have to register only if there has been some form of direct contact or communication with a person holding public office.

In this case, it is not disputed that the applicant had "direct contact or communication" with the TPC and other public office holders, so his activities were "direct attempts" within the meaning of the Legislative Summary.

[61] Finally, although I doubt that the Act's registration requirements are penal in nature, I find that I do not need to decide the question because even if the Act is interpreted strictly, the applicant would still be required to register. The evidence is clear that the applicant arranged meetings with public office holders, so he was required to register even under a strict interpretation of paragraph 5(1)(b). Similarly, even on a strict interpretation of subparagraph 5(1)(a)(v), there was sufficient evidence on which the Registrar could reasonably conclude that the applicant had

communicated with TPC for the purpose of influencing the federal government's awards of financial benefits to the Companies.

[62] For all of these reasons, it was reasonable for the Registrar to conclude that the applicant was required to register under subsection 5(1) of the Act and was therefore subject to the Code.

B – The Registrar's Conclusion that the Applicant Breached the Act

[63] The Registrar was entitled to find that the applicant was required to register under subsection 5(1) of the Act, but the Registrar went farther and concluded that the applicant had breached the Act. As discussed above, the Registrar did not have jurisdiction to investigate breaches of the Act. I find that the Registrar exceeded his jurisdiction in reaching this conclusion.

[64] However, being now bound by the Federal Court of Appeal's decision in *Makhija II*, I cannot agree with the applicant that this jurisdictional error taints the Registrar's decision with respect to the Applicant's breaches of the Code. Notwithstanding the Registrar's findings about the applicant's breach of the Act, the Registrar's conclusion that the Code had been breached is supported by adequate reasons and falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": see *Dunsmuir*, above, at paragraph 47.

C – Applicant's Breaches of the Code

[65] I agree with the applicant that at the relevant time, a breach of the Rules and not just of the Principles was necessary for a finding that the Code had been breached. I also agree that there is nothing in the Rules alone that would require the applicant to register. Nonetheless, I find that the Decisions with respect to the Code were reasonable. The Decisions make it clear that the Registrar did not find the applicant in breach of the Rules for failing to register. Rather, he found that the applicant had breached the Rules by failing to inform the Companies of his obligations under the Act and the Code. This is expressly contrary to Rule 3 of the Code, and constitutes a breach of the Code.

[66] In reaching this conclusion, the Registrar held as follows:

> Mr. Makhija's view, as evidenced by his lack of registration and as confirmed by his written submission during the investigation, was that his activities were not subject to registration under the *Lobbyists Registration Act*. It follows, then, that he did not disclose his obligation under the *Lobbyists Registration Act* to [the Companies].

[67] The Registrar's reasoning does not depend on his improper finding that the applicant breached the Act. Rule 3 requires a lobbyist to disclose his or her obligations under the Act and the Code, so the Registrar was required to determine whether the applicant had any such obligations to begin with. In other words, the determination that the applicant was a lobbyist within the meaning of the Act was required for a determination that the applicant had breached the Code. This determination would have been required even if the Registrar had not conducted an investigation under the Act.

[68] After determining that the applicant was subject to the Rules of the Code, the Registrar found, based on the applicant's own submissions during the investigation, that the applicant did not believe himself to be bound by the Code. This finding was surely reasonable. Indeed, the applicant maintains the same submissions before this Court. The Registrar also referred to the applicant's failure to register, but only as evidence that the applicant did not believe himself to be subject to the Rules of the Code.

[69] It seems logical to presume that the applicant would not tell the Companies about his obligations under the Act and the Code given that he did not believe he had any. In view of the evidence before the Registrar, this finding of fact was not unreasonable and, as explained above, did not depend on a finding that the Act had been breached.

[70] The Registrar therefore found, reasonably, that the Applicant, in violation of Rule 3, had not disclosed his obligations under the Code. He accepted that the Applicant did not believe he was subject to the Code but did not consider this to be a defence. In other words, he interpreted Rule 3 of the Code as providing something akin to absolute liability, in which a breach can occur without a requisite mental element. This interpretation is clearly implicit in the Registrar's reasoning and as such it is transparent and intelligible, as required by *Dunsmuir*, above.

[71] It seems unfair that the applicant would be reported for failing to disclose obligations that he did not know or believe he had in the first place. If I were deciding the case at first instance, I may have preferred an interpretation that required evidence either of negligence or of a conscious failure

to disclose obligations before a breach could be found. Such requirements would better accord with the purpose of the Code, namely, to ensure that lobbying is conducted ethically.

[72] However, for the following reasons, I cannot say that the interpretation chosen by the Registrar is unreasonable. First, the language of the Act and the Code are mandatory. Subsection 10.3(1) of the Act says that lobbyists "shall comply" with the Code. Rule 3 says that lobbyists "shall indicate" their obligations. This language makes it reasonable for the Registrar to find that the Applicant was under a mandatory obligation that did not depend on his mental state.

[73] Second, Rule 2 of the Code says, in part,

> Moreover, lobbyists shall not knowingly mislead anyone and shall use proper care to avoid doing so inadvertently.

It seems to me that the drafters of the Code were deliberate when they intended to create a defence of due diligence or "proper care." This suggests they did not intend to do so with respect to Rule 3.

[74] Third, I am not convinced that the normal presumption in favor of a strict liability standard for public welfare offences applies where the legislation does not involve the prosecution of an offence by the Crown. In the present application we are dealing with an investigation and report by an administrative actor, and importantly, the breach in question carries no penal consequences.

[75] Fourth, and most important, the Federal Court of Appeal in *Makhija II* said, at paragraph 9:

> If Mr. Makhija was required to file the prescribed form because he agreed to undertake lobbying activities, he was, by the same token, required to comply with the Code.

Similarly, the Federal Court of Appeal added at paragraph 11 that the Registrar's investigation would be "to see if the person had complied with the terms of the Code."

[76] It seems that the Federal Court of Appeal did not find it relevant that the Applicant did not know he had obligations under the Code. If he had the obligations, whether he knew about them or not, he had to comply with the Code in its precise terms. I am bound by the Federal Court of Appeal's decision and therefore I find myself unable to conclude that the Applicant could be excused from compliance with Rule 3 of the Code because he was unaware of the obligations incumbent upon him.

[77] I also find that the Registrar was reasonable in concluding that the applicant had breached Rule 2 of the Code by providing signed statements to Infowave that he had not engaged in lobbying. As mentioned above, Rule 2 says, in part:

> Moreover, lobbyists shall not knowingly mislead anyone and shall use proper care to avoid doing so inadvertently.

[78] The Registrar held as follows:

> On behalf of NJM, Mr. Makhija provided Infowave with statements he signed to confirm that he did not solicit the agreement with TPC and that he did not engage in lobbying on behalf of Infowave to obtain the agreement. He did so knowing that Infowave was relying on these statements in its dealings with TPC and others . . . Mr. Makhija breached Rule 2 in that either he knowingly misled Infowave or, in failing to exercise proper care, he inadvertently did so.

[79] This conclusion, too, is independent of the Registrar's finding that the Act had been breached. To determine whether Rule 2 was breached, the Registrar had to determine whether the applicant's statements were misleading. The Registrar was entitled to conclude that the applicant was engaged in lobbying activities, and therefore that his statements that he had not engaged in lobbying were misleading.

[80] Having determined that the applicant had made misleading statements, the Registrar then had to decide whether the applicant had done so either knowingly or by failing to use proper care. The evidence supports the Registrar's finding that the applicant made the inaccurate statements knowing that they would be relied on by Infowave in its dealings with TPC and others. The investigation revealed that these statements were made because they were required by the TPC funding agreement. As well, the applicant was asked to contact Infowave immediately if he had any information inconsistent with the statements. This would make the applicant realize that Infowave was relying on them.

[81] In light of this evidence, the Registrar could reasonably conclude that the statements were either deliberately or negligently misleading. Since he knew the statements would be relied on, the applicant at the very least ought to have taken further steps to determine whether they were accurate (that is, whether his activities constituted lobbying under the Act) before he signed them. Again, in view of the fact that, as decided by the Federal Court of Appeal, the Registrar had jurisdiction in the first place to undertake an investigation as to whether a breach of the Code had occurred, the

Registrar could reasonably conclude that the applicant was negligent in failing to take proper care. This conclusion is not based on the applicant's alleged breach of the Act by failing to register.

[82] I may have reached different conclusions myself with respect to breaches of the Code, but again this is not the proper test. In passing, my earlier findings in *Makhija I* that: (i) "prior to 2005, the applicant was not required to register as a lobbyist according to the terms of the Code" (which was supported by the statements made by the Registrar in the Annual Report 2005-2006); and (ii) "the Registrar attempted to justify his investigation (which was in fact an investigation of a potential breach of the Act) under the guise of an alleged breach of the Code", both appear to have been implicitly overturned and I am now bound by the judgment rendered by the Federal Court of Appeal in *Makhija II*. Thus, in the result, I find that it was not unreasonable for the Registrar to conclude that Rules 2 and 3 of the Code were breached by the applicant.

VII REMEDY

[83] As aforesaid, I have found that the Registrar's conclusions were reasonable with respect to the Applicant's breaches of the Rules of the Code. However, I have also found that the Registrar exceeded his jurisdiction in finding that the applicant breached the Act. Accordingly, I will now turn to the question of the appropriate remedy for that latter excess of jurisdiction. In his original application, besides seeking a declaration that he did not infringe the Act and the Code, the applicant also sought an order quashing the Decisions and causing the Registrar General to withdraw them from the Parliament of Canada.

[84] The remedies available under subsection 18.1(3) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 are discretionary, and in exercising this discretion, the Court must take into account factors that influence the balance of convenience: *Mining Watch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2 at paragraphs 43 and 52 (*Mining Watch*). Certainly, the decision made by the Federal Court of Appeal in *Makhija II* is a relevant factor to take into consideration and I have considered same in limiting myself to making a declaration and not setting aside the Decisions.

[85] In *Mining Watch*, the Supreme Court of Canada held that a declaration that a decision was unlawful would provide an adequate remedy to the applicant. Since any further remedy would have a disproportionate impact on the respondent, no further remedy was granted. I would adopt a similar approach in this case. I note that since the limitation period for prosecuting offences under the Act has expired, the applicant cannot suffer any legal penalty for his alleged breach of the Act. When a decision has limited practical consequences, the Court is justified in exercising its discretion not to quash it: *Stevens v. Conservative Party of Canada*, 2005 FCA 383 at paragraph 52. While the applicant alleges that he has suffered harm to his reputation by having the Decisions tabled before Parliament, such harm can be largely addressed through a declaration that the Decisions are unlawful. I also note that upon the issuance of this declaration, the applicant will not be barred from bringing an action for damages against the Crown with respect to the alleged harm to his reputation if he so desires: see *Canada v. Grenier*, 2005 FCA 348.

[86] On the other hand, granting the full remedy sought by the applicant would be difficult in practice. First, I have no jurisdiction to order the Parliament of Canada to take any action with

respect to the Decisions. Second, while I can order the President of the Treasury Board (or perhaps the Registrar General) to take reasonable steps to have the Decisions withdrawn, it is not certain that these steps will be effective in practice since Parliament is sovereign. Third, as aforesaid, except for the conclusion of breach of the Act, all the other conclusions reached by the Registrar are valid and legal in the circumstances.

[87] For these reasons, I have concluded that the appropriate remedy in this case is a declaration that the Decisions were unlawful insofar as they conclude that the applicant was in breach of the Act, and I will further declare that the conclusions of breach of the Rules of the Code are valid and legal in the circumstances.

[88] Finally, in view of the divided success, there will be no costs in favor or against a party.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is allowed in part.

THIS COURT DECLARES that the four Investigation Reports dated February 2007 (the Decisions) are unlawful insofar as they conclude that the applicant was in breach of the Act.

THE COURT FURTHER DECLARES that the conclusions of breach of the Rules of the Code contained in the Decisions are valid and legal in the circumstances.

AS A RESULT, THE COURT DENIES all other remedies sought by the applicant in this proceeding.

There will be no costs in favor or against a party.

"Luc Martineau"

Judge

Appendix I

Lobbyists Registration Act, R.S.C. 1985 (4th Supp.), c.44 as it read on December 1, 2003

[…]	[…]
2. (1) In this Act,	**2**. (1) Les définitions qui suivent s'appliquent à la présente loi.
[…]	
"payment" means money or anything of value and includes a contract, promise or agreement to pay money or anything of value;	«paiement » Argent ou autre objet de valeur. Y est assimilée toute entente ou promesse de paiement.
[…]	
"public office holder" means any officer or employee of Her Majesty in right of Canada and includes	«titulaire d'une charge publique » Agent ou employé de Sa Majesté du chef du Canada. La présente définition s'applique notamment :
(a) a member of the Senate or the House of Commons and any person on the staff of such a member,	a) aux sénateurs et députés fédéraux ainsi qu'à leur personnel;
(b) a person who is appointed to any office or body by or with the approval of the Governor in Council or a minister of the Crown, other than a judge receiving a salary under the Judges Act or the lieutenant governor of a province,	b) aux personnes nommées à des organismes par le gouverneur en conseil ou un ministre fédéral, ou avec son approbation, à l'exclusion des juges rémunérés sous le régime de la Loi sur les juges et des lieutenants-gouverneurs;
(c) an officer, director or employee of any federal board, commission or other tribunal as defined in the Federal Courts Act,	c) aux administrateurs, dirigeants et employés de tout office fédéral, au sens de la Loi sur les Cours fédérales;

(d) a member of the Canadian Armed Forces, and

d) aux membres des Forces armées canadiennes;

(e) a member of the Royal Canadian Mounted Police;

e) aux membres de la Gendarmerie royale du Canada.

[…]

[…]

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

4(2) La présente loi ne s'applique pas dans les cas suivants :

[…]

[…]

(c) any oral or written submission made to a public office holder by an individual on behalf of any person or organization in direct response to a written request from a public office holder, for advice or comment in respect of any matter referred to in any of subparagraphs 5(1)(a)(i) to (vi) or paragraphs 6(1)(a) to (e) or 7(1)(a) to (e).

c) présentation à un titulaire d'une charge publique, en réponse directe à sa demande écrite, d'avis ou observations, oralement ou par écrit, au nom d'une personne ou d'une organisation en rapport avec une mesure visée aux sous-alinéas 5(1)a)(i) à (vi) ou aux alinéas 6(1)a) à e) ou 7(1)a) à e).

[…]

[…]

5. (1) Every individual who, for payment, on behalf of any person or organization (in this section referred to as the "client"), undertakes to

5. (1) Est tenue de fournir au directeur, dans les dix jours suivant l'engagement, une déclaration, en la forme réglementaire, contenant les renseignements prévus au paragraphe (2) toute personne (ci-après « lobbyiste-conseil ») qui, moyennant paiement, s'engage, auprès d'un client, personne physique ou morale ou organisation :

(a) communicate with a public

a) à communiquer avec un

office holder in an attempt to influence

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

(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 office holder and any other person, shall, not later than ten days after entering into that undertaking, file with the registrar, in the prescribed form and manner, a return setting out the information referred to in

titulaire de charge publique afin de tenter d'influencer :

(i) l'élaboration de propositions législatives par le gouvernement fédéral ou par un sénateur ou un député,

(ii) le dépôt d'un projet de loi ou d'une résolution devant une chambre du Parlement, ou sa modification, son adoption ou son rejet par celle-ci,

(iii) la prise ou la modification de tout règlement au sens du paragraphe 2(1) de la Loi sur les textes réglementaires,

(iv) l'élaboration ou la modification d'orientation ou programmes fédéraux,

(v) l'octroi de subventions, de contributions ou autres avantages financiers par Sa Majesté du chef du Canada ou en son nom,

(vi) l'octroi de tout contrat par Sa Majesté du chef du Canada ou en son nom;

b) à ménager pour un tiers une entrevue avec le titulaire d'une charge publique.

subsection (2).

[…]

8. The Registrar General of Canada may designate any person employed in the office of the Registrar General of Canada as the registrar for the purposes of this Act.

9. (1) The registrar shall establish and maintain a registry in which shall be kept a record of all returns and other documents submitted to the registrar under this Act.

[…]

10.1 The Governor in Council may designate any person as the Ethics Counsellor for the purposes of this Act.

10.2 (1) The Ethics Counsellor shall develop a Lobbyists' Code of Conduct respecting the activities described in subsections 5(1), 6(1) and 7(1).
[…]

(4) The Code is not a statutory instrument for the purposes of the Statutory Instruments Act, but the Code shall be published in the Canada Gazette.

10.3 (1) The following individuals shall comply with the Code:

(a) an individual who is

[…]

8. Le registraire général du Canada peut désigner tout membre du personnel de son bureau à titre de directeur de l'enregistrement pour l'application de la présente loi.

9. (1) Le directeur tient un registre contenant tous les documents — déclarations ou autres — qui lui sont fournis en application de la présente loi.

[…]

10.1 Le gouverneur en conseil peut désigner un conseiller en éthique pour l'application de la présente loi.

10.2 (1) Le conseiller élabore un code de déontologie des lobbyistes portant sur toutes les activités visées aux paragraphes 5(1), 6(1) et 7(1).
[…]

(4) Le code n'est pas un texte réglementaire pour l'application de la Loi sur les textes réglementaires. Il doit cependant être publié dans la Gazette du Canada.

10.3 (1) Sont tenues de se conformer au code la personne requise par les paragraphes 5(1) ou 6(1) de fournir une déclaration ainsi que l'employé

required to file a return under subsection 5(1) or 6(1); and

visé à l’alinéa 7(3)f).

(b) an individual who, in accordance with paragraph 7(3)(f), is named in a return filed under subsection 7(1).

[…]

[…]

14. (1) Every individual who contravenes any provision of this Act, other than subsection 10.3(1), or the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding twenty-five thousand dollars.

14. (1) Exception faite du paragraphe 10.3(1), quiconque contrevient à la présente loi ou à ses règlements commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de vingt-cinq mille dollars.

(2) Every individual who knowingly makes any false or misleading statement in any return or other document submitted to the registrar under this Act, whether in electronic or other form, is guilty of an offence and liable

(2) Quiconque donne sciemment, dans tout document — déclaration ou autre — transmis au directeur, sous forme électronique ou autre, en application de la présente loi, des renseignements faux ou trompeurs commet une infraction et encourt, sur déclaration de culpabilité :

(a) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months, or to both; and

a) par procédure sommaire, une amende maximale de vingt-cinq mille dollars et un emprisonnement maximal de six mois, ou l’une de ces peines;

(b) on proceedings by way of indictment, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years, or to both.

b) par mise en accusation, une amende maximale de cent mille dollars et un emprisonnement maximal de deux ans, ou l’une de ces peines.

(3) Proceedings by way of summary conviction in respect of an offence under this section may be instituted at any time within but not later than two years after the time when the subject-matter of the proceedings arose.	(3) Les poursuites par voie de procédure sommaire engagées aux termes du présent article se prescrivent par deux ans à compter de la date de la prétendue perpétration.
[…]	[…]

Lobbyists' Code of Conduct

Introductory Message

The *Lobbyists' Code of Conduct* is the result of extensive consultations with a large number of people and organizations interested in promoting public trust in the integrity of government decision-making. The Code was reviewed in the fall of 1996 by the Standing Committee on Procedure and House Affairs, published in the Canada Gazette on February 8, 1997, and came into effect on March 1, 1997.

The purpose of the *Lobbyists' Code of Conduct* is to assure the Canadian public that lobbying is done ethically and with the highest standards with a view to conserving and enhancing public confidence and trust in the integrity, objectivity and impartiality of government decision-making. In this regard, the *Lobbyists' Code of Conduct* complements the registration requirements of the Act to amend the *Lobbyists Registration Act*, which came into force on January 31, 1996.

Lobbyists - individuals who are paid to communicate with federal public office holders in regard to certain government decisions - are required to comply with the code. "Public office holder" means virtually anyone occupying a position in the federal government and includes members of the Senate and the House of Commons and their staff, officers and employees of federal departments and agencies, members of the Canadian Armed Forces and the Royal Canadian Mounted Police.

The Code begins with a preamble which states its purposes and places it in a broader context. Next comes a body of overriding principles which are in turn followed by specific rules. The principles set out, in positive terms, the goals and objectives to be attained, without establishing precise standards. The rules provide more detailed requirements for behaviour in certain situations. The powers of investigation which are provided to the Registrar will be triggered where there is an alleged breach of either a principle or a rule of the Code.

The *Office of the Registrar of Lobbyists* is available to offer comment and guidance to lobbyists on the application of the *Lobbyists' Code of Conduct*. An important means of communicating more widely our advice and other Code developments will be through annual reports to Parliament.

We welcome questions and enquiries from lobbyists and other members of the public as well. […]

Preamble

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

- Free and open access to government is an important matter of public interest;
- Lobbying public office holders is a legitimate activity;
- It is desirable that public office holders and the public be able to know who is attempting to influence government; and,

- A system for the registration of paid lobbyists should not impede free and open access to government.

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

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

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

Principles

Integrity and Honesty

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

Openness

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

Professionalism

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

Rules

Transparency

1. Identity and purpose

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

2. Accurate information

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

3. Disclosure of obligations

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

Confidentiality

4. Confidential information

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

5. Insider information

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

Conflict of interest

6. Competing interests

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

7. Disclosure

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

8. Improper influence

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

Appendix II

The *Lobbyists Registration Act*, R.S.C. 1985 (4th Supp.), c.44 as it read in October 2005

10.4 (1) Where the registrar believes on reasonable grounds that a person has breached the Code, the registrar shall investigate to determine whether a breach has occurred.	**10.4** (1) Le directeur fait enquête lorsqu'il a des motifs raisonnables de croire qu'une personne a commis une infraction au code.
[…]	[…]
(5) Before finding that a person has breached the Code, the registrar shall give the person a reasonable opportunity to present their views to the registrar.	(5) Le directeur doit, avant de statuer qu'elle a commis une infraction au code, donner à la personne la possibilité de présenter son point de vue.
[…]	[…]
(7) If, during the course of performing duties and functions under this section, the registrar believes on reasonable grounds that a person has committed an offence under this or any other Act of Parliament or of the legislature of a province, the registrar shall advise a peace officer having jurisdiction to investigate the alleged offence.	(7) Si, dans l'exercice des pouvoirs et des fonctions que lui confère le présent article, le directeur a des motifs raisonnables de croire qu'une personne a commis une infraction à la présente loi ou à toute autre loi fédérale ou provinciale, il avise un agent de la paix compétent pour mener une enquête relativement à l'infraction.
(8) The registrar must immediately suspend an investigation under this section of an alleged breach of the Code by any person if	(8) Le directeur suspend sans délai l'enquête menée en vertu du présent article à l'égard d'une infraction présumée au code si, selon le cas :
(a) the registrar believes on reasonable grounds that the	a) il a des motifs raisonnables de croire que la personne a

person has committed an offence under this or any other Act of Parliament or of the legislature of a province in respect of the same subject-matter; or

commis une infraction à la présente loi ou à toute autre loi fédérale ou provinciale portant sur le même sujet;

(b) it is discovered that the subject-matter of the investigation under this section is also the subject-matter of an investigation to determine whether an offence referred to in paragraph (a) has been committed or that a charge has been laid with respect to that subject-matter.

b) l'on découvre que l'objet de l'enquête est le même que celui d'une enquête menée dans le but de décider si une infraction visée à l'alinéa a) a été commise, ou qu'une accusation a été portée à l'égard du même objet.

(9) The registrar may not continue an investigation under this section until any investigation or charge regarding the same subject-matter has been finally disposed of.

(9) Le directeur ne peut poursuivre l'enquête avant qu'une décision finale n'ait été prise relativement à toute enquête ou à toute accusation portant sur le même objet.

10.5 (1) After conducting an investigation, the registrar shall prepare a report of the investigation, including the findings, conclusions and reasons for the registrar's conclusions, and submit it to the Registrar General of Canada who shall cause a copy of it to be laid before each House of Parliament on any of the first fifteen sitting days on which that House is sitting after it is received.

10.5 (1) Le directeur présente au registraire général du Canada un rapport d'enquête dans lequel il motive ses conclusions; ce dernier fait déposer le rapport devant les deux chambres du Parlement dans les quinze premiers jours de séance de chacune de celles-ci suivant sa réception.

(2) The report may contain details of any payment received, disbursement made or

(2) Le rapport peut faire état, si le directeur estime que l'intérêt public le justifie, des

expense incurred by an individual who is required to file a return under subsection 5(1) or by an employee who, in accordance with paragraph 7(3)(f) or (f.1), is named in a return filed under subsection 7(1), in respect of any matter referred to in any of subparagraphs 5(1)(a)(i) to (vi) or 7(1)(a)(i) to (v), as the case may be, if the registrar considers publication of the details to be in the public interest.

renseignements concernant tout paiement reçu ou toute dépense engagée par la personne tenue de fournir une déclaration en application du paragraphe 5(1) ou qui, aux termes des alinéas 7(3)f) ou f.1), est nommée dans une déclaration fournie en application du paragraphe 7(1), et se rapportant, le cas échéant, à l'une des mesures visées aux sous-alinéas 5(1)a)(i) à (vi) ou 7(1)a)(i) à (v).

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	T-662-07
STYLE OF CAUSE:	**NEELAM MAKHIJA** **v. ATTORNEY GENERAL OF CANADA**
PLACE OF HEARING:	Montreal, Quebec
DATE OF HEARING:	January 11, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	Martineau J.
DATED:	February 11, 2010

APPEARANCES:

Mr. Michael N. Bergman	FOR THE APPLICANT
Mrs. Nathalie Benoit	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT