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Lobbying – Minister of Justice’s Assessment of the Application of the Act Over the Last Five Years

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On October 23, 2007, Québec’s Minister of Justice laid before the National Assembly his five-year report on the implementation of the Lobbying Transparency and Ethics Act (the “Act”) and the Code of Conduct for Lobbyists; this reporting obligation is provided for in the Act. In his report, the Minister reviews the developments and accomplishments achieved since the Act came into force on June 13, 2002. The Minister reviews the accomplishments of the Québec Lobbyists Commissioner and Lobbyists Registrar, as well as the issues raised in the five years of application of Québec’s legislative framework for lobbying activities.

The Minister ends his report with four main recommendations.

- 1) Firstly, the Minister concludes it would be expedient to amend the Act in order to improve its application. However, he does not identify what amendments should be made.
- 2) Rather, the Minister recommends that the National Assembly committee responsible for

studying the implementation report hold public consultations so that all interested individuals or groups may share their perspective regarding the application of the Act and the amendments that should be made thereto.

- 3) In his recommendations, the Minister identifies the following issues that should be dealt with during these public consultations:
 - a) The scope of application of the Act, especially with regards to the desirability of having the Act apply to certain organization lobbyists currently exempted from its application;
 - b) The contents of returns pertaining to lobbying activities;
 - c) The respective roles of the Lobbyists Registrar and the Lobbyists Commissioner, and the expediency of entrusting the keeping of the registry of lobbyists to the Commissioner rather than the Registrar.

In addition to those issues specifically identified in his recommendations, the Minister's report identifies a number of elements that have proven problematic over the last five years. These include:

- i) The application of the Act which excludes organization lobbyists who lobby on behalf of non-profit organizations that were not constituted to serve management, union or professional interests or the majority of whose members are not profit-seeking enterprises or representatives of profit-seeking enterprises;
 - ii) the very definition of lobbying, namely any communication in an attempt to influence a decision, which is being put into doubt since the June 2005 amendments to the federal lobbying act, which now applies to all communications with public office holders;
 - iii) the application of certain exceptions – such as those exempting submissions made in or prior to judicial proceedings – or the threshold at which the Act applies to enterprise or organization lobbyists – namely where lobbying activities make up a significant part of the lobbyists' job or function;
 - iv) the contents of lobbyists' returns or the deadlines for filing – the Minister does in fact mention the possibility of reducing these time frames or prescribing a semi-annual renewal to help attain the Act's transparency objectives;
 - v) the operation of the Act and the powers of the Commissioner and Registrar, including the possibility of extending the one-year prescriptive period for offences in order to provide an enhance surveillance and control power for the Commissioner.
- 4) The Minister concludes his report with the observation that even if legislative amendments are made, whether or not the Act's objectives are reached will largely depend on the lobbyists themselves. The Minister hopes that implementing rigorous practices will "[TRANSLATION] transform the trade, 'professionalizing' it, eventually wiping out the distrust that lobbying can inspire in some." To achieve this, the Minister concludes with a fourth recommendation, namely that the National Assembly committee charged with studying the report "[TRANSLATION] examine what measures could be taken to valorize the role that lobbyists play in Québec's democratic society and to promote transparency and ethics among these lobbyists."

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