



**OFFICE OF THE ETHICS COMMISSIONER  
PROVINCE OF ALBERTA**

**Report of an Investigation by**

**Bradley V. Odsen, Q.C.,  
Lobbyists Act Registrar**

**into allegations involving**

**Ian Murray and Company Ltd.  
A Consultant Firm Registered  
Under the Lobbyists Act**

**Submitted to the Speaker  
of the Legislative Assembly of Alberta by**

**Neil Wilkinson,  
Ethics Commissioner**

**October 6, 2010**

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## ALLEGATIONS

[1.] By letter dated July 27, 2010, and received by the Office of the Ethics Commissioner on July 28, 2010, Mr. Hugh MacDonald, Member of the Legislative Assembly for Edmonton-Gold Bar, requested that the Registrar conduct an investigation under the Lobbyists Act ["the Act"] with respect to a possible breach of the Act by Ian Murray and Company Ltd. ["IMC"], a registered consultant lobbyist firm.

[2.] Additionally, it was alleged in the *Edmonton Journal* on July 28, 2010, that the consultant lobbyist registrations posted by IMC on the Lobbyists Act Registry ["the Registry"] indicated that IMC was engaged in lobbying, among others, the Department of Energy on behalf of several different clients, while at the same time being engaged by the Department of Energy by contract to provide advice to the Department.

[3.] In Mr. MacDonald's letter requesting the investigation, he said:

"According to filings with the Lobbyist Registry, Mr. Ian Murray is listed as the designated filer with five registrations to act as a consultant lobbyist under the firm name Ian Murray and Company Ltd. The lobbying activities listed include energy-related matters at the Department of Energy and elsewhere.

The Public Accounts of Alberta, under Supplies and Services, for the nine months ended December 31, 2009 include an amount to Ian Murray and Company Ltd. from the Department of Energy of \$341,941. The previous year's Public Accounts record indicates Ian Murray and Company Ltd. did not have a contract with the Department of Energy

According to Section 6 of the *Lobbyists Act*:

**(3)** No person shall lobby on a subject-matter if that person, or a person associated with that person, is holding a contract for providing paid advice on the same subject matter.

**(4)** No Person shall enter into a contract for providing paid advice on a subject-matter if that person, or a person associated with that person, lobbies on the same subject-matter as that of the contract.

Was Ian Murray and Company Ltd. exempted from the application of sub-section (3) or (4) by your office? And, if an exemption was not granted, how is this arrangement not a contravention of Section 6 subsection (3) and (4) of the *Lobbyists Act*? I respectfully request that your office conduct an investigation to ensure that Ian Murray and Company Ltd. is in compliance with the *Lobbyists Act*. Please find enclosed for your convenience the Public Accounts documents that I referenced and filings from the Lobbyist Registry Office."

## APPLICABLE LEGISLATION

[4.] The Lobbyists Act, S.A. 2007, Chapter L-20.5, received Royal Assent on December 7, 2007, was amended in the Spring Session of 2009, and was Proclaimed on September 28, 2009. The legislative purpose of the Act is found in the Preamble which states:

### Preamble

- WHEREAS free and open access to government is an important matter of public interest; and
- WHEREAS lobbying public office holders is a legitimate activity; and
- WHEREAS it is desirable that the public and public office holders be able to know who is engaged in lobbying activities; and
- WHEREAS a system for the registration of paid lobbyists should not impede free and open access to government; and
- WHEREAS it is desirable that the public and public office holders be able to know who is contracting with the Government of Alberta and Provincial entities

[5.] The Act is comprehensive and complex; the majority of issues that can arise under the Act are factual in nature:

- whether the Act applies;
- if does apply, how it applies;
- if it doesn't apply, why it doesn't apply;
- whether there's a breach of the Act; and
- if there is an apparent breach, whether such was inadvertent or deliberate.

[6.] All these (and more) are questions that can only be answered by having all the pertinent facts.

[7.] The main sections of the Act that are germane to this matter are sections 6 and 15. Section 6 states:

### Contracting prohibitions

**6(1)** In this section, “contract for providing paid advice” means an agreement or other arrangement under which a person directly or indirectly receives or is to receive payment for providing advice to the Government or a prescribed Provincial entity.

**(2)** For the purpose of this section, payment does not include reasonable remuneration received for serving on a board, commission, council or other similar body established by or under the authority of an enactment on which there are at least 2 other members who represent other organizations or interests.

**(3)** No person shall lobby on a **subject-matter** if that person, or a person associated with that person, is holding a contract for providing paid advice on **the same subject-matter**.

(4) No person shall enter into a contract for providing paid advice on a **subject-matter** if that person, or a person associated with that person, lobbies on **the same subject-matter** as that of the contract.

(4.1) Subsections (3) and (4) apply regardless of how many hours the person's lobbying or duty to lobby on behalf of an organization together with the lobbying or the duty to lobby of other persons in the organization amounts to annually.

(5) The Ethics Commissioner may exempt a person from the application of subsection (3) or (4) but only if the Ethics Commissioner is of the opinion that it would be in the public interest to do so.

(6) The Ethics Commissioner may impose terms and conditions on any exemption given.

(7) The Ethics Commissioner must provide reasons for giving an exemption and must ensure that information relating to the exemption, including any terms and conditions imposed, and the reasons for giving the exemption are entered into the registry.

(8) If on the coming into force of this section a person, or a person associated with that person, holds a contract for providing paid advice on a subject-matter and either the person or the associated person lobbies on the same subject-matter,

(a) the person holding the contract must cease to hold the contract, or

(b) the person lobbying must cease to lobby on that subject-matter,

within 60 days of the coming into force of this section.

Emphasis added.

[8.] Section 15 states:

### **Investigations**

**15(1)** The Registrar shall conduct an investigation if the Registrar has reason to believe that an investigation is necessary to ensure compliance with this Act.

**(2) The Registrar may refuse to conduct or may cease an investigation with respect to any matter if the Registrar is of the opinion that**

(a) the matter is one that could more appropriately be dealt with according to a procedure provided for under another enactment,

(b) the matter is minor or trivial,

(c) dealing with the matter would serve no useful purpose because of the length of time that has elapsed since the matter arose, or

**(d) there is any other valid reason for not dealing with the matter.**

(3) For the purpose of conducting an investigation, the Registrar may

(a) in the same manner and to the same extent as a justice of the Court of Queen's Bench,

(i) summon and enforce the attendance of individuals before the Registrar and compel them to give oral or written evidence on oath, and

(ii) compel persons to produce any documents or other things that the Registrar considers relevant to the investigation,

and

(b) administer oaths and receive and accept information, whether or not it would be admissible as evidence in a court of law.

**(4) An investigation must be conducted in private.**

(5) Evidence given by an individual in an investigation and evidence of the existence of an investigation are inadmissible against the individual in a court or in any other proceeding, other than in proceedings for perjury in respect of a statement made to the Registrar.

(6) The Registrar shall not make adverse findings against an individual unless that individual has had reasonable notice of the substance of the allegations against him or her and a reasonable opportunity to present his or her views.

**(7) The Registrar, and every individual acting on behalf of or under the direction of the Registrar, may not disclose any information that comes to their knowledge in the performance of their duties and functions under this section, unless**

**(a) the disclosure is, in the opinion of the Registrar, necessary for the purpose of conducting an investigation under this section or establishing the grounds for any findings or conclusions contained in a report under section 17,**

**(b) the information is disclosed in a report under section 17 or in the course of a proceeding for perjury in respect of a statement made to the Registrar,**

**(b.1) the disclosure is, in the opinion of the Registrar, necessary for the purpose of enforcing administrative penalties, or**

**(c) the Registrar believes on reasonable grounds that the disclosure is necessary for the purpose of advising the Minister of Justice and Attorney General or a law enforcement agency of an alleged offence under this Act or any other enactment of Alberta or under an Act of Parliament.**

(8) The Registrar shall immediately suspend an investigation under this section if the Registrar discovers that the subject-matter of the investigation is also the subject-matter of an investigation to determine whether an offence under this Act or any other enactment of Alberta or under an Act of Parliament has been committed or that a charge has been laid with respect to that subject-matter.

(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.

Emphasis added.

## PRELIMINARY CONSIDERATIONS

[9.] In this instance, both the queries made by the Honourable Member for Edmonton - Gold Bar, and the supporting documentation attached to his letter reference IMC being engaged to provide advice to the Department of Energy, while at the same time being engaged by clients to lobby the Department of Energy.

“Was Ian Murray and Company Ltd. exempted from the application of sub-section (3) or (4) by your office? And, if an exemption was not granted, how is this arrangement not a contravention of Section 6 subsection (3) and (4) of the *Lobbyists Act*?”

[10.] As noted above in paragraph 2, the issue was also raised in a news story published in the *Edmonton Journal*. The headline to that story reads, “Liberals call for investigation into lobbyist firm”, and includes a picture of the Honourable Member for Edmonton – Gold Bar, as well as this quote:

“You can't receive money from the same department that you are lobbying on behalf of some of the biggest energy players in the Alberta oilpatch,” MacDonald said, “Not even in Alberta is this acceptable.”

[11.] The determination of whether IMC was in breach of the prohibition contained in section 6 of the Act requires that the facts to be determined are whether the lobbying activities or any of them in which IMC is engaged are with respect to the same subject matter as the engagement of IMC by the Department of Energy to provide advice.

[12.] When a request for an investigation has been received, or allegations of impropriety have been made in the media, the Registrar reviews the information provided by the lobbyist in its Registration(s) to see whether there is anything on the face to support the allegations. In this instance, the information provided in the Registrations filed on behalf of IMC clearly indicates that the lobbying activities are not in relation to the same subject matter as the contract to provide advice to the Department of Energy.

[13.] The next step for the Registrar is to review the information provided in the request for investigation, or in the media story, to see whether there is any factual evidence contained therein to support allegations of impropriety. In this instance, the information contained in the

request for investigation, and in the *Journal* story, simply reiterated the information provided by IMC in its Registrations.

[14.] **As a matter of law, the Act does not prohibit providing advice to a Department while at the same time lobbying that Department; it is only if the advice and the lobbying activities are in relation to the same subject matter that there is breach of section 6.**

[15.] Since the Registrar's preliminary review did not reveal even a scintilla of evidence to suggest that IMC was in breach of section 6, the Registrar would have been entitled by subsections 15(1) and 15(2)(d) of the Act to decline to conduct the requested investigation. However, the tenor of *Journal* story, and the comments from the Honourable Member quoted therein cannot but have had a negative effect on the reputation of Ian Murray and Company Ltd. and Mr. Murray personally.

[16.] By the provisions of subsections 15(4) and 15(7), were the Registrar to have responded to the Honourable Member's request for an investigation by declining to do so, nobody other than the Honourable Member would be aware that there had even been a request to investigate, let alone that the Registrar had declined to investigate. Certainly the Registrar would have been constrained from even advising Mr. Murray of the request to investigate, let alone that the request was determined to be groundless in law.

[17.] In light of the foregoing, and in fairness to all parties, the Registrar determined that in this instance an investigation was warranted and a Report of that investigation and the conclusions drawn would be provided to the Speaker pursuant to section 17 of the Act.

## **PERSONS INTERVIEWED/EVIDENCE OBTAINED**

[18.] During the course of this investigation, the Registrar met with Mr. Ian Murray, principal of IMC, and spoke by telephone with Mr. Todd Nahirnik, Alberta Justice legal counsel to the Department of Energy.

[19.] The Registrar reviewed in their entirety all of the contracts engaging the services of IMC, and was provided photocopies of the deliverables required by each such contract. During the course of this review, the Registrar noted a system error had affected the IMC registrations filed under the Act. The identification and rectification of system and administrative errors is part of the normal course of business of the registry, this system error was rectified, and it had no bearing on this investigation.

[20.] The Registrar also reviewed the IMC web site, <http://www.imcprojects.ca> and the information contained there concerning the focus of IMC activities.

## **FINDINGS**

[21.] As stated on the IMC web site, <http://www.imcprojects.ca>, this is a management consulting firm "providing advisory and project implementation services to private and public sector clients since 1989. The primary focus of the work relates to the western Canadian resource and manufacturing sectors."

[22.] Among the many specialized services IMC provides is government relations advice and representation. Certainly, the latter would constitute “lobbying” under the Lobbyists Act, and depending on the activities performed in the former, it too could constitute “lobbying”. Consultants such as IMC are obligated under the Act to register each such engagement that is an engagement to lobby on behalf of the client, or that would include a component in the activities under the engagement that is lobbying activity as defined by the Act.

[23.] Of the many management consultant projects on which IMC is currently engaged, it has registered five as being either an engagement to lobby on behalf of their client, or an engagement which includes a lobbying component. As shown on the Lobbyists Act Registry, these five engagements are:

- **Registration # CL0021-20091027161000:** The client is the Industrial Power Consumers Association of Alberta of Calgary, Alberta; the client is an Association of large business electrical power consumers for whom the issue of the cost of electrical energy is of considerable consequence; IMC is lobbying the Department of Energy with respect to the subject matter of the Electrical Statutes Amendment Act; the registration also indicates that IMC has a contract with the Department of Energy to provide advice to the Department with respect to the subject matter of the Bitumen Royalty In Kind [BRIK] program;
- **Registration #CL0021-20091028141028:** The client is the Integrated Carbon Dioxide Network of Calgary, Alberta; the client is a coalition of a number of large business enterprises for whom the issue of carbon capture and storage is of significant consequence; IMC is lobbying several Departments with respect to the subject matter of carbon capture and storage, including the Department of Energy; the registration also indicates that IMC has a contract with the Department of Energy to provide advice to the Department with respect to the subject matter of the Bitumen Royalty In Kind [BRIK] program;
- **Registration CL0021-20100326100324:** The client is the Alberta Direct Connect Consumers Association of Edmonton, Alberta; the client is an Association of small business electrical power consumers for whom the issue of the cost of electrical energy is of considerable consequence; IMC is lobbying the Department of Energy with respect to the subject matter of the Electrical Statutes Amendment Act; the registration also indicates that IMC has a contract with the Department of Energy to provide advice to the Department with respect to the subject matter of the Bitumen Royalty In Kind [BRIK] program;
- **Registration CL0021-20100412150455:** the client is Air Products Canada of Calgary, Alberta; the client operates a number of facilities for the production of various liquid gasses, as well as delivering them to its customers throughout Alberta, and its relations with various Departments is a subject matter of some consequence; IMC is lobbying several Departments, including the Department of Energy on the subject matter particularly of the production of Hydrogen gas and its transmission to the client’s customers in Industrial Heartland; the registration also indicates that IMC has a contract with the Department of Energy to provide advice to the Department with respect to the subject matter of the Bitumen Royalty In Kind [BRIK] program; and
- **Registration CL0021-20100715130708:** The client is the Titanium Corporation of Edmonton, Alberta; the client is involved in developing a process to remove minerals from tailings ponds; IMC primarily provides technical consulting services for this client, but did contact an Alberta Government official in Washington, D.C. to ask for help in arranging a meeting between the client and certain parties in Washington; the registration also indicates that IMC has a contract with the Department of Energy to provide advice to the Department with respect to the subject matter of the Bitumen Royalty In Kind [BRIK] program.

[24.] Whether the subject matter of lobbying efforts is “the same as” the subject matter of an engagement with the Government of Alberta to provide paid advice is a pure question of fact.

[25.] **The Registrar has found the following as facts:**

- **Registration # CL0021-20091027161000:** is lobbying with respect to the electrical power transmission and the cost to consumers of electrical power and **is not the same** as providing advice on the BRIK program;
- **Registration #CL0021-20091028141028:** is lobbying with respect to carbon capture and storage and **is not the same** as providing advice on the BRIK program;
- **Registration CL0021-20100326100324:** is lobbying with respect to the electrical power transmission and the cost to consumers of electrical power and **is not the same** as providing advice on the BRIK program;
- **Registration CL0021-20100412150455:** is lobbying with respect to the production and transmission of hydrogen gas and **is not the same** as providing advice on the BRIK program;
- **Registration CL0021-20100715130708:** contacting an Alberta Government official for the purpose only of seeking assistance **is not lobbying** within the definition of “lobbying” contained in of ss.1(1)(f) of the Act, **nor is** setting up a meeting with parties who are not public office holders as defined in ss.1(1)(k) of the Act and, in any event, **is not the same** as providing advice on the BRIK program.

## CONCLUSIONS

[26.] The evidence clearly shows that IMC did not breach section 6 of the Act. None of IMC’s lobbying activities are with respect to the same subject matter as the subject matter of IMC’s engagement with the Department of Energy to provide advice.

[27.] The answers to the queries posed by the Honourable Member for Edmonton-Gold Bar, as set out above are:

- “Was Ian Murray and Company Ltd. exempted from the application of sub-section (3) or (4) by your office?” **No.**
- “And, if an exemption was not granted, how is this arrangement not a contravention of Section 6 subsection (3) and (4) of the *Lobbyists Act*?” **The lobbying activities are not with respect to the same subject matter as the subject matter of the engagement to provide advice.**

## **SANCTIONS**

[28.] There being no breach of section 6 the Lobbyists Act by Ian Murray and Company Ltd., no administrative penalty or other sanction is warranted or imposed.

Investigation conducted and Investigation Report prepared by:

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Bradley V. Odsen, Q.C.  
Lobbyists Act Registrar

And respectfully submitted by:

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Neil Wilkinson  
Ethics Commissioner

Dated: September 30, 2010