
The Lobby Monitor

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NAFTA Chapter 11

Chapter 11 provides a new way to obtain a policy outcome. For the lobby community, it is a true double-edged sword. Will it become a powerful tool for lobbyists, or, like a court action, rule out the need for full-blown advocacy strategies? *See Chap 11 page 2.*

Financial Lobby Still Counts

The White Paper and Senate hearings are bringing the backroom boys out onto the stage to make some of their points. *See Financial page 3.*

Speaking of Chapter 11

The MMT lobby seems to have lost the battle in the Cabinet and in the Commons. Will it fight it out in the Senate, or try to make history with a NAFTA Chap 11 challenge? *See MMT page 6.*

Never Say Die With Tobacco

The latest tobacco proxy lobby is waging the campaign against advertising restrictions. *See Alliance, page 7*

Also in this issue: Registration Notes page 5, People page 7. and Organizational Re-registrations page 8.

REGISTRATIONS IN THIS ISSUE

Lobby Organiizations

Anstey & Associates
Association House
CAI Corporate Affairs Int
Earncliffe Strategy Gp
Ernst & Young (Tor)
Finkelstein and Associates
Gervais Gagnon Covington
Govt Business Cons Gp
GPC Govt Policy Cons (Ott)
GPC Pacific Public Affairs (Vic)
Howard, Mackie
IGRG-Industry Govt Reln
McCarthy Tetrault (Tor)
Osler, Hoskin & Harcourt (Tor)
Perley-Robertson Panet

Price Waterhouse (Miss)
Price Waterhouse (York)
PSC Public Sector Corp (Ott)
Victor Peters

Client Organizations

Assoc des Armateurs Canadiens
Assoc des Prod de Film/TV QC
Assoc Que Enterprise Adaptees
Autopass
Avenor
Baxter Corporation
Capital One Financial Corp
Cdn General Investments Ltd
Cdn Oxygenated Fuels Assoc
Coal'n of Cdn Tax Payers
Doing Business in Canada

DST Corfax Systems
Fonorola
Glacier Park Lodge
Golder Associates Ltd
Great Canadian Railtour Co Ltd
Morgan Stanley Canada Limited
Novell Canada Ltd
Produits Forestiers Alliance
Scanwell Container Line (CAN)
Secunda Marine Services Ltd
Sikorsky Intl Operations Inc.
Telezone Corp
Thomson Canada Ltd
Trans Canada Credit Corp
United Corporations Ltd
Warner Music of Canada Ltd
Zurich Canada

NAFTA'S Chapter 11: Tool or Threat for Lobbyists?

Two lobbying efforts this Fall – one involving the Pearson Airport agreements and the other the US firm Ethyl Corp. – have made use of the Chapter 11 provisions of NAFTA, involving the expropriation of property. In the case of Pearson it has been through threats to launch a challenge if legislation is introduced and in the case of Ethyl Corp. it has been in actually launching a challenge to the MMT banning legislation, C-29. The arguments behind both cases say that government legislation amounts to an expropriation of its property or business in Canada and therefore violates Chapter 11 of NAFTA.

But lawyers specializing in NAFTA cases don't find the situation unusual, what's remarkable to them is that the Chapter 11 tool is not used more often. They suggest that the Chapter 11 challenge mechanism will be used more frequently in the near future and that it will become a bigger part of the policy making process.

But what looks like a powerful new tool for the lobby community has another edge to its sword. Chapter 11 may serve to advance certain lobby campaigns in the short term, but down the road might impact on the advocacy industry in less positive ways.

Expropriation of Property

"No one has been successful in launching a Chapter 11 challenge," says **Selma Lussenburg** of the law firm **Borden and Elliot**. "There have been a lot of rumblings,

such as the **Country Music Network** last year and the pharmaceutical companies, but nothing has really been done."

Rick Dearden, a lawyer with **Gowling, Strathy and Henderson** says that Chapter 11 not only includes provisions regarding expropriation, but also something called tantamount to expropriation. "These components are so broad," says Dearden. "I'm surprised by its lack of use, I thought this was the sleeper of the whole deal."

Lussenburg suggests that because no cases have made it through the tribunal process, there are still questions about how the process will work. Dearden agrees but suggests that the situation will quickly change. "Cases will begin to refine exactly what Chapter 11 means," says Dearden. "Jurisprudence will be established, however, and policy makers will have to consider Chapter 11 more seriously."

Implications

In the lobbying efforts surrounding the Pearson and Ethyl Corp. cases, the Chapter 11 challenge has its obvious utility. At the same time, however, Chapter 11 might eventually prevent major lobby campaigns. "What we're seeing is that companies don't have to go through official channels to bring forward a complaint. They don't necessarily have to get the administration on board," says Lussenburg.

She refers to the fact that trade conflicts were traditionally coordinated through the US and Canadian governments. Lobbyists, of course, were a vital component of any attempt of a company to explore such avenues.

Trade dispute advocacy campaigns can be long and are virtually always expensive. Does the independence offered by Chapter 11 to disgruntled companies cut into that lobbying business? Most observers agree that the lobbying role certainly won't disappear.

"Don't forget that most of these conflicts are solved at the political level," says one source who follows NAFTA cases.

Dearden says that policy makers already factor in the Charter, international agreements as well as NAFTA. "These decisions are made every day." He suggests that the Chapter 11 mechanism will be used more often, but won't completely replace more traditional routes to settling trade disputes.

Ottawa lobbyist Fred Doucet says he can't imagine a lobbying role in the Chapter 11 process. "It's very legalistic."

If such a tribunal mechanism was indeed used more frequently in the resolution of trade disputes, it follows that lobbying activity would decrease in the sector. Sources close to trade cases suggest, however, that trade issues have various dimensions and there will likely remain a prominent advocate role.

The Committee Monitor

For those organizations in the private and public sector that need to closely monitor the hearings of parliamentary committees, tribunals and other agencies of the federal government, ARC Publications presents The Committee Monitor.

The Committee Monitor service is designed to meet the needs of organizations that want to comprehensively track a committee's examination of an issue. The ultimate shape of the service will depend on a final assessment of clients' needs and demands for the service.

For further information, please contact Ms. Tina Guthrie at (613) 230-3029.

Financial Lobby Back in the Action

While the emasculated white paper on financial institutions left out the big issues, the fact remains that the clock is still ticking on the Bank Act review. Lobbyists and legislators alike are mobilizing the resources to get the issue resolved by the March, 1997 deadline. The Finance Committee of the House of Commons and the Senate Committee on Banking, Trade and Commerce have swung into high gear, as will the yet-to-be-created Task Force on Financial Institutions.

At the centre of attention is the White Paper on Financial Institutions, which covers issues such as branching, consumer issues and corporate governance. While the retailing of insurance and car leasing by banks is noticeably absent from the paper, many participants will be pressing their opinions on these issues.

"The white paper is fairly focused," says **David McInnes** of the **Canadian Bankers Association**, who adds that they will be raising the issue of banks retailing insurance and car leasing when they appear before the various committees. With recent support for this initiative from the **Consumers Association of Canada**, it is unlikely that the banking

interests will let the opportunity to reassert this position go by.

For the **Canadian Life and Health Insurance Association**, the issue that keeps them coming back is the payments system. **Andrew Casey**, Director of Federal Affairs for the CLHIA, says their agenda is to get the legislation passed by the March 31 deadline and deal with the broad policy issues.

"The department seems dedicated to getting draft legislation out by Christmas," says Casey, who has been all over the committee process in the last few weeks. But few are willing to gamble on the outcome of the committees' work just yet.

"It's too early to say which way the committee will go," says **Dan Tessier**, of the **Insurance Brokers Association of Canada**. "There's no end to this issue, and we will continue to work."

Task Force

However attached to the committee consultation process the key players are, there is an even greater vested interest in the formulation and process of building the Task Force.

"The key thing right now is the task force," says Casey of the CLHIA. "What process they use, who's on it, the mandate, are big items."

Mark Yakabuski of the **Insurance Bureau of Canada** says that there are a lot of groups trying to identify issues for the task force.

"The way you start determines how you finish," observes Yakabuski, who says he's heard that the possible membership list for the task force is up to about 257 names. While one name in particular, that of **Tory, Tory** lawyer **Jim Baillie**, is being floated as a possible for the chairmanship, there has yet to be any confirmation.

"We'll hear in the next few weeks who the chair will be," says Casey. "I expect the task force will move without much delay."

Foreign Interest

There is considerable interest from Canada's foreign banks as well. A brief scan of recent registrations mines several listings on the Bank Act, many of whom are slated to appear before the Senate Committee on Banking Trade and Commerce. Lobbyists **Julie Dickson** and **Kevin Wright** of **GPC** are keeping track of the situation for **Zurich Canada** and **Capital One Financial Corporation**, and **Harry Near** and **Michael Robinson** of **Earnscliffe Strategy Group** are keeping watch for **Trans Canada Credit Corporation**. Of great significance for all three is the establishment of operations in Canada, and the formation of regulation based on activity of the company in Canada, versus what regulations foreign parent company operates under. Since the Bank Act comes due in early 1997, banks wanting into the market are anxious for a decision on their status.

"We don't want to be pigeon-holed if our competition is not going to be regulated in a similar way," says **Nick Scarfo** of the **Trans Canada Credit Corporation**.

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Registration Notes

Advance Work

Francoise Lyon of **Techsortia CAI Corporate Affairs International** is registered for **Autopass**, and is assisting them in the development of a business development plan. Autopass plans to find funding for export of its products to the United States, and Lyon says that they intend to approach both the federal and provincial governments for assistance. Lyon adds that CAI's contribution is to find the information to help Autopass determine where it should be directing its efforts, and to help with the paperwork, although no application has been made yet.

"We don't do lobbying per se," comments Lyon, who says the registration was a precautionary measure because of telephone contact with government officials.

Banking on Government

There are a number of registrations on behalf of financial institutions that are currently defined as foreign banks. **Julie Dickson** and **Kevin Wright** of **GPC** are registered for **Zurich Canada**. Zurich spokesman **Gordon Thompson** says that what happens in the financial services review is of great interest to them because they are both a bank and an insurance company. While there are no current plans to testify before any committees, Thompson says they have discussed their status with the Office of the Superintendent of Financial Institutions (OSFI). GPC, he says, will be keeping a close eye on the situation.

Julie Dickson is also registered for **Capital One Financial Corporation**, a US based bank with interests in the outcome of the review. Spokesman **Chris Curtis** says that of primary interest to them is the entry regime for foreign banks into the Canadian market. Curtis says that GPC will provide monitoring services.

Harry Near and **Mike Robinson** of **Earncliffe Strategy Group** are registered for **Trans Canada Credit Corporation**.

Nick Scarfo of **Trans Canada** says that their interest is in the proposed amendment to the Bank Act which deals with foreign banks. Scarfo adds that the issue should be regulation based on the activities of a company in Canada, versus what the parent company does outside of Canada. Earncliffe will be monitoring the situation for **Trans Canada**, and providing advice.

Taxing Burden

The **Coalition of Tax Payers** has retained **John Haag** and **Rosemary Schmidt** of **Ernst and Young** to provide assistance with its concerns on the draft foreign reporting requirements. Haag says that the new proposed forms, which come into effect this year, pose detailed questions about the international activities of Canadian companies. The concern of the Coalition is that the paperwork is burdensome, and takes too long to complete when weighed against the need of the administration of law to know. Haag says that the Department of Finance and Revenue Canada have expressly asked for feedback from the Tax Payers.

Testing the Water

Secunda Marine Services Limited is considering an RFP issued by **Transport Canada** for the privatization of the Bay of Fundy ferry services, both the Digby, NS-Yarmouth, NS and the Yarmouth, NS - Bar Harbour, ME lines. To assist them, Secunda has hired former senior Transport official **Jaffray Wilkins**, **Edmond Chiasson** and **Maurice Lafontaine** of **Government Business Consulting Group Inc.** **Mike Connolly** of Secunda says the RFP closes the first week of October, and that GBCG is providing strategic advice on the situation. **Pat McKenna** of Transport Canada, the coordinator for the RFP, says that this is the only privatization project this year. While further details on this project were not available, McKenna says that he has no marching orders to do anything else on marine privatization as yet. The ferry service on the south

coast of Newfoundland was transferred to the province last year through a similar process.

Under Their Hats

Bruce Harris of **Price Waterhouse** is registered for **United Corporations Limited** on a few technical issues arising from the June 20, 1996 Ways and Means Motion for the Income Tax Act. Of particular interest are subclauses 81(2) to 81(5) to amend sub paragraphs 130(3)(A)(VII). One of these amendments deals with a technical issue which would allow a corporation with flexible status to maintain its interest earnings from both an investment and mutual fund perspective. The second amendment deals with the distribution of shareholders, moving from examining shareholders on an individual basis, to examining shareholders and those who are not at arms length from them, which is intended to prevent the concentration of ownership between shareholders with shared interest.

"This is not a big, big issue for us," says **Mark Taylor** of **United Corporations**. "This is a technical amendment that is still outstanding."

Another client of Harris' on this particular issue is **Canadian General Investments Limited**.

High and Dry

Scanwell Container Line (Can) Inc has retained **Michael Finkelstein** of **Finkelstein and Associates** to assist them with a sticky customs issue. At the centre of the debate is the British Preferential Tariff, which gives advantageous rates to those shipments originating from a Commonwealth country and traveling directly to Canada with no stops except at other Commonwealth ports. Scanwell's problem is because of extenuating circumstances which prevented them from meeting the criteria of the tariff. While they had planned for a Commonwealth route, and costed the trip

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MMT Lobby Hovering over Gov't

As Bill C-29 inches through Parliament, lobbyists on either side of the issue continue to build contingency plans. A recently formed coalition on MMT has linked health and environmental groups, along with the automakers in a concerted effort to give the bill one last push. **Don MacArthur**, president of the **Association of International Automobile Manufacturers of Canada** says the common denominator is that all of the groups are interested in clean air.

"We have done considerable work with MPs and cabinet ministers, as well as officials," says MacArthur, who says they have worked to make sure the issue is understood. Now that the bill has passed the Commons, MacArthur says the lobby will shift its attention to the Senate, both to the Senate committee likely to examine the legislation, and to individual senators.

Mark Nantais of the **Motor Vehicle Manufacturers Association**, also a member of this coalition, says they were waiting for the Liberals to start moving the bill. Involved in a public information effort, the MVMA is hinging its bets on the passage of the bill to help car manufacturers meet the more stringent air quality requirements set to come into play in 1998.

Finger Pointing

Much debate swirls around what is and isn't happening on the MMT front in the United States. While the EPA was forced by the federal courts to permit MMT as a gaso-

line additive, few refineries have actually taken the steps to include the chemical in gasoline. The Canadian coalition has published a list of these major refineries, which don't use MMT. These account for approximately 85 % of all gasoline sold in the U.S.. Lobbyists have also used the Californian fuel emission requirements, and the fact that legislators have expressly banned the use of MMT in the formulation of gasoline sold in that state.

On the other side of the debate, **Ethyl Canada** lobbyist-lawyer **Bruce Campbell** points to the U.S. parent companies of the members of the MVMA, many of whom are involved in the testing of the on-board-diagnostic systems second generation (OBDS-II).

"They have been granted exemptions, and the problem is not MMT," notes Campbell. He says he's puzzled over why the Canadian MVMA seems to have the answers when the testing is still underway.

Chapter 11 – NAFTA

"It's foolish for the government to proceed with the bill when they have been given notice by Ethyl under NAFTA," says Campbell, observing that there is a process for consultation under NAFTA that could help smooth the ruffled feathers on this one. Campbell adds that the majority of the provinces have also expressed opinions against the bill, an indication that C-29 should not proceed. On that score however, the auto manufacturers recently got a boost from On-

tario premier Mike Harris, who spoke in favour of the MMT ban. Hardly surprising, given the strength of the auto sector in that province.

"We're not concerned with the Chapter 11 challenge by Ethyl," says Nantais, who likens the struggle to that surrounding lead, which, he notes, coincidentally was also produced by Ethyl. "They are trying to protect their large financial interest and their product."

To date the US Trade Office has not taken up the cudgels on behalf of Ethyl, which Nantais considers to be a favourable sign that the challenge is an attempt to influence the Canadian government.

"They are trying to dictate to Canadians, and they knew the government was likely to do this," says Nantais of Ethyl and the bill.

But Campbell is not so quick to dismiss the impact of the trade challenge. He confirmed it would proceed following the bill's passage. He adds that the fact that the Canadian government went ahead with legislation even though there was a trade challenge would not be advantageous to Canada in any NAFTA hearings.

For now, it's a watch, wait and see game. Campbell says that should the Senate create opportunity for hearings, Ethyl would be most interested in making sure its message is heard.

They won't be the only ones wanting the attention of the Upper House.

Notes: continued from page 5

accordingly, the ship in question ran aground, and had to make an unscheduled stop in an unrecognized port. **Peter Sancho** of Scanwell says that they had the proper intentions, and should still qualify. He adds that Finkelstein has been negotiating with the federal government, and is quite optimistic about the outcome.

Getting the Word Out

Sandra Anstey of **Anstey & Associates** is registered for **Doing Business in Canada**, a non-profit association devoted to linking government and private enterprises with out-of-country businesses. **Robert Cohen** says the association is working with Industry Canada and Foreign Affairs on a number of issues, but one of the main joint issues is the updating and reprinting of a business manual

originally financed by government and distributed in Canadian consulates around the world. **Doing Business in Canada** is also launching a web site, which will be made available to member businesses at cost, as a mechanism for increasing awareness about Canadian services. Cohen also says that they help bring relevant partners to the table for those interested in operating in Canada.

Alliance for Sponsorship Freedom

It may be a temporary phenomenon – until the strategy doesn't work, or another issue comes to the fore – but the tobacco industry is said to be focusing its energies on the sponsorship issue. But instead of a straight ahead campaign, they've opted for the side door approach. Employing a familiar tobacco tactic, the industry is making full use of the groups it sponsor in its efforts. Sponsors that don't appear so sinister and might have a better chance of being heard.

The Campaign

The **Alliance for Sponsorship Freedom** was formed this past August and boasts an impressive list of arts groups and events organizers among its membership. Their focus is legislation banning tobacco companies from sponsoring events, promised by Health Minister **David Dingwall** to be introduced this Fall and up and running by the end of the year.

The membership has been meeting with ministers and MPs and in the face of

some resistance from Dingwall, have conducted a full media blitz to try and generate support. "We can't keep up," says **Lorraine Fry** of the **Non-Smokers' Rights Association**. "They're in and out of Hill offices like you wouldn't believe."

While the tobacco companies are not on the membership list, they are the principal funders of the organization and sources suggest are helping out organizationally through **Edelman Public Relations Worldwide**, a PR firm that works with tobacco companies including Imperial.

Spokesman **Max Beck** says that the Alliance has not hired any lobbyists of their own but might be working with those of the tobacco industry. **Canadian Tobacco Manufacturers Council** is represented by **Simon Potter** of **Ogilvy Renault**, **Mark Resnick** of **Parallax Public Affairs Inc.** and **Bill Neville** of **WHN & Associates**. **Donald Gracey** and **Utilia Amaral** of **CG Management & Communications** are registered on behalf of **Rothmans, Benson &**

Hedges and **Randall Hofley** and **T. Gregory Kane** of **Stikeman, Elliot** represent **Alfred Dunhill Limited**.

Familiar Approach

The Alliance is labelled by anti-smoking groups as "fronts" for the tobacco industry are not new to the scene. Examples of industry funded groups have emerged in the past. The **Smokers' Freedom Society (SFS)** was almost entirely funded by the tobacco industry. As well, **Coalition 51** – comprised of arts groups and sports organizations – was said to be funded by Rothmans, Benson and Hedges. Coalition 51 was formed in the '80s to combat moves by the **Mulroney** government to ban tobacco-product advertising and sponsorship.

While anti-smoking groups continue to push the government to provide alternative funding for the arts, a decision on whether or not the government will proceed with legislation is expected soon.

People on the Move

There has been a change in the guard at the **Canadian Bankers Association**, just in time for the renewing of lobby efforts in the review of the Bank Act and the Task Force on Financial Institutions. **Richard Remillard**, the former VP of Government Relations has left the association to "work for himself" says a spokesperson of the CBA. Attempts to contact Remillard led the LM to the **Institute on Governance**.

Taking over is **David McInnes**, who has been part of the GR team at the CBA's Ottawa office since 1991. He has also worked in the CBA's Toronto headquarters as a policy advisor in the Domestic Banking Division. Prior to joining the CBA, McInnes worked as a policy coordinator with the Bank of Nova Scotia.

On another note, the trend away from the public service continues as long time public servant **Murray Wilson** retires from the Government of Ontario's agency the **Cornell Development Group**. Wilson held the responsibility for the development of large plots of land and for housing more than 20,000 people. Prior to the Cornell Agency, Wilson was the executive director for Ontario's government sponsored housing programs in both the public and private sectors.

Other past experiences include a stint with the Ontario Lottery Corporation and the Ontario Water Resources Commission. He joins the consulting firm **Public Perspectives Inc.**, as a special advisor in the fields of development, housing, gaming and the environment. Wilson feels the shift is a natural extension of his public service career.

Finally, yet another senior bureaucrat has been lured to head up an association. The latest is **Richard Dicerni**, who served as a senior communications and policy executive in several key post in the federal government and seemingly finished his public service career as a deputy minister in the Ontario government.

Dicerni has left the post of DM, Education to accept the job as president of the new **Canadian Newspaper Association**. The search committee put a great deal of emphasis on the advocacy component of the new association. Outside of Dicerni's vast connections in government, his other qualification seems to be his pleasure in reading the members' products.


Organizational Registration Update

It's that time of year when organizational lobbyists are expected to renew their registrations with the Lobbyist Registration Branch. Although the intention of the renewal system was to have the information on the registrations updated and improved upon, the first crop of re-registrations demonstrates both how slowly issues move through the system and the very general nature of the registration information.

With the option to update their files, organizational lobbyists evidently have

opted for the tried and true route of resubmitting information that has already been accepted. It appears that one of the original concerns of the registration process — that everyone would know your business before you wanted them to — is surfacing again in this category. While there are obviously a number of campaigns that are long-term and could span more than six months, it seems unlikely that that is true for the bulk of the re-registrations at this time.

One aspect of the re-registration requirement that could be classified as a trouble spot is how the de-registration process works. Since the senior officer of a company is responsible for the registration he or she must deregister and then reregister to comply with the law. The same criteria does not appear to apply to other employees who participate in the lobby process. These lobbyists do not seem to be de-registering on the expired registration, but are listed on the new registration.



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