



Organisation for Economic Co-operation and Development

Office of the Commissioner of Lobbying of Canada

Elements of Canadian Lobbying Legislation

Canada has over two decades of experience in administering legislation on lobbying. During this time, growing expectations for government transparency and integrity have resulted in lobbying remaining in the spotlight and on the political agenda. The *Lobbyists Registration Act* was Canada's initial federal legislation regarding the registration of lobbyists. It came into force in 1989. Since then, the legislation has been amended on a number of occasions. Most recently, the legislation was amended and renamed the *Lobbying Act* in 2008.

The *Lobbying Act* created the position of the Commissioner of Lobbying, who is an agent of the Parliament of Canada. The Commissioner is responsible for maintaining the Registry of Lobbyists and for the administration of the *Lobbying Act* and the *Lobbyists' Code of Conduct*, which governs the behaviour of lobbyists.

The 2012 OECD paper entitled "Transparency and Integrity in Lobbying" indicates that strong and effective lobbying regulation will depend on five particular elements. This paper will demonstrate how the Canadian lobbying regime addresses those five elements.

1. *The definition of lobbyists and lobbying activities targeted by regulation are clear and unambiguous.*

Canada's lobbying legislation has never included a definition of "lobbyist". Rather, the law has always focussed upon the types of activities that must be registered. In 2005, the definition of the activities that constitute registrable lobbying activity was amended to clarify that all communications with public office holders regarding certain subjects were to be considered registrable lobbying activities. The previous requirement, that communications must be made in "an attempt to influence" public office holders in order to constitute registrable lobbying activity, was eliminated.

The registration requirements in the *Lobbying Act* contain clear statements regarding when persons who communicate with federal public office holders must register their lobbying activities. The Act requires that individuals must be communicating with public office holders, for payment, regarding the subjects described in the Act. Communications regarding the development of legislative proposals, the making or amendment of laws and regulations, the development or amendment of policies or programs of the government and the awarding of grants, contributions or other financial benefits are all subjects that require registration as a lobbyist. For individuals who are not employed as employees of corporations or organisations, communicating regarding government



contracts and arranging meetings with public office holders are also registrable lobbying activities.

2. *Disclosure requirements provide pertinent information on key aspects of lobbyists and lobbying such as its objective, beneficiaries, funding sources and targets.*

Initially, Canada's lobbying legislation required minimal disclosure of lobbyists, effectively asking for little more than the information set out on a typical business card. The disclosure requirements contained in the *Lobbying Act* are extensive, covering such matters as the identity of clients, the identity of subsidiary corporations that benefit from the lobbying activity and government funding received by the corporation or organisation represented. In addition, particulars of the lobbying activity, such as a description of the specific legislation, policy, or program that is the subject of the lobbying activity, must be described.

In 2008, changes to the legislation provided for the reporting, on a monthly basis, of certain "oral and arranged communications" with a new category of public office holders called designated public office holders. This new requirement provides for increased transparency, as the Registry of Lobbyists reveals the identity of the designated public office holders that were lobbied regarding particular subjects.

3. *Rules and guidelines set standards for expected behaviour, for example to avoid misuse of confidential information, conflict of interest and prevent revolving door practices.*

The *Lobbyists' Code of Conduct* has been in place since 1997. It governs the behaviour of lobbyists by providing a framework of principles for professional behaviour and a set of eight rules. It establishes guidelines for the behaviour of lobbyists vis-à-vis their clients and with respect to their interaction and communications with public office holders. The Commissioner reports on breaches of the Code directly to Parliament, and has done so 10 times since 2010. The Commissioner's reports, which are made public, have discussed cases of non-compliance with registration requirements and the failure to disclose accurate information. In addition, the Commissioner reported on two allegations of improper influence by lobbyists on public office holders. The reports serve as an educational tool for lobbyists and as an incentive to lobbyists to comply with the *Lobbyists' Code of Conduct*.

The Commissioner has provided guidance to lobbyists regarding improper influence on public office holders, based upon a decision of the Federal Court of Appeal in 2009 that considered the issue.¹

In addition, the changes to the *Lobbying Act* enacted in 2008 introduced a five-year post-employment prohibition on lobbying activities by former designated public office holders.

¹ *Democracy Watch v. Barry Campbell and Attorney General of Canada (Registrar of Lobbyists)*, [2009]FCA 79



This prohibition was enacted specifically to curtail revolving door practices. This post-employment lobbying prohibition is very lengthy by international standards.

4. Procedures for securing compliance are framed in a coherent spectrum of strategies and mechanisms, including monitoring and enforcement.

The Commissioner utilizes a continuum of monitoring and enforcement mechanisms in administering the *Lobbying Act*. The *Lobbying Act* sets out offences that must be prosecuted in a court of law. When the Commissioner finds such circumstances, she refers appropriate matters to the police for investigation and possible prosecution. For less serious alleged breaches of the *Lobbying Act*, such as late filing, alternative means are used to ensure compliance.

The Commissioner investigates alleged breaches of the *Lobbyists' Code of Conduct* and when she finds that a lobbyist has breached the Code, she tables a Report on Investigation in Parliament in order to publicize her findings and conclusions.

In addition, administrative procedures have been developed by the Office of the Commissioner of Lobbying to monitor compliance by lobbyists with the registration and reporting requirements in the *Lobbying Act*. The Office of the Commissioner of Lobbying is developing a more strategic approach to compliance verification using the information in the Registry of Lobbyists.

5. The organisational leadership promotes a culture of integrity and transparency in daily practice through regular disclosure and auditing to ensure compliance.

The *Lobbying Act* provides the Commissioner with an explicit education mandate to foster public awareness regarding the requirements of the Act. The Office of the Commissioner of Lobbying has an extensive educational program that targets public office holders, lobbyists and their advisors, academia and other interested parties. The Office of the Commissioner of Lobbying has continuously improved the Registry of Lobbyists, both in terms of lobbyists' experience inputting the required information, and the public's access to this information. This helps to ensure that electronic registration and report-filing systems facilitate compliance with the Act's registration requirements.

Conclusion

While Canada has a robust system for lobbying registration and regulation, it is important to continually review the regime, to make certain that it is meeting the objective of ensuring the transparency of federal lobbying activities in Canada.

The *Lobbying Act* includes a provision requiring a statutory legislative review by a Parliamentary committee every five years. In the Fall of 2013, the Commissioner of Lobbying will be launching a review of the *Lobbyists' Code of Conduct* to ensure that it continues to reflect the high ethical standards Canadians expect of lobbyists.