Code of Conduct Consultation, November 2014

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The proposed revisions of the Code render it more precise and address some of the questions lobbyists have raised concerning the interpretation of the current Code. The following presents a few comments on the proposed changes.

The introduction:

The language is tightened and more complete information is provided about the role and powers of the Commissioner and the investigatory and decision-making procedures that are followed. The consequences of failing to comply with the Act and the Code are presented, and should give pause to some aspirant lobbyists with reckless inclinations. (Of course, if the Commissioner were given the authority to impose administrative penalties, the warning implicit in this introduction would be considerably more compelling.)

One nit-picking observation: In the final paragraph it is asserted that the Commission may enforce the Code 'if there is an alleged breach'. A breach may be alleged, but surely the authority is only exercised if the allegation is proven. Suggest changing the sentence to read: '…. to enforce the Code if it is proven that a breach of either a principle or rule of the Code has occurred.'

Principles:

Integrity

Glad to see that the revisions drop the references to relations between lobbyists and their clients. The new version is a more realistic, and therefore more credible, statement of the state's expectations of lobbyists and of the regulator's ability to enforce those expectations.

While desirable, the decision to drop coverage of lobbyist-client relations, does draw attention to the difficulty lobbyists' professional organizations face when they themselves attempt to regulate those relations. Those organizations lack the educational and gatekeeper capacities that enable other professional bodies, such as professional associations in law, engineering, forestry and accounting, to name a few, to regulate those who claim to be competent in their fields. It is not the responsibility of government to impose similar regimes on the lobbying community, but it is in the public interest that government encourage professional organization. In my December 2013 response to the first round of consultation on the Code I made some suggestions in this regard. I am including a slightly updated

version of them here in an Appendix in the hope of fostering discussion on the prospects of government encouragement for strengthening professional associations in the community.

Dropping the reference in the 1997 Code to relations with the public may be a mistake. The *Lobbying Act* does require registration of grass-roots lobbying and therefore contemplates regulating the relationship between lobbyists and the general public. Advertising and support for grass-roots organizations can be a way of indirectly influencing public office holders. For example, Professor Yates in her appearance before the House of Commons Committee on Access to Information, Privacy and Lobbying, in 2012, drew attention to the creation of 'astro-turf' organizations. The Code could justifiably insist that lobbyists conduct themselves with integrity in their relations with the public as well as with public office holders.

Professionalism

Do 'the highest professional and ethical standards' include respecting the responsibility of public office holders to adhere to the codes applicable to their own roles?

Respect for democratic institutions

This is a valuable addition. A pity, though, that the directive is expressed negatively. Why not enjoin lobbyists to 'act in a manner that sustains and enhances public confidence and trust in government'?

Rules

Rule 2: Accurate information

The earlier version seems to me to be preferable. It explicitly warns against presenting misleading information; its reference to 'anyone' implies a duty to avoid misleading members of the public (as well as public office holders), and the phrase 'shall use proper care' stresses the responsibility to exercise diligence in researching and presenting information.

Rule 3: Disclosure of obligations

One can never be sure how seriously lobbyists will take the requirement to 'inform' clients of their obligations. It would strengthen the effect of the rule if lobbyists were required to provide clients with a short pamphlet informing clients/employers about the *Lobbying Act* and the obligations of the various parties engaged in the lobbying process. A parallel web-page would be desirable.

The reference to clients seems to preclude educating corporate and organizational employers (and co-workers) of lobbyists' obligations (and their own).

Rules 7 and 8: Preferential access

These address the complaints of lobbyists concerning the old Rule 8. I found the language opaque but can't think of a better way to express each point while still adhering to the intent of the Federal Court judgment. Doubtless there will be many enquiries about the meaning of the word 'friend'.

Rule 9 Political activities

Also useful addition. Makes the general point, but Commissioner Shepherd's comments, to the Commons Committee, on 'low risk' and 'high risk' political activities were clearer.

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Appendix 1: A role for professional organizations in a possible lobbyist certification process. (Extract from consultation submission of December 2013)

The Lobbyists Code of Conduct is attached to the *Lobbying Act* because no effective method has been found to impose a similar discipline on lobbyists through a professional body. In Canada, and elsewhere, professional groups have been formed with a view to instilling an appropriate professional and democratic culture in the lobbyists' community. Their effectiveness has been limited by the fact that the private sector has no way of denying unscrupulous lobbyists access to lobbying work.

Up to a point regulators in government can do that, but beyond that point there are aspects of lobbyists' business practices where government regulation is inappropriate. This regulatory vacuum could be addressed by strengthening the role of professional bodies, primarily by providing these bodies with a role in the administration of the Code. I suggest a two-step process: (1) make it mandatory for lobbyists to complete periodic ethics education programmes before they carry out lobbying activities, and (2) give recognized professional bodies a role, under the authority of the Act and the Commissioner, in providing the programmes and certifying that lobbyists have completed them.

This approach is similar to the one used in California. There the California Government Code, Sections 8956 and 86103, requires that 'every individual who registers as a lobbyist .... must periodically attend a lobbyist ethics orientation course.' When the lobbyist registers he or she must file a certification statement indicating whether or not the course has been taken within the previous 12 months. If it has not been taken, the lobbyist's certification is 'conditional' subject to completing the course and filing an amended statement. Lobbyists who do not complete the course are prohibited from lobbying and could be subject to 'criminal penalties and substantial fines.' (California Fair Political Practices Commission. 'Lobbyists Ethics Course'. Www.fppc.ca.gov/print.php?id=28 . Accessed 22 Nov. 20013.)

My suggestion differs from the California system in the delivery of the course and the certification process. In California the 'Lobbyists Ethics Course' is delivered by the Assembly Legislative Ethics Committee and the Senate Committee on Legislative Ethics. The state's Fair Political Practices Commission, an independent body charged with oversight of electoral matters as well as lobbying, receives and checks certification statements and determines

whether a lobbyist is eligible to practice.

In the Canadian context a consortium of professional organizations, under the authority of the Commissioner, could offer a course that would deal with both the Lobbyists Code of Conduct and the professional codes of the organizations involved. The consortium, again under the authority of the Commissioner, would be charged with certifying that the course had been successfully completed. This status would be verified by the OCL in the registration process and registration would be denied to any lobbyist who had failed to successfully complete the course.

The effect of this approach would be to give professional bodies the gatekeeper role that would enable them to discipline their members. Since the courses would deal in large part with the *Lobbying Act* and the Lobbyists Code, it would be important that the Commissioner have a decisive role in determining the eligibility of the professional bodies to participate in the design and delivery of the courses and to certify successful completion. At the same time, the process would give professional organizations a means of instilling ethical standards of business practice. It would vastly reduce - perhaps even eliminate - the ability of would-be lobbyists to engage in lobbying activity on an opportunistic basis. Ultimately it could strengthen the ethical standards observed in Canadian lobbying and thereby enrich and strengthen our democratic processes.

To sum up: I am suggesting (1) that the *Lobbying Act* be amended to require that acceptance of a lobbyist's registration should be contingent on the successful completion of a course in lobbying ethics, (2) that the design and delivery of the course and certification of successful completion be carried out by a consortium of professional bodies under the authority of the Commissioner of Lobbying.