

December 16, 2014

Submission of the:

**Canadian Society of Association Executives (CSAE)**

To:

Karen E. Shepherd  
Commissioner of Lobbying;  
Office of the Commissioner of Lobbying of Canada

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## **Revised Lobbyists' Code of Conduct**

*To ensure the Canadian public that lobbying is done ethically and in accordance with the highest standards. It is intended to enhance public confidence and trust in the integrity, objectivity and impartiality of government decision-making.*

**Friday, December 19, 2014**

### **Preface**

The Canadian Society of Association Executives (CSAE), established in 1951 as a knowledge-based, professional organization to promote excellence in not-for-profit management, remains committed to reinforcing the many valuable contributions Canada's not-for-profit organizations provide to the country by supporting and strengthening the professionalism of the individuals who lead them.

### **Foreword**

CSAE is the professional organization of the 2,400 men and women who manage many of this country's most progressive trade, professional, occupational, philanthropic and special interest organizations. An additional 600 Business Members – individuals representing organizations that offer services and products to the sector – are also an integral component of CSAE's membership.

CSAE welcomes this opportunity to comment on the Revised Lobbyists' Code of Conduct. The administration of the Code may contain implications for the individuals who comprise our organization and we are pleased to make this submission on their behalf.

### **Introduction**

The Canadian Society of Association Executives frequently undertakes lobbying

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initiatives on behalf of the sector in the belief that such efforts are legitimate and ultimately result in better-informed public policy decisions. Large segments of the public hold lobbying activities in low regard, however, and CSAE and its member organizations support Government initiatives that will strengthen the rules and institutions to ensure increased transparency and accountability to all Canadians.

We are pleased to support the Commissioner's proposed revisions to the Code of Conduct and respectfully offer the following comments for additional consideration.

**Scope:**

The scope of the Code should be similar to that of the Act. Interactions between lobbyists and their clients are business relationships that fall outside of the scope of the Act.

**Comment:**

**The Lobbying Act is designed to provide transparency between lobbyists and federal public office holders rather than between lobbyists and their clients, so the desire to achieve symmetry between the revised Code of Conduct and the Act is understandable.**

**Nevertheless, the removal of rules relating to the lobbyist/client relationship in the revised Code introduces an element of reputational risk to clients, organizations or associations that did not previously exist in the Code. We realize that contractual clauses could circumvent such issues but suggest, instead, that consideration be given to retaining the requirement that lobbyists must disclose existing and potential conflicts of interest to their clients.**

**Proposed Amendment on Rule 8 on Improper Influence:**

Proposed Rules 6 to 10 are designed to replace current Rule 8. Proposed Rule 6 adds the phrase "real or apparent" to the general conflict of interest rule, reflecting the Court of Appeal's decision that such conflicts exist when a lobbyist's actions create a tension between the private interests and the public duties of a public office holder.

**Comment:**

**A conflict of interest either exists or it does not. A "real" conflict occurs 'when' a lobbyist's actions actually compromise private interests and public duties. An "apparent" conflict, however, seems vague. Is it a matter of "optics" or is it a situation that may possibly become a conflict of interest? This lack of clarity may prove difficult to resolve should circumstances occur and come under review in the future.**

**Proposed Rules 7 and 9:**

Lobbyists shall not arrange a meeting for another person with a public office holder who is a relative or friend of the lobbyist or has financial or business dealings with the lobbyist. Further, lobbyists shall not lobby other public office holders who work within that public office holder's area of responsibility.

**Comment:**

**Establishing who is a relative or who has a business relationship with a public office holder is a straightforward matter to identify and resolve. Establishing who is a “friend”, however, may prove more problematic. The term “friend” may require definition or further clarification. We can all envisage circumstances where public office holders may find themselves reduced from friends to acquaintances, or where consultants are transformed from acquaintances to friends in the eyes of a client.**

**The term “area of responsibility” also appears to lack definition and clarity. What constitutes an area of responsibility? How can lobbyists know whether or not they are lobbying a public office holder who works within the “area of responsibility” of a friend of the lobbyist? This seems to imply that lobbyists must know beforehand (or gather from each friend who is a public office holder) a clear definition of who works within his or her area of responsibility.**

**Proposed Rule 9:**

A lobbyist shall not lobby a public office holder if political activities undertaken by the lobbyist prior to or at the same time as the lobbying activities create a sense of obligation that might bring into question the public office holder’s primary duty to uphold the public interest.

**Comment:**

**We agree with the suggestion that a five-year “cooling off” period -- similar to that applied to former designated public office holders under the Lobbying Act -- may be an appropriate measure to mitigate this effect.**

**We are uncertain as to how Rules 7 to 9 will apply to in-house lobbyists. Or, do they apply at all? An in-house person who communicates with a federal public office holder may not meet the “significant part of the duties” (i.e. 20 per cent) test, for example, so talking to an individual in the department of a friend would not seem to matter. And yet, if others in the corporation or association later engage in more lobbying activity, aren’t the actions of the first person (which were acceptable at the time) then an unacceptable breach of the Code?**

**Gifts:**

**Comment:**

**We concur that lobbyists shall not provide or promise a gift, hospitality or other benefit that a public office holder is not allowed to accept.**

**Clarifying the Role of the Responsible Officer:**

The responsible officer of an organization shall inform employees who lobby on the organization’s behalf of the responsible officer’s obligations under the Lobbying Act and the obligations of the employees under the Lobbyists’ Code of Conduct.

**Comment:**

**This should pose few problems, although the easier solution would be to ultimately amend the Act to ensure that all employees who lobby on an organization's behalf – regardless of their time commitment – register under the Lobbying Act. Registration is simple, fast and free.**

We commend the Commissioner for her efforts to revise, simplify and clarify the Lobbyists' Code of Conduct and appreciate this opportunity to provide our comments.

Please contact Michael Anderson, CAE, President & CEO, at 416-363-3555 ext. 234, or [manderson@csae.com](mailto:manderson@csae.com) should you have any questions or comments regarding this submission.