Office of the Commissioner of Lobbying of Canada
Commissariat au lobbying du Canada

Improving the *Lobbying Act*

Preliminary recommendations

FEBRUARY 2021

PROVIDED IN RESPONSE TO A REQUEST FROM THE HOUSE OF COMMONS STANDING COMMITTEE ON ACCESS TO INFORMATION, PRIVACY AND ETHICS

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Aussi offert en français sous le titre :
Améliorer la Loi sur le lobbying : recommandations préliminaires

List of preliminary recommendations

Introduction

The *Lobbying Act* came into force in 2008 when the *Lobbyists Registration Act* (1989) was updated and renamed. The *Lobbying Act* established the position of Commissioner of Lobbying who reports directly to Parliament. The legislative amendments also resulted in the creation of the Office of the Commissioner of Lobbying to support the work of the Commissioner.

The *Lobbying Act* requires a comprehensive review of the legislation every five years by a committee of the Senate, of the House of Commons, or of both Houses of Parliament. The last review was completed by the House of Commons Standing Committee on Access to Information, Privacy and Ethics in 2012. That review gave rise to eleven recommendations from the Committee, although no legislative changes resulted.

The *Lobbyists' Code of Conduct*, created pursuant to legislation, was implemented in 1997 and updated in 2015.

The lobbying regime is intended to foster transparency of lobbying activities and ethical conduct of lobbyists. The *Lobbying Act* recognizes that open and free access to government decision-makers is a matter of public interest and that lobbying is a legitimate activity.

The mandate of the Commissioner of Lobbying includes maintaining a searchable registry of information reported by lobbyists, providing education to stakeholders about the requirements of the federal lobbying regime, and ensuring that lobbyists comply with these requirements. This mandate is a key pillar in fostering public trust in government decision-making.

This submission contains the Commissioner of Lobbying's preliminary recommendations to improve the *Lobbying Act* and the *Lobbyists Registration Regulations*, provided in response to a November 2020 request from the House of Commons Standing Committee on Access to Information, Privacy and Ethics.

The preliminary recommendations in this submission are based on the experience of the Office of the Commissioner of Lobbying in administering the federal lobbying regime and the 2012 statutory review of the *Lobbying Act*. They are also based on a review of Canadian provincial and territorial regimes, as well as the cities of Ottawa and Toronto which are part of the network of federal and provincial lobbying regulators.

The preliminary recommendations touch upon all aspects of the lobbying regime - the *Lobbying Ac*t, the *Lobbyists Registration Regulations*, and the *Lobbyists' Code of Conduct*.

A note about key values

The preliminary recommendations were developed to enhance the values of transparency, fairness, clarity, and efficiency. These values are essential to registration, compliance, and the effective administration of the federal lobbying regime.

T Transparency

Information about lobbying activities is reported and available to the public

F Fairness

Requirements and processes are applied equally and equitably

C Clarity

Requirements and processes are simple and easy to understand and apply

E Efficiency

Requirements and processes do not require more time or resources than necessary

Recommendation 1

Amend the in-house lobbyist registration threshold

Amend the *Lobbying Act* to remove the "significant part of duties" registration threshold for in-house lobbyists and replace it with an obligation to register lobbying activities by default unless a limited exemption based on objective criteria applies.

Improves: Registration

T Transparency

Enhances the transparency of the lobbying activities carried out by the employees of corporations and organizations.

F Fairness

Lessens the administrative burden on corporations and organizations to ascertain if they have met the "significant part of duties" threshold.

Although more corporations and organizations would have to register, the proposed exemption would mitigate the administrative burden by exempting small corporations and organizations that do not engage in extensive lobbying.

C Clarity

Enhances the clarity of the *Lobbying Act* because a regime based on registration by default is simple, and easier to understand and apply than one based on a "significant part of duties" registration threshold.

E Efficiency

Reduces the amount of resources and time corporations and organizations are required to spend to determine if they are required to register, as well as the amount of time and resources the Office of the Commissioner of Lobbying must expend to ensure there is compliance.

ISSUE

The existing "significant part of duties" threshold for corporations and organizations to register the in-house lobbying activities of their employees is difficult to apply and difficult to enforce. As a result, this threshold fails to ensure the transparency of all lobbying activities.

TARGETED SECTIONS OF THE ACT

Amend the *Lobbying Act* to remove the "significant part of duties" threshold set out in paragraph 7(1)(b) and replace it with a requirement that all organizations and corporations whose employees engage in lobbying activities must register by default unless they qualify for a limited exemption.

CURRENT SITUATION

Corporations and organizations are required to register the lobbying activities of their employees when both of the following conditions are met:

1) the corporation or organization employs one or more individuals whose duties include communicating with public office holders in respect of:

    - the development of legislative proposals at the federal level;
    - the introduction of bills or resolutions in Parliament;
    - the amendment of regulations;
    - the development or amendment of any policies or programs of the federal government; or
    - the awarding of any federal grants, contributions or financial benefits; and

2) engaging in such communications with public office holders constitutes a significant part of the duties of one employee or would constitute a significant part of the duties of one employee if they were performed by only one employee [emphasis added].

Neither the *Lobbying Act* nor its regulations define what constitutes "significant part of duties".

The Office of the Commissioner of Lobbying has issued guidance to those responsible for filing returns on behalf of in-house lobbyists. In this guidance, the Office sets out a quantitative threshold for registering, explaining that "the threshold after which lobbying represents a significant part of one's duties has been established at 20% or more of overall duties." This is commonly known as "The 20% rule". The 20 percent threshold dates back to the late 1990s from guidance developed by the predecessor of the Registrar of Lobbyists, the Ethics Counsellor. The Ethics Counsellor based this number on a formulation used in the United States under its *Lobbying Disclosure Act*.

In order to determine whether the "significant part of duties" threshold has been met, the responsible officer on behalf of a corporation or organization must first account for all of the lobbying-related activities undertaken by each employee of the corporation or organization. The guidance interprets lobbying-related activities to include not only the time spent actually communicating with public office holders, but also the time spent preparing to communicate with public office holders, including all associated research, drafting, planning and travelling. The amount of time spent on lobbying activities is calculated on a monthly basis.

Once this accounting is complete, the responsible officer must determine whether the time spent engaging in these lobbying-related activities collectively and cumulatively amounts to 20 percent or more of the duties of a single full-time employee. When these activities reach the 20 percent threshold,

the responsible officer is required to file an in-house registration return within two months in the federal Registry of Lobbyists.

The "significant part of duties" threshold is elaborate and overly burdensome. It can be difficult to track, monitor and account for all of the time spent by employees in order to calculate whether the combined activities of employees require registration. This challenge also applies when the Office of the Commissioner of Lobbying is required to verify the compliance of corporations and organizations with the requirements of the *Lobbying Act*. Furthermore, 20 percent of one employee's time over a four week period translates to a registration threshold of 32 hours, based on a 40 hour work week. This means that a significant amount of lobbying can occur during a given four week period and, yet, not need to be reported in the Registry of Lobbyists. This leads to less transparency.

CONSIDERATIONS

Requiring registration by default

Requiring registration by default would eliminate the need for corporations and organizations to apply a complex registration threshold analysis, including all of the associated tracking, monitoring and accounting of time spent on lobbying-related activities, in order to determine whether they are required to file a return in the Registry of Lobbyists.

This change could, however, increase the administrative burden of complying with the *Lobbying Act* for smaller corporations and organizations that engage in limited amounts of lobbying or that lobby on an infrequent basis. This would be contrary to one of the principles set out in the preamble to the *Lobbying Act*, which requires that the "system for the registration of paid lobbyists should not impede free and open access to government." This administrative burden could be seen to outweigh the associated increase in transparency for these smaller corporations and organizations. For this reason, a limited exception based on objective criteria could be adopted to balance the competing goals of maximizing transparency and mitigating the associated administrative burden of compliance.

In-house lobbyist registration thresholds in other Canadian jurisdictions

Lobbying legislation in some provinces includes a "significant part of duties" threshold for in-house lobbying. Other jurisdictions have adopted a threshold based on the number of hours that employees spend on lobbying activities (see table "In-house lobbyist registration thresholds in various Canadian jurisdictions").

In-house lobbyist registration thresholds in various Canadian jurisdictions

Jurisdiction	Threshold	Timeframe	See note
Federal (Canada)	Significant part of duties: (20%)	(1 month)	A
British Columbia	50 hours	1 year	B
Alberta	50 hours	1 year	A
Saskatchewan	30 hours	1 year	B
Manitoba	Significant part of duties: (100 hours)	1 year	B
Ontario	50 hours	1 year	
Québec	Significant part of duties: (12 days)	(1 fiscal year)	A and C
New Brunswick	Significant part of duties: (20%)	(3 months)	
Prince Edward Island	50 hours	3 months	
Nova Scotia	Significant part of duties: (20%)	(3 months)	
Newfoundland and Labrador	20% of duties	3 months	
Yukon	20 hours	1 year	
City of Ottawa			D
City of Toronto			D

All thresholds listed above take into account the collective and cumulative amount of time employees spend lobbying on behalf of their employer within the noted timeframe. Thresholds and timeframes indicated inside parentheses are criteria set by regulation or guidance, as applicable.

Notes for this table:

A Guidance documents in these jurisdictions, rather than legislation, direct that preparation time should be included when calculating registration threshold.

B The regulations in these jurisdictions include preparation time when calculating if the threshold has been met.

C The threshold in Quebec is enacted as a "significant part of duties", which has been interpreted as "quantitative significance" (a number of hours rather than a percentage of duties) as well as "qualitative significance" (any and all lobbying activity by an executive or member of board of directors of a corporation or organization requires registration, regardless of the amount of time spent lobbying).

D In these municipalities there is no registration threshold and all lobbyists must register regardless of the amount of time spent lobbying.

Until recently, the regime in British Columbia included a registration threshold of 100 hours about which the Registrar of Lobbyists had also raised issues related to enforcement. Last year, as part of a larger package of amendments to enhance transparency of lobbying practices in that province, British Columbia's government amended its lobbying rules with respect to the registration threshold for in-house lobbying. The new rule is that organizations (which includes corporations) must register their in-house lobbying by default unless they have fewer than six employees and their combined lobbying is

less than 50 hours in a 12 month period. This exception does not apply if an organization's primary purpose is to represent the interests of its members or to promote or oppose issues, in which case it must register, regardless of hours spent lobbying. This approach is new in Canada and came into force in May 2020.

At the municipal level, Ottawa and Toronto do away entirely with a numeric threshold for registration by requiring all in-house and consultant lobbyists to register, regardless of the amount of time spent lobbying.

RECOMMENDATION

The current registration threshold based on "significant part of duties" should be removed. All corporations and organizations whose employees lobby federal public office holders should be required to register their lobbying activities by default unless they qualify for a limited exemption based on objective criteria.

This change would enhance transparency by having a greater proportion of paid lobbying activities reported in the Registry of Lobbyists. It would also reduce complexity for corporations and organizations in determining whether they are required to register.

A limited exception based on objective criteria is the most appropriate approach to adopt in balancing the competing objectives of maximizing transparency and mitigating the associated administrative burden of compliance. In crafting the proposed exemption, the Commissioner of Lobbying has identified objective criteria that could be used to identify the types of corporations and organizations that could be appropriately exempted from the reporting requirements under the *Lobbying Act*. These criteria include the number of employees, the number of hours over a short period of time spent on lobbying activities and whether a primary purpose of the corporation or organization is to represent membership interests or to promote or oppose issues. Each of these criteria is relevant to determining whether a corporation or an organization should be properly exempted from having to register its lobbying activities. An appropriate exemption should combine each of these criteria.

In order for the objective criteria to enhance transparency and balance the administrative burden, the number of employees should be low, the number of hours spent on lobbying should represent one day of work in a given three month period, and the corporation or organization should not have as one of its primary purposes to represent the interests of its membership or to promote or oppose issues.

The Commissioner of Lobbying therefore recommends that the "significant part of duties" threshold set out in paragraph 7(1)(b) of the *Lobbying Act* be removed and replaced with a requirement that every corporation and organization employing in-house lobbyists must register by default unless **all** of the following objective criteria are met:

- it employs fewer than six (6) employees and is not a subsidiary of, or otherwise controlled by, any other corporation or organization which collectively employs six (6) or more employees; and
- its employees collectively and cumulatively spend less than eight (8) hours in the preceding three-month period on lobbying-related activities, inclusive of time spent preparing to communicate with federal public office holders; and
- one of its primary purposes is not to represent the interests of its membership or to promote or oppose issues.

The criteria governing the application of this limited exemption are cumulative, which means that if a corporation or organization does not meet one or more of these three criteria, then it would not qualify for the exemption and, instead, continue to be required to register its in-house lobbying activities.

Recommendation 2

Harmonize registration time limits

Amend the *Lobbying Act* to harmonize the registration deadline for consultant and in-house lobbyists to 15 days.

Improves: Registration

T Transparency
Enhances the transparency of lobbying by in-house lobbyists by ensuring registration occurs within 15 days, rather than two months.

F Fairness
Imposes the same registration deadlines on consultant and in-house lobbyists.

ISSUE

The *Lobbying Act* imposes different registration timeframes for consultant as compared to in-house lobbyists. As a result of these differences, in-house lobbyist registrations are filed in a less timely fashion than those filed by consultant lobbyists, which delays transparency.

TARGETED SECTIONS OF THE ACT

Amend subsection 5(1.1) of the *Lobbying Act* to increase the time a consultant lobbyist has to register from 10 to 15 days.

Amend subsection 7(2) of the *Lobbying Act* to decrease the time the responsible officer of a corporation or organization has to file an in-house lobbyist registration from two months to 15 days.

CURRENT SITUATION

The *Lobbying Act* requires that a consultant lobbyist register no later than 10 days after entering into an undertaking to lobby on behalf of a client. In comparison, a responsible officer has two months in which to file in-house lobbyist registration returns once lobbying reaches the "significant part of the duties" threshold. This longer deadline delays the disclosure of in-house lobbying activities and thereby also delays transparency.

CONSIDERATIONS

The initial rationale for these differences in registration timeframes reflected different expectations for "professional" lobbyists (i.e. consultant lobbyists), as compared to those who lobby as a part of their duties of employment. In practice, however, although in-house lobbyists are not responsible for their own registrations, they account for more than 5,000 of the over 6,300 lobbyists currently registered.

Although consultant lobbyists for the most part meet the registration deadline, statistics compiled by the Office of the Commissioner of Lobbying show that they have a slightly more difficult time meeting their registration deadline than responsible officers for in-house lobbyists. In 2019-20, 3.5 percent of new registrations filed by consultant lobbyists were submitted late. In comparison, 2.8 percent of new registrations by responsible officers for in-house lobbyists were submitted late. In 2018-19, 4.7 percent of new registrations by consultant lobbyists and 2.5 percent of new registrations by responsible officers were submitted late.

The following table sets out the registration deadlines applicable in other jurisdictions. Of note, the lobbying legislation of British Columbia as recently amended, the legislation in Newfoundland and Labrador, as well as the municipal lobbying regimes in Toronto and Ottawa, all require both consultant and in-house lobbyists to register within the same amount of time (see table "Registration deadlines in provinces and certain municipalities").

Registration deadlines in provinces and certain municipalities

Jurisdiction	Consultant lobbyists	In-house lobbyists
Federal (Canada)	10 days	2 months
British Columbia	10 days	10 days
Alberta	10 days	2 months
Saskatchewan	10 days	60 days
Manitoba	10 days	2 months
Ontario	10 days	2 months
Québec	30 days	60 days
New Brunswick	15 days	2 months
Prince Edward Island	10 days	2 months
Nova Scotia	10 days	2 months
Newfoundland and Labrador	10 days	10 days
Yukon	15 days	60 days
City of Ottawa	15 business days	15 business days
City of Toronto	3 business days	3 business days

RECOMMENDATION

In order to harmonize the registration deadlines for consultant and in-house lobbyists, a 15 day time limit to register would be a reasonable compromise between the two existing registration deadlines (10 days and two months) that are currently employed in the *Lobbying Act*. This proposed amendment will enhance transparency by ensuring that all lobbying activities are registered in a timely fashion. It will also increase fairness by removing differences in the registration deadlines.

Recommendation 3

Make reporting requirements the same for all in-house lobbyist registrations

Amend the *Lobbying Act* to make all corporations and organizations subject to the same registration requirements.

Improves: Registration

T Transparency

Enhances transparency for both corporations and organizations by requiring them to disclose the same level of detail, including the names of all employees who lobby on their behalf.

F Fairness

Ensures that corporations and organizations are subject to the same disclosure requirements.

Ensures all lobbyists are subject to the *Lobbyists' Code of Conduct*, regardless of how much they lobby.

C Clarity

Clarifies the disclosure regime for corporations and organizations by standardizing reporting requirements across in-house lobbyist registrations.

E Efficiency

Simplifies registration for corporations by requiring all employees engaged in lobbying to be listed.

ISSUE

The *Lobbying Act* has different disclosure requirements for corporations and organizations whose employees engage in in-house lobbying activities.

These differences result in an uneven application of the *Lobbying Act* for corporations as compared to organizations and create a gap whereby some in-house lobbyists employed by corporations are not subject to the *Lobbyists' Code of Conduct*.

Note: Although the term "corporation" is not defined in the Act, the term "organization" is defined as including: (a) a business, trade, industry, professional or voluntary organization, (b) a trade union or labour organization, (c) a chamber of commerce or board of trade, (d) a partnership, trust, association, charitable society, coalition or interest group, (e) a government, other than the Government of Canada, and (f) a corporation without share capital incorporated to pursue, without financial gain to its members, objects of a national, provincial, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional or sporting character or other similar objects. Thus, a not-for-profit corporation meets the definition of an organization under the Act.

TARGETED SECTIONS OF THE ACT

Amend subsection 7(3) of the *Lobbying Act* to harmonize the disclosure requirements for the in-house lobbyist registrations of corporations and organizations.

CURRENT SITUATION

The *Lobbying Act* requires both corporations and organizations to disclose certain information when their employees engage in lobbying activities. However, the disclosure requirements for in-house lobbyists employed by corporations are not the same as those for in-house lobbyists employed by organizations.

These differences result in an uneven application of the *Lobbying Act* and different levels of transparency for corporations and organizations.

Disclosure requirements for naming in-house lobbyists

The *Lobbying Act* requires organizations to list, without exception, the name of each employee that engages in in-house lobbying activities on their behalf, regardless of the status of the employee or amount of such activities. Corporations, by contrast, are required to list the name of each senior officer – defined as a chief executive officer, chief operating officer or president of the corporation, or anyone reporting directly to one of these positions – that engages in any amount of lobbying activity, as well as the names of each employee whose lobbying activities constitute a "significant part of [their] duties". However, corporations are not required to list the names of any employees whose lobbying duties do not constitute a significant part of their duties.

A corporation must still account for lobbying done by all of its employees in assessing the broader "significant part of duties" registration threshold, regardless of whether or not it is ultimately required to name a particular employee in its registration.

Differences in disclosing the names of in-house lobbyists

Corporations	Organizations
Must list in their registration only senior officers who lobby and the employees for whom lobbying constitutes a "significant part of [their] duties". Those employees whose lobbying activities fall below this threshold do not need to be listed in the registration, even though their lobbying activities must be counted in determining whether the corporation meets the "significant part of duties" threshold.	Must list in their registration all employees who lobby, regardless of status or amount of lobbying.

One repercussion of this uneven application of the *Lobbying Act* between corporations and organizations is that the *Lobbyists' Code of Conduct* does not apply to those employees of corporations who spend less than 20 percent of their time engaged in lobbying activities. This is because paragraph 10.3(1)(b) of the *Lobbying Act* provides that the *Lobbyists' Code of Conduct* only applies to in-house lobbyists who are required to be named in a corporation's registration return. In contrast, organizations are required to list all employees who engage in lobbying activity in their registration returns and all such employees are therefore subject to the *Lobbyists' Code of Conduct*.

Disclosure requirements for holding/controlling interests, subsidiaries, and membership

The *Lobbying Act* requires a corporation to list every subsidiary of the corporation that has a direct interest in the outcome of its lobbying efforts in the corporation's registration. If the corporation is a subsidiary of another corporation, it must list its parent corporation in its registration.

Although the *Lobbying Act* requires that an organization includes a description of its membership, there is no express requirement in the *Lobbying Act* or the *Lobbyists Registration Regulations* for an organization to list each of its individual members. An organization is not required to disclose if it has subsidiaries or is a subsidiary of another corporation or organization.

Differences in disclosing controlling interests, subsidiaries, membership

Corporations	Organizations
Must list subsidiaries and parent corporations that have a direct interest in the outcome of the lobbying.	Must describe membership. However, there is no obligation to list information regarding holding and controlling relationships that may have an interest in the outcome of an organization's lobbying. A coalition is considered an organization under the *Lobbying Act*. Like other types of organizations, a coalition is not expressly required to list the corporations and organizations that comprise its membership. (Note: if a consultant lobbyist represents a coalition, they must list all members of the coalition.)

These disclosure requirements are designed to enhance transparency by identifying those individuals and entities that have an interest in the outcome of the lobbying being conducted. However, as presently drafted, the requirements are narrow as they do not require the disclosure of all entities that would have a direct interest in the outcome of the lobbying activities.

CONSIDERATIONS

Listing of in-house lobbyists

All ten Canadian provinces and Yukon require that in-house lobbyist registrations for both corporations and organizations list every employee who lobbies on their behalf.

The Lobbyists' Code of Conduct complements the registration requirements set out in the *Lobbying Act* and serves to reinforce transparent and ethical lobbying practices. As such, it should apply to all individuals who engage in in-house lobbying activities on behalf of their employer.

Disclosure of entities with a direct interest in the outcome of lobbying

In many provinces, a "direct interest test" has been adopted to identify entities that should be disclosed in a return (British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Prince Edward Island and Nova Scotia). This test requires the person filing the return to disclose those entities that, to the filer's knowledge, have a direct interest in the outcome of the lobbying activities. Although this disclosure requirement is, for the most part, applicable only to corporations, British Columbia and Saskatchewan also require organizations to use this test.

In addition, British Columbia, Alberta, Saskatchewan, Ontario, New Brunswick, Prince Edward Island, Nova Scotia and Newfoundland and Labrador all require corporations and organizations to disclose any entities that have contributed financially towards the outcome of their lobbying activities.

With respect to members of a coalition, organizations must disclose the name of each member of a coalition in British Columbia and Saskatchewan. In Alberta, Manitoba, Ontario, Nova Scotia, Prince Edward Island and Newfoundland and Labrador, organizations are only required to disclose a general description of the coalition's membership.

RECOMMENDATION

Corporations and organizations should list all employees who lobby on their behalf. This will simplify the disclosure requirements and improve transparency. By naming these employees in the corporation or organization's registration, this recommendation will also have the meaningful effect of ensuring that all of those who engage in lobbying are subject to the *Lobbyists' Code of Conduct*.

Corporations and organizations should be required to disclose all entities that have a direct interest in the outcome of their lobbying activities. This will improve transparency and ensure that both corporations and organizations are required to disclose the same level of detail.

Recommendation 4

Deem members of boards of directors to be employees of corporations and organizations

Amend the *Lobbying Act* to deem paid members of boards of directors to be employees of corporations and organizations for the purposes of the Act.

Improves: Registration

T Transparency
Creates a more accurate and unified picture of the in-house lobbying activities undertaken on behalf of a corporation or organization.

C Clarity
Simplifies the registration process by placing the administrative responsibility to register on the responsible officer of a corporation or organization, rather than on individual board members who may not be aware of their obligations to register.

E Efficiency
Ensures that all in-house lobbying activities associated with a given corporation or organization are reported together in the Registry of Lobbyists.

ISSUE

The *Lobbying Act* requires that the responsible officer who registers on behalf of a corporation or organization list the employees involved in in-house lobbying activities when those activities meet a certain threshold. Members of boards of directors who are not employees of the corporation or organization they serve and who engage in paid lobbying for that corporation or organization are required to register separately as consultant lobbyists. These separate registrations can hinder transparency by making it difficult to obtain a more comprehensive picture of the lobbying activities in which organizations or corporations engage.

TARGETED SECTIONS OF THE ACT AND REGULATIONS

Amend subsections 7(3) and 7(6) of the *Lobbying Act* to extend the requirements that apply to in-house lobbyists to members of boards of directors of corporations and organizations.

Amend subsections 5(a) and 5(b) of the *Lobbyists Registration Regulations* to remove references to members of boards of directors.

CURRENT SITUATION

A responsible officer registering on behalf of an organization is required to account for the lobbying activities of all employees in determining whether the organization meets the threshold for registration and to list in the Registry of Lobbyists all employees involved in in-house lobbying activities on behalf of the organization.

A responsible officer registering on behalf of a corporation is also required to account for the lobbying activities of all employees in determining whether the corporation meets the threshold for registration and is required to list in the Registry of Lobbyists certain employees involved in in-house lobbying activities on behalf of the corporation, namely any senior officer engaged in any amount of lobbying activity, as well any other employee whose lobbying activities constitute a "significant part of [their] duties".

When members of boards of directors are not employees of the corporations or organizations on whose boards they sit and engage in lobbying activities on behalf that corporation or organization, they do not qualify as in-house lobbyists for registration purposes. As such, the lobbying activities of these board members are not included as part of the in-house lobbyist registrations filed on behalf of corporations and organizations.

When members of boards of directors engage in lobbying on behalf of the corporation or organization on whose board they sit and receive payment beyond reimbursement of expenses, they are required to register as consultant lobbyists and to identify the organization or corporation as the client on whose behalf they are acting.

In practice, this means that paid lobbying activities conducted by non-employee board members on behalf of a corporation or an organization as well as lobbying activities on the same subject matter by employees of the corporation or organization are reported separately in the Registry of Lobbyists.

In 2019-20, there were 309 consultant lobbyist registrations from members of boards of directors. In the instances where multiple members of a board of directors are required to file separate and distinct registrations and monthly communication reports related to the same corporation or organization – and in situations where a responsible officer for the very same corporation or organization must also file an in-house lobbyist registration and monthly communication reports – it is difficult for members of the public to easily find and identify all registrations and monthly communication reports available in the Registry of Lobbyists related to the lobbying done on behalf of the corporation or organization. In order to determine the complete picture of the lobbying activities undertaken on behalf of the corporations and organizations, members of the public have to first search for the registrations and monthly communications reports filed by each individual member of the board of directors in their capacity as consultant lobbyists, and then conduct another search for any registrations and monthly communication reports filed by the responsible officer on behalf of the same corporation or organization.

The current situation is problematic as many non-employee members of boards of directors do not conceive of themselves as consultant lobbyists for the corporations and organizations on whose boards they sit even when they engage in paid lobbying activities that would otherwise require registration. Consequently, this introduces a risk that members of boards of directors will not report lobbying activities that require separate individual consultant lobbyist registrations.

CONSIDERATIONS

British Columbia, Alberta, Saskatchewan, and Manitoba, all include paid officers, directors and employees in their respective definitions of "in-house lobbyist". Therefore, in these jurisdictions, the senior officer responsible for registering on behalf of a corporation or organization also reports the lobbying activity undertaken by members of boards of directors.

Under Yukon's lobbying legislation, an in-house lobbyist includes a "directing mind", which is defined as "an individual who is a director, officer or partner, or otherwise controls the operations of, the corporation, partnership or organization, in whole or in part, directly or indirectly". The legislation also does not provide that such a person must be employed or paid by the corporation, partnership, or organization that they direct in this capacity. The person responsible for registering on behalf of a corporation or organization is therefore required to list members of its board of directors who lobby, including unpaid volunteer members, when submitting an in-house lobbyist registration.

RECOMMENDATION

In-house registration should include the paid lobbying activities undertaken by members of boards of directors. By deeming board members to be employees, the proposed amendment will consolidate all the in-house lobbying activities carried out on behalf of a corporation or an organization in a single in-house lobbyist registration filed by the responsible officer.

Recommendation 5

Expand reporting requirements for monthly communication reports

Amend the *Lobbyists Registration Regulations* so that monthly communication reports are required for all oral communications with designated public office holders and list all those who participated in the communication.

Improves: Registration

T Transparency
Enhances the transparency of the monthly communications report regime by providing a more comprehensive picture of communications activities.

F Fairness
Harmonizes reporting requirements for consultant and in-house lobbyist registrations by requiring that all individuals, including all lobbyists and/or clients, who participate in oral communications with designated public office holders, be identified.

C Clarity
Clarifies that all oral communication with designated public office holders should be reported equally, regardless of how or by whom the communication was arranged.

ISSUE

As prescribed by the *Lobbyists Registration Regulations*, monthly communication reports are required where an oral communication with a designated public office holder is "arranged in advance" and "initiated" by a lobbyist. Additionally, oral communications initiated by a public office holder must be reported when they concern the awarding of a grant, contribution or other financial benefit, or the lobbyist is a consultant and the communication is about the awarding of a contract.

The inclusion of these criteria significantly narrows the scope of the communications that lobbyists are required to report in the Registry of Lobbyists. All oral communications with designated public office holders should be reported in the Registry of Lobbyists, regardless of who initiated them and whether or not they were arranged in advance. The fact that all oral communications are not currently required to be reported limits the transparency of the federal lobbying regime.

Furthermore, monthly communication reports only list the names of the designated public office holders present during the oral communication. Monthly communication reports do not list the names of the lobbyists or the client who are present during an oral communication (i.e. a meeting, telephone call, videoconference or other verbal communication), anyone who accompanied them, or any other public office holders who participated in the communication. Again, the absence of this information further hinders the transparency of the federal lobbying regime.

TARGETED SECTIONS OF THE ACT AND REGULATIONS

Amend sections 6 and 9 of the *Lobbyists Registration Regulations* to remove the requirements that only communications that are "arranged in advance" and "initiated" by a lobbyist are required to be reported in the Registry of Lobbyists.

Amend sections 7 and 10 of the *Lobbyists Registration Regulations*, which set out the particulars of what must be reported with respect to an oral communication.

Amend paragraph 5(3)(a) of the *Lobbying Act* to include the reporting of communications with designated public office holders on registrable subject matters that take place as a result of a consultant lobbyist arranging that communication.

CURRENT SITUATION

"Arranged in advance" and "initiated by a person other than a public office holder"

All registered consultant lobbyists and responsible officers for corporations and organizations are currently required to report oral communications (interpreted to include in-person meetings, telephone calls, videoconferencing, or any other direct verbal communication) with designated public office holders when the communication is arranged in advance and initiated by a lobbyist or someone other than a public office holder. Oral communications initiated by a public office holder are only required to be reported when they concern the awarding of a grant, contribution or other financial benefit, or the lobbyist is a consultant and the communication is about the awarding of a contract.

Determining whether a given communication was "arranged in advance" is open to subjective interpretation. In the context of ongoing lobbying, it can be difficult to determine whether a given communication was "initiated" by a lobbyist or by a public officer holder.

The "arranged in advance" and "initiated by a person other than a public office holder" requirements result in many communications going unreported, simply because they happened spontaneously or were initiated by a public office holder.

Participants listed in monthly communication reports

Currently, monthly communication reports do not include the names of all those who participated in a reportable oral communication with a designated public office holder.

Consultant lobbyists must individually register and report the communications in which they participate. As a result, it is relatively clear which lobbyist participated in a reported communication. However, where consultant lobbyists arrange a meeting between a designated public office holder and another person but do not themselves participate in the communication, there is no requirement for consultants to report the communication that occurred between their client and the designated public officer holder.

Registrable communications between in-house lobbyists and designated public office holders are reported by the responsible officer on behalf of the corporation or organization. At present, in-house lobbyists who participate in a communication with a designated public office holder are not required to be identified in reported communications. Consequently, it is not possible to determine which specific in-house lobbyist(s) participated in a given reported communication. Furthermore, the responsible officer's name is associated with each communication even if that responsible officer may not have participated in the reported communication.

In addition, the current regime does not require that all who participated in reported communications be identified. When meeting with designated public office holders, consultants and in-house lobbyists can often be accompanied by clients, colleagues, volunteers, or workers from their industry who participate in the communication. As well, clients may meet designated public office holders on their own unaccompanied by their consultant lobbyists. This information is not required to be disclosed under the current reporting requirements.

The absence of the names of all lobbyists, clients and other participants in monthly communication reports means that the information disclosed in the Registry of Lobbyists is much less robust and comprehensive than it could be, to the detriment of the overall transparency of the federal lobbying regime. At present, only the names of participating designated public office holders are required to be reported in monthly communication reports. These designated public office holders include members of the Senate and House of Commons, ministers and their staff, deputy ministers, chief executive officers, associate and assistant deputy ministers, and others of a comparable rank. In many cases, there may be other public office holders, such as directors general, who participate in a reported communication, but who are not currently required to be listed even though they may play a significant role in relation to the subject matter of the communication.

Reporting of specific lobbying activities in other jurisdictions

Many Canadian jurisdictions require that registration returns identify both the subject matter of a given lobbying activity and the government institution(s) lobbied. Amongst regimes examined, only British Columbia and the two municipalities of Toronto and Ottawa include a requirement to report each specific lobbying communication.

British Columbia has recently amended its lobbying law to require "designated filers" to submit lobbying activity reports on a monthly basis setting out various categories of information in relation to each lobbying activity. These amendments require that a lobbying activity report be filed for each written or oral communication with senior public office holders and identify the senior public office holders lobbied. Of particular note, when a designated filer submits a lobbying activity report on behalf of a corporation or an organization, they must also disclose the names of all in-house lobbyists who participated in the lobbying activity.

The cities of Toronto and Ottawa both require lobbyists to report specific lobbying communications within 3 or 15 business days, respectively, of a communication occurring. When reporting communications, lobbyists must disclose the date of the activity, the method of communication (meeting, email, telephone, etc.) and the names of all public officer holders lobbied.

RECOMMENDATION

In the interests of transparency, monthly communication reports should provide more robust and comprehensive information with respect to who is lobbying whom.

Reportable oral communications

All oral communications with designated public office holders should be reported equally, regardless of how or by whom the communication was arranged. Amending the *Lobbying Act* to include this requirement would greatly enhance transparency by disclosing all oral communications with designated public office holders about reportable subject matters.

Participants listed in monthly communication reports

For all oral communications between a lobbyist and/or a lobbyist's client and a designated public office holder, monthly communication reports should disclose – in addition to the name of the designated public office holder as currently required – the name, position title, and employer of all others who participate in such communications. To the extent that a public office holder (for example a director general) participates in a meeting between a designated public office holder and a lobbyist or a lobbyist's client, the name and title of that public office holder should also be disclosed.

In addition, consultant lobbyists should also be required to report arranged communications between their clients and designated public office holders when such communications are about a registrable subject matter – even if the consultant did not participate in the communication – given that arranging a meeting between a public office holder and any other person is a registerable activity for consultant lobbyists.

Listing all of the individuals who participate in a reportable communication with a designated public office holder would enhance transparency. It would result in a more complete description of the lobbying activity and, in turn, enhance public confidence in the integrity of the information contained in the Registry of Lobbyists.

Recommendation 6

Add reporting of additional contextual information in monthly communication reports

Amend the *Lobbying Act* to require that registrants disclose prescribed contextual information in their monthly communication reports.

Improves: Registration

T Transparency
Ensures that greater contextual details about lobbying activities are made available to the public.

E Efficiency
Reduces the need to cross-reference information with other sources.

ISSUE

The *Lobbying Act* requires lobbyists to include prescribed information in reporting their communications with designated public office holders on a monthly basis. This prescribed information does not include important details about the context in which lobbying occurs. Additional contextual information could include such things as whether lobbying occurred during a sponsored trip or during an event offered by a lobbyist. It could also include whether a gift was offered. Where a designated public office holder is an elected official, it could also include whether political donations have been provided.

TARGETED SECTIONS OF THE ACT

Amend subsections 5(3) and 7(4) of the *Lobbying Act*, which govern the contents of monthly communication reports, to include a residual category for the disclosure of additional contextual information.

CURRENT SITUATION

Subsections 5(3) and 7(4) of the *Lobbying Act* set out the information that consultant lobbyists and responsible officers for corporations and organizations must disclose when they report monthly communications with designated public office holders. This information includes:

- the name of the designated public office holder who was the subject of the communication;
- the date of the communication;
- particulars to identify the subject-matter of the communication; and
- any other information prescribed by regulation.

Sections 7 and 10 of the *Lobbyists Registration Regulations* also require that, when reporting monthly communications with designated public office holders, consultant lobbyists and responsible officers for corporations and organizations disclose:

- the position title of the designated public office holder;
- the name of the branch or unit and the name of the department or other institution in which the designated public office holder is employed.

Lobbyists are not currently required to disclose important details about the circumstances and the settings in which lobbying activities and communications occur. Such contextual details include, for example, whether lobbying took place during a sponsored trip or during an event offered by the lobbyist. It could include whether a gift was offered. Where the designated public office holder is an elected official, it could also include whether political donations have been provided.

CONSIDERATIONS

Sponsored travel provided to parliamentarians by lobbyists

In her 2019 report to Parliament on *Sponsored Travel Provided by Lobbyists*, the Commissioner of Lobbying noted that reporting additional contextual information – such as that lobbying occurred during sponsored travel or that a lobbyist had previously provided sponsored travel to a public office holder – would have enhanced the transparency of the federal lobbying regime and furthered the fundamental purposes of the *Lobbying Act*. In the absence of this additional information, there was a gap in transparency that would require those who wished to know about the correlation between sponsored travel and lobbying to engage in the labour-intensive process of cross-referencing monthly communication reports in the Registry of Lobbyists with the instances of sponsored travel reported in public registries maintained by the Office of the Conflict of Interest and Ethics Commissioner and the Senate Ethics Officer.

Reporting of additional contextual information in British Columbia

In British Columbia, recently enacted changes to the *Lobbyists Transparency Act* require the disclosure of particulars related to each lobbying activity when a "designated filer" submits a lobbying activity report (equivalent to a monthly communication report in the federal regime). In addition to listing the date, the names and titles of senior public office holders lobbied, as well as the names of lobbyists that participated in the activity, a lobbying activity report must also identify the specific topics, intended outcomes, and subject matters associated with the communication.

In addition to being required to file a lobbying activity report for each reportable communication in British Columbia's Lobbyists Registry, designated filers must also report, as applicable, any changes to information included in their registrations. In particular, the designated filer is required to disclose that a lobbyist named in a lobbying activity report or that a lobbyist's client has provided certain types of political or other contributions to a member of the provincial legislative assembly (or to any political party, constituency association, or third party sponsor of election advertising associated with a member). The designated filer is also required to disclose that a lobbyist named in a lobbying activity report has offered or given a gift or other benefit to a public office holder, including the name of that public office holder, the value and a description of the gift or benefit, the circumstances under which the gift or benefit was given and accepted or promised to be given, and the applicable date.

RECOMMENDATION

The circumstances in which lobbyists carry out their lobbying activities and communicate with designated public office holders are relevant to understanding the nature of these communications. Making this type of contextual information available in monthly communication reports – including information related to sponsored travel, events, gifts, and political contributions – furthers the transparency purposes and objectives of the *Lobbying Act*.

Recommendation 7

Harmonize the five-year prohibition on lobbying

Amend the *Lobbying Act* to harmonize the five-year post-employment prohibition on lobbying by making former designated public office holders subject to the same post-employment restrictions regardless of whether they are employed by a corporation or an organization.

Improves: Compliance

F Fairness
Ensures former designated public office holders employed by both corporations and organizations are subject to the same post-employment prohibitions.

C Clarity
Clarifies the post-employment prohibition regime by standardizing the requirements for former designated public office holders employed by corporations and organizations.

E Efficiency
Eliminates or reduces the amount of resources and time needed to determine whether a former designated public office holder has exceeded the "significant part of work" exception.

ISSUE

The post-employment restrictions on lobbying to which former designated public office holders are subject differ depending on whether they are employed by a corporation or an organization.

At present, the *Lobbying Act* prohibits former designated public officer holders from engaging in any in-house lobbying activities on behalf of organizations, but allows former designated public officer holders to engage in in-house lobbying on behalf of corporations as long as such lobbying does not amount to a significant part of their work.

There is no readily apparent explanation in the parliamentary record to justify why the five-year prohibition ought to be applied differently depending on whether a former designated public office holder engages in in-house lobbying activities on behalf of a corporation rather than an organization.

TARGETED SECTIONS OF THE ACT

Amend subsection 10.11(1) of the *Lobbying Act* to harmonize restrictions on the extent to which former designated public office holders are entitled to engage in consultant and in-house lobbying activities after they cease to hold office.

CURRENT SITUATION

During the five-year period after they cease to hold office, former designated public office holders are prohibited from engaging in any consultant lobbying activities. Similarly, former designated public office holders who are employed by an organization are also prohibited from engaging in any in-house lobbying activities for this same five-year period. However, former designated public office holders who are employed by a corporation may, during the five-year period after they cease to hold office, engage in any in-house lobbying activities as long as such activities do not constitute a significant part of their work on behalf of their employer. This "significant part of work" exception to the prohibition is only available to former designated public office holders that are employed by corporations.

As a result of this exception to the five-year prohibition on lobbying, some former designated public office holders employed by corporations who engage in permissible amounts of in-house lobbying activities on behalf of their employer are not subject to the *Lobbyists' Code of Conduct*. In particular, to the extent that a former designated public office holder lobbies less than a significant part of their work as an employee of a corporation and is not a "senior officer" of that corporation, then that individual does not have to be listed in the corporation's registration in the Registry of Lobbyists and, as a result, is not subject to the *Lobbyists' Code of Conduct*. Recommendation 3 of this submission identifies a remedy for this particular gap.

CONSIDERATIONS

Previous parliamentary study

As part of its study of the omnibus bill, Bill C-2 (short title: *Federal Accountability Act*, 39th Parliament, 1st session), the Standing Senate Committee on Legal and Constitutional Affairs recognized that the *Lobbying Act*'s proposed five-year prohibition on lobbying did not apply the same standard to former designated public office holders employed by organizations as it did to those employed by corporations. The Committee proposed an amendment to Bill C-2 that would have eliminated this differential treatment by extending the "significant part of work" exception that applies to former designated public office holders employed by corporations to former designated public office holders employed by organizations.

> *Your Committee has three final comments with respect to the new 5-year ban on lobbying for former senior public office holders. We were surprised to see that Bill C-2 would have made it significantly more difficult for former senior public office holders to join organizations such as not-for-profit organizations, than to leave office and join corporations. As drafted, the 5-year ban distinguishes between the two. […] we believe this was not intentional, but rather another example of the too-hasty drafting of Bill C-2. We propose amending this provision, to apply the same standard to organizations that would be applied to corporations.*
>
> **Excerpt from a report of the Standing Senate Committee on Legal and Constitutional Affairs**
> Fourth Report: Bill C-2, *An Act providing for conflict of interest rules, restrictions on election financing and measures respecting administrative transparency*
> October 26, 2006

In October 2006, the Senate of Canada passed an amendment to Bill C-2 that would have made former designated public office holders employed by both corporations and organizations subject to the "significant part of work" exception to the five-year prohibition on lobbying. Ultimately, however, this amendment was not adopted in the final Bill that was passed into law. A House of Commons motion moved by the sponsoring minister stated that the Senate amendment "would seriously weaken the scope of the five-year prohibition on lobbying by designated public office holders by allowing them to accept employment with an organization that engages in lobbying activities provided that they themselves do not spend a significant part of their time engaged in lobbying activities".

Post-employment prohibitions in other Canadian jurisdictions

British Columbia, Saskatchewan, Quebec, Prince Edward Island, Newfoundland and Labrador, Yukon and the City of Toronto have post-employment prohibitions in their lobbying regimes of varying durations – ranging from six months to two years depending on the jurisdiction – but do not make an analogous distinction between lobbying for a corporation as opposed to an organization. In other jurisdictions, such as Ontario, post-employment prohibitions on lobbying can be found under conflict of interest regimes.

RECOMMENDATION

The post-employment prohibition on lobbying should apply equally to former designated public office holders, regardless of whether they are employed by a corporation or an organization.

Parliament could prohibit all former designated public office holders from engaging in any in-house lobbying activities for a period of five years from the date on which they cease to hold office by eliminating the "significant part of work" exception for former designated public office holders employed by corporations set out in paragraph 10.11(1)(c) of the *Lobbying Act*.

Alternatively, if Parliament wishes to retain an exception for former designated office holders employed by corporations, then this exception should also be extended to those employed by organizations. In that case, the reference to "significant part of work" should be removed and replaced with clear objective criteria. For example, the exception could instead set out a maximum number hours per month of allowable lobbying activities on behalf of an employer. If Parliament retains such an exception, the *Lobbying Act* should explicitly make former designated public officer holders whose in-house lobbying activities are permitted by the exception subject to the *Lobbyists' Code of Conduct*.

Recommendation 8

Introduce new compliance measures

Amend the *Lobbying Act* to add a range of compliance measures, including training, administrative monetary penalties and temporary prohibitions, to allow for greater flexibility and proportionality in addressing contraventions of the Act.

Improves: Compliance

T Transparency
Makes information about lobbyists' non-compliance with their obligations under the *Lobbying Act* available to the public.

F Fairness
Ensures that sanctions for non-compliance are commensurate with the seriousness of the contravention.

E Efficiency
Allows the Commissioner of Lobbying to invoke less resource-intensive compliance measures in respect of minor contraventions of the *Lobbying Act* than would be required to make a criminal referral.

ISSUE

Non-compliance with provisions of the *Lobbying Act* or the *Lobbyists Registration Regulations* are addressed through the imposition of criminal (penal) sanctions following an investigation and referral to a peace officer. The experience of the Office of the Commissioner of Lobbying in administering the *Lobbying Act* indicates that some instances of non-compliance, including those involving late filing and filing mistaken information, do not require investigations and would be more appropriately addressed through administrative measures.

TARGETED SECTIONS OF THE ACT

Amend the *Lobbying Act* to add a range of measures, including training, administrative monetary penalties (AMPs) and temporary prohibitions, to allow for greater flexibility and proportionality in addressing contraventions of the *Lobbying Act*.

CURRENT SITUATION

Contraventions of the *Lobbying Act*

Under the *Lobbying Act*, it is a criminal offence to fail to register lobbying activities and to fail to file a monthly return. This latter offence includes failing to file monthly communication reports by the deadline specified in the *Lobbying Act*, namely not later than 15 days after the end of the month in which the communication occurred. It is also a criminal offence to knowingly make a false or misleading statement in response to a request from the Commissioner of Lobbying to confirm the accuracy and completeness of a registration or monthly return. Each of these offences is punishable on summary conviction (fines of up to $50,000 and/or prison terms not more than six months) or by way of indictment (fines of up to $200,000 and/or prison terms not exceeding two years).

The *Lobbying Act* also makes it a criminal offence, punishable on summary conviction, to contravene any other provision of the Act (other than the provision that makes consultant and most in-house lobbyists subject to the *Lobbyists' Code of Conduct)*, or the *Lobbyists Registration Regulations*. This would include failing to register lobbying activities within the timeframes set out in the *Lobbying Act*, as well as failing to provide all of the information required by the Act and its regulations. Summary convictions for these offenses could result in fines of up to $50,000.

In practice, lobbyists occasionally submit initial registrations and monthly communication reports after the deadlines prescribed in the *Lobbying Act* have expired. In the majority of these situations, lobbyists submit such overdue registrations or reports shortly after the deadline (see table "Data on late submissions, 2019-20").

To address late filings and mistaken information in the registry, the current practice of the Office of the Commissioner of Lobbying is to educate lobbyists about their reporting obligations and then to monitor their compliance for one year. In general, lobbyists voluntarily amend late or mistaken information in the Registry of Lobbyists. These late filings or amendments are accepted for a variety of reasons, particularly in light of their voluntary nature, to increase transparency in the Registry of Lobbyists and because an investigation, which could lead to criminal sanctions, is not necessary to ensure compliance with the *Lobbying Act*.

Under the *Lobbying Act*, the Commissioner of Lobbying may prohibit individuals convicted of offences under the Act from lobbying for up to two years following their conviction.

Breaches of the *Lobbyists' Code of Conduct*

Breaches of the *Lobbyists' Code of Conduct* are explicitly excluded from the application of the criminal offence provisions set out in the *Lobbying Act*. If, after conducting an investigation, the Commissioner of Lobbying determines that a lobbyist has failed to comply with the rules of conduct set out in the Code, the *Lobbying Act* requires that the Commissioner prepare and submit to Parliament a report of the investigation that sets out the Commissioner's findings, conclusions and the reasons for the conclusions.

CONSIDERATIONS

Contraventions of the *Lobbying Act* related to filings

In 2019-20, of the over 1,700 new lobbying registrations filed, 3.4% were filed late. Of these late registrations, 80% were filed within 30 days of the deadline. Similarly, out of the approximately 18,700 monthly communication reports filed, 7.9% were filed late. Of these late reports, 58% were filed within 30 days of the deadline.

The Office of the Commissioner of Lobbying has observed that a significant majority of late-filed monthly communication reports are made by lobbyists who have previously missed deadlines for reporting communications. For example, of all the late monthly communication reports in 2019-20, only 11% were filed by a lobbyist who was late just one time. The remaining 89% were filed by lobbyists who were late at least more than once during the year.

Data on late submissions, 2019-20

Lobbying registrations	
Total new	1,738
Total late	59 (3.4%)
1-15 days late	25
16-30 days late	22
31-45 days late	0
46-60 days late	1
60+ days late	11

Monthly communication reports	
Total	18,728
Total late	1,474 (7.9%)
1-15 days late	706
16-30 days late	143
31-90 days late	328
91-180 days late	71
180+ days late	226

Failure to provide accurate information has not proven to be a significant concern in practice. Lobbyists can report corrections to the filings that they make in the Registry of Lobbyists. Every month, the Office of the Commissioner of Lobbying verifies the accuracy of 5% of the monthly communication reports filed in the Registry with the designated public office holders listed in the reports. In 2019-20, 879 monthly communication reports were verified and 89% (778) of these were confirmed to have been accurately reported. Of the 101 reports found to contain inaccuracies, 25 were "over-reported", meaning that the report did not need to be submitted because the communication was not oral and arranged, or it was a duplicate entry. The remainder (76) were found to contain minor errors, such as an incorrectly-identified name, title, or date.

Measures for addressing non-compliance in other jurisdictions

In addition to criminal offence provisions, the lobbying regimes in provincial and municipal jurisdictions provide for additional measures to ensure compliance, including training, administrative monetary penalties (AMPs), and temporary prohibitions.

Training

The City of Toronto's Lobbyist Registrar has the ability to impose conditions on registration, continued registration, or renewal of registration, including explicit requirements for training and education, if a lobbyist does not meet the requirements of the municipal lobbying regime. In addition, lobbyists who do not comply with conditions imposed by the Registrar may have their registrations suspended, which effectively prohibits them from lobbying.

Administrative monetary penalties (AMPs)

Lobbying legislation in several provincial jurisdictions allows for the imposition of AMPs in relation to a range of non-compliant lobbyist conduct. For instance, the lobbying registrars in British Columbia, Alberta, and Saskatchewan can each impose AMPs up to $25,000 for contraventions of their respective Acts. Under these regimes, AMPs can be applied, for example, for contravening the duty to file a return. In British Columbia, the Registrar of Lobbyists can make public the AMPs imposed.

AMPs regimes of varying breadths are also contained in provincial ethics legislation. For example, whereas Alberta's Ethics Commissioner can impose AMPs up to $500 for the late-filing of disclosure statements, Nova Scotia's Conflict of Interest Commissioner can impose AMPs up to $10,000 for a wider range of contraventions.

At the federal level, the *Conflict of Interest Act* sets out a comprehensive process for imposing AMPs up to $500 on public office holders when they fail to comply with their mandatory disclosure obligations. Under this regime, the Conflict of Interest and Ethics Commissioner is authorized to make public the nature of the violation, the name of the public office holder who committed it and the amount of the penalty imposed.

Temporary prohibitions

The lobbying registrars of Manitoba and Nova Scotia as well as the New Brunswick commissioner may remove a return from their respective registry for failure to provide information required by their legislation, effectively prohibiting an individual from lobbying.

The commissioners of lobbying in both Quebec and Newfoundland and Labrador may prohibit individuals from lobbying for up to one year if they find that lobbyists have "gravely or repeatedly" contravened the requirements of their respective act, code or regulations.

In Ontario and British Columbia, lobbying registrars reaching a decision of non-compliance have the authority to prohibit persons from lobbying for up to two years. In making such decisions, the gravity of the non-compliance, the number of previous incidents of non-compliance committed by the individual and the public interest must be taken into consideration. The decision to prohibit a person from lobbying must be made public by the registrar.

The authority conferred upon these provincial registrars to impose temporary prohibitions is broader in scope than that conferred upon the federal Commissioner of Lobbying, since they can impose such prohibitions in circumstances in which a lobbyist has not been convicted of a criminal offence. Under the *Lobbying Act*, the Commissioner of Lobbying may prohibit individuals from lobbying for up to two years, but only after they have been convicted of an offence under the Act.

RECOMMENDATION

The proposed amendment is intended to supplement the existing recourses for non-compliant lobbyist conduct currently set out in the *Lobbying Act* – namely making criminal referrals to a peace officer in respect of contraventions of the Act – by providing for additional compliance measures that would allow for a greater range of responses to instances of non-compliance. Adding a range of measures, including training, administrative monetary penalties and temporary prohibitions would provide the Commissioner of Lobbying with greater flexibility to fashion appropriate and proportionate remedies to address non-compliance with the *Lobbying Act*. The measures imposed would be made public. To the extent that lobbyists engage in repeated instances of non-compliant conduct, the proposed amendment would also allow for increasingly significant measures to be applied, including a criminal referral to the appropriate authority if warranted in the circumstances.

Recommendation 9

Make orders enforceable

Amend the *Lobbying Act* to allow orders, i.e. summonses and production orders, issued by the Commissioner of Lobbying to become orders of the Federal Court.

Improves: Administration

F Fairness
Relies on the procedures and caselaw already established by the Federal Court for enforcement of orders and contempt proceedings.

C Clarity
Establishes a process for the Office of the Commissioner of Lobbying to access the enforcement jurisdiction of the Federal Court and makes this process known to the public.

E Efficiency
Makes use of resources available through the Federal Court to enforce orders issued by the Commissioner of Lobbying.

ISSUE

The *Lobbying Act* confers upon the Commissioner of Lobbying the same powers as a superior court to collect evidence in the context of investigations. However, the *Lobbying Act* does not set out a specific mechanism by which the Commissioner of Lobbying can enforce orders issued pursuant to these powers. This lack of specificity is significant given that non-compliance with such orders is punishable by contempt, which could entail the imposition of fines and/or imprisonment. The Federal Court has rules in place for enforcing orders and holding contempt proceedings where it has authority to do so, and would therefore be the appropriate forum for the Commissioner of Lobbying to enforce these orders, particularly given the Federal Court's familiarity with the mandate of the Commissioner of Lobbying.

TARGETED SECTIONS OF THE ACT

Amend the *Lobbying Act* to allow for orders issued by the Commissioner of Lobbying under subsection 10.4(2) of the Act to become orders of the Federal Court.

CURRENT SITUATION

Subsection 10.4(2) empowers the Commissioner of Lobbying to summon witnesses to appear before the Commissioner and give evidence under oath as well as to compel the production of documents for the purposes of conducting investigations under the *Lobbying Act*. Although the *Lobbying Act* provides that these powers may be exercised in the same manner and to the same extent as a superior court of record, the Office of the Commissioner of Lobbying would not, in practice, be the most appropriate body to enforce compliance with a summons or production order given that non-compliance with such orders is punishable by contempt.

The Federal Court has rules in place for enforcing orders and holding contempt proceedings where it has authority to do so. At present, however, the Federal Court does not have explicit statutory jurisdiction to enforce orders issued by the Commissioner of Lobbying pursuant to the *Lobbying Act*.

CONSIDERATIONS

The Federal Court has established rules for enforcing orders and holding contempt proceedings in circumstances in which individuals and entities disobey its orders, which are set out in sections 423 to 465 and 466 to 472 of the *Federal Courts Rules*, respectively.

In order for a federal board, tribunal or commission to apply to have its orders enforced by the Federal Court pursuant to these rules, an Act of Parliament must explicitly confer such authority upon the Court. At present, the *Lobbying Act*, unlike other federal statutes identified immediately below, does not grant the Federal Court jurisdiction to enforce orders issued by the Commissioner of Lobbying.

By contrast, several federal statutes include specific procedures which allow for orders issued by federal administrative bodies to become orders of the Federal Court for the purposes of enforcement. For example, section 57 of the *Canadian Human Rights Act* and subsection 13(1) of the *Broadcasting Act* make orders issued by the Canadian Human Rights Tribunal and the Canadian Radio-television and Telecommunications Commission, respectively, to be orders of the Federal Court when a certified copy of an order from the Tribunal or Commission is filed with the Registry of the Federal Court. The effect of these provisions is to enable each body to apply to the Federal Court to enforce its orders in the event that the individuals or entities subject to such orders fail to comply with them.

Similar mechanisms have been adopted in lobbying legislation at the provincial level, including in British Columbia, Saskatchewan, Ontario and Newfoundland and Labrador. In British Columbia, for example, the Registrar of Lobbyists may apply to the Supreme Court of British Columbia for an order directing a person to comply with a summons or production order issued by the Registrar. If the person fails or refuses to comply with such an order, they are liable to be found in contempt as if in breach of an order or judgment of the Supreme Court. In Ontario, the Registrar of Lobbyists may apply to the Superior Court of Justice for an order to enforce a summons directing a person to attend and be examined or for a production order to provide information, documents or things.

RECOMMENDATION

The powers to summon witnesses and to order the production of documents are essential to the ability of the Commissioner of Lobbying to collect the evidence required to fulfill the statutory mandate to investigate alleged contraventions of the *Lobbying Act* and the *Lobbyists' Code of Conduct*. Although the Commissioner of Lobbying rarely has to rely on these powers given that witnesses and subjects voluntarily participate in investigations as a matter of course, they are important in adversarial or litigious situations where clarity is required.

Orders issued pursuant to these coercive powers can be enforced through contempt proceedings, the punishment for which could entail fines, imprisonment or both. Given the nature of these sanctions, the Federal Court is better placed in terms of expertise to enforce compliance with the terms of summonses and production orders issued pursuant to the *Lobbying Act*.

The *Lobbying Act* should include a mechanism for orders issued by the Commissioner of Lobbying to become orders of the Federal Court for the purposes of enforcement.

Recommendation 10

Allow referrals to appropriate authority

Amend the *Lobbying Act* to allow referrals relating to alleged offences under the *Lobbying Act* or other federal or provincial legislation to be made not only to peace officers, but also to any other appropriate authority, including the Commissioner of Lobbying's provincial counterparts.

Improves: Administration

C Clarity
Clarifies to whom the Commissioner of Lobbying may make referrals.

E Efficiency
Allows the Commissioner of Lobbying to refer matters directly to the appropriate investigative authority.

ISSUE

The *Lobbying Act* currently directs the Commissioner of Lobbying to advise only a "peace officer" when referring potential offences under federal or provincial statutes. Depending on the particulars of an alleged offence, this procedure is too restrictive and does not allow for referral of the matter to the Commissioner of Lobbying's provincial counterparts if such a course of action would be appropriate in the circumstances.

TARGETED SECTIONS OF THE ACT

Amend paragraph 10.4(6)(c) and subsection 10.4(7) of the *Lobbying Act* to allow alleged breaches of any Act of Parliament or of a provincial legislature to be referred to any "appropriate authority".

CURRENT SITUATION

The *Lobbying Act* requires the Commissioner of Lobbying to suspend an investigation and refer the matter to a peace officer having jurisdiction to investigate whenever the Commissioner believes on reasonable grounds that a person has committed an offence under the *Lobbying Act,* any other Act of Parliament, or any Act of the legislature of a province.

CONSIDERATIONS

During the course of an investigation conducted pursuant to the *Lobbying Act,* the Commissioner of Lobbying may become aware of lobbying activity that may constitute an offence under a provincial lobbying regime. In such circumstances, the Commissioner of Lobbying's provincial counterparts would be the most appropriate authorities (when they have investigative powers) to determine whether offences have occurred under their respective lobbying regimes. However, these counterparts are not peace officers and, under the *Lobbying Act*, the Commissioner of Lobbying cannot refer to them potential breaches of their legislation. Rather, potential breaches must always be referred to a police authority and, given the confidentiality provisions under the *Lobbying Act*, the Commissioner of Lobbying is precluded from notifying provincial counterparts about of the subject matter of such referrals.

During the course of an investigation, the Commissioner of Lobbying may also become aware of information that would constitute an offence under federal or provincial legislation (other than a lobbying regime offence) where authority to investigate is conferred upon on an entity other than a peace officer.

At the federal level, the Conflict of Interest and Ethics Commissioner has the ability under the *Conflict of Interest Act* to refer a matter to the "relevant" authority. The Public Sector Integrity, Privacy and Information Commissioners have the authority under their respective enabling legislation to advise the Attorney General of Canada of a suspected offence; the Public Sector Integrity Commissioner also has the discretion to advise a peace officer.

Provincial counterparts whose powers of investigation are similar to those of the Commissioner of Lobbying are able to refer alleged offences to an "appropriate" law enforcement person, body or agency (Alberta and Ontario), or their respective Attorney General or prosecution service (British Columbia, Saskatchewan, Quebec).

RECOMMENDATION

The Commissioner of Lobbying should have the flexibility to refer matters to an "appropriate authority" where the Commissioner has established reasonable grounds to believe that an offence has been committed under the *Lobbying Act*, any other Act of Parliament, or any Act of the legislature of a province.

Adopting this proposed amendment would not prevent the Commissioner of Lobbying from referring alleged offences under the *Lobbying Act* to a peace officer, which, in most cases, would be the Royal Canadian Mounted Police (RCMP). However, where there is an alleged breach of a provincial lobbying regime, the appropriate authority would be the relevant commissioner or registrar when they have investigative powers.

Recommendation 11

Provide immunity against civil or criminal proceedings

Amend the *Lobbying Act* to provide immunity against civil or criminal proceedings for the Commissioner of Lobbying and those acting on behalf or under the direction of the Commissioner.

Improves: Administration

C Clarity
Enables the Commissioner of Lobbying and the employees of the Office of the Commissioner of Lobbying to conduct their work in good faith without fear of criminal or civil recrimination.

ISSUE

The *Lobbying Act* does not provide any protections against civil or criminal proceedings to the Commissioner of Lobbying, or any person acting on behalf or under the direction of the Commissioner, for things said, done or reported in good faith in the exercise of their official duties and functions. This omission should be corrected in the *Lobbying Act,* particularly given that these protections are included in the enabling legislation of other Agents of Parliament.

TARGETED SECTIONS OF THE ACT

Amend the *Lobbying Act* to provide immunity for the Commissioner of Lobbying, and those acting on behalf or under the direction of the Commissioner, against civil or criminal proceedings that arise in relation to the performance of their duties.

CURRENT SITUATION

The *Lobbying Act* imposes a number of obligations on the Commissioner of Lobbying, including maintaining a registry of lobbyists, conducting investigations to ensure compliance with the *Lobbying Act* or the *Lobbyists' Code of Conduct*, reporting the results of these investigations to Parliament, referring matters to peace officers and engaging in education activities with stakeholders. However, the *Lobbying Act* provides no protection against civil or criminal proceedings to the Commissioner of Lobbying or the Commissioner's staff in the performance of these duties.

CONSIDERATIONS

At the federal level, most other Agents of Parliament and their staff have protection from criminal and civil proceedings in their enabling legislation (*Access to Information Act, Auditor General Act, Conflict of Interest Act, Officials Languages Act,* and *Public Servants Disclosure Protection Act)*. A representative provision from the *Privacy Act* is as follows:

> *No criminal or civil proceedings lie against the [Privacy] Commissioner, or against any person acting on behalf or under the direction of the Commissioner, for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise or performance of any power, duty or function of the Commissioner under this Act.*
>
> **Subsection 67(1) of the *Privacy Act* (RSC 1985,, c. P-21)**

Similar protections are conferred in various provincial lobbying acts, including those in British Columbia, Alberta, Saskatchewan, Quebec, and Newfoundland and Labrador.

RECOMMENDATION

The work of the Office of the Commissioner of Lobbying is often highly sensitive and can impact the reputation of lobbyists and those with whom they communicate. The Commissioner of Lobbying and the Commissioner's staff ought to benefit from the same legislative protections extended to other Agents of Parliament. Adopting this proposed recommendation would allow the Commissioner of Lobbying and staff to conduct their work in good faith without fear of criminal or civil recrimination.

Annex: legislative and regulatory references

Jurisdiction	Act	Regulations
Federal (Canada)	*Lobbying Act* R.S.C. 1985, c. 44 (4th Supp.)	*Lobbyists Registration Regulations* SOR/2008-116 *Designated Public Office Holder Regulations* SOR/2008-117
British Columbia	*Lobbyists Transparency Act* SBC 2001, c 42	*Lobbyists Transparency Regulation* BC Reg 235/2019
Alberta	*Lobbyists Act* SA 2007, c L-20.5	*Lobbyists Act General Regulation* Alta Reg 71/2020
Saskatchewan	*The Lobbyists Act* SS 2014, c L-27.01	*The Lobbyists Regulations* RRS c L-27.01 Reg 1
Manitoba	*The Lobbyists Registration Act* CCSM c L178	*Lobbyists Registration Regulation* Man Reg 34/2012
Ontario	*Lobbyists Registration Act, 1998* SO 1998, c 27	*Deemed Service of Notices* O Reg 133/16
Québec	*Lobbying Transparency and Ethics Act* CQLR c T-11.011	*Code of Conduct for Lobbyists* CQLR c T-11.011, r 2 *Lobbying Transparency and Ethics Act Exclusions Regulation* CQLR c T-11.011, r 1 *Lobbyists Registry Regulation* CQLR c T-11.011, r 3 *Tariff of fees respecting the lobbyists registry* CQLR c T-11.011, r 4
New Brunswick	*Lobbyists' Registration Act* RSNB 2014, c 11	*General Regulation* NB Reg 2017-11
Prince Edward Island	*Lobbyists Registration Act* RSPEI 1988, c L-16.01	*Lobbyists Registration Act General Regulations* PEI Reg EC680/18
Nova Scotia	*Lobbyists' Registration Act* SNS 2001, c 34	*Lobbyists' Registration Regulations* NS Reg 116/2002
Newfoundland and Labrador	*Lobbyist Registration Act* SNL 2004, c L-24.1	None in force
Yukon	*Lobbyists Registration Act* SY 2018, c.13	None in force
City of Ottawa	*Lobbyist Registry By-law* By-law No. 2012-309	Not applicable
City of Toronto	*Toronto Municipal Code* C 140, Lobbying	Not applicable