

CFN Consultants appreciates the opportunity to respond to your call for comments during the consultation period for the proposed changes to the Code of Conduct.

The Partners and Associates who contribute to CFN's success and longevity have considerable experience in government procurement and are regularly called upon to assist industry to interpret and respond to government demands associated with numerous procurement files. Notwithstanding the fact that the great majority of our work involves Consulting, as evident in our company name, there often arises the occasion to interact with public office holders on behalf of our clients, thus requiring compliance with the provisions of the Lobbying Act as they apply to Consultant Lobbyists. CFN Consultants complies with the Lobbying Act and further operates with a "one client - one project" policy so as to avoid conflict situations. The comments below are therefore based on our own experiences.

We would be most pleased to engage further should you wish to follow up with us concerning any of these comments.

George A. Butts MBA
Partner, CFN Consultants

++++
The proposed changes to the Lobbyist's Code of Conduct would benefit from additional definition. While the main intent of the Code remains valid and is appreciated, it is believed that some of the proposed changes may result in confusion and cause problems with future interpretation by all parties affected.

The first concern relates to the deletion of **Rule 6 - Competing Interests**. Despite the comment that this is considered outside the scope of the Lobbying Act as it relates to client/lobbyist relations, it is not understood why this rule was deleted. This rule was obviously intended to address lobbying activity of a Consultant Lobbyist and not an In-House Lobbyist. Public Office Holders likely gained some degree of comfort in knowing that when dealing with a lobbyist on a potentially contentious issue of policy, that the same lobbyist would not take an opposite position during a subsequent interaction in support of another client.

Consideration should be given to reinserting a revised Rule 6 such as "Lobbyists shall not represent conflicting or competing interests to a public office holder without full disclosure to all parties directly concerned in the lobbying activity." Thus should a consultant lobbyist represent two competing clients, with different interests, or on the same issue or file, this fact would have to be made known not only to the clients themselves, but also to the public office holder(s) to whom the lobbying activity is directed.

The following concerns relate to the proposed additions to the Code:

Confidential Information

Rule 5. A lobbyist shall neither use nor disclose confidential information received from a public office holder, without the consent of the originating authority.

A number of potential issues can be seen here.

Firstly, it may not be clear to the lobbyist that the information is confidential information. It would be more appropriate that the public office holder be required either to not disclose confidential information in the first place, or if required to disclose that information, then to identify it as such and secure appropriate non-disclosure assurances from the lobbyist. If this is done, and the lobbyist subsequently uses or discloses the information, a clear breach may be identified and the lobbyist held to account for the breach.

A secondary concern relates to internal government interrelations. If the lobbyist, in seeking to obtain consent from the originating authority, causes that authority to question the motives or the integrity of the public office holder that supplied the information to the lobbyist, it may give rise to undesired consequences for the public office holder.

Preferential Access

Rule 7. A consultant lobbyist shall not arrange for another person a meeting with a public office holder who is a relative or friend of the lobbyist or has financial or business dealings with the lobbyist.

How will “a relative or a friend” be determined and defined? Relatives exist in many situations and at many levels. Close relatives, distant relatives, related by marriage, etc. Friends can and often are found among work colleagues or through other social interactions unrelated to work.

Awkwardly, while I may consider you a friend, you may not reciprocate and vice versa. In such a case, when a lobbyist arranges a meeting with a public office holder that is also a loosely defined “friend” and that public office holder considers the friendship to be closer than what the lobbyist considers it to be, who will rule on the degree of friendship? Will there exist a “friendship measure” that can be consulted before such a meeting is arranged in order to gauge the degree of the “infraction”?

Rule 8 extends the degree of friendship even further – how will it be known that other public officer holders who may benefit from information facilitated by a lobbyist, happen to work within the area of responsibility of a public office holder who is (or was) a friend or a long lost family member?

Rule 9 Political Activities - second sentence. **A lobbyist shall also not lobby other public office holders who work within that public office holder’s area of responsibility.**

The purpose of this sentence is unclear. This rule should apply to all public office holders, including “other public office holders who work within ...”

Rule 10 A lobbyist shall not provide or promise a gift, hospitality or other benefit that a public office holder is not allowed to accept.

It must first be stated that this rule is not intended to address something that could be classified as a bribe, as bribery is clearly unlawful. The onus needs to be on the public office holder to decline a gift as opposed to on the lobbyist to become familiar with the various gift and

hospitality policies of each and every department or agency that the lobbyist may deal with in support of his or her clients. It is completely appropriate to decline a gift or benefit for a legitimate reason. Further, there may arise a situation where a previous public office holder accepted certain hospitality as a normal part of his or her business. The responsibility should first rest with the public office holder to know the hospitality policies of his or her department and to work in compliance with them.