

Ottawa, December 11, 2014

Ms. Karen Shepherd
Commissioner of Lobbying
255 Albert St., 10th Floor
Ottawa, ON K1A 0R5

Dear Ms. Shepherd:

Thank you for your letter of November 14, and your invitation to comment on proposed changes to the *Lobbyists' Code of Conduct*.

While we are in agreement with the objectives of the *Code of Conduct*, and with the necessity of acting in a manner that places public office holders in neither a conflict of interest, nor the appearance of a conflict of interest, some of the proposed wording – in the absence of greater clarity – raises potential concerns. I refer specifically to the use of the words “friend” and “relative.”

With regard to preferential access, the proposed wording of section 8 states that “[a] lobbyist shall not lobby a public office holder who is a relative or friend of the lobbyist or has financial or business dealings with the lobbyist.” We would suggest that a number of issues need to be clarified in order to ensure compliance:

- The term “relative” is not defined in the proposed *Code of Conduct*. We note that the *Conflict of Interest Code for Members of the House of Commons* defines “relative” as a spouse, common-law partner, or minor child, adopted child, or child of a common-law partner, while other statutory and regulatory instruments provide different definitions. **We recommend that the proposed *Code of Conduct* be amended to provide a clear definition of “relative” in order to provide certainty and reduce the likelihood of compliance issues.**
- In a similar vein, the word “friend” is problematic. “Friend” is perhaps more difficult to define than “relative,” but the absence of an objective standard in the proposed *Code of Conduct* is extremely troubling. The leaders of charities and nonprofits – who are also usually responsible for any lobbying activity – are often well-known and active in their communities. The same can be said about Members of Parliament and many senior public servants. Indeed, there are a number of MPs who were once, themselves, leaders of organizations in our sector. Many senior public office holders also serve as volunteers and board members with charities and nonprofits. At what point does being a peer and colleague, or an acquaintance, cross into the realm of friendship? The answer to this will always be subjective, but the absence of clarity will make compliance and enforcement much more difficult. **In the absence of a clear and reasonable definition, we recommend striking the word “friend” from the proposed *Code of Conduct*.**

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- We understand and accept the rationale for including “financial and business dealings” in discussing preferential access. While we believe the intent of this is to capture such dealings that may provide a personal financial benefit to a public office holder, we are concerned that the broad wording could capture other instances. To that end, **we seek your confirmation that “financial and business dealings” do not include agreements between a government department or agency and a charity or nonprofit, for which the public office holder in question is responsible. We also seek your clarification that a public office holder making a donation to, or purchasing a good or service from, a charity or nonprofit does not constitute a financial or business dealing for the purposes of the Code of Conduct.**

The proposed section 8 goes on to state that, where a problematic relationship with a public office holder exists, “[a] lobbyist shall also not lobby other public office holders who work within that public office holder’s area of responsibility.” We have two concerns with this section:

- Where the public office holder is a Minister of the Crown, the implication is that a lobbyist who has a personal relationship with that Minister may not engage with any public office holder working within the Minister’s Department, or at any agency that reports to or through that Minister. We believe this would be far too broad a prohibition, and could have a serious detrimental effect on the ability of organizations to make representations to government.
- As lobbyists employed within an organization share one registration with their responsible officer, the implication is that any prohibition on lobbying activity by the responsible officer would extend to other individuals within that organization. This would be an unacceptably broad prohibition on organizations’ ability to engage with government.

Should your interpretation of this portion of section 8 be different from ours, we would appreciate clarification from you. However, if your interpretation matches ours, we would recommend that the proposed wording not be proceeded with.

Thank you again for inviting us to comment. We would be more than happy to discuss this with you if you have any questions about our comments and we welcome a timely reply to the issues we raised in this letter.

Yours truly,



Bruce MacDonald
President and CEO, Imagine Canada