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Office of the Commissioner  
of Lobbying of Canada



Commissariat au lobbying  
du Canada

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## **Annotated *Lobbyists' Code of Conduct* (2015)**

### **IMPORTANT NOTICE**

#### **Disclaimer**

This document is not the official version of the *Lobbyists' Code of Conduct*. This annotated Code has been prepared by the Office of the Commissioner of Lobbying as an aid to lobbyists and others interested in this subject. This annotated Code is not intended as a substitute for legal advice and has no official sanction.

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### **NOTE**

The *Lobbyists' Code of Conduct* (2015) replaced the *Lobbyists' Code of Conduct* (1997) on December 1, 2015.

## INTRODUCTION

The Commissioner has the authority, under the [Lobbying Act](#), to develop and administer a *Lobbyists' Code of Conduct* (the Code). The first version of the Code came into effect on March 1, 1997. In 2015, the Commissioner of Lobbying amended the Code, following a public consultation. The Code was referred to the House of Commons Standing Committee on Access to Information, Privacy and Ethics in spring 2015 before being published in the *Canada Gazette* on November 7, 2015. This version of the Code came into force on December 1, 2015.

Canadians should expect that all who participate in the development and application of public policy, laws and regulations will act in a manner that demonstrates respect for Canada's democratic institutions.

The purpose of the Code is to assure the Canadian public that when lobbying of public office holders takes place, it is done ethically and with the highest standards with a view to enhancing public confidence and trust in the integrity of government decision making. In this regard, the Code complements the registration requirements of the *Lobbying Act*, which came into force on July 2, 2008.

The term "public office holder" as defined in the *Lobbying Act* includes senators and members of the House of Commons and their staff, ministers and their staff, officers and employees of federal departments and agencies, Governor in Council appointees, and members of the Canadian Armed Forces and the Royal Canadian Mounted Police.

The Code applies when a registration is required under the *Lobbying Act*, whether or not a registration has actually been filed.<sup>1</sup> Specifically, the Code applies to individuals who are required to register or be listed in a registration under section 5 or 7 of the *Lobbying Act*.<sup>2</sup>

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<sup>1</sup> Section 10.3 of the *Lobbying Act* sets out the requirement for lobbyists to comply with the Code.

<sup>2</sup> The Federal Court of Canada and the Federal Court of Appeal have considered the application of the *Lobbyists' Code of Conduct* to persons who are required by the *Lobbying Act* to register as lobbyists. The Federal Court of Appeal has confirmed two important points. First, that breaches of the Code are not sanctioned by charges and penalties, but rather by the Commissioner's Reports on Investigation to Parliament. Second, the Federal Court of Appeal confirmed that in the case of the Code, "... the defence of error of law is no excuse." (See *Makhija v Canada (Attorney General)*, 2010 FCA 342 at paragraph 7.) The Federal Court has confirmed section 10.3 of the *Lobbying Act* by stating that in "...investigating whether a person has breached the Code, the Registrar must first determine whether the person has engaged in lobbying activities that trigger the obligation to register. If so, the person is subject to the Code, and the Registrar may proceed to determine whether the Code had been breached." (See *Makhija v Canada (Attorney General)*, 2010 FC 141 at paragraph 18.) At present, the Commissioner, as the Registrar's successor, is bound by this ruling.

The preamble of the *Lobbyists' Code of Conduct* states its purposes and situates the Code in a broader context. The preamble is followed by a body of overarching principles and a set of specific rules. The principles set out the goals and objectives to be attained, while the accompanying rules provide more detailed requirements for behaviour related to the principles in applied situations. Lobbyists, when engaging in lobbying activities, shall meet the standards set out in the principles and rules of the Code.

Under the *Lobbying Act*, the Commissioner shall open an investigation when the Commissioner has reason to believe one is necessary to ensure compliance with the Act or the Code.<sup>3</sup> The Commissioner of Lobbying has the authority to enforce the *Lobbyists' Code of Conduct* if there is an alleged breach of either a principle or a rule of the Code. The Code is a non-statutory instrument, and carries no fines or jail terms.<sup>4</sup> Anyone suspecting non-compliance with the Code should forward information to the Commissioner. Investigations are conducted in accordance with the *Lobbying Act* and respecting the principles of natural justice. At the end of an investigation, the Commissioner shall table a report in both Houses of Parliament, detailing the findings and conclusions and reasons for these conclusions.<sup>5</sup>

## PREAMBLE

The *Lobbying Act* is based on four principles:

- Free and open access to government is an important matter of public interest;
- Lobbying public office holders is a legitimate activity;
- It is desirable that public office holders and the public be able to know who is engaged in lobbying activities; and
- A system for the registration of paid lobbyists should not impede free and open access to government.

The *Lobbying Act* provides the Commissioner with the authority to develop and administer a code of conduct for lobbyists. The Commissioner has done so, with these four principles in mind. The *Lobbyists' Code of Conduct* is an important instrument for promoting public trust in the

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### *Application of the Lobbyists' Code of Conduct*

*The Commissioner has reported upon the lobbying activities of a number of persons she determined were engaged in registrable lobbying activity, but had not registered as lobbyists. See "[Report on Investigation - The Lobbying Activities of Julie Couillard](#)," at page 21. Also, see "[Report on Investigation - The Lobbying Activities of GPG - Green Power Generation Corp. and Patrick Glémaud and Rahim Jaffer](#)".*

*The Commissioner's Reports on Investigation are available [online](#).*

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<sup>3</sup> Subsection 10.4(1) of the *Lobbying Act*. Section 10.4 provides for the conduct of investigations.

<sup>4</sup> Subsection 14(2) of the *Lobbying Act* provides that a contravention of subsection 10.3(1) of the Act (duty to comply with the Code) is not an offence under the Act.

<sup>5</sup> Section 10.5 of the *Lobbying Act* sets out the requirements and content of a report on investigation.

integrity of government decision making. The trust that Canadians place in public office holders to make decisions in the public interest is vital to a free and democratic society.

Public office holders, when they deal with the public and with lobbyists, are required to adhere to the standards set out for them in their own codes of conduct. For their part, lobbyists communicating with public office holders must also abide by standards of conduct, which are set out below.

These codes complement one another and together contribute to public confidence in the integrity of government decision making.

## PRINCIPLES

### Respect for Democratic Institutions

Lobbyists should act in a manner that demonstrates respect for democratic institutions, including the duty of public office holders to serve the public interest.

#### Note

*The first principle of the Code calls on lobbyists to respect democratic institutions while representing the interests of their clients or employers. Democratic institutions include a democratic political system, the participation of citizens in that democracy, the rule of law and the institutions that support and protect those democratic rights. When interacting with public office holders, their actions should not diminish public confidence and trust in government.*

### Integrity and Honesty

Lobbyists should conduct with integrity and honesty all relations with public office holders.

### Openness

Lobbyists should be open and frank about their lobbying activities.

### Professionalism

Lobbyists should observe the highest professional and ethical standards. In particular, lobbyists should conform fully with the letter and the spirit of the *Lobbyists' Code of Conduct* as well as with all relevant laws, including the *Lobbying Act* and its regulations.

#### Note

*The Commissioner has reported upon several cases in which she concluded that lobbyists had breached the principle of Professionalism. Examples of the types of activities that led to this conclusion include the following:*

- For individuals, engaging in activities that require registration as a lobbyist, but not registering as required by the Lobbying Act: (Reports on Investigation — [The Lobbying Activities of René Fugère and André Nollet](#); [The Lobbying Activities of Bruce Rawson](#); [The Lobbying Activities of Paul Ballard](#); [The Lobbying Activities of Graham Bruce](#); [The Lobbying Activities of Mark Jiles](#); [The Lobbying Activities of Julie Couillard](#); and [The Lobbying Activities of GPG-Green Power Generation Corp. and Patrick Glémaud and Rahim Jaffer](#));
- For employees, failing to fulfill an obligation to ensure that any lobbying activity performed by an employee on behalf of a corporation or an organization is properly registered by the responsible officer of the corporation or organization: (Report on Investigation — [The Lobbying Activities of GPG-Green Power Generation Corp. and Patrick Glémaud and Rahim Jaffer](#)); and
- For former designated public office holders, who are prohibited from engaging in lobbying activities requiring registration as a consultant lobbyist, subject to a post-employment five-year prohibition on lobbying activity set out in section 10.11 of the Lobbying Act, engaging in registrable lobbying activities: (Report on Investigation — [The Lobbying Activities of Keith Beardsley](#)).

## RULES

### Transparency

#### *Identity and purpose*

1. A lobbyist shall, when communicating with a public office holder, disclose the identity of the person, organization or corporation on whose behalf the communication is made and the nature of their relationship with that person, organization or corporation, as well as the reasons for the approach.

#### Note

Section 7 of the Lobbying Act places the responsibility for filing returns on behalf of organizations and corporations upon the most senior paid officer in the organization or corporation. Employees who lobby on behalf of organizations or corporations should clearly state the nature of their relationship with the organization or corporation. Individuals working on behalf of organizations or corporations who are not employees should register as consultant lobbyists and disclose that fact to public office holders that they lobby. Similarly, directors who are not employees should register as consultant lobbyists and disclose that fact to public office holders that they lobby.<sup>6</sup>

<sup>6</sup> The Commissioner has provided Advice to outside chairpersons and members of boards of directors in [Boards of Directors: Application of the Act to outside chairpersons and members](#).

### **Accurate information**

2. A lobbyist shall avoid misleading public office holders by taking all reasonable measures to provide them with information that is accurate and factual.

#### **Note**

*Lobbyists should exercise due diligence in ensuring that their communications to public office holders are accurate and factual. The Commissioner has reported upon several cases in which she concluded that lobbyists did not identify themselves as lobbyists or, by failing to register, did not provide public office holders with accurate information. A failure to ensure that information in a registration is accurate and complete results in a misleading registration.*

*(See Reports on Investigation — [The Lobbying Activities of René Fugère and André Nollet](#); [The Lobbying Activities of Bruce Rawson](#); [The Lobbying Activities of Paul Ballard](#); [The Lobbying Activities of Graham Bruce](#); [The Lobbying Activities of Mark Jiles](#); [The Lobbying Activities of Julie Couillard](#); and [The Lobbying Activities of GPG-Green Power Generation Corp. and Patrick Glémaud and Rahim Jaffer](#).)*

### **Duty to disclose**

3. A consultant lobbyist shall inform each client of their obligations as a lobbyist under the *Lobbying Act* and the *Lobbyists' Code of Conduct*.

#### **Note**

*Lobbyists should exercise due diligence in ensuring that their clients are aware of their obligations under both the *Lobbying Act* and the *Lobbyists' Code of Conduct*. This requirement is a necessary counterpart of the disclosure requirements for lobbyists contained in the *Lobbying Act*. The Commissioner has reported upon several cases in which she concluded that lobbyists did not ensure that their clients were aware of their obligations as lobbyists under the *Lobbying Act* and the *Lobbyists' Code of Conduct*.*

*(See Reports on Investigation — [The Lobbying Activities of René Fugère and André Nollet](#); [The Lobbying Activities of Bruce Rawson](#); [The Lobbying Activities of Paul Ballard](#); [The Lobbying Activities of Graham Bruce](#); [The Lobbying Activities of Mark Jiles](#); [The Lobbying Activities of Julie Couillard](#); and [The Lobbying Activities of GPG-Green Power Generation Corp. and Patrick Glémaud and Rahim Jaffer](#).)*

4. The responsible officer (the most senior paid employee) of an organization or corporation shall ensure that employees who lobby on the organization's or corporation's behalf are informed of their obligations under the *Lobbying Act* and the *Lobbyists' Code of Conduct*.

#### **Note**

*This obligation is placed upon the responsible officer of an organization or a corporation. Organizations and corporations should establish appropriate methods to ensure that employees who engage in lobbying activities are aware of their obligations under the *Lobbying Act* and the *Lobbyists' Code of Conduct*.*

## Use of Information

5. A lobbyist shall use and disclose information received from a public office holder only in the manner consistent with the purpose for which it was shared. If a lobbyist obtains a government document they should not have, they shall neither use nor disclose it.

### Note

*This rule addresses the issue of improper disclosure of confidential information. Public office holders share information with stakeholders for many legitimate purposes. However, when information obtained from public office holders is used improperly by third parties, the public interest may be adversely affected.*

*This rule addresses situations such as that described in the Annual Report of the Office of the Commissioner of Lobbying for 2012-13 as the "[Commissioner's Report on the Activities of Five Lobbyists relating to a Confidential Parliamentary Report](#)". This report detailed the circumstances surrounding the disclosure of a confidential draft report of the House of Commons Standing Committee on Finance by a staff member of a Member of Parliament, in November 2010. The Commissioner determined that the sharing of confidential information by two of the lobbyists involved was an important matter that was not adequately addressed by the Lobbyists' Code of Conduct. Rule 5 addresses this type of situation.*

*The Commissioner recommends that lobbyists ask public office holders to clarify the purpose for which information is being shared if this is not clear when the information is obtained.*

## Conflict of interest

6. A lobbyist shall not propose or undertake any action that would place a public office holder in a real or apparent conflict of interest.

### Note

*Rule 6 provides an overriding rule for lobbyists to follow in their interactions with public office holders. Rules 7 through 10 provide for more specific guidance for lobbyists.*

*"Conflict of interest" has been defined by the Federal Court of Appeal in the following way:*

*... the idea of conflict of interest is intimately bound to the problem of divided loyalties or conflicting obligations. While the specific facts giving rise to a conflict of interest will vary ..., that which leads to the conclusion that a person is subject to a conflict of interest is the presence of a tension between the person's duty and some other interest or obligation. [para. 45]*

*... Where the lobbyist's effectiveness depends upon the decision maker's personal sense of obligation to the lobbyist, or on some other private interest created or facilitated by the lobbyist, the line between legitimate lobbying and illegitimate lobbying has been crossed. The conduct proscribed ... is the cultivation of such a sense of personal obligation, or the creation of such private interests. [para. 53]<sup>7</sup>*

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<sup>7</sup> [Democracy Watch v. Campbell et al. \[2009\] FCA 79.](#)

The Honourable Jeffrey J. Oliphant, Commissioner, wrote in the Report of the Commission of Inquiry into Certain Allegations respecting Business and Financial Dealings between Karlheinz Schreiber and The Right Honourable Brian Mulroney ("*Oliphant Commission Report*") (2010) at page 531 on defining conflict of interest, adopting the Parker Commission definition of conflict of interest, as follows:

*...The 1987 Parker Commission defined a real conflict of interest as a "situation in which a minister of the Crown has knowledge of a private economic interest that is sufficient to influence the exercise of his or her public duties and responsibilities". An apparent conflict of interest "exists when there is a reasonable apprehension, which reasonably well-informed persons could properly have, that a conflict of interest exists".*

*...The Federal Court of Appeal has applied what amounts to the same standard: "Would an informed person, viewing the matter realistically and practically and having thought the matter through, think it more likely than not that the public servant, whether consciously or unconsciously, will be influenced in the performance of his official duties by considerations having to do with his private interests?"<sup>8</sup>*

Lobbyists are required to conduct their affairs in a manner that ensures that their lobbying does not result in a sense of obligation or private interest being created or facilitated by the lobbyist, as this could place a public office holder into a conflict of interest. See the discussion in "[Commissioner's Guidance for Lobbyists Regarding the Application of Rule 6 of the Lobbyists' Code of Conduct – Conflict of Interest](#)", including the standard the Commissioner of Lobbying will apply when determining whether a lobbyist has placed a public office holder in a real or apparent conflict of interest:

*Would an informed person, viewing the matter realistically and practically and having thought the matter through, think that an action taken by a lobbyist has created a sense of obligation on the part of the public office holder, or a tension between the public office holder's private interests and the duty of the public office holder to serve the public interest?*

Rule 6 is the general rule concerning actions undertaken by lobbyists that could place public office holders in a conflict of interest. Rules 7, 8, 9 and 10 are more specific rules for lobbyists with respect to preferential access, political activities, and gifts.

In particular:

### ***Preferential access***

7. A lobbyist shall not arrange for another person a meeting with a public office holder when the lobbyist and public office holder share a relationship that could reasonably be seen to create a sense of obligation.
8. A lobbyist shall not lobby a public office holder with whom they share a relationship that could reasonably be seen to create a sense of obligation.

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<sup>8</sup> As cited in: "[Report to Council on an Inquiry into Contribution by Lobbyists to a Fundraiser for a Member of Council](#)".



#### Note

The Commissioner's ["Guidance for lobbyists regarding the application of Rules 7 and 8 of the Lobbyists' Code of Conduct – Preferential Access"](#) provides guidance for lobbyists who share relationships with public office holders so that they can avoid placing public office holders in a real or apparent conflict of interest. The Commissioner of Lobbying has interpreted real or apparent conflict of interest, for the purposes of the Lobbyists' Code of Conduct, as follows: "A conflict of interest can be created by the presence of a tension between the public office holder's duty to serve the public interest and his or her private interest or sense of obligation created or facilitated by the lobbyist." The creation of a sense of obligation on the part of a public office holder can create such a conflict of interest if a lobbyist were to lobby that public office holder.

#### **Political activities**

9. When a lobbyist undertakes political activities on behalf of a person which could reasonably be seen to create a sense of obligation, they may not lobby that person for a specified period if that person is or becomes a public office holder. If that person is an elected official, the lobbyist shall also not lobby staff in their office(s).

#### Note

The Commissioner has provided guidance for lobbyists concerning the application of Rule 9, entitled ["Commissioner's Guidance for lobbyists regarding the application of Rule 9 of the Lobbyists' Code of Conduct – political activities"](#).

The Commissioner has reported upon two instances in which she concluded that the actions of lobbyists in organizing fund-raising activities on behalf of a public office holder placed that public office holder in a conflict of interest when those lobbyists subsequently communicated directly with the public office holder, a Minister, in respect of registrable subject matters.

(See Reports on Investigation — [The Lobbying Activities of Will Stewart](#) and [The Lobbying Activities of Michael McSweeney](#).)

#### **Gifts**

10. To avoid the creation of a sense of obligation, a lobbyist shall not provide or promise a gift, favour, or other benefit to a public office holder, whom they are lobbying or will lobby, which the public office holder is not allowed to accept.

#### Note

The ["Commissioner's Guidance for lobbyists regarding the application of Rule 10 of the Lobbyists' Code of Conduct - Gifts"](#) provides guidance for lobbyists in the area of gifts, so that lobbyists may avoid placing public office holders in a real or apparent conflict of interest.

*Providing or promising a gift, favour, or other benefit to a public office holder could create a sense of obligation, or the appearance of one. This could in turn generate a tension between the public office holder's primary duty to the public interest and their private interest. Thus, the provision of a gift by a lobbyist to a public office holder could create a sense of obligation giving rise to a conflict of interest. Rule 10 of the Lobbyists' Code of Conduct is intended to prevent such a situation.*

*The Commissioner defines "gift" to include anything of value, given for free or at a reduced rate, when there is no obligation to repay. The Commissioner's Guidance is consistent with the approach taken by the Conflict of Interest and Ethics Commissioner in the [Guideline on Gifts \(including Invitations, Fundraisers and Business Lunches\)](#) issued under the Conflict of Interest Act.*

*The Conflict of Interest Act defines "gift or other advantage" in subsection 2(1) as:*

- (a) an amount of money if there is no obligation to repay it; and*
- (b) a service or property, or the use of property or money that is provided without charge or at less than its commercial value.*

*In her Guideline, the Conflict of Interest and Ethics Commissioner interpreted the definition of "Gifts" to include such things as:*

- *money, other than a bona fide loan, regardless of format (cash, cheques, etc.);*
- *property (a book, flowers, a painting or sculpture, a car, a house, furniture, wine, etc.);*
- *use of property or facilities (a vehicle, an office, a house or cottage, a sports facility, a golf course, etc.) at a reduced rate or at no cost;*
- *membership in a club or other organization (a golf club, a tennis club, etc.) at a reduced rate or at no cost;*
- *a service (dry cleaning, haircut, etc.) at a reduced rate or at no cost;*
- *a meal paid for by another individual;*
- *an invitation to and/or tickets to attend an event (a game, a concert, a play, etc.) at a reduced rate or at no cost; or*
- *an invitation to attend a gala or fundraising event at a reduced rate or at no cost.*