

Office of the Commissioner of Lobbying of Canada

*Report on the 2013  
Consultation -  
Lobbyists' Code of  
Conduct*

May 2014

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## MESSAGE FROM THE COMMISSIONER

The purpose of the *Lobbying Act* (the Act) is to ensure that federal lobbying activities are conducted in a transparent manner. In that context, the *Lobbyists' Code of Conduct* (the Code) provides a set of principles and rules to clarify what is expected of lobbyists and ensures they conduct themselves according to the highest ethical standards. As Commissioner of Lobbying, it is my responsibility to administer both the Act and the Code.

The preamble in both the Act and the Code contains 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 general public be able to know who is engaged in lobbying activities.
- The system for the registration of paid lobbyists should not impede free and open access to government.

Section 10.2 of the Act gives me the authority to develop, administer and enforce a *Lobbyists' Code of Conduct*. In developing the Code, the Act directs me to consult persons and organizations that I consider are interested in the Code. The existing Code has been in place since 1997 and the Principles and Rules remain unchanged. In the wake of the recent legislative review of the *Lobbying Act*, I thought this was an appropriate time to review the Code and decide if amendments were warranted. The reason for launching this consultation in September 2013 was to hear the views of interested parties on whether the Code should be amended.

This paper outlines what I heard during the consultation. I am pleased with the range of participants who participated in the consultation and that the value of the Code was reaffirmed. Many of the participants noted that it provides useful guidance for both lobbyists and public office holders. A number indicated that the Code is helpful in clarifying expectations about acceptable behaviour in the course of conducting lobbying activities.

Participants recommended a number of opportunities for improvement. Comments received ranged from minor amendments, such as adding definitions or clarifying the scope, to more substantive ones, such as changing the scope of the Code or adding rules.

In deciding on amendments to the *Lobbyists' Code of Conduct*, I will consider both the views and suggestions I heard during this consultation, and my own experience in administering the Code. I intend to present a revised Code in the Fall of 2014, at which time I will once again consult stakeholders. The Act requires that, prior to publishing the Code in the *Canada Gazette*, I refer it to a committee of the House of Commons. I will table the revised Code at the House of Commons Standing Committee on Access to Information, Privacy and Ethics.

I would like to take this opportunity to express my gratitude to everyone who dedicated time and effort to respond or participate throughout this consultation. I look forward to continued cooperation with everyone interested in lobbying issues when consultations begin on a revised Code in the Fall.

Karen E. Shepherd  
Commissioner of Lobbying

## BACKGROUND

### ***The Lobbyists' Code of Conduct***

Canada has a long history at the federal level with lobbying legislation. The *Lobbyists Registration Act* was first introduced in 1989 and was amended over the years to introduce increasingly greater disclosure from lobbyists and to provide enhanced independence and investigatory powers for the regulator.

In 1996, the *Lobbyists Registration Act* was amended to mandate that the Ethics Counsellor develop a code of conduct for lobbyists.<sup>1</sup> That same year, the Ethics Counsellor developed a discussion paper and launched a public consultation. The consultation was extensive, reaching out to a wide range of lobbyists, public office holders, including Senators and Members of Parliament, members of the media, academics and others. More than 80 submissions were received as part of the consultation.

A subsequent consultation was then launched to hear views on the draft Code. Approximately 40 submissions were received as part of this process. As mandated by the legislation, the Ethics Counsellor tabled a subsequent draft of the Code to a parliamentary committee in the Fall of 1996. The House of Commons Standing Committee on Procedure and House Affairs reviewed the Code, and the *Lobbyists' Code of Conduct* (the Code) was published in the *Canada Gazette* on February 8, 1997. It came into effect on March 1, 1997. The Principles and Rules have not changed since then.

Under the Canadian lobbying regime, lobbyists must behave ethically and according to the highest standards. The purpose of the Code is to articulate what behaviours are expected from lobbyists. In so doing, it serves to enhance the level of public confidence and trust in the integrity, objectivity and impartiality of government decision-making. At the same time, the Code is useful for federal public office holders. As the objects of lobbying, it is important that they understand what behaviours they can expect from the lobbyists who communicate with them.

The Code includes a preamble, a principles section, and a rules section. The preamble states the purpose and situates the Code in a broader context. The preamble is followed by a body of three overriding principles and a set of eight rules touching on transparency, confidentiality and conflict of interest. The principles set out the goals and objectives to be attained, without establishing precise standards. The rules provide guidance about expected behaviours.

### ***Enforcement to Date***

Unlike the *Lobbying Act*, the Code is a non-statutory instrument and, as such, breaches of the Code are not subject to fines or jail terms. At the end of an investigation of an alleged breach of the Code, the *Lobbying Act* requires that the Commissioner table a Report of her findings, conclusions and reasons for those conclusions in both Houses of Parliament.

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<sup>1</sup> From 1989-2004, the Ethics Counsellor was responsible for administering the Code. From 2004-2008, the Registrar of Lobbyists was responsible, and the Commissioner of Lobbying has been responsible since 2008, when the *Lobbying Act* was introduced.

In 2007, my predecessor, the former Registrar of Lobbyists, tabled four Reports on Investigation in Parliament, indicating that one individual had breached the Principle of Professionalism for failing to register his consultant lobbyist activities on behalf of four clients.<sup>2</sup> Since my appointment in 2008, I have tabled ten Reports on Investigation in Parliament, finding that 12 individuals breached the Code. Specifically:

- Nine individuals failed to register their lobbying activities and therefore breached the Principle of Professionalism, Rule 2 (Accurate Information) and Rule 3 (Disclosure of Obligations)<sup>3</sup>;
- One individual lobbied while prohibited to do so under the *Lobbying Act*, which was a breach of the Principle of Professionalism<sup>4</sup>; and
- Two individuals were found to have breached Rule 8 (Improper Influence)<sup>5</sup> because they placed a public office holder in an apparent conflict of interest.

### ***Timing of this Consultation***

The Act gives the Commissioner of Lobbying the authority to develop, administer and enforce the *Lobbyists' Code of Conduct*. It also directs the Commissioner to "consult persons and organizations that the Commissioner considers are interested in the Code."<sup>6</sup>

In September 2013, I decided to launch a consultation on whether changes to the Code were required for several reasons. While the *Lobbying Act* has been the subject of a number of amendments since the legislation was first introduced in 1989, the *Lobbyists' Code of Conduct* has not been reviewed or amended since coming into force in 1997. I believed that it was time to verify with stakeholders whether the Code can be improved. The Code was designed to specify the ethical standards that are expected of lobbyists. Over time ethical standards have evolved and what is considered acceptable behaviour has changed. It is essential to ensure that the Code continues to reflect the high ethical standards that Canadians expect of lobbyists.

In a 2009 decision<sup>7</sup>, the Federal Court of Appeal (FCA) ruled that the guidelines that had originally been issued by the former Ethics Counsellor regarding Rule 8 (Improper Influence) were "unreasonable". The FCA specifically stated that:

*Conflict of interest may exist because of a "reasonable apprehension" of an apparent conflict of interest, rather than a demonstration of interference with the public duties of a public office holder.*

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<sup>2</sup> See the former Registrar's [reports](#) dealing with the lobbying activities of Neelam J. Makhija on behalf of TIR Systems, Ltd; Infowave Software, Inc.; Intrinsync Software, Inc.; and Wavemakers, Inc.

<sup>3</sup> [The Lobbying Activities of Bruce Rawson](#); [The Lobbying Activities of René Fugère and André Nolle](#); [The Lobbying Activities of Paul Ballard](#); [The Lobbying Activities of Graham Bruce](#); [The Lobbying Activities of Mark Jiles](#); [The Lobbying Activities of GPG-Green Power Generation Corp. and Patrick Glémaud and Rahim Jaffer](#); [The Lobbying Activities of Julie Couillard](#).

<sup>4</sup> [The Lobbying Activities of Keith Beardsley](#)

<sup>5</sup> [The Lobbying Activities of Will Stewart](#); [The Lobbying Activities of Michael McSweeney](#)

<sup>6</sup> *Lobbying Act*, (R.S.C., 1985, c.44 (4<sup>th</sup> Supp.)), section 10.2.

<sup>7</sup> [Democracy Watch v. Barry Campbell and the Attorney General of Canada \(Office of the Registrar of Lobbyists\)](#), 2009 FCA 79.

The 2009 decision made it clear that the Commissioner must consider not only real conflicts of interest, but also situations where a lobbyist creates the appearance of one. A conflict of interest can be created by the presence of a tension between the public office holder's public duty to serve the public interest and his or her private interest or obligation created or facilitated by the lobbyist. Following the FCA decision, I published [guidance on the application of Rule 8 of the Code](#) and, later, provided further [clarifications about political activities in the context of Rule 8](#).

My experience with the Code, including the feedback I received on the application of Rule 8, informed my decision to launch this consultation. I believe, however, that it is important that the Code continues to reflect existing case law and jurisprudence, including the 2009 Federal Court decision.

## CONSULTATION PROCESS

I launched this consultation on the *Lobbyists' Code of Conduct* in September 2013. While the consultation period ended on December 20, 2013, submissions from participants were accepted until January 31, 2014.

The consultation was conducted primarily online, and a total of 19 written submissions were received in response to my discussion paper. The discussion paper was shared widely, with: registered lobbyists; academics with an interest in the fields of lobbying and ethics; my Canadian counterparts and some American colleagues; and with several senior federal officials. In the interest of a transparent process, submissions received were posted on the OCL [website](#). In addition, several consultation roundtables were held, the results of which were incorporated in my analysis.<sup>8</sup>

### ***Discussion Paper***

The consultation process was not intended to be prescriptive. As such, participants were encouraged to provide their input and comments in the manner and format they preferred. The discussion paper that I published to support this consultation posed ten questions organized under four general themes.

The questions included in the paper were intended to help focus the discussion about the Code.

- Objectives
  - What should be the objectives of a lobbyists' code of conduct?
- Scope
  - Which interactions should the code of conduct regulate other than those between a lobbyist and a public office holder? Should communications between lobbyists and their clients be regulated? Between clients and public office holders?
  - Should the code of conduct apply to both lobbyists and their clients?
  - Should the client have an obligation to ensure the lobbyist they hire complies with the *Lobbyists' Code of Conduct*?
- Clarity
  - Is it well understood that failure to comply with the Act may also result in a breach of the *Lobbyists' Code of Conduct*?
  - Does the *Lobbyists' Code of Conduct* need more clarity?
  - Is the sanction for breaches of the *Lobbyists' Code of Conduct* well understood and communicated?
- Content and format
  - What are the top 10 rules you would like to see in a code of conduct?
  - The current *Lobbyists' Code of Conduct* includes a Preamble, Principles and Rules. Should the format change?

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<sup>8</sup> For a full list of consultation participants, please see Annex B of this report.



- o Codes of conduct from other jurisdictions and professional associations include sections such as an introduction, preamble, purpose, objectives, application, principles, rules, definitions, conclusion, sanctions, etc. What would you like to include in a code of conduct?

A selection of codes of conduct from other jurisdictions was included for comparative purposes<sup>9</sup> and for the participants' consideration.

### ***Written Submissions***

My Office received 19 written submissions from a variety of stakeholders, including consultant lobbyists, in-house lobbyists, clients of lobbyists, academics and others. The names of all who participated in the consultation are listed in Annex B.

### ***Roundtable Events***

I led five separate roundtable events, which were organized to provide additional opportunities for discussions about the Code.

- November 29, 2013 in Toronto – roundtable with consultant lobbyists
- December 9, 2013 in Quebec City – roundtable with legal group at the Council on Governmental Ethics Laws (COGEL)
- December 10, 2013 in Quebec City – roundtable with counterparts at COGEL
- December 17, 2013 in Ottawa – roundtable with public office holders (in French)
- December 17, 2013 in Ottawa – roundtable with public office holders (in English)

The views expressed by the roundtable participants are not attributed in this report, but were considered. The names of participants are listed in Annex B.

The Toronto roundtable brought together seven consultant lobbyists. A total of twelve regulators and lawyers interested in lobbying regulation participated at the two roundtables at COGEL. Of the 20 most lobbied federal departments, 14 responded to my request for input. Twelve sent representatives to two roundtables organized in Ottawa by my Office, while two responded with written submissions. One department sent a representative to a roundtable and also submitted a written response.

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<sup>9</sup> Codes appended to OCL's discussion paper included those from: Quebec, Newfoundland and Labrador, City of Toronto, City of Ottawa, Australia, European Commission, National Assembly of France, Government Relations Institute of Canada, Public Affairs Association of Canada, UK Association of Professional Political Consultants, UK Chartered Institute of Public Relations, UK Public Affairs Council, and American League of Lobbyists.

## WHAT I HEARD

The majority of comments indicated that the *Lobbyists' Code of Conduct* is an important tool to guide the behaviour of lobbyists. It also serves to inform public office holders about what behaviour to expect from lobbyists. A number of key themes emerged in terms of how the Code can potentially be improved. Combined with my own experience in administering the Code, the views expressed in the context of this consultation will assist me in my analysis of where amendments are warranted.

### ***Need for Congruence***

Many participants stressed the need for congruence between the Act and the Code. It was pointed out, for instance, that the scope of the Code should not extend beyond that of the Act. Comments received indicated that it was also important to ensure that the Code reflects amendments that have been made to the Act.

Several sets of rules govern the behaviour of public office holders. It was felt that the Code should reflect or mirror those rules as set out in the [Values and Ethics Code for the Public Sector](#), the [Conflict of Interest Act](#), "[Accountable Government: A Guide for Ministers and Ministers of State](#)", and the [Public Service Employment Act](#), particularly the sections that relate to political activities.

#### **For consideration**

- **How can the Code be amended to make it more congruent with the *Lobbying Act* and other relevant ethics documents?**

### ***Principles vs. Rules***

In the field of ethics, there are proponents of a principles-based approach and proponents of a rules-based one. Proponents of a principles-based approach for codes of conduct argue that principles provide more flexibility as they suggest broad guidelines that can be applied to particular situations. Principles allow for a positive approach and focus more on promoting ethical behaviour rather than on preventing rule-breaking. Conversely, those who argue in favour of a rules-based approach argue that it is simpler to comply with rules, and that they are easier for a regulator to enforce.

During the consultation, the *Lobbyists' Code of Conduct* was recognized by public office holders as achieving a good balance between rules and principles. There was general agreement that such a hybrid approach made sense. One academic, Dr. Paul Pross, stated that "the Code should continue to be couched in general terms," and recommended against developing a highly detailed list of obligations and prohibitions.<sup>10</sup> Another academic, Dr. Paul Thomas,

<sup>10</sup> A. Paul Pross, submission, p.2:  
[https://strategis.ic.gc.ca/eic/site/012.nsf/vwapi/Letter\\_Commissioner\\_of\\_Lobbying\\_Dec18.pdf/\\$file/Letter\\_Commissioner\\_of\\_Lobbying\\_Dec18.pdf](https://strategis.ic.gc.ca/eic/site/012.nsf/vwapi/Letter_Commissioner_of_Lobbying_Dec18.pdf/$file/Letter_Commissioner_of_Lobbying_Dec18.pdf).

pointed to studies that have demonstrated the value of “soft laws” such as the Code in “shaping the attitudes and guiding the behaviours of the targets of regulation.”<sup>11</sup>

It was also recognized that the lobbying community is diverse, and this diversity is a good reason why a mix of rules and principles may work best for the *Lobbyists’ Code of Conduct*. It was noted by some during roundtables that lobbyists who carry out lobbying on a full-time basis may be more comfortable applying principles to everyday situations, while those who lobby occasionally may prefer the simplicity and clarity offered by rules. In summary, I believe it is fair to say that there was general agreement about the benefits of adopting a mix of approaches that would meet the needs of both kinds of lobbyists.

**For consideration**

- **How to maintain an appropriate balance between principles and rules in the Code.**

### ***Respect for Democracy***

One area that was identified by some participants as a gap in the Code is the absence of a principle that encourages lobbyists to respect democracy and democratic institutions. Dr. Pross argued that lobbyists should be required to “exercise a duty to respect democratic institutions, to increase public understanding of public processes and to act in a manner that will enhance public confidence and trust in government.”<sup>12</sup> However, it was noted by some public office holders and academics that the Code should not require lobbyists to put the public interest first.<sup>13</sup> While it is the duty of public office holders to act in the public interest above all else, it was recognized that lobbyists must put their client’s interests first. This does not preclude lobbyists from considering the public interest. It was generally agreed that lobbyists are communicating on behalf of their clients/employers, and it is expected that those concerns would be foremost.

It was indicated by several participants that public office holders operate under a range of prescriptive rules and principles set out in various laws and codes. In the interest of congruence, I was asked to consider adding a rule prohibiting lobbyists from putting public office holders into conflict with the rules of conduct or values and ethics codes that apply to them.<sup>14</sup> This would require that lobbyists understand the rules that apply to public office holders. The point was made, however, that this knowledge would encourage lobbyists to behave according to high standards. It was recommended that such a rule could complement the existing Rule 8 regarding improper influence and conflict of interest.

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<sup>11</sup> Paul G. Thomas, submission, p.1:  
[https://strategis.ic.gc.ca/eic/site/012.nsf/vwapi/Paul\\_Thomas\\_University\\_of\\_Manitoba.pdf/\\$FILE/Paul\\_Thomas\\_University\\_of\\_Manitoba.pdf](https://strategis.ic.gc.ca/eic/site/012.nsf/vwapi/Paul_Thomas_University_of_Manitoba.pdf/$FILE/Paul_Thomas_University_of_Manitoba.pdf).

<sup>12</sup> A. Paul Pross, submission, p. 2:  
[https://strategis.ic.gc.ca/eic/site/012.nsf/vwapi/Pross.pdf/\\$file/Pross.pdf](https://strategis.ic.gc.ca/eic/site/012.nsf/vwapi/Pross.pdf/$file/Pross.pdf).

<sup>13</sup> Bruce Anderson, Shelagh Campbell, Bill Bonner, University of Regina, submission, p. 2:  
[https://strategis.ic.gc.ca/eic/site/012.nsf/vwapi/Lobbyists\\_Code\\_of\\_Conduct\\_URegina.pdf/\\$file/Lobbyists\\_Code\\_of\\_Conduct\\_URegina.pdf](https://strategis.ic.gc.ca/eic/site/012.nsf/vwapi/Lobbyists_Code_of_Conduct_URegina.pdf/$file/Lobbyists_Code_of_Conduct_URegina.pdf).

<sup>14</sup> Quebec’s code of conduct, for instance includes the following rule: “In carrying on their activities, lobbyists shall be respectful of parliamentary, government and municipal institutions and of public office holders. They shall also respect the right to equal access to those institutions.”

### For consideration

- **Whether a principle should be included to the Code to promote greater respect for public institutions.**
- **Whether a rule should be included in the Code to prohibit lobbyists from putting a public office holder in a conflict with the values and ethics rules governing his/her behaviour.**

### ***Sanctions under the Act and the Code***

Several participants indicated that a clear statement about sanctions and other consequences for breaches of the Code would be beneficial. From a regulator's perspective, "regarding clarifying expectations for compliance and consequences for breaches, there can never be too much clarity."<sup>15</sup>

Academics from the University of Regina disagreed that additional clarity was required, recommending that the Code should "remain as it is currently framed, referring back to the Act and Regulations rather than adding additional layers of instruction regarding sanctions."<sup>16</sup>

There are two types of sanctions set out in the Act. The first type concerns breaches of the Act and includes a maximum penalty of \$200,000, jail time up to two years, and possible prohibition from engaging in registrable lobbying activity for up to two years. The second type is also set out in the Act, and relates to breaches of the Code. This type involves public disclosure of breaches in Reports tabled by the Commissioner in Parliament.

It is my practice to treat breaches of the Act as potential breaches of the Code. If, during the course of an investigation, I have reasonable grounds to believe a breach of the Act has occurred, I am required to suspend my investigation and refer the matter to a peace officer, normally the Royal Canadian Mounted Police (RCMP). I have done so on 11 occasions since 2008. In two cases, the RCMP decided, in consultation with the Public Prosecutions Service of Canada, to lay charges.<sup>17</sup> When charges were not laid, reasons included:

- It was not in the public interest to proceed;
- The time limitation on proceedings was exceeded;
- There was not a strong enough likelihood of conviction; and
- Aspects of the *Lobbying Act* make it difficult to enforce (e.g., section 7, particularly the significant part of duties registration threshold).

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<sup>15</sup> Elizabeth Denham, Registrar of Lobbyists for British Columbia, submission, p.5; [https://strategis.ic.gc.ca/eic/site/012.nsf/vwapj/Letter\\_CodeofConduct\\_20Dec2013.pdf/\\$file/Letter\\_CodeofConduct\\_20Dec2013.pdf](https://strategis.ic.gc.ca/eic/site/012.nsf/vwapj/Letter_CodeofConduct_20Dec2013.pdf/$file/Letter_CodeofConduct_20Dec2013.pdf).

<sup>16</sup> Bruce Anderson, Shelagh Campbell, Bill Bonner, University of Regina, submission, p. 2: [https://strategis.ic.gc.ca/eic/site/012.nsf/vwapj/Lobbyists\\_Code\\_of\\_Conduct\\_URegina.pdf/\\$file/Lobbyists\\_Code\\_of\\_Conduct\\_URegina.pdf](https://strategis.ic.gc.ca/eic/site/012.nsf/vwapj/Lobbyists_Code_of_Conduct_URegina.pdf/$file/Lobbyists_Code_of_Conduct_URegina.pdf).

<sup>17</sup> To date, two cases referred by the Commissioner to the RCMP have resulted in charges, including one conviction. Andrew Skaling was convicted in 2013 for unregistered lobbying. In 2014, three charges of lobbying while prohibited were laid against Bruce Carson. These charges have not been proven in Court.

If the RCMP returns a file to me, I review the allegations and determine if an investigation under the *Lobbyists' Code of Conduct* should be pursued. In my view, failing to comply with the *Lobbying Act* clearly constitutes a breach of the Principle of Professionalism, as it is stated in the Code:

*Lobbyists should observe the highest professional and ethical standards. In particular, lobbyists should conform fully with not only the letter but the spirit of the Lobbyists' Code of Conduct as well as all the relevant laws, including the Lobbying Act and its regulations.*

On this issue, the Canadian Bar Association (CBA) questioned whether it is appropriate to treat an alleged breach of the Act as a breach of the Code, noting that “Parliament has determined that a breach (or alleged breach) of the Act is to be dealt with through a process of investigation, charge, trial, conviction and sentence.” In the CBA’s view, “there is no indication that Parliament intended the *Lobbyists' Code of Conduct* to provide an alternate mechanism to address breaches of the Act.”<sup>18</sup>

**For consideration**

- **Whether a section should be added to indicate the consequences for breaches of the Code.**

### **Complaints Process**

It is my practice to take all allegations seriously, regardless of who is making the allegation. MacDonald-Dettwiler and Associates, in their submission, recommended that the Code be amended to clearly state who can make a complaint about a breach of the Code. In their view, the Code should allow clients, public office holders and members of the public to lodge complaints.<sup>19</sup> Unlike other legislation, the *Lobbying Act* does not specify who can complain about alleged breaches of either the Act or the Code. I will consider whether this clarification would be best added to the Code itself, or made available on the OCL’s website.

**For consideration**

- **Whether the Code should be explicit with respect to who can complain about breaches.**

### **Scope**

The discussion paper included a series of questions about the scope of the Code. These questions received significant attention from participants. The Code outlines the types of behaviour that are expected from lobbyists when they interact with public office holders. The Code also provides guidance to help lobbyists understand what is expected of them when they communicate with their clients. Specifically, Rules 1, 2, 7, and 8 relate to how lobbyists interact

<sup>18</sup> CBA, submission, p. 7: [https://strategis.ic.gc.ca/eic/site/012.nsf/vwapj/CBA\\_-\\_submission\\_-\\_2014-01-30.pdf/\\$FILE/CBA\\_-\\_submission\\_-\\_2014-01-30.pdf](https://strategis.ic.gc.ca/eic/site/012.nsf/vwapj/CBA_-_submission_-_2014-01-30.pdf/$FILE/CBA_-_submission_-_2014-01-30.pdf).

<sup>19</sup> Preetpal Bhamra, Corporate Counsel, MacDonald-Dettwiler and Associates, submission, p. 2: [https://strategis.ic.gc.ca/eic/site/012.nsf/vwapj/Feedback\\_LobbyistsCodeofConduct.pdf/\\$file/Feedback\\_LobbyistsCodeofConduct.pdf](https://strategis.ic.gc.ca/eic/site/012.nsf/vwapj/Feedback_LobbyistsCodeofConduct.pdf/$file/Feedback_LobbyistsCodeofConduct.pdf).

with public office holders, and Rules 3, 4, 5, and 6 relate to how lobbyists interact with their clients.<sup>20</sup>

### Lobbyists and public office holders

The main focus of the *Lobbying Act* is on disclosure of communications between lobbyists and public office holders. The consultation revealed a general consensus that the Code should focus on the same relationship. Several participants also expressed the view that the scope of who is covered by the Code should be the same as who is covered by the Act.

The Code does not address the treatment of confidential information provided by a public office holder.<sup>21</sup> In their joint submission, the Government Relations Institute of Canada (GRIC) and the Public Affairs Association of Canada (PAAC) pointed out that the rule about confidential information prohibits lobbyists from disadvantaging their client or employer by divulging confidential information obtained in the course of their lobbying activities. They requested that, if I decide to expand the interpretation of this rule to include sensitive information obtained from government, I should make it explicit in the Code.<sup>22</sup>

### Lobbyists and clients

Several participants indicated that the interactions between lobbyists and their clients should not be regulated by the Code. From the perspective of the Canadian Association of Petroleum Producers, General Electric, the Dairy Farmers of Canada, and the Winnipeg Airport Authority, the relationship between lobbyists and their clients is strictly a business relationship. As such, it should remain with clients and lobbyists to work out between themselves. It was, however, recognized that a possible exception might be with respect to the prohibition on payments that are contingent on the success of the lobbying activities. Contingency fees were explicitly prohibited in the *Lobbying Act* in 2008.

Several participants recommended that the rules relating to communications between lobbyists and their clients or employers be removed entirely from the Code. Besides the jurisdictional issue that the Code should not apply to relationships that are not provided for in the Act, the following reasons were provided:

- There is a lack of congruence between the Code's preamble, stated purpose and the rules. The preamble does not mention lobbyists' relationships with their clients or employers, yet rules do attempt to set standards for these relationships.
- How a lobbyist interacts with their client does not interfere, generally, with the public's confidence in the integrity of government decision-making.
- It may prove difficult to enforce standards that regulate the relationship between lobbyists and their clients.

The Canadian Bar Association (CBA) argued for limited regulation about the lobbyist/client relationship. It recommended that lobbyists be obligated to inform their clients of the

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<sup>20</sup> Full text of the *Lobbyists' Code of Conduct* is included in Annex C.

<sup>21</sup> For a discussion of such an instance, and how the Commissioner dealt with it under the Code, please see the OCL's Annual Report 2012-13.

<sup>22</sup> GRIC/PAAC submission, p. 3:

[https://strategis.ic.gc.ca/eic/site/012.nsf/vwapj/GRIC\\_PAAC\\_Submission\\_Lobbyists\\_Code\\_Consultations\\_20131220.pdf/\\$FILE/GRIC\\_PAAC\\_Submission\\_Lobbyists\\_Code\\_Consultations\\_20131220.pdf](https://strategis.ic.gc.ca/eic/site/012.nsf/vwapj/GRIC_PAAC_Submission_Lobbyists_Code_Consultations_20131220.pdf/$FILE/GRIC_PAAC_Submission_Lobbyists_Code_Consultations_20131220.pdf).

requirements of both the Act and the Code, and not be allowed to lobby until they were satisfied that the client understands the nature and implications of those requirements. The CBA recommended that lobbyists discharge their duty to disclose to their clients by using standard retainer agreements with clauses containing this information. According to the CBA, lobbyists should be required to communicate honestly with clients, and should not promise clients that a particular outcome will be achieved. At no time, however, should the Code attempt to regulate how a client communicates with the lobbyist(s) they hire. This was viewed by the CBA as being outside the scope of the Code.

### **Clients and public office holders**

Two main questions relating to clients were raised in the discussion paper:

1. Should the interactions between clients and public office holders be governed by the Code?; and
2. Should clients bear a responsibility to ensure that the lobbyists they hire adhere to rules set out in the Code?

According to many participants, the only clients to whom the Code should apply are those who, by virtue of their own communications with public office holders, are themselves required to register under the Act. Dr. Pross pointed out that, from a public policy perspective, this effectively means that “a client of a lobbyist may overstep limitations that are imposed on registered lobbyists.” His recommendation was for the Code to require lobbyists to advise clients of the rules that apply to registered lobbyists, and to encourage clients to live by the spirit of the Code.<sup>23</sup>

There was general agreement that I should not introduce an obligation in the Code for clients to ensure the lobbyist they hire adheres to the Code. With few exceptions, it was argued that since the Act places the onus on the lobbyist to follow the rules, so should the Code. GRIC and PAAC, in their joint submission, pointed out that shifting responsibility away from lobbyists to those who hire them may create the unintended outcome of diluting responsibility. This might provide an excuse for any lobbyist wishing to act in a manner not reflective of the standards set out in the Code.

#### **For consideration**

- **Whether the scope of the Code should be changed.**

### **Rule 8 – Improper Influence**

Rule 8, deals with improper influence and conflicts of interest. It states:

*Lobbyists shall not place public office holders in a conflict of interest by proposing or undertaking any action that would constitute an improper influence on a public office holder.*

<sup>23</sup> A. Paul Pross, submission, p. 5:  
[https://strategis.ic.gc.ca/eic/site/012.nsf/vwapj/Pross.pdf/\\$file/Pross.pdf](https://strategis.ic.gc.ca/eic/site/012.nsf/vwapj/Pross.pdf/$file/Pross.pdf).

Three main aspects were raised during the consultation with respect to improper influence and conflicts of interest: gifts, political activities, and preferential access.

## Gifts

The [Guidance on Rule 8](#) that I issued in 2010 states that “the provision of a gift, an amount of money, a service, or property without an obligation to repay” may give rise to a competing obligation for a public office holder. Several participants believed that this guidance notwithstanding, there is a gap in the Code regarding gifts being offered by lobbyists. While various legislation and values and ethics codes cover the acceptability of gifts offered to public office holders, no guidance is offered to lobbyists in the *Lobbyists’ Code of Conduct*.

One participant, Suncor, requested more clarity around what constitutes an “inappropriate gift.”<sup>24</sup> Others felt that the Code should provide for an outright prohibition on any type of gifts, with some exceptions perhaps for reasons of custom, protocol, or social obligations. The Canadian Bar Association recommended the following rule be added to the Code: “A lobbyist shall not, in anticipation of lobbying, in the course of lobbying, or following lobbying, provide a gift, hospitality, or other benefit except as a token of nominal value to a public office holder.”<sup>25</sup>

This gap with respect to gifts from lobbyists was also noted during the 2012 review of the *Lobbying Act*. The House of Commons Standing Committee on Access to Information, Privacy and Ethics recommended in its Report that there should be an explicit ban on gifts from lobbyists.<sup>26</sup> The Government, in its Response, indicated its intention to “prohibit, under the *Lobbying Act*, lobbyists from giving gifts to public office holders. This should provide clarity regarding the nature and value of acceptable gifts. Lobbyists would then know what standards they are expected to meet.”<sup>27</sup>

The issue of volunteer political activities that may be carried out by a registered lobbyist is related to the provision of gifts. Clarity was sought regarding whether volunteering services, giving money, or time, to help a Member of Parliament get elected could be viewed as a gift that might further the private interests of an individual. According to GRIC/PAAC, since electoral district associations (EDA) are not the personal property of a candidate, volunteering for an EDA should not be seen as a personal gift to the candidate.<sup>28</sup>

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<sup>24</sup> Heather Kennedy, for Suncor Energy Inc., submission, p.1: [https://strategis.ic.gc.ca/eic/site/012.nsf/vwapj/20131220CanadaLobbyCodeofConductSubmission.pdf/\\$file/20131220CanadaLobbyCodeofConductSubmission.pdf](https://strategis.ic.gc.ca/eic/site/012.nsf/vwapj/20131220CanadaLobbyCodeofConductSubmission.pdf/$file/20131220CanadaLobbyCodeofConductSubmission.pdf).

<sup>25</sup> Canadian Bar Association, submission, p. 6, [https://strategis.ic.gc.ca/eic/site/012.nsf/vwapj/CBA\\_-\\_submission\\_-\\_2014-01-30.pdf/\\$FILE/CBA\\_-\\_submission\\_-\\_2014-01-30.pdf](https://strategis.ic.gc.ca/eic/site/012.nsf/vwapj/CBA_-_submission_-_2014-01-30.pdf/$FILE/CBA_-_submission_-_2014-01-30.pdf).

<sup>26</sup> The Committee Report can be found at: <http://www.parl.gc.ca/HousePublications/Publication.aspx?Mode=1&Parl=41&Ses=1&Language=E&DocId=5577899&File=72#18>

<sup>27</sup> The Government Response can be found at: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5706852&Mode=1&Parl=41&Ses=1&Language=E>

<sup>28</sup> Government Relations Institute of Canada and Public Affairs Association of Canada submission, p.6: [https://strategis.ic.gc.ca/eic/site/012.nsf/vwapj/GRIC\\_PAAC\\_Submission\\_Lobbyists\\_Code\\_Consultations\\_20131220.pdf/\\$FILE/GRIC\\_PAAC\\_Submission\\_Lobbyists\\_Code\\_Consultations\\_20131220.pdf](https://strategis.ic.gc.ca/eic/site/012.nsf/vwapj/GRIC_PAAC_Submission_Lobbyists_Code_Consultations_20131220.pdf/$FILE/GRIC_PAAC_Submission_Lobbyists_Code_Consultations_20131220.pdf).



**For consideration**

- **Whether a rule explicitly dealing with the provision of gifts by lobbyists should be included in the Code.**

**Political activities**

Several participants indicated that the clarity of the Code would be improved by explicitly defining political activities. For example, the CBA suggested that the area of political contributions would be clarified by a rule stating that: “A lobbyist shall not make a political contribution or encourage the making of a political contribution in an attempt to influence a public office holder’s decision.”<sup>29</sup>

It was suggested by GRIC and PAAC that I should align how I define political activities with the similar definition that applies to public office holders under the *Public Service Employment Act* (PSEA). The definition of political activities in the PSEA is as follows:

- (a) *carrying on any activity in support of, within or in opposition to a political party;*
- (b) *carrying on any activity in support of or in opposition to a candidate before or during an election period; or*
- (c) *seeking nomination as or being a candidate in an election before or during the election period.*

GRIC and PAAC also recommended that I introduce an explicit time limit after which political activities carried out by a lobbyist would cease to create a real or apparent conflict of interest for any public office holder they are lobbying. This was echoed in a roundtable held during the Council on Governmental Ethics Laws. GRIC and PAAC also pointed out in their joint submission that a period of five years is consistent with the cooling-off period included in the *Lobbying Act* for former designated public office holders. Others considered one year to be a sufficient period of time.

**For consideration**

- **Whether a definition of political activities should be included in the Code and if so, whether it should be aligned with the definition included in the *Public Service Employment Act*.**
- **Whether a time limit should be included in the Code to determine the relevance of political activities by lobbyists in the context of creating a real or an apparent conflict of interest.**

**Preferential access**

Several participants recognized that some of the motivation to regulate lobbying activities is to ensure a level playing field in terms of access to public officials. The CBA recommended adding rules to ensure that lobbyists do not seek or accept preferential access by arranging meetings

<sup>29</sup> CBA submission, p. 6, [https://strategis.ic.gc.ca/eic/site/012.nsf/vwapj/CBA\\_-\\_submission\\_-\\_2014-01-30.pdf/\\$FILE/CBA\\_-\\_submission\\_-\\_2014-01-30.pdf](https://strategis.ic.gc.ca/eic/site/012.nsf/vwapj/CBA_-_submission_-_2014-01-30.pdf/$FILE/CBA_-_submission_-_2014-01-30.pdf).

with public office holders who are friends or relatives of the lobbyists, or who have financial dealings with the lobbyists. The CBA also recommended that lobbyists be prohibited from lobbying a public office holder directly who is a friend or relative, or someone with whom the lobbyists have financial dealings.

**For consideration**

- **Whether a rule should be included in the Code to explicitly regulate preferential access to public office holders.**

***General Comments about Structure and Format of the Code***

General comments were made with respect to the structure and format of the Code. The short, succinct format of the Code was considered a positive trait. Some participants suggested that the clarity of the Code would benefit from the inclusion of illustrative scenarios that would highlight how the rules apply in given situations. Taking a “plain-language” approach was also recommended by some public office holders.

**For consideration**

- **Whether illustrative scenarios should be included in the Code.**

In terms of the Code’s structure, a number of participants suggested that to whom the Code applies could be clarified in a new “Application” section. It was also suggested that definitions be included to ensure a common understanding of key concepts. Such clarifications could be provided as a companion to the Code, for instance on the OCL website.

**For consideration**

- **Whether definition and application sections should be included in the Code itself or as a companion to the Code.**

## CONCLUSIONS AND LOOKING AHEAD

The purpose of the *Lobbyists' Code of Conduct* is to assure the Canadian public that lobbying is done ethically and according to the highest standards. The Code is intended to preserve and enhance public confidence and trust in the integrity, objectivity and impartiality of government decision-making.

In my opinion, this consultation was successful on a number of fronts. Primarily, I am pleased that I heard from key stakeholders, including lobbyists (both consultant and in-house), public office holders, my American and Canadian colleagues, lawyers providing advice to lobbyists, and academics with an interest in this field. I would like to express my gratitude to all those who took the time to participate in this process.

In determining what amendments to the *Lobbyists' Code of Conduct* are warranted, I will consider the views and suggestions expressed by everyone who participated in this consultation. I will also reflect on my own experience in administering the Code. I am confident that with the information that I now have before me, combined with my own experience, the result will be a revised Code that will better serve Canadians.

I expect to publish the draft of a revised *Lobbyists' Code of Conduct* in the Fall of 2014. A subsequent consultation process will be launched at that time. The *Lobbying Act* requires that, prior to publishing the Code in the *Canada Gazette*, I refer it to a committee of the House of Commons. I will therefore table a revised *Lobbyists' Code of Conduct* before the House of Commons Standing Committee on Access to Information, Privacy and Ethics.

## GLOSSARY

### Lobbying:

To communicate with a public office holder in respect of:

- The development of any legislative proposal by the Government of Canada or by a member of the Senate or House of Commons;
- The introduction of any bill or resolution in either House of Parliament;
- The passage, defeat, amendment of any regulation;
- The development or amendment of any policy or program of the Government of Canada; or
- The awarding of any grant, contribution or other financial benefit.

For consultant lobbyists, the following activities also constitute lobbying:

- Arranging a meeting between another person and a public office holder; and
- Communicating with respect to the awarding of a contract.

### Lobbyist:

An individual who is paid to communicate with public office holders in respect of certain matters (listed above). The legislation identifies three types: consultant, in-house (organization), in-house (corporation).

### Public office holder:

- A member of the Senate or House of Commons and any person on his or her staff;
- A person who is appointed to any office or body by the Governor in Council or a Cabinet Minister;
- An officer, director, or employee of any federal board, commission, or other tribunal;
- A member of the Canadian Armed Forces;
- A member of the Royal Canadian Mounted Police; and
- Any officer or employee of the federal government not listed above.

### Designated public office holder:

A sub-category of public office holders that includes:

- Ministers of the Crown or Ministers of State and any person employed in their offices who are appointed under subsection 128(1) of the *Public Service Employment Act*;
- Deputy ministers;
- Associate deputy ministers, assistant deputy ministers or those occupying a position of comparable rank;
- Any individual who occupies a position that has been designated by regulation;
  - Seven senior positions in the Armed Forces:

- Chief of the Defence Staff
- Vice Chief of the Defence Staff
- Chief of Maritime Staff
- Chief of Land Staff
- Chief of Air Staff
- Chief of Military Personnel
- Judge Advocate General
- Two classes of positions in the Privy Council Office;
  - Any position of Senior Advisor to the Privy Council to which the office holder is appointed by the Governor in Council
  - Deputy Minister (Intergovernmental Affairs) Privy Council Office
- Comptroller General of Canada;
- Any position to which the office holder is appointed pursuant to paragraph 127.1(1)(a) or (b) of the *Public Service Employment Act*
- All members of the Senate or House of Commons; and
- Staff in the offices of the Leader of the Opposition in the Senate or House of Commons, appointed pursuant to subsection 128(1) of the *Public Service Employment Act*.

## LIST OF PARTICIPANTS

### *Written submissions were received from the following participants*

- Paul G. Thomas, Professor Emeritus, University of Manitoba
- Nikol J. Schultz, VP Pipeline Regulation and General Counsel, Canadian Association of Petroleum Producers (CAPP)
- Charles Milne, Charles Milne & Company
- Paul Pross, Professor Emeritus, Dalhousie University
- Ilijha, Director of Foreign Affairs, BGB Group
- Bruce Futterer, Vice-President and General Counsel, General Electric Canada
- Bruce Anderson, Director Centre for Management Development; Shelagh Campbell, Assistant Professor of Business Ethics; Bill Bonner, Associate Professor of Management Information Systems, on behalf of Faculty of Business Administration, University of Regina
- Richard Doyle, Executive Director, Dairy Farmers of Canada
- Preetpal Bhamra, Corporate Counsel, MacDonald-Dettwiler and Associates
- Hon. Joseph L. Jordan, P.C. (*as an individual*), Senior Consultant, The Capital Hill Group
- Heather Kennedy, Vice President Government Relations, Suncor Energy
- Elizabeth Denham, Registrar of Lobbyists, Office of the Registrar of Lobbyists of B.C.
- Government Relations Institute of Canada (GRIC) and Public Affairs Association of Canada (PAAC)
- University of Toronto
- Barry W. Rempel, President & CEO, Winnipeg Airports Authority
- Andrée Lessard (*as an individual*), Project Officer, Public Works and Government Services Canada
- Joe Heffernan, Chairman, Clairvest Group and Ken Rotman, Co-CEO and Managing Director, Clairvest Group
- Rick Sztramko, Manager Business Development CCG, Babcock Canada
- Canadian Bar Association (CBA)

### *Consultant lobbyists*

- Stephen Andrews (Borden Ladner Gervais)
- John Capobianco (Fleishman-Hillard)
- Barbara Fox (Enterprise Canada and Ensign Canada)
- Christopher Holz (Campbell Strategies)
- Brett James (Sussex Strategy Group)
- John Matheson (StrategyCorp)
- Paul Pellegrini (Sussex Strategy Group)

### ***Regulators/Legal specialists (at COGEL)***

- Nicholas Allard, Dean of Brooklyn Law School and Partner, Patton Boggs
- Pam Gavin, former Superintendent of Public Records, United States Senate
- Linda Gehrke, Lobbyist Registrar, City of Toronto
- Guy Giorno, Partner, Fasken Martineau
- Ken Gross, Partner, Skadden Arps Slate Meagher & Flom, LLP
- Robert Marleau, Integrity Commissioner, City of Ottawa
- Lynn Morrison, Integrity Commissioner, Ontario
- Bradley V. Odsen, Registrar of Lobbyists and General Counsel to the Ethics Commissioner, Alberta
- John Schaaf, Legal Counsel, Kentucky Legislative Ethics Commission
- Jeff Sigurdson, Assistant Executive Director, Minnesota Campaign Finance and Public Disclosure Board

### ***Federal Departments***

- Agriculture and Agri-Food Canada
- Canadian Heritage
- Citizenship and Immigration Canada
- Employment and Social Development Canada
- Environment Canada
- Fisheries and Oceans
- Foreign Affairs and Trade Development Canada
- Health Canada
- Industry Canada
- National Defence
- Natural Resources Canada
- Public Safety Canada
- Public Works and Government Services Canada
- Treasury Board Secretariat

## ***LOBBYISTS' CODE OF CONDUCT***

### **Preamble**

The *Lobbyists' Code of Conduct* is founded on four concepts stated in the *Lobbying Act*:

- 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 *Lobbyists' Code of Conduct* is an important initiative for promoting public trust in the 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.

To this end, public office holders, when they deal with the public and with lobbyists, are required to honour 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.

Together, these codes play an important role in safeguarding the public interest in the integrity of government decision-making.

### **Principles**

#### **Integrity and Honesty**

Lobbyists should conduct with integrity and honesty all relations with public office holders, clients, employers, the public and other lobbyists.

#### **Openness**

Lobbyists should, at all times, be open and frank about their lobbying activities, while respecting confidentiality.

#### **Professionalism**

Lobbyists should observe the highest professional and ethical standards. In particular, lobbyists should conform fully with not only the letter but the spirit of the *Lobbyists' Code of Conduct* as well as all the relevant laws, including the *Lobbying Act* and its regulations.



# Rules

## Transparency

### 1. Identity and purpose

Lobbyists shall, when making a representation to a public office holder, disclose the identity of the person or organization on whose behalf the representation is made, as well as the reasons for the approach.

### 2. Accurate information

Lobbyists shall provide information that is accurate and factual to public office holders. Moreover, lobbyists shall not knowingly mislead anyone and shall use proper care to avoid doing so inadvertently.

### 3. Disclosure of obligations

Lobbyists shall indicate to their client, employer or organization their obligations under the *Lobbying Act*, and their obligation to adhere to the *Lobbyists' Code of Conduct*.

## Confidentiality

### 4. Confidential information

Lobbyists shall not divulge confidential information unless they have obtained the informed consent of their client, employer or organization, or disclosure is required by law.

### 5. Insider information

Lobbyists shall not use any confidential or other insider information obtained in the course of their lobbying activities to the disadvantage of their client, employer or organization.

## Conflict of interest

### 6. Competing interests

Lobbyists shall not represent conflicting or competing interests without the informed consent of those whose interests are involved.

### 7. Disclosure

Consultant lobbyists shall advise public office holders that they have informed their clients of any actual, potential or apparent conflict of interest, and obtained the informed consent of each client concerned before proceeding or continuing with the undertaking.

### 8. Improper influence

Lobbyists shall not place public office holders in a conflict of interest by proposing or undertaking any action that would constitute an improper influence on a public office holder.