

**THE LEGISLATIVE ASSEMBLY
OF SASKATCHEWAN**



**STANDING COMMITTEE ON
INTERGOVERNMENTAL AFFAIRS &
JUSTICE
SECOND REPORT**

Lobbying Legislation Inquiry

Final Report

May 16, 2012



May 16, 2012

To the Honourable Members
of the Legislative Assembly
of the Province of Saskatchewan:

HONOURABLE MEMBERS:

Your Standing Committee on Intergovernmental Affairs and Justice is pleased to present its report respecting a legislative model for new legislation regarding lobbying in Saskatchewan to the Honourable Members of the Legislative Assembly.

On December 7, 2011, the Standing Committee on Intergovernmental Affairs and Justice received an Order of Reference from the Legislature which stated:

That the Standing Committee on Intergovernmental Affairs and Justice, in accordance with Rule 147(1) of the *Rules and Procedures of the Legislative Assembly of Saskatchewan*, shall conduct an inquiry and make recommendations to the Assembly respecting a legislative model for new legislation regarding lobbying in Saskatchewan to ensure that the public is informed and aware of who is lobbying public office holders in Saskatchewan while ensuring that free and open access to government decision-makers is not unduly impeded; and

That the said committee shall conduct public hearings and receive presentations from interested individuals and groups.

The committee travelled to Ottawa in February 2012. The Members observed the House of Commons Standing Committee on Access to Information, Privacy and Ethics' statutory review of *The Lobbying Act* and met with many of the Lobbyist Commissioners and Registrars from across Canada as well as interested stakeholders. Your Committee accepted nine written submissions that were received by the February 28th deadline. Based on the study of the information, your committee makes 23 recommendations.

Your Committee respectfully submits the Standing Committee on Intergovernmental Affairs and Justice's Second Report, *Lobbyist Legislation Inquiry*.

A handwritten signature in cursive script that reads "Warren Michelson".

Warren Michelson
Chair
MLA Moose Jaw North

Table of Contents

Executive Summary	1
Introduction.....	3
Order of Reference.....	3
Summary of Events.....	4
Principles	6
Definition of “Lobby”	6
Definition of “Lobbyist”	7
Exemptions when Acting in Official Capacity	8
Registration Threshold (Significant part of duties).....	9
Definition of “Public Office Holder”	10
Post-employment Prohibitions.....	10
Code of Conduct.....	11
Contracting Prohibition.....	12
Contingency Fees	12
Registering & Reporting	12
Investigatory Powers	13
Sanctions and Penalties	14
Administrator	15
Legislative Review.....	15
Appendix A – List of Written Submissions	16
Appendix B – Works Cited	17
Minority Opinion	19

COMPOSITION OF COMMITTEE

Mr. Warren Michelson, Chair
Moose Jaw North

Ms. Cathy Sproule, Deputy Chair
Saskatoon Nutana

Mr. Kevin Phillips
Melfort

Mr. Warren Steinley
Regina Walsh Acres

Mr. Lyle Stewart
Thunder Creek

Ms. Christine Tell
Regina Wascana Plains

Mr. Corey Tochor
Saskatoon Eastview

OTHER PARTICIPATING MEMBERS

Hon. Jeremy Harrison, Government House Leader
Meadow Lake

Mr. John Nilson, Leader of the Opposition
Regina Lakeview

Executive Summary

On December 7, 2011, the Standing Committee on Intergovernmental Affairs and Justice received an Order of Reference from the Legislature. Your Committee met in January and adopted the Steering Committee's report which outlined the plans for the committee's inquiry regarding lobbying in Saskatchewan. Your committee travelled to Ottawa in February 2012. Your Committee observed the House of Commons Standing Committee on Access to Information, Privacy and Ethics' statutory review of *The Lobbying Act* and met with many of the Commissioners and Registrars as well as interested stakeholders. Your Committee accepted 9 written submissions that were received by the February 28th deadline. Based on the study of the information, your committee makes the following 23 recommendations:

Definition of "Lobby"

- Your Committee recommends defining to "lobby" as a means *to communicate with a public office holder in an attempt to influence*. This is consistent with all other provincial jurisdictions including Alberta and British Columbia.

Definition of Lobbyist

- Your Committee recommends defining consultant lobbyists as individuals who for compensation, undertakes to lobby on behalf of a client.
- Your Committee recommends the same definition for in-house lobbyist as presented in British Columbia's *Lobbyist Registration Act*.
In-house lobbyist means an employee, an officer or a director of an organization (a) who receives a payment for the performance of his or her functions, and (b) whose lobbying or duty to lobby on behalf of the organization or an affiliate alone or together with individuals in the organization, (i) amounts to at least 100 hours annually, or (ii) otherwise meets criteria established by the regulations.
- Your Committee recommends that there should be a charitable exemption.

Exemptions when acting in official capacity

- Your Committee recommends following similar exemptions that are listed in other jurisdictions.
- Your Committee recommends that all post-secondary institutions register as an in-house lobbyist.

Registration Threshold (Significant part of duties)

- Your Committee recommends following Alberta and British Columbia's registration threshold of 100 hours.
- Your Committee also recommends including travel time when calculating the 100 hours.

Definition of Public Office Holder

- Your Committee recommends including Members of the Legislative Assembly, employees of a Ministry, any person appointed by Lieutenant Governor in Council or member of Executive Council to the definition of public office holder.

Post-employment Prohibitions

- Your Committee recommends including a post-employment prohibition in any lobbyist legislation as there is no post-employment provisions for public office holders in other Saskatchewan legislation.
- Your Committee recommends that Ministers be prohibited from lobbying the ministry they were responsible for a period of 12 months and elected Members for a period of 6 months.
- Your Committee recommends that deputy ministers, assistant deputy ministers, associate deputy ministers, chiefs of staff to Ministers and the Premier and senior political staff be prohibited from lobbying the Ministry they were responsible for, for a period of six months after they leave their positions.
- Your Committee recommends giving the Commissioner powers to exempt officials from post-employment provisions.

Code of Conduct

- Your Committee does not recommend introducing a Code of Conduct at this time however, it may be considered during a future review of the legislation.

Contracting Prohibition

- Your Committee recommends including a contracting prohibition in any lobbyist legislation.

Contingency Fees

- Your Committee recommends that contingency fees do not need to be disclosed.

Registering & Reporting

- Your Committee recommends a registration system with no fee to register.
- Your Committee also recommends that Consultant Lobbyists report when they sign a new client, when there is a change or update every six months whichever comes first.
- Your Committee recommends that In-House Lobbyists register once and report updates every six months.

Investigatory Powers

- Your Committee recommends that the administrator of the Act have investigatory powers.

Sanctions and Penalties

- Your Committee recommends a system of administrative monetary penalties similar to Alberta and British Columbia.

Administrator

- Your Committee recommends that the Conflict of Interest Commissioner for Saskatchewan oversee the Act.

Legislative Review

- Your Committee recommends that a review of any legislation should be conducted as required.

Introduction

“On any given day in this province and across the country, lobbyists are communicating with public office holders to persuade them to support certain causes. Non-profit organizations lobby for increased funding for health care research and treatment; increased social security; and changes to the judicial system. Canadian businesses lobby for economic subsidies and changes to laws, regulations and international trade agreements to benefit the Canadian economy and Canadian workers” (Elizabeth Denham, Registrar of Lobbyists for British Columbia to the Standing Committee on Access to Information, Privacy and Ethics February 7, 2012)

Currently in Canada, lobbyist legislation exists in many jurisdictions including, at the federal level and in the provinces of British Columbia, Alberta, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador. Manitoba has passed legislation but it is not yet in force and a bill was introduced in New Brunswick in 2011 but never progressed any further. Some municipalities are also covered under legislation or by-laws.

Lobbyist legislation came into force at the federal level in the late 1980's. In a Background Paper prepared by the Library of Parliament, the authors state, “Lobbying at the federal level was first governed by the *Lobbyists Registration Act*. It came into force in 1989 and established a registration system intended to foster the public's right to know and to be informed regarding who was trying to influence government policy in Canada” (Holmes and Lithwick 2011, 1). There have been many revisions since the introduction of the legislation with the most significant occurring in 2006 with “substantive amendments brought about by the Federal Accountability Act” (Holmes and Lithwick 2011, 1).

Ontario was the first provincial jurisdiction to introduce a registry. It remains mostly unchanged and resembles the federal legislation in its original form. The Ontario Integrity Commissioner is calling for amendments to its legislation. British Columbia followed in 2001 and had significant revisions to its legislation in 2009 to emulate that of Alberta's legislation which was introduced in 2008 and passed in 2009. The other provincial jurisdictions introduced and passed legislation throughout the mid-late 2000's.

Order of Reference

On December 7, 2011, the Legislative Assembly of Saskatchewan passed the following motion:

That the Standing Committee on Intergovernmental Affairs and Justice, in accordance with Rule 147(1) of the *Rules and Procedures of the Legislative Assembly of Saskatchewan*, shall conduct an inquiry and make recommendations to the Assembly respecting a legislative model for new legislation regarding lobbying in Saskatchewan to ensure that the public is informed and aware of who is lobbying public office holders in Saskatchewan while ensuring that free and open access to government decision-makers is not unduly impeded; and

That the said committee shall conduct public hearings and receive presentations from interested individuals and groups.

Summary of Events

January 16, 2012

Your Committee was fortunate to study lobbyist legislation of other jurisdictions while a similar exercise was being undertaken at the federal level. The House of Commons' Standing Committee on Access to Information, Privacy and Ethics (ETHI) began a statutory review of *The Lobbying Act* in December 2011. Your Committee closely observed the review process and agreed that it would be beneficial to travel to Ottawa and meet with many of the Commissioners and Registrars while there.

The Standing Committee on Intergovernmental Affairs and Justice met on Monday, January 16, 2012 to discuss plans for the committee's inquiry regarding lobbying in Saskatchewan. The Committee adopted the Steering Committee's report which outlined the following plans:

1. The committee will study lobbying legislation as it relates to other provincial jurisdictions in Canada. The committee will travel to Ottawa from February 6th to 9th, 2012 in order to: attend the House of Commons' Standing Committee on Access to Information, Privacy and Ethics; meet with Commissioners and Registrars from provincial lobbyist registries; meet with other individuals and/or groups regarding lobbying legislation.
2. The committee will seek written submissions through advertising in the Saskatchewan Weekly Newspapers Association, and the daily newspapers in Regina, Saskatoon, Prince Albert, and Moose Jaw before January 31, 2012. In addition, the committee will use social media and press releases to seek written submissions. The deadline for written submissions via post, fax or e-mail is February 28, 2012 at 5:00 pm; late submissions will not be accepted.
3. The committee will meet on Wednesday, February 29, 2012 to review written submissions.

February 7, 2012

Your Committee travelled to Ottawa and observed the House of Commons Standing Committee on Access to Information, Privacy and Ethics' (ETHI) statutory review of *The Lobbying Act*. The following Provincial Commissioners and Registrars presented to the House of Commons Committee:

- Neil Wilkinson, Ethics Commissioner and Lobbyists Act Registrar – Office of the Ethics Commissioner of Alberta
- Bradley Odsen, General Counsel and Lobbyists Act Registrar – Office of the Ethics Commissioner of Alberta
- Lynn Morrison, Integrity Commissioner – Office of the Integrity Commissioner of Ontario
- Francois Casgrain, Lobbyists Commissioner – Quebec Lobbyists Commissioner
- Elizabeth Denham, Commissioner – Office of the Information and Privacy Commissioner for British Columbia
- Jay Fedorak – Acting Deputy Registrar - Office of the Information and Privacy Commissioner for British Columbia

Your Standing Committee on Intergovernmental Affairs and Justice then met the Commissioners and Registrars. Your Committee was given the opportunity to discuss lobbyist legislation across Canada from those that administer them.

February 8, 2012

Your Committee met with the Office of the Commissioner of Lobbying of Canada. Karen Shepherd - Commissioner, Rene Leblanc – Deputy Commissioner and Gillian Cantello – Director of Registration and Client Services discussed the federal lobbyist system and responded to your Committee's questions. Ms. Cantello also showed your Committee the online federal registry system.

Your Committee then met with Elizabeth Roscoe – Vice President and Jim Patrick – Treasurer for the Government Relations Institute of Canada (GRIC). GRIC is a professional association representing several hundred lobbyists. They provided your Committee the lobbyists' perspective and discussed their recommendations to ETHI.

February 9, 2012

Your Chair, Mr. Warren Michelson, and Deputy Chair, Ms. Cathy Sproule, met with Guy W. Giorno, a lawyer and recognized subject area expert on lobbying legislation and lobbyist registration laws. He provided your Steering Committee with a presentation on trends and issues in Canadian lobbying law. The trends and issues he raised with your Steering Committee include:

- Regulation, not just registration
- Enforcement
- Penalties and sanctions
- Anti-conflict rules
- Advocacy by public-sector bodies
- Communication and decision-making
- Grass-roots lobbying
- Corporate directors
- Significant part of duties
- Municipal registries

Your Committee concluded its study tour by attending a second House of Commons Standing Committee on Access to Information, Privacy and Ethics meeting. The witnesses appearing before this meeting were:

- Duff Conacher, Board Member and Chairperson – Democracy Watch
- Stephanie Yates, Professor – Department of Social and Public Communication
- John Chernier, Editor and Publisher – ARC Publications

February 28 and 29, 2012

Nine written submissions were received by the deadline of February 28, 2012 at 5pm. For a complete list, please see Appendix A.

Your Committee met the next day, February 29, to discuss the written submissions and begin its consideration of the information gathered during the study tour.

May 10, 2012

Your Committee met to consider its report.

May 14, 2012

Your Committee met to consider its report. It was agreed that the Committee would include a minority opinion and that the Second Report of the Standing Committee on Intergovernmental Affairs and Justice be adopted and presented to the Assembly.

Principles

Lobbying is a legitimate and constructive activity.

“Professional lobbying activity is a key to the development of sound public policy and thus not only legitimate but necessary for a healthy democracy” (PAAC 2012, 8).

Many jurisdictions include a preamble or purpose of their Act in their legislation that affirms lobbying as a legitimate activity. Transparency is foundational but must be balanced with continued ease of access to elected Members.

WHEREAS free and open access to government is an important matter of public interest;
AND WHEREAS lobbying public office holders is a legitimate activity;
AND WHEREAS it is desirable that public office holders and the public be able to know who is engaged in lobbying activities;
AND WHEREAS a system for the registration of paid lobbyists should not impede free and open access to government (*The Lobbying Act*)

Definition of “Lobby”

The federal definition of “lobby” differs distinctly from provincial definitions. At the federal level the definition to “lobby” means to *communicate with a public office holder in respect of* a variety of topics. Provincial jurisdictions, including Alberta and British Columbia, define to “lobby” as a means to *communicate with a public office holder in an attempt to influence*. The Quebec definition includes *in an attempt to influence and that may reasonably be considered by the initiator of the communication as capable of influencing a decision*. Public Affairs Association of Canada (PAAC) describes the difference between the federal definition and provincial definitions in their written submission. PAAC states, “The communication that qualifies as lobbying need not, in other words, attempt to influence a government decision but simply be about a government decision” (IAJ 6/27).

The topics or decisions that are typically covered in the legislation include:

- The development of any legislative proposal by the Government of Canada, by a member of the Senate or the House of Commons, by a Provincial Government or prescribed provincial entities or by Members of Legislative Assemblies.
- The introduction, passage, defeat or amendment of any Bill or resolution that is before either House of Parliament or Legislative Assembly.
- The making or amendment of any regulation or order-in-council.
- The development, establishment, amendment or termination of any policy or program of the Government of Canada, Provincial Governments or prescribed provincial entities.
- The awarding of any grant, contribution or other financial benefit by the Government of Canada, Provincial Governments or prescribed provincial entities.
- For consultant lobbyists, if they arrange a meeting between a public office holder and any other person.

Recommendation

Your Committee recommends defining to “lobby” as a means to *communicate with a public office holder in an attempt to influence*. This is consistent with all other provincial jurisdictions including Alberta and British Columbia.

Definition of “Lobbyist”

Consultant Lobbyists

All jurisdictions distinguish between consultant lobbyists and in-house lobbyists. Consultant lobbyists are individuals who for payment, undertakes to lobby on behalf of a client.

In-house or Organization Lobbyist

In-house lobbyists are employees of organizations – non-profit organizations, non-governmental organizations, large corporations etc. whose duties may in whole or in part include lobbying government.

British Columbia and Alberta use a very similar definition. The only difference is in the name. An in-house or organization lobbyist is an employee, officer or director of an organization who receives payment for the performance of his or her functions, who lobbies or whose duty is to lobby on behalf of the organization at least 100 hours annually or lobbies with other persons in the organization where their total time amounts to at least 100 hours.

Alberta also includes a sole proprietor, or a partner in a partnership in their definition of an organization lobbyist and British Columbia includes an additional provision in the definition that states, “otherwise meets criteria established by the regulations”.

The definition of organization in British Columbia and Alberta are essentially the same. An organization includes any of the following, whether incorporated, unincorporated, a sole proprietorship or partnership: a business, trade, industry, professional or voluntary organization, a trade union or labour organization, a chamber of commerce or board of trade, a charitable or non-profit organization, association, society, coalition or interest group, a government other than the provincial government in which the legislation is enacted.

In Alberta, the legislation has a charitable exemption. The Act does not apply to the directors, officers or employees of a non-profit organization, association, society, coalition or interest group not constituted to serve management, union or professional interests nor having a majority of members that are profit-seeking enterprises or representatives of profit-seeking enterprises when acting in their official capacity.

Recommendation

Your Committee recommends defining consultant lobbyists as individuals who for compensation, undertakes to lobby on behalf of a client.

Your Committee recommends the same definition for in-house lobbyist as presented in the British Columbia Act.

In-house lobbyist means an employee, an officer or a director of an organization (a) who receives a payment for the performance of his or her functions, and (b) whose lobbying or duty to lobby on behalf of the organization or an affiliate alone or together with individuals in the organization, (i) amounts to at least 100 hours annually, or (ii) otherwise meets criteria established by the regulations

Your Committee recommends that there should be a charitable exemption.

Exemptions when Acting in Official Capacity

Many people are exempt from registering as lobbyists when acting in their official capacity. The Provincial and federal legislation are essentially the same with minor nuances and are typically found in two sections of the legislation. The following are sections from Alberta and British Columbia that illustrate these exemptions.

Lobbyists Act

Alberta

For the purpose of this Act, the following are not considered to be consultant lobbyists or organization lobbyists when acting in their official capacity:

- a) Members of the Legislative Assembly and members of the Executive Council, and any individuals on their staff
- b) Officers and employees of the Legislative Assembly Office under the Legislative Assembly Act;
- c) Individuals appointed under the *Public Service Act*
- d) Employees, officers, directors and members of a prescribed Provincial entity;
- e) Any other individuals or category of individuals prescribed in the regulations.

Provincial entity means a Provincial agency as defined in section 1 of the Financial Administration Act and includes any body or entity referred to in the List of Government Entities set out in the most recent Government Estimates and any body or entity set out in the most recent Government of Alberta Annual Report;

A list is included in the Lobbyists Act General Regulation in Schedule 1. The list includes over 200 agencies such as universities, colleges, environment and energy agencies and boards etc.

Lobbyists Registration Act

British Columbia

Restrictions on application of Act

2(1) This Act does not apply to any of the following persons when acting in their official capacity:

- a) Members of the Senate or House of Commons of Canada or persons on their staff;
- b) Members of the Legislative Assembly of another province or of a territory, or persons on the staff of any of those members;
- c) Employees of the Government of Canada or of the government of another province or territory;
- d) Members of a municipal council, regional district board, improvement district board, school district board or other local government authority, persons on the staff of those members
- d.1) Employees of bodies representing municipal councils, regional district boards, improvement district boards, school district boards or other local government employees; or employees of a municipality, regional district, improvement district, school district or other local government authority;
- e) Members of an aboriginal governing body, however organized and established by aboriginal people within their territory in British Columbia, persons on the staff of those members, or employees of that governing body;
- f) Diplomatic agents, consular officers or official representatives in Canada of a foreign government;
- g) Officials of a specialized agency of the United Nations in Canada or officials of any other international organization to whom privileges and immunities are granted under an Act of the Parliament of Canada.

The Saskatchewan Urban Municipality Association (SUMA) addressed exemptions in its written submission when it stated: “it is our opinion that because urban governments are creatures of the provincial government and that SUMA is incorporated through an Act of the legislature that urban governments, their officials, employees and SUMA when acting in their official capacity should be exempt from any lobbying legislation enacted in this province” (SUMA 2012, 2).

Your committee supports SUMA’s recommendation that municipal governments, their officials and employees when acting in their official capacity should be exempt from registering as lobbyists. However, as a representative association, SUMA and SARM will be required to register.

Recommendation

Your Committee recommends following similar exemptions that are listed in other jurisdictions.

Your Committee recommends that all post-secondary institutions register as an in-house lobbyist.

Registration Threshold (Significant Part of Duties) for In-House Lobbyists

There are three distinct ways registration thresholds have been defined in Canada. British Columbia and Alberta require registration if an organization or individual within the organization lobbies for 100 hours or more annually.

The Federal legislation, as well as in Ontario, Nova Scotia and Newfoundland and Labrador require lobbyists to register if they meet the “significant part of duties” test. This has been interpreted as 20% of one employee’s time. The Office of the Commissioner of Lobbying of Canada has recommended to the House of Commons Access to Information, Privacy and Ethics Committee that ‘significant part of duties’ should be removed from the *Lobbying Act* (OCL 2011, 7). The Government Relations Institute of Canada (GRIC) and PAAC also recommend eliminating the significant part of duties tests for lobbying disclosure.

Quebec has interpreted ‘significant part of duties’ as all lobbying, including preparation and follow-up, by an enterprise that amounts to more than 12 days in a fiscal year.

Recommendation

Your Committee recommends following Alberta and British Columbia’s registration threshold of 100 hours.

Your Committee also recommends including travel time when calculating the 100 hours.

Definition of “Public Office Holder”

Lobbying requires communicating with a public office holder in an attempt to influence (Alberta Justice, 2010). Typically, the definition of public office holder includes Members of Parliament or Members of the Legislative Assembly and any individual on a Member’s staff, an employee of the government, a person who is appointed by or with the approval of the Lieutenant Governor in Council or Minister and officers, directors, members or employees of any government corporations or prescribed provincial entities.

Recommendation

Your Committee recommends including Members of the Legislative Assembly, employees of a Ministry, any person appointed by Lieutenant Governor in Council or member of Executive Council to the definition of public office holder.

Post-employment Prohibitions

Post-employment prohibitions or “cooling-off periods” limit Members and senior government officials from leaving office and subsequently becoming a lobbyist. Post-employment provisions reduce public perception that former members and senior government officials are receiving preferential access to government.

Post-employment prohibitions range from six months to five years depending on jurisdiction and position. Many who spoke to the Committee stated a five year prohibition is far too long and a one to two year cooling off period would be more appropriate. Public Affairs Association of Canada recommends “a time period of one year for all former public office holders” (PAAC 2012, 6).

Typically, post-employment prohibitions are found in complementary pieces of legislation and not included in lobbying legislation.

- Alberta – *The Conflict of Interest Act* and *Public Service Act*
 - Ministers are prohibited from lobbying the ministry that they were responsible for a period of 12 months; however they can lobby other elements of government.
 - Elected members are prohibited for 6 months
 - Deputy Ministers, senior government officials and former political staff are prohibited from lobbying for 6 months after they leave their positions
- Ontario – *Members’ Integrity Act, 1994* and *Public Service of Ontario Act, 2006*
 - Ministers are restricted from lobbying all of government for 12 months.
 - *The Public Service of Ontario Act* prohibits Minister’s staff from lobbying their former ministry or ministries that they have worked in the last 12 months.
- British Columbia – *Conflict of Interest Act*
 - Ministers have a 12 month cooling-off period
- Quebec
 - 2 years for a minister and their staff and one year for deputy ministers or those central to decision making for one year.
- Federal – *The Lobbying Act*
 - A 5 year post employment prohibition for designated public office holders

Recommendation

Your Committee recommends including a post-employment prohibition in any lobbyist legislation as there is no post-employment provisions for public office holders in other Saskatchewan legislation.

Your Committee recommends that Ministers be prohibited from lobbying the ministry they were responsible for a period of 12 months and elected Members for a period of six months.

Your Committee recommends that deputy ministers, assistant deputy ministers, associate deputy ministers, chiefs of staff to Ministers and the Premier and senior political staff be prohibited from lobbying the Ministry they were responsible for, for a period of six months after they leave their positions.

Your Committee recommends giving the Commissioner powers to exempt officials from post-employment provisions.

Code of Conduct

Codes of Conduct outline expectations of those involved in the lobbyist profession. As stated on the Office of the Commissioner of Lobbying of Canada's website, "The purpose of the Code is to assure the Canadian public that lobbying is done ethically and with the highest standards with a view to conserving and enhancing public confidence and trust in the integrity, objectivity and impartiality of government decision-making"

(http://ocl.gc.ca/eic/site/o12.nsf/eng/h_00013.html).

The Lobbyists' Code of Conduct has three principles – integrity and honesty, openness and professionalism and eight rules which are as follows:

Principles

Integrity and Honesty

Openness

Professionalism

Rules

1. Identity and purpose
2. Accurate information
3. Disclosure of obligations
4. Confidential information
5. Insider information
6. Competing interests
7. Disclosure
8. Improper influence

Currently, Codes of Conduct exist at the Federal level, in Quebec and Newfoundland and Labrador. All other provincial jurisdictions, including Alberta and British Columbia do not have Codes of Conduct although British Columbia is looking to implement one.

Recommendation

Your Committee does not recommend introducing a Code of Conduct at this time. However, it may be considered during a future review of the legislation.

Contracting Prohibition

Contracting prohibition clauses prohibit lobbyists from being paid to advise the government on a subject area while lobbying the government on the same subject at the same time. British Columbia, Alberta and Manitoba have contracting prohibitions in their legislation.

Recommendation

Your Committee recommends including a contracting prohibition in any lobbyist legislation.

Contingency Fees

Contingency fee, also known as a success fee, is compensation that is based on the achievement or the lobbyist's degree of success.

Contingency fees are banned at the federal level and Quebec. Most other jurisdictions, including Alberta, Ontario, Nova Scotia and Newfoundland and Labrador do not ban contingency fees but require the lobbyist to disclose that information. British Columbia does not ban nor are lobbyists required to disclose this information.

Recommendation

Your Committee recommends that contingency fees do not need to be disclosed.

Registering & Reporting

Consultant Lobbyists

All the jurisdictions require consultant lobbyists to file an initial registration within ten days after entering into an undertaking. An undertaking is defined in many pieces of lobbyist legislation as “an undertaking by a consultant lobbyist to lobby on behalf of a client” (ON, BC, MB, AB). The federal government also requires monthly communication reports to be filed by the 15th of each month.

The following list is typical of filing requirements for consultant lobbyists:

- Name and business address of the firm where the consultant lobbyist is engaged in business.
- Name and business address of the client and the name and business address of any person, partnership or organization that, to the knowledge of the consultant lobbyist, controls or directs the activities of the client and has a direct interest in the outcome of the consultant lobbyist's activities on behalf of the client.
- If the client is a corporation that is a subsidiary of any other corporation, the name and business address of that other corporation.
- If the client is a coalition, the name and business address of each partnership, corporation or organization that is a member of the coalition.
- The date the undertaking was entered into.
- The name of any government or government agency that funds or partly funds the client or organization, and the amount of the funding.

- Particulars to identify any relevant legislative proposal, bill, resolution, regulation, order in council, program, policy, directive, guideline, decision, grant, financial benefit, contract or subject-matter which is or will be the subject of the lobbying.
- Whether a consultant lobbyist named in the return has lobbied or expects to lobby during the relevant period any member of the Executive Council or any individual on a member's staff.
- The techniques of communication that a consultant lobbyist named in the return has used or expects to use to lobby.
- A declaration stating that every consultant lobbyist named in the return and, to the knowledge of the designated filer after reasonable inquiry, every person associated with those consultant lobbyists are not in contravention of the Act.

In-house Lobbyists

Designated filers, often the senior officers of an organization, are required to register within 60 days of the date the organization has in-house lobbyist(s). Furthermore, if an organization retains the services of an in-house lobbyist, it is required to update the registration within 30 days to two months after the expiration of each 6-month period.

Recommendation

Your Committee recommends a registration system with no fee to register.

Your Committee also recommends that Consultant Lobbyists report when they sign a new client, when there is a change or update every six months whichever comes first.

Your Committee recommends that In-House Lobbyists register once and report updates every six months.

Investigatory Powers

The ability to investigate breaches of the Codes of Conduct and Acts are essential in maintaining the integrity of the registry systems. The federal legislation as well as most provincial legislation, with the exception of Ontario, gives Commissioners the ability to investigate breaches of the Act or Codes.

Ontario does not have investigative or inquiry powers but has requested that such a review take place to consider whether the Commissioner should have these powers.

Recommendation

Your Committee recommends that the administrator of the Act have investigatory powers.

Sanctions and Penalties

At the federal level, the Office of the Commissioner of Lobbying of Canada (OCL) can conduct an investigation to ensure compliance with the Act and the Code of Conduct. However, if the Commissioner has sufficient evidence that a person has committed an offence, the Commissioner must suspend her investigation and advise a peace officer or the RCMP. Individuals who fail to file a return or knowingly make false or misleading statements in documents are liable on a summary conviction to a fine not exceeding \$50,000 or to imprisonment up to six months or both. On proceedings by way of indictment, they could be subject to a fine not exceeding \$200,000 or to imprisonment up to two years or both (IAJ 2/27). To date there have been no charges laid by the RCMP.

At the conclusion of an investigation by the Commissioner, the Commissioner must table a report in Parliament. This has a ‘naming and shaming’ effect but it is not seen as flexible to deal with other minor breaches. In her submission to the ETHI, the Commissioner states, “Certain transgressions may warrant sanctions or penalties that would fall somewhere between the two extremes currently being utilize: the system of education, correction and monitoring employed by the Commissioner, at one end, and a Report to Parliament and/or criminal proceedings with resulting fines, jail terms and possible prohibition, at the other” (OCL 2011, 33).

Like their federal counterparts, the provincial jurisdictions have penalties when a person is found guilty of contravening the Act. Typically, for the first offence, the maximum penalty is a fine not more than \$25,000 and for a second or subsequent offence a fine not more than \$100,000. Some jurisdictions can also prohibit the person who committed the offence from lobbying for a period of time.

In addition to the criminal punishments, Alberta and British Columbia can also investigate matters of non-compliance and issue administrative monetary penalties (up to \$25,000) for breaches of their Acts such as when a lobbyist files a late return. Since Alberta’s lobbyist legislation is relatively new, the Commissioner and Registrar have identified education as a priority and have encouraged compliance. Administrative penalties have not yet been imposed. British Columbia amended its legislation to include monetary penalties and witnessed a significant increase in registration but has yet to impose any penalties.

The OCL has recommended that the *Lobbyist Act* “be amended to provide for the establishment of administrative monetary penalties for breaches of the Act and the Code, to be administered by the Commissioner of Lobbying” (OCL 2011, 7).

Recommendation

Your Committee recommends a system of administrative monetary penalties similar to Alberta and British Columbia.
--

Administrator

Lobbyist legislation across Canada, with the exception of Nova Scotia, is administered by an independent officer of Parliament. Some jurisdictions, such as the federal level and Quebec, have independent officers that are solely responsible for administering their lobbying acts. Other jurisdictions, such as British Columbia, Alberta and Ontario have designated an existing independent officer as the administrator of their respective Acts. For example, Ms. Elizabeth Denham is the Information and Privacy Commissioner in British Columbia. Mr. Neil Wilkinson is the Ethics Commissioner in Alberta and Ms. Lynn Morrison is the Integrity Commissioner for Ontario.

Recommendation

Your Committee recommends that the Conflict of Interest Commissioner for Saskatchewan oversee the Act.

Legislative Review

Many of the Commissioners and Registrars advised your Committee to start with a piece of legislation that introduces a monitoring regime. A monitoring regime will aid in identifying the current state and level of lobbying activity in Saskatchewan and requires fewer resources. Furthermore, your Committee was advised that it would be prudent to start with a monitoring regime because it can be strengthened and amended through later reviews to ensure that it is addressing its original policy intentions.

Your committee is confident that the administrator of the Act would advise Members of the Legislative Assembly if and when any revisions to the legislation would be required.

Recommendation

Your Committee recommends that a review of the legislation should be conducted as required.

Appendix A – List of Written Submissions

IAJ 2/27	Office of the Commissioner of Lobbying of Canada: Submission for lobbying legislation inquiry, <i>The Lobbying Act</i> , dated February 13, 2012.
IAJ 3/27	Government Relations Institute of Canada: Submission for lobbying legislation inquiry, re: statutory review of <i>The Lobbying Act</i> , dated February 2, 2012.
IAJ 4/27	Gale Godson for TUC: Submission for lobbying legislation inquiry, dated February 7, 2012.
IAJ 5/27	Multiple Sclerosis Society of Canada, Saskatchewan Division: Submission for lobbying legislation inquiry, dated February 22, 2012.
IAJ 6/27	Public Affairs Association of Canada: Submission for lobbying legislation inquiry, dated February 23, 2012.
IAJ 7/27	Nicole Pivovar: Submission for lobbying legislation inquiry, dated February 28, 2012.
IAJ 8/27	University of Saskatchewan: Submission for lobbying legislation inquiry, dated February 27, 2012.
IAJ 9/27	Students from the University of Saskatchewan: Submission for lobbying legislation inquiry, dated February 19, 2012.
IAJ 10/27	Saskatchewan Urban Municipalities Association: Submission for lobbying legislation inquiry, dated February 27, 2012.

Appendix B – Works Cited

Office of the Commissioner of Lobbying of Canada. “Administering the Lobbying Act: Observations and Recommendations Based on the Experience of the Last Five Years” (report presented by the Commissioner of Lobbying to the Standing Committee on Access to Information, Privacy and Ethics, Ottawa, Ontario, December 13, 2011).

Minority Opinion

This opinion addresses concerns regarding the scope of the proposed legislation and the IAJ Committee's recommendations in the report.

The committee's discussions have centered around the stated goal of the Assembly's motion: "to ensure that the public is informed and aware of who is lobbying public office holders in Saskatchewan". We recommend that the requirements for registration and reporting be as simple and easy as possible so that lobbyists who are included in the definition of "lobbyist", those who are not exempted for specific reasons, and the threshold of time are not onerous, and people are encouraged to err on the side of registration and reporting when in doubt.

On that basis, the committee looked at whether or not charities should be exempted and it was originally discussed that they should not, as the registration and reporting requirements would be minimal, and the stated goal of ensuring the public knows who is lobbying would be impacted if they were excluded. It is for that reason that I continue to recommend that charities NOT be exempted from the definition of lobbyist. Further to that, the threshold, which was originally discussed to be 100 hours, including preparation and travel time, is now being reduced to 100 hours including travel time. It is my view that this watering down of the 100 hour content will effectively eliminate most lobbyists from the requirement to register and will emasculate the legislation, particularly in the light of exempting charities from the definition. It is my opinion that the legislation will be ineffective if the committee recommends to exempt charities and water down the 100 hour benchmark by excluding preparation time.

Respectfully submitted,

Cathy Sproule

MLA Saskatoon Nutana

