Recommendations for amendments to the *Lobbyists Registration Act, 1998*

Office of the Integrity Commissioner
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Introduction

The Lobbyists Registrar for Ontario is calling for a thorough and thoughtful review of Ontario's *Lobbyists Registration Act, 1998*, including consultation with all stakeholders.

Big picture questions need to be asked. Should lobbyists in Ontario be subject to a code of conduct? Is the time threshold to trigger the in-house lobbyist registration requirement still necessary? Should the Registrar be charged with investigative authority and the ability to issue penalties? In this document, the Registrar provides her views on these topics.

The Registrar is also seeking specific recommendations, such as clarification of certain defined terms, amalgamation of the two categories of in-house lobbyists, and greater parity between the information required to be disclosed by consultant lobbyists and in-house lobbyists.

The Registrar's guiding principle in putting forward these recommendations is that Ontario must strive to achieve the highest level of transparency possible about lobbying activities. The purpose of lobbying legislation is to ensure that the public can determine who is lobbying whom about what. Lobbying is part of the democratic process. Legislation that creates loopholes to avoid registration feeds a misconception that appearing on the registry is punitive or negative. It is not punitive to be required to register on the Ontario lobbyists registry.

The Registrar looks forward to participating in the review process.

Overview of the Ontario Law

The Act establishes a system for lobbyists' registration – not for lobbyists' regulation. Its main functions are to establish the Ontario Lobbyists Registry, specify registration triggers and requirements and appoint the Integrity Commissioner as the Registrar.

The Registry is available online. It contains current and historical information about registration since 1999, when the Act came into force. There are three types of lobbyists under the Act: consultant lobbyists, in-house lobbyists (organizations) and in-house lobbyists (persons and partnerships). In-house lobbyists (organizations) are employed at not-for-profit entities; in-house lobbyists (persons and partnerships) are employed at for profit entities.

The Act establishes when an individual must register their lobbying activities on the registry. Consultant lobbyists are required to register within 10 days of lobbying. In-house lobbyists are required to register when their time spent lobbying is a significant part of their duties. In-house lobbyists employed by for profit companies register and calculate significant part of duties on an individual basis. All in-house lobbyists employed by not-for-profit entities register together in a single return; significant part of duties is calculated using an aggregate of all time spent by all in-house lobbyists.

Under the Act the Integrity Commissioner as the Registrar has: authority to issue non-binding advisory opinions and interpretation bulletins; limited powers to compel information from registered lobbyists; and, can remove a return from the registry or refuse to accept a return.

The Act contains offence provisions for failing to comply with the law and for putting a public office holder in a conflict of interest. The Commissioner has no investigative powers that could assist or support a charge under the offence provision.

Recommendations

1. Provide the Registrar with investigation powers and the power to issue penalties

Registrar's Position

- The Registrar recommends that:
    - the Act be amended to provide the Registrar with investigation powers and powers to issue penalties, including administrative monetary penalties (AMPs), public reporting regarding contraventions and restrictions against lobbying;
    - the offence provisions in the Act be maintained, to operate alongside of the penalty provisions;
    - the model contained in the British Columbia legislation be used as a basis to develop a system that works for Ontario.

Context

The Registrar does not have investigation powers except for limited powers to request information from registered lobbyists. The Registrar uses the limited powers to deal with incomplete/inaccurate registrations, and makes informal inquiries of alleged unregistered lobbyists. Registrars in Quebec, B.C., Alberta, Newfoundland and Canada have investigation powers.

There are offence provisions in the Act. There has never been a charge or prosecution under these provisions. In the absence of investigation powers, the Registrar would have no role in relation to prosecution of any offence other than cooperation with the police authorities.

The Registrar advocates for a "what makes sense" approach and points to the B.C. and Alberta models that give the Commissioner/Registrar discretion to: 1) determine when an investigation would assist with compliance with the Act; 2) determine when to escalate to police or resolve at Commissioner/Registrar level; and 3) impose monetary penalties and/or lobbying restrictions.

The Registrar would be better equipped to encourage compliance if charged with investigation powers that enabled the Registrar to compel information from third parties. Additional investigation powers will likely require additional resources.

2. Introduce a restriction to prevent persons who lobby from being paid to provide advice to government

Registrar's Position

- The Registrar recommends that the Act be amended to state that it is not permissible for a person to be paid to provide advice to the government while at the same time lobbying the government about the same matter. The Registrar suggests modeling the restriction after section 2.1 and 2.2 in the B.C. *Lobbyists Registration Act* or section 6 of the Alberta *Lobbyists Registration Act*.
- The Registrar does not recommend including a Code of Conduct in the Act. However, if a Code is introduced, it is important that the legislation is clear with respect to how it is enforced and it must align with the rules in place for public office holders.

Context

Ontario's Act focuses on registration, not the conduct of lobbyists. However, the Act makes it an offence to knowingly place a public office holder in a position of real or potential conflict of

interest and the definitions of conflict of interest align with the *Members' Integrity Act, 1994*. The Registrar has, within her existing mandate, provided informal advice to lobbyists in consideration of the rules of conduct in place for elected officials and public servants.

The Registrar is aware of the trend in Canada toward regulating conduct of lobbyists through codes of conduct and importantly, that lobbyists themselves advocate for such regulation. However, compared to most provincial and federal counterparts, the Ontario Registrar brings a unique perspective to this issue because of the multiple mandates housed within the Office of the Integrity Commissioner. The Registrar believes that resources are best focused on encouraging and ensuring proper conduct of elected officials and public servants, which makes it more difficult for lobbyists to engage in conduct contrary to standard codes of conduct. When carrying out her duties under the *Members' Integrity Act, 1994* and the *Public Service of Ontario Act, 2006* the Registrar is able to encourage MPPs, Ministers and Ministers' staff, as public office holders, to know and comply with the rules regarding influence and conflict of interest.

Legislation in the provinces of Alberta, B.C. and Manitoba has undergone recent review and codes of conduct have not been introduced. (The B.C. Registrar is currently conducting a consultation about whether a Code should be introduced.) However, all three provinces have introduced a new provision which clarifies that persons cannot provide paid advice to government and, at the same time, lobby about the same issue, which the Registrar believes is a sound principle.

3. Eliminate the "significant part of duties" threshold

Registrar's Position

- The Registrar recommends the elimination of the significant part of duties threshold, maintaining that all paid lobbying activity should be registered, regardless of the amount of time spent on the activity. In addition, the Registrar recommends that the Act be amended so that "paid" activity includes the donation of a lobbyist's time from one entity to another.

Context

Most jurisdictions, including Ontario, have a threshold of time before registration is required for in-house lobbyists. This is known as the "significant part of duties" threshold. It is calculated either on the basis of 20% of time or 100 hours per year. Ontario uses the 20% of time model.

There is a push nationally to eliminate the "significant part of duties" test. The federal Commissioner of Lobbyists has recommended that "significant part of duties" be eliminated from the federal Act. This recommendation is supported by the federal Parliamentary Committee reviewing that Act, the Canadian Bar Association and the Public Affairs Association of Canada.

4. Amalgamate the categories of In-house Lobbyists

Registrar's Position

- The Registrar recommends that the two categories of in-house lobbyists be amalgamated into one type of in-house lobbyist to align with legislation from other Canadian jurisdictions. This means that there would be a single, unified, category of in-house lobbyist, which is modeled after the current "organization" category, including frequency of registration and the single registration system.

Context

There are two types of in-house lobbyists in Ontario, with different registration rules and requirements for each.

First, there are lobbyists employed by **persons & partnerships** (e.g. corporate entities, businesses, etc.). These in-house lobbyists must register individually if they meet the "significant part of duty threshold". Employees who lobby, but do not meet the threshold, are not required to register. However, this also means that multiple returns will be filed if there is more than one lobbyist that meets the threshold. The filing obligation for this type of lobbyist is annual.

Second, there are lobbyists employed by **organizations** (e.g. not-for-profits, associations, etc.). This category requires that a single return be filed by the senior officer of the organization. All of the employees who lobby are listed on that one registration. The significant part of duties is calculated cumulatively. The filing obligation for this type of lobbyist is every six months.

The Registrar has observed that the two categories of lobbyists is unnecessarily confusing and does not promote maximum transparency. All jurisdictions except Nova Scotia require a single registration for each for-profit (and not-for-profit) entity engaged in lobbying.

5. Require former public officers who lobby to register on the Registry regardless of time spent lobbying and align the post-employment rules for ministers' staff with the Act

Registrar's Position

- The Registrar recommends that, within a set timeframe of leaving their position, former public office holders be required to register their lobbying activity regardless of whether the entity for which they are an in-house lobbyist meets the significant part of duties threshold[1] or whether they are being paid to lobby.
- The Registrar recommends that relevant legislation be amended to clarify that the meaning of "lobby" in the post employment rules for public servants is the meaning of "lobby" as defined in the Act and is not limited to registrable lobbying,

Context

The conflict of interest rules for public servants (ministers' staff and otherwise) contain a post-employment restriction against lobbying. "Lobby" is not defined in the *Conflict of Interest Rules* established by the *Public Service of Ontario Act, 2006* but the Commissioner has interpreted it to have the same meaning as "lobby" in the Act.

The post-employment lobbying restriction in the *Conflict of Interest Rules* restricts former public servants from lobbying the ministry for which a public servant worked for 12 months. Former public servants, therefore, can engage in legal lobbying of other ministries during the cooling off period or after the cooling off period has expired. If the former public servant works with an organization or a person or partnership, they are required to register only if the "significant part of duties" test is met.

[1] This recommendation would be moot if the significant part of duties threshold was eliminated.

6. Consult on and update the requirements for contents of return, require disclosure by lobbyists of public offices held and provide the Registrar with discretion to add new categories of information.

Registrar's Position

- The Registrar believes that all requirements for information required to be disclosed on the returns should be reviewed with the benefit of consultation with stakeholders.
- The Registrar recommends that the review of requirements be built on the principle that each type of lobbyist be required to provide no less information than another type of lobbyist (e.g. if an in-house lobbyist for an organization must describe the entity's membership, so must a consultant lobbyist hired by an organization).
- The Registrar seeks the authority to add new categories of information to be required to be disclosed in the future.
- The Registrar recommends that all prior senior public offices held by lobbyists be disclosed.

Context

The Act requires updating regarding the information required in returns. On this topic in particular, the Registrar believes the legislature would benefit from input from stakeholders about what type of information is helpful and useful.

Outside of a broad review, the Registrar has identified a need to require that the same type of information is required to be disclosed for each category of lobbyist. In addition, the Registrar believes that the return should include information about the former public offices held by lobbyists. Finally, the Registrar seeks the authority to introduce new categories of information in the future should the Registrar be of the view that the category of information aligns with the goals of the Act.

7. Clarify that "grass-roots communications" (a type of indirect communication) is lobbying

Registrar's Position

- The Registrar recommends that the definition of "lobby" in the Act be amended to include the phrase "directly or through grass-roots communication" after the phrase "to communicate with a public office holder".

Context

Lobbyists are required to disclose "grass-roots communication" but there is ambiguity in the Act about whether this type of activity meets the definition of lobby because the consultant or in-house lobbyists may never have direct communication with a public office holder. The Registrar's interpretation of the Act is that grass-roots communication is lobbying. The Newfoundland legislation has recently been amended to align with the interpretation of the Registrar.

8. Clarify that in-house lobbyists include directors

Registrar's Position

- The Registrar seeks legislative clarity that directors are included as in-house lobbyists, which aligns with the Registrar's interpretation.

Context

The definition of in-house lobbyists (both categories) does not expressly include directors, but does expressly include paid officers. On a similar scheme, the federal Commissioner of Lobbying has interpreted this to mean that directors must register as consultants. Ontario's Registrar has interpreted the definition of in-house to include directors.

9. Clarify the term "government funding"

Registrar's Position

- The Registrar recommends aligning the *Broader Public Sector Accountability Act, 2010* (BPSAA) definition of government funding ("public funds") with the description of government funding in the Act. It would also be helpful to elaborate on how much detail is required about funding from other government levels (e.g. federal, municipal).

Context

The current language in the Act is vague about what information is required to be disclosed about government funding received by the client or entity engaged in lobbying. The BPSAA provides more detail on how to determine what constitutes provincial government funding.

There are challenges for lobbyists to provide a full breakdown of funding received from the departments or agencies of other levels of government, particularly at the federal level. The Act does not expressly require this level of detail.

10. Make other housekeeping changes

The Registrar also recommends a number of house-keeping changes, which are not set out in this document.