O.R.L.
office of the registrar of lobbyists
BRITISH COLUMBIA

LOBBYING IN BRITISH COLUMBIA:

RECOMMENDATIONS FOR CHANGES TO THE *LOBBYISTS REGISTRATION ACT*

Elizabeth Denham
Registrar of Lobbyists

November 5, 2013

TABLE OF CONTENTS

EXECUTIVE SUMMARY

Building on the work outlined in *Lobbying in British Columbia: The Way Forward*, this report summarizes the results of an extensive consultation undertaken by the Office of the Registrar of Lobbyists ("ORL") on the status of lobbying regulation in British Columbia and recommends five amendments to the *Lobbyists Registration Act* ("LRA").

After publishing *Lobbying in B.C.*, the ORL asked public office holders, lobbyists, journalists, and other stakeholders to respond to the report's 13 recommendations through public meetings and oral and written submissions. The purpose of this final phase of consultation was to identify and build consensus in the lobbying community around the most important, urgent and practical amendments needed for the LRA.

If implemented, these amendments will make compliance easier for lobbyists and help the legislation better meet its intended purpose of increasing transparency in lobbying and making government more accessible to the citizens of B.C.

The LRA currently requires lobbyists to register both who they have lobbied and who they expect to lobby. This obscures the reality of lobbying activity and threatens to undermine the integrity of data in the Registry. This report recommends the LRA be amended to require lobbyists to report actual lobbying activity to the Registry on a schedule similar to that of the federal Registry. Such an amendment would have the added benefit of harmonizing the registration requirements of consultant lobbyists and organizational lobbyists.

To eliminate the potential for undue influence in lobbying, this report recommends the LRA be amended to prohibit former public office holders from lobbying the agency where they worked during the last 12 months of their employment, as well as on matters on which they were engaged during those 12 months, with an opportunity to apply to the Registrar for an exemption. To promote increased transparency in lobbying, this report recommends that designated filers be required to include the name of any person or organization, other than the client or employer, who controls, directs or is a major funding source for lobbying activities or has a direct interest in the outcome of the activities of each lobbyist named in a return.

Finally, this report recommends a mandatory statutory review of the LRA every five years, to ensure B.C. laws are kept up to date with the latest developments in the sector.

1.0 INTRODUCTION

Government transparency is fundamental to a well-functioning democracy. To engage in informed debate and make knowledgeable choices, citizens need to know the basis on which government makes decisions.

The Office of the Registrar of Lobbyists is charged with enforcing the *Lobbyists Registration Act* ("LRA") and overseeing the B.C. Lobbyists Registry. First passed in 2001, the LRA was amended in 2010 to make lobbyists' registration mandatory, expand the powers of the Registrar to enforce the LRA and create an online Registry to allow citizens to see who is lobbying which public officials with respect to which issues.

Although the 2010 amendments to the LRA made considerable improvements, three years of experience have shown that the LRA is not meeting all of its objectives. The purpose of the LRA is to create transparency regarding who is attempting to influence government decision making. However, the reporting regime established by the current legislation inadvertently undermines the goal of transparency and constructs barriers to compliance in certain respects.

This report is the culmination of more than six months of formal consultation with lobbyists, public office holders, journalists and key stakeholders, with the aim of offering practical solutions that will enhance transparency for citizens, while also simplifying and streamlining processes and compliance requirements for lobbyists. These proposals have broad support in the lobbyist community, and I urge Members of the Legislative Assembly to study these recommendations and amend the LRA at the earliest opportunity.

1.1 Consultation Process

During the spring and summer of 2012, my Office undertook the first phase of an extensive consultation about the state of lobbying regulation in B.C. We published a discussion paper[1] in April of 2012, posted it on our website and invited response from citizens ("Discussion Paper"). We circulated the Discussion Paper broadly to all those we thought might have an interest, including Members of the Legislative Assembly and other public office holders, all the lobbyists who had registered in B.C., industry associations, chambers of commerce, labour organizations, and other stakeholders. In addition, we arranged focus groups to discuss the Discussion Paper with members of the B.C. lobbying community. We also met with representatives of three national lobbying associations, and 54 public office holders. We concluded this first phase of our consultation in early September of 2012.

[1] Office of the Registrar of Lobbyists for BC. *Developing a Code of Conduct for Lobbying in British Columbia: A Public Consultation Paper*. April 23, 2012. Also available through the ORL website, http://www.lobbyistsregistrar.bc.ca/.

After analyzing the results from the first phase of this consultation, we tabled a report in the Legislative Assembly ("Report") called ***Lobbying in British Columbia: The Way Forward***[2], which we also published on our website.

Following the publication of the Report, we engaged in a second round of consultation to gather public office holder and stakeholder feedback on the Report and its 13 recommendations. The focus of this second consultation was to build consensus in the lobbying community on the most important amendments needed to enhance transparency in lobbying and address compliance issues. We received frank and thoughtful responses from our stakeholders and the extended circle of our larger policy community.

As a result of this second phase of consultation, we have narrowed our final recommendations, which are presented in this report ("Final Report"). I believe these reforms would result in substantial improvements to the current oversight regime, and should be implemented as soon as practicable by Members of the Legislative Assembly.

[2] For a discussion of the 13 recommendations and the ORL's public consultation on the recommendations, please see: Office of the Registrar of Lobbyists for BC. *Lobbying in British Columbia: The Way Forward—Report on Province-Wide Consultations and Recommendations for Reform*. January 21, 2013. Also available through the ORL website, http://www.lobbyistsregistrar.bc.ca/.

2.0 RECOMMENDED AMENDMENTS TO THE *LOBBYISTS REGISTRATION ACT*

2.1 BACKGROUND: CURRENT LRA

The LRA stipulates that, if you lobby, you must register

Under the LRA, "lobbying" is communicating with a public office holder, for payment, in an attempt to influence a number of possible outcomes concerning matters that are under the purview of the public office holder.

The LRA does not capture interactions between private citizens and public officials. It also excludes communication between the Government of British Columbia and officials of other governments, including governments of other provinces, the Government of Canada, local governments or representatives of international governments. Its definitions of "lobbying" and "lobbyist" are accordingly constrained.

The LRA defines two types of lobbyists:

- ***Consultant lobbyists*** are individuals who undertake to lobby, for payment, on behalf of a client; and
- ***In-house lobbyists*** are employees, officers or directors of an organization who receive a payment for the performance of their functions, and whose activities meet the legal definition of "lobbying."

The LRA defines ***public office holders*** to include:

- an MLA or MLA's staff member;
- an officer or employee of the Government of B.C.;
- a person appointed to an office or body by or with the approval of the Lieutenant Governor in Council or a Minister of the Government of B.C. (but not a person appointed on the recommendation of the Legislative Assembly); and
- an officer, director or employee of any government corporation as defined in the *Financial Administration Act*.

This definition does not include a judge or justice of the peace.

The LRA does not require public officials to ensure that lobbyists are registered on the Registry before agreeing to communicate with them. Although a number of MLAs have told us that they ask their staff to check whether lobbyists communicating with them are registered, the responsibility for compliance with the LRA rests entirely with lobbyists.

A complete copy of the LRA is included in Appendix B.

2.2 PROPOSED REFORMS

2.2.1 Require lobbyists to register actual lobbying, not expected lobbying

The LRA requires that lobbyists report who they have lobbied and ***expect to lobby*** during the period covered by their registrations. This provision requires lobbyists to speculate about who they might lobby in the future and enter potentially inaccurate data in the Registry. In the end, many of the lobbyists do not actually lobby all of the public office holders that they identify in their registrations. This requirement is difficult for many lobbyists and results in the Registry presenting a misleading picture of the actual state of lobbying.

For example, organizations' registrations are active for six months at a time. In an attempt to be transparent, many organizations will choose "all MLAs" and "all Cabinet Ministers" as potential lobbying targets from the Registry drop-down menus, because in that six months, they believe there is a chance that they will want to contact many or all MLAs and Cabinet Ministers, depending on how their lobby effort unfolds.

It often turns out, though, that during the six months, registrants will contact only a small number of the lobbying targets they initially chose. However, once registrants have chosen their intended contacts, the Registry does not permit them to delete any. This is because it would enable lobbyists also to alter accurate and valid registration data after the fact, which would undermine the integrity of data in the Registry.

The requirement for lobbyists to report who they expect to lobby results in hundreds of registrations on the Registry that declare lobbying targets that they never actually contact. Rather than providing greater transparency, the requirement for registrants to report who they expect to lobby actually obscures the reality of lobbying activity.

In addition, this requirement creates confusion among lobbyists about when they must register, because sometimes it is not completely clear when they have established an undertaking to lobby. In some cases, lobbyists discuss the possibility of lobbying with a client but in the end the client declines. Some lobbyists, in an abundance of caution, have registered once they have entered into negotiations with a client, even though, at the end of the process there was no undertaking. This results in lobbyists entering misleading information into the Registry, which constitutes a contravention of the LRA.[3] Requiring lobbyists to register only actually lobbying would avoid recurrences of this problem.

[3] For example, see Investigation Reports 12-01, 12-02, and Reconsideration Report 12-01.

We found almost universal support for amending this feature of the LRA, because it is, by far, the one that causes most registrants, public office holders and citizens searching the Registry the greatest trouble and concern.

Throughout our consultation, both consultant and in-house lobbyists spoke frequently about the difficulty of trying to comply with the LRA's aim of transparency, while being required to provide potentially misleading information by naming lobbying targets before they knew who they would actually be contacting. One in-house lobbyist with a non-profit organization said, "We highly support reporting actual lobbying, as it is hard to predict six months down the road." An association executive agreed: "I really like this change. I find it very hard to say who we will lobby in the future. It is hypothetical until it occurs." One consultant lobbyist wrote, "Lobbyists should only be required to register those meetings they have already attended rather than register for those meetings they have yet to attend"; another consultant echoed the thought, writing, "Reporting what you have done is better than reporting what you might do"; another wrote, "Wholeheartedly agree. The public is interested in what happened, not what people said they hoped would happen."

A consultant lobbyist also pointed out that the wording "expect to lobby" leaves too much room for interpretation. He told us, "There can be quite different views of 'expect' between me and my client." He expressed concern about possibly being involved in an ORL compliance investigation due to discrepancies between his and a client's interpretation of this point. His fear is based on the fact that, in some cases, there might be a current registration for a consultant lobbyist and a separate one for his or her client organization, both representing the same lobby effort. If their interpretations of "expect to lobby" differ enough, the two registrations for the same lobbying could offer significantly different information about the intended lobbying targets. Regardless of whether the situation would ever result in a compliance investigation, there is reason to be concerned about the integrity of Registry data and the real possibility that the goal of transparency for citizens is impaired.

Public office holders have also expressed concern about being named inaccurately as lobbying targets. An executive staff member of a public agency said, "I didn't see how we were the fourth most-lobbied [ministry]. I don't experience being lobbied, and I'm not sure when I was lobbied." Similarly, an MLA said, "I don't even know most of the names on the list [of those who named me as a lobbying target]. I could bump into someone on the street and have no idea who they are." A back-bench MLA with the government said, "I was shocked to see that I was listed as a lobbying target [over 300] times. Who is it [lobbying me]?"

This message is one we have heard often from public office holders both during the consultation and during the normal course of business.

My recommendation for an amendment initially suggested that registrants should register actual lobbying activity within 10 days of the activity occurring. Many of the lobbyists we consulted expressed concern about the 10-day time frame. Some said that 10 days would

not be long enough and others were concerned about the frequency with which their registrations would need to be updated. One said, "Our lobbyists have ongoing meetings and getting them to tell me their lobbying activities is difficult enough without adding this short time frame." Another added, "If we had this, we'd have to register each time one of our employees met with someone in Natural Gas, and that would very quickly become onerous for us." Another organization expressed this concern in more detail, writing, "It appears that every time our sales and marketing employees meet with a BC government employee on sales and marketing calls (which could be several times a month), we would have to report these meetings within 10 days? As an example, all our sales and marketing employees in our Healthcare sector meet with all BC hospitals. In a month, we could have a minimum of 200 separate reportings."

A number of consultant and in-house lobbyists suggested or endorsed an alternative proposal: to make the B.C. reporting regime more like the federal regime. In the federal system, lobbyists start by registering accurately their lobbying activity at the time of registration. After that, registrants update the registration with additional communication that is different from the underlying registration. That is, if an existing registration names a particular public official in February as a lobbying contact, and a subsequent meeting with the same official occurs in March, the registration would not need to be updated to reflect that meeting, because the details of the registration already name the official as a contact. The registration would need to be updated only if there were new officials contacted for lobbying and/or new subject matters and details of subject matters added to the lobbying effort. Updates are due no later than the 15th of the month following the one in which the communication took place.

Almost all the lobbyists we consulted welcomed the suggestion to adopt a reporting schedule similar to that of the federal Registry. Some lobbyists stated that copying the federal schedule would reduce the administrative burden of maintaining multiple registrations across jurisdictions, easing compliance with multiple regimes. A lobbyist from a non-profit organization said, "I am here to advocate following the federal system of monthly listing of contacts made the previous month. Ten days before the deadline, I request information from our lobbyists, they advise, and I report." A lobbyist with a corporation agreed, saying, "I support this idea, as we already follow this federally. You need time to look at the time period since last month and what will need to be in the new report. It means we can combine effort and do both at once." Another lobbyist from a corporation concurred, writing, "We expect that most organizations with In-House Lobbyists already have an internal system to capture this information to meet Federal reporting requirements; therefore, it would not be onerous to include the reporting of lobbying activities in British Columbia in the same manner and frequency."

An additional benefit of adopting a predictable reporting schedule is that it would be easier to track registered lobbying on the Registry. For example, if a citizen was interested in knowing what new lobbying was conducted by a particular consultant or organization, they

could search the Registry on the 16th of each month to see if anything had been added to that consultant's or organization's registration(s). Similarly, if any public officials were interested in learning whether the lobbyists they met with registered their discussion, they could also direct staff to search for the relevant registrations on the 16th of each month following any communication.

Recognizing that there is almost universal support for this change, I make the following recommendation:

Recommendation #1

Remove the requirement for designated filers to list who they "expect to lobby," and replace this with the requirement that designated filers register who they have lobbied and update their registrations by the 15th of the month following the month in which any new lobbying activity takes place.

2.2.2 Harmonize registration requirements for consultant and organizational lobbyists

In discussing the recommendation to register actual lobbying instead of intended lobbying, many stakeholders raised the issue of the differences in registration requirements for consultant and organizational lobbyists. Currently, LRA registration thresholds for consultant lobbyists versus organizations' lobbyists differ considerably. It was argued that the differing thresholds obscure lobbying transparency and undermine equitable treatment of those subject to the law.

Within 10 days after entering into an undertaking to lobby on behalf of a client, consultant lobbyists must register their undertaking on the Registry, whether they have begun to lobby or not. In contrast, organizations that lobby are not legally required to register until the collective efforts of all those who contribute to the lobby effort reaches 100 hours in a 12-month period. The intention of the "free lobbying" provision for organizations appears to have been to exempt from registration organizations that lobby very little and very infrequently, such as small non-profits. These organizations might hold one event each year, such as an open house where they invite all MLAs to attend. However, 100 hours equates with 12.5 average work days, which means that organizations can lobby for more than two weeks without being required to register. Two weeks of lobbying can have significant results, and this unreported lobbying by any and all organizations is not subject to public scrutiny.

Consultant lobbyists who participated in the consultation frequently indicated that the differing thresholds for registration stigmatized them. One said, "Why should there be a

bias in favour of organizations? This demonizes consultant lobbyists, because it says that we need tighter regulation than organizations do. Isn't lobbying lobbying? If the principle really is to create transparency, then shouldn't everyone have to register their lobbying?" Another consultant said, "I don't see the work done by organizations as being any different from me registering the lobbying I do on behalf of an organization." Another said, "In the (United) States, they say, 'Follow the money'. If a non-profit lobbies and gets three-to-four million dollars for a new facility, why should they not register?"

Although some in-house lobbyists said that having to register before reaching the 100 hours threshold would be onerous, there were many who agreed with the consultant lobbyists. One representative of a non-profit organization said, "Coming from a non-profit organization, I believe it de-values the work we do to say we should be unregulated. It's respectful of our work to take it seriously enough to say, you show up as a lobbyist and you're treated the same as the consultants. I think that it might be good for public officials to see us as being on the same playing field as consultants."

Requiring individuals to register lobbying that has not taken place or permitting organizations to omit registering a considerable amount of lobbying does not well serve the goal of transparency in lobbying. Nor is it equitable to impose greater scrutiny of a lobbyist who has an organization as a client than the employees of the client organization do when they lobby.

Requiring that designated filers—whether consultant lobbyists or the filers for organizations—register actual lobbying activities would address both of these problems.

There is, however, an issue that remains with respect to whether certain organizations should be exempt from registration. In some limited instances, there may be a public benefit in maintaining an exemption for organizations. For example, there are very small, community-based service-oriented organizations that might have only one paid employee, typically an Executive Director, who is responsible for all aspects of administration including any lobbying. If such an organization has a single, showcase event annually—a conference or an open house, for example—it might not be necessary to require registration. The principle behind the exemption might be recognition that there are certain very small organizations that provide valuable service to their communities, and, given that these organizations are often over-burdened and under-funded, that there is a public benefit in relieving them of a further administrative burden.

Based on the feedback we received during our consultation, I have concluded that there is a principle of fairness in harmonizing registration thresholds for consultant lobbyists and organizations that lobby regularly. There is also a public benefit in excusing small, administratively-burdened organizations that do very little lobbying from the requirement to register. In my recommendation, I have attempted to accommodate both principles: to generally harmonize thresholds for registering and also permit an application for exemption for small organizations such as those discussed above, evaluated on a case by case basis, and according to guidelines issued by my Office.

Since the substantial changes proposed in this discussion would ease compliance and significantly improve the accuracy of data on the Registry, it would enhance the LRA's purpose of creating transparency in lobbying. Therefore, I make the following recommendation:

Recommendation #2

Remove the requirement for organizations to lobby "at least 100 hours annually" before they are required to register their in-house lobbyists. Give the Registrar of Lobbyists the authority to grant exemptions from the requirement to register in cases where it would be reasonable to excuse small organizations that do little lobbying.

2.2.3 Mandate a 12 month "cooling-off period" for former public office holders

The LRA provides no "cooling-off period" for former public office holders who wish to become lobbyists after leaving public service. Statutes that provide such cooling-off periods, whether they concern lobbying or conflict of interest, acknowledge that certain former public office holders, at least for a time, can have more "insider knowledge" and influence over former colleagues than lobbyists who did not formerly work as public office holders in similar positions.[4] This possibility of greater advantage is the rationale for restricting certain former public office holders from certain lobbying activities for a period after they leave office.

As the aim of the LRA is to provide transparency to citizens regarding who is attempting to influence government decision making, and given that some lobbyists might exercise greater influence than others, it is necessary to publicly acknowledge this fact. It is also necessary to find a means to promote fair practices for all lobbyists and clients who seek to influence government decision making. Upholding the ideal of a level playing field and fair access to decision-makers is important in maintaining the integrity of decision-making processes and supporting public trust in government decisions.

The LRA currently acknowledges the "special status" of certain former public office holders by having them declare on their registrations the nature and term(s) of their former

[4] Other lobbying acts in Canadian jurisdictions that have post-employment lobbying restrictions for certain former public office holders include the federal *Lobbying Act*, the Newfoundland and Labrador *Lobbyist Registration Act* and the Québec *Lobbying Transparency and Ethics Act*.

office(s). Here is the LRA's definition of the "former public office holders" who are required to make the declaration:

> 4(1.1) **"former public office holder"** means
>
> (a) a former member of the Executive Council and any individual formerly employed in the former member's former office,
>
> (b) any individual who
>
> (i) formerly occupied a senior executive position in a ministry, whether by the title of deputy minister, chief executive officer or another title, or
>
> (ii) formerly occupied the position of associate deputy minister, assistant deputy minister or a position of comparable rank in a ministry, or
>
> (c) any individual who formerly occupied a prescribed position in a Provincial entity.

In our January 2013 report, our initial recommendation stated: "Former public office holders as defined by the LRA shall not lobby for a period of 24 months after leaving office, with the ability to apply to the Registrar of Lobbyists for an exemption." Response from stakeholders to this proposal focussed on the appropriate scope and duration of a cooling-off period, and what such a cooling-off period could reasonably be expected to accomplish.

Many of those consulted acknowledged that lobbyists who had recently been public office holders have an advantage when it comes to gaining access to and influencing their former colleagues. However, a number of lobbyists suggested that an amendment should not unreasonably bar experienced, knowledgeable people from contributing to the policy process. As one consultant lobbyist put it, "The industry is too small to limit the resources."

One suggestion for attaining a middle ground was to limit the scope of the post-employment restriction. A consultant lobbyist said about the draft amendment, "This is too restrictive and should pertain only to that person's previous ministry or jurisdiction. An across-the-board restriction would be too broad." An in-house lobbyist echoed this suggestion, writing, "We should at least restrict the cooling-off period to the SAME FIELD as the public office that [the official worked in]. As written, this directive suggests that an outgoing deputy minister of aboriginal affairs would be unable to assist his or her neighbours in making the case for a new community recreation centre to the Ministry of Sports and Culture for 24 months without some paperwork and a special plea."[5]

The focus of the discussion of the appropriate duration of the restriction was on how long any particular policy matter typically remains current in a ministry or other public agency.

[5] NB: A person assisting his or her neighbours on a voluntary basis would not be "lobbying" in the sense of the LRA's legal definition, because to lobby in this sense is to communicate for payment.

One lobbyist suggested that two years was too long for a restriction: "Make it two years, and you lose people. They have to make a living. They'll move on if it's that long, and you'll lose them." Another added, "You won't get people putting themselves forward for public office, if they think they're limiting their options afterward." A number of respondents suggested that 12 months is adequate for an agency to "move on" from the issues that were current when an individual left employment there, and so would be adequate as a post-employment ban on lobbying in that policy area by that individual.

In British Columbia, two existing regulations establish cooling-off periods for former public office holders. The *Members' Conflict of Interest Act* applies a cooling-off period to former members of Executive Council and parliamentary secretaries only regarding the awarding of a contract or benefit. This legislation states that these two classes of former public officials must not "make representation on another person's behalf" regarding "a contract or benefit that is awarded, approved or granted" until 24 months after the date he or she ceases to hold office.[6] The LRA's definition of "lobbying" includes communicating with a public office holder in an attempt to influence "the awarding, amendment or termination of any contract, grant or financial benefit." This means that, while the *Members' Conflict of Interest Act* prohibition last two years, it applies only to some of the activities covered by the LRA. As a result, there is no prohibition on members to engage in other categories of lobbying.

The other "cooling off period" appears in the B.C. Public Service policy, *Post Employment Restrictions for Senior Management in the BC Public Service,*[7] which more broadly restricts lobbying by former members of the public service who occupied senior management positions. It states that those who occupied senior management positions may not lobby for one year after leaving the B.C. Public Service.

The *Lobbying Act* of Canada applies a five-year cooling-off period for lobbying by designated former public officials. However, the length of time stipulated in other provincial and municipal laws and by-laws in Canada that apply a post-employment restriction on lobbying generally specify that former officials is only 12 months after leaving public office.[8]

One consultant lobbyist, a former public office holder, questioned whether any cooling-off period would be effective. He said, "I'm not sure about the cooling-off interval. I think the

[6] You can find a complete copy of the *Members' Conflict of Interest Act* at: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96287_01#section2.
[7] You can find a complete copy of the policy for *Post Employment Restrictions for Senior Management in the BC Public Service* at: http://www.bcpublicserviceagency.gov.bc.ca/policy/down/HR_policy/13_Post_Employment_Restrictions_Senior_Executive.pdf
[8] These include Alberta's *Conflicts of Interest Act*, Manitoba's *Conflict of Interest Act*, Ontario's *Members' Conflict of Interest Act,* Nova Scotia's *Conflict of Interest Act*, Newfoundland and Labrador's *Lobbyist Registration Act* and the City of Toronto's *Lobbying By-Law*.

length of time for the [federal *Lobbying Act* cooling-off period] of five years is punitive. The premise here is that it needs to be two years, because they are too close to the files. I'm not sure two years will solve this. I think there needs to be further debate on the appropriate cooling-off period."

A sitting MLA also questioned whether one or even two years would suffice to lessen any access advantage. He pointed out that a personal connection with former colleagues can last as long as the former colleagues remain in office and so, therefore, can the potential for influence over former colleagues. He said, "Officials are elected for four years, if not more. They will continue to make decisions for that whole time, so it would be a joke to make it for one year or two years."

Another MLA and former cabinet minister suggested that it might be impossible to limit the influence of personal relationships in lobbying. He said, "When you start to talk about how you actually get results, it becomes much more complex. There's a lot of indirect lobbying—get at Minister X through colleagues. That's what people do when they know a public office holder pretty well."

The issue is complex. On one hand, there are public interest benefits in retaining experienced policy-makers in the policy process, whether as public office holders or as lobbyists. There are also open questions around the degree to which a law can or should delimit an individual's career options. On the other hand, there is a principle of lobbying regulation that it should support well-informed policy development based on a system of more or less equitable access to decision-makers. If a personal relationship between a lobbyist and a public official is durable, it is probably true that a cooling-off period will not affect the lobbyist's access to the public office holder, no matter how long the cooling-off period. Nevertheless, a cooling-off period could give "hot" policy issues a chance to move along to the point where the current knowledge of a former public office holder would no longer be of advantage.

In making a recommendation on this point, I recognize the need to balance the public benefit of having well-informed policy makers contribute to the policy process and the goal of fair access to influence government decision making for all citizens.

After careful consideration, I make the following recommendation:

Recommendation #3

Require that, for a period of 12 months after they leave office, former public office holders as defined by the LRA refrain from lobbying the agency where they worked during the last 12 months of employment as public officials and from lobbying on matters they engaged during the last 12 months of their employment as public officials. Give the Registrar of Lobbyists the authority to grant exemptions if doing so would not be contrary to the purposes of the LRA.

2.2.4 Require lobbyists to identify third-party interests as part of the registration process

The LRA requires that individuals designated as legally responsible for filing registrations supply the following, among other information, in their registrations:

- their client or employer;
- other lobbyists lobbying on the registration's subject matter(s);
- other members of the coalition, if the registration is for a coalition; and
- the parent or subsidiary company, if the registration is for a subsidiary or parent company.

The LRA does not require that designated filers identify any others who control, direct or fund the lobbying effort or have a stake on the outcome. Our discussions with stakeholders suggest, however, that in many cases there are other interests involved.

A number of MLAs we spoke with raised the issue of third-party interests as a problem. One experienced MLA said that she had implemented procedures for identifying who she was meeting with: "I've asked my assistant to ask about that [*i.e.,* interests represented at a meeting]. The onus should be on them [*i.e.,* lobbyists] to make that declaration. They should say it when they phone to make the appointment. I've been under the impression I'm meeting with a person, and then they show up with several other people. For example, lawyers come and bring a client, someone completely different from who I thought I was meeting."

Another experienced MLA pointed to the rise of multinational corporations and cross-national lobbying efforts as a contributing factor. He said:

> My door is open to everyone. I met with [a local environmental group] and found out later they were funded from the U.S. One problem is that international and U.S. firms have much different behaviour than our firms here. Unethical behaviour is the norm. All you can do is make it as clean and transparent as possible on the registrations. You can't legislate the behaviour face to face. Most of the pros do tell you [about any third-party interests]. Most of them are up front. A few aren't.

Most of the lobbyists we consulted said that they habitually identify themselves and their clients to public officials as a matter of course. A consultant lobbyist said, "When I call, I identify myself and say I'm calling on behalf of my client, So-and-So. It's no different than an admin assistant calling from an organization and identifying their organization." He added that, in his experience, MLAs' staff members often request additional information: "They usually ask for an email to explain why I want the meeting." One in-house lobbyist said, "[Lobbyists] are not doing their job if they meet with an MLA and they don't say who they represent."

However, when asked if they habitually identify ***third-party*** interests in addition to their clients, few of the lobbyists we met with did. An experienced consultant lobbyist said, "We write and identify the drug company, but don't identify any underlying group."

Some lobbyists suggested that the onus should be on public office holders to find out for themselves. One asked, "Is it your obligation to mention all parties? This is a tricky legal requirement, as some clients have many coalitions. There is a need to balance transparency and how to deal with public officials not looking things up, themselves."

However, the MLAs we spoke with universally rejected the suggestion that they or their staff members should bear responsibility for identifying the interests represented in a lobbying effort. One MLA summed up the consensus this way: "The onus is on the lobbyists and it should be on record in the Registry. We don't have time to do deep research on everybody who comes to talk to us."

Economic developments across the globe, the increasing use of social media as a means of communication and social organization around issues of common interest, and other factors, have contributed to the growth of more complex corporate structures and connections among interest groups in recent years. The LRA has failed to keep up with these developments, because it does not contemplate these kinds of shared interests or provide a way for lobbyists to easily identify them on their registrations.

The primary purpose of the LRA is to achieve transparency in lobbying. If third-party interests are involved in lobbying efforts, it is in the public interest that these third-party relationships be transparent. Both lobbyists and public office holders have indicated that, currently, lobbyists do not consistently identify third-party interests either verbally or in writing. I propose an amendment is to correct this omission by requiring the lobbyists register this information.

I therefore make the following recommendation:

Recommendation #4

Require designated filers to include in their registrations the name and business address of any person or organization, other than the client or employer, that, to the designated filer's knowledge after making reasonable inquiries, controls, directs or is a major funding source for the lobbying activities or has a direct interest in the outcome of the activities of each lobbyist named in the return who lobbies on behalf of the client or organization.

2.2.5 Require periodic review of the LRA, so it can continue meeting its objectives.

With the increasing pace of social and technological change, many laws can become outdated. In a publication called, *Transparency and Integrity in Lobbying,* the Organisation for Economic Cooperation and Development ("OECD") suggests, "Countries should review the functioning of their rules and guidelines related to lobbying on a periodic basis and make necessary adjustments in light of experience."[9] It is necessary to review laws to ensure that they remain current. This is why many statutes include a provision for periodic review.

This Final Report confirms that it is necessary to review the LRA periodically, but the LRA does not currently contain a provision that mandates a review. Several lobbying laws in Canada, including the federal *Lobbying Act* and the Alberta *Lobbyists Registration Act,* include provisions for mandatory review every five or six years. As we have seen, great changes can occur even over a period as short as five years. Consequently, it makes sense to require a periodic mandatory review of the LRA by a legislative committee to assess the LRA and ensure that it continues to meet its objectives.

I therefore make my final recommendation:

Recommendation #5

Require a mandatory review of the LRA every five years.

[9] For the full text of this publication, please see OECD, *Transparency and Integrity in Lobbying*. Published in 2012. Accessible online at: http://www.oecd.org/gov/ethics/Lobbying%20Brochure%202012.pdf.

3.0 Conclusion

The reforms I recommend in this report will substantially improve the oversight regime by eliminating significant obstacles to transparency and introducing greater consistency and fairness into the requirements for lobbyist registration.

By having lobbyists report only actual lobbying, we will ensure more accurate reporting of lobbying targets on the Registry. By having former public office holders observe a reasonable cooling-off period, we will level the playing field for lobbyists and those they represent. By having lobbyists declare what third-party interests are associated with their lobbying efforts, we will increase transparency for public officials who are lobbied and for citizens regarding what interests are represented at the table in a lobbying effort. And by building in a periodic review of the LRA, we will ensure that the LRA continues to meet the needs of providing greater transparency in lobbying over time.

I look forward to working with government in the coming months to realize the shared goals of making lobbying more transparent and government more accessible to British Columbians.

4.0 Acknowledgements

This report reflects the conscientious effort of the many people who agreed to participate in the ORL consultation on whether to adopt a code of conduct and I thank the people, agencies and organizations for their thoughtful submissions and/or responses to our questions.

Jacqueline Howse, Compliance and Policy Officer and Cara McGregor, Director of Communications assisted in preparing this report.

November 5, 2013

Elizabeth Denham
Registrar of Lobbyists

APPENDIX 'A': SUMMARY OF RECOMMENDATIONS

Recommendation #1

Remove the requirement for designated filers to list who they "expect to lobby," and replace this with the requirement that designated filers register who they have lobbied and update their registrations by the 15th of the month following the month in which any new lobbying activity takes place.

Recommendation #2

Remove the requirement for organizations to lobby "at least 100 hours annually" before they are required to register their in-house lobbyists. Give the Registrar of Lobbyists the authority to grant exemptions from the requirement to register in cases where it would be reasonable to excuse small organizations that do little lobbying.

Recommendation #3

Require that, for a period of 12 months after they leave office, former public office holders as defined by the LRA refrain from lobbying the agency where they worked during the last 12 months of employment as public officials and from lobbying on matters they engaged during the last 12 months of their employment as public officials. Give the Registrar of Lobbyists the authority to grant exemptions if doing so would not be contrary to the purposes of the LRA.

Recommendation #4

Require designated filers to include in their registrations the name and business address of any person or organization, other than the client or employer, that, to the designated filer's knowledge after making reasonable inquiries, controls, directs or is a major funding source for the lobbying activities or has a direct interest in the outcome of the activities of each lobbyist named in the return who lobbies on behalf of the client or organization.

Recommendation #5

Require a mandatory review of the LRA every five years.

APPENDIX 'B': THE *LOBBYISTS REGISTRATION ACT*

IMPORTANT INFORMATION

This Act is Current to October 23, 2013

LOBBYISTS REGISTRATION ACT

[SBC 2001] CHAPTER 42

Assented to August 27, 2001

Contents

Part 1 — Interpretation, Application and Prohibition

Interpretation

1 (1) In this Act:

"affiliate" has the same meaning as in the *Business Corporations Act*;

"client" means a person or organization on whose behalf a consultant lobbyist undertakes to lobby;

"consultant lobbyist" means an individual who, for payment, undertakes to lobby on behalf of a client;

"designated filer" means

(a) a consultant lobbyist, or

(b) in the case of an organization that has an in-house lobbyist,

(i) the most senior officer of the organization who receives payment for performing his or her functions, or

(ii) if there is no senior officer who receives payment, the most senior inhouse lobbyist;

"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, either alone or together with other individuals in the organization,

(i) amounts to at least 100 hours annually, or

(ii) otherwise meets criteria established by the regulations;

"lobby", subject to section 2 (2), means,

(a) in relation to a lobbyist, to communicate with a public office holder in an attempt to influence

(i) the development of any legislative proposal by the government of British Columbia, a Provincial entity or a member of the Legislative Assembly,

(ii) the introduction, amendment, passage or defeat of any Bill or resolution in or before the Legislative Assembly,

(iii) the development or enactment of any regulation, including the enactment of a regulation for the purposes of amending or repealing a regulation,

(iv) the development, establishment, amendment or termination of any program, policy, directive or guideline of the government of British Columbia or a Provincial entity,

(v) the awarding, amendment or termination of any contract, grant or financial benefit by or on behalf of the government of British Columbia or a Provincial entity,

(vi) a decision by the Executive Council or a member of the Executive Council to transfer from the Crown for consideration all or part of, or any interest in or asset of, any business, enterprise or institution that provides goods or services to the Crown, a Provincial entity or the public, or

(vii) a decision by the Executive Council or a member of the Executive Council to have the private sector instead of the Crown provide goods or services to the government of British Columbia or a Provincial entity,

(b) in relation to a consultant lobbyist only, to arrange a meeting between a public office holder and any other individual, and

(c) in relation to an in-house lobbyist only, to arrange a meeting between a public office holder and any

other individual for the purposes of attempting to influence any of the matters referred to in paragraph (a) of this definition;

"lobbyist" means a consultant lobbyist or an in-house lobbyist;

"organization" includes any of the following, whether incorporated, unincorporated, a sole proprietorship or a partnership:

(a) a person other than a person on whose behalf a consultant lobbyist undertakes to lobby;

(b) a business, trade, industry, professional or voluntary organization;

(c) a trade union or labour organization;

(d) a chamber of commerce or board of trade;

(e) a charitable or non-profit organization, association, society, coalition or interest group;

(f) a government, other than the government of British Columbia;

"payment", subject to section 2.1, means money or anything of value and includes a contract, a promise or an agreement to pay money or anything of value, but does not include a reimbursement of expenses;

"Provincial entity" means a prescribed Provincial entity;

"public office holder" means

(a) a member of the Legislative Assembly and any person on the member's staff,

(b) an officer or employee of the government of British Columbia,

(c) a person who is appointed to any office or body by or with the approval of the Lieutenant Governor in Council, other than a person appointed on the recommendation of the Legislative Assembly,

(d) a person who is appointed to any office or body by or with the approval of a minister of the government of British Columbia, and

(e) an officer, director or employee of any government corporation as defined in the *Financial Administration Act*,

but does not include a judge or a justice of the peace;

"registrar" means the person designated as registrar under section 7 (1);

"registry" means the registry established under section 7 (2);

"undertaking" means an undertaking by a consultant lobbyist to lobby on behalf of a client, but does not include an undertaking by an employee to do anything

(a) on the sole behalf of the employer, or

(b) if the employer is a corporation, at the direction of the employer on behalf of a subsidiary of the employer or any corporation of which the employer is a subsidiary.

(2) [Repealed 2009-31-3.]

(3) For the purposes of this Act, the following are not considered to be in-house lobbyists when acting in their official capacity:

(a) members of the Legislative Assembly or Executive Council, or persons on their staff;

(b) officers and employees of the Legislative Assembly appointed under section 39 of the *Constitution Act*;

(c) persons appointed under the *Public Service Act*;

(d) persons employed by, or officers or directors of, Provincial entities;

(e) officers of the Legislature within the meaning of the *Freedom of Information and Protection of Privacy Act*, or persons on their staff.

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, or employees of a municipality, regional district, improvement district, school district or other local government authority;

(d.1) employees of bodies representing municipal councils, regional district boards, improvement district boards, school district boards or other local government authorities;

(e) members of an aboriginal governing body, however organized and established by aboriginal people within their traditional 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.

(2) This Act does not apply in respect of an oral or written submission made as follows:

(a) made in proceedings that are a matter of public record to a committee of the Legislative Assembly or to any body or person having jurisdiction or powers conferred under an Act;

(b) made to a public office holder by an individual on behalf of a person or organization concerning

(i) the enforcement, interpretation or application of any Act or regulation by the public office holder with respect to the person or organization, or

(ii) the implementation or administration of any program, policy, directive or guideline by the public office holder with respect to the person or organization;

(c) made to a public office holder by an individual on behalf of a person or organization in direct response to a written request from a public office holder for

advice or comment on any matter referred to in paragraph (a) of the definition of "lobby" in section 1 (1);

(d) made to a member of the Legislative Assembly by or on behalf of a constituent of the member with respect to any personal matter of the constituent.

(3) For the purposes of subsection (2) (d), a submission made to a member of the Legislative Assembly concerning the introduction in the Legislative Assembly or the passage or amendment of a private bill for the special benefit of a constituent of the member is not considered to be a personal matter of the constituent.

(4) This Act does not require the disclosure of any identifying information about an individual if the registrar is satisfied that disclosure of that information could reasonably be expected to threaten the individual's safety.

Contracting prohibition

2.1 (1) In this section, **"contract for providing paid advice"** means an agreement or other arrangement under which a person directly or indirectly receives or is to receive payment for providing advice to the government of British Columbia or a Provincial entity, but does not include reasonable remuneration for serving on a board, commission, council or other body that is established under an enactment and on which there are at least 2 other members who represent other organizations or interests.

(2) A person must not do either of the following:

(a) lobby on a matter in relation to which the person, or a person associated with that person, holds a contract for providing paid advice;

(b) enter into a contract for providing paid advice on a matter in relation to which the person, or a person associated with that person, is lobbying.

(3) Subsection (2) applies regardless of the number of hours the person's lobbying or duty to lobby on behalf of an organization or an affiliate, either alone or together with other individuals in the organization, amounts to annually.

(4) For the purposes of subsection (2), a person is associated with another person if the other person is

(a) a corporation of which the first person is a director or senior officer,

(b) a corporation carrying on business or activities for profit or gain if the first person owns or is the beneficial owner of shares of the corporation,

(c) the employer of the first person,

(d) a partnership

(i) of which the first person is a partner, or

(ii) of which one of the partners is a corporation associated with the first person by reason of paragraph (a) or (b) of this subsection, or

(e) a person or group of persons acting as the agent of the first person and having actual authority in that capacity from the first person.

Exemption from contracting prohibition

2.2 (1) Despite section 2.1, the registrar may, if the registrar is satisfied that it is in the public interest, exempt a person from the prohibition under section 2.1 (2).

(2) If the registrar makes an exemption under subsection (1), the registrar

(a) may impose terms and conditions on the exemption, and

(b) must enter into the registry

(i) information relating to the exemption, and

(ii) the reasons for making the exemption.

Part 2 — Filing Returns

Requirement to file return

3 (1) Within 10 days after entering into an undertaking to lobby on behalf of a client, a consultant lobbyist must file with the registrar a return in the prescribed form and containing the information required by section 4.

(2) Only one return need be filed under subsection (1) for each undertaking even though a consultant lobbyist named in the return may, in connection with the undertaking,

(a) communicate with one or more public office holders on one or more occasions, or

(b) arrange one or more meetings between a public office holder and any other person.

(3) The designated filer of an organization must file with the registrar a return in the prescribed form and containing the information required by section 4,

(a) if no return has been filed previously, within 60 days of the date the organization first has an in-house lobbyist, or

(b) if a return has been filed previously, within 30 days of the end of each 6month period after the date of filing the previous return.

Form and content of return

4 (1) Each return filed under section 3 must include the following information, as applicable:

(a) the name and business address of the designated filer, and whether he or she is a consultant lobbyist or the designated filer for an in-house lobbyist;

(b) if the return is filed by a consultant lobbyist,

(i) the name and business address of the firm, if any, where the consultant lobbyist is engaged in business,

(ii) the date on which the undertaking with the client was entered into and is scheduled to terminate, and

(iii) the name of each individual engaged by the consultant lobbyist to lobby on behalf of the client;

(c) if the return is filed in respect of an in-house lobbyist, the name of each inhouse lobbyist for the organization;

(d) the name and business address of the client or organization;

(e) a summary of the business or activities of the client or organization;

(f) if the client or organization is a corporation, the name and business address of each affiliate of the corporation that, to the designated filer's knowledge after making reasonable inquiries, has a direct interest in the outcome of the activities of each lobbyist named in the return who lobbies on behalf of the client or organization;

(g) without limiting paragraph (f), if the client or organization is a corporation that is a subsidiary of another corporation, the name and business address of the other corporation;

(h) if the client or organization is a member of a coalition, the name and business address of each member of the coalition;

(i) the name of any government or government agency that funds or partly funds the client or organization, and the amount of the funding;

(j) particulars to identify the subject matter concerning which a lobbyist named in the return has lobbied or expects to lobby, during the relevant period;

(k) if a lobbyist named in the return has lobbied or expects to lobby, during the relevant period, a public office holder employed by or serving in a ministry of the government of British Columbia or a Provincial entity, the name of the ministry or Provincial entity;

(l) if a lobbyist named in the return has lobbied or expects to lobby, during the relevant period,

(i) a member of the Legislative Assembly, or

(ii) a person on the staff of a member of the Legislative Assembly

concerning a matter that involves the member's capacity as a member, the name of that member;

(m) if a lobbyist named in the return has lobbied or expects to lobby, during the relevant period,

(i) a minister, or

(ii) a person on the staff of a minister

concerning a matter that involves the minister's capacity as a minister, the name of that minister;

(n) a declaration that no lobbyist named in the return is in violation of section 2.1;

(o) if any lobbyist named in the return is a former public office holder, the nature of the office formerly held by the lobbyist and the term of office;

(p) additional prescribed information.

(1.1) For the purposes of subsection (1) (o), **"former public office holder"** means

(a) a former member of the Executive Council and any individual formerly employed in the former member's former office,

(b) any individual who

(i) formerly occupied a senior executive position in a ministry, whether by the title of deputy minister, chief executive officer or another title, or

(ii) formerly occupied the position of associate deputy minister, assistant deputy minister or a position of comparable rank in a ministry, or

(c) any individual who formerly occupied a prescribed position in a Provincial entity.

(2) An individual who files a return must supply the registrar with the following information within the applicable period:

(a) particulars of any change to the information in the return, within 30 days after the change occurs;

(b) any information required to be supplied under subsection (1) the knowledge of which the individual acquired only after the return was filed, within 30 days after the knowledge is acquired;

(c) any information requested by the registrar to clarify any information supplied by the individual under this section, within 30 days after the request is made.

(3) Within 30 days after the completion or termination of an undertaking for which a return was filed, the consultant lobbyist who filed the return must inform the registrar of the completion or termination of the undertaking and indicate the date on which the completion or termination occurred.

(4) Within 30 days after an individual named in a return as an in-house lobbyist ceases to be an in-house lobbyist for the organization named in the return, the individual who filed the return must inform the registrar of the event and indicate the date on which the event occurred.

(5) Any information required under subsections (2) to (4) must be supplied to the registrar in the prescribed form and manner.

(6) In this section, **"relevant period"** means,

(a) in relation to a return filed by a consultant lobbyist, the period beginning on the date of the undertaking for which the return was filed and ending on the date of completion or termination of the undertaking, and

(b) in relation to a return filed in respect of an in-house lobbyist, the period,

(i) if no return has been filed previously, beginning on the date the organization first has an in-house lobbyist, or

(ii) if a return has been filed previously, beginning on the date the most recent return was filed

and ending 6 months from the date the current return is filed.

Certification of documents and date of receipt

5 (1) An individual who submits a document, including a return, to the registrar under this Act must certify,

(a) on the document, or

(b) in the manner specified by the registrar, if the document is submitted in electronic or other form under section 6,

that, to the best of the individual's knowledge and belief, the information contained in the document is true.

(2) Subject to sections 6 (2) and 7 (6), for the purposes of this Act,

(a) the date on which a return is received by the registrar is the date on which the return is considered to have been filed, and

(b) the date on which information or a document other than a return is received by the registrar is the date on which the information is considered to have been supplied or the document is considered to have been submitted to the registrar.

Submission of documents in electronic or other form

6 (1) Subject to the regulations, any return or other document that is required to be submitted to the registrar under this Act may be submitted in electronic or other form by the means and in the manner specified by the registrar.

(2) For the purposes of this Act, any return or other document that is submitted in accordance with subsection (1) is deemed to be received by the registrar at the time provided for in the regulations.

Part 3 — The Registrar

Designation and functions of registrar

7 (1) The person holding the office of, or acting as, *Information and Privacy Commissioner under the Freedom of Information and Protection of Privacy Act* is designated as registrar for the purposes of this Act.

(2) The registrar must establish and maintain a registry in which a record of all returns and other documents submitted to the registrar under this Act are to be kept.

(3) The registry must be organized in the manner and kept in the form that the registrar may determine.

(4) The registrar may do one or more of the following:

(a) verify the information contained in any return or other document submitted under this Act;

(b) subject to subsection (5), refuse to accept a return or other document that does not comply with the requirements of this Act or the regulations or that contains information not required to be supplied or disclosed under this Act;

(c) remove a return from the registry if the individual who filed the return does not comply with section 4 (2) (c);

(d) delegate, in writing, to any person appointed or retained under section 41 (1) or (2) of the *Freedom of Information and Protection of Privacy Act* any of the powers and duties of the registrar under this Act, subject to any restrictions or limitations that the registrar may specify;

(e) authorize a person to whom powers and duties are delegated under paragraph (d) of this subsection to subdelegate those powers and duties to another person appointed or retained under section 41 (1) or (2) of the *Freedom of Information and Protection of Privacy Act*.

(5) On refusing to accept a return or other document under subsection (4) (b), the registrar must

(a) inform the individual who submitted it of the refusal and the reason, and

(b) allow a reasonable extension of the time set under this Act for filing the return or submitting the document if that individual cannot reasonably be expected to file another return or submit another document within the set time.

(6) A return that is filed or a document that is submitted within the time allowed under subsection (5) (b) and is accepted by the registrar in place of one refused under subsection (4) (b) is deemed to have been filed or submitted, as the case may be, on the date the registrar received the one that was refused.

(7) If a return is removed from the registry under subsection (4) (c),

(a) the registrar must inform the individual who filed the return of its removal and the reason, and

(b) that individual is deemed not to have filed the return.

Power to investigate

7.1 (1) If the registrar considers it necessary to establish whether there is or has been compliance by any person with this Act or the regulations, the registrar may conduct an investigation.

(2) The registrar may refuse to investigate or may cease an investigation with respect to any matter if the registrar believes that

(a) the matter could more appropriately be dealt with under another enactment,

(b) the matter is minor or trivial,

(c) dealing with the matter would serve no useful purpose because of the length of time that has elapsed since the matter arose, or

(d) there is any other valid reason for not dealing with the matter.

(3) If the registrar discovers that

(a) the subject matter of an investigation under this section is also the subject matter of an investigation to determine whether an offence under an enactment of British Columbia or Canada has been committed, or

(b) a charge has been laid with respect to that subject matter,

the registrar must immediately suspend his or her investigation and may not continue until the other investigation has been completed, the charge has been withdrawn or a final verdict has been rendered in respect of the charge.

Hearing and administrative penalty

7.2 (1) If after an investigation under section 7.1 the registrar believes that a person under investigation has not complied with a provision of this Act or the regulations, the registrar must

(a) give notice to the person

(i) of the alleged contravention,

(ii) of the reasons why the registrar believes there has been a contravention, and

(iii) respecting how the person may exercise an opportunity to be heard under paragraph (b) of this subsection, and

(b) give the person a reasonable opportunity to be heard respecting the alleged contravention.

(2) If after giving a person under investigation a reasonable opportunity to be heard respecting an alleged contravention the registrar determines that the person has not complied with a prescribed provision of this Act or the regulations, the registrar

(a) must inform the person of the registrar's determination that there has been a contravention,

(b) may impose an administrative penalty of not more than $25 000, and

(c) must give to the person notice

(i) of the registrar's determination that the person has not complied with a prescribed

provision of this Act or the regulations and the reason for the decision,

(ii) if a penalty is imposed, of the amount, the reason for the amount and the date by which the penalty must be paid, and

(iii) respecting how the person may request reconsideration, under section 7.3, of the determination of non-compliance or the imposition or amount of the penalty.

(3) Despite subsection (2), the registrar must not impose an administrative penalty if more than 2 years have passed since the date of the contravention.

Reconsideration

7.3 (1) Within 30 days after being informed of a contravention in accordance with section 7.2, a person may request the registrar to reconsider a decision under section 7.2 (2) (a) or (b), or both.

(2) A request under subsection (1) must be in writing and must identify the grounds on which a reconsideration is requested.

(3) On receiving a request for a reconsideration under subsection (1), the registrar must do all of the following:

(a) consider the grounds on which the reconsideration is requested;

(b) rescind the decision under section 7.2 (2) (a) or (b), or both, or confirm or vary the amount of the penalty;

(c) if the amount of an administrative penalty is confirmed or varied, extend the date by which the penalty must be paid;

(d) notify the person in writing of the matters under paragraphs (b) and (c) of this subsection, as applicable, and of the reasons for the decision to confirm, vary or rescind under paragraph (b) of this section.

Payment of administrative penalties

7.4 (1) A person on whom an administrative penalty is imposed must pay the administrative penalty by the date stated in the notice under

(a) section 7.2 (2), if no reconsideration is requested under section 7.3, or

(b) section 7.3 (3), if a reconsideration is requested under that section.

(2) An administrative penalty constitutes a debt due to the government by the person on whom the penalty is imposed.

(3) If a person fails to pay an administrative penalty as required under subsection (1), the registrar may file with the Supreme Court or Provincial Court a certified copy of the notice imposing the administrative penalty and, on being filed, the notice has the same force and effect, and all proceedings may be taken on the notice, as if it were a judgment of that court.

(4) All administrative penalties received under this section must be paid into the consolidated revenue fund.

Powers to compel persons and records

7.5 (1) For the purposes of sections 7.1 to 7.3, the registrar may make an order requiring a person to do either or both of the following:

(a) attend, in person or by electronic means, before the registrar to answer questions on oath or affirmation, or in any other manner;

(b) produce for the registrar a record in the custody or under the control of the person, including a record containing personal information.

(2) The registrar may apply to the Supreme Court for an order

(a) directing a person to comply with an order made under subsection (1), or

(b) directing any directors and officers of a person to cause the person to comply with an order made under subsection (1).

(3) A person must produce to the registrar within 10 days any record or a copy of any record required under subsection (1).

(4) A person subject to an order under subsection (1) or (2) has the same privileges in relation to giving evidence to the registrar as the person would have with respect to a proceeding in a court.

(5) Evidence given by a person in an investigation or during a hearing is inadmissible against the person in a court or in any other proceeding, except

(a) in a prosecution for perjury in respect of sworn testimony,

(b) in a prosecution for an offence under this Act, or

(c) in an application for judicial review or an appeal from a decision with respect to that application.

Contempt proceeding for uncooperative person

7.6 (1) The failure or refusal of a person subject to an order under section 7.5 to do any of the following makes the person, on application to the Supreme Court by the registrar, liable to be committed for contempt as if in breach of an order or a judgment of the Supreme Court:

(a) attend before the registrar;

(b) take an oath or make an affirmation;

(c) answer questions;

(d) produce records in the person's custody or under the person's control.

(2) Subsection (1) does not limit the conduct for which a finding of contempt may be made by the Supreme Court.

Discretion to receive information and records in confidence

7.7 The registrar may direct that all or part of the information or a record received under section 7.1, 7.2, 7.3 or 7.5 be received in confidence to the exclusion of any other person, on terms the registrar considers necessary, if the registrar believes that the nature of the information or record requires that direction to ensure the proper administration of this Act.

Report if non-compliance

7.8 (1) If after a hearing under section 7.2 the registrar determines that a person under investigation has not complied with a provision of this Act or the regulations, the registrar must make a report of

(a) the registrar's findings and conclusions and reasons for those conclusions, and

(b) the amount of any administrative penalty imposed and whether, at the time of making the report, the amount has been paid.

(2) If the registrar considers it to be in the public interest, the registrar may include in a report details of any payment received, disbursement made or expense incurred by an individual named in a return filed under section 3 in respect of any communication or meeting referred to in the definition of "lobby" in section 1 (1).

(3) If after a hearing under section 7.2 an administrative penalty is imposed, the registrar is not required to report under subsection (1) of this section until

(a) the time for requesting a reconsideration under section 7.3 (1) has expired, or

(b) the registrar has given notice of his or her decision under section 7.3 (3).

(4) The registrar must deliver to the Speaker of the Legislative Assembly each report made under this section.

(5) After receiving a report under subsection (4),

(a) if the Legislative Assembly is sitting or will be sitting within 10 days, the Speaker must promptly lay the report before the Legislative Assembly, or

(b) if the Legislative Assembly is not sitting or will not be sitting within 10 days, the Speaker must file the report with the Clerk of the Legislative Assembly.

Other reports of investigations

7.9 (1) This section applies if

(a) the registrar refuses to investigate, ceases an investigation or suspends an investigation under section 7.1, or

(b) after an investigation or a hearing, as applicable, the registrar believes or determines that a person under investigation has complied with this Act and the regulations.

(2) The registrar may

(a) make a report of the registrar's findings and conclusions and reasons for those conclusions in respect of a matter referred to in subsection (1), and

(b) if the register considers it to be in the public interest, make the report publicly available.

Reports made publicly available

7.91 In accordance with section 33.1 (1) (c) of the *Freedom of Information and Protection of Privacy Act*, the registrar may disclose inside or outside Canada a report that must be made under section 7.8 or that may be made under section 7.9 of this Act, and may include with the report

(a) the name of the person who was under investigation or in respect of whom the registrar refused to investigate or ceased or suspended an investigation,

(b) a description of the conduct or circumstances that were the subject of the report, and

(c) any of the matters set out in section 7.8 (1) or (2) or 7.9 (2) (a).

Restrictions on disclosure of information by the registrar and staff

7.92 (1) Except as provided under this section, the registrar and anyone acting for or under the direction of the registrar must not disclose

(a) whether an investigation or a hearing is being conducted under this Act, or

(b) any information or record obtained in conducting an investigation or a hearing under this Act.

(2) The registrar may disclose, or may authorize anyone acting for or under the direction of the registrar to disclose, information that is necessary to

(a) conduct an investigation or a hearing under this Act,

(b) enforce an administrative penalty under section 7.4, or

(c) make a report under this Act.

(3) If the registrar considers it to be in the public interest or in the interest of an individual, the registrar may comment publicly about a matter relating generally to the exercise of the registrar's duties or to a particular investigation or hearing being conducted under this Act.

(4) The registrar and anyone acting for or under the direction of the registrar must not give or be compelled to give evidence in court or in any other proceedings in respect of any information or records obtained in conducting an investigation or a hearing under this Act.

(5) Despite subsection (4), the registrar and anyone acting for or under the direction of the registrar may give or be compelled to give evidence

(a) in a prosecution for perjury in respect of sworn testimony,

(b) in a prosecution for an offence under this Act, or

(c) in an application for judicial review of, or an appeal from, a decision of the registrar made under this Part.

(6) If the registrar considers there is evidence of an offence against an enactment of British Columbia or Canada, the registrar may disclose to the Assistant Deputy Attorney General, Criminal Justice Branch, information relating to the commission of the alleged offence.

Return of records

7.93 If the registrar considers that a record or copy of a record produced under section 7.5 is no longer required for the purposes of this Act, the registrar must return the record or copy as soon as practicable.

Application of sections 5 and 6

7.94 Sections 5 and 6 do not apply to a document submitted to the registrar under section 7.1, 7.2, 7.3 or 7.5.

Part 4 — General Provisions

Access to registry

8 (1) The registry, including the dates when a lobbyist registered under this Act and completed or terminated an undertaking or otherwise ceased to be a lobbyist for the purposes of this Act, must be available for public inspection in the manner and at the times that the registrar may determine.

(2) For greater certainty, nothing in this Act requires a public office holder to verify whether any person who is or may be lobbying the public office holder has acted in accordance with this Act.

Storage of documents and use of documents as evidence

9 (1) Subject to the regulations, any return or other document that is received by the registrar under this Act may be entered or recorded by any information storage device, including any system of mechanical or electronic data processing, that is capable of reproducing the stored return or other document in intelligible form within a reasonable time.

(2) In any prosecution for an offence under this Act, a copy of a return or other document that is reproduced as permitted by subsection (1) and certified under the registrar's signature as a true copy

(a) is admissible in evidence without proof of the official character of the person appearing to have signed the copy, and

(b) has, in the absence of evidence to the contrary, the same evidentiary value as the original would have if it were proved in the ordinary way.

Annual report

9.1 (1) The registrar must prepare and deliver to the Speaker of the Legislative Assembly an annual report respecting activities under this Act for the past year.

(2) After receiving a report under subsection (1),

(a) if the Legislative Assembly is sitting or will be sitting within 15 days, the Speaker must promptly lay the report before the Legislative Assembly, or

(b) if the Legislative Assembly is not sitting or will not be sitting within 15 days, the Speaker must file the report with the Clerk of the Legislative Assembly.

Personal liability protection

9.2 (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against the registrar or persons acting on behalf of the registrar because of anything done or omitted

(a) in the exercise or intended exercise of any power under this Act, or

(b) in the performance or intended performance of any duty under this Act.

(2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

Time limit for judicial review

9.3 (1) An application for judicial review of a final decision of the registrar must be commenced within 60 days of the date notice of the decision is given.

(2) Despite subsection (1), either before or after expiration of the time, the court may extend the time for making the application on terms the court considers proper, if it is satisfied that there are serious grounds for relief, there is a reasonable explanation for the delay and no substantial prejudice or hardship will result to a person affected by the delay.

Power to educate public respecting this Act

9.4 In addition to the registrar's powers and duties under this Act, the registrar may develop and conduct public education and

information designed to promote awareness and understanding of this Act.

Offences and penalty

10 (1) A person who contravenes section 2.1 (2), 3 (1) or (3) or 4 commits an offence.

(2) A person who supplies false or misleading information in a return or other document submitted to the registrar under this Act commits an offence.

(3) A person does not commit an offence under subsection (2) if, at the time the information was supplied, the person did not know that it was false or misleading and, with the exercise of reasonable diligence, could not have known that it was false or misleading.

(3.1) A person who wilfully interferes with or obstructs a person exercising a power or performing a duty under this Act commits an offence.

(3.2) A person who contravenes a prohibition imposed under subsection (7) commits an offence.

(4) A person who commits an offence under subsection (1), (2), (3.1) or (3.2) is liable on conviction

(a) for a first offence, to a fine of not more than $25 000, and

(b) for a second or subsequent offence, to a fine of not more than $100 000.

(5) Section 5 of the *Offence Act* does not apply in respect of this Act or the regulations.

(6) A prosecution for an offence under this section must not be commenced more than 2 years after the date on which the alleged offence occurred.

(7) If a person is convicted of an offence under this Act, the registrar may, if the registrar considers it to be in the public interest, taking into account the gravity of the offence and the number of previous convictions or administrative penalties imposed, if any, prohibit the person who committed the offence from lobbying and from filing, or having a return filed in respect of the person, for a period of not more than 2 years.

(8) If the registrar imposes a prohibition under subsection (7), the registrar must ensure that information relating to the prohibition is entered into the registry.

(9) The registrar may make public the nature of an offence, the name of the person who committed it, the punishment imposed and, if applicable, any prohibition under subsection (7).

Person not to be charged with both administrative penalty and offence

10.1 (1) A person subject to an administrative penalty under this Act must not be prosecuted under this Act for an offence in respect of the same incident that gave rise to the administrative penalty.

(2) A person charged under this Act with an offence must not be subject to an administrative penalty under this Act in respect of the same incident that gave rise to the charge.

Power to make regulations

11 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(a) [Repealed 2009-31-17.]

(a.1) respecting the determination of time spent lobbying and establishing other criteria for the purposes of the definition of "in-house lobbyist" in section 1 (1);

(a.2) respecting the determination of what constitutes communication with a public office holder for the purposes of the definition of "lobby" in section 1 (1);

(a.3) prescribing Provincial entities, including prescribing different Provincial entities for the purposes of different provisions of this Act;

(b) requiring a fee to be paid on the filing of a return or a class of return under section 3 or for any service performed or the use of any facility provided by the registrar;

(c) prescribing any fee required to be paid under paragraph (b) or the manner of determining the fee, and providing for different fees or for the waiver of a fee based on one or more of the following:

(i) the manner in which a return is submitted to the registrar;

(ii) the time at or within which a return is submitted to the registrar;

(iii) the class of lobbyist by or in relation to whom a return is submitted to the registrar;

(d) prescribing information for the purpose of section 4 (1) (p) and the form and manner in which information required by the registrar under section 4 (2) to (4) is to be supplied;

(d.1) prescribing positions for the purposes of section 4 (1.1) (c);

(e) respecting the submission of returns and other documents to the registrar under this Act, including the time at which returns and other documents submitted in electronic or other form under section 6 are deemed to be received by the registrar;

(e.1) prescribing provisions of this Act or the regulations for the purposes of section 7.2 (2);

(f) respecting the entering or recording of any return or other document under section 9;

(f.1) respecting the service of notice under Part 3, including deeming a person to have received notice after a time or if served in a manner set out in the regulations;

(g) defining any word or expression used but not defined in this Act.

Spent

12–15 *[Consequential amendments. Spent. 2001-42-12 to 15.]*

Commencement

16 This Act comes into force by regulation of the Lieutenant Governor in Council.