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INFLUENCING BC

An e-zine on lobbying, lobbyists, and transparency in public influence

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

INSIDE THIS ISSUE:

THE WAY FORWARD:

BRITISH COLUMBIA'S FIRST CONVERSATION ON LOBBYING WAS A GOOD START

Happy 2012! Welcome to our 1st anniversary issue of *Influencing BC*. 2011 was a very busy and productive year for the Office of the Registrar of Lobbyists, culminating in a December conference co-hosted with Simon Fraser University's Institute of Governance Studies (IGS).

This conference, "Why the Road Exists and Where the Rubber Hits it: A Conversation on Lobbying," was a significant step forward in public and compliance education. I would like to once again thank President Andrew Petter and Professor Paddy Smith, Director of the IGS, for the vision, resources and support they provided to our office.

Conference keynote speaker Paul Pross, former Director of the Dalhousie University School of Public Administration and author of *Group Politics and Public Policy*, noted that it was the first Canadian conference focussed on lobbying that brought together industry, civil society, politicians, regulators and observers from many jurisdictions. It is always exciting to break new ground in British Columbia.

We had a constructive and open conversation with legal experts, academics, lobbyists and the media about the challenges facing lobbyists and regulators. We discussed what measures should be in place for effective oversight. We examined cooling off periods, whether or not they work, whether they are the right length of time.

We explored whether it is time to introduce a code of conduct for lobbyists in British Columbia, how a code could fit with the overall ethics landscape and how codes of conduct have fared in other jurisdictions. Finally, we reviewed the definition of lobbying and the ambiguity over the kinds of behaviours that trigger the requirement to register. On balance, we found that we are making progress but have more work to do.

The event also provided us with an opportunity for face to face discussion. Lobbyists and my staff have been corresponding for almost two years, and it was great to put faces to names. On the whole, I believe the conference will prove a great benefit to my Office and the lobbying community. At future events, I hope to have more industry voices on the panels .

The more I work in this area, the more I am convinced that lobbying plays a vital role in government decision-making. Transparent lobbying enables citizens and organizations to communicate their ideas and concerns to public office holders in a way that gives those communications appropriate influence.

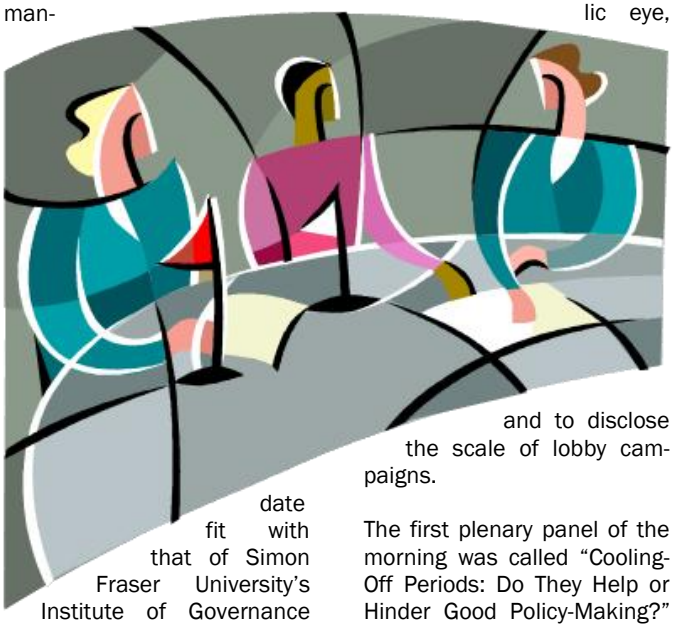
The system of lobbying meets these objectives as long as all parties and interests have fair and equitable opportunities to communicate their ideas and concerns. I think that this is a positive message that deserves more attention. It is my role to ensure that there are appropriate safeguards to minimize the opportunities for individual parties and interests to exert undue influence on public office holders. As lobbyists and regulators, we can work together to ensure that British Columbia benefits from sound public policy decision-making that serves the public interest.

- Elizabeth Denham, Registrar of Lobbyists

Why there's a Road and Where the Rubber Hits it: BC's First Conversation on Lobbying

In early December 2011, Simon Fraser University's Institute of Governance Studies and the Office of the Registrar of Lobbyists for British Columbia co-hosted BC's first public conversation on lobbying. The one-day seminar brought together lobbyists, regulators and observers from Canada and the United States to discuss a range of topics raised by lobbying laws, policies and practices. Dr. Patrick Smith, Duff Conacher and Colin MacDonald, who participated in the seminar, have generously submitted articles based on their remarks, which also appear in this issue of *Influencing BC*.

In her welcoming remarks Elizabeth Denham, the Registrar of Lobbyists for British Columbia, highlighted the importance of her role as public educator in achieving the goal of BC's lobby legislation – transparency – and pointed out that her mandate to educate requires that she not only speak, but also listen. She discussed how naturally her mandate to disclose fit with that of Simon Fraser University's Institute of Governance Studies to facilitate collaborative research on matters of public governance, and to share that information with the broader community.



The seminar continued with a keynote address by Paul Pross, Professor Emeritus at Dalhousie University's School of Public Administration. Dr. Pross is a distinguished scholar who has written extensively about the role of public interest groups in policy formation and democratic processes, and the business and regulation of lobbying.

Dr. Pross' address outlined the history of lobby legislation in Canada. He discussed how Canadian lobby legislation developed, beginning with the passage of federal lobby legislation in 1989 to address a perceived loss of public confidence in democratic institutions. While the evolution of lobby regulation since 1989 has enhanced transparency in lobbying, a number of tasks still exist, including the need to engage the bureaucracy in enforcing lobby regulation, to eliminate legislative exclusions that permit lobbying to take place away from the public eye, and to disclose the scale of lobby campaigns.

The first plenary panel of the morning was called "Cooling-Off Periods: Do They Help or Hinder Good Policy-Making?" it included panellists Duff Conacher, the Founding Director of the democratic reform organization, Democracy Watch; Kenneth A. Gross, a partner with the international law firm Skadden, Arps, Slate, Megher & Flom, based in Washington, DC, and a recognized authority in political law; Colin MacDonald, a partner and the National Lead in Government Relations Practice with Borden, Ladner, Gervais in Calgary, Alberta; and Dr. Patrick Smith, professor of political science and Director of the Institute of Governance Studies at Simon Fraser University.

Panellists discussed the legislated practice of "cooling-off periods." They range from one to five years, during which former public office holders are not permitted to lobby their former employers or, in some cases, former lobbyists are not allowed to work for government. Debate centered on the efficacy of cooling-off periods, and questioned the benefits of longer versus shorter timeframes. See articles on this topic elsewhere in this issue by Dr. Patrick Smith, Duff Conacher, and Colin MacDonald.

The second panel, "Lobbyists Code

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Websites of Interest

BC Lobbyists Registry
www.lobbyistsregistrar.bc.ca

Office of Commissioner of Lobbying of Canada
www.ocl-cal.gc.ca

Policy Monitor Canada
www.policymonitor.ca

Government Relations Institute of Canada
www.gric-irgc.ca

ORL Holds Public Office Holder Information Sessions

In November, 2011, the Office of the Registrar of Lobbyists held information sessions in Victoria and Vancouver for public office holders entitled, "Are You Being Lobbied?"

The sessions were aimed at helping public office holders become familiar with the legal definition of lobbying in British Columbia, so they can recognise when they are being lobbied. Sessions also oriented attendees in how to search the online Lobbyists Registry.

A small number of people attended the Vancouver session, and the Victoria session was "sold out." Public office holders in Victoria and in other centres in BC requested additional information sessions. Further sessions are being planned. In the coming months, please watch the Office of the Registrar of Lobbyists website, http://www.lobbyistsregistrar.bc.ca/, for more information about upcoming sessions.

Why there's a Road and Where the Rubber Hits it:
BC's First Conversation on Lobbying (Continued from Page 2)

of Conduct: Necessary, Nice to Have, or Overkill," included panellists Registrar Elizabeth Denham, journalist Sean Holman, John Langford, Professor of Public Administration, University of Victoria and Dennis Prouse, vice-president of government affairs for Croplife Canada and a board member for the Government Relations Institute of Canada.

Speakers focused on a number of related issues, including the development of codes of conduct as part of the maturation of a profession; devising effective codes of conduct; and evaluating codes of conduct. The panellists also explored the question of whether BC should institute a code of conduct for lobbyists, what it might contain and how it should be administered. Two panellists made the point that codes are more effective when those subject to them are engaged in helping to develop them, and Registrar Denham announced her intention to launch a public consultation in early 2012 on the possibility of developing a lobbyists' code of conduct for British Columbia.

The first panel of the afternoon session, "What is Lobbying: Do You Know it When You See it?" was moderated by Dr. Patrick Smith, and consisted of lawyers Frank A.V. Falzon, QC, Geoff Plant, QC (former Attorney General of British Columbia, who introduced the first Lobbyist Registration Act) and Andrew Wilkinson, QC. The discussion explored the public image of lobbying and the rationale for lobbyist registration legislation, considered how ambiguities in the legislation might be resolved, and discussed the proper approach for ensuring that persons subject to the *Lobbyists Registration Act* comply with the legislation.

The second afternoon panel, "The Devil is in the Details: Keeping Your Registration Compliant," offered advice about registering as a lobbyist in British Columbia. Mary Carlson, the Deputy Registrar of Lobbyists for British Columbia, reviewed the legislative requirements for consultant and in-house lobbyists' registrations. The Lobbyist Registry Manager, Carol Searle, offered tips that could help registrants file an accurate return that complies with the law. The Deputy Registrar reminded lobbyists that when they submit a registration, they are certifying that the information it contains is true, and recommended that they review registrations carefully for accuracy before submitting them. Ms. Searle noted that, in response to feedback from registrants, the BC Lobbyists Registry system would be undergoing some upgrades to make it more user-friendly.

In the final session of the day, "Regulators' Perspectives: Compliance and Enforcement Challenges," regulators from several Canadian jurisdictions discussed difficulties in achieving compliance with lobby legislation. Some common factors panellists identified included a lack of awareness among lobbyists of the need to register and the triggers for registering; the difficulty of enforcing compliance when the regulated community is as widely-dispersed as the lobbying community is; and the difficulty of regulating when shortcomings in legislation fail to provide regulators with adequate enforcement tools.

The seminar was attended by a range of people, including lobbying professionals, public office holders, academic and non-academic observers and members of the public. Because of a full agenda, discussion after speakers' presentations was often, unfortunately, abbreviated. Nevertheless, attendees offered insightful questions and comments to what turned into a lively discussion and a fruitful beginning for an ongoing conversation among a variety of stakeholders about lobbying in British Columbia.

BC Lobbyists Registry System Improvements

Since the last issue of *Influencing BC* – and in response to feedback from users – we've made some changes to our Lobbyists Registry. We have:

- Added the ability to edit the lobbying subject matter and targets if changes are required. Rejecting registrations and having to redo them from scratch is no longer required.
- Changed the system to enable consultant lobbyists and organizations' designated filers to add new targets after cabinet changes directly to their current lobbying activities, rather than having to duplicate all their details to add these new targets as they had to do in the past.
- Added a "date added" field to the target table to capture historical and new information.

We're planning further upgrades, so look for more improvements in the months to come.

Institutionalizing Lobbyist Registration in BC: Lessons From Establishing Independent Officer "Watchdogs" And Starting New Conversations

By Patrick J. Smith

Most North Americans, if they think about lobbying at all, might envision President Ulysses S. Grant sipping brandy and smoking a cigar in the lobby of Washington, DC's elegant Willard Hotel while those seeking his audience try and "lobby him" amongst the potted ferns with their latest ideas for federal action in late 1860's America. After five years studying in the UK, I can report also that in our Mother legislative chamber, lobbying relates to the recesses of Britain's House of Commons – its lobbies – where those seeking to influence policy choices gather and meet with representatives to discuss their ideas. That latter view has tended to inform the Canadian meaning of the term "to lobby."

Every new oversight agency goes through a period of "institutionalization" – where even its very existence is itself questioned. It is early days for BC's Office of the Registrar of Lobbyists – though the history of lobbyist registration in Canada is longer – but its very existence says that new drivers' licences will be needed to travel down its provincial lobbying roads.

One of the very first things BC's first Ombudsman, Dr. Karl Friedman, did when appointed was to talk with his main customers *within* the system. He confronted enough suspicion, even resistance, for his office from the public bureaucracy that he published an early booklet in response for the province's public servants. Its title was *Running Things Is Sometimes Hard.* Its sub-title summed up its mission: *A Manual of Ombudsman Investigative Techniques For Public Servants In BC.* Given misgivings and fears within the bureaucracy that the Ombudsoffice was created simply to make life more miserable for public servants, BC's Ombudsofficers have been able to demonstrate over time, and with care, that fulfilling a mandate for administrative fairness now well serves not only a broader public good – like trust in government – but also the interests of those who administer BC's public affairs. With ongoing dialogue, including the publication – and then updating – of a "Code of Administrative Justice", the relations between public servants and the Ombudsperson is now largely a highly – and mutually – beneficial one. Check out the BC Ombudsperson's Annual Reports: there remain areas which cause concern, but the vast majority of administrative decisions in BC are found to be fair and reasonable; a good number of the small minority remaining are quickly mediated and resolved and very few remain as issues of concern. That is now seen as good and helpful in ensuring positive public administration in the province. Other Independent Officers responsible for Freedom of Information, or Privacy, or Ethics have also all had their initial challenges. Their early Annual Reports identify many of these challenges. Yet all have been able to establish their roles in ensuring good governance. More importantly, they have all been able to fulfill the mandate given to them by the legislature with now higher degrees of cooperation amongst those they oversee than was initially the case.

Similarly, this is perhaps the case with BC's still new Office of the Registrar of Lobbyist. As an academic, I can observe noting a similar early reticence amongst many lobbyists – a resistance equivalent to late 1970's/early 1980's civil servants to new oversight legislation in BC. During that initial "warming up" period, the rules of the bureaucratic game changed, but many public servants did not wish to change with them. Similarly, with ethics or open government reforms, there was not a full, early embracing of the concepts around Freedom of Information, or regarding privacy or around conflict of interest; or earlier efforts to ensure clear public auditing. Resistance did not make open government or ensuring fair – or ethical – administration, or clearer/better public accounting go away. So something had to give. Through prods and conversations with each of these earlier independent officers, new normals were established. Attitudes shifted, behaviour came to reflect the new rules of the road – on conflict, open government, privacy or public auditing. The relationships with each independent office, while not necessarily "cozy," have become more cordial – and the public interest, which demanded the changes in the first place, came to be better served.

"...the rules of the bureaucratic game changed, but many public servants did not wish to change with them..."

It is arguable that regarding lobbyists and lobbyist registration and regulation in British Columbia, many lobbyists continue to seek "limited visibility," to operate under older rules of the road, ones less transparent and more akin to the lobby of the Willard Hotel. In terms of new rules, pushed by public sentiments for still more transparency in how we govern ourselves, some who lobby continue to say "why me?/why us?" Some have been slow to adjust to the new rules of the governing/lobbying road. That view may have worked well amongst the many potted plants and cigar smoke of DC's Willard Hotel; I would suggest that will no longer do – and not just because we have also banned smoking in public places.

Fifty years ago we let politicians, largely from the governing party, set electoral boundaries; we changed that. Then we added election expense limits and reporting. Forty years ago we began to add Ombudsoffices. Thirty-plus years ago we legislated freedom of information and privacy rules; since then, we have added public sector ethics and conflict of interest rules and offices. More recently we have concluded that having lobbying as a regulated activity would be another good governance reform.

Each of these democratic reforms has produced some suspicion and reaction. All of this has been about making governing more transparent and establishing a

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Institutionalizing Lobbyist Registration in BC: Lessons From Establishing Independent Officer "Watchdogs" And Starting New Conversations

By Patrick J. Smith

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more level playing field. Governing in the sunshine may require sunglasses, but democratic oversight can never be a bad thing. So, re "cooling off," my first message is this: COOL OFF! Registering to lobby may be different than how things have been up to now; and it may represent a change in how this important and democratic activity operates. But it is not the end of the world. It is not a critique of past practice as much as it is about new, more democratic practices being established. And those who adjust quickest to this new normal may well find advantage.

On the other cooling off – cooling-off periods – I will offer a simple rationale: suffice it to say, the intention was good; the execution may be less useful than hoped. Cooling-off periods were intended as much to ensure public sector ethical behaviour within government as it was about use of insider information by outsiders. Either abuse, as past Conflict of Interest Commissioner Ted Hughes has concluded, simply erodes public trust. That serves none of us in a democracy. And trust, once lost, is not easily restored.

Should cooling-off periods exist? Probably yes. Need they be for lengthy periods such as five-plus years? I don't think so – not with good lobby registration rules.

Should they be eliminated? I would say they should not – at least for those who serve in the most senior political and bureaucratic realms.

So what may be more at play is, How Long? Let's take a stab at that: 12-24 months for direct contact with those former associates. Zero to little cooling off if unrelated activity is involved.

BC's Conflict of Interest Commissioners have suggested extending the regulatory net to include offices such as ministerial assistants so that might fit into our discussions too.

Bottom line:
Lobbyist Regulation is no more anti-lobbying than is the Ombudsperson anti-bureaucratic. Independent officers have added value to important areas of public administration.

Will we learn from an ongoing dialogue? Yes.

And we will contribute to better democratic governance in the process.

That was the intent in establishing lobbyist registration regimes. More open, transparent public decision-making will be the result.

Dr. Patrick J. Smith is a professor of political science at Simon Fraser University (SFU) who is active in the SFU Graduate Urban Studies program and is Director of the Institute of Governance Studies.

The Industry Perspective

Cooling-Off Periods: Do They Help or Hinder Good Policy-Making?

By Colin P. MacDonald

In September 2010, the Government of Canada amended the regulations made pursuant to the federal *Lobbying Act* (the "Act") to expand the definition of Designated Public Office Holder ("DPOH") to include all Members of Parliament and Senators as well as certain staff in the offices of the Leader of the Opposition in the House of Commons and the Senate. As a result of these amendments, the five-year prohibition on registerable lobbying activity set out in s.10.11 of the Act was broadened to include all of these previously excluded groups of individuals.

These regulatory amendments were introduced after allegations of inappropriate lobbying were made against former Member of Parliament Rahim Jaffer. The government's response to extend the five-year ban to include this much larger group of parliamentarians seemed to be a quick and rather ad hoc response to a singular incident without considering potential negative consequences which we suggest are not insignificant for a number of reasons we set out below.

In our opinion, the five-year prohibition is inappropriate – particularly so for those who are neither members of the federal cabinet nor parliamentary secretaries. First, we argue that a five-year prohibition is far **too long.** Historically, and to this day in other jurisdictions, conflict of interest and post-employment restrictions have been limited to one or two years. Most former public servants and elected officials will say that a year is a long time in the public policy world and more than enough to put distance from inside information.

Second, we believe it is **too sweeping in scope**. In most jurisdictions, conflict of interest and post-employment rules prevent former government officials from conducting business with their former department or agency for a specified period of time. The five-year ban on registerable lobbying, however, applies to every department and agency of government. It does not distinguish between communications with a former colleague who previously had the office next door, and a public servant in another department in a regional office three provinces away.

Third, we believe that it is **unfair in its application**. The five-year prohibition is

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The Industry Perspective

Cooling-Off Periods: Do They Help or Hinder Good Policy-Making?

By Colin P. MacDonald *(Continued from Page 5)*

applied equally from the most junior backbench Member of Parliament to the most senior Cabinet Minister, notwithstanding that the former would not have a fraction of the connections or privileged information that the latter would possess. A defeated first term opposition MP, for example, would face the exact same restrictions in lobbying the Department of National Defence as would a former Minister of National Defence.

Finally, the negative impact of the ban is **bad for government.** It is yet another hurdle to overcome in attracting good people to government, forcing anyone considering a senior job opportunity in the public service for a particular period of time to think about post-employment restrictions. In addition, it is a detriment to keeping former public servants, many of whom are subject matter experts, from continuing to contribute directly to the public discourse on important public policy issues for stakeholders on their retirement from government.

"...the system of registration should not impede free and open access to government..."

In our view, the administration of justice would be better served if the *Lobbying Act* did not deal with cooling-off periods at all. The federal government, like most provinces, has very specific conflict of interest legislation which clearly deals with post-employment "cooling-off periods" for former public officials. For example, the federal *Conflicts of Interest Act* ("COIA") has quite specific restrictions, specifically s.33 and s.34, which deal with post-employment limitations for all former "reporting public office holders".

These post-employment restrictions include a one-year cooling-off period for all specified public office holders, except for former Cabinet Ministers, who have a two-year cooling-off period. The relevant provisions of the COIA also address what is considered inappropriate communication or contact with former government colleagues. In our opinion, these provisions adequately protect the public interest (both in reality and perception) of ensuring that someone is not taking advantage of their previous position in government.

Having two sets of post-employment restrictions, in two separate statutes, overseen by two different authorities, and applying to the same class of people creates unnecessary confusion. There have already been cases where former Designated Public Office Holders have had to consult with both the

Commissioner of Lobbying and the Conflict of Interest and Ethics Commissioner on the dual obligations, as well as cases where those two Commissioners have investigated the same individual for the same subject-matter but in respect of different rules.

There are also public policy issues which would support removing the five-year prohibition from the provisions of the Act. When the original *Lobbyist Registration Act* was passed in the late 1980s, its preamble contained a series of principles that survive to this day. They provide, in part, that free and open access to government is an important matter of public policy, that lobbying public office holders is a legitimate activity, and that the system of registration should not impede free and open access to government.

We take the position that the five-year ban does impede free and open access to government, and contributes to a pervasive sense that lobbying is somehow illegitimate. In so doing, it is a provision that is inconsistent with the very purpose of the Act. As their respective preambles clearly demonstrate, both the *Lobbyist Registration Act* and the *Lobbying Act* were never intended to restrict communication with government officials. Rather, the legislation was enacted to allow the public to know who is engaged in lobbying activities.

We need more, not less, communication between government officials and affected stakeholders in this country. Sweeping rules such as the five-year lobbying ban "red circles" a wider group of subject matter experts from directly participating in the public process of developing good public policy for too long a time. Although non-registerable "lobbying" can and does occur without violating this particular prohibition in the *Lobbying Act,* it still forces these individuals to stay in the background. One wonders whether the public good is being served by

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In B.C., and Across Canada, Secret and Unethical Lobbying is Legal

By Duff Conacher

B.C.'s so-called *Lobbyists Registration Act* shares the same flaws and loopholes as the laws across Canada, because they all copied the federal law that, in combination with other laws, allows secret, unethical lobbying.

I say "so-called" because, if the law was titled accurately, it would be called the "Only Some Lobbyists Registering Only Some Lobbying Act."

Lobbying without registering in B.C. – let me count the ways. You can lobby without registering if you are not paid or only paid expenses; if you are a corporate director or retired executive or board member; if you receive a written request from a public official to lobby them; if you are lobbying about the enforcement, implementation or application of laws, regulations, programs, policies, directives or guidelines; if you are lobbying an MLA about a personal matter of a constituent; and if everyone in your organization lobbies less than 100 hours annually.

So, just have your clients pay you for other services, and do lobbying for them for free, or have your directors and/or retired executives do your lobbying. Ask for a meeting with a public official and then have them confirm with an email inviting you to the meeting. Frame all of your submissions as enforcement and implementation issues, etcetera. Do these things, and there is little chance you will be prosecuted, and less of a chance you will be found guilty.

The federal *Lobbying Act* has had almost all the same loopholes for 23 years, and no one has ever been prosecuted. Other provinces' laws also have the same loopholes (again because they all copied the flawed federal law).

But in some key ways, the situation in B.C. is even worse than at the federal government level. The federal *Lobbyists' Code of Conduct* is, finally, after Democracy Watch spent a decade in court, being enforced in compliance with a unanimous March 2009 Federal Court of Appeal ruling concerning Rule 8 of the Code, which essentially prohibits lobbyists from doing anything significant for, or giving anything significant to, politicians and public officials of various types whom they are lobbying or will lobby in the future.

In contrast, B.C. does not have a code of conduct for lobbyists, has loophole-filled ethics rules for politicians, does not have any ethics rules for staff of politicians, and does not have donation limits or requirements to disclose all donations.

Few people realize that, despite the B.C. *Members' Conflict of Interest Act* (or, more accurately, because of that Act), it is almost impossible for a B.C. politician, even Cabinet ministers, to be in a conflict of interest.

The Act sounds good – it says essentially that politicians can't make any decisions or actions if they have a private interest in the outcome. But the definition of "private interest" guts this rule, because it says that, when making decisions that apply to the general public or that affect the politician as one of a broad class of people, the politician can't be in a conflict of interest. And, just for good measure, when a politician is making a decision about their own pay and perks, the Act also says they can't be in a conflict of interest.

As a result, B.C. provincial politicians can't be in a conflict of interest when making a policy or legislative decision – they can be in a conflict of interest only when making a very specific decision that affects only one person, or one company, or only the politician. The only types of decisions that are specific in these ways are when a politician is hiring staff, handing out a contract, or approving a merger, takeover or license.

In addition, the two-year ban in the Act for former Cabinet ministers and parliamentary secretaries that supposedly prohibits accepting or lobbying about contracts has a huge loophole – it doesn't apply as long as the contract terms are the same as usually offered to the public!

In other words, the B.C. *Conflict of Interest Act* covers only about 1% of the decisions of B.C. politicians. If it was titled accurately, it would be called "The B.C. Prevention of Only 1% of Conflicts of Interest Act".

As well, because of the loopholes in the requirements to register lobbying activities, no one would likely even know if a former B.C. Cabinet minister was lobbying for government contracts for themselves or others during their so-called cooling-off period.

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In B.C., and Across Canada, Secret and Unethical Lobbying is Legal

By Duff Conacher *(Continued from Page 7)*

Finally, under the B.C. *Elections Act*, election, nomination or leadership candidates are required to disclose a donation of money, property or services only if they use the donation for their campaign. So secret donations (gifts) that buy off candidates are legal – they don't have to be reported as income because they are a gift, and the *Criminal Code's* anti-bribery measures do not apply, because they cover only elected officials (not candidates), and cover only those situations in which a specific action or decision or benefit is explicitly and corruptly requested or given in return for the gift.

Overall, in B.C., the lack of key rules, and huge loopholes in existing loopholes, are a recipe for unethical relationships – lobbyists fundraising for politicians or helping them get elected or making huge donations (secret or disclosed), and then lobbying them – if not outright corruption.

B.C.'s system also has enforcement weaknesses. The Registrar of Lobbyists and Conflict of Interest Commissioner are not required to investigate, no matter how strong the evidence of a violation of the laws they enforce, and if the Registrar decides not to investigate a lobbying situation, there is no requirement to explain the decision publicly (nor is the Commissioner required to give reasons if s/he refuses to investigate a complaint filed by a member of the public).

As well, the statute of limitations period in the B.C. lobbying law is only two years (it is five years in the federal Act). And B.C. does not have a whistleblower protection law to protect from retaliation those who disclose government wrongdoing, and reward them (the federal law is flawed, and enforcement very weak, but at least it exists).

It is true that you cannot stop secret lobbying, unethical lobbying, or secret donations. However, you can make all of these things illegal, and establish an effective enforcement system to discourage violations.

No government in Canada has come close to closing all these loopholes, but B.C. is lagging behind most other governments because it has not even begun to try to make any of these much-needed democratic, good-government changes.

British Columbians deserve better. Will any of the provincial parties promise to give it to them, and then finally deliver?

Duff Conacher is the Founding Director of Democracy Watch, a Canadian organization that advocates for democratic reform.

Ask the Registrar

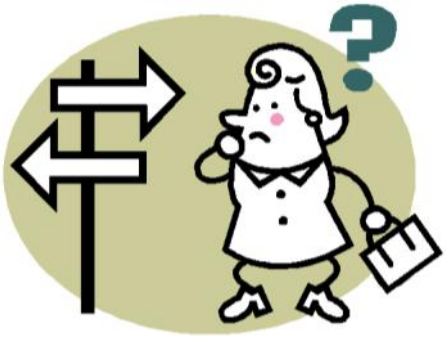
Q. *I updated my registration, but the changes I made don't show in the Registry. Why can't I see my changes?*

A. First, did you save the changes you made? You must click "Certify and Save" or "Certify and Next" buttons to save changes you make before going on to the next screen. Second, when you have reviewed your registration, and made sure that all the information in it is accurate and true, check the "I certify…" box and click the "Submit" button. If you just save your registration, but don't click on the "Submit" button, your registration hasn't been submitted to the Registry Manager, and your registration will be deleted by the system after 10 days.

Q. *How often do I have to update my registration?*

A. You must update your registration with the particulars of any change to your information within 30 days after the change occurs or within 30 days of you becoming aware of the change. Changes may include things such as new subject matters, new intended outcomes, new public office holder targets. It would also include an in-house lobbyist ceasing to lobby, or a new end date for an undertaking by a consultant lobbyist.

Q. *I reported a Deputy Minister as a lobbying target, selected "Minister Staff Contact," and listed their name. The Registry Manager told me to amend this information. Why?*



A. When naming target contacts, there is an important difference between political staff of a minister and civil servants.

- Minister Staff Contacts are those who work directly for Ministers in the Ministers' offices, such as Ministerial Assistants and Executive Assistants to a Minister. When targeting these staff members, you have the option of naming either them or the Minister him- or herself.
- Civil servants work in a ministry *below* the level of the Minister's office, and include positions such as Deputy Minister, Assistant Deputy Minister or Executive Director. These people are civil servants, not minister's office staff. Do not name civil servants. Instead, when targeting civil servants, select from the "Name of Public Agency" drop-down menu the name of the *ministry* within which the civil servant is employed (e.g., Health, etc.).

The Industry Perspective

Cooling-Off Periods: Do They Help or Hinder Good Policy-Making? By Colin P. MacDonald

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such a result.

In fact, one would have thought that the public interest would be better served if subject matter experts were more transparent (i.e. registered as lobbyists) in their advocacy and support of their new post-government employers or clients. What is needed in Canada is, frankly, a greater interchange of experts between the government and the private sector with more, not less, transparency of their communications with government. Under the current framework, that type of enhanced dialogue simply isn't possible.

Fortunately, Parliament will be considering changes to the *Lobbying Act* this year as part of a mandatory statutory review. This creates a natural and logical opportunity for the government to address the five-year ban at the same time that it addresses a number of loopholes in the law as it currently exists. (Among the loopholes is an acknowledged anomaly that essentially allows DPOHs to legally circumvent the five-year ban provided they are lobbying only for their corporate employer and their lobbying activities do not constitute more than 20% of their duties.)

Our hope is that Parliament will remove the five-year ban from the *Lobbying Act*. We believe that any post-employment restrictions are best dealt with within the context of the COIA as administered by the Conflict of Interest and Ethics Commissioner. We further believe that the restriction should be harmonized with the two-year restriction already contained in the COIA, to ensure that there is one consistent set of standards for senior public office holders. Finally, we believe the post-employment restriction should not apply to backbench Members of Parliament and Senators.

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"If you could just email me the faxes of the photocopies of the transcripts of the fifteen phone messages in question, that would probably be the simplest."

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