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

Lobbying in British Columbia: The Way Forward

Report on Province-Wide Consultations and Recommendations for Reform

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TABLE OF CONTENTS

EXECUTIVE SUMMARY

Lobbyists are a natural part of the democratic landscape. And yet, lobbying is largely misunderstood by the public, and often mischaracterised. Lobbyists come from all walks of life. They are employees and contractors of non-profit associations seeking additional funding for out-of-school care, local businesses seeking changes in law enforcement policies, multinational corporations seeking to increase investment opportunities, chambers of commerce seeking business tax exemptions and environmental groups seeking to protect indigenous species of plants. They are employees and contractors of any organization seeking to influence public policy decisions.

To many people, lobbying is something of a dirty word. There is a common and inaccurate perception that lobbying is unethical and damaging to healthy government. The truth is that lobbying is an important part of the political decision-making process. Politicians and other public servants cannot be expected to know and understand every angle of an issue, and lobbyists bring valuable information and expertise to the decision-making process.

The *Lobbyists Registration Act* ("LRA") regulates lobbying in British Columbia. "Lobbyists" are persons who, on behalf of their employers or clients, communicate with public office holders in an attempt to influence their decisions. The LRA promotes transparency in the lobbying process by requiring lobbyists to declare details of their lobbying effort, including on whose behalf they are lobbying, who they are targeting, on what subject matter and toward what outcome. All of this information is available for the public to view, free, at any time. Although the LRA ensures transparency, it does not govern the conduct of lobbyists: as long as a lobbyist is registered, *how* they lobby is outside the purview of the LRA.

In light of the adoption of codes of conduct in other Canadian jurisdictions, and in response to citizens' concerns about possible unethical lobbying in British Columbia, I initiated a public consultation about whether the time has come for BC to adopt its own lobbyist code of conduct. Although I have indicated my general support for a code of conduct, I conducted this consultation with an open mind.

The public office holders we consulted all indicated that, although they did see ways to improve transparency in lobbying, the lobbyists who approached them behaved ethically and professionally. The lobbyists we spoke to told us that they knew of some unethical practices in the community, but regarded those who used these practices as "outliers," and saw them as a small minority. Even though a small percentage of lobbyists may behave unethically, it is my opinion that those few do not substantiate the need for a stand-alone code of conduct in British Columbia at this time.

I also believe that, to enhance transparency, support existing ethical standards for public office holders and strengthen the public decision-making process, BC should embed aspects of other jurisdictions' codes of conduct into the existing LRA.

To enhance transparency, lobbyists should be required to be explicit in their communications with public office holders that they are lobbying and on whose behalf, and ensure the information they provide is accurate. Lobbyists should also be required to declare in their registration whether they, their client or their employer has made a political contribution reportable under the BC *Election Act* to the MLA or cabinet minister they are attempting to influence.

We should also introduce rules around what gifts or benefits a lobbyist may offer any public office holder—whether a ministry employee or a crown corporation employee—to support general standards of conduct that apply to the public sector. In addition, rules should be introduced to minimize undue influence in the lobbying process by banning lobbying by former cabinet ministers and other high ranking public office holders for two years after they leave office, granting them the ability to request an exemption.

In my last annual report, and despite the fact that the LRA is not subject to a mandatory legislative review, I signalled that I would be making recommendations to improve transparency, streamline the registration process and improve the quality of the data in the registry. I have concluded that the best approach is to provide my recommendations for legislative reform along with my code of conduct recommendations, in this one report. Those recommendations include harmonizing the threshold for registration, removing the requirement to report the intent to lobby and substituting for it the requirement to report actual lobbying, the dates the lobbying took place and the names of any high ranking public office holder lobbied.

I am grateful to the public office holders and lobbyists who candidly shared their thoughts and knowledge about the process and industry of lobbying in British Columbia, and to the academics, fellow regulators and members of civil society for their insightful contributions.

1.0 DOES BC NEED A LOBBYISTS CODE OF CONDUCT?

1.1 INTRODUCTION AND BACKGROUND

This paper discusses the results of a province-wide consultation carried out by the Office of the Registrar of Lobbyists ("ORL") on whether British Columbia needs a lobbyist code of conduct and also makes recommendations for legislative reform in this province.

The *Lobbyists Registration Act* ("LRA") regulates lobbyists. A lobbyist may be either a "consultant lobbyist" who acts on behalf of a client or an "in-house lobbyist" who acts on behalf of an employer. Common to both is that a lobbyist is a person who, in return for payment, communicates with public office holders in an attempt to influence their decisions on a number of outcomes, such as changes to legislation or regulation or the awarding of contracts. The term "public office holder" as defined in the LRA extends beyond MLAs and employees of government proper to include employees of crown corporations, universities and health authorities, among others. It is important to note that, because it is limited to persons paid to lobby, the LRA does not apply to citizens who try to influence public decisions, without receiving any payment.

The purpose of most lobbying laws, including the LRA, is to promote transparency by requiring lobbyists to declare their lobbying activities on the public lobbyist registry, which my office oversees. The LRA does not, however, govern the conduct of lobbyists: as long as lobbyists register, *how* they lobby is largely unregulated by the LRA. The only legal constraints governing the conduct of lobbyists in their relations with provincial public officials is set out in the *Criminal Code*, which creates criminal offences—bribery, fraud or corruption, for example—in relation to public officials and those who attempt to influence them.

A number of jurisdictions across the globe have concluded that relying on criminal law enforcement is not sufficient to address public concerns about lobbying. As a result, they have adopted lobbyist "codes of conduct," some created as a preventative measure, and others created in the wake of political scandals. In this country, the governments of Canada, Newfoundland and Labrador, Québec and the City of Toronto have all introduced lobbyist codes of conduct.

Codes of conduct are common in many professions and occupations. Codes of conduct provide guidance to individuals on responsible and ethical professional practices. They define rules of behaviour based on core principles and ethical standards for members of the profession or occupation. They increase peer pressure on individuals to comply with certain generally accepted standards. They also enhance the reputations of individuals by publicizing the principles for which they stand, and provide a means of evaluating the ethics of individuals who practise in the field.

In response to citizens' questions to the ORL about ethics in lobbying, brought on in part by expressions of public concern over allegations arising from the BC Rail matter, I wrote to BC's Attorney General in December 2010, recommending the government give serious consideration to establishing a lobbyist code of conduct and suggesting one be embedded in either the LRA or its associated regulations. The Deputy Attorney General suggested that the ORL was well-placed to

carry out a discussion with stakeholders regarding the possibility of a BC lobbyist code of conduct, and encouraged me to do so.

My office undertook that task during the spring and summer of 2012. We published a discussion paper[1] in March of 2012, posted it on our website and invited response from citizens. We circulated the paper broadly to everyone we thought might have an interest in the issue, including Members of the Legislative Assembly and other public office holders, all the lobbyists who had ever registered in BC, industry associations, chambers of commerce, labour organizations, organizations across the non-profit sector, the Law Society of British Columbia and the BC chapter of the Canadian Bar Association, members of the academic community across Canada, and our counterparts in other provinces and the Government of Canada who are engaged in lobbying oversight. In addition, we arranged focus groups in Vancouver and Victoria to discuss the issues with 41 members of the BC lobbying community, met with representatives of three national lobbying associations, and met in groups or individually with more than 40 public office holders. We concluded our consultation in early September of 2012.

Because lobbying and ethics laws are often created or amended in response to a political scandal, there is rarely time for a thorough consultation, so the opportunity to engage in a dispassionate dialogue about a code of conduct was welcome. To encourage frank discussion, I assured all participants that their comments and suggestions will not be attributed in this report.

Although I have publicly indicated my general support for a code of conduct, I have considered the question with an open mind in light of this consultation. Through the process, new ideas emerged about how to achieve greater transparency in lobbying, without the need for a stand-alone code. These ideas will be discussed in more detail throughout the report.

Our conversations about a code of conduct inevitably turned into discussions about the LRA itself, whether it is achieving its objectives and how it could be strengthened. In my last annual report, I said that, although the LRA has no mandatory review provision, I would be making recommendations to improve transparency, streamline the registration process and improve the quality of data in the registry.

Because they are so intertwined, I have chosen to comment on my recommendations for possible code provisions and legislative amendments together in this paper. The first part of the paper will report the results of the consultation and present a rationale for adopting some, but not all, provisions of a code. The question of how the legislation could be improved through amendments will be addressed in the second part of this paper.

1.2 Do We Need a Code of Conduct to Promote Ethical Behaviour?

Through the consultation process, novel ideas emerged about how to achieve greater transparency in lobbying, without the need for a stand-alone code.

[1] *Developing a Code of Conduct for Lobbying in British Columbia: A Public Consultation Paper.* March, 2012.

Currently, there are over 900 active registrations for "undertakings" of paid consultant lobbyists and in-house lobbyists of organizations.[2] At its best, lobbying provides critical services to organizations and clients and critical client information to public office holders. Those services include acting as a strategic resource by researching regulatory or policy changes, understanding the government's policy agenda, determining who the decision makers will be on any given matter, developing positive relationships with the media, communication planning, mobilizing grass roots, coaching and mentoring, setting up and attending meetings, outlining unintended consequences of existing and planned policies, and sustaining communication momentum. At its worst, lobbying includes the type of unethical behaviour revealed in some political scandals.

Conventional thinking often assumes that lobbying usually involves some form of questionable interaction with government, such as arm-twisting, providing gifts and favours, secret back room meetings and campaign contributions in return for expected favourable decisions. However, although this type of behaviour by lobbyists is found at the heart of many political scandals, very few lobbyists achieve their ends through corrupt means. In fact, the vast majority conduct their business by applying their knowledge of how public policy is developed and by building access to advisors and decision makers through this policy process.

It is impossible to know how much unethical lobbying takes place. What we heard in our public consultation is that the stereotypical myths attributed to lobbying—that it typically involves trading in backroom secrets, pursuing agendas contrary to the public interest, exploiting political contacts and dishonesty—is mostly that, the stuff of myths. We heard from public office holders and from lobbyists that most lobbyists working in BC are professional, honest and transparent in their dealings and respectful of public concerns. Lobbyists are in the business of persuasion, and there is nothing wrong with honest attempts at persuasion. That is an important and healthy part of the democratic process. A recent American publication described the situation this way:

> ... [F]or all the colorful caricatures, the daily grind of almost all lobbying is remarkably banal. It much more closely resembles the tiring lawyerly mastery of arcane policy and legislative detail and depends on the careful patience to make the same arguments and pitches to anyone who will listen, over and over and over again.[3]

Some lobbyists in BC will, of course, attempt to influence in unethical ways. However, the lobbyists we spoke to believe that the negative perceptions of their field are caused by a few "outliers." One lobbyist said, "You are speaking [about ethical behaviour] to the committed." Another stated, "98% [of lobbyists in BC] are doing a solid ethical job, but there always exists the rascal element." One questioned the need for a code of conduct to deal "with .001% of unethical people."

The lobbyists we spoke to consider themselves part of the "mainstream" lobbying community, and made it clear that, for them, unethical behaviour results in "doors closing in our faces, and that happens at a tremendous cost." A number of people questioned whether a code of conduct would make those few unethical actors suddenly become ethical. As one said, "Integrity and ethical conduct is something that comes from within an individual. Laws actually have very little impact on

[2] The LRA defines "consultant lobbyists" as those who have an "undertaking" to lobby on behalf of a client; many consultant lobbyists are full-time lobbyists. "In-house" lobbyists are paid employees of organizations who, among their duties, lobby on behalf of their organizations.

[3] Drutman, L. "A Better way to fix Lobbying" *Issues in Governance Studies* (June 2011, Number 40), p. 2.

whether any particular individual acts with integrity." Some respondents expressed a fear that an unintended consequence of a code of conduct might even be to "drive those bad actors further underground."

Public office holders generally confirmed the view that lobbyists are professional and above board. One said, "I am pretty satisfied with my interactions with lobbyists. Most folks have been very professional." With respect to the process, one MLA said, "A lot of my time is spent not granting favours, but facilitating discussions with lobbyists and their clients. My sense is that, as a profession, lobbyists behave professionally." Another said, "I receive a lot of valuable information from lobbyists, different perspectives on matters I am required to consider." A cabinet minister said, "Lobbyists perform an important role and are part of a democratic society. We need to hear from all sides of an issue, and people should have access to state their case." In terms of negative experience, one said, "Although it has never happened to me, I have heard of some lobbyists going a bit overboard and forcing themselves into places where they are not invited." However, none of the public office holders we spoke to reported experiencing unethical overtures from any lobbyist.

Despite the belief expressed by many that unethical behaviour is infrequent in BC, some participants thought that there might nevertheless be some benefit in adopting a code of conduct. One academic participant suggested that a code is necessary in any modern democracy, stating, "Experience has shown that the public cannot rely on the personal integrity of lobbyists, or even on their collective professionalism to ensure that public business is conducted fairly, openly and honestly. Just as it has become necessary to articulate and enforce a set of standards for the behaviour of public officials, so it has also become necessary to set out the public's expectations for the behaviour of those whose business it is to represent others before government decision makers."

All public office holders thought that some parts of a code could be a positive tool, useful in mirroring and supporting existing rules, such as the conflict of interest guidelines that apply to the public sector. One MLA said that a code would "give people an expectation and set a standard. For MLAs and cabinet ministers, there are pretty thorough standards of conduct, but not for lobbyists." "Ethical conduct belongs mainly to the politicians," said another MLA, "and lobbyists have to support the ethical behaviour of elected people." Another participant expressed the possible value of a code of conduct this way: "A code is not needed to protect the interests of MLAs or ministers. They have the ample ability to protect themselves and can make sure they adhere to the agenda. It is important to be clear in one's own mind that [lobbyist codes of conduct] are there to protect the *public* interest."

Both national lobbyist associations and a number of lobbyists supported a code, in particular those parts of a code that promote greater transparency and public trust. "A code is useful because it sets boundaries and has great public optics," one lobbyist said. Another thought a code would be helpful to lobbyists, saying, "In situations where you are not sure, you can refer to a code. Anything that raises perception and legitimizes and makes the profession more acceptable to the public would be useful." One industry association supported this idea, saying that the "benefits of having a code of conduct primarily relate to promoting the integrity of government decision making … . Codes of conduct assist in promoting the legitimacy of the lobbying profession by ensuring lobbyists follow

an agreed upon set of principles guiding their conduct and facilitates the 'weeding out' of those individuals attempting to influence government decision-making in ways that undermine the integrity of democratic government."

I, too, believe that adopting those parts of a code that enhance transparency and support ethical behaviour would help to legitimize lobbying in the public eye and enhance public trust in government decision-making processes. Although it can be argued that integrity comes from individuals rather than laws, it is also worth remembering, as Martin Luther King said, "It may be that morality cannot be legislated, but behavior can be regulated."

Recommendation #1

Adopt those parts of a code of conduct that strengthen transparency in lobbying, support existing ethical standards for public office holders and enhance public decision-making processes.

1.3 What is the Appropriate Scope of a Code?

Lobbyist codes of conduct vary in content, detail and scope. All codes of conduct contain provisions relating to the relationship between a lobbyist and a public office holder, but some also contain provisions regarding the relationship between lobbyists and their clients or employers. For example, some codes prohibit lobbyists from representing competing interests or using confidential client information without the prior consent of the client, or require lobbyists to advise their clients of lobbyists' behavioural obligations under a code. Provisions such as these raise the question of who should enforce them: a public regulator or the industry itself.

A number of participants questioned the value of inserting a public regulator into matters between lobbyists and their clients or employers. One academic commented that, because these types of provisions "extend into matters that many would argue have only a tangential impact on actual lobbying… one has to ask whether this isn't really a matter for lobbyists to work out within their own professional organizations and with their clients? Wouldn't civil litigation be the normal way to enforce respect for this aspect of ethical business relations? Furthermore, how effectively can registrars investigate alleged breaches of [these rules], let alone impose sanctions on lobbyists who fail to respect [them]?"

The lobbyists we spoke with often suggested there was more the industry itself could and should do to promote public trust and a better understanding of the industry. "We are such good advocates for our clients," one lobbyist observed, "but we don't do a good job of advocating for our industry." Another said it was their job, not the Registrar's "to talk about our profession and professional standards."

I agree with this view. In my opinion, the law, and the role of this office, should be focused on those aspects of the work of lobbyists that relate most directly to the public interest and the democratic process—namely, the interactions between lobbyists and public officials.

Matters relating to client relationships are matters between lobbyists and their clients, to be enforced by the courts, if necessary. In this area, it is evident that an industry association—which could help articulate industry standards for client relationships and help educate the public regarding lobbying—would serve the lobbyist community well. I strongly encourage the lobbyist community to move forward with recent movements to create such an industry association.

Recommendation #2

The role of the ORL in regulating lobbying should be limited to those aspects of the work of lobbyists that relate directly to the interactions between lobbyists and public officials.

1.4 Should Conduct Rules be Binding or Voluntary?

On the question of whether a code of conduct should be binding or voluntary, one academic observed, "By default… governments have found that if they wish to require lobbyists to observe specified standards of conduct, then they themselves must take on the responsibility for developing and enforcing the necessary codes."

Most lobbyists we spoke to thought that, if a code were to be adopted, it should be mandatory. Those who endorsed a mandatory code most strongly were people who spend all or most of their work time lobbying. One industry association endorsed a mandatory code, saying, "Voluntary codes are vague and high-level." One lobbyist, pointing out that a voluntary code might have no force, asked "Who gets punished if [a code] is not enforceable?"

A number of individual lobbyists told us that they are, in any case, subject to sometimes very rigorous mandatory codes through their employers, and that being subject to a lobbying code of conduct would not require them to change their behaviour. For example, one in-house lobbyist said, "We are obliged to follow the global company's code and our organization has a code employees must sign. The purpose is, regardless of registering as lobbyists, you are accountable for your behavior... [I]t keeps consistency. You can't say you didn't know and can't use your ignorance as a defence. It is a comfortable and great way to go." Another in-house lobbyist said that, in order to ensure "uniformity of expectations," if a code were adopted, it "should be mandatory and subject to enforcement by the Registrar similar to other Canadian jurisdictions that have mandatory codes of conduct." One individual endorsed a mandatory code, saying, "[I]t has to have teeth so the public does not think it is fluff," but he also added that it "should not be so tight that it restricts what you do."

Those for whom lobbying represented only a small part of their duties were cool to the idea of a code and cooler to the idea of code provisions being mandatory. Some saw a mandatory code as simply an "extra layer" of regulation that would make their lives more complicated. Those participants who work in the charitable sector suggested that they are already "highly regulated and highly reported." One person who worked in the charitable sector said that if new rules of conduct were introduced, they should be offset by taking "existing rules off the table."

Some public office holders were open to the idea of a voluntary code, believing it would enhance the standing of the industry. "I can see certain advantages to a voluntary code," said one MLA, "lobbyists can say they adhere to one." Although one cabinet minister thought that a voluntary code would be best, he said, "I am not sure [the industry] is at the point of being able to do that. The public might not see voluntary compliance as rigorous enough—a bit like the fox guarding the henhouse." He suggested "maybe a hybrid model, with some things in legislation and the rest in a voluntary code?"

Most public office holders we spoke to felt that the public interest would be better served if a code were mandatory. "Our age is not strong on ethics," remarked one MLA. Another cabinet minister thought that a mandatory code would "make sure everyone knew what the rules were." One MLA, a lobbyist in a previous career phase, said, "I support the rules being strengthened. People who have access and influence should be bound by those rules, and not be above them. There should be consequences for breaking the rules."

It is obvious that if a code is to be enshrined in law, it must be enforceable in law. Laws without consequences lack credibility. The real question is not whether a code of conduct should be enforced, but what the requirements of a code ought to be. Before turning to that question, I will briefly address whether any new rules should be part of a stand-alone code or embedded in the legislation itself.

One option is to have a stand-alone, enforceable code of conduct. A stand-alone code might make sense had we concluded that a comprehensive code of conduct is necessary and desirable. However, by eliminating those provisions affecting relations between lobbyists and clients or employers, we have eliminated many of the provisions of stand-alone codes. Because there are only a handful of provisions left, I believe it does not make sense to have a stand-alone code of conduct.

The parts of a code I recommend be adopted are those that align with the current objectives of the LRA: to meet public expectations about transparency, efficiency and integrity in lobbying and the public decision-making process. Because of this alignment, and because they are few in number, I recommend that they be integrated into the existing framework of the LRA.

Recommendation #3

New provisions adopted from codes of conduct should be integrated directly into the LRA.

1.5 What Conduct Requirements Should be Added to the LRA?

1.5.1 *Make clear declarations to public office holders*

The primary goal of BC's lobbying law is to increase transparency—to make visible to the public and public officials who is attempting to influence which public office holders regarding what issues

and decisions. At present, the LRA seeks to achieve this transparency by requiring lobbyists to register their activities in a publicly searchable database.

There are varying levels of awareness among public office holders concerning whether, and when, they are being lobbied. Some public office holders said that they know who the lobbyists are without needing to be told; others said that lobbyists often identify themselves as representing a particular client. However, many public office holders we spoke to said they had never had someone clearly identify themselves as a lobbyist. One MLA said, "Nobody has ever made such a declaration to me in 11 years. A lobbyist doesn't have to explain he's a lobbyist— it's pretty clear." Other public office holders thought they had very few encounters with lobbyists, even though the Lobbyists Registry shows these same public office holders were listed dozens of time as lobbying targets. Others said that they know who the consultant lobbyists are, but do not always know who their clients are. Yet others said they have had lobbyists identify themselves and their clients. We heard that public office holders are occasionally approached by groups or associations that purport to be speaking on their own behalf, only to learn afterward that the group was created and funded by undeclared third party interests. One public office holder said there have been times when he would have made a different decision had he known fully all of the interests that were behind the discussions.

One way to enhance transparency would be to impose a requirement on public officials to check the registry before meeting with a lobbyist. In Toronto, for example, the onus is on public office holders to confirm prior to meeting with a lobbyist that the lobbyist is duly registered. One academic respondent supported these requirements: "These are not onerous requirements. Any official who is truly professional should, as a matter of course, require staff to research the status and objectives of individuals who communicate with them. Nor is it unreasonable to expect officials to insert in files short notes on meetings and chance discussions." This type of requirement is seen as assisting greatly in identifying unregistered lobbying.

However, the public office holders we consulted unanimously rejected any suggestion they be required to confirm whether someone is a lobbyist and, if so, if they are registered, before meeting with them. As one observed, "Everywhere I go, people come up to me and start talking to me. That's part of the challenge, particularly when you're reasonably well-known: people come up and talk to you about an issue, you know—'I don't mean to interrupt your lunch…' It can be just five minutes at a reception… If you come to my office and you represent someone, you're probably a lobbyist, [but] at a function, I'd have to ask, 'Are you lobbying me?' Awkward." MLAs consistently thought this requirement would dampen if not drown public discourse, wherever it takes place.

This point was, in fact, addressed in the Legislative Assembly of British Columbia by the Attorney General of the day as part of the 2009 amendments to the LRA:

> The act should not make, in my view, publicly elected officials regulators. It should not bestow an obligation upon, for example, the MLAs that sit in this House the obligation to determine whether or not the technical requirements of the *Lobbyists Registration Act* have been complied with. We impose that obligation to comply on the lobbyists and the decision about whether or not those obligations have been properly discharged upon the registrar. …

> I think virtually every member of this House will know that when they return home, they are confronted by people who want to talk to them about issues that may be relevant to their community, relevant to their lives. It strikes me that it would be entirely unworkable and inadvisable to create a situation where an MLA had to say to someone: "Sorry. I can't talk to you until I am absolutely satisfied that you are either exempt from or have complied with the provisions of the act."
>
> As I said at the outset, at the heart of our democracy is the ability that citizens have to interact with their elected officials and engage in a meaningful conversation. To erect hurdles or obstacles in the path of that occurring would, in my view, be unwise. That approach and that philosophy is reflected in the act, particularly in respect of the one section dealing with an explicit assertion of where the obligation for compliance rests.[4]

The Attorney General's statement makes clear that the obligation to disclose lobbying activities was intended to lie with lobbyists themselves.

To this end, some codes of conduct require lobbyists to be explicitly transparent about their intentions to the public office holders they contact. Those codes require lobbyists to disclose that they are lobbying and to identify the person(s) or organization(s) they represent, either before or while they are communicating with a public office holder.

There was united support from public office holders for this proposal. One cabinet minister said that, although such a declaration would not "change how I relate to that person, from a public policy perspective, it's a good thing to do to change the perception and help provide elected people with greater transparency. It would provide more structure and strengthen the relationship between the people in that business and the elected or senior staff people."

The majority of the lobbyists we spoke to supported the proposal. Some of them said that they already subscribe to voluntary or professional codes of conduct that contain similar disclosure requirements. For example, one lobbying firm in BC requires its employees to "deal fairly and honestly with the media, government and the public. Employees shall not act improperly to influence the media, the public or government bodies. We will practice openness and full disclosure in our work." Many of the lobbyists we consulted said they had no objections to identifying themselves and their clients, employers and other interests when they request a meeting and, in fact, already do so routinely. Many also saw it as a positive opportunity to raise awareness about the industry and to promote their own professionalism.

In my view, it is clearly in the public interest for lobbyists to tell a public office holder before or at the time they are lobbying that they are, in fact, lobbying and to disclose the interests they are representing. Such disclosure increases transparency for public office holders, lessening the chance that a public office holder might misunderstand the matter and the interests being represented.

These requirements are not inconsistent with the reality that, in addition to the lobbying that takes place in formal settings, lobbying also takes place at social settings, public functions, sporting events and chance encounters. It is not an unreasonable expectation for lobbyists who know they

[4] BC Legislature, Hansard: Bill 19—Lobbyists Registration Amendment Act, 2009. 2nd Reading: Thursday, October 29, 2009.

are going to be billing for the work, or who are attending an event in their role as an employee, to make the appropriate disclosure to the public official before turning to matters of substance. Lobbyists should be required to declare to public office holders that they are lobbying, and on whose behalf, whenever and wherever the lobbying takes place.

Recommendation #4

Before communicating with a public office holder, lobbyists must declare to that public office holder that they are lobbying, on whose behalf they are lobbying and identify any other third party interests that are funding and/or directing the lobbying.

1.5.2 *Provide accurate information to public office holders*

Public office holders rely on lobbyists to bring important information to bear on public policy decisions. It is therefore critical that lobbyists not knowingly provide false or misleading information to public office holders and take proper care to avoid doing so inadvertently.

Existing codes address this issue to varying degrees. The Government Relations Institute of Canada ("GRIC") code of professional conduct says that members must "not knowingly disseminate false or misleading information, and exercise care not to do so inadvertently."[5] The Government of Canada's *Lobbyists' Code of Conduct* similarly requires lobbyists to "provide information that is accurate and factual to public office holders. Moreover, lobbyists shall not knowingly mislead anyone and shall use proper care to avoid doing so inadvertently."[6] The Toronto municipal *Lobbyists' Code of Conduct* requires lobbyists to "provide information that is accurate and factual" and to "not knowingly mislead anyone and use proper care to avoid doing so inadvertently."[7] Toronto and the province of Québec take a step further by requiring lobbyists to inform their client or employer about these obligations.

During our consultation, a question arose as to whether there should be a legal requirement to provide "complete" information to public officials. The word "complete" is used in a number of codes, but is not defined. It appears in the Québec code, and the Commissaire of Lobbying explained that it is interpreted to mean that "the lobbyist must provide all the elements of a situation and not only those that are advantageous for him."[8]

The lobbyists we consulted support the principle that they are required to provide accurate and up-to-date information, but expressed concerns about the word "complete." The fear was that a requirement to provide "complete" information could be interpreted to mean that lobbyists be required to present all sides of an argument to public office holders, when the job of a lobbyist is to represent their client's or their organization's interests. A shared understanding among lobbyists is

[5] Government Relations Institute of Canada, *Code of Professional Conduct*.
[6] Office of the Commissioner of Lobbying of Canada. *Lobbyists' Code of Conduct*.
[7] Municipal Government of Toronto. *Lobbyists' Code of Conduct*.
[8] Commissaire of Lobbying, personal communication, November 2012.

a professional expectation that they present their case persuasively, on its merits, without resorting to manipulating information in ways that could reasonably be interpreted as dishonest or false.

In my opinion, the word "complete" is unnecessary. The central concern ought to relate to honesty. Clearly, dishonesty can at times arise from the failure to provide complete information. However, there may be a very significant difference between withholding important information, which might make a representation false, and simply declining to articulate another philosophical argument, which would not have that effect. In my view, it makes more sense to focus on whether a failure to provide information renders that information false or misleading, rather than just looking at completeness for its own sake, which risks focusing on issues that are not truly ethical in nature.

Lobbyists made it abundantly clear to us that providing inaccurate or misleading information would spell the end of not only their relationship with their client, but likely their career as a lobbyist. One seasoned lobbyist succinctly explained, "Our reputation is our livelihood." This statement also resonated with many of the MLAs we interviewed. "A lobbyist who does not operate above board," one MLA remarked, "risks taking his client down with him, because people will not make a distinction between the lobbyist and the company he was hired to represent."

Recognizing the mischief that could occur if public policies were based entirely or in part on inaccurate information, we believe the LRA should be amended to require lobbyists to not knowingly provide false or misleading information to a public official and to take proper care to avoid doing so inadvertently.

Recommendation #5

Lobbyists shall not knowingly provide false or misleading information to a public official and shall use proper care to avoid doing so inadvertently.

1.5.3 *Minimize undue influence of gifts or benefits*

Codes of conduct specifically prohibit lobbyists from attempting to influence public office holders by offering gifts or benefits, or using any other means that might be seen as currying favour or creating a sense of obligation on the part of the public office holder toward the lobbyist or the lobbyist's client.

Lobbyists told us that successful lobbying depends on their developing good working relationships with public office holders, and it is reasonable to assume that such relationships can sometimes take on some of the characteristics of social relationships and involve the mutual exchange of gifts or favours. In that context, concerns were raised regarding the parameters of what a "gift" might be.

Would it include a free meal at an annual dinner hosted by an industry association, dinner and drinks at a Chamber of Commerce holiday party or free tickets to an agricultural fair?

Because the process of public policy making is complex, non-linear and involves many other stakeholders, it is unlikely that free tickets to an annual dinner hosted by an industry association would unalterably influence the outcome of the process in favour of the association. Yet, the public might perceive it that way, and this perception is a prickly problem, even when there is no actual undue impact on a public official. Understanding this, and seeking to promote the "highest ethical

standards in interactions between lobbyists and public office holders," the Government of Canada has recently pledged to forbid lobbyists from giving gifts to public office holders, while also pledging to provide "clarity regarding the nature and value of gifts such that lobbyists will know the standards they will be expected to meet."[9]

Currently, there are legislative and policy standards that regulate the receipt of gifts by public office holders in British Columbia. The *Members' Conflict of Interest Act* applies to MLAs and the BC Public Service Agency *Standards of Conduct Policy Statement* generally applies to employees of government ministries. These documents set parameters about what gifts are acceptable in what circumstances, and whether those gifts must be reported to the public. The two documents differ in the particulars, but as a general rule, an MLA or an employee may not accept a gift unless the gift is exchanged as a part of protocol, is an exchange of hospitality between persons doing business, or fits the parameters for a normal presentation of a gift to someone participating in a public function. Before accepting a gift, public servants must be certain that the benefit is of nominal value, the exchange creates no obligation, reciprocation is easy and the exchange occurs infrequently.[10]

There was general agreement among lobbyists and public office holders that banning lobbyists from offering gifts or benefits a public office holder is *not permitted to accept* would support and enhance the existing rules and the public trust, and also build stronger relationships between lobbyists and public office holders. Several lobbyists remarked that any such guidelines would help to delineate the "grey areas" and keep both lobbyists and public office holders onside.

It should be noted that the term "public office holder" as defined in the LRA extends beyond MLAs and employees of government proper. Employees of crown corporations, universities and health authorities, among others, are also public office holders under the LRA and the rules around accepting gifts vary across these sectors. As such, the rules and parameters about accepting gifts from lobbyists across the provincial public sector landscape are not consistent. I think they should be.

In the absence of a consistent set of rules around what gifts various public officials may accept, it makes sense to set a standard that applies to lobbyists in their interactions with *all* public office holders. That standard should be unambiguous and clearly understood, without being overly prescriptive. Rules that exist within the public service can be used as the basis for this standard. Based on a survey of the rules in BC, I recommend that lobbyists shall not undertake to lobby in a form or manner that includes offering, providing or bestowing gifts or benefits of any kind, unless that gift or benefit is of nominal value, the exchange creates no obligation, reciprocation is easy and it occurs infrequently.

Recommendation #6

Lobbyists shall not undertake to lobby in a form or manner that includes offering, providing or bestowing gifts or benefits of any kind, unless that gift or benefit is of nominal value, the exchange creates no obligation, reciprocation is easy and the exchange occurs infrequently.

[9] The Honourable Tony Clement, P.C., M.P., on behalf of the Government of Canada. Letter to Mr. Pierre-Luc Dusseault, Chair, Standing Committee on Access to Information, Privacy and Ethics, n.d.
[10] See Government of British Columbia, *Policy Statement 09—Standards of Conduct*.

1.5.4 *Minimize undue influence of high-ranking public office holders*

Significant perception concerns arise when public officials leave office only to be engaged immediately as lobbyists. A perception might arise that a public official's behavior in office could be improperly influenced by the prospects of a lucrative career as a lobbyist upon leaving office. In this context, "revolving door syndrome" is said to arise when individuals move from a ministerial or senior administrative role to private sector employment in a closely related area where a conflict of interest exists or might be perceived to exist between their new and previous roles.

Another concern exists regarding the potential influence of former public office holders on their colleagues who are still public officials. Because an individual has had access to privileged information and close relationships with former colleagues, there is a concern that the development of sound public policy could be impaired by the special weight politicians might give to the opinions and views expressed by a former colleague on behalf of a client who has retained their services soon after they leave office.[11] The *Members' Conflict of Interest of Act* governs the conduct of MLAs after they leave public office. As in similar legislation in most other provinces, it imposes a post-employment "cooling off" period for former cabinet ministers, generally prohibiting them from accepting a contract or benefit from the government or from making representations for a contract or benefit (not a benefit of general application) on another person's behalf for 24 months after leaving office. It also restricts the ability of former cabinet ministers to make representations on "ongoing transactions or negotiations" to which the government is a "party" and in which the former member was involved. However, the *Members' Conflict of Interest Act* does not specifically prohibit former members of the executive from lobbying.

The LRA currently recognizes that certain lobbyists may have greater ability to influence decisions. Therefore, it requires lobbyists to identify whether they are "former public office holders," which can include being a former member of the Executive Council or an employee thereof, an Assistant Deputy Minister, an Associate Deputy Minister, a Deputy Minister, a CEO or a person in a position of comparable rank. However, it does not impose any cooling off period in respect of lobbying.

This issue has been addressed with regard to senior public servants. The *Post Employment Restrictions for Senior Management in the BC Public Service* state that former members of "senior management" who had "substantial involvement in dealings with an outside entity" may not "lobby or otherwise make representations" on behalf of that entity, work for that entity or give counsel to that entity for a year post employment. In addition, senior management may not lobby or otherwise make representations for an outside entity on any matters on which they had advised the government, nor may they make a representation to lobby on any matter to the ministry where they were employed during the last year before they left public office.[12]

Both the lobbyists and public office holders with whom we spoke recognize that lobbyists who are former high ranking public office holders can have influence that is, or is perceived to be, more amplified than is appropriate. There was general recognition that high ranking public office holders

[11] See generally: Government of Ireland, Department of Public Expenditure and Reform, *Regulation of Lobbying: Policy Proposals* (July 2012), ch. 12.
[12] See Government of British Columbia, *Post Employment Restrictions for Senior Management in the BC Public Service*.

who become lobbyists immediately after leaving public office may be able to better employ ongoing relationships with former colleagues that are much closer than any relationship an "outsider" might hope to develop. Many comments were made that some form of uniform cooling off period should be considered.

The question is where to strike the balance between minimizing the potential for excessive influence while at the same time not creating disincentives to civic-minded individuals to run for public office or work for public agencies. The federal *Lobbying Act* prohibits former "designated public office holders" (members of parliament, members of the senate and the senior ranks of the civil service) from lobbying any federal government agencies for five years post-employment.

I believe that a two-year cooling off period strikes an appropriate balance between managing the perceptions and realities arising when former politicians become lobbyists and allowing those former politicians and their employers or clients to participate in the democratic process as lobbyists. In my view, it is unlikely that a cabinet minister or senior public servant will make an important decision that is influenced by the prospect of potential employment after a period of two years after he or she leaves office. I believe it is reasonable, and that most people will see it as reasonable, that a two-year cooling off period—a significant period in the life of a provincial government, and the period already used in the *Members' Conflict of Interest Act*—significantly mitigates perceptions of undue influence in respect of former public officials.

I also believe that people should be able to request an exemption from the Registrar. Government today is a vast enterprise, and the issues lobbyists may be concerned with are so various that many situations may well arise where there is no reasonable prospect of harm in allowing a former public office holder to lobby within the two-year cooling off period. The Registrar is in a position to make these judgments on a case by case basis, and should be able to exercise that ability.

Recommendation # 7

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.

1.5.5 *Minimize undue influence due to political support of a candidate by a lobbyist*

A lobbyist might actively support an MLA in an election campaign, a nomination race or a leadership bid. That lobbyist might subsequently lobby the MLA. This situation might result in charges of undue influence due to the nature of the relationship between the lobbyist and the MLA. The perception might be that the MLA "owes" the lobbyist favourable treatment. The same perception might apply if the lobbyist's client or employer provided political support to the MLA.

All of the current federal, provincial and municipal lobbyist codes of conduct in Canada have provisions requiring lobbyists to avoid placing a public office holder in a "conflict of interest." The BC *Members' Conflict of Interest Act* defines a conflict of interest as existing when an elected official "exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise

of the power there is the opportunity to further his or her private interest." That Act also prohibits members from becoming involved in situations where there is an apparent conflict of interest, a "reasonable perception" that a member's ability to perform an official duty has been affected by his or her private interest. The onus in BC on recognizing and avoiding a conflict of interest rests solely with the MLA.

Each situation must be examined on its merits. However, the Federal Court of Appeal found that the host of a fundraiser for a member of parliament who subsequently lobbied that member placed the member in a perceived conflict of interest.[13] That decision and subsequent guidelines issued by the Commissioner of Lobbying for Canada have resulted in widespread alarm across some sectors of the federal lobbying community about what political activities people can safely engage in while avoiding contravening the rules. The Canadian Bar Association opined that the guidelines will require "an 'after-the-fact' determination," and questioned the constitutionality of the guidelines, believing them to be a "deterrent to *all* political activities."[14]

This issue generated considerable discussion during our consultation. If there is to be a prohibition on lobbyists placing politicians in a conflict of interest, what sorts of activities should count? Displaying a candidate's sign? Canvassing a neighbourhood? Attending a fundraiser? Donating money? Sitting on a constituency executive?

One experienced lobbyist worried that creating rules for political activity of lobbyists "feed into public misperceptions" about the nature of public policy making. He suggested that those unfamiliar with the policy process overestimate the influence of political support, pointing out, "There are so many influences on public office holders—media, publics, government priorities, policy processes—one relationship with one person has relatively little influence in the context. The value-add of lobbying is not access; it is the understanding of the policy development processes."

Public office holders also commented on the potential deleterious effects of rules restricting political activity by lobbyists, one stating: "People get involved in a campaign as they favour certain positions. If you are disabled from speaking to politicians after they are elected, it is not productive… If they can't influence, then what is the point in contributing? If I contribute and then am not able to pressure for my interests, that is ridiculous and unrealistic. We need to be careful of regulations that are well-intentioned but do more harm than good."

On the other hand, one academic suggested that undue influence and political contributions, in whatever form they take, "should not be tolerated as an inevitable part of the political process." How can we prescribe acceptable behaviour in a manner that respects the right to engage in political activity, without overreaching or making vague pronouncements, and still provide proper transparency to the public at large? It is a complex question, perhaps one that requires broader and deeper consideration than can be accomplished in this paper.

[13] *Democracy Watch v. Campbell and Attorney General of Canada (Registrar of Lobbyists)* 2009 FCA 79.
[14] Canadian Bar Association. *Opinion Respecting the Constitutionality of Rule 8 of the Lobbyists' Code of Conduct.*

There is no easy answer to the question of whether, given that politicians themselves are required to avoid conflicts of interest, BC should follow the lead of other jurisdictions and prohibit lobbyists from placing politicians in a conflict of interest. The complexity of these questions should not be a deterrent from seeking answers that would address both the public interest in ensuring integrity in lobbying and impartiality in public decision making and at the same time respecting the right to participate in the democratic process. In my view, the best approach to resolving these questions would be through a more focused consultation managed by an all-party committee of the Legislature.

Several participants suggested one incremental measure that could be adopted to address, at least in part, the public interest in knowing which lobbyists have politically supported which elected officials they are targeting. The suggestion is that lobbyists be required to disclose, directly on their registration, if they have provided political support to the MLA they are attempting to influence.

In my view, this is a good suggestion, and one that I also made in February 2012 to the parliamentary committee reviewing the federal *Lobbying Act*. In that submission, I stated, "One way of addressing [the issues involving political support and conflict of interest] is to require all lobbyists to declare on their registration whether or not they have engaged in political activity on behalf of the person they are lobbying, and in what capacity. This would, at minimum, provide transparency to the public about the nature of the relationship between the lobbyist and the elected official." [15]

Some lobbyists we spoke to preferred this kind of disclosure over proscribing certain behaviours and "limiting constitutionally protected rights such as freedom of expression."

A few of the lobbyists we spoke to strenuously objected to this suggestion, saying. "It will violate my right to privacy," and "We have a right to keep our private political activities separate from our employment." My response is that certain political activities, specifically those captured by the BC *Election Act* are not private. Under the *Election Act*, if a person or entity makes one or more political contributions during specified periods, [16] and if those contributions have a total value of more than $250, the recipient of the contributions must declare publicly the contributor's name, the value of the contribution and the date it was made. If the contributor is of a different "classification," specifically a corporation, unincorporated organization, trade union or non-profit organization, it must provide the names of at least two individuals who are either directors of the entity or principal officers, if there are no directors.

One lobbyist said it is up to the public to look the information up on their own and "connect the dots." In my opinion, in the interests of public transparency, the public should not be required to "connect the dots." In the interests of transparency, lobbyists should declare directly in their

[15] Elizabeth Denham, Registrar of Lobbyists for British Columbia. *Submission to the House of Commons Standing Committee on Access to Information, Privacy and Ethics*, February 7, 2012.

[16] Registered political parties and constituency associations must file annual reports with the Chief Electoral Officer by March 31 of the following year; an election financing report must be filed within 90 days after General Voting Day for an election. In the case of a leadership contestant, a contestant's financing report must be filed within 90 days after a leader is selected.

registration whether they, their clients or their employers have made a political contribution to the cabinet minister or MLA they are targeting of sufficient value to be reportable under the *Election Act.*

Recommendation #8

Lobbyists must declare directly on their registration, whether they, their client or their employer has made a political contribution reportable under the *Election Act* to the cabinet minister or MLA they are lobbying.

2.0 IS THE LRA MEETING ITS OBJECTIVES?

The BC LRA differs from the federal *Lobbying Act* and two other provincial lobbying laws in one significant way: it does not contain a clause requiring periodic mandatory reviews of the legislation itself. We have been able to work out process and system kinks, but without a periodic review of the legislation's efficacy, we are unable to work out the legislative problems that we believe should be addressed to promote greater transparency, level the playing field, ease registration and harmonize with developments taking place across the country.

The comments we received about a code of conduct were inextricably intertwined with comments about the LRA itself, whether it was achieving its objectives, how registration could be streamlined, and how transparency could be strengthened. There was substantial agreement across the board that in a few key areas, the LRA obscures, rather than promotes transparency.

2.1 HARMONIZE THRESHOLDS FOR REGISTRATION

The LRA recognizes two distinct types of lobbyists: in-house lobbyists and consultant lobbyists. In-house lobbyists are employees of organizations who lobby on behalf of their employer on a full- or part-time basis. Consultant lobbyists are those who lobby on a contractual basis on behalf of a client. The legal threshold triggering the requirement to register is markedly different between them. Organizations have a grace period of 100 hours of lobbying before they are required to register. Consultant lobbyists must register within ten days of agreeing to lobby on a client's behalf, whether or not lobbying has taken place.

In-House Lobbyists

For in-house lobbyists, the existing rules require that, all hours spent directly lobbying as well as all hours spent in preparatory activities directly related to and necessary for lobbying to occur (e.g., writing submissions, setting up meetings) must be included in the calculation of the 100 hours. Once the employees of an organization have lobbied more than 100 hours, the "senior officer"[17] of that organization must register the organization and list all the in-house lobbyists. In other words, organizations have a grace period where they can lobby for 100 hours before they are legally required to register.

This grace period was originally intended to exempt those organizations that lobby perhaps only once or infrequently—those for whom lobbying is not a part of their normal, everyday operations. The model was created with the federal statute, which required organizations to register when an employee's lobbying comprised a "significant portion" (20%) of his or her duties, and it has been copied in one form or another by other statutes in Canada, including the LRA.

[17] The LRA defines a "senior officer" as "the most senior officer of the organization who receives payment for performing his or her functions, or if there is no senior officer who receives payment, the most senior in-house lobbyist."

However, what was originally intended to protect the small or "one-off" lobbying effort has become a free pass for all organizations—from multi-national corporations to labour unions to chambers of commerce and boards of trade, to name a few—to lobby 100 hours without having to register and declare to the public that they are lobbying a public office holder, on what subject matter and toward what outcome.

Considerable discussion has taken place across the country about removing this exemption in the interests of transparency. Canada's Commissioner of Lobbying, Karen Shepherd, said during her appearance before the parliamentary committee reviewing the federal *Lobbying Act*, "The Registry of Lobbyists provides a wealth of information on who is engaged in the lobbying activities for payment, but does not capture the lobbying activities of organizations and corporations who do not meet the 'significant part of duties' threshold. That threshold is difficult to calculate and even more difficult to enforce." The Ontario Registrar of Lobbyists, Lynn Morrison, has very recently recommended the elimination of the 20% rule, saying that "all paid lobbying activity should be registered, regardless of the amount of time spent on the activity." One civil society group told us that the 20% rule simply allows for "secret, unethical and undisclosed lobbying" to take place. This argument suggests that there is really no valid basis in principle for treating in-house lobbyists differently from consultant lobbyists, who do not enjoy a similar threshold.

One hundred hours is clearly significantly more time than is needed to exempt "one-off" lobbying. One hundred hours equals 12.5 work days, which means that organizations can lobby for more than two weeks, full-time, without having to register. The rule fails to recognize that, if an organization is good at organizing a lobby effort, or if it happens to have a CEO who carries considerable influence, lobbying by this organization could influence public policy changes, and yet remain invisible to the public.

Some participants in our consultation expressed concern that removing the 100 hour rule might create a mountain of paperwork for organizations where none currently exists. From our perspective, the 100 hours rule, in addition to creating lopsided legal obligations, actually creates more confusion and paperwork.

Far more organizations have expressed concern to us that keeping track of the 100 hours creates a bigger headache. We have heard from organizations that struggle to determine what kinds of preparatory activities count as lobbying and how to track those hours. Some organizations have told us that they decided to abandon any attempt to track activities and register, regardless of how many hours they spend on lobbying; others say they abandoned the attempt to track and did *not* register, regardless of how many hours they spend on lobbying. Both scenarios suggest how the 100 hours rule again undermines the transparency of the registry, if organizations that don't lobby 100 hours register and organizations that lobby more than 100 hours don't register. In my view, the 100 hours should be replaced by a requirement that the designated filer register when the organization has actually lobbied, within ten days of the lobbying.

Consultant Lobbyists

A consultant lobbyist is someone who, for payment, undertakes to lobby on behalf of a client. Consultant lobbyists can come from a variety of backgrounds, for example government relations, public relations, law or accounting, among others. For example, a lawyer who agrees to speak to

a public office holder on behalf of his or her client about amending a regulation is a consultant lobbyist.

The LRA requires consultant lobbyists to register within ten days of *entering into an undertaking to lobby* on behalf of a client. This requirement exists, even if the planned lobbying will not take place for months to come or, for whatever reason, does not occur at all. Irrespective of the amount of time they actually spend lobbying or whether they actually lobby at all, provided they have entered into an agreement to lobby, consultant lobbyists must register. The legal obligation to register rests with the consultant lobbyist, not the client.

This means that a search of the lobbyist registry for activities of consultant lobbyists does not differentiate *planned* lobbying from *actual* lobbying. Provided they have listed the MLA, cabinet minister or the public entity they either have lobbied or expect to lobby, consultant lobbyists and in-house lobbyists are not required to confirm that they have lobbied or how many times they have lobbied a particular public office holder.

These requirements do little to advance transparency in lobbying by consultant lobbyists. Often, a government relations or a law firm will be hired on retainer by a client for a variety of services, one of which might be lobbying if and when the need arises. Under these circumstances, the consultant lobbyist must register, regardless of whether the contemplated lobbying ever takes place. The present requirement obliges the consultant lobbyist to enter data that might be purely speculative. Again, it makes more practical sense to replace this requirement with a requirement that consultant lobbyists register when they have actually lobbied, within 10 days of the lobbying taking place.

The difference in registration thresholds between in-house and consultant lobbyists also implies that lobbying undertaken by consultant lobbyists requires greater scrutiny than lobbying undertaken by in-house lobbyists. Lobbying laws here and elsewhere regulate entirely legal behaviour, and I submit that the distinction the LRA draws between the two groups is unjustifiable.

Recommendation #9

Designated filers should register when they have actually lobbied, within 10 days of lobbying.

2.2 Improve the Quality of Data on the Registry

Once the threshold to register has been met, the designated filer—whether a consultant lobbyist or the senior officer of an organization—must submit an online registration. Information that must be supplied includes details about the client or organization, whether the lobbyist is a former high-ranking public official, the subject matter of the lobbying, the outcome the lobbyist is hoping to achieve, and the public office holders the lobbyist "has lobbied or expects to lobby."

Designated filers must certify that the information they provided is true. Changes to the information in a registration must be made within 30 days of the change, or within 30 days of the

designated filer becoming aware of the change. If a lobbyist targets a cabinet minister or an MLA, the name of the minister or MLA must be supplied. All other public office holder targets are referenced only by the ministry or public entity for which they work. For example, if a lobbyist targets the Deputy Attorney General, the lobbyist must state only that they are lobbying someone within the Ministry of Justice.

2.2.1 *Amend the wording "has lobbied or expects to lobby"*

The LRA requires designated filers to list the public office holder(s) the lobbyist "has lobbied or expects to lobby during the relevant period." By requiring people to declare who they *expect to* lobby, the LRA governs both the *intent* to lobby as well as *actual* lobbying. Problematically, however, the LRA does not differentiate between the two. The public have no way of knowing from the data in the registry whether the public office holders targeted by a lobbyist have actually been lobbied. Asking designated filers to provide data on who they *might* lobby undermines the quality of the data, as much of what is entered is at a "best guess" level.

Lobbyists will often submit a registration and list all public office holders and agencies as potential targets. The ORL often seeks clarification from those lobbyists who do so regarding whom they actually intend to lobby in the near future. In an effort to keep the registry as free as possible from unessential data, the ORL has provided guidance around the term "expect" stating it means "to regard as likely to happen." From our perspective, that means that either a communication *will* take place (e.g., a meeting is scheduled, a letter will be sent) or there is a *strong likelihood* that a communication will take place. "Expect" should not be confused with "might."

During the code of conduct consultation, most MLAs were astonished to see how many times they had been listed as targets in the registry, when they either had limited contact with lobbyists or had never met with the person or persons who had listed them as targets. "One thing that is frustrating about the registry," said one MLA, is that it lists dozens and dozens of people I've never met, and that scattergun approach protects them from scrutiny. It also gives the public the wrong impression." Another remarked, "It is quite meaningless to ask a lobbyist to register who he might call upon or endeavour to influence. If that was me, I would merely register the government telephone directory."

Media participants felt the LRA should capture actual lobbying. As one said, "The current system creates a smokescreen about who is really being lobbied. We should be able to search the registry and find out who was actually lobbied, when, and where."

As a result of these concerns, it is my view that the Legislature should repeal the requirement for designated filers to list who they "expect to lobby" and replace it with the requirement that they list, within 10 days of doing so, who they have lobbied and the date that the lobbying took place.

Recommendation #10

Remove the requirement for designated filers to list who they "expect to lobby" and replace it with the requirement that designated filers list who they have lobbied and the date the lobbying took place, within 10 days of its occurrence.

2.2.2 *Name high-ranking public office holders that have been lobbied*

Other than MLAs and cabinet ministers, designated filers are not required to name which public office holders they are targeting. If they target anyone other than an MLA or cabinet minister, including high-ranking individuals such as Deputy Ministers or CEOs of crown corporations, they are required to list only the ministry or agency the individual works for. [18]

The LRA currently recognizes that there is public interest in knowing which lobbyists were former high-ranking public office holders, by requiring them to declare this fact. Under the LRA and its regulation, a "former public office holder" is a former member of the Executive Council, an employee of the former member, former senior executives such as Assistant, Associate or Deputy Minister, CEO or another title, first and second in command of provincial entities, or anyone who sat on the governing board of a provincial entity. Lobbyists who are "former public office holders" must detail the nature of the office formerly held and the term of office.

I believe that anyone who lobbies an individual currently occupying a post similar to those referenced in the "former public office holder" definition should be required to identify that person by name. From a transparency perspective, it is not good enough to list the "Ministry of Justice," which could mean any one of thousands of employees, when it is the Deputy Attorney General that is targeted.

Lobbyists told us they are more likely to communicate with higher-ranking civil servants than with ministers or MLAs. Therefore, from the perspective of public transparency, it makes sense to require lobbyists to identify by name any high-ranking civil servant they lobby and the date that person was lobbied.

Recommendation # 11

Designated filers must identify by name any public office holder they lobby who occupies a senior executive position, whether by title Assistant Deputy Minister, Associate Deputy Minister, Deputy Minister, Chief Executive Officer, Chief Operating Officer or similar rank.

2.2.3 *Identify other controlling interests*

The BC *Lobbyists Registration Act* that passed in 2001, the precursor of the present Act, required designated filers to identify any interests that controlled or directed the client or employer's activities, and that had a direct interest in the outcome of the lobbying. This provision was designed to ensure that the main actors involved in any lobbying enterprise were clearly identified. When the Act was amended in 2009, the requirement to declare other controlling interests disappeared. I think it should be reintroduced.

[18] *Lobbyists Registration Act*, 4(1) (k)-(m).

During our code of conduct consultation, a few MLAs spoke about occasionally learning that there had been undeclared "shadow interests" behind some lobby attempts. One MLA and former cabinet minister expressed concern that the funding sources for lobbying activities might also remain concealed. For example, a group might present itself as a citizens' advocacy group lobbying on behalf of patients with a certain medical condition, but the group is, in fact, established and funded by a company that manufactures a medication for treating the condition.

Because relevant disclosure is the heart of transparency and effective oversight, I recommend the LRA be amended to restore the requirement to identify other controlling interests supporting the lobbying effort.

Recommendation # 12

Require designated filers to identify other persons or organizations that control or direct the lobbying activities and/or have a direct interest in the outcome of the lobbying, including agencies that fund or direct the activities of an organization or client represented in a lobbying effort.

2.3 Ensure the LRA Stays Current and Meets its Objectives

Various lobbying laws across the country, including the federal *Lobbying Act* and the Alberta *Lobbyists Registration Act* require mandatory reviews of the legislation every five or six years. A great deal can change in five years, and it makes sense to require a periodic mandatory review of the LRA by a legislative committee in order to receive public input and assess the LRA to ensure that it continues to meet its objectives.

Recommendation #13

Require mandatory review of the LRA.

3.0 CONCLUSIONS

This consultation has provided the rare and welcome opportunity to engage in a dispassionate and thoughtful discussion with all stakeholder groups—elected officials, civil servants, lobbyists, academics, civil society and regulators—about the relationships between lobbyists and public office holders, the value of information brought forward by lobbyists, barriers to compliance, ideas for enhancing transparency and easing registration and the consequences, intended and unintended, of additional regulation. This consultation was an important step on the evolutionary path toward an improved legal framework that recognizes and supports the contributions of lobbyists in the democratic process and bolsters the transparency of that process.

This process has confirmed for me that the responsibility for ensuring ethics and accountability in the process of public decision making is shared amongst public office holders, lobbyists and oversight agencies. It is also one shared with the public, whom I encourage to exercise their right to know who is attempting to influence government decisions by searching the lobbyists registry.

In my capacity as Registrar of Lobbyists and as an Officer of the Legislature, I commend this report for your consideration.

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.

Mary Carlson, Deputy Registrar and Jacqueline Howse, Compliance and Policy Officer conducted the consultation, lead the focus groups and assisted in preparing this report.

January 21, 2013

Elizabeth Denham
Registrar of Lobbyists

APPENDIX "A"

RECOMMENDATIONS

1. **Adopt those parts of a code of conduct that strengthen transparency in lobbying, support existing ethical standards for public office holders and enhance public decision-making processes.**
2. **The role of the ORL in regulating lobbying should be limited to those aspects of the work of lobbyists that relate directly to the interactions between lobbyists and public officials.**
3. **New provisions adopted from codes of conduct should be integrated directly into the LRA.**
4. **Before communicating with a public office holder, lobbyists must declare to that public office holder that they are lobbying, on whose behalf they are lobbying and identify any other third party interests that are funding and/or directing the lobbying.**
5. **Lobbyists shall not knowingly provide false or misleading information to a public official and shall use proper care to avoid doing so inadvertently.**
6. **Lobbyists shall not undertake to lobby in a form or manner that includes offering, providing or bestowing gifts or benefits of any kind, unless that gift or benefit is of nominal value, the exchange creates no obligation, reciprocation is easy and the exchange occurs infrequently.**
7. **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.**
8. **Lobbyists must declare directly in their registration, whether they, their client or their employer has made a political contribution reportable under the *Election Act* to the cabinet minister or MLA they are lobbying.**
9. **Designated filers should register when they have actually lobbied, within 10 days of lobbying.**
10. **Remove the requirement for designated filers to list who they "expect to lobby" and replace it with the requirement that designated filers list who they have lobbied and the date the lobbying took place, within 10 days of its occurrence.**
11. **Designated filers must identify by name any public office holder they lobby who occupies a senior executive position, whether by title Assistant Deputy Minister, Associate Deputy Minister, Deputy Minister, Chief Executive Officer, Chief Operating Officer or similar rank.**
12. **Require designated filers to identify other persons or organizations that control or direct the lobbying activities and/or have a direct interest in the outcome of the lobbying, including agencies that fund or direct the activities of an organization or client represented in a lobbying effort.**
13. **Require mandatory review of the LRA.**

APPENDIX "B"

The following people, agencies and organizations contributed in one form or another to this report:

British Columbia public office holders

Donna Barnett, MLA
Jagrup Brar, MLA
Hon. Stephanie Cadieux, Minister of Children and Family Development
Murray Coell, MLA
Kathy Corrigan, MLA
Mike Farnworth, MLA
Colin Hansen, MLA
Rob Howard, MLA
Vicki Huntington, MLA
Paul Jeakins, Commissioner & CEO, BC Oil and Gas Commission
Alexis Kerr, Legal Counsel, Fraser Health Authority
Nikki Macdonald, Executive Director of Government Relations, University of Victoria
Hon. Dr. Margaret MacDiarmid, Minister of Health
Joan McIntyre, MLA
Andrew Petter, President, Simon Fraser University
Pat Pimm, MLA
Linda Reid, MLA
Hon. Ralph Sultan, Minister of State for Seniors
Trevor Swan, General Counsel and Corporate Secretary, BC Oil and Gas Commission
Hon. Steve Thomson, Minister of Forests, Lands and Natural Resource Operations
Brian Woods, Vice President, Corporate Services Integration, VIHA
Members of the BC New Democratic Party caucus

Offices of Registrars/Commissioners of Lobbying

Karen Shepherd, Commissioner of Lobbying for Canada
François Casgrain, Commissaire au lobbyisme du Québec
Linda Gehrke, Lobbyist Registrar, City of Toronto
Bradley V. Odsen, Q.C., General Counsel, Office of the Ethics Commissioner, Alberta

Members of the BC Lobbyist Community

Sasha Angus, Victoria Chamber of Commerce
Rod Bealing, Private Forest Landowners Association
Jeff Bray, Shaw Communications Inc.
Cynthia Burton, The Progressive Group
Russ Cameron, Independent Wood Processors Association
Cheryl Davie, BC Agriculture Council
Bob Dawson, Pfizer Canada
Michael Geoghegan, Michael Geoghegan Consulting
Suzanne Gill, Director, Corporate Development, Genome British Columbia
Marg Gordon, BC Apartment Owners and Managers Association
Alan Martin, Consultant
Summer McFadyen, BC Federation of Labour

Michael McKnight, United Way of the Lower Mainland
Tim Meyer, TRIUMF
Norma Miller, BC Real Estate Association
Terrie Moore, EPCOR
Amy Morris, BC SPCA
Don Nixdorf, BC Chiropractors' Association
Kathryn Seely, Canadian Cancer Society
Muneesh Sharma, Vancouver Aquarium
Robert Sloat, Surety Association of Canada-Western Canada
Jo-Ann Stuart Chatterley, Janssen - Pharmaceutical Companies of Johnson-Johnson
Victor Vrsnik, Spire Public Relations
Marilyn Whitemarsh, Canadian Home Builders' Association of BC
Alexa Young, Teck Resources

Elections BC

Kevin Atcheson, Research and Policy Analyst
Janette Ryan, Manager, Electoral Operations
Louise Sawdon, Manager, Electoral Finance

Government Relations Institute of Canada

Charles King, President (to September, 2012)

Public Affairs Association of Canada

John Capobianco, President
Stephen Andrews, Vice-President
Members of the Board of Directors

Public Affairs Association of Canada BC

Canadian League of Lobbyists - Edward Anderson

Canadian Association of Petroleum Producers

Canadian Bar Association, British Columbia Branch

Canadian Taxpayers Federation - Jordan Bateman, British Columbia Director

Democracy Watch Canada

Dr. Paul Pross, Professor Emeritus, School of Public Administration, Dalhousie University

Dr. Patrick Smith, Professor, Political Science, & Director of the Institute of Governance Studies, Simon Fraser University