OFFICE OF THE ETHICS COMMISSIONER

OEC
Alberta Lobbyist Registry

Improving the *Lobbyists Act*
Recommended Amendments

NOVEMBER 2021

SUBMITTED IN RESPONSE TO A REQUEST FROM THE STANDING COMMITTEE ON ALBERTA'S ECONOMIC FUTURE

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Ethics Commissioner of Alberta

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EXECUTIVE SUMMARY

A. AMENDMENTS TO ENHANCE TRANSPARENCY & ACCOUNTABILITY

1. Establish a "Communications Registry" of separate filings that disclose direct lobbying communications with senior public office holders within the last 30 days

Recommendation

To promote public transparency and accountability about essential lobbying information, the Act should be amended to require lobbyists to file separate forms in a "Communications Registry" that disclose prescribed information about any direct lobbying communication with a "senior public office holder" that occurred within the last 30 days.

The direct lobbying communication should be disclosed whether it is oral or written and regardless of who initiated the communication and the context in which the communication took place.

A "senior public office holder" should include:

- a Member of the Legislative Assembly;
- a member of the Executive Council (which includes the Premier, Ministers, and Associate Ministers);
- a member of the Premier's and Ministers' staff as defined in the *Conflicts of Interest Act*;
- a deputy minister of a department;
- an assistant deputy minister of a department;
- a chair or chief executive officer of a prescribed Provincial entity.

The prescribed information about the lobbying communication should include:

- the date of the communication;
- the technique of communication (e.g., in-person or virtual meeting, phone or virtual call, email, letter);

- a description of the subject matter of the communication;
- the first and last names and the position title of the senior public office holder who participated in the communication or at whom the communication was directed;
- the first and last names, position title, and employer/organization of all other individuals who participated in the communication, including, for example, any lobbyists and any client representatives.

Issue

The most essential information for there to be public transparency and accountability about regarding lobbying activities is who is lobbying whom, on behalf of whom, about what, and when and in what circumstances. That information goes to the heart of the Act's objectives.

This is especially the case when the lobbying is directed at senior public office holders.

However, the current disclosure requirements in the Act for lobbyist registrations provide limited transparency and accountability to the public about that essential information.

Explanation

The information that consultant lobbyists and organization lobbyists must disclose in their registrations is respectively set out in Schedules 1 and 2 of the Act.

However, Schedules 1 and 2 of the Act do not require consultant lobbyists or organization lobbyists to disclose in their registrations: the names or position titles of any of the individual public office holders lobbied; any specifics about when lobbying occurred; or which techniques of communication were or will be used for which lobbying activities.

On the other hand, in British Columbia, lobbyists must file a "Lobbying Activity Report" that discloses the following information about any lobbying of a senior public office holder during the preceding month: the name and position title of the senior public office holder lobbied; the date of the lobbying activity directed at the senior public office holder; the particulars of the subject matter of the lobbying; and the names of the lobbyists who participated in the lobbying.

Relevant Provisions

Schedule 1
Consultant Lobbyist Return

[…]

2 The designated filer shall set out in the return for the purpose of section 4 of this Act the following with respect to the undertaking:

[…]

(n) the name of any department or prescribed Provincial entity in which any public office holder is employed or serves whom a consultant lobbyist named in the return has lobbied or expects to lobby during the relevant period;

(o) whether a consultant lobbyist named in the return has lobbied or expects to lobby during the relevant period any Member of the Legislative Assembly or any individual on a Member's staff;

(p) whether a consultant lobbyist named in the return has lobbied or expects to lobby during the relevant period any member of the Executive Council or any individual on a member's staff;

(q) the techniques of communication, including grassroots communication, that a consultant lobbyist named in the return has used or expects to use to lobby;

[…]

Schedule 2
Organization Lobbyist Return

[…]

2 The designated filer shall set out in the return for the purpose of section 5 the following information:

[…]

(m) the name of any department or prescribed Provincial entity in which any public office holder is employed or serves whom an organization lobbyist named in the return

(i) has lobbied during the period for which the return is filed, or

(ii) expects to lobby during the next 6-month period;

(n) whether any organization lobbyist named in the return

(i) has lobbied a Member of the Legislative Assembly or an individual on the staff of a Member during the period for which the return is filed, or

(ii) expects to lobby a Member of the Legislative Assembly or an individual on the staff of a Member during the next 6-month period;

(o) whether any organization lobbyist named in the return

(i) has lobbied a member of the Executive Council or an individual on the staff of a member during the period for which the return is filed, or

(ii) expects to lobby a member of the Executive Council or an individual on the staff of a member during the next 6-month period;

(p) the techniques of communication, including grassroots communication, that any organization lobbyist named in the return has used to lobby during the period for which the return is filed or expects to use to lobby during the next 6-month period;

2. Remove the requirement for organization lobbyists to file Semi-Annual Renewal Returns

Recommendation

Subject to the establishment of the "Communications Registry" as set out above to provide necessary and currently lacking public transparency and accountability, and the establishment of a broad "auditing" power as set out in the explanation below to promote and enforce compliance with ongoing filing obligations, the requirement for organization lobbyists to file Semi-Annual Renewal Returns should be removed in order to eliminate unnecessary administrative burden and to encourage prompt updating of registrations.

Issue

The requirement for organization lobbyists to file a Semi-Annual Renewal Return every six months is unnecessary and confusing given that organization lobbyists already are required to keep their active registrations up to date within a 30-day period by filing a Notice of Change.

Explanation

The Act currently imposes two types of ongoing filing obligations on organization lobbyists:

1) After filing an Initial Return, an organization lobbyist must file a Semi-Annual Renewal Return to update the organization's registration every six months.

2) If a change or new information arises in between the organization's Semi-Annual Renewal Return filings, then the organization must file a Notice of Change to update its registration within 30 days of learning of the change or new information.

Many organization lobbyists already regularly update their active registrations by filing Notices of Change in between their Semi-Annual Renewal Return deadlines. The requirement to also file a Semi-Annual Renewal Return every six months is an unnecessary administrative burden for those organization lobbyists.

The additional requirement to file Semi-Annual Renewal Returns also creates confusion for organization lobbyists, as some mistakenly think that the only time that they need to update their active registration is when their Semi-Annual Renewal Return is due. Removing the requirement to file Semi-Annual Renewal Returns would prove clarity to those organization lobbyists. This, in turn, would promote more prompt public transparency and accountability about their lobbying by improving their compliance with

the requirement to file a Notice of Change to update their registration within 30 days of any change or new information.

However, while many lobbyists are proactive about complying with their obligation to file a Notice of Change, there inevitably are lobbyists who are not. If the requirement to file Semi-Annual Renewal Returns were removed from the Act, the Lobbyist Registrar would need a broad power to "audit" lobbyists' compliance with their ongoing obligation to file a Notice of Change in order to incentivize lobbyists to keep their registrations consistently updated absent a regularly scheduled renewal requirement.

This broad "auditing" power would allow the Registrar, at any time that the Registrar sees fit in the Registrar's sole and absolute discretion, to compel information, documents and/or a declaration from the designated filer to confirm that a filed registration is complete, accurate and up to date. If the Registrar determines that a lobbyist has not kept its registration updated as required by the Act, then the Registrar should have the discretion to apply the Act's enforcement provisions.

Relevant Provisions

Duty to file return: organization lobbyist

5(1) The designated filer of an organization that has an organization lobbyist shall file with the Registrar a return in the prescribed form and containing the information required in Schedule 2

> (a) within 2 months after the day on which an individual in that organization becomes an organization lobbyist, and
>
> (b) within 30 days after the expiration of each 6-month period after the date of filing the previous return.

[…]

Subsequent filings

10(1) A designated filer who files a return under section 4 or 5 shall provide the Registrar with the following information within the applicable period:

> (a) particulars of any change to the information in the return, within 30 days after the change occurs;
>
> (b) any information required to be provided in a return under section 4 or 5 the knowledge of which the designated filer acquired only after the return was filed, within 30 days after the knowledge is acquired;
>
> […]

3. Reduce the "organization lobbyist" threshold from 50 hours to 20 hours annually (including time spent lobbying and preparing to lobby)

Recommendation

To enhance public transparency and accountability about in-house lobbying, the "organization lobbyist" threshold should be reduced from 50 hours annually, including both the time spent lobbying and preparing to lobby, to 20 hours annually, including both the time spent lobbying and preparing to lobby.

Issue

The current "organization lobbyist" threshold is too high, which allows a significant amount of influence on, and access to, public office holders by organizations to avoid public transparency and accountability.

Explanation

The Act defines an "organization lobbyist" as a paid employee, paid officer, paid director, partner or sole proprietor of an organization who lobbies or has a duty to lobby on behalf of that organization and who, collectively with others in the organization, meets the 50-hour annual "organization lobbyist" threshold.

The 50-hour annual "organization lobbyist" threshold will be met by an organization if the cumulative/collective amount of time that any one or more of the paid employees, paid officers, paid directors, partners or sole proprietor of the organization have spent lobbying and preparing to lobby, or have a duty to spend lobbying and preparing to lobby, on behalf of the organization is 50 hours or more in a year.

While there is a basis for having some level of "organization lobbyist" threshold in the Act, as it prevents organizations that seldom lobby from being subject to the ongoing filing obligations that apply to organization lobbyists under Act, the current 50-hour threshold is too high and should be reduced to provide public transparent and accountability about in-house lobbying.

A significant amount of lobbying can occur without any transparency and accountability under the current threshold. This is especially the case because organizations outsource preparation time to avoid meeting the threshold that triggers registration. There is a loophole in the Act whereby an organization engages an outside consultant to do all the preparation for the organization's in-house lobbying. The outside consultant's preparation time is not counted towards the organization's threshold and the organization might not meet the threshold through the lobbying time of its in-house personnel alone. Meanwhile,

the outside consultant does not need to register as a lobbyist either because it only has been engaged to do the preparations and not to lobby.

In addition, the amount of time that an organization spends lobbying and preparing to lobby does not necessarily correlate to the level of access to, or influence on, public office holders achieved by the organization. A significant impact could be achieved in a short period of time. The current 50-hour threshold, particularly in light of the loophole noted above, allows a significant amount of access to, and influence on, public office holders by organizations to avoid public transparency and accountability.

Note that, while the number of hours in the threshold should be reduced, the requirement in the Act to include lobbying preparation time, in addition to lobbying communication time, in the threshold should be maintained to facilitate the administration of the Act. For meetings and other verbal lobbying communications, determining how much time was spent "communicating" is not complicated. However, for written lobbying communications, determining the amount of time that the "communication" took can be complex. For example, in the case of a lobbying email, is the time spent "communicating" the time that the lobbyist spent writing the email? Or is it the time that the lobbyist spent pressing send on the email? Or is it the time that the public office holder spent reading the email? Or is it all the above? Maintaining the requirement to include time spent preparing for the lobbying communication in the threshold mitigates this issue.

Relevant Provisions

Interpretation

1(1) In this Act,

[…]

(h) "organization lobbyist" means, subject to subsection (2), an employee, officer or director of an organization who receives a payment for the performance of his or her functions, or a sole proprietor, or a partner in a partnership,

(i) who lobbies or whose duty is to lobby on behalf of the organization **at least 50 hours annually**, or

(ii) whose lobbying or duty to lobby on behalf of the organization together with the lobbying or the duty to lobby of other persons in the organization amounts to **at least 50 hours annually**;

[…]

(3.1) For the purposes of determining whether lobbying amounts to **at least 50 hours annually** under subsection (1)(h), time spent lobbying includes time spent preparing for communication and communicating with a public office holder.

4. Simplify and close potential loopholes in the section 6.2 'prohibited gifts' provision

Recommendation

To improve compliance by alleviating unnecessary complexity and to prevent potential attempts to circumvent its purpose, the current section 6.2 'prohibited gifts' provision should be deleted and replaced with the following (subject to review by Legislative Counsel):

> 6.2 (1) A consultant lobbyist or organization lobbyist shall not give, offer or promise, directly or indirectly, any gift, favour or benefit to a public office holder whom the consultant lobbyist or organization lobbyist is lobbying or intends to lobby.
>
> (2) Subsection (1) does not apply to a gift, favour or other benefit if the following apply:
>
> (a) the gift, favour or benefit is given, offered or promised under the protocol or social obligations that normally accompany the duties or responsibilities of office of the public office holder; and
>
> (b) the total value of gifts, favours or benefits described in paragraph (a) given, offered or promised, directly or indirectly, by the consultant lobbyist or organization lobbyist to the public office holder in the calendar year is $200 or less.
>
> (3) For the purposes of this section, a consultant lobbyist or an organization lobbyist is deemed to give, offer or promise a gift, favour or benefit to a public office holder if any employee, director, officer, partner or proprietor of the organization of which the organization lobbyist or the consultant lobbyist is an employee, director, officer, partner or proprietor gives, offers, or promises the gift, favour or benefit to the public office holder.
>
> (4) For the purposes of this section, a consultant lobbyist is deemed to give, offer or promise a gift, favour or benefit to a public office holder if a client of the consultant lobbyist gives, offers, or promises the gift, favour or benefit to the public office holder and the consultant lobbyist participates in the gift, favour or benefit.

Issue

Section 6.2 currently is unnecessarily complex and highly contextual, which makes compliance unnecessarily challenging for lobbyists.

The current wording of section 6.2 also creates potential loopholes that lobbyists might try to exploit to circumvent its purpose.

Explanation

Unnecessarily Complex and Highly Contextual

Section 6.2 requires lobbyists to complete a complicated and highly contextual two-step inquiry before they give or offer any gift, favour or benefit to a public office holder.

Under step one of the inquiry, lobbyists must consult the particular gift restrictions that apply to the relevant public office holder to confirm that the public office holder is allowed to accept the contemplated gift, favour or benefit under those restrictions. The answer as to what is acceptable may vary considerably depending on the particular situation and public office holder at issue, as different public officer holders are subject to different restrictions.

For example, lobbyists need to determine that, pursuant to the *Conflicts of Interest Act,* they cannot offer MLAs or Ministers tangible gifts with a value over $200 or invitations to events, conferences or meetings with a total value over $400 in a calendar year.

Lobbyists also need to determine that, under the Code of Conduct for Employees Serving in the Offices of the Premier and Cabinet Ministers (which is set out in an order in council), they cannot offer fees, gifts, or benefits that exceed a total value of $200 in a calendar year to a political staffer.

In addition, for members of the public service or employees and board members of prescribed Provincial entities, before offering any gift, favour or benefit, lobbyists need to locate a copy of the relevant code of conduct to determine the applicable gift limits.

Once a lobbyist has confirmed that a gift, favour or benefit is within the relevant public office holder's acceptable limits under step one, then the lobbyist must complete step two of the inquiry by considering whether accepting such a gift, favour or benefit would place the public office holder in a conflict of interest.

It is possible, depending on who is offering or paying for it and the particular relationship and circumstances between them and the recipient public office holder, that a gift, favour or other benefit within the acceptable limits under step one still could put the public office holder in a conflict of interest under step two and hence be prohibited. For example, any past, current or anticipated official dealings, lobbying, or competitive procurement processes involving the relevant parties would be relevant in step two of the inquiry.

In contrast, British Columbia's *Lobbyists Transparency Act* achieves the goals of section 6.2 more straightforwardly by making the acceptable dollar value limit clear and consistent, as well as by making clear and consistent the type of situation in which offering a gift, favour or benefit would be acceptable for lobbyists.

In British Columbia, lobbyists cannot give or promise any gift or other benefit to a public office whom the lobbyist is lobbying, unless: (1) the gift or benefit is given or promised under the protocol or social obligations that normally accompany the duties or responsibilities of office of the public office holder; and (2) the total value of all such gifts or benefits given or promised by the lobbyist to the public office holder is $100 or less in a 12-month period.

This office supports British Columbia's approach, other than it is of the view that British Columbia's $100 total annual limit is too restrictive and that a $200 cumulative annual limit is more practical in Alberta.

Potential Loopholes

Section 6.2 applies to a "consultant lobbyist" or an "organization lobbyist", which, put broadly, the Act defines as persons who are paid to lobby as part of their duties.

There is a risk that some lobbyists could try to circumvent the purpose of section 6.2 by having another individual at their lobbyist organization who does not lobby as part of their duties, and hence does not meet the definition of a "consultant lobbyist" or an "organization lobbyist" in the Act, give, offer or promise a prohibited gift, favour or benefit to the public office holder on behalf of and for the benefit of the lobbyist and the lobbying activities.

For example, an employee or a board member of an organization lobbyist organization who does not "lobby" as part of their duties might offer a public office holder a prohibited invitation to an event at which the organization's "organization lobbyists" would lobby the public office holder, but the lobbyist organization might take the position that the invitation is acceptable because it was not the individual "organization lobbyists" in the organization who specifically offered it.

Another potential circumstance that would circumvent the purpose of section 6.2 is where a client of a consultant lobbyist gives, offers or promises a prohibited gift, favour or benefit to a public office holder and the client's consultant lobbyist participates in the prohibited gift, favour or benefit. For example, a client could extend a prohibited event invitation to a public office holder and have the client's consultant lobbyist participate in the event alongside the client and the public office holder. In that scenario, the prohibited event invitation benefits the consultant lobbyist's lobbying activities on behalf of the client, even though it was not the "consultant lobbyist" who specifically extended the invitation.

Although this office is of the view that section 6.2 already would preclude lobbyists from indirectly giving or offering to public office holders what they cannot give or offer directly, these issues should be expressly clarified and addressed in the Act to avoid potential attempts to circumvent the spirit of section 6.2.

As is the case with the gift prohibition in British Columbia's *Lobbyists Transparency Act*, section 6.2 should state expressly that a lobbyist shall not "directly or indirectly" give, offer or promise a gift, favour or other benefit to a public office holder whom the lobbyist is lobbying or intends to lobby other than as permitted in that section.

A subsection also should be added that expressly states that, for the purposes of section 6.2, an organization lobbyist or consultant lobbyist is deemed to give, offer or promise a gift, favour or benefit to a public office holder if any employee, director, officer, partner or proprietor of the organization lobbyist's organization or consultant lobbyist's organization gives, offers, or promises the gift, favour or benefit to the public office holder.

Similarly, a subsection should be added that expressly states that, for the purposes of section 6.2, a consultant lobbyist is deemed to give, offer or promise a gift, favour or benefit to a public office holder if a client of the consultant lobbyist gives, offers, or promises the gift, favour or benefit to the public office holder and the consultant lobbyist participates in the gift, favour or benefit.

Examples of where a consultant lobbyist would be considered to "participate in" a gift, favour or benefit would include: an event, conference, or meeting invitation where the consultant lobbyist attends the event, conference, or meeting; a gift, favour or benefit for which the consultant lobbyist paid all or part of its cost; a gift, favour or benefit for which the consultant lobbyist is acknowledged as being one of the sources.

Relevant Provisions

Prohibited gifts

6.2 A consultant lobbyist or organization lobbyist shall not, in the course of lobbying activities, give or promise any gift, favour or other benefit to the public office holder being or intended to be lobbied that the public office holder is not allowed to accept or that, if given, would place the public office holder in a conflict of interest.

5. Require disclosure in lobbyist registrations of gifts, favours or benefits offered to public office holders within the last 12 months

Recommendation

To enhance public transparency and accountability and to promote compliance with the section 6.2 ‘prohibited gifts’ provision, the Act should require the designated filer of a consultant lobbyist or an organization lobbyist to declare in a lobbyist registration (whether an initial filing or a subsequent update) any gifts, favours, or other benefits that, to the knowledge of the designated filer after reasonable inquiry, were offered to a public office holder within the last 12 months by a lobbyist named in the registration.

With respect to each such gift, favour or benefit, the designated filer should be required to disclose in the registration (whether an initial filing or a subsequent update) the following prescribed information:

- a description of the gift, favour or benefit;
- a description of the circumstances under which the gift, favour or benefit was offered;
- the total market value of the gift, favour or benefit;
- the first and last name and position title of the public office holder to whom the gift, favour or benefit was offered;
- the date that the gift, favour or benefit was offered to the public office holder; and
- a statement as to whether the public office holder accepted the gift, favour or benefit.

Issue

The Act does not do enough to promote public transparency and accountability about gifts, favours or benefits from lobbyists to public office holders. It also does not do enough to facilitate enforcement of the section 6.2 ‘prohibited gifts’ provision.

Explanation

Schedules 1 and 2 of the Act require the designated filer of a consultant lobbyist or an organization lobbyist to declare in their registrations that every lobbyist named in the

registration has complied with the 'contracting prohibitions' in section 6 of the Act and the 'prohibited gifts' provision in section 6.2 of the Act.

With a view to enhancing compliance, transparency, and accountability with respect to the section 6 'contracting prohibitions', Schedules 1 and 2 also require a designated filer to disclose in a lobbyist registration whether any person associated with a lobbyist named in the registration holds a contract for providing paid advice to a Government department or a prescribed Provincial entity and, if so, the name of the relevant department or prescribed Provincial entity.

However, Schedules 1 and 2 do not include a similar disclosure requirement to enhance compliance, transparency, and accountability with respect to the section 6.2 'prohibited gifts' provision.

It would provide necessary and currently lacking public transparency and accountability about gifts, favours or benefits from lobbyists to public office holders, as well promote compliance with and enforcement of the section 6.2 'prohibited gifts' provision, to require the designated filer of a consultant lobbyist or an organization lobbyist to disclose in their registrations (whether an initial filing or a subsequent update) information about gifts, favours or benefits offered to a public office holder within the last 12 months by a lobbyist named in the registration.

Recent amendments to the *Lobbyists Transparency Act* in British Columbia have gone even further in this regard. Lobbyists in British Columbia must not only declare in a monthly registration information about any gift or other benefit given or promised by a lobbyist named in the registration to a public office holder (including the name of the public office holder; a description of the gift or benefit; the value of the gift or benefit; the circumstances under which the gift or benefit was give or promised; and the date on which it was given or promised), but also information about political, sponsorship or recall contributions made by a lobbyist named in the registration since a writ was issued for the last provincial election.

This office supports British Columbia's approach, other than it is of the view that only information about gifts, favours or benefit offered by lobbyists to public office holders within the last 12 months should be required in registrations in the Alberta Lobbyist Registry (whether an initial filing or a subsequent update) at this time, as political contributions currently are not within the scope of the Act or the purview of this office.

Relevant Provisions

Schedule 1
Consultant Lobbyist Return

[…]

2 The designated filer shall set out in the return for the purpose of section 4 of this Act the following with respect to the undertaking:

[…]

(r) a declaration stating that

(i) no consultant lobbyist named in the return holds a contract for providing paid advice to a department or prescribed Provincial entity, or that each consultant lobbyist named in the return who holds a contract has an exemption from the Ethics Commissioner for the contract, and

(ii) the following are not in contravention of section 6, 6.1 or 6.2 of this Act:

(A) every consultant lobbyist named in the return;

(B) to the knowledge of the designated filer after reasonable inquiry, every person associated with those consultant lobbyists;

(s) a statement stating whether, to the knowledge of the designated filer after reasonable inquiry, any person associated with a consultant lobbyist named in the return holds a contract for providing paid advice to a department or a prescribed Provincial entity, and if so, the name of the department or prescribed Provincial entity;

[…]

Schedule 2
Organization Lobbyist Return

[…]

2 The designated filer shall set out in the return for the purpose of section 5 the following information:

[…]

(q) a declaration stating that

(i) no organization lobbyist named in the return holds a contract for providing paid advice to a department or prescribed Provincial entity, or that each organization lobbyist named in the return who holds a contract has an exemption from the Ethics Commissioner for the contract, and

(ii) the following are not in contravention of section 6 or 6.2 of this Act:

(A) every organization lobbyist named in the return;

(B) to the knowledge of the designated filer after reasonable inquiry, every person associated with those organization lobbyists;

(r) a statement stating whether, to the knowledge of the designated filer after reasonable inquiry, any person associated with an organization lobbyist named in the return holds a contract for providing paid advice to a department or a prescribed Provincial entity, and if so, the name of the department or prescribed Provincial entity;

6. Shorten the time for organization lobbyists to file Initial Returns

Recommendation

To improve public transparency and accountability about in-house lobbying and to reduce inequality between the two types of lobbyists, the deadline by when organization lobbyists must file an Initial Return should be amended to be within 30 days, rather than within two months, after the organization meets the "organization lobbyist" threshold.

Issue

There is significant disparity between the deadlines by when organization lobbyists and consultant lobbyists must file an Initial Return. This results in an unnecessarily long delay in public transparency and accountability about lobbying by organization lobbyists and unnecessary inequality between the two types of lobbyists.

Explanation

Organization lobbyists must file an Initial Return within two months of meeting the requirement to register, whereas consultant lobbyists must file an Initial Return within 10 days of meeting the requirement to register.

Not only would a 30-day (rather than a two-month) Initial Return filing deadline for organization lobbyists be closer to the Initial Return filing deadline for consultant lobbyists, but it also would be consistent with the existing 30-day deadline for filing Notices of Change with which organization lobbyists already must comply.

Relevant Provisions

Duty to file return: consultant lobbyist

4(1) The designated filer in respect of an undertaking entered into by a consultant lobbyist shall file with the Registrar a return in the prescribed form and containing the information required in Schedule 1 with respect to the undertaking **not later than 10 days** after entering into the undertaking.

Duty to file return: organization lobbyist

5(1) The designated filer of an organization that has an organization lobbyist shall file with the Registrar a return in the prescribed form and containing the information required in Schedule 2

(a) **within 2 months** after the day on which an individual in that organization becomes an organization lobbyist, and
[…]

7. Narrow the exemption for in-house personnel of non-profit organizations

Recommendation

To provide necessary and currently lacking public transparency and accountability about in-house lobbying and to reduce unwarranted inequality among non-profit organizations, the broad exemption for the in-house personnel of certain non-profit organizations should be removed from the Act and replaced with a more targeted exemption for non-profit organizations as follows.

There should be an exemption in the Act for the directors, officers and employees of a non-profit organization that is established for the purpose of providing community support services to members of the public.

The Act should define “non-profit organization” for the purposes of this exemption. In particular, the Lobbyist Registrar’s interpretation of it as “an organization that is organized and operated exclusively for any other purpose except profit and no part of the income of which is payable to, or is otherwise available for the private financial advantage of, any proprietor, member or shareholder of the organization” should be considered in this regard.

The Act should state expressly that, for the purposes of this exemption, a non-profit organization will be considered to be “established for the purpose of providing community support services to members of the public” where the non-profit organization spends 75% or more of its total annual budget on providing tangible services directly to members of the public in any one or more of the following subject areas: education; animals; arts; children; community sports or recreation (non-professional); culture; disability; health; relief of poverty; seniors; social or financial assistance.

The Act also should state expressly that, for the purposes of this exemption, “members of the public” does not include the members, officers, employees, directors, shareholders, proprietors, or partners of the organization.

The Act further should state expressly that, for greater certainty and without altering the scope of this exemption, the following types of organizations do not fall within this exemption: political organizations (e.g. advocacy groups; political parties); research or policy institutes; professional organizations (including associations and regulatory bodies); industry organizations; business organizations; trade or labour organizations (including unions).

Issue

The current exemption in the Act for in-house personnel of non-profit organizations is overly broad, which creates a serious gap in public transparency and accountability about in-house lobbying and unwarranted inequality among non-profit organizations.

Explanation

There is an exemption in subsection 3(1)(i) of the Act for the directors, officers and employees of non-profit organizations (1) that are not established to serve management, union or professional interests and (2) that do not have a majority of members that are profit-seeking enterprises or representatives of profit-seeking enterprises.

Those individuals are not subject to the application of the Act when they are acting in their official capacity as a director, officer or employee of that type of non-profit organization and so they do not need to register as lobbyists for any lobbying that they do on behalf of their non-profit organization in that official capacity.

Note that this exemption never would cover any lobbying done by a consultant lobbyist on behalf of a client that is a non-profit organization. It only covers the in-house directors, officers and employees of a qualifying non-profit organization.

The Act does not define a “non-profit” organization, so the Lobbyist Registrar interprets it in this context to mean an organization that is organized and operated exclusively for any other purpose except profit and no part of the income of which is payable to, or is otherwise available for the private financial advantage of, any proprietor, member or shareholder of the organization.

This exemption does not capture organizations such as unions, professional associations, or business or industry associations. Paid in-house personnel of those types of non-profit organizations currently must register their lobbying activities if they meet the “organization lobbyist” threshold.

However, this exemption otherwise captures a considerably broad scope of organizations that are non-profit. This can include organizations that have a mandate to carry out a significant amount of lobbying and that lobby about divisive special interest issues.

Those organizations currently can avoid publicly registering their lobbying because of this exemption, which creates a serious gap in transparency and accountability. Regardless of one’s personal stance on any particular issue, it is in the public interest to have public transparency and accountability about those lobbying activities.

In addition, this broad exemption creates unwarranted inequality among non-profit organizations. It suggests that it is in the public interest to have transparency about

lobbying by organizations like unions, professional associations, or business or industry associations, but that it is not in the public interest to have transparency about lobbying by any other non-profit organizations.

As a specific example, the Lobbyist Registrar has received feedback in the past from a registered non-profit industry association to the effect that it was unfair that the industry association was required to publicly disclose its lobbying activities, while there was an exempt non-profit organization that regularly lobbied for policies that the industry association felt were detrimental to the livelihood of the industry members and the industry association was unable to see any public information about the exempt organization's lobbying activities.

Relevant Provisions

Interpretation

1(1) In this Act,

[…]

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

[…]

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

[…]

Restrictions on application of Act

3(1) This Act does not apply to any of the following when acting in their official capacity:

[…]

(i) directors, officers or employees of an organization referred to in section 1(1)(g)(iv) not constituted to serve management, union or professional interests nor having a majority of members that are profit-seeking enterprises or representatives of profit-seeking enterprises;

B. AMENDMENTS TO REDUCE UNNECESSARY COMPLEXITY

1. Allow the Registrar to compel information and documents without an investigation that results in a report tabled in the Legislative Assembly

Recommendation

To allow proportionality and flexibility when addressing potential breaches of the Act, the Act should be amended to give the Lobbyist Registrar the power to compel information or documents to determine if there was a breach and what enforcement action is appropriate to promote compliance in the circumstances, without having to commence an investigation that results in a report tabled in the Legislative Assembly.

Issue

The Act does not give flexible or proportionate investigative powers to the Registrar when addressing potential breaches of the Act, which creates the potential for unnecessary administrative burden for this office and the Legislative Assembly and unnecessary public embarrassment for lobbyists.

Explanation

Section 15 of the Act enables the Lobbyist Registrar to commence an investigation, which would result in an investigation report that is tabled by the Speaker in the Legislative Assembly, if there is reason to believe that an investigation is necessary to ensure compliance with the Act.

When conducting an investigation under section 15, the Registrar may, in the same manner and to the same extent as a justice of the Alberta Court of Queen's Bench, summon and enforce the attendance of individuals before the Registrar, compel them to give oral or written evidence on oath, and compel persons to produce any documents or other things that the Registrar considers relevant to the investigation. The Registrar also may administer oaths and receive and accept information, whether or not it would be admissible as evidence in a court of law.

Without commencing an investigation under section 15, which results in a report tabled in the Legislative Assembly, the Act does not give the Registrar the power to compel information and documents.

However, actual or potential breaches of the Act often are too minor to warrant a full investigation that ends with a report tabled in the Legislative Assembly. Many breaches involve missing a registration filing deadline by a non-egregious amount of time.

Inquiries and requests for information and/or documents by the Registrar usually are sufficient to determine whether there is breach. If there is a breach, a written warning, an administrative penalty, and/or a direction to carry out the appropriate mitigating action (such as file the outstanding registration) usually is sufficient to address the breach and encourage compliance.

It creates an unnecessary administrative burden for this office and the Legislative Assembly, and an unnecessary public embarrassment for lobbyists, to require the tabling of an investigative report in the Assembly every time the Registrar needs information and documents to look into and address a potential breach of the Act.

Giving the Registrar the power to compel information and documents, short of an investigation that results in a report tabled in the Legislative Assembly, to determine if there was a breach and the appropriate enforcement action would provide flexibility and proportionality when addressing potential breaches of the Act.

Relevant Provisions

Investigations

15(1) The Registrar shall conduct an investigation if the Registrar has reason to believe that an investigation is necessary to ensure compliance with this Act.

(2) The Registrar may refuse to conduct or may cease an investigation with respect to any matter if the Registrar is of the opinion that

(a) the matter is one that could more appropriately be dealt with according to a procedure provided for under another enactment,

(b) the matter is minor or trivial,

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

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

(3) For the purpose of conducting an investigation, the Registrar may

(a) in the same manner and to the same extent as a justice of the Court of Queen's Bench,

(ii) summon and enforce the attendance of individuals before the Registrar and compel them to give oral or written evidence on oath, and

(ii) compel persons to produce any documents or other things that the Registrar considers relevant to the investigation, and

(b) administer oaths and receive and accept information, whether or not it would be admissible as evidence in a court of law.

[…]

Report

17(1) After an investigation has been conducted by the Registrar, the Registrar shall prepare a report of the investigation, including findings and conclusions and reasons for the findings and conclusions.

(1.1) The Ethics Commissioner shall submit the report referred to in subsection (1) to the Speaker of the Legislative Assembly.

(2) On receiving the report from the Ethics Commissioner, the Speaker shall lay the report before the Legislative Assembly if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting.

(3) If the Legislative Assembly is not sitting when the Ethics Commissioner submits the report to the Speaker, the Speaker shall forthwith distribute a copy of the report to the office of each Member of the Legislative Assembly.

2. Allow the Registrar to issue interpretive bulletins and advisory opinions

Recommendation

To ease unnecessary administrative complexity and to facilitate timely provision of advice to lobbyists and the public, the Act should be revised to state that the Lobbyist Registrar may issue advisory opinions and interpretation bulletins with respect to the enforcement, interpretation or application of the Act or any regulations under the Act.

Issue

The Act restricts the power to issue advisory opinions and interpretive bulletins about the Act to the Ethics Commissioner, which does not reflect the reality of the Registrar's role and which fosters unnecessary inconvenience and delay in the provision of advice to lobbyists and the public.

Explanation

Subsection 14(1) of the Act states that the Ethics Commissioner, but not the Lobbyist Registrar, may issue advisory opinions and interpretation bulletins with respect to the enforcement, interpretation, or application of the Act.

Pursuant to subsection 11(2) of the Act, the Ethics Commissioner may authorize an individual in this office to administer and enforce the Act as Registrar. The individual authorized to be Registrar also is the General Counsel to this office and therefore has the education and skills necessary to interpret and advise on the Act.

In practice, it is the Registrar who is responsible for interpreting, administering, and enforcing the Act and for educating lobbyists and the public about the Act on a day-to-day basis. The Registrar regularly advises lobbyists about the Act and prepares the educational resources that explain the Act, such as the guidance documents and FAQ, available on the Alberta Lobbyist Registry. Section 14 of the Act should reflect the reality of the Registrar's role in this regard.

It also promotes unnecessary inconvenience in this office, and delay in the provision of advice and interpretations to lobbyists and the public about the Act, to require the Ethics Commissioner to be responsible for all advisory opinions and interpretation bulletins about the Act.

In addition, even if an employee of this office has been authorized as Registrar, subsection 11(4) of the Act makes clear that the Ethics Commissioner still has all of the powers, duties and functions of the Registrar for the purposes of this Act. If subsection

14(1) of the Act were revised to state that the Registrar may issue advisory opinions and interpretation bulletins, that would not preclude the Ethics Commissioner from also being able to do so if desired.

Relevant Provisions

Registrar

11(1) There shall be a Registrar for the purposes of this Act.

(2) The Ethics Commissioner may authorize any individual in the Office of the Ethics Commissioner to be the Registrar and to exercise or perform, subject to any restrictions or limitations that the Ethics Commissioner may specify, any of the powers, duties or functions of the Registrar under this Act.

(3) To the extent that the Ethics Commissioner does not make an authorization under subsection (2), the Ethics Commissioner shall act as Registrar.

(4) Whether or not the Ethics Commissioner makes an authorization under subsection (2), the Ethics Commissioner has the powers, duties and functions of the Registrar for the purposes of this Act.

[…]

Advisory opinions and interpretation bulletins

14(1) The Ethics Commissioner may issue advisory opinions and interpretation bulletins with respect to the enforcement, interpretation or application of this Act or the regulations under this Act.

(2) Advisory opinions and interpretation bulletins issued under subsection (1) are not binding.

3. Allow the Registrar to approve a “designated filer” who is not the highest-ranking paid senior officer of the lobbyist organization

Recommendation

To ease unnecessary administrative complexity for lobbyists and this office, the Act should be amended to give the Lobbyist Registrar the discretion to approve the selection of somebody other than the highest-ranking paid senior officer of a lobbyist organization to be the organization’s “designated filer” for the purposes of the Act.

Examples of alternative designated filers that might be approved would include the highest-ranking paid officer or employee of the organization who is responsible for the organization’s Alberta or Canada operations, the organization’s government relations activities, or the organization’s regulatory compliance.

Issue

The inflexible requirement in the Act that the “designated filer” of a lobbyist organization must be the highest-ranking paid senior officer of the organization creates unnecessary inconvenience for lobbyists and this office.

Explanation

The Act requires the "designated filer" of a consultant lobbyist or an organization lobbyist to certify and file the lobbyist's registrations in the Alberta Lobbyist Registry in compliance with the Act.

The Act also requires that the highest-ranking paid senior officer of the lobbyist organization be the “designated filer”. This means that the individual who has primary responsibility for overseeing the day-to-day operations of an organization must be the individual responsible for that organization's lobbyist registrations.

Only if a lobbyist does not have any senior officer, then the individual organization lobbyist or individual consultant lobbyist (as the case may be) is the “designated filer”.

The Act does not provide any discretion or flexibility about the “designated filer” definition. As a result, this office cannot allow lobbyist organizations that have a senior officer to select somebody other than the highest-ranking paid senior officer to be the “designated filer”.

However, it often is unnecessarily onerous and inconvenient to require lobbyist organizations to have their highest-ranking paid senior officer be responsible for filings in the Alberta Lobbyist Registry. It makes filing registrations more difficult for lobbyists. It also complicates this office's enforcement efforts, as it can be hard to get in contact with the highest-ranking paid senior officer of an organization.

This is particularly the case for organizations where: the highest-ranking paid senior officer is located in another jurisdiction (especially if outside of Canada); the organization is large and the lobbyists are not usually in contact with the highest-ranking paid senior officer; the highest-ranking paid senior officer only works part time; and/or the highest-ranking paid senior officer has little to no involvement in the lobbying activities or even in the organization's broader operations in Alberta.

Relevant Provisions

Interpretation

1(1) In this Act,

[…]

(d) "designated filer" means

(i) the senior officer of an organization who occupies the highest ranking position in that organization and receives payment for the performance of his or her functions, or

(ii) if there is no senior officer, the organization lobbyist or consultant lobbyist, as the case may be;

[…]

Duty to file return: consultant lobbyist

4(1) **The designated filer** in respect of an undertaking entered into by a consultant lobbyist shall file with the Registrar a return in the prescribed form and containing the information required in Schedule 1 […]

[…]

Duty to file return: organization lobbyist

5(1) **The designated filer** of an organization that has an organization lobbyist shall file with the Registrar a return in the prescribed form and containing the information required in Schedule 2 […]

[…]

Subsequent filings

10(1) **A designated filer** who files a return under section 4 or 5 shall provide the Registrar with the following information within the applicable period:

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

(b) any information required to be provided in a return under section 4 or 5 the knowledge of which the designated filer acquired only after the return was filed, within 30 days after the knowledge is acquired;

(c) any information requested by the Registrar to clarify any information provided by the designated filer under this section, within 30 days after the request is made.

(2) Within 30 days after the completion or termination of an undertaking for which a return was filed, **the designated filer** who filed the return shall inform the Registrar of the completion or termination of the undertaking.

(3) Within 30 days after an individual named in a return as an organization lobbyist ceases to be an organization lobbyist or ceases to be an employee of the employer named in the return, **the designated filer** shall inform the Registrar of the event.

(4) Where a return has been filed by a designated filer described in section 1(1)(d)(i), **the designated filer** shall, within 30 days after an individual becomes an organization lobbyist or is engaged as a consultant lobbyist with respect to an undertaking, inform the Registrar of that event.

4. Narrow the requirement to disclose in a lobbyist registration government, government agency, or prescribed Provincial entity funding

Recommendation

To alleviate unnecessary burden on lobbyists and their clients and to make enforcement feasible, the Act should be revised to require disclosure in lobbyist registrations of funding received or requested by the client or the organization (as applicable) within the last 12 months from the Government of Alberta, an agency of the Government of Alberta, or a prescribed Provincial entity, rather than disclosure of funding received or requested by the client or the organization (as applicable) within the last 12 months from any government, government agency, or prescribed Provincial entity.

Issue

The requirement in the Act for lobbyists to disclose in their registrations any government or government agency funding received or requested by the organization or the client (as applicable) in the last 12 months is excessively broad, which makes compliance unduly onerous and enforcement infeasible.

Explanation

The Act requires lobbyists to disclose in their registrations the name of each government, government agency, or prescribed Provincial entity from which the client (in the case of a consultant lobbyist) or the organization (in the case of an organization lobbyist) requested or received funding within the last 12 months, as well as the amount(s) of such funding.

The terms “government” and “government agency” in that requirement include a government or government agency at any level and in any geographical area, whether at the federal, provincial, municipal, regional, or state level and whether in Canada or abroad.

The Lobbyist Registrar has received feedback from lobbyists to the effect that this disclosure requirement is excessively broad and onerous.

In addition, it is not feasible for the Registrar to regularly ascertain all the funding requested or received by an organization or a client from any government or government agency in the world within the last 12 months in order to be able to properly enforce this broad disclosure requirement.

Relevant Provisions

Schedule 1
Consultant Lobbyist Return

[…]

2 The designated filer shall set out in the return for the purpose of section 4 of this Act the following with respect to the undertaking:

[…]

(m) the name of **any government, government agency or prescribed Provincial entity** that funded the client, in whole or in part, within the last 12 months and the amount of the funding;

(m.1) the name of **any government, government agency or prescribed Provincial entity** from which the client requested funding within the last 12 months and the amount of the funding requested;

[…]

Schedule 2
Organization Lobbyist Return

[…]

2 The designated filer shall set out in the return for the purpose of section 5 the following information:

[…]

(l) the name of **any government, government agency or prescribed Provincial entity** that funded the organization, in whole or in part, within the last 12 months and the amount of the funding;

(l.1) the name of **any government, government agency or prescribed Provincial entity** from which the organization requested funding within the last 12 months and the amount of the funding requested;

5. Allow a parent corporation to include the in-house lobbyists and lobbying of its subsidiary corporations in its organization lobbyist registration

Recommendation

To reduce administrative burden for organization lobbyists while still providing public transparency about their lobbying activities, the Act should be amended to take a more flexible and holistic approach to the registration of collective in-house lobbying by a group of parent and subsidiary corporations by allowing a parent corporation to include the organization lobbyists and lobbying activities of its subsidiary corporations in its organization lobbyist registration.

Issue

The Act takes an unnecessarily inflexible and narrow approach to the registration of collective in-house lobbying by a group of parent and subsidiary corporations.

Explanation

The “organization” definition, the “organization lobbyist” definition, and the organization lobbyist filing requirement in the Act together mean that a corporation must file its own organization lobbyist registration in the Alberta Lobbyist Registry that covers only the lobbying activities and duties on behalf of that corporation of that corporation’s own paid employees, paid directors and paid officers.

If any subsidiary corporation of that corporation also has any paid employees, paid directors or paid officers who lobby or have a duty to lobby, then the subsidiary corporation would need to file its own organization lobbyist registration to register the lobbying activities and duties of the subsidiary corporation’s own employees, directors and officers.

This approach, although straightforward, does not provide flexibility to address situations in which there is parent corporation that carries out all or most of its operations collectively through individuals employed by numerous subsidiary corporations. In those situations, the employees of the various subsidiary corporations lobby and have a duty to lobby on behalf of and for the benefit of the parent corporation and its group of subsidiary corporations at large.

Currently, the Act would require the parent corporation and each of the subsidiary corporations in that scenario to each file their own separate registration in the Alberta Lobbyist Registry to register the lobbying activities and duties of their respective personnel. Depending on how many subsidiary corporations are at issue, one group of

parent and subsidiary corporations could be required to maintain many registrations in the Alberta Lobbyist Registry at the same time to cover their collective lobbying activities and duties, even though the lobbying is carried out on behalf of and for the benefit of the group at large.

This creates an unnecessarily administrative burden for those corporations. Their collective lobbying activities and duties could be transparently registered in the Alberta Lobbyists Registry with less administrative complexity if the Act were to allow the parent corporation to include the organization lobbyists and lobbying activities of its subsidiary corporations in its organization lobbyist registration.

Under this less burdensome approach, the collective amount of time spent lobbying and preparing to lobby by the employees, officers and directors across the group of parent and subsidiary corporations at large should count towards the "organization lobbyist" threshold that triggers the need to register.

The Act also should require that the full names and business addresses of the parent corporation and of each of the relevant subsidiary corporations be disclosed in the registration.

To enhance public transparency in practice under this less burdensome approach, this office also would seek to revise the search function in the Alberta Lobbyist Registry application so that registrations could be searched by the name of a subsidiary corporation listed in a registration, in addition to by the name of the parent corporation.

Note that the Act, in subsection 1(4), conveniently already defines when a corporation is a subsidiary of another corporation for the purposes of the Act.

Relevant Provisions

Interpretation

1(1) In this Act,

[…]

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

(i) a business, trade, industry, enterprise, professional or voluntary organization or institution;

(ii) a trade union or labour organization;

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

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

(v) a government other than the Government of Alberta;

(h) "organization lobbyist" means, subject to subsection (2), **an employee, officer or director of an organization** who receives a payment for the performance of his or her functions, or a sole proprietor, or a partner in a partnership,

(i) who lobbies or whose duty is to lobby **on behalf of the organization** at least 50 hours annually, or

(ii) whose lobbying or duty to lobby **on behalf of the organization** together with the lobbying or the duty to lobby of other persons in the organization amounts to at least 50 hours annually;

[…]

(4) For the purposes of this Act, a corporation is a subsidiary of another corporation if

(a) securities of the corporation to which are attached more than 50% of the votes that may be cast to elect directors of the corporation are held, otherwise than by way of security only, directly or indirectly, whether through one or more subsidiaries or otherwise, by or for the benefit of the other corporation, and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation.

[…]

Duty to file return: organization lobbyist

5(1) The designated filer of an organization that has an organization lobbyist shall file with the Registrar a return in the prescribed form and containing the information required in Schedule 2

6. Clarify that arranging a meeting on behalf of a client between a public office holder and the consultant lobbyist is "lobbying" for the consultant lobbyist

Recommendation

To improve clarity and compliance and to address a potential gap in the Act, the Act should be revised to state expressly that arranging a meeting on behalf of a client between a public office holder and any other individual, including the consultant lobbyist alone, is "lobbying" for a consultant lobbyist.

Issue

There is potential uncertainty in the Act as to whether arranging a meeting on behalf of a client between a public office holder and the consultant lobbyist alone is "lobbying" for the consultant lobbyist. This may create confusion for lobbyists that may affect their compliance. It also creates a possible gap in the Act.

Explanation

Subsection 1(1)(f)(ii)(A) of the Act states that the definition of "lobby" for a consultant lobbyist includes "to arrange a meeting between a public office holder and any other individual".

The basis for this appears to be to reflect that consultant lobbyists often have superior contacts and connections with public office holders that they can be paid to use to give clients special and enhanced access to public office holders.

What potentially is uncertain about subsection 1(1)(f)(ii)(A) is whether "any other individual" refers to any individual *other than the public office holder* or any individual *other than the consultant lobbyist*.

If "any other individual" means "any individual *other than the consultant lobbyist*", then the "lobby" definition would not capture a scenario in which a consultant lobbyist arranges a meeting on behalf of a client between only the consultant lobbyist and a public office holder to, for example, promote or raise the profile of the client with the public office holder.

However, if "any other individual" means "any individual *other than the public office holder*", then the "lobby" definition would capture a scenario in which a consultant lobbyist arranges a meeting on behalf of a client between only the consultant lobbyist and a public office holder to, for example, promote or raise the profile of the client with the public office holder.

This office is of the view that the latter approach better reflects the purpose of subsection 1(1)(f)(ii)(A). If a consultant lobbyist is arranging a meeting between only the consultant lobbyist and a public office holder on behalf of and for the benefit of a client, then the client still is paying for and getting special, enhanced access to the public office holder for its benefit through the consultant lobbyist's contacts and connections, even if the client itself does not attend the meeting.

Confirming this approach expressly in the Act would provide clarity to lobbyists, which would improve their compliance. It also would address a possible gap in the Act.

Relevant Provisions

Interpretation

1(1) In this Act,

[…]

(f) "lobby" means, subject to section 3(2),

[…]

(ii) only in relation to a consultant lobbyist,

(A) to arrange a meeting between a public office holder **and any other individual**, or

[…]

7. Revise the relevant time frame for the disclosure requirement in lobbyist registrations about financial contributions to the lobbying

Recommendation

To be clear and better achieve its purpose, the relevant time frame for the disclosure requirement in lobbyist registrations about financial contributions to the lobbying should be revised. Specifically, it should be amended to require the designated filer of a lobbyist to identify in a lobbyist registration any individual or organization that contributed $1,000 or more towards the lobbying activities within the last 12 months, rather than during the individual's or organization's financial year that preceded the filing of the return.

Issue

The relevant time frame for the disclosure requirement in lobbyist registrations about financial contributions to the lobbying is unclear, confusing, and does not achieve the disclosure requirement's purpose.

Explanation

Subsection 2(d) of Schedules 1 and 2 of the Act require the designated filer of a lobbyist to identify in a lobbyist registration any individual or organization that contributed, during the individual's or organization's financial year that preceded the filing of the return, $1,000 or more towards the lobbying activities.

However, the specification that the money must have been contributed by an individual or organization "during the individual's or organization's financial year that preceded the filing of the return" in order for that money to need to be disclosed in a lobbyist registration is unclear and confusing.

A financial year typically is associated with a business. It is not clear what the Act means by an "individual's…financial year". Individuals who contribute money towards the lobbying activities may not have any financial year.

Further, the specification that the money must have been contributed by an individual or organization "during the individual's or organization's financial year that preceded the filing of the return" in order for that money to need to be disclosed in a lobbyist registration does not achieve the disclosure requirement's purpose.

It allows a lobbyist to avoid disclosing any financial contributions that are made during the time that lobbying actually is taking place and the associated registration is active in the Alberta Lobbyist Registry.

The following example scenario illustrates this point:

> A consultant lobbyist is engaged by a client on June 30, 2021 to lobby on the client's behalf from July 1 to September 1, 2021. The consultant lobbyist files an Initial Return in the Alberta Lobbyist Registry to register the client engagement in early July 2021 and then terminates the registration in early September 2021, after the client engagement is complete. An organization (other than the client) that has a financial year end of December 31st contributes more than $1,000 towards the consultant lobbyist's lobbying activities on behalf of that client during the July 1 to September 1, 2021 time frame when the lobbying is taking place and the associated registration is active.

In that scenario, the consultant lobbyist never would be required to disclose in its registration for that client engagement the fact that the other organization contributed financially to the lobbying activities on behalf of the client.

This is because the money was not contributed during the other organization's financial year (ending December 31, 2020) that preceded the consultant lobbyist's filing of its Initial Return in early July 2021, so the contribution would not need to be disclosed in the Initial Return. Also, the client engagement and associated registration terminated in September 2021, which is before the end of the organization's financial year in which the money was contributed (ending December 31, 2021), so the active registration never would need to be updated to disclose the contribution after the Initial Return is filed.

On the other hand, the meaning of "within the last 12 months" is clear. Changing the relevant time for this disclosure requirement to "within the last 12 months" also would better achieve the requirement's purpose by capturing funding that is contributed while the lobbying is taking place and the registration is active but that was not already contributed when the initial registration was filed.

Relevant Provisions

Schedule 1
Consultant Lobbyist Return

[…]

2 The designated filer shall set out in the return for the purpose of section 4 of this Act the following with respect to the undertaking:

[…]

(d) the name and address of the client and of any individual or organization that, to the designated filer's knowledge after reasonable inquiry,

> […]
>
> (ii) contributed **during the individual's or organization's financial year that preceded the filing of the return** $1000 or more toward lobbying activities on behalf of the client;

[…]

Schedule 2
Organization Lobbyist Return

[…]

2 The designated filer shall set out in the return for the purpose of section 5 the following information:

[…]

(d) the name and address of any individual or organization that, to the knowledge of the designated filer after reasonable inquiry, contributed **during the individual's or organization's financial year that preceded the filing of the return** $1000 or more toward the lobbying activities;

8. Define “anything of value” in the “payment” definition

Recommendation

To provide clarity to stakeholders about a key term that defines the scope of the entire Act, a definition of “anything of value” for the purposes of the “payment” definition (in particular one that reflects the Lobbyist Registrar’s interpretation of the same) should be added to the Act.

Issue

“Anything of value” in the “payment” definition is an essential concept that delineates the scope of the entire Act, but it is nebulous and undefined in the Act.

Explanation

To be a “consultant lobbyist” or an “organization lobbyist”, and to be subject to the Act in general, a person must receive a “payment”.

The Act defines “payment” to mean “…money or anything of value…includ[ing] a contract, promise or agreement to pay money or anything of value…”.

However, it does not define “anything of value”, notwithstanding that it is a nebulous term that is crucial to the scope of the entire Act.

The Lobbyist Registrar has interpreted “anything of value” in this context to mean anything that has exchange value, meaning anything that is capable of being transferred to another person in open market in exchange for money, property, goods, or services.

On this interpretation, something that has subjective value to an individual but does not have exchange value would not be included in “anything of value” within the “payment” definition in the Act. For example, while the experience and fulfillment gained by an individual through the performance of their duties may have subjective value for that individual, they are not capable of being transferred to another person in open market in exchange for money, property, goods or services and so would not be considered “payment”.

Although the Registrar regularly gives guidance to lobbyists and has created educational resources for the Alberta Lobbyist Registry website that address this issue, clarifying the intended meaning of “anything of value” – a term that is essential to defining the Act’s entire scope - expressly in the Act would enhance stakeholders’ understanding of and compliance with the Act as a whole.

Relevant Provisions

Interpretation

1(1) In this Act,

[…]

(b) "consultant lobbyist" means, subject to subsection (2), a person who, **for payment**, undertakes to lobby on behalf of a client, and includes an individual engaged by a consultant lobbyist to lobby in respect of an undertaking;

[…]

(h) "organization lobbyist" means, subject to subsection (2), an employee, officer or director of an organization who **receives a payment** for the performance of his or her functions, or a sole proprietor, or a partner in a partnership, […]

(i) "**payment" means**, except in section 7 but subject to sections 6 and 6.1, money or **anything of value** and includes a contract, promise or agreement to pay money or **anything of value**, but does not include a reimbursement of expenses;

[…]

Restrictions on application of Act

3(1) This Act does not apply to any of the following when acting in their official capacity
[…]

(l) a person acting as a volunteer who does not receive **a payment**;

9. Define "any gift, favour or other benefit" for the purposes of section 6.2

Recommendation

To provide clarity to stakeholders and to assist in their compliance, a definition of "any gift, favour or other benefit" for the purposes of section 6.2 (in particular one that reflects the Lobbyist Registrar's interpretation of the same) should be added to the Act.

Issue

The Act imposes restrictions on lobbyists' ability to give or offer "gifts, favours or other benefits" to public office holders but does not define a "gift, favour or other benefit". Some lobbyists, particularly when the restrictions first came into effect, have experienced difficulty understanding that concept.

Explanation

Section 6.2 of the Act prohibits consultant lobbyists and organization lobbyists from giving or promising "any gift, favour or other benefit" to a public office holder being or intended to be lobbied (1) that the public office holder is not allowed to accept or (2) that, if given, would place the public office holder in a conflict of interest. Yet the Act does not define "any gift, favour or other benefit".

The Lobbyist Registrar has interpreted "any gift, favour or other benefit" in this context to mean anything of value given or offered free of charge or at a price that is less than its market value where there is no obligation of reimbursement. For example, an invitation or ticket to a conference or an event would be included.

Although the Registrar regularly gives guidance to lobbyists and has created detailed educational resources for the Alberta Lobbyist Registry website about this issue, stating the intended scope and meaning of "any gift, favour or other benefit" expressly in the Act would provide clarity to stakeholders and assist in their compliance.

Relevant Provisions

Prohibited gifts

6.2 A consultant lobbyist or organization lobbyist shall not, in the course of lobbying activities, give or promise **any gift, favour or other benefit** to the public office holder being or intended to be lobbied that the public office holder is not allowed to accept or that, if given, would place the public office holder in a conflict of interest.

10. Clarify that the deadline for filing a consultant lobbyist Initial Return is not determined in reference to when the lobbying starts or occurs

Recommendation

To provide clarity to consultant lobbyists and to improve their compliance, the Act should be amended to state expressly that a consultant lobbyist Initial Return must be filed not later than 10 days after the consultant lobbyist enters into the undertaking, regardless of when the lobbying activity contemplated by the undertaking commences or occurs.

Issue

Consultant lobbyists often mistakenly think that they need to register within 10 days of when they started lobbying, rather than within 10 days of when they entered into an undertaking to lobby on behalf a client as required by the Act.

Explanation

It is common for consultant lobbyists to be confused about the fact that the 10-day deadline by when a consultant lobbyist must file an Initial Return to register an undertaking to lobby on behalf of a client is *not* determined in reference to the date that the lobbying activities contemplated by the undertaking begin or take place. Rather, it is determined in reference to the date that the consultant lobbyist entered into the undertaking, even if the lobbying will not start or occur until a later point in time.

Although the Lobbyist Registrar regularly gives guidance to consultant lobbyists and has created educational resources for the Alberta Lobbyist Registry website to clarify this issue, it remains a common source of confusion. Addressing this issue expressly in the Act would provide clarity to consultant lobbyists and enhance their compliance.

Relevant Provisions

Interpretation

1(1) In this Act,

[…]

(n) "undertaking" means, with respect to a consultant lobbyist, an undertaking to lobby on behalf of a client.

Duty to file return: consultant lobbyist

4(1) The designated filer in respect of an undertaking entered into by a consultant lobbyist shall file with the Registrar a return in the prescribed form and containing the information required in Schedule 1 with respect to the undertaking not later than 10 days **after entering into the undertaking**.

11. Remove the requirement to declare in a lobbyist registration that “every person associated with” a lobbyist is not in breach of sections 6.1 or 6.2

Recommendation

To eliminate an unnecessary burden on designated filers, the Act should be revised to remove the requirement for the designated filer of a consultant lobbyist or an organization lobbyist to declare in a lobbyist registration that “every person associated with” a lobbyist named in the registration is not in contravention of sections 6.1 or 6.2 of the Act.

Issue

The requirement in the Act for the designated filer of a consultant lobbyist or an organization lobbyist to declare in a lobbyist registration that “every person associated with” a lobbyist is not in breach of sections 6.1 or 6.2 of the Act is unnecessary.

Explanation

Subsection 2(r)(ii)(B) of Schedule 1 of the Act requires the designated filer of a consultant lobbyist to declare in a consultant lobbyist registration that, to the knowledge of the designated filer after reasonable inquiry, every person associated with a consultant lobbyist named in the registration is not in contravention of sections 6, 6.1, or 6.2 of the Act.

Subsection 2(q)(ii)(B) of Schedule 2 of the Act requires the designated filer of an organization lobbyist to declare in an organization lobbyist registration that, to the knowledge of the designated filer after reasonable inquiry, every person associated with an organization lobbyist named in the registration is not in contravention of sections 6 or 6.2 of the Act.

However, it is an unnecessary burden to require designated filers to declare that “every person associated with” a lobbyist named in the registration is not in breach of sections 6.1 or 6.2 of the Act.

This is because sections 6.1 and 6.2 do not apply to “persons associated with” a consultant lobbyist or organization lobbyist (as the case may be). As a result, there is no reason to require designated filers to declare in their registrations that such persons are in compliance with those provisions.

Relevant Provisions

Contingent payment to consultant lobbyist prohibited

6.1(1) A consultant lobbyist shall not receive any payment that is, in whole or in part, contingent on the consultant lobbyist's degree of success in lobbying.

(2) A client of a consultant lobbyist shall not make any payment to a consultant lobbyist that is, in whole or in part, contingent on the consultant lobbyist's degree of success in lobbying.

[…]

Prohibited gifts

6.2 A consultant lobbyist or organization lobbyist shall not, in the course of lobbying activities, give or promise any gift, favour or other benefit to the public office holder being or intended to be lobbied that the public office holder is not allowed to accept or that, if given, would place the public office holder in a conflict of interest.

Schedule 1
Consultant Lobbyist Return

[…]

2 The designated filer shall set out in the return for the purpose of section 4 of this Act the following with respect to the undertaking:

[…]

(r) a declaration stating that

[…]

(ii) **the following are not in contravention of section 6, 6.1 or 6.2 of this Act**:

(A) every consultant lobbyist named in the return;

(B) to the knowledge of the designated filer after reasonable inquiry, every person associated with those consultant lobbyists;

Schedule 2
Organization Lobbyist Return

[…]

2 The designated filer shall set out in the return for the purpose of section 5 the following information:

[…]

(q) a declaration stating that

[…]

(ii) **the following are not in contravention of section 6 or 6.2 of this Act**:

(A) every organization lobbyist named in the return;

(B) to the knowledge of the designated filer after reasonable inquiry, every person associated with those organization lobbyists;

12. Simplify the Semi-Annual Renewal Return filing deadlines for organization lobbyists (only if the Act retains the Semi-Annual Renewal Return filing requirement)

Recommendation

To assist organization lobbyists' compliance, if the Act retains a requirement for organization lobbyists to file Semi-Annual Renewal Returns, then it should be revised so that the deadline for filing a Semi-Annual Renewal Return is calculated from the date of filing of the "initial" return rather than from the date of filing of the "previous" return.

Issue

The deadlines prescribed in the Act for organization lobbyists to file their Semi-Annual Renewal Returns are inconsistent, which makes compliance unnecessarily challenging for organization lobbyists.

Explanation

Subsection 5(1)(b) requires organization lobbyists to file a Semi-Annual Renewal Return within 30 days after the expiry of each six-month period after the date of filing the previous return.

Since an organization lobbyist can file a Semi-Annual Renewal Return on any date within its 30-day Semi-Annual Renewal Return submission window, the date of filing of its "previous" Semi-Annual Renewal Return typically differs each time. As the due date of the organization lobbyist's next Semi-Annual Renewal Return depends on the filing date of its "previous" Semi-Annual Renewal Return, that upcoming due date also will differ each time.

Inconsistent due dates make it more challenging for organization lobbyists to monitor and comply with their Semi-Annual Renewal Return filing obligations.

To facilitate administration and compliance, the current Alberta Lobbyist Registry application was set up in 2016 so that each organization lobbyist has two consistent Semi-Annual Renewal Return filing due dates in any given year (e.g., April 1st and October 1st of each year), which are determined based on the date that the organization lobbyist filed its Initial Return (rather than its "previous" return). The Act also should reflect this more straightforward approach.

Relevant Provisions

Duty to file return: organization lobbyist

5(1) The designated filer of an organization that has an organization lobbyist shall file with the Registrar a return in the prescribed form and containing the information required in Schedule 2

(a) within 2 months after the day on which an individual in that organization becomes an organization lobbyist, and

(b) within 30 days after the expiration of each 6-month period after the date of filing the previous return.

C. TECHNICAL AMENDMENTS

We would request that the following Technical Amendments to the Act be referred to Alberta Justice for review.

1. Clarify that the disclosure requirement in subection 2(f) of Schedule 2 is limited to organizations that are corporations

Recommendation

To provide clarity to organization lobbyists, the language “if the organization is a subsidiary of another corporation” in subsection 2(f) of Schedule 2 of the Act should be deleted and replaced with “if the organization is a corporation that is a subsidiary of any other corporation”.

This would confirm that the organization itself must be a corporation in order for it to be necessary to disclose in the organization’s organization lobbyist registration any other corporations of which the organization is a subsidiary.

Issue

The current language in subsection 2(f) of Schedule 2 of the Act creates uncertainty for organization lobbyists as to whether the disclosure requirement in that subsection is limited to cases in which the organization that is the subject of the organization lobbyist registration itself is corporation.

Explanation

Subsection 2(g) of Schedule 1 of the Act expressly states that the client itself must be a corporation in order for it to be necessary to disclose in a consultant lobbyist registration any other corporations of which the client is a subsidiary.

In contrast, subsection 2(f) of Schedule 2 of the Act does not expressly state that the organization itself must be a corporation in order for it to be necessary to disclose in the organization’s organization lobbyist registration any other corporations of which the organization is a subsidiary.

The Lobbyist Registrar has interpreted subsection 2(f) of Schedule 2 of the Act as being limited to cases in which the organization that is the subject of the organization lobbyist registration itself is corporation for a few reasons.

First, subsection 2(f) of Schedule 2 states that the organization must be a subsidiary of "another corporation", which implies that the organization itself also is a corporation.

Second, the plain and ordinary meaning of the term "subsidiary" in reference to a corporation is a shortened version of "subsidiary corporation". Without specific language to that effect in the legislation, it would be unusual to refer to an organization being a "subsidiary" of another corporation to mean something other than a subsidiary corporation of another corporation.

Third, the Act (in subsection 1(4)) only defines what a subsidiary is with respect to when a corporation is the subsidiary of another corporation. If the Act intended subsection 2(f) of Schedule 2 of the Act to address a circumstance other than where the organization is a corporation that is a subsidiary of another corporation, then the Act also would include information about how to determine when a non-corporate organization is a subsidiary of a corporation.

Fourth, limiting subsection 2(f) of Schedule 2 of the Act to cases in which the organization that is the subject of the organization lobbyist registration itself is corporation is consistent with the equivalent requirement for consultant lobbyists in subsection 2(g) of Schedule 1 of the Act.

However, addressing this issue expressly in the Act would provide clarity to stakeholders and hence improve their compliance.

Relevant Provisions

Interpretation

[…]

(4) For the purposes of this Act, a corporation is a subsidiary of another corporation if

(a) securities of the corporation to which are attached more than 50% of the votes that may be cast to elect directors of the corporation are held, otherwise than by way of security only, directly or indirectly, whether through one or more subsidiaries or otherwise, by or for the benefit of the other corporation, and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation.

Schedule 1
Consultant Lobbyist Return

[…]

2 The designated filer shall set out in the return for the purpose of section 4 of this Act the following with respect to the undertaking:

[…]

(f) if the client is a corporation, the name and business address of each subsidiary of the corporation that, to the knowledge of the designated filer after reasonable inquiry, has a direct interest in the outcome of the lobbying activities on behalf of the client;

(g) **if the client is a corporation that is a subsidiary of any other corporation**, the name and business address of that other corporation;

Schedule 2
Organization Lobbyist Return

[…]

2 The designated filer shall set out in the return for the purpose of section 5 the following information

[…]

(e) if the organization is a corporation, the name and business address of each subsidiary of the corporation that, to the knowledge of the designated filer after reasonable inquiry,

(f) **if the organization is a subsidiary of another corporation**, the name and business address of that other corporation;

2. Clarify that "subsidiary" in the disclosure requirements for lobbyist registrations is limited to subsidiary corporations

Recommendation

To provide clarity to stakeholders, the language "each subsidiary of the corporation" in subsection 2(f) of Schedule 1 and subsection 2(e) of Schedule 2 of the Act should be deleted and replaced with "each subsidiary corporation of the corporation".

This would confirm that the disclosure requirement in those subsections is limited to corporate subsidiaries.

Issue

The current language in subsection 2(f) of Schedule 1 and subsection 2(e) of Schedule 2 of the Act creates uncertainty for lobbyists as to whether the disclosure requirement in those subsections is limited to corporate subsidiaries.

Explanation

Subsection 2(f) of Schedule 1 and subsection 2(e) of Schedule 2 of the Act refer to "each subsidiary of the corporation", but the Act does not specify whether that is limited to corporate subsidiaries or also includes subsidiaries that are not corporations, such as partnerships.

The Lobbyist Registrar has interpreted "each subsidiary of the corporation" in this context as being limited to corporate subsidiaries of a corporation for a few reasons.

First, the plain and ordinary meaning of the term "subsidiary" in reference to a corporation is a shortened version of "subsidiary corporation". Without specific language to that effect in the legislation, it would be unusual to refer to a corporation's "subsidiaries" to mean something other than the subsidiary corporations of the corporation.

Second, the Act (in subsection 1(4)) only defines what a subsidiary is with respect to when a corporation is the subsidiary of another corporation. If the Act intended "each subsidiary of the corporation" in subsection 2(f) of Schedule 1 and subsection 2(e) of Schedule 2 to include non-corporate subsidiaries like partnerships, then the Act also would include information about how to determine when a partnership is the subsidiary of a corporation.

Third, limiting "each subsidiary of the corporation" in subsection 2(f) of Schedule 1 and subsection 2(e) of Schedule 2 to corporate subsidiaries is consistent with the disclosure requirements in subsection 2(g) of Schedule 1 and subsection 2(f) of Schedule 2, which require a corporate client or corporate organization to identify any corporations of which

it is a subsidiary. Together, these subsections require disclosure of the corporations "below" the corporate client or corporate organization in the chain of control and corporations "above" the corporate client or corporate organization in the chain of control.

However, clarifying this issue expressly in the Act would enhance stakeholders' understanding and compliance.

Relevant Provisions

Interpretation

[…]

(4) For the purposes of this Act, a corporation is a subsidiary of another corporation if

(a) securities of the corporation to which are attached more than 50% of the votes that may be cast to elect directors of the corporation are held, otherwise than by way of security only, directly or indirectly, whether through one or more subsidiaries or otherwise, by or for the benefit of the other corporation, and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation.

[…]

Schedule 1
Consultant Lobbyist Return

[…]

2 The designated filer shall set out in the return for the purpose of section 4 of this Act the following with respect to the undertaking:

[…]

(f) if the client is a corporation, the name and business address of **each subsidiary of the corporation** that, to the knowledge of the designated filer after reasonable inquiry, has a direct interest in the outcome of the lobbying activities on behalf of the client;

(g) if the client is a corporation that is a subsidiary of any other corporation, the name and business address of that other corporation;

Schedule 2
Organization Lobbyist Return

[…]

2 The designated filer shall set out in the return for the purpose of section 5 the following information

[…]

(e) if the organization is a corporation, the name and business address **of each subsidiary of the corporation** that, to the knowledge of the designated filer after reasonable inquiry,

(f) if the organization is a subsidiary of another corporation, the name and business address of that other corporation;

3. Clarify or delete “a voluntary organization or institution” in the “organization” definition

Recommendation

To reduce uncertainty and confusion, the “organization” definition in the Act should be revised to clarify or remove the term “voluntary organization or institution”.

Issue

The use of the vague and undefined term “voluntary organization or institution” in the “organization” definition in the Act creates uncertainty and confusion.

Explanation

Subsection (i) of the “organization” definition in subsection 1(1)(g) includes the term “voluntary organization or institution” as an example of a type of “organization”.

However, “voluntary organization or institution” is vague and not defined in the Act. It is not clear what that term means, nor is it clear how it fits alongside the other examples of ‘types’ of organizations set out in that subsection, being “business, trade, industry, enterprise, [or] professional” organizations or institutions. This creates uncertainty and confusion.

Relevant Provisions

Interpretation

1(1) In this Act,

[…]

(g) “organization” includes any of the following, whether incorporated, unincorporated, a partnership or a sole proprietorship:

(i) a business, trade, industry, enterprise, professional **or voluntary organization or institution**;

(ii) a trade union or labour organization;

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

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

(v) a government other than the Government of Alberta;

4. Clarify that independent Officers of the Legislature, and their employees, are not lobbyists

Recommendation

For clarification purposes, subsection 1(2) of the Act should be revised to include a category that makes clear that independent Officers of the Legislature, and employees of the independent Offices of the Legislature, are expressly excluded from being considered "lobbyists" for the purposes of the Act when acting in their official capacity.

Issue

The Act makes clear that other categories of individuals who work in the executive and legislative branches of the Alberta Government are not considered to be "lobbyists" for the purposes of the Act when they are acting in their official capacity. However, it does not do the same for the independent Officers of the Legislature and employees of the independent Offices of the Legislature.

Explanation

Subsection 1(2) of the Act sets out categories of individuals who are not considered to be consultant lobbyists or organization lobbyists when acting in their official capacity.

Although it captures many other categories of individuals who work in the executive and legislative branches of the Alberta Government, subsection 1(2) does not capture the independent Officers of the Legislature or employees of the independent Offices of the Legislature. These include the Auditor General, the Chief Electoral Officer, the Child and Youth Advocate, the Ethics Commissioner, the Information and Privacy Commissioner, the Ombudsman, and the Public Interest Commissioner and the employees of their respective offices.

Subsection 1(1)(g) of the Act exempts "the Government of Alberta" from being an "organization" for the purposes of the Act. This means that employees of "the Government of Alberta" could not be considered "organization lobbyists" under the Act.

However, section 28(1)(r) of the *Interpretation Act*, RSA 2000, c I-8 defines "Government of Alberta" as "Her Majesty in right of Alberta", which is synonymous with the Crown and means executive power carried out through government ministers and their departments (or those exercising executive power on their behalf). Since independent Offices of the Legislature are part of the legislative branch, rather than the executive branch, they would not fall within the exemption in subsection 1(1)(g) for the "Government of Alberta".

As a result, in contrast to other categories of individuals who work in the executive and legislative branches of the Alberta Government, the Act currently does not make

expressly clear that the independent Officers of the Legislature and employees of the independent Offices of the Legislature are not considered to be “lobbyists” for the purposes of the Act.

Relevant Provisions

Interpretation

1(1) In this Act,

[…]

(g) “organization” includes any of the following, whether incorporated, unincorporated, a partnership or a sole proprietorship:

[…]

(v) a government other than the Government of Alberta;

[…]

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

(a) Members of the Legislative Assembly and any individuals on their staff;

(a.1) members of the Executive Council;

(a.2) a member of the Premier’s and Ministers’ staff as defined in the Conflicts of Interest Act;

(b) officers and employees of the Legislative Assembly Office under the Legislative Assembly Act;

(c) individuals appointed under the Public Service Act;

(d) employees, officers, directors and members of a prescribed Provincial entity;

(d.1) a designated senior official as defined in Part 4.3 of the Conflicts of Interest Act;

(e) any other individuals or category of individuals prescribed in the regulations.

5. Remove the outdated transitional provisions regarding section 6.1

Recommendation

The transitional provisions about section 6.1 should be removed from the Act.

Issue

The transitional provisions in the Act regarding section 6.1 are outdated and unnecessary at this time.

Explanation

Since more than 24 months has passed since section 6.1 of the Act came into force, the transitional provisions in subsections 6.1(3) and (4) of the Act and subsection 2(k) of Schedule 1 of the Act no longer are necessary.

Relevant Provisions

Contingent payment to consultant lobbyist prohibited

6.1 […]

(3) Despite subsections (1) and (2), where a consultant lobbyist, before the coming into force of this section, has entered into an agreement that provides for payment that is, in whole or in part, contingent on the consultant lobbyist's degree of success in lobbying, such payment is permitted **until the earlier of**

(a) the date on which the agreement that provides for the payment expires, and

(b) **24 months after this section comes into force**.

(4) The portion of an agreement referred to in subsection (3) that provides for payment that is, in whole or in part, contingent on the consultant lobbyist's success in lobbying may not be renewed or extended

[…]

Schedule 1
Consultant Lobbyist Return

[…]

2 The designated filer shall set out in the return for the purpose of section 4 of this Act the following with respect to the undertaking:

[…]

(k) **during the 24 months following the coming into force of section 6.1 of this Act**, in the case of an agreement entered into before the coming into force of section 6.1 of this Act, whether the payment to the consultant lobbyist is, in whole or in part, contingent on the consultant lobbyist's degree of success in lobbying as described in section 1(1)(f) of this Act;