

December 1, 2021

Mr. Nathan Neudorf, M.L.A.

Chair – Standing Committee on Alberta’s Economic Future

The Legislative Assembly

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Dear Mr. Neufeld:

Thank you for the Committee’s request for comments on prospective changes to Alberta’s *Lobbyists Act*. This legislation is an important component of measures enacted by Canada’s Parliament and provincial legislatures to promote integrity and transparency in the operations of government and its relations with organized economic and societal interests. At the same time, as acknowledged by the *Act*’s preamble, it seeks to preserve “free and open access to government,” including the lobbying of public office holders, thereby enabling all citizens, communities and other organized interests within the province to encourage the acknowledgement of their interests within measures intended to serve broader concepts of the public good.

The following are comments on the current provisions of the *Lobbyists Act* along with certain omissions which could usefully be addressed in the context of ongoing debates over prospective and recent changes to similar legislation in other Canadian jurisdictions.

De Minimis registration rules

Currently, section 1(1.h) of the *Act* defines an “organization lobbyist” as “an employer, officer, or director of an organization who receives a payment for the performance of his or her functions,” whose “duty is to lobby on behalf of the organization at least 50 hours annually,” either personally or “together with other persons in the organization.”

This *de minimis* provision is intended to reduce the need for registration for people or organizations whose provincial lobbying activities average less than one hour a week over a year, with semi-annual reporting (Section 5(1)). Maintaining this provision is a reasonable way of meeting the *Act*’s explicit objectives of encouraging transparency of lobbying activity while minimizing regulatory obstacles to the incidental activities of citizens and small organizations seeking to engage the provincial government.

The collective 50-hour annual threshold provides greater clarity than the current federal legislative provision criticized by the federal Commissioner of Lobbying that require registration by persons for whom lobbying involves a “significant part of (their) duties” – a threshold functionally defined in federal legislation as 20 percent of a single employee’s duties over a two-

month period.¹ Table 1 summarizes threshold provinces across Canadian provinces and territories in early 2021.

Although the federal Commissioner recommends eliminating the current threshold, in virtually the same breath, she suggests that a “limited exemption” based on “objective criteria” may be necessary to avoid unduly “increas(ing) the administrative burden of complying with the *Lobbying Act* for smaller corporations and organizations that engage in limited amounts of lobbying or that lobby on an infrequent basis.”² Under such circumstances, it seems preferable to have a single general *de minimis* category, as in Alberta, that limits distinctions among different groups of citizens or interests based on *extent* of lobbying rather than distinguishing among different types of interests.

Table 1

In-house lobbyist registration thresholds in various Canadian jurisdictions

Jurisdiction	Threshold	Timeframe
Federal (Canada)	Significant part of duties:	(20%) (1 month)
British Columbia	50 hours*	1 year
Alberta	50 hours	1 year
Saskatchewan	30 hours	1 year
Manitoba	Significant part of duties:	(100 hours) 1 year
Ontario	50 hours	1 year
Québec	Significant part of duties:	(12 days) (1 fiscal year)
New Brunswick	Significant part of duties:	(20%) (3 months)
Prince Edward Island	50 hours	3 months
Nova Scotia	Significant part of duties:	(20%) (3 months)
Newfoundland and Labrador	20% of duties	3 months
Yukon	20 hours	1 year

* For organizations with fewer than six employees, excluding membership-based interest groups and issue-oriented advocacy organizations, which are subject to mandatory registration.

All thresholds listed above take into account the collective and cumulative amount of time employees spend lobbying on behalf of their employer within the noted timeframe. Thresholds and timeframes indicated inside parentheses are criteria set by regulation or guidance, as applicable.

Source: Office of the Commissioner of Lobbying, “Improving the *Lobbying Act*” (2021: 4-5.)

Large organizations and professional (consultant) lobbyists may reasonably be required to familiarize themselves with federal and provincial rules and regulations intended to structure

¹ Office of the Commissioner of Lobbying of Canada (2021), “Improving the Lobbying Act: Preliminary recommendations,” (Ottawa: February).

² Office of the Commissioner of Lobbying (2021), “Improving the *Lobbying Act*,” (Ottawa: February), 3.

the professional conduct of government relations. However, **a reasonable exemption threshold can and should avoid excessive bureaucratization of relations between ordinary citizens and their governments to discourage or penalize citizens whose dealings with governments are incidental or responses to the routine regulatory actions of government.** Such exceptions are anticipated by exemptions noted in Section 3(2) including contributions to public consultation processes, responses to direct regulatory implementation or enforcement actions of government entities, membership in formal, government-initiated consultative bodies, or routine contacts between constituents and their MLAs.

Section 1(3.1) of the Act defines “time spent lobbying” as “time spent preparing for communications and communicating with a public office holder.” Although federal legislation and that of at least three provinces include travel time as part of this definition, the current definition provides greater equity to Albertans who live outside Edmonton in establishing minimum thresholds for regulation and public disclosure.

Registration Deadlines

Registration and filing deadlines for lobbyists are a significant factor in achieving the *Lobbyist Act*’s objective of transparency of lobbying activities. Table 2 summarizes current rules governing initial filing deadlines for lobbyist registrations across Canadian jurisdictions. Historically, separate filing deadlines have applied to consultant lobbyists and organization or “in-house” lobbyists based on differences in the regulatory assumptions governing the two groups.

Table 2

Registration deadlines in provinces and certain municipalities

Jurisdiction	Consultant lobbyists	In-house lobbyists
Federal (Canada)	10 days	2 months
British Columbia	10 days	10 days
Alberta	10 days	2 months
Saskatchewan	10 days	60 days
Manitoba	10 days	2 months
Ontario	10 days	2 months
Québec	30 days	60 days
New Brunswick	15 days	2 months
Prince Edward Island	10 days	2 months
Nova Scotia	10 days	2 months
Newfoundland and Labrador	10 days	10 days
Yukon	15 days	60 days

Source: Office of the Commissioner of Lobbying (2021), “Improving the *Lobbying Act*,” 8.

In most jurisdictions, registration of consultant lobbyists is mandatory, automatic, and even anticipatory, to take place within 10 days of “entering into an undertaking” (Section 4(1)) to lobby, based on the “regulation of hired guns” principle. The presence of higher thresholds for organization and in-house lobbyists, (typically two months, except in British Columbia and Newfoundland and Labrador), combined with the related record keeping requirements for all staff assisting in the preparation of lobbying materials, has typically resulted in a longer *initial* registration deadline, although *subsequent* filings are required within 30 days after any changes to the information in the return, or when such knowledge is “acquired” (Section 10(1)), or 30 days following six-month intervals following initial registration (Section 6(1)).

However, regulatory filings by organizations also have an anticipatory element in that Schedule 2 of the Act, “Organization Lobbyist Return,” requires disclosure of “subject-matter concerning which any organization lobbyist named in the return . . . (ii) expects to lobby during the next 6-month period” (Section 2(i)(ii)), along with prospective contacts with members of the legislature or cabinet (Sections 2(n)(ii) and 2(o)(ii)), and “techniques of communication, including grassroots communication” which have been used or whose use is anticipated “during the next six month period” (Section 2(p)).

The presumption of automatic filing of lobbyist registrations, as in British Columbia and as recommended by the federal Commissioner of Lobbying, carries with it the presumption that rules governing registrations should be the same for all classes of lobbyists. **Should the Committee recommend retaining *de minimis* rules as suggested above, initial registration requirements for organization lobbyists, whether of economic interests or non-profit organizations, should be tailored accordingly. A tightening of disclosure requirements might reasonably be accompanied by a 30-day deadline for registration.**

Lobbying Disclosure

Rules governing the disclosure of employees and directors engaged in lobbying by corporations and other organization should remain the same, as at present – including exemptions for “person(s) acting as volunteer(s)” (Section 3(1)(l)).

The current Act’s provision incorporates directors who are paid to serve on organization boards who engages in lobbying activity, but exempts volunteers (including organization Board members) who perform such functions under Section 3(1)(l). This provision coincides with recommendations made by the federal Commissioner of Lobbying to consolidate reports on employees and paid directors within an organization’s lobbying registration forms, rather than the latter reporting separately as consultant lobbyists. Alberta’s current approach has the advantage of greater efficiency and transparency.

However, there should be greater consistency between the filing requirements for corporations and organizations, particularly those organizations which are coalitions of other organizations. At present, consultant lobbyists are required to disclose (Schedule 1(f,g,h)

both parent corporations (Schedule 1(g)) and subsidiaries (Schedule 1(f)) of corporations which have a direct interest in the outcomes of their lobbying activities, along with the names and business addresses of “*each organization* that is a member of the coalition” (Schedule 1(h)) on whose behalf they are lobbying. Corporations are subject to comparable disclosure requirements (Schedule 2(e,f)), but other organizations are only required to disclose financial contributions of \$ 1,000 or more towards their lobbying activities during the financial year to which lobbying activities apply (Schedule 2(d)).

Given the frequent (and longstanding) use of coalitions as umbrella groups to pool resources and project influence within the political process, it is not unreasonable for your Committee to **recommend amendments requiring that coalitions which engage in lobbying be required to publish the names and business addresses of each organization which is a member of the coalition in the interests of greater transparency and regulatory consistency.**

It is also recommended that organizations be required to disclose other organizations which may exercise a “controlling relationship” over any organization registered to lobby in Alberta. These recommendations are consistent with the recommendation of the Commissioner of Lobbying for amendments to federal legislation.³

However, except in cases of substantial donors (\$ 1,000 or more), as already provided for in Alberta’s *Lobbyists Act*, the disclosure of individual supporters of such organizations has the potential to chill the participation of individual citizens, particularly given the culture of vilification and intimidation that has become increasingly common on social media. For that reason, **the Committee should limit disclosure of individual names to persons actually engaged in lobbying as consultant or organization lobbyists, along with substantial donors.**

One prospective loophole within the broader framework of lobbyist regulation involves the actions of individuals or groups in receipt of funding by foreign governments and other foreign-based interests which may or may not be subject to the influence and/or control of foreign governments. Foreign diplomats are appropriately exempted from regulations which govern domestic lobbying or interest representation in Canada as in most other countries. However, it is not uncommon for foreign governments to engage in interest group mobilization, sometimes including the intimidation of naturalized Canadians citizens or landed immigrants, or the influencing of public opinion in other ways. Since 1938, the United States *Foreign Agents Registration Act* has required individuals or organizations in receipt of funds to carry out “political activities or other activities specified under the statute to make periodic public disclosure of their relationship with the foreign principal, as well as activities, receipts and disbursements in support of those activities.”⁴

³ Office of the Commissioner of Lobbying (2021), “Improving the *Lobbying Act*,” 12.

⁴ U.S. Department of Justice (2021), “Foreign Agents Registration Act,” (Washington, DC); <https://www.justice.gov/nsd-fara>.

The Lobbyist Registrar should review existing legislation in Canada, the United Kingdom, and the United States to determine whether sufficient grounds exist to incorporate a foreign agent registration clause within the Lobbyists Act, and if so, to make recommendations to the Committee on its contents.

Non-Profit Organizations

Among issues referred to your committee for review by the Legislature, is the current exemption of ‘public benefit’ non-profit organizations from provisions of the Act.⁵ Currently, non-profit “organization(s), association(s), societ(ies), coalition(s) and interest group(s)” are currently subject to regulation under Section 1(1)(g)(iv) of the Act, along with businesses, unions, business and voluntary organizations and institutions. However, Section 3(1)(i) exempts “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.”

This exemption runs a significant risk of exploitation by economic and/or other advocacy groups or even foreign governments which may use non-profit organizations as fronts for lobbying ostensibly intended to serve a broader public interest. Should such activities be conducted through the use of consultant lobbyists, as noted above, they would require full disclosure of supporting coalitions, organizations, and substantial contributors. However, identical activities carried out by non-profit organizations, potentially with the benefit of significant outside funding, would currently be exempt from registration under Alberta law.

Your Committee such seriously consider the removal of section 3(1)(i) so that non-profit organizations and coalitions are subject to the same *de minimis* rules as other organizations, but not given a blank cheque to engage in lobbying without having to meet requirements for public disclosure and transparency applicable to other organizations.

The *Lobbyists’ Act* currently makes provisions for disclosure of “grassroots communications” by economic interest groups. However, as noted above, the exemptions from disclosure requirements for those funding or organizing such campaigns are very broad. Although economic and professional interests are required to disclose their use of grassroots communications campaigns as part of regular information returns under the Act, **the interests of public transparency would be better served by requiring that organizations or coalitions which participate in such campaigns should also be required to disclose their activities through the provincial lobbying registry unless exempted under the Act’s *de minimis* provisions.**

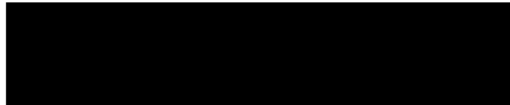
⁵ Motion 86, *Legislative Assembly of Alberta*, June 15, 2021; <https://www.assembly.ab.ca/assembly-business/committees/EF>

Prohibitions on Lobbying

Section 6 of the current Act prohibits lobbying by persons contracted to provide paid advice to the government, except in case of selected exemptions authorized by the Ethics Commissioners and persons participating in government-organized, multiple-stakeholder advisory committees. Section 6 is an appropriate constraint on the prospective abuse of “insider” networks to influence government policy and should be retained.

I would like to thank the Committee for its invitation to submit these thoughts on prospective improvements to the *Lobbyist's Act* as part of its broader deliberations.

Yours sincerely,



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