

Submission to the Standing Committee on Alberta's Economic Future

Regarding the *Lobbyists Act*



The Alberta Teachers' Association

2021 12 02

About Us

The Alberta Teachers' Association, as the professional organization of teachers, promotes and advances public education, safeguards standards of professional practice and serves as the advocate for its 46,000 members.

The Association's statutory objects are set out in section 4 of the *Teaching Profession Act*:

The objects of the association are

- (a) to advance and promote the cause of education in Alberta;
- (b) to improve the teaching profession
 - (i) by promoting and supporting recruitment and selection practices that ensure capable candidates for teacher education,
 - (ii) by promoting and supporting adequate programs of preservice preparation, internship and certification,
 - (iii) by promoting the establishment of working conditions that will make possible the best level of professional service,
 - (iv) by organizing and supporting groups that tend to improve the knowledge and skill of teachers,
 - (v) by meetings, publications, research and other activities designed to maintain and improve the competence of teachers,
 - (vi) by advising, assisting, protecting and disciplining members in the discharge of their professional duties and relationships, and
 - (vii) by assessing the professional competence of its members by means of a professional practice review process provided for under the bylaws of the association;
- (c) to arouse and increase public interest in the importance of education and public knowledge of the aims of education, financial support for education, and other education matters;
- (d) to co-operate with other organizations and bodies in Canada and elsewhere having the same or like aims and objects.

The Association is fully funded by dues paid by its active member teachers employed by Alberta's public, separate and francophone school authorities. Additional revenue comes from associate member fees, rental of space to tenants at Barnett House (the Association's Edmonton office building), casual rental of meeting space and provision of catering services, conference



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registration fees, the sale (typically at cost of production) of publications, and the sale of advertising in Association publications (most notably, the *ATA News* and the *ATA Magazine*).

To fulfill these objects, the Association has established a large number of committees and subgroups, including 56 locals, 21 specialist councils and 9 teachers' convention associations. The subgroups are almost exclusively operated by volunteer teachers, who work full-time jobs and undertake tasks related to the operation of the subgroups on evenings and weekends. The committees and subgroups routinely host meetings, events and conferences that often include representation from employees of school boards, universities and the Government of Alberta.

Many of the Association's objects are not necessarily related to active lobbying of government decision makers, but they do require ongoing work with people defined in the *Lobbyists Act* as public office holders.

Other objects, however, do require advocacy with decision makers, including members of cabinet, members of the legislative assembly, and staff in the education minister's office and the education department. The Association has, therefore, registered as a lobbyist pursuant to the *Lobbyists Act*. Since December 2018, the Association has also contracted Alberta Counsel as consultant lobbyists on its behalf.

The Association's typical lobbying activity is in the areas of education budgets, teacher pensions, curriculum and student assessment, labour relations and collective bargaining, education legislation and regulations affecting teachers, professional quality standards, conditions of professional practice, student safety, human rights and, more recently, provisions related to COVID-19.

The Association and its subgroups do enter into contracts from time to time with government for specific deliverables, including producing learning materials to support teacher education and professional development and managing educational programs and projects on behalf of government. In many cases, these are effectively cost-shared, with the Association contributing staff resources and other in-kind supports to ensure successful delivery.

Background

In recent years, as changes have been made to the *Lobbyists Act*, the Association has examined its activities under the act, including soliciting information from committees and subgroups on their practices and providing information and directives to ensure that all Association business complies with the act.



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The Association has determined that it is very uncommon for the Association or its subgroups to engage in active gift giving to decision makers and public office holders. One exception to this is an annual program undertaken by the Early Childhood Education Council to provide student-made cards and crafts to MLAs at Christmastime.

The Association and its subgroups are more likely to invite public office holders to meetings, events or conferences.

In a small number of unique situations, these events are held for the purpose of building relationships with elected officials. For instance, the Association has in the past hosted a hospitality function that allows Association officials to socialize with ministry officials and MLAs. Similarly, the Calgary Public Teachers Local traditionally hosts a November Nosh social activity, where local teachers meet and socialize with area MLAs. The Association has also invited MLAs to attend educational sessions related to public education and the teaching profession at its annual Summer Conference in Banff. Some teachers' convention associations invite MLAs to attend special luncheon sessions with a guest speaker at their annual conferences.

However, it is much more common for the Association to invite people the act defines as public office holders (such as midlevel managers or university professors) to attend meetings, events and conferences for the purpose of conducting standard business. The Association often invites the Government of Alberta and faculties of education at Alberta's universities to name representatives to sit on its committees and subgroups in order to inform the work of the groups and provide the best programming and services possible to members. For example, a representative from Alberta Education sits on the Association's Indigenous Education Committee to share information about government programs and services for teachers and students; representatives of universities, typically faculty members, sit on the Teacher Education and Certification Committee to provide updates on enrolments and program offerings; and subject-matter experts from the government and universities commonly sit on the specialist council executives to help the Association ensure that professional development for members reflects government policy and best practices from academic research.

The Association also occasionally invites people defined as public office holders to present or speak at Association meetings, events or conferences. This could include a professor speaking on their area of expertise, the education minister speaking on government priorities, an MLA speaking on an area of policy interest, or a government staff member speaking on a new program or policy of interest to teachers.



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It is the Association’s standard operating procedure to “make whole” anyone who is attending meetings at the request of the Association or conducting business on its behalf. This means covering mileage, meals, accommodation and release time for event organizers and committee members. Similarly, many Association events and conferences are free or subsidized for members, as the costs are funded by member dues.

The Association’s Position

The Association understands, respects and appreciates the public interest in ensuring that lobbying activities occur in a way that respects principles of transparency and ethical behaviour. The preamble to the *Lobbyists Act* states that “it is desirable that the public and public office holders be able to know who is engaged in lobbying activities,” but it also notes that lobbying “is a legitimate activity” and that “a system for the registration of paid lobbyists should not impede free and open access to government.” It is the Association’s position that certain elements and interpretations of the act have created a regulatory framework that is overly burdensome and rife with red tape. A system that exceeds necessary transparency requirements and ultimately makes access to officials too burdensome for lawful persons and organizations is, in fact, contrary to the public interest.

The act defines *provincial entity* and *public office holder* too broadly. Section 1(1)(j.1) means that all public universities in Alberta, despite having their own codes of conduct and ethical guidelines, are considered provincial entities. Section 1(1)(k)(v) means that all employees of the Government of Alberta and any public university are considered public office holders, regardless of level of position or ability to influence decision making. Tens of thousands of employees are included in these definitions, which places significant constraints and limitations on how an organization that is registered as a lobbyist can interact with them, regardless of the purpose of that interaction.

The definition of *prohibited gifts* in section 6.2 is also too broad. According to the Alberta Lobbyist Registry’s guidance document *Prohibited Gifts from Lobbyists* (August 2021), examples of gifts include “an invitation . . . to a conference” or to an “educational, speaking or other event”; “food, beverage or other hospitality”; and “payment or reimbursement of travel or mileage expenses.” These are all courtesies, as outlined earlier, that the Association offers to essentially all participants as part of its standard operating procedure. This list of prohibited gifts means that the Association must develop distinct and separate processes for those identified as public office holders in the legislation and for everyone else who attends its events—regardless of the purpose of the event or the role a person is filling.



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Furthermore, the addition in section 6.2 of the word *promise* has added substantial risk and burden for lobbyists. The Association respects and appreciates that the purpose of the law is to prevent bribes and to increase integrity and transparency in acts of lobbying and also understands that the offering of bribes is as problematic as the actual exchange. However, offering common courtesies associated with conducting standard business should not be viewed in the same light as, say, a back-alley exchange of an envelope of cash.

As *Prohibited Gifts from Lobbyists* states, “The onus remains on lobbyists to ensure that the offer of any gift, favour, or other benefit (including an event or conference invitation) to a public office holder complies with the *Lobbyists Act* before they make the offer.” The document goes on to state, “It is important to note that an offer of a gift, favour or other benefit (including an event or conference invitation) to a public office holder itself can be a breach of section 6.2 of the Act, even if the public office holder ultimately does not accept, or does not end up receiving or keeping, the gift, favour or other benefit” (emphasis in the original). The document outlines a two-step inquiry that the lobbyist must undertake “each time before giving or offering any gift, favour or other benefit (including an event or conference invitation)” (emphasis in the original). The two steps require the lobbyist to determine whether the office holder is allowed to accept the gift and whether it would place the office holder in a conflict of interest. In the case of provincial entities that are not direct government departments, lobbyists must pore over volumes of obscure data, policy and regulations and apply considerable judgment to determine whether they can even invite a participant at a meeting, for instance, to partake in the catered lunch. The rules in codes of conduct for various situations related to various employees in these organizations are often not clear, thus amplifying the risk for the registered lobbyist.

The Association believes that it is not gift giving or lobbying to treat the government officials and university representatives at its meetings and events in the same way as any of the other attendees in order to facilitate their participation. It is the Association’s standard operating procedure to provide meals at such events while conducting business and to offer to pay for accommodation and expenses related to assisting someone to travel to a meeting or event that the Association invited them to. This is a common courtesy that the Association extends almost universally. However, the *Lobbyists Act* now requires the Association to establish two separate sets of policies, procedures and protocols in order to ensure compliance, and the standard of treatment is thus made lower for public office holders than it is for others the Association deals with in the same situations. Furthermore, the Association must be cognizant of adopting these two distinct procedures before it even begins a conversation with a public office holder about whether they want or are able to attend a meeting, event or conference, because even if the public office holder is copied on correspondence that every other participant receives, this will be interpreted as an inappropriate offer of a prohibited gift and a violation of the law.



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Conclusion

The Association encourages members of the standing committee to spend some time reviewing the volume of information and guidance documents on the Alberta Lobbyist Registry website. Doing so will help committee members understand how burdensome and unwieldy interpreting this legislation can be.

The Association takes the general position that many of the obligations placed on registered lobbyists are overly bureaucratic and excessively burdensome and that the red tape that is created makes for a system that is too complicated, confusing and unmanageable for law-abiding organizations to comply with. The preamble to the legislation is correct in stating that “a system for the registration of paid lobbyists should not impede free and open access to government.” If the system is too burdensome and too much of an imposition, then it is not in the public interest.

To remedy these issues, the Association recommends that changes be made in the *Lobbyists Act* to the definitions of *provincial entity* and *public office holder*, in order to reduce how broadly the law could be applied. Such changes should consider whether the provincial entity has its own code of conduct and ethical rules, as well as the level of employees being included and their ability to influence decisions that would benefit the lobbyist.

The Association also recommends that section 6.2, on prohibited gifts, be reworked to reduce the burden on the registered lobbyist and to allow for dialogue between the lobbyist and the public office holder so that the public office holder can reasonably refuse an offer made in good faith, without creating a situation in which the lobbyist has already violated the law.

The committee should also look at redefining what constitutes a gift, considering whether meals at a meeting or an event and the reimbursement of travel and other expenses to attend a meeting or an event constitute the giving of a gift. If the law is to include meals and reimbursements as prohibited gifts, then it should consider the purpose of the event and the role of the public office holder at the event in determining whether those offerings are included as prohibited gifts under the act.

Finally, the Association believes that the law should view the offering of a so-called gift to a public office holder relative to how that same person or organization treats those who are not public office holders and how it conducts its normal business. It makes no sense that the law would view the same offer being made to all participants at an event as an attempt to gain influence, just because some of those participants happen to be public office holders.



The Association thanks the members of the Standing Committee on Alberta's Economic Future for their time and consideration of teachers' views on this important matter and looks forward to seeing the results of the committee's work in potential amendments to the *Lobbyists Act*.



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