



## OFFICE OF THE ETHICS COMMISSIONER

Hon. Marguerite Trussler, Q.C.  
Ethics Commissioner  
Officer of the Legislature

February 10, 2017

MLA Rod Loyola  
Chair, Standing Committee on Resource Stewardship  
3<sup>rd</sup> fl Federal Building  
9820-107 Street  
Edmonton, AB T5K 1E7

Dear Chair Loyola:

### **Re: Follow-up Submission to the Standing Committee on Resource Stewardship**

Thank you for the opportunity to make a presentation to the committee on January 12, 2017 and for the opportunity to forward a follow up submission. The Office of the Ethics Commissioner would like to respond to some of the issues and comments raised in the presentation made by the five representatives of the volunteer organizations. We would also like to put forth some changes to our recommendations regarding non-profit organizations.

### **Ongoing communications regarding the administration of a grant program are already exempt under the Act**

We heard many comments in the presentation by the representatives of the volunteer organizations that requiring non-profit organizations to register would capture ongoing discussions they may have with department employees about grant application administrative processes.

We would like to clarify that these types of communications are already exempt under s.3(2)(b)(ii) of the Act. This section states that the Act does not apply to a submission to a public office holder concerning *the implementation or administration of any program, policy, directive or guideline with respect to the person or organization*. Ongoing communications between a department and a non-profit organization with respect to the requirements of a grant program or application process are therefore exempt communications under the Act, provided that those communications are not made with a clear intent to influence *the awarding* of the grant. We are not recommending that this exemption be changed.

### **Expanding exemption for written grant applications**

We had also recommended that, if more non-profit organizations are required to register under the Act, it be made absolutely clear that written grant applications are not lobbying. For additional clarity in the Act we believe this exemption could be expanded to exclude from the definition of lobby "*any communications regarding grant applications or awards, unless those communications are outside of the established administrative review, approval or appeal processes for the grant application or award.*"

### Our initial recommended non-profit organization exemption

Currently, non-profit organizations (even if they meet the 100 hour lobbying threshold) do not have to register unless they are constituted to serve union, management or professional interests, or more than half of their members are for-profit entities. There are, as a result, many non-profit organizations that are actively lobbying but are not required to register under the Act.

We had recommended that this exemption be replaced with an exemption for only charitable non-profit organizations that have 4 or less paid employees or directors unless they lobby for more than 30 hours annually. A 30 hour threshold, while difficult to monitor, was suggested so that concentrated lobbying campaigns or significant lobbying efforts by smaller charitable non-profit organizations would still be captured.

Under this approach, all smaller non-profit organizations that serve a charitable purpose would qualify for the exemption. As most volunteer-based organizations that serve a charitable purpose have very few staff and no paid directors, they would be exempt unless they are engaging in a significant amount of lobbying activities. There are according to Service Alberta, 1090 registered charities in Alberta, 19071 active societies registered in Alberta and 2204 active non-profit companies registered in Alberta. We believe that this exemption would apply to the vast majority of them.

### Alternative approach for non-profit exemption

However, we understand that some voluntary organizations are concerned with the use of the word "charitable purpose" as they believe this may create confusion with the definition used by the Canada Revenue Agency. After further consideration of these comments and the difficulties in monitoring a 30-hour threshold, we have identified an alternative approach for consideration by the committee which we believe will simplify the exemption for non-profit organizations even more but still meet the objective of transparency.

Under this simplified approach the term "charitable" would be changed to "community service" and the 30 hour threshold would also be deleted, as we believe that for the most part smaller organizations do not engage in significant lobbying. A non-profit organization would therefore be exempt if it:

- (1) is a **community service organization** (to be defined in the *Lobbyists Act*); and
- (2) has **4 or less full-time staff** (or equivalent to this, based on a 35-hour work week for one full time staff member).

All other non-profit organizations would be subject to the same registration requirements as for-profit organizations. The crucial issue is how "community service organization" will be defined in the Act.

We would recommend that the definition of "community service organization" include the following elements:

1. The organization must be a non-profit organization constituted to serve one or more of the following community service interests:
  - (i) education
  - (ii) animals
  - (iii) arts
  - (iv) children
  - (v) community sports or recreation (non-professional)
  - (vi) culture
  - (vii) disability
  - (viii) health
  - (ix) relief of poverty
  - (x) seniors
  - (xi) social or financial assistance
2. It must use the vast majority of its resources (85 percent) to provide a tangible service or program to the community in serving those interests.
3. For greater clarity, the following interests do not qualify as a community service interest:
  - (i) political
  - (ii) professional
  - (iii) labour
  - (iv) union
  - (v) industry
  - (vi) business
  - (vii) private interests
  - (viii) religion
  - (ix) advocacy (unless the organization otherwise falls within the definition of community service organization and uses less than 10 percent of its resources on advocacy)
4. The Ethics Commissioner would have the authority, upon written application to the Ethics Commissioner, to approve a community service interest that is not on the list to allow some flexibility in this regard.

#### Loophole under Act

A key provision of the current legislation is that to be a lobbyist one has to receive payment. Volunteers are exempt.

However, we would like to point out that this exemption creates a large loophole in the Act as many non-profit organizations have volunteer board members who do all of the lobbying for the organization. Many of these directors are high-profile individuals who would have considerable influence. In such situations the non-profit organization would not need to register whether or not it has any amount of paid staff. Whether this loophole should be closed may be an issue the committee may want to consider.

Change of recommendation regarding requests for advice or comment initiated by public office holders

Finally, we had recommended that the exemption for submissions made "in response to a request initiated by public officer holder for advice or comment" (section 3(2)(c)), be narrowed to limit it to submissions made in "*direct* response to *written* requests" initiated by the public office holder.

However, it has been brought to our attention that at times a public office holder may send a written request to meet with an organization to seek input on a particular issue, but then, during the course of the meeting, orally request input from the organization on a different issue not originally on the meeting agenda. Even though both requests for input are initiated by the public office holder, if the exemption is limited to written requests, the additional issue raised orally by the public office holder during the course of the meeting would not fall within the exemption as it was not made in writing.

After further discussion and consideration of this issue, we would like to withdraw this recommendation as we believe that all instances where a person is making a submission to a public office holder in response to a request for advice or comment from that public office holder should be exempt under the Act.

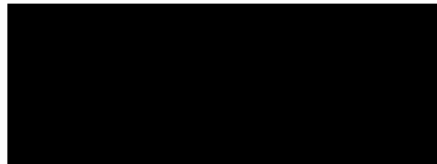
The problem that precipitated the recommended change is where former Premiers, Ministers, or members of their staff are involved in grassroots lobbying campaigns within their cooling-off period, notwithstanding that the campaign is in response to a request for public input on an issue by a public office holder. To resolve this issue, we will be recommending additional changes to the *Conflicts of Interest Act* to prohibit such activities.

Thank you for the opportunity to make additional submissions to the committee.

Sincerely,



Hon. Marguerite Trussler, Q.C.  
Ethics Commissioner



Lana S. Robins  
Lobbyist Registrar and General Counsel