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# LOBBYING & ETHICS

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# Lobbyists concerned potential rule changes could hinder volunteer opportunities in campaigns

Lobbying Commissioner Nancy Bélanger released a list of draft updates to the Lobbyists' Code of Conduct on Dec. 15. A consultation period for the draft updates is currently open, and will close on Feb. 18. *The Hill Times photograph by Andrew Meade*

Proposed changes to the Lobbyists' Code of Conduct include a mandatory one-year cooling-off period for lobbyists following political activities such as door-to-door canvassing during an election campaign.

BY JESSE CNOCKAERT

Lobbyists are raising red flags in the wake of proposed changes to the Lobbyists' Code of Conduct, which they say could restrict their ability to volunteer in even minor roles on political campaigns during elections.

"There are bad apples in any profession, and so it's no different in our profession. There has to be a proper balance there, but we can't discourage activity to a point where it's impacting [lobbyists'] rights in the Charter of Rights and Freedoms," said Alex Greco, the Ontario chapter president of the Public Affairs Association of Canada (PAAC). "It's one thing to volunteer … but it's different if you take a role in a campaign. I don't think we should discourage … involvement, but there has to be reasonable rules in order to ensure there is transparency and accountability."

The Office of the Commissioner of Lobbying (OCL) is currently accepting feedback from stakeholders in regards to a list of draft updates to the Lobbyists' Code of Conduct, which were released by the OCL on Dec. 15. After the consultation period closes on Feb. 18, the OCL will consider further possible revisions to the Code based on the stakeholder input, and submit a final draft to the House Ethics Committee for study.

The Code, last updated in 2015, sets the standards of conduct for lobbyists, including rules for avoiding conflicts of interest, and a requirement to avoid misleading public office holders.

Since the release of the draft updates, PAAC members have voiced concerns about a proposed change that could impact lobbyists who accept roles in political campaigns, according to Greco, who also serves as the senior director of policy and government affairs for the Canadian Beverage Association. The draft updates propose mandatory cooling-off periods for lobbyists during which they may not lobby public office holders for whom they have performed certain political work, whether paid or unpaid. For political work deemed "significant," a cooling-off period of two years is imposed, while other, less significant political work can restrict lobbyists for one year. Examples of less-significant political work listed in the draft includes gathering donations for political candidates, or canvassing.

Greco argues the proposed one-year cooling-off period for activities such as canvassing would restrict lobbyists' freedom to participate in the political process. In contrast, the current Code states that lobbyists only face a cooling-off period following political activities if those activities could reasonably be seen to create a sense of obligation. A guidance document posted on the OCL website explains that "low-risk" political activities, such as canvassing or attending fundraising events, won't result in a cooling-off period because they pose little or no risk of creating a sense of obligation between the lobbyist and the public office holder.

"There's a difference between if I was holding a senior role on a campaign, versus if I was knocking on doors for a candidate," said Greco. "Political work, that can be a wide range of different things; canvassing, making phone calls, going to a fundraiser, [or] being on a campaign. Me going canvassing for three hours for a candidate, that's not going to influence a public policy decision, in my view."

The proposed changes regarding lobbyists' ability to serve as part of political campaigns have also raised concern amongst surveyed members of the Government Relations Institute of Canada (GRIC), according to Jason Kerr, GRIC's president, who also serves as managing director of government relations for the Canadian Automobile Association.

"Canvassers help the democratic process. They help enfranchise Canadians to be part of the vote. Volunteers are a key accountability mechanism in elections. We shouldn't be doing anything that suppresses their activity," said Kerr. "A federal election is like the Super Bowl for lobbyists. To think they would not want to be involved in some way, shape, or form is, I think, not correct."

Kerr said GRIC is still gathering feedback from its members, and did not yet know what recommendation the organization might make as an alternative to the draft updates regarding political work.

Lobbying Commissioner Nancy Bélanger said that the draft updates to the Code were chosen partly with the goal of simplifying the rules for lobbyists. The consultation process is still underway, and the proposed updates are still subject to change based on the public's feedback, she added.

"The previous rule required an analysis of whether or not each activity would possibly create a sense of obligation, and based on the experience and the types of different situations we had a chance to analyze, we came up with a list to define what significant political work would include, versus other types of political work," said Bélanger. "We were trying to make it more clear as to what would be acceptable versus not, instead of having to dive into what kind of sense of obligation a public office holder would have towards this individual. We thought we were making it clearer [and] more simple. I look forward to hearing from the stakeholders and see what they have to say."

Scott Thurlow, an Ottawa lawyer and founder of Thurlow Law, told *The Hill Times* the reason political campaigns have volunteers is to ensure the electoral process runs smoothly, and volunteers should not face potential punishment for political work.

"There should be no disincentives to participating in the political process. These proposed changes will make it more difficult for people who are already in the government relations industry to exercise their constitutionally protected franchise," said Thurlow. "People will say 'I don't want to sacrifice my livelihood to go and advance these things which are my political ideals.'"

The draft updates also propose a change regarding gifts and hospitality, by listing a specific monetary threshold for acceptable food and beverages offered by lobbyists to public office holders.

A guidance document provided by the OCL cautions that meals or refreshments offered by lobbyists to public office holders during meetings can potentially create a sense of obligation, unless those foods and beverages are of "minimal value."

In the draft updates, the OCL proposes that low-value food and beverage should be set at or below $30 in 2022 dollars, including taxes.

The decision to put a firm dollar limit on food and beverage items in the draft updates stemmed from concerns related to the appropriateness of gifts and hospitality being one of the most common questions posed to the OCL by lobbyists, according to Bélanger.

"Every single time we need to do somewhat of an analysis. The $30 threshold, for me, was a reasonable *de minimis*, where anything below that, people might think I'm being unreasonable, and anything above that a reasonable person may start to look like it could possibly be given to influence," she said. "Every time we told people 'around $30,' they appeared to accept that was being reasonable, because that's the type of advice we were giving."

Thurlow argued that a $30 threshold may not always be the best guideline, because what constitutes "low value" could be evaluated differently depending on the person or the circumstances. As an example, he cited former minister of International Co-operation Bev Oda, who made headlines in 2012 for a spending scandal that included charging the public for a pricey drink of orange juice.

In 2012, it was reported in the media that Oda, who served in Stephen Harper's Conservative cabinet, switched from a five-star hotel to an even more luxurious establishment at the public's expense while attending a conference in London, England, in 2011. Following the report, Oda repaid taxpayers for $1,000 a day in limousine expenses, her stay at the Savoy Hotel, and for a $16 glass of orange juice.

Thurlow argued that Oda's $16 orange juice "inflamed the passions of Canadians," but, under the proposed draft updates to the Code, lobbyists would not be prohibited from offering a similarly priced beverage to public office holders, as it would fall below the $30 threshold and be considered "low value."

"Common sense is the thing that should dictate a lot of this and if you are in a position where you are offering something that you, yourself, know a reasonable person would find to be extravagant, then you should not be offering [it]," he said.

Kerr said that a firm dollar threshold on hospitality could be useful, because currently lobbyists are left to interpret what food and beverage constitute minimal value on their own.

"Regardless of where the arbitrary line is drawn, the fact that it's being recognized—that refreshments of low value are acceptable—I think is important," said Kerr. "[Coffee and snacks]

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# Spend time on ethics prep to save time handling pitfalls

For 2022, my attention remains focused on educating to prevent conflicts of interest, especially in light of recent ethical issues that have impacted public confidence.

Mario Dion

*Opinion*

Prevention is the major focus of the regimes that I administer as the federal Conflict of Interest and Ethics Commissioner, but they also contain enforcement provisions for instances of non-compliance. Under the Conflict of Interest Act, I can issue administrative monetary penalties for failure to meet certain reporting deadlines and compliance orders that can, for example, prohibit former public office holders from dealing with current public officials. I can also conduct investigations resulting in the release of a public report.

The Act provides a variety of mechanisms to help ensure the spirit and intent of the law are met. One question about my powers that I am at times asked is should I have the ability to recommend stiffer penalties for public office holders who violate the Act. However, it is not up to the commissioner to suggest changes outside of a formal review by a parliamentary committee. I administer the Act as it is written and for the most part, I believe it is working well.

Whether or not the Act is amended, it will still be up to all regulatees—ministers, deputy ministers, parliamentary secretaries and ministerial staff, and individuals appointed to public sector boards and agencies—to take the time to learn about its conflict of interest rules. My role is to provide what is needed to achieve and maintain compliance. This includes supporting, advising, and directing them as well as monitoring their actions. However, it is manifestly unfeasible to watch regulatees' every move to proactively provide preventative guidance. It is therefore imperative that regulatees develop a reflex to act ethically and educate themselves to ensure compliance.

As I look back on how I fulfilled my mandate in administering both the Act and the Conflict of Interest Code for Members of the House of Commons last year, I am pleased with how the Office has evolved its approaches and adopted more preventative strategies towards education. For 2022, my attention remains focused on educating to prevent conflicts of interest, especially in light of recent ethical issues that have impacted public confidence.

To maintain the trust that Canadians have placed in them, regulatees must invest the time necessary to understand and respect the rules around conflicts of interest to continue upholding that confidence. They are accountable for their compliance with the legislation and therefore must take charge of their education. If you're a regulatee, here's how you can build your own understanding of your obligations, now and in the future.

Complying with the Conflict of Interest Act is not about avoiding penalties, but about doing the right thing, and Ethics Commissioner Mario Dion writes that he firmly believes the vast majority of regulatees are honest people who want to follow the rules. *The Hill Times photograph by Sam Garcia*

First, you must familiarize yourself with the rules. It's as simple as reading the text of the Act or its summary, easily accessible on the Office's website. While this is an initial investment of time, it will go a long way in helping you meet your obligations throughout your mandate. Remember that compliance rules go beyond the duration of your mandate under the Act: you continue to have obligations even after you leave office. Post-employment rules include prohibitions against taking improper advantage of your previous public office, switching sides, and using insider information.

Second, continue building your education by taking advantage of our educational tools. These include virtual and in-person educational sessions hosted by myself or another representative of the Office, as well as helpful information on the website such as information notices on various themes covered by the Act. We also use Twitter (@EthicsCanada) to keep you in the loop of information that can help you understand and comply with the Act. Our aim is to make it easy for you to stay on top of your obligations, but it is up to you to become a lifelong learner and make the most of these tools. Feedback is always welcome, and I would encourage you to tell us how we can best support your needs.

Third, should you have questions at any point in your learning journey, whether general or specific to your case, advisers in the Office are available to help you. Just as you would seek medical advice to avoid health complications or legal advice to avoid falling afoul of the law, you must take it upon yourself to seek advice from the Office to avoid conflicts of interest.

Complying with the Conflict of Interest Act is not about avoiding penalties, but about doing the right thing. I firmly believe that the vast majority of regulatees are honest people who want to follow the rules. My advice to regulatees is simple: spend time to save time. It is far easier for you to meet your obligations than it is to be investigated for possible non-compliance.

*Mario Dion has been the federal Conflict of Interest and Ethics Commissioner since Jan. 9, 2018.*

*The Hill Times*

# Lost in the haze: has the need for ethics law reform been overshadowed by Trump and COVID?

Our laws tell the world something about who we are as a nation and who we believe we can be. If we want to remain a global leader, then our laws must be modernized so that they send a clear signal about the Canadian public's expectations of its elected officials.

Ian Stedman

*Opinion*

I teach an upper year course on public sector ethics at York University. Every year, I add new content to my course because every year politicians in this country make what I desperately hope are clumsy, rather than corrupt, decisions that land them in hot water. I am a glass-half full person though, and I want my students to learn to think critically about public sector ethics, not cynically. This is easier said than done sometimes. The unpalatable amount of ethics-related drama coming from politicians both north and south of our border over the past five years has made it nearly impossible for many of us to stave off our growing cynicism.

In fairness, maybe the bad behaviour has always been there. Maybe it's the constant media attention now placed on that behaviour that has changed, bolstered by former President Donald Trump's obsession with Twitter. But it's not all Trump's fault—our current prime minister has also been found in violation of our parliamentary ethics laws. I tell my students that it is no longer good enough to "make a mistake" about these laws; that senior officials need to have advisers who are trained in parliamentary ethics because these laws are not new. I tell them that "honest mistake" should no longer appear in an ethics commissioner's report. I say "fool me once, shame on you."

It is of course a bad thing that Justin Trudeau has found himself on the wrong side of an ethics report a few too many times. But it is also because of his behaviour that Canadians are starting to understand how toothless the conflict of interest and ethics commissioner (CIEC) is when it comes to enforcing parliamentary ethics rules. It's time to "give the CIEC more powers," we all scream. Is that even possible though—or is the CIEC's powerlessness over discipline simply an unavoidable function of parliamentary democracy, where those who are elected to office ultimately get to make decisions about whether and how to discipline one another?

Some of us (including my keen students) contrast Trudeau's transgressions with former President Trump's activities and to the gravity and challenge of governing during a global pandemic and are compelled to dismiss our made-in-Canada ethics "scandals" as being comparatively inconsequential. I understand this proclivity—I really do. Some also

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Former Conservative MP Kenny Chiu introduced the Foreign Influence Registry Act last year. According to McGill researchers, he was among the Tories targeted by a 'state-sponsored disinformation campaign' during the 2021 election, write Andre Albinati and Megan Buttle. *Photograph courtesy of Flickr/Andrew Scheer*

# Lobbying needs transparency in the face of foreign threats and disinformation

Foreign influencers and the challenges posed by disinformation must be high on the agenda as we update our regulatory systems.

Andre Albinati & Megan Buttle

*Opinion*

When the Lobbying Act was brought in, one of its key objectives was to bring transparency to an otherwise opaque area of government engagement. In this sense, the act and its regulations have been highly effective. The system provides clickable, searchable information on reportable meetings and lobbying activities with clear oversight and punishments for those not following the law.

As Ottawa returns to work, reviews of ethics rules and the Lobbying Code of Conduct are on the agenda. But instead of further obsessing over whether the purchase of a cup of coffee constitutes a threat to democracy, why don't we focus on some real threats, such as the growing interference of foreign actors in Canadian political processes and the societal implications of disinformation?

In early 2021, former Conservative backbench MP Kenny Chiu introduced Bill C-282, the Foreign Influence Registry Act. The bill's objective was transparency: it would require individuals acting on behalf of a "foreign principal" to report "when they take specific actions with respect to public office holders."

A recent *Policy Options* article by two McGill University researchers documented how Chinese agents targeted Chiu and other Conservative MPs during last fall's election through a "state-sponsored disinformation campaign." He and several other Conservatives lost their seats in constituencies with large Chinese-Canadian populations.

The details of this campaign have exposed a huge hole in the Lobbying Act. If many of the activities deployed by the foreign plotters had been conducted by Canadian lobbyists, they would have run afoul of that legislation, not to mention the Elections Act.

Ensuring transparency remains a cornerstone of solid ethics and lobbying regimes that guide both policy makers and practitioners. Surely transparency should extend to foreign actors when they engage in propaganda campaigns that would be subject to regulation if conducted by domestic lobbyists.

Of course, the case of Chiu raises another issue besides foreign intervention in our democratic processes—the damage done when disinformation is harnessed for political purposes.

Last spring, there was a lively discussion of Bill C-10, centred on the need to regulate social media platforms and the algorithms they use to amplify or recommend content. However, as digital tools continue to evolve and grow in influence, decision-makers need also to focus on the role misinformation plays in distorting opinions and eroding trust in institutions. In the past year, misinformation targets have included vaccines, climate change, racism, education, and mental health.

Since one person's misinformation is another's revealed truth, early government action is likely to prove elusive. Weaponization of disinformation and its intentional spread are difficult to define and even tougher to address comprehensively. But the disinformation campaign that was organized offshore to target MP Chiu reinforces the need for greater transparency and broader regulatory mandates.

> If our democratic institutions are seeking ways to improve how Canadians consume information, can fact check and filter sources, trustworthy or not, we must add greater transparency, not manipulate algorithms.

The federal government is fond of pledging "whole of government" efforts to address complex issues that cut across multiple departments. This kind of approach will be necessary to enable federal legislators and policy makers to focus attention on cybersecurity transparency—to ensure our democratic institutions remain strong and reflect Canadian interests.

There are some simple measures that could be considered in Canada, such as the U.S. Foreign Agents Registration Act and the Foreign Influence Transparency Scheme in Australia.

Our ethics and lobbying regulation regimes could also start by extending their mandates to the activities of foreign players who use disinformation against Canadian public officials and target Canadian citizens. Might the current requirement in the Lobbying Act to report the formation of coalitions be expanded to catch offshore agents who are using disinformation campaigns to influence or intimidate Canadians?

There are some tough challenges to face. Online spaces like social media are constantly changing in what they offer users, whether it's through paid targeting tactics or their algorithms that alter how Canadians view content organically. More importantly, the actors engaging in disinformation campaigns are adaptive and used to reinventing the wheel quickly—especially in contrast to government.

Even on the best of days, governments move slowly, and reaction times for regulatory changes are often no match for the pace of social media. If our democratic institutions are seeking ways to improve how Canadians consume information, can fact check and filter sources, trustworthy or not, we must add greater transparency, not manipulate algorithms.

Adding further complexity to the interpretation of the acts that govern lobbying and ethics to create some quasi-judicial utopia at a time when Canadian democratic institutions are being eroded is of doubtful utility.

There is only so much legislative bandwidth to examine issues and we need to be ruthless in focusing on what is important and what actually needs to be fixed.

Foreign influencers and the challenges posed by disinformation must be high on the agenda as we update our regulatory systems.

*Megan Buttle is the digital practice lead at Earnscliffe Strategies, current vice-president of the Government Relations Institute of Canada, and previously worked for several Liberal Cabinet ministers. Andre Albinati is a principal at Earnscliffe Strategies, a former adviser to the Rt. Hon. Paul Martin, former president of the Government Relations Institute of Canada, and sits as an adviser to the Board of the Canada Science Policy Centre.*

*The Hill Times*

# Strengthening Canada's lobbying regime

Significant improvements can be made in the areas of transparency, fairness, clarity, and efficiency—values that are essential to an effective administration of the federal lobbying regime.

Nancy Bélanger

*Opinion*

Canada's lobbying regime is intended to foster transparency of lobbying activities and the ethical conduct of lobbyists. A healthy lobbying regime is one that supports public confidence in the integrity of government decision-making.

It will come as no surprise that I believe the Lobbying Act should be strengthened. With this in mind, I shared 11 preliminary recommendations with committees in both Houses of Parliament in 2021.

Significant improvements can be made in the areas of transparency, fairness, clarity, and efficiency—values that are essential to an effective administration of the federal lobbying regime.

It's no secret that the "significant part of duties" registration threshold for organizations and corporations is a thorn in the side of many. It can be difficult to track, monitor, and account for all of the time spent by employees in order to calculate whether registration is required.

Instead, all corporations and organizations whose employees lobby federal government officials should be required to register their lobbying activities by default, unless they qualify for a limited exemption based on objective criteria.

All corporations and organizations whose employees lobby federal government officials should be required to register their lobbying activities by default, unless they qualify for a limited exemption based on objective criteria, writes Lobbying Commissioner Nancy Bélanger. *The Hill Times photograph by Aidan Chamandy*

Registration by default is simple and easier to understand and apply. Not only would it reduce complexity for corporations and organizations in determining whether they are required to register, but, more importantly, it would enhance transparency by having a greater proportion of paid lobbying activities reported in the Registry of Lobbyists.

Each month, lobbyists are required to report their oral communications with a designated public office holder that are "arranged in advance" and "initiated" by a lobbyist. However, these reports don't need to include some relevant information, such as the names of the lobbyists or the clients who were present, anyone who accompanied them, or any other public office holders who participated in the communication. This information should be reported and would provide greater context in respect of oral communications.

All oral communications with designated public office holders should be reported in the Registry of Lobbyists, regardless of who initiated them and whether or not they were arranged in advance; again, this would enhance transparency. British Columbia has made great strides in this regard in its 2020 amendments to their lobbying regime.

Also problematic is the existence of different disclosure requirements for corporations and organizations, which result in an uneven application of the Lobbying Act. For example, both corporations and organizations should be required to list all employees who lobby on their behalf. Currently, only organizations must do so. This creates a gap whereby those employees of corporations lobbying less than a significant part of duties do not find themselves listed on the Registry, hence not subject to the Lobbyists' Code of Conduct.

Another area where the playing field should be levelled is the post-employment restriction on lobbying, which applies to former designated public office holders.

The Lobbying Act prohibits former designated public officer holders from engaging in any in-house lobbying activities as a consultant and on behalf of organizations. However, the Act allows them to engage in in-house lobbying on behalf of corporations as long as their lobbying activities do not amount to a significant part of their work.

There is no readily apparent explanation in the parliamentary record to justify this difference. The five-year post-employment restriction on lobbying should be the same, regardless of whether former designated public office holders become consultants or are employed by a corporation or an organization.

I also believe that the addition of a range of compliance measures would strengthen and modernize the lobbying regime. It would allow for greater flexibility and proportionality in addressing contraventions of the Act. Such measures could include training, administrative monetary penalties and temporary prohibitions.

Hand in hand with a healthy lobbying regime is the requirement for a strong ethical culture. The Lobbyists' Code of Conduct complements the Lobbying Act's registration requirements and serves to reinforce transparent and ethical lobbying.

I have initiated two consultations on future changes to the Lobbyists' Code of Conduct: the first in late 2020, to help inform the changes to the Code and the second, just recently, on a draft update to the Code.

The proposed draft is based on transparency, respect for government institutions, integrity, and honesty. It is intended to provide clear and simple rules of conduct, which should be easier to follow, and consequently, easier to enforce. Definitions of key terms to help guide the conduct of lobbyists are also included in the draft Code.

A strong and modern federal lobbying regime is one that should stay current. I continue to reflect on how to enhance our federal lobbying regime. One thing is certain, that any future recommendations to improve the Act or enhancements to the Code will be grounded in the values of transparency, fairness, clarity and efficiency.

*Nancy Bélanger is the Commissioner of Lobbying, an independent agent of Parliament responsible for regulating federal lobbying activities.*

*The Hill Times*

# Lost in the haze: has the need for ethics law reform been overshadowed by Trump and COVID?

Some of us contrast Prime Minister Justin Trudeau's transgressions with former president Trump's activities and to the gravity and challenge of governing during a global pandemic and are compelled to dismiss our made-in-Canada ethics 'scandals' as being comparatively inconsequential, writes Ian Stedman. *The Hill Times photograph by Andrew Meade*

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argue that focusing too closely on modernizing laws to give the CIEC more power makes the search for a politics of integrity feel more like a search for "a politics of compliance."

I have to admit that I don't think parliamentary ethics laws will ever be able to keep pace with public expectations. In fact, every time a politician is absolved of a perceived ethics violation, the Twitterverse proceeds to call the CIEC toothless, useless, and "in Liberal pockets." What's more likely than that the CIEC is "bought" is that the CIEC's powers are simply limited. In fact, the cynic in me thinks those powers will always be limited. Not because they necessarily have to be (after all, the CIEC already has the power to issue administrative monetary penalties against public office holders), but because the laws in question can only be updated by the very Parliamentarians whose behaviour they are meant to restrict.

So where do we go from here?

Well, Canada prides itself on being a global leader in strong, progressive, social-justice oriented governance. Our parliamentary ethics laws have been held up as a high-water mark for others to aspire to. As each new ethics scandal calls the world's attention to our outdated parliamentary ethics regime, that water begins to recede.

We do not need to have a new government in order to have incentive to improve our parliamentary ethics laws. Our laws tell the world something about who we are as a nation and who we believe we can be. If we want to remain a global leader, then our laws must be modernized so that they send a clear signal about the Canadian public's expectations of its elected officials. Mere compliance with that expectation cannot be our collective goal, however. We must strive to elect politicians who take these laws seriously while simultaneously seeing them as a low-water mark, not a high one. They are the bare minimum standard for what we expect from our political class, nothing more. Modernizing these laws will help us keep our ships rising so that the rest of the world can see what is possible and aspire to keep pace.

*Ian Stedman is an assistant professor of Canadian public law and governance in the School of Public Policy and Administration at York University.*

*The Hill Times*

# Charging into 2022 on the COVID carousel

The pandemic has exposed how industry and government, working together and listening to each others' interests, can effectively work together to create the right support solutions for all Canadians.

Jason Kerr & Alex Greco

*Opinion*

As 2022 kicks off, Canadians are unfortunately again being confronted by many of the same challenges we had to overcome over the last 22 months as a result of the pandemic. As all sectors continue to adapt, the impact on the lobbying industry is no different.

As was the case in 2021 and much of 2020, the majority of government relations professionals across the country will continue to work remotely and conduct much of their engagement virtually. While the fall of 2020 did present a short window of opportunity for some on-the-Hill meetings and receptions, the rise of the Omicron variant paints a bleak picture for these types of engagements to occur again anytime before the summer. Until then, our communications with Members of Parliament, political staff, and departments will remain primarily digital.

Sadly, we have been here before; however, the positive news is government relations professionals and government are now equipped and, most importantly, fully accustomed to virtual advocacy engagements.

The pandemic has opened the industry's eyes to emerging digital tools such as webinars on LinkedIn Live and audio panels, like Twitter Spaces, which are becoming the norm. While we used to gather for luncheons and meet for evening receptions to share successes and profile thought leadership, a growing number of lobbyists and those they represent are exploring these new digital avenues.

Moving to these virtual experiences has also demonstrated another important consideration for our industry—they can be extremely cost effective and time efficient, especially for those located hours away from Ottawa. Individuals from across Canada who are keen to advocate their position with the federal government, no longer need to make the costly trip to Ottawa and can instead now meet virtually to engage cabinet ministers, political staff, and department officials. Even for those based in Ottawa, a 30-minute meeting is now just a 30-minute meeting, saving you the cold winter walk down Sparks Street.

While it's hard to say what the long-lasting impact will be on how advocacy is carried out after the pandemic is over, it is likely that at least some elements of virtual and hybrid meetings will continue. The importance of meet-

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# Loophole-filled, weakly enforced lobbying and ethics laws a sad joke

The key question is: will a critical mass of MPs in the current minority Parliament situation work together to pass a bill to finally clean up this unethical mess?

Duff Conacher

*Opinion*

The federal Lobbying Act and Lobbyists' Code of Conduct, as well as federal ethics rules in the Conflict of Interest Act, MPs' and Senators' ethics codes, and public servants' code continue to be a collective sad joke because of huge loopholes, fatal flaws, and weak, secretive enforcement by the ethics commissioner, lobbying commissioner, deputy ministers and the public sector integrity commissioner.

These commissioners are handpicked by the cabinet through secretive processes that the Federal Court of Appeal has ruled are biased. The appointment process for these and all other federal democratic good government watchdogs, including judges, needs to be made more independent of cabinet to remove the taint of self-interested partisanship that undermines public confidence.

The loophole-filled, flawed federal rules: 1) allow for secret, unethical lobbying, mainly by big business lobbyists; 2) allow cabinet ministers, their staff, top government officials, MPs, and Senators all to participate in decisions that they and their family members can profit or benefit from in secret, and; 3) do not even cover staff of MPs and Senators.

Only one of the loopholes is usually mentioned in articles about the Lobbying Act—the rule that allows an employee of a business to lobby in secret without registering as long as they don't lobby more than 20 per cent of their work time. The House Ethics Committee unanimously called for that loophole to be closed 10 years ago, and again last June.

But there are other huge loopholes. Businesses are not required to disclose their lobbying of enforcement agencies.

No one is required to register and disclose their lobbying if they are not paid for it. Hired-gun "consultant" lobbyists can easily have their contract say their clients will pay them for advice, and then lobby for them in secret for free. This loophole also allows unpaid board members and retired executives of businesses and other organizations to lobby in secret.

Even if a person is required to register their lobbying, only oral, pre-arranged communications that they initiate with office holders are required to be disclosed. Emails, letters, and any communications initiated by the office holder (other than about a financial benefit) can be kept secret.

Lobbying Commissioner Nancy Bélanger is pictured ahead of a December 2017 House Ethics Committee meeting. The committee has called for the Lobbying Act to do away with the 20 per cent rule for a decade, writes Duff Conacher. *The Hill Times photograph by Andrew Meade*

If you can exploit a loophole so you don't register your lobbying, then the ethics rules in the Lobbyists' Code don't apply and you can do favours for politicians you lobby, like fundraising and campaigning.

Even if you are a registered lobbyist, the Code together with a loophole in the MP and Senator ethics codes legalize lobbyists giving MPs the gift of unlimited sponsored travel, and other loopholes allow all federal politicians to accept gifts from friends, even if they are lobbyists.

The loopholes also allow federal politicians and officials to leave office and start lobbying federal politicians and government officials the next day, in secret and unregistered. The so-called "five-year ban" in the Lobbying Act only applies to registered lobbyists.

And while there is a cooling-off period in the ethics law for cabinet ministers and top government officials after they leave office, it is also so full of loopholes that they can start working right away with most businesses or lobby groups. The stronger rules that prohibit giving advice based on secret information obtained in office, or taking improper advantage of your former office, anytime in the future have essentially been ignored by the ethics commissioner.

The much-too-high political donation and third-party spending limits in the Canada Elections Act are additional layers in this smelly layer cake of unethical federal political decision-making. They allow wealthy individuals to buy influence through annual donations of more than $3,300, and wealthy individuals and lobby groups to buy influence through spending in support of parties. Banks, which are regulated by the federal government, are also allowed to make unlimited loans to parties and candidates.

Finally, the ethics commissioner and lobbying commissioner are allowed to make secret rulings, both have gone easy on what could be argued as violations of the rules and, even if you are found guilty, the only penalty in most cases is a public report. The commissioners should be required to rule publicly on every situation they examine, and to impose significant fines on all violators.

Add it all up and it's essentially a legalized bribery system of unethical, biased favour-trading—pay to play, cash for access and influence—that makes every federal political decision-making process vulnerable to being tainted, in secret, by serious conflicts of interests.

The key question is: will a critical mass of MPs in the current minority Parliament situation work together to pass a bill to finally clean up this unethical mess?

*Duff Conacher is co-founder of Democracy Watch, and a PhD student in law at the University of Ottawa.*

*The Hill Times*

# Lobbyists concerned potential rule changes could hinder volunteer opportunities in campaigns

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are not something that is going to leave someone with a sense of obligation against the lobbyists that they've been meeting. They're just normal pleasantries. They're part of a meeting, and you shouldn't have to bring your own lunch to a meeting during a luncheon."

Kerr added that pursuing greater clarity in the Code can be good, but he also doesn't see any major concerns with the Code in its current state.

Thurlow questioned whether revisions to the Lobbyists' Code of Conduct are necessary, arguing there is already an onus on public office holders to conduct themselves responsibly while engaging with lobbyists.

"Public office holders have an obligation under the Conflict of Interest Act, and that is sufficient for dealing with this issue," said Thurlow.

NDP MP Matthew Green (Hamilton Centre, Ont.), his party's ethics critic, agreed that there is overlap between the Conflict of Interest Act and the Lobbyists' Code of Conduct, but that having a separate set of rules for lobbyists is still important. He argued the Code could be made even more stringent by including penalties for rule breakers.

"I think that the fact that a contravention of the Lobbyists Code of Conduct is not an offence—it doesn't result in any penalties—speaks to how we can tighten it up to put the onus on people who are engaged in these practices. I think that being able to investigate a breach is one thing, and the onus always being on the elected officials is another. Certainly we should have the highest standard of accountability but so should the people who are out actively lobbying," he said.

A stricter set of rules with penalties for lobbyists could help restore some public confidence in Canada's lobbying and ethical regimes, following scandals from recent years, including the affairs surrounding SNC-Lavalin and the WE Charity, according to Green.

"One of the challenges we have in the ethics committee is that, regardless of whatever politician or party is being targeted for an ethical breach, it denigrates the integrity of the entire institution," said Green. "We have a responsibility, in a non-partisan way, to restore the trust and confidence in government. The Code adds a new principle of respect for democratic institutions. It says that lobbyists should act in a manner that demonstrates respect for democratic institutions, including the official's duty to serve the public."

In regards to the SNC-Lavalin affair, federal Ethics Commissioner Mario Dion found in August 2019 that Prime Minister Justin Trudeau breached the Conflict of Interest Act by improperly pressuring then-justice minister Jody Wilson-Raybould to intervene in an ongoing criminal case against the construction company. Regarding WE Charity, a May 13 report from Dion found close ties between former Liberal finance minister Bill Morneau and WE Charity co-founders Craig and Marc Kielburger, which resulted in a breach of the Conflict of Interest Act over a program contract. Trudeau was also investigated on the matter, but cleared of any violation.

"I think that if we were to add in penalties [to the Code], and make an offence for breaches, then the onus would be on the private interest to act in accordance with the principles. Absent of that, it's essentially a slap on the wrist, which is what we see time and time again, when people are caught in this way, and the damage is already done," said Green.

Greco argued that virtually all lobbyists have followed the Code since it was established.

"The current Code's preamble explicitly stated that advocacy is an integral and important part of Canada's democratic process that strengthens how public policy is developed. It would be nice to see that important acknowledgement carried forward in the revised version," he said in an emailed statement to *The Hill Times* on Jan. 14.

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*The Hill Times*

## A summary of draft updates for the Lobbyists' Code of Conduct

### Political work

**Existing Code:** When a lobbyist undertakes political activities on behalf of a person which could reasonably be seen to create a sense of obligation, they may not lobby that person for a specified period if that person is or becomes a public office holder. If that person is an elected official, the lobbyist shall also not lobby staff in their office(s).
**Proposed change:** Never lobby an official or their associates if you have done political work—paid or unpaid—for the benefit of the official, unless the cooling-off period has expired.

### Gifts

**Existing Code:** To avoid the creation of a sense of obligation, a lobbyist shall not provide or promise a gift, favour, or other benefit to a public office holder, whom they are lobbying or will lobby, which the public office holder is not allowed to accept.
**Proposed change**: Never offer, promise or provide—directly or indirectly—any gift to an official that you lobby or expect to lobby, other than a low-value token of appreciation or promotional item. (Low-value is set at approximately $30 in 2022 dollars, including taxes.)

### Preferential access/Sense of obligation

**Existing Code:** A lobbyist shall not arrange for another person a meeting with a public office holder when the lobbyist and public office holder share a relationship that could reasonably be seen to create a sense of obligation.
A lobbyist shall not lobby a public office holder with whom they share a relationship that could reasonably be seen to create a sense of obligation.
**Proposed changes:** Never lobby an official with whom you share a close relationship (A relationship is defined as a close bond with an official that extends beyond simply being acquainted. This includes close family, personal, working, business or financial relationships.). Never lobby an official where that official could reasonably be seen to have a sense of obligation towards you because of actions you have taken.

## Lobbying statistics (as of Jan. 17, 2022)

- Active consultant lobbyists: 1,019
- Active in-house corporation lobbyists: 2,198
- Active in-house organization lobbyists: 3,254
- Active consultant registrations: 3,456
- Active in-house corporation registrations: 469
- Active in-house organization registrations: 684

*—Source: federal lobbyists' registry*

While we used to gather for luncheons and meet for evening receptions to share successes and profile thought leadership, a growing number of lobbyists and those they represent are exploring new digital avenues amid the ongoing pandemic, write Jason Kerr and Alex Greco. *Pexels photograph by Anna Shvets*

# Charging into 2022 on the COVID carousel

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ing face-to-face cannot be understated. The ability to have casual dialogue at the beginning and end of meetings helps build relationships, while the opportunity to do simple things like read body language and maintain someone's focus are all undoubtedly stronger in person.

In 2022, we see an optimism among lobbyists for hybrid options when Health Canada and provincial guidelines again permit. This means the virtual tools that we have all come to know so well will continue to be leveraged, but the opportunity to integrate in-person engagements will be top-of-mind for in-house and consultant lobbyists when the time comes.

Even within our own associations, the Government Relations Institute of Canada (GRIC) and the Public Affairs Association of Canada (PAAC), we have also had to pivot the way we deliver our events, professional development opportunities and how we more generally connect with our members. As soon as health restrictions permit, our organizations will look for ways to re-introduce in-person events safely.

The year ahead will also be busy for the lobbying community on the federal legislative front. GRIC and PAAC are jointly preparing a response to the revised draft Lobbyists' Code of Conduct and will be looking to ensure the changes to the Code add clarity to the rules in support of greater transparency. Our organizations will also continue to consult our members and prepare for the next review of the federal Lobbying Act. However, this remains unlikely in the near term given there was no mention of a review in the recent release of the federal ministerial mandate letters.

Irrespective of whether our industry's work is held virtually or in-person, the vast majority of all government relations professionals conduct their affairs in accordance with the highest standards of integrity, honesty, openness, and professionalism—a pandemic has not changed that. If anything, the pandemic has exposed how industry and government, working together and listening to each others' interests, can effectively, in short order, work together to create the right support solutions for all Canadians.

*Jason Kerr is the managing director, government relations at the Canadian Automobile Association and president of the Government Relations Institute of Canada. Alex Greco is the president of the Public Affairs Association of Canada Ontario Chapter and is the senior director of policy and government affairs with the Canadian Beverage Association.*

*The Hill Times*