

LOBBYING 101: EVERYTHING YOU NEED TO KNOW DURING THE ONTARIO 2022 ELECTION

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Ontario Provincial Election 2022 Edition

Public discourse and civic participation take many forms during an election. Among other things, individuals may choose to donate to a political party, third parties may run advertising campaigns, and candidates and political parties may be lobbied to adopt preferred policy positions. Lobbying, in particular, is an important concept at a time when members of the community and organizations are trying to influence public discourse and policy. There are rules that carefully govern these activities in Ontario and interactions between political entities and stakeholders – whether it be individuals or organizations.

In this article, as part of McMillan LLP's ongoing coverage of this year's Ontario provincial election, we discuss lobbying and offer insights for individuals, grassroots organizations, government relations professionals, and political parties navigating their responsibilities during the writ period. Ontario's provincial election is likely taking place on June 2, 2022. The election period begins at 12:01 AM on the day the writ of election is issued, running until the last polling day.

Who is Considered a Lobbyist?

Ontario's *Lobbyists Registration Act* contemplates two different types of lobbyists – in-house and consultant lobbyists.

In-house lobbyists are individuals who, on behalf of a person or organization, are compensated for lobbying for a total of at least 50 hours, either individually or collectively with other employees.^[1]

Consultant lobbyists are individuals who, for payment, undertake to lobby on behalf of a client.^[2]

What is Lobbying?

Lobbying is communicating with public office holders in an attempt to influence government or regulatory agency actions, policies, or decisions, in certain circumstances. Lobbying is frequently employed during election periods as it is when political entities will be most attuned to the wants and needs of external

stakeholders.

With respect to in-house lobbyists, lobbying means communication with a public office holder in an attempt to influence:

- the development of legislative proposals by MPPs;
- the introduction, passage, defeat, or amendment of legislative bills or resolutions;
- the making or amendment of regulations;
- the development, amendment, or termination of any policy or program of the provincial government;
- a decision by the Executive Council regarding privatization or outsourcing; and
- the awarding of any grant, contribution, or other financial benefit from the provincial government.^[3]

In addition to the above forms of communication, consultant lobbyists are considered to be lobbying if they communicate with a public office holder in an attempt to influence the awarding of any government contract or to arrange a meeting between a public office holder and any other person.^[4]

These categories are not intended to capture all communication with public office holders. For example, among others, submissions to legislative committees in proceedings that are a matter of public record or routine constituency communication about matters of a private interest are not considered lobbying.^[5]

A key consideration in determining whether an individual is a lobbyist is whether they have, or will, receive payment for communicating with a public office holder with respect to the above categories. If they have not, or will not, receive payment, then the analysis does not need to go any further – they are not a lobbyist.

Who is a Public Office Holder?

Generally, a public officer holder in Ontario is defined as:

- any minister, officer, or employee of the Crown;
- a member of the Legislative Assembly and any person on their staff;
- a person appointed to any office or body requiring the appointment or approval of the Lieutenant Governor in Council or a minister of the Crown, other than a judge or justice of the peace or a person appointed by or with the approval of the Lieutenant Governor in Council on the address of the Legislative Assembly;
- an officer, director, or employee of any Crown agency, board, or commission; and
- a member of the Ontario Provincial Police.^[6]

During the election period, the Legislative Assembly is dissolved and MPPs are no longer considered public office holders. In contrast, cabinet ministers continue in office throughout the election period and registration

requirements continue as they would outside of an election. However, the Integrity Commissioner encourages all lobbyists to continue registering their lobbying activities as they would outside of the election period.^[7]

Who must Register?

If you are an in-house or consultant lobbyist, you have certain obligations with respect to registering your interactions with public office holders. For in-house lobbyists, it is the responsibility of the senior officer of an organization that employs an in-house lobbyist.^[8] Most commonly, this is the CEO of an organization. In large organizations, in particular, communication with public office holders is a common activity. It can sometimes be difficult to track and calculate the lobbying activities of all employees, and therefore, it may be prudent for the senior officer to pre-emptively register key employees interacting with public office holders, regardless of whether the requisite 50-hour threshold is reached.

Regarding consultant lobbyists, a consultant lobbyist is responsible for their individual registration and filing of returns.^[9] This registration must occur within 10 days after a consultant lobbyist commences the performance of an undertaking to lobby.^[10] At other levels of government, registration and reporting obligations may be triggered when an agreement of an undertaking is first made, as opposed to Ontario where *performance* of an undertaking is the triggering action. For further clarity, undertakings are contracts or agreements entered into between a consultant and a client for payment.

Third Parties and Lobbying

Third parties engaged in the political process are also subject to certain rules and requirements, because, as discussed, various individuals and organizations frequently participate in the political process and interact with parties and candidates to influence public policy and opinion.

Third parties are broadly defined as persons or entities other than registered candidates, registered constituency associations, or registered parties.^[11] While third parties are distinct from “lobbyists”, such third parties may be captured by Ontario’s lobbying regime, depending on their structure and activities, and must be aware of the rules surrounding lobbying and consult with professionals to ensure ongoing compliance.

Third parties are subject to additional rules and requirements governing their election-related activities, particularly with respect to advertising. For example, third parties must register with Elections Ontario immediately after spending \$500 or more on advertising during an election period or in the twelve months before a general election.^[12] To register, third parties must appoint a CFO, appoint an auditor if the third party intends to spend \$5000 or more on political advertising, and submit the requisite application form.^[13]

McMillan LLP has prepared a separate article on third parties that is available [here](#).

Lobbying and Political Activity

Lobbyists have the right and are permitted to participate in political activities. However, lobbyists must be mindful of creating potential conflict of interests. By participating in a political campaign with a public office holder, the lobbyist may jeopardize their ability to subsequently lobby said public office holder if they are elected.^[14]

There are many considerations when participating in an election, be it as an individual, lobbyist, third party organization, or political entity. It is important to work with qualified professionals that can assist you and your organization in navigating applicable lobbying and election finance laws.

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

[1] LRA 5(7)

[2] LRA 1(1)

[3] LRA 1(1)

[4] LRA 1(1)

[5] LRA 1(1)

[6] LRA 1(1)

[7] *Guidance for Lobbyists During and After an Election*

[8] LRA 5(1)

[9] LRA 4(1)

[10] LRA 4(1)

[11] EFA 1(1)

[12] EFA 37.5(1)

[13] EFA 37.5(2)

[14] Interpretation Bulletin #11, [What is a conflict of interest and how does it affect my lobbying?](#)

by [Timothy Cullen](#) and [Jeremiah Kopp](#)

A Cautionary Note

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