

LOBBYING REFORM DÉJÀ VU? CANADA'S COMMISSIONER OF LOBBYING RECOMMENDS HEIGHTENED OBLIGATIONS FOR LOBBYISTS ONCE AGAIN

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Last month, the Office of the Commissioner of Lobbying of Canada (the “**Commissioner**”) released a report entitled “[Improving the Lobbying Act: Preliminary recommendations](#)”. Stakeholders who keep an eye on federal lobbying law reform can be forgiven for feeling a sense of *déjà vu*; the report comes almost ten years after the last review of the *Lobbying Act* (the “**Act**”) by the House of Commons Standing Committee on Access to Information, Privacy, and Ethics, for which the Commissioner also prepared a report containing recommendations for reform.^[1] The Commissioner’s December 2011 report contained nine recommendations. Ten years later, the Commissioner’s February 2021 report contains 11 preliminary recommendations, six of which are the same, or very nearly the same, as the Commissioner’s prior recommendations. Guided by the values of transparency, fairness, clarity, and efficiency, the 11 preliminary recommendations submitted by the Commissioner can be divided into the three categories below.

1. Harmonize responsibilities of in-house lobbyists and consultant lobbyists

The *Lobbying Act*, which is built on the premise that lobbying public office holders is a legitimate activity so long as the system is transparent, divides lobbyists into two categories: organization/corporation (“in-house”) and consultant. Organization/corporation lobbyists are in-house lobbyists, who lobby on behalf of their own organization. Consultant lobbyists are individuals or firms external to an organization, who are paid to lobby on behalf of that organization. The Act, at present, imposes different requirements on these two different groups.

The Commissioner wants to change that. In recommendation **1**, the Commissioner proposes **requiring in-house lobbyists to register their lobbying activities by default** (or, in other words, the standard applied to consultant lobbyists). Currently, corporations and organizations are only required to register their lobbying activity when said activity constitutes a “significant part of the duties of one employee” – a threshold that the Commissioner finds “*difficult to apply and difficult to enforce*.”

In recommendation **2**, the Commissioner proposes **reducing the time in-house lobbyists have to register their activity from two months to 15 days** (and increasing consultant lobbyists’ registration time frame from

10 days to 15 days). Should these recommendations be implemented, any interaction with government by a corporation or organization would trigger a strict, time-sensitive onus to register and report on that activity.

The Commissioner is also recommending that, for the purposes of registration, paid members of boards of directors that perform lobbying activities be considered employees of the corporation or the organization, as opposed to their current status as consultant lobbyists (recommendation 4). Other recommendations include harmonizing the **disclosure requirements** and the **five-year post-employment prohibition on lobbying** applied to in-house lobbyists employed by corporations and those employed by organizations (recommendations **3** and **7**).

2. Expand monthly communication reports

Registered lobbyists are currently required to file summary monthly communication reports where an “oral communication” with a “designated public office holder” is “arranged in advance” and “initiated” by a lobbyist. According to the Commissioner, these qualifiers result in an “*absence of information [that] further hinders the transparency of the lobbying regime.*” As such, recommendation **5** proposes that **monthly communication reports should be required for all oral communications with designated public office holders – regardless of how or whom that communication is arranged, and that those reports should disclose all participants in attendance**. The Commissioner is further recommending that registrants be required to **disclose prescribed contextual information** – such as information related to sponsored travel, events, gifts, and political contributions – in their monthly communication reports (recommendation **6**). Requiring this additional information is thought to increase the transparency of the system.

3. Reform the compliance and enforcement mechanisms

The final category of recommendations deals with compliance and enforcement. Here, the Commissioner acknowledges both the stubbornness and the shortcomings of the current system. To counteract the Act’s rigidity, the Commissioner proposes **introducing new forms of penalties**, such as training, administrative monetary penalties, and temporary prohibitions, to provide a balance to the existing options of fines, imprisonment and up to a two-year ban on lobbying (recommendation **8**). To address the limitations of the current system, the Commissioner proposes making orders enforceable by **allowing orders issued by the Commissioner of the Lobbying to become orders of the Federal Court** (recommendation **9**) and **allowing referrals relating to alleged offences under the Lobbying Act** (or other federal or provincial legislation) **be made to any appropriate authority** (recommendation **10**). Lastly, in recommendation **11**, the Commissioner proposes that the Act be amended to **provide immunity against civil or criminal proceedings for the Commissioner of Lobbying and the Commissioner’s staff**.

Key Insights

- The changes recommended by the Commissioner are significant. They would impose heightened obligations on all lobbyists, but particularly on in-house lobbyists, while also providing the Commissioner with a greater range of tools for compliance and enforcement.
- Despite the proposed changes, these preliminary recommendations do not go as far as lobbying laws in certain provincial and municipal jurisdictions. For example, changes to British Columbia's lobbying law in Spring 2020 implemented more stringent rules for in-house lobbyists and capture a much wider swath of the public sector including crown corporations and prescribed public entities. Many provincial lobbying laws include crown corporations and other prescribed public entities within their scope.
- For companies doing business with the federal public sector, the Commissioner's preliminary recommendations leave the definition of lobbying untouched, which means that communicating with federal public officer holders about the awarding of a contract is not lobbying when performed by in-house lobbyists. This means that commercial sales and marketing activity, which can fall within the definition of lobbying in some jurisdictions, will not attract registration or reporting obligations for in-house lobbyists (which can include sales team members, account managers, etc.) at the federal level.
- The Standing Committee on Access to Information, Privacy, and Ethics will now consider these 11 recommendations. While corporations and organizations that interact with government would be well-advised to stay apprised of developments, it bears mentioning that the last review of the Lobbying Act by the Standing Committee on Access to Information, Privacy, and Ethics in 2012 gave rise to a report containing 11 recommendations but no legislative changes, even though the government supported some of them. As noted above, more than half of the current preliminary recommendations were made by the Commissioner back in 2011. In short, the Commissioner's preliminary recommendations are far from becoming law.

McMillan LLP, together with its public affairs arm, McMillan Vantage Policy Group, is here to help companies navigate the complex world of lobbying compliance and/or government relations. For more information, please contact [Timothy Cullen](#) or [Tessa Seager](#).

[1] [Administering the Lobbying Act – Observations and Recommendations Based on the Experience of the Last Five Years](#)

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A Cautionary Note

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