

# CRACKING (DOWN ON) THE CODE - KEY CHANGES TO THE LOBBYISTS' CODE OF CONDUCT

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The third edition of the *Lobbyists' Code of Conduct* is set to take effect on July 1, 2023.<sup>[1]</sup> The Code's amendments have many implications for both consultant and in-house lobbyists as well as the businesses and organizations that retain and/or employ them.

In this bulletin, we focus on highlighting parts of the Code most relevant to businesses and organizations that retain or employ lobbyists. Some of the key changes in the new Code concern duties to inform, or be informed of, obligations under the *Lobbying Act* and the Code; new low-value spending limits for gifts and hospitality; and a reduced cooling-off period for lobbyists engaged in political activities.

## Application of the Code

The new Code introduces an "Application" section, which identifies who must comply with the Code and the consequences associated with failing to comply. The Code applies to consultant lobbyists<sup>[2]</sup>, in-house lobbyists and the employers for whom they act. The previous editions did not identify who must comply with the Code.

## Duty to Disclose Rules

### *Consultant Lobbyists*

Rule 1.2 of the new Code requires consultant lobbyists to inform their clients of any obligations the client or the lobbyist may have under the *Lobbying Act*, its regulations, and the Code.<sup>[3]</sup> This change corresponds to Rule 3 in the 2015 Code, which only required consultant lobbyists to inform their clients of the lobbyist's own obligations under the legislation.

### *In-House Lobbyists*

This version of the Code includes a new rule specific to in-house lobbyists who lobby on behalf of an employer.<sup>[4]</sup> In-house lobbyists must inform their employer about their lobbying activities to ensure they are correctly registered and reported in the Registry of Lobbyists.<sup>[5]</sup>

### *Employer Obligations*

The registrant for an employer (i.e., the most senior paid officer for a corporation who is responsible for registering lobbying carried out by its employees<sup>[6]</sup>) must inform all lobbying employees about their obligations under the Code.<sup>[7]</sup> This rule is consistent with Rule 4 of the 2015 edition of the Code.

### **Gifts, Hospitality, and the New Low-Value Limits**

The rules around gifts and hospitality contain some of the most significant changes to the Code. The new Code aims to provide more clarity surrounding gifting and hospitality rules.

Rules 3.1 and 3.2 prohibit providing any gift or hospitality to an official other than those of low value. Rule 3.3 establishes a spending limit for allowed gifts and hospitality that can be provided to an official. The low-value amount is a maximum of \$40 per gift, with a total annual limit of \$200. This annual low-value limit may be adjusted based on the consumer price index on an annual basis.<sup>[8]</sup>

The new Code also includes a definition section specific to gifts and hospitality. This section includes a definition of “gift” with a list of examples such as door prizes, promotional items, and tokens of appreciation. Travel, excursions and transportation are also considered to be gifts. This includes sponsored travel, which some organizations use to educate elected officials abroad on issues of foreign policy and international development and humanitarian causes (while some of this travel is merely an extravagant junket).

The Commissioner of Lobbying also has the authority to grant an exemption to the gift and hospitality rules if certain conditions are met. These might include consideration of local market prices and dietary requirements for hospitality.<sup>[9]</sup> Lobbyists that would like to provide sponsored travel and continue lobbying the officials that receive it can likely do so, provided they have an exemption from the Commissioner. Organizations will need to be mindful of the limits that these new gift and hospitality rules and spending limits may place on their lobbying activities.

### **Sense of Obligation and the Cooling-Off Period**

The new Code expands on the former version’s conflict of interest rules,<sup>[10]</sup> prohibiting lobbying an official with whom the lobbyist has a relationship that could reasonably be seen to create a sense of obligation.<sup>[11]</sup> The new Code provides examples of what may be considered a “close relationship”, including family relationships, friendships and romantic relationships, and working relationships.<sup>[12]</sup>

The cooling-off period has also been significantly reduced in the new iteration. Lobbyists cannot lobby an official who they have previously done political work for, unless the cooling-off period has expired.<sup>[13]</sup> The cooling-off period, the time which must pass before lobbying an official for whom the lobbyist has previously conducted political work, has been reduced to 12 to 24 months depending on the nature of the work.<sup>[14]</sup> This is a significant change from the 2015 Code, which prohibited lobbying an elected official with whom the lobbyist

previously worked until the end of a full election cycle.<sup>[15]</sup>

The third edition of the Code takes effect on July 1, 2023, and it is important for lobbyists as well as the businesses and organizations that retain and/or employ them to take heed of these changes. Please reach out to Timothy Cullen if you have any questions regarding the new Code or compliance with lobbying laws in Canada.

[1] LCC (2023).

[2] “Application” section LCC (2023); Lobbying Act, RSC 1985, c C-44, s 10.3(1).

[3] Rule 1.2 LCC (2023).

[4] Rule 1.3 LCC (2023).

[5] “Registry of Lobbyists” (last modified 19 May 2023), online: [Office of the Commissioner of Lobbying Canada](#).

[6] “Definitions – General – “registrant for an employer” LCC (2023).

[7] Rule 1.4 LCC (2023).

[8] “Definitions– Gifts and hospitality” LCC (2023).

[9] Rule 3.3 LCC (2023).

[10] Rules 6-8 LCC (2015).

[11] Rule 7 LCC (2015).

[12] “Definitions – Close relationships” LCC (2023).

[13] Rule 4.2 LCC (2023).

[14] “Definitions – Political work” LCC (2023).

[15] Rule 9 LCC (2015).

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### **A Cautionary Note**

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.

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