

ONTARIO'S LOBBYISTS REGISTRATION ACT TO BE REVIEWED – PREMIER WANTS VIOLATORS TO FACE JAIL TIME

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In a statement on September 6, 2023, the Office of the Attorney General of Ontario announced that Ontario's *Lobbyists Registration Act, 1998* would be reviewed by a legislative committee in the coming weeks and that Premier Doug Ford had instructed the Attorney General to prepare recommendations to be presented to the committee including increased penalties for violations of the act, including potential jail time.

In June 2021, the LRA was referred to a legislative committee for a mandatory review, but the legislature was dissolved in May 2022 for a general election before the review took place. In advance of the 2021 review, Ontario's Integrity Commissioner, as Lobbyist Registrar, had highlighted some of the changes that they would like to see made to the Act. It is anticipated the Integrity Commissioner will make specific recommendations to the legislative committee in line with the Commissioner's desired changes as part of the coming review process.

The Integrity Commissioner's Desired Changes

1. Significantly reducing the annual 50-hour threshold for in-house lobbyists

The Commissioner believes the current threshold of 50 hours is high and results in less transparency on who is lobbying whom in government and about what.

If the threshold for in-house lobbyist registration is lowered, more corporations and non-profits will need to register their lobbying activity and develop proper internal procedures to ensure compliance with the Act. The Commissioner did not give any indication of what they believe would be a "significant" reduction to the annual hour threshold or if they would prefer no threshold apply at all. In British Columbia there is no threshold below which in-house lobbyists do not need to register. In Quebec there can be a qualitative assessment of the significance of a lobbying activity, which can effectively mean there is no registration threshold. The Commissioner of Lobbying of Canada has recently proposed that the federal threshold for registering as an in-house lobbyist be eliminated. [1]

2. Improving the conflict of interest provisions

The Commissioner would like to see the definition of a conflict of interest clarified, and the closure of significant loopholes on when the prohibition applies to individuals.

The Commissioner did not provide any further detail on what they believe is unclear about the current definition, which incorporates provisions of Ontario's *Members Integrity Act, 1994*, or what they view as being "significant loopholes" in the application of the current prohibition. The Commissioner's desire to see improvements in the conflict of interest provisions may be connected to issues raised in ongoing legal challenges filed by Democracy Watch against Integrity Commissioner rulings on conflicts of interest. Among other issues, Democracy Watch has highlighted that the one-year "cooling-off" period for lobbyists who were engaged in political activity in the Integrity Commissioner's [Interpretation Bulletin #11: What is a conflict of interest and how does it affect my lobbying?](#), issued June 11, 2020, is shorter than in other Canadian jurisdictions, where the cooling-off period can be many years. Interpretation Bulletins provide guidance on how the Integrity Commissioner, interprets sections of the Act.

3. Reporting lobbying done by volunteers or unpaid directors

The definition of lobbying in the *Lobbyists Registration Act, 1998* only captured people who are paid to lobby (whether as a consultant or in-house lobbyist). Unpaid directors and members of organizations like industry and professional associations that lobby as volunteers are not caught by the Act.

As with the possibility of a reduction in the 50-hour threshold for in-house lobbyist registration, expanding the definition of lobbying to include unpaid directors and volunteers who lobby on behalf of organizations or associations will lead to more corporations and non-profits registering their lobbying activity and needing to develop proper internal procedures to ensure compliance with the Act.

4. Broadening the range of penalties for non-compliance

Currently, the Act only provides for the Integrity Commissioner to impose two penalties for non-compliance: publicly naming the non-compliant individual or prohibiting the individual from lobbying for a period of up to two years. The Integrity Commissioner has highlighted that a broader range of penalties could include fines, and would provide more options to ensure compliance.

Until the Commissioner provides specific recommendations, it remains to be seen what other penalties they would like to have at their disposal. Lobbying czars in other Canadian jurisdictions have the power to impose administrative monetary penalties (AMPs) themselves. Back in 2021, the Commissioner of Lobbying of Canada also proposed introducing new forms of penalties such as training, AMPs, and temporary prohibitions, to balance their current options of fines, imprisonment and a ban on lobbying for a period of up to two years.^[2] In Ontario, the Integrity Commissioner can refer non-compliance for possible prosecution leading to fines of up to

\$25,000 for a first offence and \$100,000 for subsequent offences, but there is currently no possibility of imprisonment for violating the LRA.

As the review of Ontario's lobbying law progresses, corporations and organizations that interact with the Ontario government would be well-advised to stay apprised of developments.

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

[1] See [Lobbying Reform Déjà Vu? Canada's Commissioner of Lobbying Recommends Heightened Obligations for Lobbyists Once Again](#).

[2] See [Lobbying Reform Déjà Vu? Canada's Commissioner of Lobbying Recommends Heightened Obligations for Lobbyists Once Again](#).

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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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