

Commissioner of Lobbying



Commissaire au lobbying

March 3, 2023

Sent by email to: john.brassard@parl.gc.ca

Mr. John Brassard, M.P.
Chair, Standing Committee on Access to Information, Privacy and Ethics
House of Commons
Ottawa ON K1A 0A6

Dear Mr. Brassard:

**Letter addressing issues raised by witnesses regarding the updated
*Lobbyists' Code of Conduct***

I am writing to address some of the concerns and issues raised by the witnesses who appeared before the Standing Committee on Access to Information, Privacy and Ethics on February 14 and 17, 2023. In doing so, I will limit myself to providing information relevant to those concerns and issues in order to assist the Committee as it finalizes its work on the *Lobbyists' Code of Conduct* (Code).

Before specifically addressing some of the recurring concerns raised in relation to gifts, hospitality and political work, and given that many comments made during these recent meetings appear to misconstrue the rules of the Code as drafted, I would begin by making two fundamental points.

First, I would remind the Committee that the Code only applies to registered lobbyists regarding their lobbying activities and their interactions with public office holders that they lobby or expect to lobby.

Second, I would also remind the Committee that public office holders covered by the *Lobbying Act* and the Code include not only Members of Parliament and their staff, but also Senators and their staff as well as public servants.



Gifts (rule 3)

With respect to the rule on gifts offered by lobbyists to public office holders, some witnesses expressed concern that this rule failed to account for variations in market prices across Canada, particularly in remote communities, as well as for gifts given as expressions of cultural tradition or practice.

I was mindful of these concerns in crafting the rule on gifts, which explicitly confers a discretion upon the Commissioner to take any relevant circumstances into account in granting an exemption to or adjusting the low-value and/or annual limits, including both local market prices and gifts given as customary expressions of courtesy and protocol.

I am of the view that gifts offered by lobbyists to public office holders as expressions of cultural tradition or practice would be addressed under this latter consideration. **In finalizing the Code, however, I am considering whether any additional clarification would be helpful.**

Hospitality (rule 4)

Exemption to account for local market prices and dietary requirements

As with gifts, some witnesses asserted that the rule on hospitality does not account for variations in market prices across Canada. Others contended that this rule does not address the higher costs associated with providing kosher food and beverage options.

Contrary to these assertions, the rule on hospitality, like its counterpart on gifts, explicitly allows the Commissioner to take into account any relevant circumstances in granting an exemption to or adjusting the low-value and/or annual limits, including local market prices as well as any dietary requirements or restrictions.

Low-value, annual limit and calculation

Some witnesses also expressed concern that there is a discrepancy between the \$30 low-value limit for gifts and hospitality they claimed had been set by the Conflict of Interest and Ethics Commissioner for the *Conflict of Interest Code for Members of the House of Commons* (MP Code) and the \$40 low-value limit for gifts and hospitality set out in the updated Lobbyists' Code. One witness also referenced the \$200 threshold set out in the *Conflict of Interest Act* and the MP Code in suggesting that \$200 would be a reasonable value limit for receptions in the updated Lobbyists' Code. A few points are worth making in respect of these submissions.

First, there is no low-value limit for gifts and hospitality in the MP Code as all such gifts and hospitality are subject to an acceptability test. Although the former Conflict of Interest and Ethics Commissioner recommended that a low-value limit of \$30 be included in the MP Code, this recommendation was not taken up by the Committee on Procedure and House Affairs. I would also note that both the Conflict of Interest and Ethics Commissioner and the Senate Ethics Officer indicated to me that setting the low-value limit at \$40 per allowed gift or instance

of hospitality is both reasonable and clear, and that they would apply their respective regimes on a case-by-case basis.

Second, it is important to underscore that the \$200 amount referred to in the *Conflict of Interest Act* and the MP Code is not a limit on the value of gifts or hospitality that certain public office holders and Members of Parliament are allowed to accept. Rather, this amount is a disclosure threshold beyond which certain public office holders and Members of Parliament must publicly disclose gifts or other benefits or advantages that they have received. With respect to the lobbying regime, I would support increasing transparency by requiring lobbyists to publicly report the value of the gifts and hospitality they provide to public office holders. However, as I noted during my appearance on February 3, 2023, such a change would, in my view, require an amendment to the *Lobbying Act* and the *Lobbyists Registration Regulations*.

In any event, it is worth noting that the rules set out in the *Conflict of Interest Act* and the MP Code only apply to a subset of public office holders. These regimes do not apply to Senators or their staff or to all public servants.

In addition, some witnesses claimed that the updated rule on hospitality will require lobbyists to keep track of how much any public office holders who attend their receptions consume. This claim misconstrues the updated rule, which simply requires the value of the food and beverage “offered” at receptions to be below \$40 per person. The related definition of low-value sets out a formula to calculate this amount. In particular, the value of hospitality is determined by dividing the total cost of food and beverage by the number of individuals reasonably expected to attend a reception. This formula in no way requires lobbyists to monitor how much food or beverage is consumed by a given official during a reception.

Other witnesses expressed concern that the low-value and annual limits on hospitality will unduly constrain lobbyists’ ability to practice their profession by significantly restricting the number of times that they can meet with public office holders. In my view, this concern is overstated as lobbyists do not need to offer hospitality to meet with public office holders.

That said, **I am considering increasing the annual limit for hospitality from \$80 to \$100** to provide lobbyists with greater flexibility to offer reasonable receptions and still allow them to offer hospitality on a smaller scale to public office holders. In raising this potential change, I would note that increasing the annual limit to \$100 would align the updated rule on hospitality with the annual limit on gift-giving set out in British Columbia’s *Lobbyists Transparency Act* and *Lobbyists Transparency Regulation*.

Please note that, even if I were to adopt this change, I would continue to maintain a low-value limit of \$40 for each instance of permitted hospitality.

Furthermore, several witnesses indicated that they would prefer to retain what they referred to as the existing rule on gifts and hospitality, which they characterized as allowing them to offer food and beverages at receptions so long as the costs of doing so were “reasonable”. I would

note that the word “reasonable” does not appear in the existing rule on gifts in the 2015 Code, but rather in a guidance document.

During the consultation process, I received few submissions that provided a specific amount they considered to be an appropriate value limit for hospitality. In particular, one indicated that this limit could be set at \$40 and two provided limits between \$50 and \$80. Significantly, none of the other stakeholders who participated in the consultation provided submissions on the costs of holding receptions or any supporting information, including invoices, to demonstrate how much they spend on receptions.

As I have already indicated and explained, I am of the view that \$40 is a reasonable low-value limit for both gifts and hospitality.

Restriction on lobbying following political work (rule 6)

Two-year cooling-off period

Although there appeared to be a consensus among most witnesses that the two-year cooling-off period for strategic, high-profile or important political work is appropriate, one witness indicated that the list of examples provided for these types of political work was unnecessary because lobbyists already know what kind of roles, positions and functions would qualify for the two-year cooling-off period. Please note that the definition of “political work” was crafted to provide a non-exhaustive list of examples of the types of strategic, high-profile or important political work that would result in a two-year cooling-off period in order to clearly guide registered lobbyists in complying with this rule.

That said, in order to provide even greater clarity, **I am considering defining what constitutes “strategic, high-profile and important” political work.**

One-year cooling-off period

In addition, multiple comments made during each of the Committee’s last two meetings on the Code appeared to misconstrue the application of the one-year cooling-off period for political work involving frequent and/or extensive interaction with a candidate or performed on a full-time or near-full-time basis.

Many of these comments expressed concern about the potential chilling effect that this one-year cooling-off period could have on the ability of their members, their employees, prospective lobbyists or prospective government relations practitioners to participate in the democratic process. Many comments were made in relation to examples in which individuals, particularly young people, who had volunteered on a Member of Parliament’s campaign would have to choose between participating in the democratic process and pursuing prospective employment opportunities or accepting positions involving lobbying or government relations work.

In my respectful view, these comments significantly overstate the impact of the one-year cooling-off period set out in the rule on political work.

Let me be very clear. The one-year cooling-off period does not prevent anyone from pursuing a career in government relations for having volunteered in an elected official's campaign or for having canvassed or distributed campaign materials.

First, the rule on political work only applies to registered lobbyists. Anyone who is not a registered lobbyist is not subject to the Code. Even if an individual who engages in political work subsequently joins either an organization or corporation that engages in lobbying activities or a government relations firm, that individual would not be subject to this rule unless they are required to be identified as either an in-house or consultant lobbyist in the Registry of Lobbyists.

Second, to the extent that an individual is a registered lobbyist who is or has engaged in political work, the updated rule would only prevent that individual from lobbying the specific official for whose benefit they engaged in the political work and that official's associates as defined in the Code. Moreover, this limitation would only apply if the individual interacted with the official frequently or extensively or engaged in their political work on a full- or near-full-time basis. Even then, this targeted cooling-off period lasts for one year.

Furthermore, this one-year period could be reduced in appropriate circumstances. In particular, the updated rule on political work authorizes the Commissioner to reduce the cooling-off period taking any relevant circumstances into account, including the importance or prominence of the political work and its frequency, extent or duration.

Taken together, the effect of this cooling-off period – to the extent that it applies and circumstances do not warrant that it be reduced – would be to preclude a registered lobbyist who engaged in political work that involved frequent or extensive interaction with a candidate or elected official or that was performed on a full-time or near-full-time basis from lobbying that elected official and their associates for a period of one year. Significantly, during this targeted cooling-off period, such a registered lobbyist would not be precluded from lobbying all other Members of Parliament for whom they did not do political work, Senators or public servants.

That said, in order to provide even greater clarity, **I am considering defining what constitutes both "frequent" and "extensive" interaction with a candidate or elected official as well as "a full-time or near-full-time basis"**.

Discretion to reduce cooling-off periods

In addition, I note that the discretion conferred on the Commissioner to reduce the applicable cooling-off period in appropriate circumstances was not a focus of discussion during the Committee's meetings. In order to enhance understanding of the operation of the cooling-off periods, **I am considering specifying in the definitions of "cooling-off period" and "political work" that the applicable cooling-off periods may be reduced based on the discretion conferred on the Commissioner in rule 6.**

Further, during my appearance I was asked whether I would publish the names of lobbyists whose cooling-off periods had been reduced. I indicated to the Committee that I would be prepared to consider adopting this practice. However, as I also indicated to the Committee, I continue to have concerns about the privacy implications of adopting such a practice.

Other partisan activities

Finally, one witness expressed concern that a lobbyist who raises significant amounts of money in political donations, but who does not interact frequently or extensively with a candidate or elected official in doing so or who does not raise such amounts on a full- or near-full-time basis, would not be subject to any cooling-off period.

Although this scenario would not meet the definition of political work, I am of the view that it could be addressed by rule 7 (sense of obligation) of the updated Code, which expressly applies to circumstances outside the scope of the other rules of the Code and prevents registered lobbyists from lobbying officials who could reasonably be seen to have a sense of obligation toward them. This assessment would depend on the factual circumstances at issue and made on a case-by-case basis.

Point of clarification regarding the transparency of the consultation process

Before closing, I would like to specifically address the claim in one of the briefs submitted to this Committee to the effect that I refused to publish a letter received from a stakeholder. This allegation is completely false. The stakeholder requested that I remove its submission after it had been published on our website as part of the consultation process. My office acknowledged receipt of this stakeholder letter and advised the stakeholder that, to maintain the integrity of the public consultation on the Code, its submission would remain published on our website, but that we would clearly indicate that it had been withdrawn. We further requested that the stakeholder notify us if they wanted their letter requesting this withdrawal to be published. Although we never received any response about publishing this withdrawal letter, we did clearly indicate on our consultation webpage that this stakeholder had withdrawn its submission.

Although the Committee has received briefs and heard testimony from a subset of stakeholders in connection with its last two hearings, I would invite the Committee to consider the full breadth of the stakeholder submissions received by my office during the consultation process and published on our website.

I hope that this letter, in combination with the document I provided in referring the updated Code and my appearance, will be helpful to the Committee in finalizing its work on the Code. I would request that this letter be published as part of the Committee's proceedings.

I look forward to receiving the letter that the Committee is preparing to send to me shortly following its scheduled meeting on March 7, 2023.

Yours sincerely,



Nancy Bélanger

cc. Vice-chairs:

Iqra Khalid, René Villemure

Members:

Parm Bains, Michael Barrett, Hon. Greg Fergus, Jacques Gourde, Matthew Green,
Lisa Hepfner, Damien C. Kurek, Ya'ara Saks

Clerk of the Committee