

Conflict of interest and the perception of conflict of interest – new boundaries for Canada’s lobbyists?

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Recent guidance restricting lobbyists’ relationships with federal political candidates will put pressure on the profession

Lobbyists are political junkies. They live to work on political campaigns of all kinds and often play key strategic roles, which include the following activities:

- Strategy development
- Rapid response communications
- Party platform development
- Tour management
- Fundraising
- Debate preparation
- Local campaign management

These activities often bring lobbyists into close contact with people seeking elected office, either current members of parliament or candidates for various political parties. Intense campaigns fought over the course of several weeks or, most recently months, often result in new professional and personal relationships being formed.

These relationships matter to lobbyists; they help establish credibility in the eyes of many organizations with interests in government policy since they assume that lobbying is (or is at least in part) about communication to these elected officials in an effort to influence policy outcomes. The perception is that the more relationships a person has with elected officials the greater the likelihood of being able to advance the cause of an organization’s policy objectives.

Lobbying in Canada is a regulated activity; statutes exist federally and in every provincial jurisdiction except for Prince Edward Island. The cities of Ottawa and Toronto also have by-laws that regulate communications between lobbyists and government officials. A number of jurisdictions have codes of conduct that spell out ethical and professional rules to guide the activities of lobbyists. Federally, the Commissioner of Lobbying administers the *Lobbying Act* and *Lobbyists’ Code of Conduct* and instructs lobbyists on various matters involving their interactions with government officials.

One key area relates to real and perceived conflicts of interest. The Commissioner states:

Any conflict of interest impairs the public confidence in government decision-making. For this reason, the *Lobbyists' Code of Conduct*, introduced in 1997, prohibits lobbyists from placing public office holders in a conflict of interest. Rule 8 of the *Lobbyists' Code of Conduct* states: lobbyists shall not place public office holders in a conflict of interest by proposing or undertaking any action that would constitute an improper influence on a public office holder.¹

For the past year, the Commissioner has been consulting with the public affairs industry on possible changes to the *Lobbyists' Code of Conduct*. The draft updated Code of Conduct was released in early June and comes into effect on December 1st, 2015. The updated Code contains additional criteria on potential conflicts of interest. For example, the revised code outlines “preferential access” as a source of conflict. The new rules 7 and 8 state:

“A lobbyist shall not arrange for another person a meeting with a public office holder when the lobbyist and public office holder share a relationship that could reasonably be seen to create a sense of obligation”;

“A lobbyist shall not lobby a public office holder with whom they share a relationship that could reasonably be seen to create a sense of obligation”.

In addition, in the revised code “political activities” is now explicitly mentioned as a source of conflict between lobbyists and public office holders. The new rule 9 states:

“When a lobbyist undertakes political activities on behalf of a person which could reasonably be seen to create a sense of obligation, they may not lobby that person for a specified period if that person becomes a public office holder. If that person is elected, the lobbyist shall also not lobby staff in their Office(s)”.

In addition, in June 2015, the federal Commissioner issued guidance outlining the kinds of political activities that may violate rule 9. Playing a strategic or senior role in political campaigns could create the appearance of a conflict between a lobbyist and a successful political candidate if the lobbyist were to lobby that individual after they assumed office. The rationale is that a member of parliament may feel obligated to the lobbyist who assisted in their campaign and this may impair their judgment around public vs. private interest (for instance, getting elected or re-elected).

Examples of strategic political activity outlined in the guidance include:

- Serving as a campaign chair
- Serving in a named position on behalf of a candidate or electoral district association

“WHEN A LOBBYIST UNDERTAKES POLITICAL ACTIVITIES ON BEHALF OF A PERSON WHICH COULD REASONABLY BE SEEN TO CREATE A SENSE OF OBLIGATION, THEY MAY NOT LOBBY THAT PERSON FOR A SPECIFIED PERIOD IF THAT PERSON BECOMES A PUBLIC OFFICE HOLDER. IF THAT PERSON IS ELECTED, THE LOBBYIST SHALL ALSO NOT LOBBY STAFF IN THEIR OFFICE(S)”.²

- Leading the preparation of a candidate for debates or providing strategic advice in the context of debate preparation
- Organizing a fundraising event

What follows from all of this? Obviously, persons playing a strategic role in federal political campaigns and lobbying those successful candidates subsequently will likely run afoul of the federal *Lobbyists' Code of Conduct*. This will result in the lobbyist being investigated and possibly named in a public report to Parliament. This public report will damage the reputation of the named lobbyist and likely impair his or her career significantly. In addition, the lobbying profession as a whole will suffer if viewed as trading on relationships for personal gain. And the perceived integrity of government decision-making will also take a hit because politicians may be viewed as making decisions to support their private interests.

The federal Lobbyist Commissioner has made it very clear that she will view strategic political activity and the subsequent lobbying of elected officials by lobbyists as a violation of the conflict of interest rules in the *Lobbyists' Code of Conduct*.

Lobbyists should therefore stand down from any senior or strategic role in federal political campaigns or at least refrain from lobbying those they assist in campaigns for some period of time. For example, running a “war room” or serving as a paid staff person on a campaign are clearly ruled out. Moreover, lobbyists should pay close attention to the growing pressure on provincial lobbyist registrars to institute similar conflict of interest rules related to political activities. Political activity for lobbyists therefore appears to be coming to an end.



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¹ Guidance on the Lobbyists' Code of Conduct, June 2015.

² The maximum timeframe to refrain from lobbying is five years. There is no indication however of a minimum