



Submission to

**Registrar of Lobbyists for British  
Columbia**

regarding

***DEVELOPING A CODE OF CONDUCT FOR LOBBYING  
IN BRITISH COLUMBIA:  
A PUBLIC CONSULTATION PAPER***

**Issued by:  
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## PREFACE

The Canadian Bar Association represents over 38,000 lawyers, judges and law students across Canada, of which more than 6,800 are members of the B.C. branch (the “CBABC”). The CBABC is the primary resource and voice for its members in all issues affecting its members. The CBABC also promotes the public interest by preparing comprehensive submissions to government commenting on proposed legislation or making recommendations for amendments to existing legislation.

Many members of the CBABC come into contact with the provincial government through their legal practices. From time to time, that contact requires them to register their activities under the *Lobbyists Registration Act*. Hence, some members of our branch stand to be directly affected by the potential introduction of a code of conduct for lobbying in British Columbia.

In preparing this submission, the CBABC drew on the advice of its Government Relations Committee. Several members of the committee have direct experience working with or for government, and the committee includes former civil servants and political assistants.

## SUBMISSIONS

### Introduction

In April 2012, the Registrar of Lobbyists for British Columbia issued, Developing A Code Of Conduct For Lobbying In British Columbia: A Public Consultation Paper (the “Consultation Paper”).<sup>1</sup> The purpose of this Consultation Paper is “to stimulate thought and discussion amongst stakeholder groups and the general public about whether British Columbia should have a lobbyist code of conduct, and, if so, what effects it might have, and how such a code might best be enforced.”<sup>2</sup>

In the Discussion Paper, these questions are posed:

1. Is a lobbyist code of conduct necessary or desirable?
2. What should be the objectives of a code of conduct?
3. What should be included in the code of conduct?
4. What should not be included?
5. How should a code be developed?
6. By whom?
7. How should a code be implemented?
8. How should a code be enforced?
9. Who should have oversight of a lobbyist code?
10. How should the administration of the code be financed?<sup>3</sup>

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<sup>1</sup> Available at:  
[http://www.lobbyistsregistrar.bc.ca/images/Lobbyist Code of Conduct public consultation underway.pdf](http://www.lobbyistsregistrar.bc.ca/images/Lobbyist_Code_of_Conduct_public_consultation_underway.pdf).

<sup>2</sup> *Supra* at page 1.

<sup>3</sup> *Supra* at page 8.

## **Code of Conduct for Lobbyists**

The CBABC is of the view that a code of conduct for lobbyists is neither necessary, nor desirable at this time. The current *Lobbyists Registration Act* (the “*Act*”) does not authorize a code of conduct. In its amendments over the years, the legislature has not seen fit to add a lobbyist code of conduct to the *Act*. No British Columbia court has identified any problems with the *Act*.

The CBABC has identified, however, an area of concern with respect to disclosure by lobbyists of sources of funding by third parties that may influence the positions lobbyists take in their representations to government. We have described this issue in further detail below.

Our specific answers to the questions raised in the Consultation Paper are as follows:

### **1. Is a lobbyist code of conduct necessary or desirable?**

No. The CBABC’s view is that a lobbyist code is neither necessary, nor desirable at this time. The current *Act* does not authorize a code of conduct. In its amendments over the years, the legislature has not seen fit to add a lobbyist code of conduct to the *Act*. Nor have courts in British Columbia identified any problems with the *Act*.

The Office of the Registrar of Lobbyists has not identified in the Consultation Paper any examples of actual or anticipated misconduct in British Columbia that necessitates a code of conduct. As the 2012 Annual Report of the Office of the Registrar of Lobbyists British Columbia shows, most of the investigations conducted by the Registrar are resolved informally.<sup>4</sup> There are less than 2,600 active registrations for lobbyists of all kinds under the *Act*.<sup>5</sup> Most lobbying matters are grouped into three areas: health, environment and energy.<sup>6</sup> Over 85% of all lobbying outcomes are grouped into three areas: arranging a meeting to lobby, programs, policies, decisions and legislation.<sup>7</sup> Consequently, it appears the *Act* is working as the legislature intended and no lobbyist code of conduct is needed at this time.

Further, a lobbyist code is premature at this time since the revised *Act* has only been in operation since 2010. The first administrative penalty under the *Act* was only levied in 2012 and for a nominal sum of \$325.<sup>8</sup>

Moreover, there does not appear to be a legislative gap that might justify the promulgation of a code. The conduct of lobbyists and others who seek to influence government policies and decisions are already governed or influenced by legislation as varied as the *Criminal Code*, the regulation of the post-employment activity of specified

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<sup>4</sup> Available at: <http://www.lobbyistsregistrar.bc.ca/images/pdfs/2011-2012%20orl%20annual%20report.pdf>.

<sup>5</sup> *Supra* at page 10.

<sup>6</sup> *Supra* at page 11.

<sup>7</sup> *Supra* at page 12.

<sup>8</sup> *Supra* at page 9.

senior provincial employees and existing professional codes that govern members of the B.C. bar and members of the national association of government relations practitioners. The transparency provided for in the *Lobbyist Registration Act*– in combination with existing public access to information on who finances provincial and federal political parties and the public’s right of access to provincial government records– provide strong tools for the public and media to scrutinize the relationships and the conduct of lobbyists, politicians and senior public servants.

If there are shortcomings with the existing legislation that regulates lobbying and provides the public with a window on that industry and its conduct, then those shortcomings are probably best addressed within that legislation. A code would be desirable only if such changes still left a legislative gap.

In that regard, the CBABC is of the view that the *Act* may need some amendments to enhance the effectiveness of its function of providing the public with information on who stands to benefit from lobbying activity.

More specifically, CBABC has identified an area of concern with respect to disclosure by lobbyists of sources of funding by third parties that may influence the positions lobbyists take in their representations to government. Some organizations may receive funding from third parties on the implicit or explicit understanding that the organization will lobby for particular outcomes, which are consistent with the objectives of the funding parties.

There does not appear to be a requirement at present for lobbyists to identify their sources of funding, particularly if the organization is not a corporation. Section 4(1)(f) of the *Act* limits disclosure to the name and business address of each affiliate of a *corporation* that has a direct interest in the outcome of the activities of each lobbyist named in a registration. Many non-profit organizations, such as societies, may not be organized as a corporation and hence would not have affiliates as that term is understood in law. We further note that the receipt of funding from a third party that supports the lobbying objectives of an organization may not qualify as a “direct interest”.

The CBABC raises these issues with your office for your consideration as to whether any legislative amendments may be advisable

## **2. What should be the objectives of a code of conduct?**

We have no comment to this question, as we do not believe a lobbyist code is necessary or desirable at this time.



### **3. What should be included in the code of conduct?**

A preliminary question for any future lobbyist code would be if an assessment of the existing legislative and professional framework provides evidence of gaps that might justify the need for a lobbyist code. This process should include a comprehensive survey of statutory, regulatory, professional and other measures regulating and influencing lobbying.

### **4. What should not be included?**

We recommend that a lobbyist code should not include matters considered in other places such as the *Act*, regulations, other BC legislation or codes of conduct imposed by regulating professions.

### **5. How should a code be developed?**

Please see our recommendations in answer to question 3.

### **6. By whom?**

If at a future time a lobbyist code is required, we recommend that the B.C. Legislature develop any lobbyist code in consultation with stakeholders like the CBABC and the public.

In addition, we recommend that the Registrar publish on her Office's website her views on the efficacy of the lobbyist legislation pursuant to her powers under section 9.4 of the *Act*. Section 9.4 of the *Act* permits the Registrar to develop and conduct public education and information designed to promote awareness and understanding of the *Act*.

We also recommend that the Registrar publish on her office's website statistics about lobbyists already covered by lobbyist codes. Neither the Consultation Paper, nor the Registrar's current 2012 Annual Report has statistics on how many lobbyists are covered already by voluntary codes such as the Government Relations Institute of Canada, or codes of their profession like lawyers under the Professional Conduct Handbook (to be replaced January 1, 2013 by the Code of Professional Conduct for British Columbia).<sup>9</sup> This information would be helpful to determine if a lobbyist code is needed.

#### **7. How should a code be implemented?**

#### **8. How should a code be enforced?**

We recommend that implementation and enforcement of a lobbyist code should only be required if there are problems with enforcement under existing legislation or matters that need to be added because of a gap in legislation. There appear to be no gaps in legislation at present justifying the need for a lobbyist code.

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<sup>9</sup> Available at: <http://www.lawsociety.bc.ca/page.cfm?cid=381&t=Members-Manual>.

**9. Who should have oversight of a lobbyist code?**

**10. How should the administration of the code be financed?**

Given our recommendations that a lobbyist code is neither necessary, nor desirable at this time, these questions regarding oversight and finance are premature.

**CONCLUSION**

The CBABC welcomes the opportunity to provide further discussion with the Registrar of Lobbyists for British Columbia regarding a code of conduct for lobbying in British Columbia.

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