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THE FEDERAL LOBBYING SYSTEM: THE *LOBBYING ACT* AND THE *LOBBYISTS' CODE OF CONDUCT*

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*The Federal Lobbying System:
The Lobbying Act and the Lobbyists' Code of Conduct
(HillStudies)*

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CONTENTS

EXECUTIVE SUMMARY	
1	INTRODUCTION.....1
2	HISTORY OF THE <i>LOBBYING ACT</i>1
2.1	The <i>Lobbyists Registration Act</i>1
2.2	The <i>Lobbying Act</i>3
3	THE PRESENT SYSTEM4
3.1	The <i>Lobbying Act</i>4
3.1.1	Administration of the <i>Lobbying Act</i> and the Commissioner of Lobbying.....4
3.1.2	Lobbying in the Context of the <i>Lobbying Act</i>4
3.1.2.1	Lobbying4
3.1.2.2	Public Office Holders and Designated Public Office Holders5
3.1.2.3	Types of Lobbyists5
3.1.3	Five-Year Post-Employment Ban for Designated Public Office Holders6
3.1.4	Disclosure Requirements and the Registry of Lobbyists7
3.1.4.1	Initial Return7
3.1.4.2	Monthly Returns7
3.1.4.3	Registry of Lobbyists.....7
3.1.5	Offence Provisions and Sanctions8
3.2	The <i>Lobbyists' Code of Conduct</i>8
4	STATUTORY REVIEW OF THE <i>LOBBYING ACT</i>10
5	CONCLUSION15



EXECUTIVE SUMMARY

The preamble to the *Lobbying Act* states that free and open access to government is an important matter of public interest, that lobbying public office holders is a legitimate activity, that it is desirable for public office holders and the public to be able to know who is engaged in lobbying activities, and that a system for the registration of paid lobbyists should not impede free and open access to government.

In 2008, substantive amendments to the *Lobbyists Registration Act* came into force; it was renamed the *Lobbying Act* because it now focused on regulating the activities of lobbyists rather than simply monitoring them through a registration system.

The following legislative amendments resulted from the adoption of the *Lobbying Act*:

- replacement of the position of Registrar of Lobbyists with that of Commissioner of Lobbying, an independent officer of Parliament, with expanded investigative powers and an education mandate;
- identification of a new category of public office holder within the federal government, called designated public office holder (DPOH), a key decision maker in government;
- imposition of a five-year post-employment prohibition on becoming a lobbyist once a DPOH has left office;
- new filing requirements for lobbyists and an obligation, when requested by the Commissioner of Lobbying, for DPOHs or former DPOHs to confirm information that is provided by lobbyists about communications with DPOHs;
- a ban on making or receiving any payment or other benefit that is contingent on the outcome of any consultant lobbyist's activity; and
- extension from two to 10 years of the period during which infractions under the *Lobbying Act* and the *Lobbyists' Code of Conduct* may be investigated and prosecution may be initiated.

In addition, the *Lobbying Act* provides that the Commissioner of Lobbying must develop a lobbyists' code of conduct that sets out the ethical standards lobbyists must meet to preserve Canadians' confidence in public institutions, the integrity of these institutions and their decision-making processes. Accordingly, this code complements the disclosure and registration requirements of the *Lobbying Act*. The current version of the code came into force on 1 July 2023.

The *Lobbying Act* also provides that the Act itself must undergo parliamentary review every five years. In 2012, the House of Commons Standing Committee on Access to Information, Privacy and Ethics completed the five-year statutory parliamentary review prescribed in the *Lobbying Act*. The committee tabled a report in the House of Commons, which contained 11 recommendations on amending the Act, but none of these recommendations resulted in legislative amendments. No further parliamentary reviews of the *Lobbying Act* have taken place since 2012. The *Lobbying Act* has not been amended in any significant way since it was enacted.

THE FEDERAL LOBBYING SYSTEM: THE *LOBBYING ACT* AND THE *LOBBYISTS' CODE OF CONDUCT*

1 INTRODUCTION

The term “lobbying” refers generally to any effort to communicate with legislators or other public officials against or in favour of a specific cause.

Lobbying at the federal level was first governed by the *Lobbyists Registration Act* (LRA). The LRA came into force in 1989 and established a registration system intended to reinforce the public’s right to be informed about who was trying to influence government policy in Canada. In 2008, when certain provisions of the *Federal Accountability Act* of 2006 came into force, substantive amendments were made to the LRA, which was renamed the *Lobbying Act*. The Act was renamed because it would no longer simply serve to monitor the activities of lobbyists by means of a registration system, but would now regulate their activities. Currently, more than 7,000 lobbyists are registered to lobby federal public office holders.¹

The *Lobbying Act* also provides for the development of the *Lobbyists’ Code of Conduct* (the Code), the first version of which came into force in 1997. The Code “sets out standards of behaviour for individuals who must be listed in a registration as required by the *Lobbying Act*.”² Accordingly, it complements the disclosure and registration requirements of the *Lobbying Act* and lobbyists are required to comply with its provisions. The current version of the Code came into force on 1 July 2023.

This HillStudy provides a review of the history of the *Lobbying Act*³ and outlines how the Act and the Code operate.⁴ It also discusses the five-year review of the Act completed in 2012, and the absence of a new parliamentary review since then.

2 HISTORY OF THE *LOBBYING ACT*

2.1 THE *LOBBYISTS REGISTRATION ACT*

On 30 September 1989, following extensive consultations and considerable debate, the LRA came into force in Canada.⁵ The legislation sought to make the activities of lobbyists transparent without impeding access to government. The LRA was a response to public perceptions at the time that individuals seeking to influence the government through political or personal contacts were abusing the system. Indeed, between 1965 and 1985, more than 20 private members’ bills were introduced in Parliament, generally in response to political scandals or public outcry.⁶

The view then was that the enactment of the LRA would lead to a reliable and accurate source of information on the activities of lobbyists, which would dispel much of the mystery surrounding lobbying and thus remove the atmosphere of conjecture and innuendo that can accompany such activities. The LRA required paid lobbyists to register and disclose certain information through a public registry.⁷ Under the LRA, the Registrar of Lobbyists was responsible for administering the information disclosure provisions and maintaining the public registry. The LRA did not attempt to regulate lobbyists or the manner in which lobbying was conducted.

The LRA evolved significantly over time,⁸ in large part because of statutory review provisions in the legislation that required periodic reviews of its provisions and operation.⁹ The last full review of the LRA was conducted in 2001 by the House of Commons Standing Committee on Industry, Science and Technology (INST), as it was then named. In its report, INST made several recommendations aimed at improving the operation of the Act.¹⁰

Introduced in the House in 2002, Bill C-15, An Act to amend the Lobbyists Registration Act, responded to some of the major recommendations from INST.¹¹ This bill specifically sought to improve enforcement of the LRA and expand investigative powers under it, simplify and harmonize the registration requirements for lobbyists and clarify and improve the language of the Act. For example, Bill C-15 clarified the definition of lobbying in three ways:

- It broadened the scope of activities for which registration was required by removing the expression “in an attempt to influence” from the LRA. This change meant that all communications on matters prescribed in the LRA were now considered lobbying, not just those intended to influence government decision making.
- It specified that simple requests for information were not considered lobbying.
- It removed the exemption from the requirement to register when a communication was initiated by a public office holder.¹²

Although Bill C-15 received Royal Assent on 11 June 2003, it did not come into force until 20 June 2005, along with *Regulations Amending the Lobbyists Registration Regulations*. The delay was necessary in order to update the *Lobbyists Registration Regulations* as well as the electronic filing system for online registrations.

Bill C-15 also added a new section, section 14.1, to the LRA, which specified that a parliamentary review of the provisions and operation of the Act must be undertaken every five years.

2.2 THE *LOBBYING ACT*

In December 2006, the *Federal Accountability Act* made substantive amendments to the LRA and renamed it the *Lobbying Act*.¹³

The amendments were, in part, designed to implement the recommendations of Justice John Gomery in his 2006 report of the Commission of Inquiry into the Sponsorship Program and Advertising Activities,¹⁴ a commission into concerns raised in the 2003 report of the Auditor General of Canada.¹⁵ In his report, Justice Gomery recommended that the Registrar of Lobbyists should report directly to Parliament on matters concerning the application of the LRA. The Office of the Registrar of Lobbyists should be provided with sufficient resources to enable it to publicize and enforce the requirements of the Act, allowing its staff to investigate and prosecute violations of the Act. The report also recommended that the limitation period for investigation and prosecution should be increased from two years to five from the time the registrar becomes aware of an infringement.

The following changes were brought about by the amendments to the LRA (now the *Lobbying Act*) that came into force in July 2008:

- replacement of the position of Registrar of Lobbyists with that of Commissioner of Lobbying, an independent officer of Parliament, with expanded investigative powers and an education mandate;
- identification of a new category of public office holder within the federal government, called designated public office holder (DPOH), a key decision maker in government;¹⁶
- imposition of a five-year post-employment prohibition on becoming a lobbyist once a DPOH has left office;
- new filing requirements for lobbyists and an obligation, when requested by the Commissioner of Lobbying, for DPOHs or former DPOHs to confirm information that is provided by lobbyists about communications with DPOHs;
- a ban on making or receiving any payment or other benefit that is contingent on the outcome of any consultant lobbyist's activity;¹⁷ and
- extension from two to 10 years of the period during which infractions under the *Lobbying Act* and the *Lobbyists' Code of Conduct* may be investigated and prosecution may be initiated.

In March 2011, the House of Commons Standing Committee on Access to Information, Privacy and Ethics (ETHI) began the five-year statutory parliamentary review prescribed in the *Lobbying Act*. After conducting a review of the Act from December 2011 to May 2012, ETHI reported to the House of Commons in May 2012.¹⁸ The report contained 11 recommendations to amend the Act, none of which

have resulted in a legislative amendment to date. The government's response to the report was tabled in the House in September 2012.¹⁹ The *Lobbying Act* has not been amended in any significant way since it was enacted in 2006.

3 THE PRESENT SYSTEM

3.1 THE *LOBBYING ACT*

3.1.1 Administration of the *Lobbying Act* and the Commissioner of Lobbying

The *Lobbying Act* replaced the position of Registrar of Lobbyists with that of Commissioner of Lobbying (the commissioner), an independent officer of Parliament responsible for promoting an understanding of, acceptance of and compliance with the Act. The commissioner's mandate includes education, particularly with respect to lobbyists, their clients and public office holders, and some enforcement through limited measures (see section 3.1.5 of this HillStudy, "Offence Provisions and Sanctions"). The Act also provides the commissioner with broad investigatory powers in relation to both the legislation and the Code.²⁰ All the commissioner's investigations are to be conducted in private, and the commissioner must report to Parliament on their findings and conclusions. The commissioner is also required to table an annual report before Parliament on the administration of the Act. In addition, a special report may be prepared on any matter of importance that falls within the commissioner's mandate.

Despite enhanced investigatory powers, the commissioner, like the former Registrar of Lobbying, may not impose administrative or monetary penalties as alternatives to criminal charges under the Act. The commissioner must cease an investigation and advise the appropriate authorities where he or she has reasonable grounds to believe that a person has committed an offence under this Act or any other federal or provincial law.²¹

3.1.2 Lobbying in the Context of the *Lobbying Act*

3.1.2.1 Lobbying

The *Lobbying Act*'s preamble states that free and open access to government is an important matter of public interest, that lobbying public office holders is a legitimate activity, that it is desirable that public office holders and the public be able to know who is engaged in lobbying activities, and that a system for the registration of paid lobbyists should not impede this free and open access.

The *Lobbying Act* defines and enumerates activities that, when carried out for compensation, are considered to be lobbying. Generally speaking, they include communicating with public office holders about changing federal laws or regulations; the development or amendment of any policy or program of the Government of Canada; the awarding of a financial benefit such as a grant or contribution; and, in certain cases, the awarding of a government contract. As well, in the case of consultant lobbyists (individuals who lobby on behalf of clients), arranging a meeting with a public office holder on behalf of another person qualifies as lobbying.²² Only activities set out in the *Lobbying Act* must be reported. Lobbying done on a voluntary basis – that is, without compensation – need not be reported.

3.1.2.2 Public Office Holders and Designated Public Office Holders

Public office holders, as defined in the *Lobbying Act*, are virtually all persons occupying an elected or appointed position in the federal government.²³ The *Lobbying Act* also contains the definition of a “designated public office holder.” The term refers to key decision makers within government and includes ministers of the Crown, their exempt staff, senior public servants (e.g., deputy or assistant deputy ministers) and other positions designated by regulation (e.g., certain senior members of the Canadian Armed Forces). The Act also treats as a DPOH any member of a prime minister’s transition team. DPOHs are subject to post-employment limitations on lobbying, and lobbyists have particular disclosure requirements when meeting with DPOHs.

On 20 September 2010, regulations entered into force amending the *Designated Public Office Holder Regulations*.²⁴ The amendments added members of Parliament, senators and certain staff of the Office of the Leader of the Opposition to the list of designated public office holders.

3.1.2.3 Types of Lobbyists

The *Lobbying Act* applies to paid lobbyists who communicate with federal public office holders on behalf of a third party. Two types of lobbyists are identified by the Act:

- *Consultant lobbyists*. Individuals who lobby on behalf of clients must register as consultant lobbyists.
- *In-house lobbyists (employed by corporations and organizations)*. Senior officers of corporations and organizations²⁵ must register as in-house lobbyists when one or more employees lobby and where the total lobbying duties of all employees would constitute a significant part of the duties of one employee.²⁶

Section 10 of the *Lobbying Act* authorizes the Commissioner of Lobbying of Canada to issue advisory opinions and interpretation bulletins with respect to the enforcement, interpretation or application of the Act. In 2009, then-commissioner Karen E. Shepherd relied on this provision to issue an interpretation bulletin on the concept of “a significant part of the duties” of an employee in order to assist in-house lobbyists in complying with section 7 of the *Lobbying Act*, which sets out the circumstances in which in-house lobbyists are required to provide information.²⁷

In this interpretation bulletin, the commissioner established the threshold after which lobbying represents a significant part of an employee’s duties at 20% of overall duties. She also suggested approaches for calculating the 20% threshold and provided examples of activities that are not subject to the registration requirement and, therefore, should not be factored into the calculation of the significant portion of duties.

3.1.3 Five-Year Post-Employment Ban for Designated Public Office Holders

Under the *Lobbying Act*, DPOHs, including senators and members of Parliament, are prohibited by law from lobbying for five years after leaving office.²⁸ The five-year lobbying ban also applies to persons identified by the prime minister as having provided support and advice to the prime minister during the transition period from election to swearing-in. The five-year period starts from the time the member ceases to carry out their functions with the team. Anyone who contravenes this provision is liable on summary conviction to a fine not exceeding \$50,000. The commissioner also has the power to make public any offence committed in this regard as well as the name of the offender. The prohibition does not apply to former public office holders who became DPOHs through employment exchange programs.

A former DPOH may apply to the commissioner for an exemption from the five-year post-employment ban. In determining whether to grant an exemption, the commissioner considers whether doing so would be in keeping with the purpose of the *Lobbying Act* and the criteria set out in the Act (i.e., if the applicant was a DPOH for only a short time, or was employed on an acting or administrative basis only, or was employed as a student). The commissioner is required to make public every exemption granted, along with their reasons for doing so. The list of individual exemptions from the five-year prohibition on lobbying granted since the *Lobbying Act* came into force in 2008 is available on the website of the Office of the Commissioner of Lobbying of Canada.²⁹

The exemption criteria for members of a prime minister’s transition team, set out in section 10.12 of the *Lobbying Act*, differ from the exemption criteria for other DPOHs. For example, the following factors can be considered for transition team members: the circumstances under which the member left the team, the authority and influence

the member possessed while on the team and the degree to which the member's new employer might gain unfair commercial advantage upon hiring the member. Indeed, transition team members are very closely involved in senior government offices – often in the staffing of high-level positions – and they could thus potentially exercise considerable influence over these offices if they were permitted to lobby them within five years of leaving the team.

3.1.4 Disclosure Requirements and Registry of Lobbyists

3.1.4.1 Initial Return

The *Lobbying Act*, as with the LRA before it, requires lobbyists to register, in an initial return, all types of communication with public office holders. Information is submitted in the form and manner prescribed by the *Lobbyists Registration Regulations*; the forms and regulations function as an integral part of the implementation of the *Lobbying Act*.³⁰ The information that lobbyists who are subject to the Act must disclose includes the name of the client or employer, the subject of the lobbying, the federal institution being lobbied, the lobbying methods used, an indication of whether the lobbyist was formerly a public office holder, the public office(s) held, as well as confirmation on whether the lobbyist was a DPOH, and the last date on which the person held that position.

3.1.4.2 Monthly Returns

In addition to the initial return requirement, the *Lobbying Act* contains provisions that require lobbyists to file monthly returns if they carry out any oral and arranged communications with DPOHs. Oral and arranged communications include telephone calls, meetings and any other communications that are arranged in advance.³¹ The monthly return must disclose, for each communication that takes place in a given month, the date of the communication with a DPOH, the name and title of all DPOHs who were the object of the communication, and the subject of the communication. The lobbyist must submit the return to the Commissioner of Lobbying no later than the 15th day after the end of the month covered by the report.

3.1.4.3 Registry of Lobbyists

Section 9 of the *Lobbying Act* provides the Commissioner of Lobbying with the mandate to establish and maintain a Registry of Lobbyists. The Registry of Lobbyists is considered the primary tool to increase transparency of federal lobbying activities.³² The registry is a free, publicly accessible web-based database.

Lobbyists must certify the accuracy of information in their monthly returns. These returns are then validated for completeness by the staff in the Office of

the Commissioner of Lobbying before being posted in the registry. There is no registration fee for lobbyists.

3.1.5 Offence Provisions and Sanctions

As indicated above, the Commissioner of Lobbying does not have the authority to impose administrative or monetary penalties.

The LRA already contained penalties for non-compliance with the legislation (e.g., failure to register) and for submitting false or misleading information, on summary conviction (of a criminal charge). The *Lobbying Act* contains offence provisions for failure to file a requisite return or for a DPOH to make a false or misleading statement in response to a request for information from the commissioner. Under that *Act*, anyone convicted of these offences by way of summary conviction is liable to a maximum fine of \$50,000 or imprisonment for up to six months, or both. Where proceedings are by way of indictment, the maximum fine is \$200,000 or imprisonment for up to two years, or both.³³

The *Lobbying Act* also provides that anyone convicted of contravening any other provision of the Act, except in relation to the Code, will be liable to a maximum fine of \$50,000. The limitation period for instituting proceedings by way of summary conviction under the Act is not later than five years after the commissioner became aware of the facts and not later than 10 years after the offence was committed.³⁴

Finally, the commissioner may prohibit anyone who has been convicted of an offence under the Act from lobbying for up to two years. The commissioner must be satisfied that the prohibition is necessary and in the public interest, and he or she must also take into consideration the gravity of the offence and the existence of any previous convictions. In addition, the commissioner has the power to make publicly available any information related to a person convicted of an offence under the Act, including the person's name, the nature of the offence, the punishment imposed and any lobbying prohibition the commissioner may have imposed.

3.2 THE *LOBBYISTS' CODE OF CONDUCT*

In 1995, the LRA was amended to include a provision for a mandatory code of conduct for lobbyists and the submission of an annual report to Parliament on the application of this code. After publication in the *Canada Gazette*, the *Lobbyists' Code of Conduct* came into effect on 1 March 1997. A second edition of the Code was published in 2015. The current version of the Code was published in 2023.³⁵

The Code establishes standards of conduct for lobbyists who communicate with federal public office holders and who must be named in a return filed for the Registry of Lobbyists in accordance with the *Lobbying Act*. The Code is

a non-regulatory document that adds to the registration requirements of the Act. The Code begins by setting out its objectives and the context of its creation under the Act. This is followed by three expectations: transparency; respect for government institutions; and integrity, honesty and professionalism. Finally, the Code provides the specific rules lobbyists must follow. The expectations are designed to guide lobbyists in complying with the rules of the Code. The rules provide detailed requirements for lobbyists' behaviour in certain situations.

Under section 10.4 of the *Lobbying Act*, the Commissioner of Lobbying is responsible for investigating possible breaches of the Code and such investigations must be conducted in private.³⁶ Where a formal investigation has been conducted, the commissioner must table a report in Parliament citing the investigation's findings, conclusions and reasons for those conclusions. Like the LRA, the *Lobbying Act* does not prescribe penalties for breaches of the Code. The *Lobbying Act* does not specify how Parliament is to respond to a reported breach of the Code either. Furthermore, there is no limitation period for pursuing breaches of the Code.

The Code is updated periodically. Between 2020 and 2022, the Commissioner of Lobbying held a consultation process to support the development of the third edition of the Code (the updated Code). In 2020, a first round of consultations was held for stakeholders to share with the Office of the Commissioner of Lobbying of Canada their opinions and perspectives on the 2015 Code, which was in force at the time. After these initial consultations, the Office of the Commissioner of Lobbying of Canada published a draft version of the updated Code in December 2021. A second consultation was held between December 2021 and February 2022, this time to enable stakeholders to provide their comments on the draft version of the updated Code. In May 2022, a revised draft of the updated Code was published. A final round of consultations subsequently took place in May and June 2022.³⁷ The final version of the updated Code was published in November 2022.

On 15 November 2022, the Commissioner of Lobbying provided ETHI with a document entitled *Renewing the Lobbyists' Code of Conduct: Updated standards for ethical and transparent lobbying*.³⁸ The *Lobbying Act* requires the Code to be reviewed by the committee designated by the House before it is published in the *Canada Gazette*. ETHI reviewed the updated Code in February and March 2023. On 20 March 2023, it sent a letter to the Commissioner of Lobbying with changes it recommended be made to the Code before publication.³⁹ The third edition of the Code was published in the *Canada Gazette* on 1 July 2023.

Among the changes to the Code were new rules and limits on gifts and hospitality and more specific rules on conflicts of interest, particularly as concerns the sense of obligation arising from close relationships, political work and other situations.⁴⁰

4 **STATUTORY REVIEW OF THE *LOBBYING ACT***

Section 14.1 of the *Lobbying Act* mandates that a parliamentary review of the Act must be undertaken every five years:

14.1(1) A comprehensive review of the provisions and operation of this Act must be undertaken, every five years after this section comes into force, by the committee of the Senate, of the House of Commons, or of both Houses of Parliament, that may be designated or established for that purpose.

(2) The committee referred to in subsection (1) must, within a year after the review is undertaken or within any further period that the Senate, the House of Commons, or both Houses of Parliament, as the case may be, may authorize, submit a report on the review to Parliament that includes a statement of any changes to this Act or its operation that the committee recommends.

Section 14.1 came into force on 20 June 2005.⁴¹

On 15 December 2010, the House of Commons unanimously adopted a motion to designate ETHI as the committee charged with conducting the parliamentary review of the *Lobbying Act* in the House of Commons.⁴²

Prior to the dissolution of the 40th Parliament, ETHI had the opportunity to hear testimony from then-Commissioner of Lobbying Karen E. Shepherd on two occasions: on 14 December 2010, in anticipation of the statutory review; and on 23 March 2011, the formal beginning of the review, when the commissioner made several recommendations to amend the Act in order to improve its functioning.

In a document titled *Administering the Lobbying Act: Observations and Recommendations Based on the Experience of the Last Five Years*, Commissioner Shepherd summarized her nine recommendations for reform of the Act:

- Recommendation 1:** The provisions regarding the “significant part of duties” should be removed from the *Lobbying Act* and consideration should be given to allowing limited exemptions.
- Recommendation 2:** The Act should be amended to require that every in-house lobbyist who actually participated in the communication be listed in monthly communication reports, in addition to the name of the most senior officer.
- Recommendation 3:** The prescribed form of communications for the purposes of monthly communication reports should be changed from “oral and arranged” to simply “oral.”
- Recommendation 4:** The Act should be amended to require lobbyists to disclose all oral communications about prescribed subject-matters with DPOHs [designated public office holders], regardless of who initiates them.
- Recommendation 5:** The Act should be amended to make explicit the requirement for consultant lobbyists to disclose the ultimate client of the undertaking, as opposed to the firm that is hiring them.
- Recommendation 6:** The provision of an explicit outreach and education mandate should be maintained in the *Lobbying Act* to support the Commissioner’s efforts to raise awareness of the legislation’s rationale and requirements.
- Recommendation 7:** The Act should be amended to provide for the establishment of a system of administrative monetary penalties for breaches of the Act and the Code, to be administered by the Commissioner of Lobbying.
- Recommendation 8:** The requirement for the Commissioner to conduct investigations in private should remain in the *Lobbying Act*.
- Recommendation 9:** An immunity provision, similar to that found in sections 18.1 and 18.2 of the *Auditor General Act*, should be added to the *Lobbying Act*.⁴³

In May 2012, ETHI tabled a report in the House of Commons on its first five-year review of the *Lobbying Act*. ETHI made 11 recommendations for legislative change.⁴⁴ The government's response to ETHI's report, tabled in the House in September 2012, grouped ETHI's recommendations into three categories: those that the government supports, those whose intent with which the government concurs and "will consider means of implementing them that maximizes their effectiveness while minimizing administrative burden," and those of which the government takes note and will continue to study carefully.⁴⁵ Table 1 below presents ETHI's recommendations as grouped by the government in its response to the report. None of these recommendations have led to legislative change to date.

**Table 1 – House of Commons Standing Committee
on Access to Information, Privacy and Ethics,
Recommendations Grouped by Government Response (2012)**

Recommendations Supported by the Government	Recommendations Whose Intent with Which the Government Concurs	Recommendations of Which the Government Takes Note and Will Continue to Study Carefully
Recommendation 5: Ensure monthly returns contain the names of in-house lobbyists who attended oral pre-arranged meetings [in addition to the senior reporting officer].	Recommendation 1: All public servants serving in a Director General's position, or serving in a more senior position than Director General, should now be considered designated public office holders and held subject to all applicable laws governing this designation.	Recommendation 2: Remove the "significant part of duties" threshold for in-house lobbyists.
Recommendation 9: The five-year ban should be retained, and post-employment restrictions on public office holders should be interpreted and administered by a single authority.	Recommendation 3: Eliminate the distinction between in-house lobbyists (corporations) and in-house lobbyists (organizations).	Recommendation 10: Enshrine the administrative review process in the <i>Lobbying Act</i> .
n/a	Recommendation 4: Require in-house lobbyists to file a registration, along with the senior officer.	Recommendation 11: Empower the Commissioner of Lobbying to impose administrative monetary penalties. Perhaps consider temporary bans for breaches of the law (as in the Newfoundland and Labrador and Quebec provincial legislation).

Recommendations Supported by the Government	Recommendations Whose Intent with Which the Government Concur	Recommendations of Which the Government Takes Note and Will Continue to Study Carefully
n/a	Recommendation 6: Allow board members (corporations and association directors), partners and sole proprietors to be included in an in-house lobbyist's returns.	n/a
n/a	Recommendation 7: Impose an explicit ban on the receipt of gifts from lobbyists.	n/a
n/a	Recommendation 8: Prohibit an individual or entity from lobbying the government on a subject matter, if they have a contract to provide advice to a public office holder on the same subject matter.	n/a

Source: Table prepared by the Library of Parliament based on data obtained from Tony Clement, President of the Treasury Board and Minister for the Federal Economic Development Initiative for Northern Ontario, [Government response to the recommendations of the third report of the House of Commons Standing Committee on Access to Information, Privacy and Ethics, entitled *Statutory Review of the Lobbying Act: Its First Five Years*, tabled on 14 May 2012.](#)

The second five-year review of the *Lobbying Act*, which was supposed to have been conducted in 2017 in accordance with the Act, did not take place that year.

In 2020, the Commissioner of Lobbying, Nancy Bélanger, appeared before ETHI to provide an overview of her work. At that time, she said the following:

[T]he *Lobbying Act* has been up for statutory review since 2017. I have developed a targeted number of recommendations to enhance the federal framework for lobbying. These recommendations are values-based, aimed at enhancing transparency, fairness, clarity and efficiency. Should the *Lobbying Act* be reviewed, I am ready to share a summary of my recommendations or a more comprehensive document detailing the rationale for each of them.⁴⁶

Commissioner Bélanger noted that she had made 11 recommendations pertaining to registration and compliance. With respect to registration, she expressed her desire to eliminate the “significant part of the duties” threshold because of how difficult it is to apply. The commissioner recommended that registration be by default with very clear criteria. She also recommended requiring registration after three months if an organization meets the prescribed threshold or if it requests more than \$10,000 for its lobbying services.⁴⁷

With regard to monthly communication reports, Commissioner Bélanger argued the following:

[W]ho organizes the meeting should not matter to Canadians, and whether it's arranged in advance should not matter. Those one-hour conversations while you wait for your plane together should matter. To me, that's an important one. Whoever is in the room while the lobbying is occurring should be named.⁴⁸

In February 2021, in response to a request from ETHI, Commissioner Bélanger published a document laying out 11 preliminary recommendations for improving the *Lobbying Act*:

- **Recommendation 1**
Amend the in-house lobbyist registration threshold.
- **Recommendation 2**
Harmonize registration time limits.
- **Recommendation 3**
Make reporting requirements the same for all in-house lobbyist registrations.
- **Recommendation 4**
Deem members of boards of directors to be employees of corporations and organizations.
- **Recommendation 5**
Expand reporting requirements for monthly communication reports.
- **Recommendation 6**
Add reporting of additional contextual information in monthly communication reports.
- **Recommendation 7**
Harmonize the five-year prohibition on lobbying.
- **Recommendation 8**
Introduce new compliance measures.
- **Recommendation 9**
Make orders enforceable.
- **Recommendation 10**
Allow referrals to appropriate authority.
- **Recommendation 11**
Provide immunity against civil or criminal proceedings.⁴⁹

In May 2024, while appearing before ETHI, the Commissioner of Lobbying again pointed out that the *Lobbying Act* requires a parliamentary review of its provisions and operation every five years, the last one having taken place in 2012.⁵⁰

5 CONCLUSION

In its 2001 report on the LRA, INST concluded its study by describing the lobbyist registration system as a “work in progress.”⁵¹ It noted that, just as our thinking must continue to evolve on the subjects of transparency and access to government, so too must our legislative framework remain flexible and responsive to change. This observation remains relevant today. Parliamentary reviews of the *Lobbying Act*, which should take place every five years, would allow recommendations to be made for relevant legislative amendments to help the Act stay current as our parliamentary democracy continues to evolve.

NOTES

1. According to the Office of the Commissioner of Lobbying of Canada’s annual report for 2023–2024, there were between 7,079 and 7,336 registered lobbyists. See Office of the Commissioner of Lobbying of Canada, [Annual Report 2023–24](#), p. 3.
2. Office of the Commissioner of Lobbying of Canada, [The Lobbyists’ Code of Conduct](#) (the Code).
3. [Lobbying Act](#), R.S.C. 1985, c. 44 (4th Supp.).
4. Office of the Commissioner of Lobbying of Canada, [Lobbyists’ Code of Conduct \(2023\)](#).
5. [Lobbyists Registration Act](#) (LRA), R.S.C. 1985, c. 44 (4th Supp.) (version in force between 17 May 2004 and 31 March 2005). Essentially, two principal viewpoints on how to regulate the lobbying industry in Canada emerged from a series of hearings on the subject held by the House of Commons Standing Committee on Elections, Privileges and Procedure in 1986–1987. The House had mandated that committee to review a discussion paper on lobbying and lobbyist registration. Some stakeholders preferred self-regulation; others felt that a lobbyist registration system would be beneficial. These viewpoints were summarized in the committee’s report, which was presented in 1987. See Consumer and Corporate Affairs Canada, [Lobbying and the Registration of Paid Lobbyists: a discussion paper](#), 1985; and Library of Parliament, “[House of Commons Committees, 33rd Parliament, 2nd Session: Standing Committee on Elections, Privileges and Procedure, Report](#),” Canadian Parliamentary Historical Resources, Database, 27 January 1987.
6. House of Commons, Standing Committee on Access to Information, Privacy and Ethics (ETHI), [Evidence](#), 14 June 2005, 0905 (Karen Shepherd, Director, Lobbyists Registration Branch, Department of Industry).
7. Only persons who are paid to communicate with federal public office holders are subject to the *Lobbying Act*, and before that, to the LRA (see section 3.1.2 of this HillStudy, “Lobbying in the Context of the *Lobbying Act*”). Volunteers, for example, are not required to register.
8. Initially, the reporting requirements for registered lobbyists were so few that many argued that registering under the LRA was simply a formality that required disclosing minimal information, equivalent to what would appear on a business card. The Act was subsequently amended in 1995, 1996, 2003, 2004 and 2006.
9. For more on what took place during these parliamentary reviews, see A. Paul Pross, “[The Lobbyists Registration Act: Its Application and Effectiveness](#),” in Donald Savoie et al., *Restoring Accountability – Research Studies: Volume 2 – The Public Service and Transparency*, Research paper prepared for the Commission of Inquiry into the Sponsorship Program and Advertising Activities, as part of writing its Phase 2 report, *Restoring Accountability: Recommendations*.

10. House of Commons, Standing Committee on Industry, Science and Technology (INST), [Transparency in the Information Age: The Lobbyists Registration Act in the 21st Century](#), Fourth report, June 2001. This committee is now known as the Standing Committee on Industry and Technology.
11. [Bill C-15, An Act to amend the Lobbyists Registration Act](#), 37th Parliament, 2nd Session (S.C. 2003, c. 10).
12. Office of the Commissioner of Lobbying of Canada, [Administering the Lobbying Act: Observations and Recommendations Based on the Experience of the Last Five Years](#), 13 December 2011, p. 9.
13. [Federal Accountability Act](#), S.C. 2006, c. 9.
14. Commission of Inquiry into the Sponsorship Program and Advertising Activities, "[Chapter 9: Advertising, Sponsorship Initiatives and Lobbying](#)," *Restoring Accountability – Recommendations: Part Three – Transparency*, 1 February 2006, pp. 171–174.
15. Office of the Auditor General of Canada, "[Chapter 3: The Sponsorship Program](#)," *Report of the Auditor General of Canada – November 2003*. Commissioner Gomery was given a two-part mandate with power issued under the *Inquiries Act*. The first part of the mandate was to investigate and report on questions and concerns addressed in the 2003 Report of the Auditor General of Canada relating to the sponsorship program and advertising activities of the Government of Canada. The second part of the mandate was for Commissioner Gomery to make any recommendations that he considered advisable, based on his findings – particularly with regards to accountability, governance, compliance and enforcement.
16. A designated public office holder may be a minister, a deputy minister or any person listed in the schedule to the *Designated Public Office Holder Regulations*. The schedule includes all members of the House of Commons and senators. See [Designated Public Office Holder Regulations](#), SOR/2008-117.
17. A consultant lobbyist is an individual paid to lobby on behalf of a client.
18. ETHI, [Statutory Review of the Lobbying Act: Its First Five Years](#), Third report, May 2012. The report was concurred in by the House later, in May 2013.
19. Tony Clement, President of the Treasury Board and Minister for the Federal Economic Development Initiative for Northern Ontario, [Government response to the recommendations of the third report of the House of Commons Standing Committee on Access to Information, Privacy and Ethics, entitled Statutory Review of the Lobbying Act: Its First Five Years, tabled on 14 May 2012](#).
20. The former Registrar of Lobbyists had no investigatory powers under the LRA, although he or she could conduct investigations into possible breaches of the Code.
21. [Lobbying Act](#), R.S.C. 1985, c. 44 (4th Supp.), ss. 10.4(8) and 14. Previously, under the LRA, when staff from the Office of the Registrar of Lobbyists received a request or complaint from the general public, media, a member of Parliament or an organization, or when officials of the branch believed there was a possible contravention of the Act or Code, the branch would assemble and review factual evidence to determine whether a formal investigation was warranted. Where there was an indication of a possible contravention of the Act, the matter was turned over to the Royal Canadian Mounted Police (RCMP). In addition, the Registrar of Lobbyists was required to notify police forces where there were reasonable grounds to believe that a criminal offence had been committed under the Act. No charges were ever laid for contraventions of the LRA, leading some observers to conclude that the legislation could not be adequately enforced.
22. Government of Canada, [The Lobbying Act – A Summary of New Requirements](#), June 2008; and Office of the Commissioner of Lobbying of Canada, [Advice and interpretation – Lobbying Act](#).
23. The *Lobbying Act* defines "public office holder" as any officer or employee of the federal government, including members of the Senate or House of Commons and members of their staff, Governor in Council appointees, ministers, officers, directors or employees of any federal board, commission or tribunal, members of the Canadian Armed Forces and members of the RCMP. See [Lobbying Act](#), R.S.C. 1985, c. 44 (4th Supp.), s. 2.
24. [Designated Public Office Holder Regulations](#), SOR/2008-117, as amended by SOR/2010-192, s. 1.
25. Section 2(1) of the *Lobbying Act* states that the definition of "organization" includes
 - (a) a business, trade, industry, professional or voluntary organization,
 - (b) a trade union or labour organization,
 - (c) a chamber of commerce or board of trade,
 - (d) a partnership, trust, association, charitable society, coalition or interest group,
 - (e) a government, other than the Government of Canada, and

- (f) a corporation without share capital incorporated to pursue, without financial gain to its members, objects of a national, provincial, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional or sporting character or other similar objects[.] See [Lobbying Act](#), R.S.C. 1985, c. 44 (4th Supp.), s. 2(1).
26. Office of the Commissioner of Lobbying of Canada, [Lobbying at the federal level – at a glance](#). With respect to the Registry of Lobbyists, the Office of the Commissioner of Lobbying of Canada groups lobbyists into three categories: “consultant lobbyists,” “in-house lobbyists (organization)” and “in-house lobbyists (corporation).” See Office of the Commissioner of Lobbying of Canada, [Registry of Lobbyists](#).
27. Office of the Commissioner of Lobbying of Canada, [A significant part of duties \(“The 20% rule”\)](#).
28. [Lobbying Act](#), R.S.C. 1985, c. 44 (4th Supp.), s. 10.11. Prior to the *Federal Accountability Act*, the Conflict of Interest and Post-Employment Code for Public Office Holders provided that former ministers, senior public servants and designated ministerial staff could not act as consultant lobbyists or accept employment as in-house lobbyists for a period of five years after leaving office. Although public office holders were bound by this obligation under the Code, the Code did not have the force of law. See Government of Canada, [Conflict of Interest and Post-Employment Code for Public Office Holders](#), 2006.
29. Office of the Commissioner of Lobbying of Canada, [Exemptions granted under the Lobbying Act](#). Between 2008 and 2023, 63 exemptions were granted.
30. [Lobbyists Registration Regulations](#), SOR/2008-116; and Office of the Commissioner of Lobbying of Canada, [A Guide to Registration](#).
31. Ibid.
32. Office of the Commissioner of Lobbying of Canada, [Administering the Lobbying Act: Observations and Recommendations Based on the Experience of the Last Five Years](#), 13 December 2011, pp. 11–19.
33. [Lobbying Act](#), R.S.C. 1985, c. 44 (4th Supp.), s. 14.
34. Ibid. Unlike the *Lobbying Act*, the LRA provided that proceedings by way of summary conviction could not be instituted later than two years after the time when the subject matter of the proceedings arose.
35. Office of the Commissioner of Lobbying of Canada, [Lobbyists’ Code of Conduct \(2023\)](#).
36. Office of the Commissioner of Lobbying of Canada, [About investigations](#).
37. Office of the Commissioner of Lobbying of Canada, [Consultation on future changes to the Lobbyists’ Code of Conduct](#).
38. Office of the Commissioner of Lobbying of Canada, [Renewing the Lobbyists’ Code of Conduct: Updated standards for ethical and transparent lobbying](#).
39. ETHI, [Letter to the Commissioner of Lobbying regarding the study on the third edition of the Lobbyists’ Code of Conduct](#), 20 March 2023.
40. Office of the Commissioner of Lobbying of Canada, [Transition to the 2023 Code – What to know](#).
41. Government of Canada, [PC Number: 2005-0919](#), 17 May 2005.
42. House of Commons, [Journals](#), 15 December 2010:

By unanimous consent, it was ordered, – That the Standing Committee on Access to Information, Privacy and Ethics be the committee designated for the purposes of section 14.1 of the *Lobbying Act*.
43. Office of the Commissioner of Lobbying of Canada, [Administering the Lobbying Act: Observations and Recommendations Based on the Experience of the Last Five Years](#), 13 December 2011, p. 7.
44. ETHI, [Statutory Review of the Lobbying Act: Its First Five Years](#), Third report, May 2012.
45. Tony Clement, President of the Treasury Board and Minister for the Federal Economic Development Initiative for Northern Ontario, [Government response to the recommendations of the third report of the House of Commons Standing Committee on Access to Information, Privacy and Ethics, entitled Statutory Review of the Lobbying Act: Its First Five Years, tabled on 14 May 2012](#).
46. ETHI, [Evidence](#), 9 March 2020 (Nancy Bélanger, Commissioner of Lobbying, Office of the Commissioner of Lobbying of Canada).
47. Ibid.

48. Ibid.
49. Office of the Commissioner of Lobbying of Canada, [Improving the Lobbying Act: Preliminary recommendations](#).
50. ETHI, [Evidence](#), 16 April 2024 (Nancy Bélanger, Commissioner of Lobbying, Office of the Commissioner of Lobbying of Canada).
51. INST, [Transparency in the Information Age: The Lobbyists Registration Act in the 21st Century](#), Fourth report, June 2001, p. 63.