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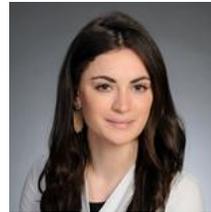
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The *Lobbying Transparency and Ethics Act*: An Unfamiliar Law to Many



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Figuring Out Lobbying Regulation In Quebec

A survey conducted by CROP¹ last April 2018 raised a number of concerning statistics with respect to lobbying in Quebec. According to the survey, nine out of ten Quebecers are unaware of the Lobbyists Commissioner's role or the *Lobbying Transparency and Ethics Act's* purpose² (the "**Act**"), while almost 60% of the respondents had never even heard of the Commissioner or the Act.

Furthermore, the public seems to hold an unfavorable impression of lobbying. However, communicating with parliamentary, government, and municipal institutions is a legitimate practice and is in the public interest. Many requirements are imposed by the Act to ensure that lobbying activities are properly conducted and to promote transparency in the lobbying of public office holders.³ For instance, every person considered a lobbyist for the purposes of the Act must be registered in the registry of lobbyists within a prescribed deadline.⁴

Lobbyist Types

The Act categorizes "lobbyists" into three groups: enterprise lobbyists, organization lobbyists, and consultant lobbyists.⁵

In short, an enterprise lobbyist means any person a significant part of whose job or function consists of lobbying on behalf of an enterprise⁶. Organization lobbyist means any person a significant part of whose job or function consists in lobbying on behalf of an association or other non-profit group. However, organization lobbyists, who lobby on behalf of an association or other non-profit group not constituted to serve management, union or professional interests, nor composed of a majority of members that are profit seeking enterprises or representatives of profit-seeking enterprises, are not considered to be lobbyists for the purposes of the Act.⁷

A consultant lobbyist is defined as any person, whether or not a salaried employee, whose occupation or mandate consists, in whole or in part, in lobbying on behalf of another person for compensation⁸. For instance, lawyers mandated by their clients to communicate with public office holders for the purpose of compelling legislative amendments act as consultant lobbyists.

What Is A Lobbying Activity

The Act broadly defines the practices covered by the term "lobbying activities". The Act defines lobbying as any oral or written communication with a public office holder in an attempt to influence a decision concerning, among other things, the following matters:

- the development, introduction, amendment or defeat of any legislative or regulatory proposal, resolution, policy, program or action plan;

- the issue of any permit, licence, certificate or other authorization;
- the awarding of any contract, otherwise than by way of a call for public tenders, or of any grant or other financial benefit or the granting of any other form of benefit determined by government regulation.⁹

In addition, the arranging by a lobbyist of a meeting between a public office holder and any other person is also considered to be a lobbying activity.¹⁰

Under the Act, the following persons are considered to be public office holders at the parliamentary and government level:

- government ministers and members of the National Assembly, as well as persons on their staff;
- government employees;
- persons appointed to a government agency as well as employees of any such agency;
- persons appointed to a non-profit agency established for the purpose of managing and providing financial support for activities of a public nature out of funds originating principally from the Government, without itself delivering products or services to the public, as well as employees of any such agency.¹¹

At the municipal level, the following persons are also considered to be public office holders:

- mayors, municipal or borough councillors;
- wardens, chairs and other members of the council of a metropolitan community;
- persons on the staff of elected members of municipalities and municipal bodies;
- employees of municipalities and municipal bodies.¹²

The term “communication” included in definition of “lobbying activity” covers a number of situations, such as a regular conversation, phone calls, emails, letters, written reports, as well as any communication made at any social or sporting activity.¹³

Registration Deadlines

All lobbyists must file an *initial return* of their lobbying activities with the Registrar. Enterprise and organization lobbyists must be registered no later than the sixtieth day after the lobbyist begins conducting lobbying activities.¹⁴ Consultant lobbyists, on the other hand, are subject to a thirty-day deadline.¹⁵ A notice of change must be filed in the registry no later than the thirtieth day following the

occurrence of the change to the information contained in the initial return.¹⁶

Consultant lobbyists must renew their registrations no later than the thirtieth day following the anniversary of the initial return while enterprise and organization lobbyists must do so no later than the sixtieth day following the end of the financial year of the enterprise or group.¹⁷

Ethical And Disciplinary Measures

Furthermore, many actions are prohibited by the Act for the purpose of ensuring that lobbying activities are ethically conducted. For example, no consultant lobbyist or enterprise lobbyist may act in return for compensation that is contingent on the achievement of a result or the lobbyist’s degree of success.¹⁸

If a lobbyist has gravely or repeatedly breached obligations under the Act or the Code of Conduct adopted under the Act, the Commissioner may, amongst others, prohibit the lobbyist’s registration.¹⁹ Besides, a lobbyist who does not comply with the Act could be exposed to fines ranging from \$500 to \$25,000 in the case of a first offence and up to \$50,000 in the case of any subsequent offence.²⁰

The Aftermath For Businesses

The media now plays a vital role in informing the public about lobbying. A complaint filed against an enterprise can cause reputational damage and harm its credibility, in addition to creating a risk of liability for disciplinary or penal sanctions provided under the Act. At a practical level, a penalized enterprise may harm its ability to communicate with municipal, governmental and parliamentary authorities.

Enterprises must understand these risks as no enterprise is immune from disciplinary measures or penal sanctions. Since 2008, 48 complaints have been filed by the Lobbyists Commissioner. In light of its history and past conduct, the Lobbyists Commissioner is willing to enforce the Act by any means necessary. Whether the enterprise or individuals in question are connected with small or medium-sized businesses, radio stations, professional associations, or even if they are the highest ranking executives of major sporting franchises, the Lobbyists Commissioner does not discriminate in its enforcement of the Act.

Understanding the Act and the Lobbyists Commissioner’s role must be a serious consideration for a business that communicates with any public office holder. Registration in the registry of lobbyists as required by the Act can prevent many unfortunate situations. In fact, public office holders are asking increasingly lobbyists who contact them if they are registered before accepting a phone call or any kind of meeting and may even refuse to meet a lobbyist if the answer is negative.

Bill N° 56

In June 2015, Bill N° 56²¹ (the “**Bill**”) was introduced to amend the Act in many respects. The Bill provides for a much more burdensome registration process for all lobbyists than what is required under the current Act. By way of example, the declaration on the registry would have to be registered before any lobbying activities have been conducted and lobbyists would also be required to submit detailed quarterly reports on their lobbying activities. The Bill also requires all non-profit organizations that engage in lobbying activities to register.

Upon presentation of the Bill, a wave of opposition, mainly by those implicated in providing community services arose throughout Quebec. According to some, the administrative burden and the associated costs as well as the risks of being exposed to substantially heavier fines could have the consequence of dissuading volunteers or organizations from beginning or continuing any kind of involvement in the community. These issues could also create serious barriers to community engagement in charitable endeavours and the development of informed public policy. Given the serious resistance, the Bill has not yet moved forward.

In a letter written to parliamentarians, published in May 2018,²² the Lobbyists Commissioner Jean François Routhier commented on the Act's obsolete nature declaring that the shortcomings and difficulties associated with enforcing and applying the Act undermine its democratic objectives and citizens' trust in public institutions. The Commissioner believes that the Bill cannot be adopted as introduced given that, amongst other things, all non-profit organizations would be subject to the Act. He contends, however, that the Act should be amended as soon as possible. In this regard, Mr. Routhier submits, amongst other things, that the administration of and responsibility for the registry, currently controlled by the Lobbyists Registrar, ought to be transferred to the Lobbyists Commissioner. According to the Commissioner, the current situation has caused the public to have difficulty understanding the respective roles and powers of the Registrar and the Commissioner.

10. *Ibid.*
11. *Ibid.*, at Section 4.
12. *Ibid.*; QUEBEC COMMISSIONER OF LOBBYING, *Guide de formation à l'intention des lobbyistes* (Québec: Bibliothèque et Archives nationales du Québec, 2018), online: <https://www.commissairelobby.qc.ca/fileadmin/Centre_de_documentation/Outils_et_publications/Lobbyistes/Guide_formation_lobbyistes_2018-02_-_NP_.pdf>, p. 7, 8.
13. QUEBEC COMMISSIONER OF LOBBYING, *Réponses du Commissaire au lobbyisme du Québec à quelques-unes des questions les plus fréquentes* (Québec: Government of Quebec, 2014), online: <https://www.mamrot.gouv.qc.ca/fileadmin/publications/ministere/acces_information/Diffusion_information/2015_103_Documents_lobbyisme.pdf>
14. *Supra* note 2, at Section 14.
15. *Ibid.*
16. *Ibid.*, at Section 15.
17. *Ibid.*, at Section 16.
18. *Ibid.*, at Section 26.
19. *Ibid.*, at Section 53.
20. *Ibid.*, at Sections 60-65.
21. *Lobbying Transparency Act*, Bill No. 56 (introduction – June 12, 2015), 1st sess., 41st legis. (Qc).
22. QUEBEC COMMISSIONER OF LOBBYING, *La loi sur le lobbyisme doit être actualisée pour atteindre pleinement ses objectifs démocratiques*, May 2018, online: <<https://www.commissairelobby.qc.ca/index.php?id=310&L=0>>.

The content of this newsletter is intended to provide general commentary only and should not be relied upon as legal advice.

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1. QUEBEC COMMISSIONER OF LOBBYING, *Allocution aux membres de l'Association québécoise des lobbyistes à l'occasion du coquetel au Château Laurier*, April 25, 2018, at p. 3, 4.
2. *Lobbying Transparency and Ethics Act*, RLRQ, c. T-11.011.
3. *Ibid.*, at Section 1.
4. *Ibid.*, at Section 8.
5. *Ibid.*, at Section 3.
6. *Ibid.*
7. *Lobbying Transparency and Ethics Act Exclusions Regulation*, RLRQ c T-11.011, r 1.1, at Section 1 (11).
8. *Supra* note 2, at Section 3.
9. *Ibid.*, at Section 2.