

# ***A Guide to the Nova Scotia Registry of Lobbyists***

lobby v. (-ies, ied) tr. (of members of the public) to communicate with a public-office holder in an attempt to influence (the members of the Legislature) intr. attempt to persuade a public office holder to support or oppose changes in a law, policy or program. lobbying n. & adj. lobbyist n. synonyms: advance, affect, boost, further, induce, influence, persuade, pressure, promote, solicit, sway, urge

WHEREAS free and open access to government is an important matter of public interest;

AND WHEREAS lobbying public office holders is a legitimate activity;

AND WHEREAS it is desirable that public office holders and the public be able to know who is engaged in lobbying activities;

AND WHEREAS a system for the registration of paid lobbyists should not impede free and open access to government.

Preamble to the *Lobbyists' Registration Act*

# CONTENTS

<b>AN OVERVIEW OF THE LOBBYIST REGISTRATION ACT .....</b>	<b>5</b>
INTRODUCTION.....	5
WHAT IS LOBBYING? .....	5
WHAT ARE THE THREE TYPES OF LOBBYIST? .....	5
WHO IS A PUBLIC SERVANT?.....	6
WHAT IS NOT CONSIDERED LOBBYING? .....	6
WHO ARE NOT CONSIDERED LOBBYISTS? .....	7
WHAT IS THE ROLE OF THE REGISTRAR OF LOBBYISTS? .....	8
HOW DOES A LOBBYIST REGISTER? .....	8
<b>CONSULTANT LOBBYIST REGISTRATION .....</b>	<b>9</b>
WHO IS A CONSULTANT LOBBYIST?.....	9
WHAT IS AN UNDERTAKING?.....	9
ARE THERE ANY RESTRICTIONS ON CLIENTS OF CONSULTANT LOBBYIST?.....	9
WHEN MUST I REGISTER? WHEN MUST I RENEW? .....	9
WHAT CHANGES OR NEW INFORMATION MUST BE REPORTED? .....	9
WHAT MUST CONSULTANT LOBBYISTS DISCLOSE? .....	9
<b>IN-HOUSE LOBBYIST (COMPANY) REGISTRATION .....</b>	<b>11</b>
WHO IS AN IN-HOUSE LOBBYIST (COMPANY)?.....	11
IS THAT DIFFERENT THAN AN IN-HOUSE LOBBYIST (ORGANIZATION)? ... ..	11
WHEN MUST I REGISTER? WHEN MUST I RENEW? .....	11
WHAT CHANGES OR NEW INFORMATION MUST BE REPORTED? .....	11
WHAT MUST AN IN-HOUSE LOBBYIST (COMPANY) DISCLOSE? .....	11
<b>IN-HOUSE LOBBYIST (ORGANIZATION) REGISTRATION .....</b>	<b>13</b>
WHO IS AN IN-HOUSE LOBBYIST (ORGANIZATION)? .....	13
IS THAT DIFFERENT THAN AN IN-HOUSE LOBBYIST (COMPANY)? .....	13
WHO IS THE SENIOR OFFICER AND WHO IS AN EMPLOYEE? .....	13
DO VOLUNTEERS WHO LOBBY NEED TO REGISTER? .....	13
WHEN MUST THE SENIOR OFFICER REGISTER AND RENEW? .....	13
WHAT MUST THE SENIOR OFFICER DISCLOSE? .....	13
<b>PENALTIES.....</b>	<b>15</b>
<b>FEES .....</b>	<b>16</b>
CONSULTANT LOBBYISTS .....	16
IN-HOUSE LOBBYISTS (COMPANY) .....	16
IN-HOUSE LOBBYISTS (ORGANIZATION) .....	16
<b>CONTACT INFORMATION .....</b>	<b>17</b>

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# AN OVERVIEW OF THE LOBBYIST REGISTRATION ACT

## INTRODUCTION

The *Lobbyists' Registration Act* (LRA) requires the registration of anyone who is paid to lobby public servants. The intention of this guide is to help individuals and organizations understand their responsibilities under the LRA.

Please note: The information in this guide is general in nature. It is the responsibility of the lobbyist and/or the lobbyist's employer to determine if registration is necessary. For more information, refer to the Act and its regulations, or contact your legal counsel.

## WHAT IS LOBBYING?

Under the LRA, lobbying means to communicate with a public servant, directly or through grass-roots communication, in an attempt to influence:

- ❖ the development of a legislative proposal;
- ❖ the introduction, passage, defeat or amendment of a bill or resolution;
- ❖ the making or amendment of a regulation;
- ❖ the development, amendment or termination of a policy or program;
- ❖ a decision about privatization or outsourcing;
- ❖ the awarding of a grant, contribution, or other financial benefit by or on behalf of the government;
- ❖ the awarding of a contract by or on behalf of the government (consultant lobbyists only); or
- ❖ the arrangement of a meeting between a public servant and another person (consultant lobbyists only).

## WHAT ARE THE THREE TYPES OF LOBBYIST?

The *Lobbyists' Registration Act* defines three categories of lobbyist:

- ❖ consultant lobbyist
- ❖ in-house lobbyist (company)
- ❖ in-house lobbyist (organization)

Registration requirements for each category vary. Information defining the differences among the three types and their responsibilities under the LRA appears later in this document.

### WHO IS A PUBLIC SERVANT?

A public servant, referred to in the Act as a public office holder, includes:

- ❖ an MLA, official or servant of the House of Assembly and their staff;
- ❖ officers, directors and employees of Nova Scotia government departments, agencies, boards and commissions;
- ❖ a person appointed by the Cabinet or a Minister to any office or body; and
- ❖ an officer or employee of the government, or employee of an officer or Minister not otherwise specified.

The following people are not considered to be public office holders under the *Lobbyists' Registration Act*:

- ❖ judges;
- ❖ justices of the peace;
- ❖ Small Claims Court adjudicators;
- ❖ members of an administrative tribunal, such as the Labour Relations Board, exercising a judicial function.
- ❖ the Ombudsman; and
- ❖ the *Freedom of Information and Protection of Privacy Act* review officer;

### WHAT IS NOT CONSIDERED LOBBYING?

Under the Act, certain communications with public servants are not viewed as lobbying. For example, when the government requests comment on an issue, the responses are not considered to be lobbying. Other examples include:

- ❖ a submission to a committee of the House of Assembly that is on the public record or to any body or person with jurisdiction under legislation;
- ❖ a submission to a public servant about how he or she enforces, interprets, or applies legislation or regulations, or administers a policy, program, directive, or guideline with respect to the person, partnership or organization being represented;

- ❖ a submission to an MLA on behalf of a constituent about a personal matter;
- ❖ communication by a trade union regarding administration or negotiation of a collective agreement;
- ❖ communication by a trade union related to representation of a member or former member who is or was employed in the public service; and
- ❖ a submission by a barrister of the Supreme Court of Nova Scotia regarding drafting of a legislative proposal.

#### WHO ARE NOT CONSIDERED LOBBYISTS?

Generally, public servants acting in an official capacity do not need to register as lobbyists. These include:

- ❖ an MLA, official or servant of the House of Assembly and their staff;
- ❖ employees in the public service of the Province;
- ❖ members, officers and employees of a municipal council or village commission, and members, officers and employees of a school board;
- ❖ officers, directors or employees of the Union of Nova Scotia Municipalities;
- ❖ officers, directors or employees of the Nova Scotia School Boards Association;
- ❖ federal senators, MPs, elected members of the legislative assembly of another province, or their staff;
- ❖ employees of the government of Canada or of the government of another province;
- ❖ members of a band council (defined in subsection 2 (1) of Canada's Indian Act or as established by an act of Parliament), their staff and employees of the council;
- ❖ diplomatic agents, consular officers or official representatives of a foreign government operating in Canada; and
- ❖ officials of a specialized agency of the United Nations or any international organization that is granted privileges and immunities under an act of Parliament.

## WHAT IS THE ROLE OF THE REGISTRAR OF LOBBYISTS?

The Registrar has several responsibilities. These include:

- ❖ administering the registration process;
- ❖ identifying omissions and inconsistencies, and asking the lobbyist to correct the information;
- ❖ informing lobbyists, public servants, the public and others about the Registry;
- ❖ ensuring that the public has access to information in the Registry; and
- ❖ issuing bulletins about the enforcement, interpretation or application of the Act or its regulations.

## HOW DOES A LOBBYIST REGISTER?

Registration can be done:

- ❖ on-line at <http://www.gov.ns.ca/lobbyist/>
- ❖ by mail or fax using a form available from the Registry of Lobbyists, Access Nova Scotia, and on-line at <http://www.gov.ns.ca/lobbyist/>

## CONSULTANT LOBBYIST REGISTRATION

### WHO IS A CONSULTANT LOBBYIST?

An individual paid to lobby on behalf of a client is considered to be a consultant lobbyist under the Act. Consultant lobbyists can include lawyers, accountants and other professionals.

A client is a person, partnership or organization that hires or retains a consultant lobbyist for an undertaking.

In the Act, person refers to a legal person, such as a corporation, as well as a natural person.

### WHAT IS AN UNDERTAKING?

An undertaking is defined by the contract between a consultant lobbyist and the client; not by the government activities that the lobbyist is trying to influence. An undertaking may be very broad and require lobbying on several activities, or it may be narrowly focused on only one activity. For example, an undertaking could involve lobbying to have more government funding allocated to highway maintenance, or it could involve lobbying to have a new highway interchange located in a specific place.

### ARE THERE ANY RESTRICTIONS ON CLIENTS OF CONSULTANT LOBBYIST?

A designated public sector organization is a member of the Government Reporting Entity as defined in the *Finance Act*. Under the *Public Sector Lobbyist Act* a consultant lobbyist is precluded from accepting an undertaking on behalf of a designated public sector organization. Further, a designated public sector organization is also precluded from hiring a consultant lobbyist for lobbyist services.

### WHEN MUST I REGISTER? WHEN MUST I RENEW?

A consultant lobbyist must register within 10 days of beginning an undertaking for a client. Usually, this means within 10 days of signing a contract with a client.

The lobbyist must re-register within 30 days of each six-month anniversary of the most recent registration.

### WHAT CHANGES OR NEW INFORMATION MUST BE REPORTED?

New information or changes to a registration, including the end of an undertaking, must be reported to the Registrar within 30 days of the change occurring or the lobbyist becoming aware of the change. Agreements or contracts with major changes are considered as new undertakings and require a new registration. For example, a new registration is necessary if there are changes to the terms or scope of an undertaking such as the subject of lobbying.

Simple changes, such as a consultant or client's change of address, must be updated in the Registry but do not require a new registration.

### WHAT MUST CONSULTANT LOBBYISTS DISCLOSE?

Consultant lobbyists must disclose the following information for each undertaking:

- ❖ their name, business address, phone number and, if applicable, the name, business address and Registry of Joint Stock Companies number of their firm;

- ❖ the name and business address of the client and the name and business address of any person, partnership or organization that controls or directs the activities of the client or has a direct interest in the outcome of the undertaking;
- ❖ if the client is a corporation, the name and business address of each subsidiary of the corporation that has a direct interest in the outcome of the lobbyist's undertaking;
- ❖ if the client is a subsidiary of a corporation, the name and business address of the parent corporation;
- ❖ if the client is a coalition, the name and business address of each partnership, corporation or organization that is a member of the coalition;
- ❖ the source and amount of any government funding received by the client; the name and business address of any non-government entity that provided \$750 or more to the client to support the undertaking;
- ❖ the name and business address of any individual who provided \$750 or more to the client, on behalf of a non-government entity, to support the undertaking;
- ❖ the subject matter of the lobbying;
- ❖ specific information regarding any relevant legislative proposal, bill, resolution, regulation, policy, program, decision, grant, contribution, financial benefit or contract;
- ❖ the name of any department, agency, board or commission that has been or will be lobbied;
- ❖ whether an MLA or an MLA's staff has been or will be lobbied; and
- ❖ any lobbying techniques that have been or will be used.

Effective May 1, 2012, consultant lobbyists are no longer permitted to enter into contingency fee agreements for payment for their lobbying services. Contingency fee agreements entered into prior to May 1, 2012, may continue until the agreement comes to an end under its terms, or in any event, May 1, 2014. If a consultant lobbyist has entered into a contingency fee agreement with a client prior to May 1, 2012, the date of the agreement must be provided upon registration or renewal.

## IN-HOUSE LOBBYIST (COMPANY) REGISTRATION

### WHO IS AN IN-HOUSE LOBBYIST (COMPANY)?

An employee of a person, partnership or company whose lobbying activity is a significant part of his or her duties or whose lobbying activity along with that of other employees' would amount to a significant part of one staff member's duties.

A "significant part of duties" is defined as an average of 20 per cent of an employee's time over a three-month period. This applies to individual employees and a collective of employees conducting lobbying activities. For example, if you assume a five-day workweek, then over a three-month period an employee or group of employees would reach the 20 per cent threshold in 12 days of lobbying. Two employees working six days each would meet this requirement.

### IS THAT DIFFERENT THAN AN IN-HOUSE LOBBYIST (ORGANIZATION)?

An organization can be distinguished from a person, partnership or company because it is, generally, a non-profit or non-commercial operation. This is not a fail-safe rule, but is a useful starting point when distinguishing between an in-house lobbyist (company) and an in-house lobbyist (organization).

### WHEN MUST I REGISTER? WHEN MUST I RENEW?

In-house lobbyists must register within two months of becoming a lobbyist (i.e., when their lobbying constitutes a significant part of their duties).

The lobbyist must re-register within 30 days of each six-month anniversary of the most recent registration.

### WHAT CHANGES OR NEW INFORMATION MUST BE REPORTED?

The lobbyist must also report any changes to information previously submitted – including when they stop their lobbying activities or when the employer ceases the lobbying activities – within 30 days. The end of the lobbying activities could be the result of the conclusion of a project, the employee's resignation or the employee's dismissal.

### WHAT MUST AN IN-HOUSE LOBBYIST (COMPANY) DISCLOSE?

In-house lobbyists (company) must disclose the following information:

- ❖ their name, business address and phone number, and the employer's name, business address and, if applicable, Registry of Joint Stock Companies number;
- ❖ if the employer is a corporation, the name and business address of each subsidiary of the corporation that has a direct interest in the outcome of the in-house lobbyist's activities on behalf of the employer;
- ❖ if the employer is a subsidiary of a corporation, the name and business address of the parent corporation;

- ❖ the fiscal year of the employer;
- ❖ a general description of the employer's business or activities;
- ❖ the source and amount of any government funding received by the employer;
- ❖ the name and business address of any non-government entity that provided \$750 or more to the employer in support of the lobbyist's activities;
- ❖ the name and business address of any individual who provided \$750 or more to the employer on behalf of a non-government entity in support of the lobbyist's activities;
- ❖ the subject matter of the lobbying;
- ❖ specific information regarding any relevant legislative proposal, bill, resolution, regulation, policy, program, decision, grant, contribution or financial benefit;
- ❖ the name of any department, agency, board or commission that has been or will be lobbied;
- ❖ whether an MLA or an MLA's staff has been or will be lobbied; and
- ❖ any lobbying techniques that have been or will be used.

## IN-HOUSE LOBBYIST (ORGANIZATION) REGISTRATION

### WHO IS AN IN-HOUSE LOBBYIST (ORGANIZATION)?

An employee of an organization such as a professional association, society or chamber of commerce whose lobbying activity is a significant part of his or her duties or whose lobbying activity along with that of other employees' would amount to a significant part of one staff member's duties.

A "significant part of duties" is defined as an average of 20 per cent of an employee's time over a three-month period. This applies to individual employees and a collective of employees conducting lobbying activities for the organization. For example, if you assume a five-day workweek, then over a three-month period an employee or group of employees would reach the 20 per cent threshold in 12 days of lobbying. Two employees working six days each would meet this requirement.

### IS THAT DIFFERENT THAN AN IN-HOUSE LOBBYIST (COMPANY)?

An organization can be distinguished from a person, partnership or company because it is, generally, a non-profit or non-commercial operation. This is not a fail-safe rule, but is a useful starting point when distinguishing between an in-house lobbyist (organization) and an in-house lobbyist (company).

### WHO IS THE SENIOR OFFICER AND WHO IS AN EMPLOYEE?

The senior officer is the organization's top person who is compensated for his or her work. An employee is any person who is compensated for performing his or her duties.

### DO VOLUNTEERS WHO LOBBY NEED TO REGISTER?

No. The Act only applies to individuals who are compensated for their lobbying efforts.

### WHEN MUST THE SENIOR OFFICER REGISTER AND RENEW?

The senior officer must register the organization when it employs an in-house lobbyist. The registration must be filed within two months of the person(s) meeting the definition of in-house lobbyist.

The senior officer must re-register within 30 days of each six-month anniversary of the most recent registration.

### WHAT MUST THE SENIOR OFFICER DISCLOSE?

The senior officer must disclose the following information:

- ❖ their name, business address and phone number, and the organization's name, business address and, if applicable, Registry of Joint Stock Companies number;
- ❖ the name of each in-house lobbyist employed by the organization;
- ❖ a summary description of the organization's business or activities;
- ❖ a general description of the organization's membership, including the names of its officers and directors;

- ❖ the name of any in-house lobbyist identified in the last return filed who has ceased to be an in-house lobbyist or to be employed by the organization;
- ❖ the source and amount of any government funding received by the organization;
- ❖ the name and business address of any non-government entity that provided \$750 or more to the organization in support of the organization's lobbying activities;
- ❖ the name and business address of any individual who provided \$750 or more to the organization on behalf of a non-government entity in support of the organization's lobbying activities; the subject matter of the lobbying;
- ❖ specific information regarding any relevant legislative proposal, bill, resolution, regulation, policy, program, decision, grant, contribution or financial benefit;
- ❖ the name of any department, agency, board or commission that has been or will be lobbied;
- ❖ whether an MLA or an MLA's staff has been or will be lobbied; and
- ❖ any lobbying techniques that have been or will be used.

## PENALTIES

The *Lobbyists' Registration Act* applies to any individual or organization that lobbies a Nova Scotia public office holder as they are defined under the Act. Anyone lobbying a public servant, regardless of whether the lobbyist or the organization they represent is located in Nova Scotia, must register.

Failure to register properly could result in prosecution leading to a fine of up to \$25,000 for a first offence and to a fine of up to \$100,000 for a second or subsequent offence. It is an offence to:

- ❖ lobby without registering within the time limits set out in the Act;
- ❖ fail to provide the required information;
- ❖ fail to provide the Registrar with changes to a registration, new information or a requested clarification of information;
- ❖ make false or misleading statements; or
- ❖ knowingly place a public servant in a position of real or potential conflict of interest.

A public servant is in a position of conflict of interest if they engage in an activity that is prohibited by Sections 7 or 22 of the *Members and Public Employees Disclosure Act* or that would be prohibited if the public servant were a member of the House of Assembly or a public employee as defined by that Act.

Legal proceedings must begin within two years of the offence.

## FEES

### CONSULTANT LOBBYISTS

- ❖ on-line registration: \$60.88
- ❖ paper registration (postal mail, fax, or drop-off at Access Nova Scotia): \$121.77
- ❖ renewal, every six months, paper or on-line: \$30.44
- ❖ updates, paper or on-line: Free

### IN-HOUSE LOBBYISTS (COMPANY)

- ❖ on-line registration: \$60.88
- ❖ paper registration (postal mail, fax, or drop-off at Access Nova Scotia): \$121.77
- ❖ renewal, every six months, paper or on-line: \$30.44
- ❖ updates, paper or on-line: Free

### IN-HOUSE LOBBYISTS (ORGANIZATION)

- ❖ on-line registration: Free
- ❖ paper registration (postal mail, fax, or drop-off at Access Nova Scotia): \$60.88
- ❖ paper renewal, every six months: \$30.44
- ❖ on-line renewal, every six months: Free
- ❖ updates, paper or on-line: Free

## CONTACT INFORMATION

Registry of Lobbyists  
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