



ACCESS, OPENNESS, ACCOUNTABILITY:

*A Guide to the
Newfoundland and Labrador
Registry of Lobbyists*

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AN OVERVIEW OF THE *LOBBYIST REGISTRATION ACT*

INTRODUCTION

Government relies on input from Newfoundlanders and Labradorians to develop policies and programs that serve the best interests of the province.

Free and open access to government is an important right of citizenship and must not be impeded. However, government decision-makers and the public should have information on who is attempting to influence public policy decisions. Therefore, government has introduced a *Lobbyist Registration Act* and a Code of Conduct that defines appropriate lobbying practices and is establishing a public Registry of paid lobbyists.

A person has to register as a lobbyist under the *Lobbyist Registration Act* when:

- carrying out a lobbying activity (except an activity that is specifically excluded in the *Act*) for pay or other benefit;
- he or she meets the definition of consultant lobbyist or in-house lobbyist;
- not in the list of persons excluded from the application of the *Act* when acting in their official capacity;
- lobbying a public office holder as defined in the *Act* (not all public officials are public office holders for the purpose of the LRA)

The Guide assists with the following questions:

- What is and is not considered lobbying under the *Act*?
- Who is a consultant and in-house lobbyist?
- Who does not have to register under the *Lobbyist Registration Act* when acting in his/her official capacity?
- Who is and is not a public office holder?
- Who is included in the group of former public office holders who are prohibited from lobbying for a 12 month period?
- What are the roles of the Registrar and Commissioner of Lobbyists?
- What are the registration requirements?
- What are the fees?
- What are the prohibited acts, offences and penalties?
- What is the contact information for the Registry of Lobbyists?

The intention of this guide is to help individuals and organizations understand their responsibilities under the *Lobbyist Registration Act*.

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.

DEFINITIONS

LOBBYING

What Lobbying Is

Lobbying, when conducted appropriately, is a legitimate activity through which individuals and groups can educate government about their issues and objectives, and thus influence public policy and program decisions. Volunteers with not-for-profit or grass-roots organizations sometimes undertake lobbying. Lobbying is also conducted by paid professionals, when organizations (whether commercial or non-profit) hire them as consultants or employees to bring a particular message to key decision-makers.

It is the latter activity, paid lobbying, that government is regulating. Open and transparent registering and recording of paid lobbying activities ensures that public office holders and the general public know who is working to influence government decision-making and the public policy decisions they are attempting to influence.

Lobbying:
to communicate, for pay or other benefit, with a *public office holder* in an attempt to influence government policy or program decisions

This includes an attempt to influence:

- the development of any legislative proposal;
- the introduction, passage, defeat, amendment or repeal of any bill or resolution;
- the making, amendment or repeal of a regulation or a by-law;
- the development, amendment or termination of any policy or program of Government or a public body or by the City of St. John's or its controlled entities.
- a decision about privatization or outsourcing;
- the awarding of any contract, grant, contribution or other financial benefit by or on behalf of the Crown or the City of St. John's or its controlled entities;
- arranging a meeting between a public office holder and any other person;
- the procurement of goods and services;
- the terms of a tender or request for proposals or other procurement solicitation prior to the awarding of that tender or the acceptance of the request for proposals or other procurement solicitation;
- the terms of a contract, the choice of a contractor, or the administration, implementation or enforcement of a contract, or
- the appointment of any public official.

Decisions that might be subject to lobbying include both general issues (for example, the content of legislation, policies or program criteria) and specific circumstances (for example, the award of a grant, funding contribution or contract).

Communication Techniques Used in Lobbying

Direct communication with a public office holder includes telephone calls, faxes, emails, formal correspondence and meetings in person.

Another technique used in lobbying is “***grass-roots communication***”. The lobbyist appeals to the public through mass media (such as radio or television advertising) or direct communication (such as direct mail leaflets) attempting to persuade members of the public to communicate directly with a public-office holder to influence a particular decision. Grass-roots communications does not include communication between an organization and its members, officers or employees or between a person or partnership and its shareholders, officers or employees.

What Isn't Lobbying

Not all communication with a public office holder, however, is subject to the *Act*. For example, when the government issues written requests for comment on an issue, the responses are not considered to be lobbying that must be registered or reported.

Other examples of communication with a public office holder that does not require registration or reporting under a *Lobbyist Registration Act* include:

- submissions to Members of the House of Assembly (MHAs) or St. John's Municipal councillors, in their official capacities as MHAs or councillors, by or on behalf of their constituents
- on-the-record submissions to a committee of the House of Assembly or to any body or person with jurisdiction under a given piece of legislation
- submissions to a public office holder about enforcement, interpretation or application of an Act or regulations, or administration of a policy, program, directive or guideline with respect to the person, partnership or organization being represented
- communication by a trade union regarding administration or negotiation of a collective agreement
- communication by a trade union representing a member or former member who is or was employed in the public service
- communication by an unpaid member of a voluntary organization, about an issue of concern to that organization

WHO IS INVOLVED

Lobbyists

A wide variety of individuals and organizations engage in lobbying. They may also be referred to as, “public affairs advisors” or “government relations consultants”. Specifically, government is seeking to regulate *paid lobbyists*. Unpaid lobbyists are not required to register.

Lobbyist:
anyone who, for pay or other benefit, carries out lobbying activity

The *Lobbyist Registration Act* applies to both consultant lobbyists and in-house lobbyists.

A ***consultant lobbyist*** is an individual (for example, a lawyer, accountant, public relations specialist or other professional) who is paid to lobby on behalf of a client.

An ***in-house lobbyist*** is an employee whose lobbying activity on behalf of the employer organization (either individually or counted with other employees) amounts to 20 per cent of one staff member’s full-time work as assessed over a three-month period. This applies to both individual employees and groups of employees conducting lobbying activities. For example, given a five-day workweek, an employee or group would qualify as an in-house lobbyist by spending 12 working days on lobbying activity over a three-month period; two employees working six days each would meet this requirement.

Volunteers conducting lobbying activity are *not* considered to be lobbyists and need not register their lobbying activities.

Public Office Holders

The following persons and groups, when acting in their official capacities, are not considered lobbyists under the *Lobbyist Registration Act*:

- members, officers and employees of the House of Assembly and their staff;
- members, officers and employees of the Senate or House of Commons of Canada, the legislative assembly of another province or territory or Canada, and their staff;
- members of a council or other statutory body charged with the administration of civil or municipal affairs of a regional municipality, town or local service district, and their staff;
- employees of municipal councils, the provincial public service or the federal public service;
- officers, directors or employees of the Newfoundland Federation of Municipalities, the Combined Councils of Labrador, the Newfoundland and Labrador School boards Association, the Newfoundland and Labrador Health Care Association or hospital boards;
- members of the council of an aboriginal band (as defined in the *Indian Act* or established by an Act of the Parliament of Canada);
- members, directors or employees of an aboriginal government or aboriginal political organization;
- diplomatic agents, consular officers or official representatives in Canada of a foreign government;
- officials of the United Nations in Canada or of any other international organization granted privileges and immunities under any Act of the Parliament of Canada;
- officers, directors or employees of a hospital board or the St. John's Nursing Home Board under the *Hospitals Act*;
- officers, directors, employees or trustees of a school board or Memorial University;
- officers, directors or employees of organizations established or funded by government to provide information or advice on matters of public policy;
- persons acting as unpaid volunteers.

To influence government decisions, lobbying has to reach the decision-makers: those who hold public office.

Public office holder:

a person occupying an elected, appointed or other employment position in the House of Assembly, as well as most officers and employees of provincial government departments and agencies

The term “public office holder” includes:

- members, officers and employees of the House of Assembly (Speaker, Clerk, Chief Electoral Officer, Auditor General and Commissioner of Members’ Interests) and their staff;
- officers, directors and employees of Crown agencies (as defined under the *Auditor General Act*);
- trustees, officers or members of school, health care, hospital or nursing home boards;
- officers or employees of the government, or employees of officers or ministers not otherwise specified;
- a member, officer, CEO, director or employee of the City of St. John’s Municipal Council and its controlled entities.

The term “public office holder” does not include:

- judges and justices of the peace;
- members of an administrative tribunal, exercising a judicial function;
- the Information and Privacy Commissioner;
- the Citizens’ Representative;
- the Child and Youth Advocate.

Former Public-Office Holders – a special case

Former public office holders are prohibited from acting as a consultant or in-house lobbyist for a period of 12 months after leaving public office or the public service.

This restriction applies only to the following public office holder positions:

- cabinet ministers or members of their executive staff (but not support staff);
- members or officers of the House of Assembly or members of their executive staff (but not support staff);
- deputy ministers or chief executive officers of Crown bodies;
- other positions designated by the Lieutenant-Governor in Council (Cabinet).

Certain former public office holders of the City of St. John’s are prohibited from lobbying City of St. John’s public office holders for a period of 12 months after leaving

public office. This restriction applies to a member of council, CEO or other positions designated by the Lieutenant-Governor in Council (cabinet).

Registrar of Lobbyists

The Registrar of Lobbyists is the administrative official responsible for:

- establishing and maintaining a Registry of Lobbyists;
- administering the registration process;
- identifying omissions and inconsistencies, and asking the lobbyist to correct the information;
- informing lobbyists, public employees, the public and others about the Registry;
- ensuring that the public has timely access to information in the Registry;
- distributing to each registrant a copy of the Code of Conduct;
- issuing bulletins about the enforcement, interpretation or application of the *Act* or any applicable regulations.

Commissioner of Lobbyists

The Commissioner of Lobbyists is responsible for:

- Investigating and conducting enquiries into possible violations of the *Lobbyist Registration Act*, regulations or Code of Conduct;
- prohibiting or canceling the registration of lobbyists whom the Commissioner determines to have gravely or repeatedly breached the obligations imposed by the *Act*, regulations or Code of Conduct;
- ordering that some or all registration information be kept confidential;
- recommending changes to the Code of Conduct;
- submitting an annual report on the Office of the Commissioner of Lobbyists to the Speaker of the House of Assembly.

REGISTRATION AND THE REGISTRY

Registration of paid lobbyists provides a public record of who is seeking to influence public policy, and by what means.

Basic Principles of the Registry of Lobbyists

- Paid lobbyists are required to disclose certain information within specified time limits.
- Information collected is a matter of public record.
- The objective of the Registry is to ensure that the general public and public office holders know who is paid to attempt to influence government decisions.
- To protect sensitivity of some commercial information the *Act* allows for Registry information to be kept confidential for up to six months, unless the confidentiality order is extended by the Commissioner.

WHERE TO REGISTER

Lobbyists can register:

- on-line at www.gs.gov.nl.ca/cr
- by mail or fax, using a form available on line at www.gs.gov.nl.ca/cr or directly from the Registry of Lobbyists, Commercial Registrations Division, Department of Government Services

WHEN TO REGISTER

Consultant Lobbyists

Consultant lobbyists who are actively lobbying at the time the legislation comes into force (October 3, 2005) must register within 10 days and are required to report their lobbying activities from January 1, 2005.

A consultant lobbyist must:

- register within 10 days of beginning an undertaking and must re-register within 30 days of each six-month anniversary of the most recent filing of the undertaking;
- file changes to information contained in a return within 30 days of the change occurring or the lobbyist becoming aware of the change;
- advise the Registrar of the completion or termination of an undertaking within 30 days of the completion or termination;

- advise the Registrar of ceasing to be a consultant lobbyist within 30 days of ceasing to be a consultant lobbyist.

Lobbying the City of St. John's or its Controlled Entities

Effective January 1, 2009 a consultant lobbyist who lobbies the City of St. John's or its controlled entities must register within 10 days from January 1, 2009 a new lobbying activity or amend an existing related registration.

In-house Lobbyists

The senior officer of an organization employing an in-house lobbyist who is actively lobbying at the time the legislation comes into force (October 3, 2005) must register within 10 days and is required to report lobbying activities from January 1, 2005.

An organization employing an in-house lobbyist must register (through its senior officer) within 10 days after the in-house lobbyist is employed or becomes active as a lobbyist. It must also re-register within 30 days of each six-month anniversary of the most recent filing of the lobbying activity.

This requirement applies also to a group of employees engaged in lobbying activity.

Lobbying the City of St. John's or its Controlled Entities

Effective January 1, 2009 an in-house lobbyist who lobbies the City of St. John's or its controlled entities must register within 10 days from January 1, 2009 a new lobbying activity or amend an existing related registration.

WHAT TO REGISTER

Consultant lobbyists must file a registration on their own behalf; the senior officer of the employer organization must file on behalf of *in-house lobbyists*. Categories of information that must be filed are: identification of lobbyist and client / employer organization; funding information; specifics of lobbying activity; and changes or updates.

Identification

A *consultant lobbyist* must disclose this information for each undertaking:

- lobbyist's name, business address and phone number
- name and business address of the lobbyist's firm (if applicable)
- client's name and business address (if applicable)
- name and business address of any person or organization that, to the lobbyist's knowledge, controls or directs the client's activities or has a direct interest in the outcome of the lobbying activities

- (if the client is a corporation) name and business address of each subsidiary of the client corporation that, to the lobbyist's knowledge, has a direct interest in the outcome of the lobbyist's undertaking
- (if the client is a subsidiary of a corporation) name and business address of the parent corporation
- (if the client is a coalition) name and business address of each partnership,

Undertakings

An undertaking is defined by the contract between a lobbyist and client, not by the government decisions the lobbyist is trying to influence. An undertaking may be very broad and require lobbying on several decisions (for example, to increase funding for highway maintenance), or may focus on a single decision (for example, to have a new highway interchange located in a specific place).

corporation or organization that is a member of the coalition

- whether the lobbyist has served as a public office holder in the last 12 months

On behalf of an *in-house lobbyist* an organization's senior officer must disclose the following information:

- senior officer's name, business address and phone number
- organization's name and business address
- name of **each** in-house lobbyist employed by the organization
- name of **any** in-house lobbyist identified in the organization's last return who has ceased to be an in-house lobbyist or to be employed by the organization
- summary description of the organization's business or activities
- general description of the organization's membership, including the names of its directors and officers
- whether the lobbyist has served as a public office holder in the last 12 months

Confidentiality Orders

NOTE: Some information provided to the Registry by a lobbyist may be commercially sensitive. In cases where it is appropriate, the Commissioner may designate specific information to be confidential and apply a confidentiality order for a specific period, which may be renewed, if appropriate.

Funding

Registrants must disclose the following funding information:

- source and amount of any funding received by the client or organization from Government or the City of St. John's
- name and business address of any non-government individual or organization that, to the registrant's knowledge, contributed \$1000 or more (including in-kind contributions but excluding membership fees) to the client or organization to support its lobbying activities, in the fiscal year preceding the return
- specific to consultant lobbyists: whether payment, in whole or in part, is contingent on their degree of success

Lobbying Activity

Registrants must disclose the following information about their lobbying activity:

- the subject of the lobbying conducted during the period for which the return is filed as well as to be conducted for the following six-month period
- specific information about the decision being lobbied on (any relevant legislative proposal or resolution, regulation, policy, program, decision, grant, contribution, financial benefit or contract)
- name of any department, Crown agency or other public office holder that the lobbyist has lobbied during the period for which the return is filed and expects to lobby for the following six-month period
- whether they have lobbied or expect to lobby a Member of the House of Assembly (MHA) or MHA staff or a councillor of St. John's Municipal Council
- any lobbying communication techniques the lobbyist has used during the filing period or expects to use in the following six months

Updates

- New information or changes to a registration (including the end of an undertaking, conclusion of a project, cessation of lobbying activity or cessation of employment of an in-house lobbyist) would have to be reported within 30 days of the change occurring.
- 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.

FEES

The general public has free and open access to the Registry.

- Registering lobbyists are charged a registration fee, to offset the costs of the system.
- In-house lobbyists are charged a lower fee than consultant lobbyists (in the case of an on-line in-house lobbyist registration, no fee is charged).
- The lobbyist registration system is designed for convenient self-service access through the Internet. To ensure access for those without Internet service, paper returns (mail, fax or over-the-counter) can be processed, at a somewhat higher fee.

Fee Schedule

	Consultant Lobbyist		In-House Lobbyist	
	On-Line	Paper	On-Line	Paper
File a return	\$60	\$150	\$0	\$100
Renew a return (semi-annual)	\$60	\$150	\$0	\$60
Updates	\$0	\$100	\$0	\$30
Other				
Certified Copies	\$10 each			
Searching Registry	Free			

COMPLIANCE

PROHIBITED ACTS

The *Lobbyist Registration Act* prohibits certain lobbying activities.

Prohibited Use of Confidential Information by Former Public Office Holders

Former public office holders are restricted in terms of post-employment lobbying activities. When acting as a lobbyist, a former public office holder is prohibited from using, disclosing or providing advice based on confidential information obtained in connection with his or her previous public office. Former public office holders also cannot, when acting as a lobbyist, disclose information obtained through persons with whom they worked closely in the year before they ceased to hold a public office.

OFFENCES

Fundamentally, the *Act* prohibits a lobbyist from contacting a public office holder unless that lobbyist is registered in the provincial Registry of Lobbyists for those lobbying activities.

It is an offence under the *Lobbyist Registration Act* to:

- knowingly make false or misleading statements in a return or other document provided to the registrar
- knowingly place a public office holder in a position of real or potential conflict of interest *
- provide a gift or other benefit to the public office holder being or intended to be lobbied
- 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, new information or requested clarifications
- fail to comply with any other provision of the Lobbyist Registration Act

*Behavior constituting conflict of interest is defined for non-elected public office holders in the *Conflict of Interest Act, 1995* and for Members of the House of Assembly and Cabinet Ministers in Part II of the *House of Assembly Act*.

PENALTIES

A person committing an offence under the *Lobbyist Registration Act* can be prosecuted. The penalty for a first offence is a fine of no more than \$25,000; the penalty for second and subsequent offences is a fine of no more than \$100,000. Where a person is found guilty of an offence, the court may also confiscate the improperly-obtained proceeds of lobbying and direct that those proceeds be paid into the Consolidated Revenue Fund.

Legal action on alleged offences must begin within two years of the alleged offence.

Lobbyists' Code of Conduct

The *Lobbyist Registration Act* also provides for a Code of Conduct for lobbyists. The Code establishes standards of conduct that all lobbyists must follow when communicating with provincial public office holders. Monitoring of adherence to the Code is the responsibility of the Commissioner of Lobbyists, who may issue advisory opinions about the enforcement, interpretation or application of the *Act* or its regulations or companion documents or may investigate possible violations of the Code.

CONTACT INFORMATION

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