COMMISSAIRE AU LOBBYISME DU QUÉBEC

TRAINING GUIDE

FOR MUNICIPAL OFFICE HOLDERS

LOBBYING TRANSPARENCY AND ETHICS ACT

ACTING WITH TRANSPARENCY TO MAINTAIN TRUST

Québec Lobbyists Commissioner

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The contents of this document have no legal value, and in no case take precedence over the Lobbying Transparency and Ethics Act (CQLR, chapter T-11.011), the regulations under it and the Code of Conduct for Lobbyists (CQLR, chapter T-11.011, r. 2).

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Message from the Lobbyists Commissioner

In a world in which lobbying and the behaviour of public office holders from an ethical standpoint are increasingly a topic of current concern, it is vitally important for them to have a solid grasp of the legislative and regulatory standards that govern lobbying activities.

Québec has introduced specific legislation in this field, the Lobbying Transparency and Ethics Act, passed by a unanimous vote of the National Assembly in June 2002.

The Act formally recognizes two fundamental principles: that lobbying is a legitimate activity, and that citizens are entitled to know who is seeking to influence public office holders, whether elected or appointed. Denial of this right may break the bond of trust between the general public and public office holders, and undermine the values that underlie our democratic system.

The Lobbying Transparency and Ethics Act creates a framework for the exercise, by public office holders, of their existing duty to ensure that the decision-making process is transparent.

Although, at first sight, the Act may appear complex, its application is straightforward as far as public office holders are concerned, since the rules governing their conduct are clear.

The benefits of complying with the principles of the Act clearly outweigh the political and legal costs of failing to comply. If elected officials and civil servants are aware of the rules governing lobbying, the integrity of the decision-making process will not need to be challenged in public forums.

By subscribing to the principles of the Lobbying Transparency and Ethics Act, elected officials and civil servants can consolidate their position as decision-makers for whom the public interest, under their responsibility, takes precedence over private interests. In this way, they can strengthen the bond of trust between citizens, public institutions, and public office holders.

Jean-François Routhier
Lobbyists Commissioner

PART 1 LOBBYING TRANSPARENCY AND ETHICS ACT

1.1 The right to know who is seeking to influence public office holders

The Lobbying Transparency and Ethics Act (the Act),[1] passed in 2002, recognizes that lobbying is a legitimate means of access to parliamentary, government and municipal institutions, but at the same time reiterates that the public is entitled to know who is attempting to influence those institutions. The public right to know is the basis for the obligations and responsibilities of all the players involved in lobbying activities. Lobbyists are required to record the subject-matter of their lobbying mandates in the registry of lobbyists, and to comply with the other provisions of the Act and the Code of Conduct for Lobbyists.

Public office holders, in turn, must ensure compliance with the Act by checking whether a person attempting to influence their decisions is registered in the registry of lobbyists and has met the requirements of the Act and the Code of Conduct.

The registry of lobbyists is kept by the Lobbyists Registrar, who reports to the Minister responsible for Democratic Institutions and Active Citizenship. It ensures that the lobbying of public office holders in Québec is a transparent process. By consulting the register, it is possible to discover who is attempting to influence decision-makers, in what field, for whose benefit and for what purpose. Every lobbyist to whom the Act applies must be registered in the registry of lobbyists. This gives citizens and opportunity to find out more about current issues and to take part in public debates at an appropriate time.

1.2 Public office holders

At the municipal level, the following are 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.

[1] Lobbying Transparency and Ethics Act, CQLR, c. T-11.011.

1.3 Categories of lobbyists

Lobbyists may be consultants in the field of communications or governmental relations, but also lawyers, engineers, urban planners, architects, accountants, promoters, or the representatives of enterprises or organizations. Section 3 of the Lobbying Transparency and Ethics Act defines three categories of lobbyist:

- consultant lobbyist: 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 in return for compensation. Example: *an urban planner lobbies the planning department of a municipality, on behalf of a client, for an amendment to the special planning program.*
- enterprise lobbyist:[2] any person whose job or function within a profit-seeking enterprise consists in lobbying on behalf of the enterprise. Example: *the representative of a specialized information technology enterprise lobbies a municipality to promote the use of the new technological solutions offered by the enterprise*.

- organization lobbyist:[3] any person whose job or function consists in lobbying on behalf of an association or other non-profit group constituted to serve management, union or professional interests[4] or composed of a majority of members that are profit-seeking enterprises or representatives of profit-seeking enterprises.[5] Example: *the president of an association representing a group of specialized environmental enterprises lobbies several different municipalities to change their guidelines concerning the sorting of waste*.

1.4 Lobbying activities

Under section 2 of the Act, lobbying or lobbying activities means any oral or written communication with a public office holder in an attempt to influence or that may reasonably be considered by the initiator of the communication as capable of influencing a decision concerning:

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[2] The appraisal of "significant part" to determine whether a person qualifies as an enterprise lobbyist or organization lobbyist is performed via a quantitative and qualitative test. Registration in the registry is necessary when either one of these tests is passed. A person passes the quantitative test when, for a fiscal year, all lobbying activities carried out on behalf of the enterprise or organization represents more than 12 work days. In this assessment, we need to take into account not only the time spent on communications with public office holders, but also on preparing and following up lobbying activities. As for the qualitative test, it is based on the consistency and intensity of lobbying activities carried out by this person. The following elements can be considered: ▪ The relative importance of representations with respect to the person's level of activity. For example, someone who makes representations with public institutions to obtain all contracts of his enterprise or organization; ▪ The nature of the tasks of the person acting and his level of involvement (takes part in several meetings, follows up, asks questions and argues or makes requests to public office holders, etc.); ▪ The awareness that there are representations with public institutions as part of a project or file, and the nature of these representations. For example, a real estate project requiring orientations, changes to the special development plan or the adoption of a special development plan, changes to the zoning by-law, permits, authorizations, etc.; ▪ The fact that the person solicits collaborators and other resources; ▪ The fact that the person is formally appointed to make representations. For example, a Vice-President, Government Relations or Business Development Manager. When this analysis of the consistency and intensity of lobbying activities is positive, the person who carried out these activities must be considered as an enterprise or organization lobbyist.

[3] *Ibid.*

[4] To determine whether a non-profit organization is covered by the Act, the Lobbyists Commissioner has prepared an overview in table form, available at: http://www.commissairelobby.qc.ca/documents/File/Tableau%20OBNL.pdf

[5] The representative of a non-profit enterprise acts on behalf of and in the name of the enterprise.

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

Examples

An urban planner meets with a municipality's director of planning, on behalf of a client, to lobby for the amendment of a zoning by-law.

An engineer contacts an elected official or municipal employee to try to influence the purpose of a project, the wording of a call for tenders, the selection grid for a project, or the specific qualifications required for or approach, technology or process used in an upcoming project.

(2) the issue of any permit, licence, certificate or other authorization;

Examples

A property developer contacts a municipal councillor to try to influence or speed up the issue of a building permit for a housing project.

A consultant meets with a mayor to persuade him to grant the authorizations needed to develop residential land.

(3) the awarding of any contract, otherwise than by way of a call for public tenders,[6] or of any grant or other financial benefit or the granting of any other form of benefit determined by government regulation;

Examples

A company representative presents a service offer to the chief executive officer of an urban transit corporation in order to obtain a contract by mutual agreement.

The president of a chamber of commerce contacts municipal councillors to obtain a grant for the creation of a customer loyalty development program to benefit local businesses.

(4) the appointment of any public office holder within the meaning of the Act respecting the Ministère du Conseil exécutif (who is either a member of the board of directors or a member of a government agency or government corporation) or of an administrator of state (who is either the Secretary-General, Associate Secretary-General or Deputy Secretary of the Conseil exécutif, the Secretary, Deputy Secretary or Associate Secretary of the Conseil du trésor, or a deputy minister or assistant or associate deputy minister).[7]

The arranging by a lobbyist of a meeting between a public office holder and any other person is considered to be a lobbying activity, if the interview concerns one of the four topics listed above.

[6] According to "Avis n° 2005-03" issued by the Lobbyists Commissioner pursuant to section 52 of the Act, communications made outside the procedure of a public call for tenders, such as communications whose objective is to change the contents of the call for tenders, the eligibility criteria, etc., are considered to be lobbying.

[7] Influence over these appointments occurs at the governmental and parliamentary level, and not at the municipal level.

1.5 Activities not covered by the Act

The Act does not apply to any submission made

- in or prior to judicial or adjudicative proceedings;
- at a public meeting of a municipal council or municipal body;
- in public proceedings, such as public hearings held by an advisory urban planning board, or in proceedings that are a matter of public record, such as the publication of a draft by-law under the Act respecting land use planning and development;
- in the negotiation, subsequent to the awarding of a contract, of conditions for the performance of the contract; the Act applies, however, to discussions concerning major changes to the contract, or its renewal;
- in the negotiation of an individual or collective labour contract.

In addition, the Act does not apply to any submission made

- by citizens acting on their own behalf and in their own name; if they are acting on behalf of their enterprise, the Act applies;
- by public office holders when acting in their official capacity;
- for the sole purpose of informing a public office holder of the existence and characteristics of a product or service, outside a process for the awarding of a contract;
- in response to a written request from a public office holder; however, the Act applies to submissions that go beyond the scope of the request;
- by persons taking part in the work of an advisory committee, when the submissions are requested in writing by a public office holder.

Last, the following activities are not considered to be lobbying:

- communications made for the sole purpose of inquiring as to the nature or scope of the legal rights or obligations of a client, an enterprise or a group;
- basic applications for a permit, licence, certificate, authorization, grant or financial benefit, or the provision of documents or information required by a public office holder to process such an application.

PART 2 OBLIGATIONS OF LOBBYISTS

2.1 Register in the registry of lobbyists

All lobbyists subject to the Act must register the subject-matter of their lobbying activities in the registry of lobbyists in compliance with the prescribed deadlines.

The registry of lobbyists is the mechanism, created under the Lobbying Transparency and Ethics Act, to achieve the goal of transparency. It allows citizens to ascertain, at all time, who is attempting to influence public office holders, for whose benefit, and for what purpose. Lobbyists must specifically identify the subject-matter of their lobbying activities, and the public institutions lobbied. The declarations filed in the registry must contain enough information to allow a person consulting it to ascertain specifically, at the time of the consultation, what it is the lobbyist is attempting to influence.

The Act provides for penalties when a lobbyist fails to comply with the deadlines. The Québec Lobbyists Commissioner asks all lobbyists to pay particular attention in order to respect with those deadlines, as this ensures a true transparency for all in the lobbying of public office holders.

REGISTRATION DEADLINES FOR EACH TYPE OF RETURN

Type of return	Consultant lobbyist	Enterprise lobbyist and organization lobbyist*
Initial return First registration of a consultant lobbyist, enterprise lobbyist or organization lobbyist	30 days after first conducting lobbying activities, to ensure that your initial return is made public	60 days after first conducting lobbying activities, to ensure that your initial return is made public
Notice of change Registration of any change in the content of a return, including new lobbying activities	30 days after the change, to ensure that your notice of change is made public	30 days after the change, to ensure that your notice of change is made public
Renewal Annual renewal of registration while mandates remain active	30 days after the anniversary of your initial registration, to ensure that your renewal is effective	60 days after the end of the financial year of your enterprise or organization, to ensure that your renewal is effective

* The senior officer of the enterprise or organization is responsible for registering enterprise lobbyists or organization lobbyists in the registry of lobbyists.

2.2 Comply with the Code of Conduct for Lobbyists

All lobbyists to whom the Act applies must comply with the Code of Conduct for Lobbyists and the other provisions of the Act. The Code of Conduct for Lobbyists sets out standards of conduct to help lobbyists conduct their activities in a proper manner. The code defines the values and specifies the obligations of lobbyists in their relations with public office holders in terms of respect for institutions, honesty, integrity and professionalism.

2.3 Work with the Lobbyists Commissioner and refraining from hindering his work

During an inspection or inquiry, lobbyists must work with the Lobbyists Commissioner or his specially authorized representatives and refrain from hindering the actions of such persons in the exercise of their powers. Proceedings may be instituted against lobbyists who fail to comply with this obligation, and they are liable to a fine of $500 to $5,000 for each offence; the fines are doubled for a second or subsequent offence.[8]

2.4 Comply with the rules on prohibited acts

Sections 25 to 27 of the Lobbying Transparency and Ethics Act set out a series of prohibited acts, which include

- lobbying a public office holder without being registered in the registry of lobbyists;
- for consultant lobbyists and enterprise lobbyists, acting
    - in return for compensation that is contingent on the achievement of a result or the lobbyist's degree of success;
    - in return for compensation derived from a grant or loan received as a result of the lobbying.

[8] *Ibid.*, ss. 62 and 65.

PART 3 ROLE AND OBLIGATIONS OF PUBLIC OFFICE HOLDERS

3.1 Ensure the compliance of influence communications

Every influence communication with a public office holder must, under the Act, be public. Because public office holders are involved in the influence communication, they must ensure that it complies with the Act and the Code of Conduct for Lobbyists. To ensure compliance with the Act, the public office holder may, after being approached, ask the lobbyist concerned to register the subject-matter of the lobbying in the registry of lobbyists. The public office holder may also check whether the lobbyist is registered in the registry of lobbyists using the website www.lobby.gouv.qc.ca.

With just a few mouse clicks, the public office holder can find out whether a lobbyist is registered in the registry of lobbyists. For each lobbying mandate, the public office holder can discover the subject-matter and duration of the lobbying, the means of communication used and the name of the public institutions targeted.

If a lobbyist refuses to register, the public office holder should refrain from dealing with him or her and bring any possible contravention of the Act or the Code to the attention of the Lobbyists Commissioner.

The Lobbyists Commissioner recommends that the following provisions be included in all calls for tenders and contracts:

- a solemn statement by the co-contractor or bidder that any influence communications that occurred to influence the awarding of the contract were in compliance with the Act, the Code and the notices issued by the Lobbyists Commissioner;
- a clause allowing the municipality concerned, if the event of non-compliance with the Act, the Code or the notices, to reject a bid, refuse to enter into a contract or cancel a contract if the non-compliance comes to light after the contract has been awarded.

In addition, public office holders must ensure that they keep all the information relating to meetings and discussions with lobbyists (diary, correspondence, E-mails, minutes of meetings, etc.).[9]

[9] In accordance with the Archives Act (CQLR, c. A-21.1), the Regulation respecting retention schedules, transfer, deposit and disposal of public archives (c. A-21.1, r.2) and the Act respecting access to documents held by public bodies and the protection of personal information (CQLR, c. A-2.1).

3.2 Work with the Lobbyists Commissioner and refraining from hindering his actions

During an inspection or inquiry, public office holders must work with the Lobbyists Commissioner or his authorized representatives and refrain from hindering the actions of such persons in the performance of their duties. Proceedings may be instituted for non-compliance with this obligation, and may give rise to a fine of $500 to $5,000 for each offence; the fines are doubled for a second or subsequent offence.[10]

[10] *Ibid.*, s. 65.

3.3 Comply with the rules after leaving office

The Lobbying Transparency and Ethics Act imposes restrictions on lobbying by public office holders who have left office.[11] A failure to comply with the rules after leaving office makes ex-public office holders liable to penal proceedings and a fine of $500 to $25,000 for each offence; the fines are doubled for a second or subsequent offence.[12]

Office	Prohibited at all times
Elected official, person on the staff of an elected official, employee of a municipality or municipal body	• **May not, at any time,** disclose confidential information that is not available to the public obtained in or in connection with the previous exercise of a public office, or advise anyone on the basis of that information • **May not, at any time**, derive undue advantage from having held a public office, or lobby in respect of a specific operation in which the person was involved in connection with the exercise of that office
Office	**Prohibited for 2 years**
Mayor, warden, member of the executive committee of a municipality or metropolitan community, borough chair	• **May not, for 2 years**, lobby the same municipal institution or a parliamentary, governmental or municipal institution with which the person had significant* and direct official relations during the preceding year
Office	**Prohibited for 1 year**
Member of the executive staff, other than the support staff, director general or assistant director general of a municipality or metropolitan community, secretary-treasurer	• **May not, for 1 year**, lobby the same municipal institution or a parliamentary, governmental or municipal institution with which the person had significant* and direct official relations during the preceding year

* Significant and direct relations refer to any contact or discussion with a public office holder that occurs without an intermediary and is neither superficial nor negligible. Official relations are relations that occur in connection with the office formerly held by the former public office holder.

[11] *Ibid.*, ss. 28 to 32.
[12] *Ibid.*, ss. 60 and 65.

PART 4 POWERS OF THE LOBBYISTS COMMISSIONER

To perform his duties relating to monitoring and control, the Lobbyists Commissioner has powers of inspection and inquiry[13] that may be exercised on the Commissioner's own initiative, or following a complaint.

4.1 Power of inspection

The Lobbyists Commissioner or an inspector authorized by the Commissioner may

- enter, at any reasonable time, the establishment of a lobbyist or a public office holder or the establishment where the lobbyist or the public office holder engages in his or her activities or exercises his or her functions;
- require the persons present to provide any information concerning the activities engaged in or the functions exercised by the lobbyist or the public office holder, and to produce any book, register, account, record or other related document ; and
- examine and make copies of documents containing information relating to the activities engaged in or the functions exercised by the lobbyist or the public office holder.

4.2 Power of inquiry

Section 39 of the Act states that the Lobbyists Commissioner may, on the Commissioner's own initiative or on request, conduct inquiries if the Commissioner believes on reasonable grounds that there has been a breach of any provision of this Act or of the Code of Conduct. In addition, the Commissioner may specially authorize any person to conduct such inquiries.

The Lobbyists Commissioner and any person specially authorized to conduct an inquiry have, for the purposes of the inquiry, the powers and immunity conferred on commissioners appointed under the Act respecting public inquiry commissions,[14] except the power to order imprisonment. They may, in particular,

- using such lawful means as they may think best fitted to discover the truth, inquire into the matters referred to them for investigation;
- by a summons under their hand, require the attendance before them of any person whose evidence may be material to the subject of inquiry;
- order any person to bring before them such books, papers, deeds and writings as appear necessary for arriving at the truth.

Any person summoned to appear or to produce documents who refuses to be sworn, fails or refuses to render testimony, or refuses to produce any paper, book, deed or writing considered necessary, is in contempt of court and liable to a fine not exceeding $5,000.[15]

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[13] *Ibid.*, s. 39 and following.

[14] Act respecting public inquiry commissions, CQLR, c. C-37.

[15] *Ibid.*, ss. 11 and 12 and the Lobbying Transparency and Ethics Act, CQLR, c. T-11.011, s. 40.

PART 5 PENALTIES

To ensure compliance with the Act and the Code of Conduct for Lobbyists, penal, civil and disciplinary measures are provided for by law.

5.1 Penal measures

The Lobbyists Commissioner may, after ascertaining a breach of the Act or the Code and in accordance with section 43 of the Act, submit an inquiry report to the Director of Criminal and Penal Prosecutions who may then decide to institute proceedings. All offences are subject to a fine of up to $25,000,[16] doubled for a second or subsequent offence.[17]

5.2 Civil measures

In accordance with section 58 of the Act, the Attorney General may, on receiving an inquiry report from the Lobbyists Commissioner ascertaining that a lobbyist has in any way breached the obligations imposed on lobbyists by the Act or the Code of Conduct, claim from the lobbyist the amount or value of any financial or other compensation received by or payable to the lobbyist on account of the activities having occasioned the breach.

5.3 Disciplinary measures

Under the Lobbying Transparency and Ethics Act, the Lobbyists Commissioner may impose disciplinary measures on a lobbyist who has gravely or repeatedly breached his or her obligations.[18] The measures include prohibiting the lobbyist from registering in the registry of lobbyists or cancelling his or her registration, preventing the lobbyist from pursuing lobbying activities for a period of up to one year. A lobbyist who continues to lobby during this period is liable to a fine of $5,000 to $25,000.

[16] Lobbying Transparency and Ethics Act, CQLR, c. T-11.011, ss. 60, 61 and 63.
[17] *Ibid.*, s. 65.
[18] *Ibid.*, s. 53 and following.