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Government Relations Institute of Canada (GRIC) and Public Affairs Association of Canada (PAAC) joint submission re: third round of public consultation on the *Lobbyists' Code of Conduct*

Introduction

We appreciate the opportunity to comment on the draft *Lobbyists' Code of Conduct*. These comments are jointly submitted by the Government Relations Institute of Canada (GRIC) and the Public Affairs Association of Canada (PAAC) after thorough consultation with our respective memberships.

GRIC is a national, not-for-profit organization, founded in 1994 by government relations professionals in response to the growth and maturing of the industry over the previous several decades. GRIC fosters high standards of practice through professional development and adherence to a code of professional conduct.

PAAC is a national, not-for-profit organization founded in 1984. Its principal objective is to help public affairs professionals succeed in their work by providing them with forums for professional development, the exchange of new ideas and networking.

Comments on Round 3 of Consultation

We wish to begin by commending the Commissioner of Lobbying for holding a multi-stage consultation and we acknowledge several improvements from previous drafts of the code. These include:

- Revising the Preamble of the Code to explicitly note that transparent and ethical lobbying is a legitimate activity and that it supports informed decision making by public officials.
- Revisions to Rule 1.2 that addressed our previous concerns.

- We welcome the title change on Rule 2 in this version of the Code to now read 'Integrity and Honesty', which reflects more positively on the important work of professionals in our sector.
- Improvements to the definition of 'close working relationships,' such that it is now clear that "former colleagues" must carry a deeper relationship than just the mere fact of having been colleagues.
- We also acknowledge that the definition of 'political work' has been revised positively to ensure that only significant involvement or near full-time involvement in campaigns is associated with the newly proposed cooling-off periods.

Canada's lobbying regime functions well because it is based on sensible, easy-to-follow rules that promote transparency and openness and ensure that nobody is permitted to take actions that would create a sense of obligation with any public office holder (POH). Better public policy results when decision makers can have discussions and regular access to those stakeholders who are the most knowledgeable about an issue or will experience the greatest impact from decisions that are being made.

While we appreciate having been heard on the above items, there remain some serious areas of expressed concern for GRIC and PAAC.

Rule 4 (Hospitality) and definition of 'low-value'

GRIC consulted our members (including holding a member-only townhall), while PAAC solicited their members for comments, and it is clear from that feedback that there continues to be widespread concern about the proposed hospitality section (Rule 4) - especially from members who represent associations and charities. The concern relates to the definition of the "low-value" limit for hospitality for a POH being set at $30 (including taxes, gratuities and catering), which cannot exceed this amount during a 12-month period.

Beyond the challenges of conducting a reception for this average amount in most places in Canada and in tracking which MPs, Senators or other POHs have previously attended receptions or received hospitality, there are serious concerns that imposing this limit will curtail the ability to meet and have discussions with POHs at receptions or coffee meetings, something that we do not believe legislators intended when they gave the Commissioner of Lobbying the authority to create a *Lobbyists' Code of Conduct.*

These concerns appear quite valid and may be an unintended consequence put forward in the most recent draft. For illustrative purposes, it would be all but impossible to host a reception for 50 people for under $1,500 for food and beverage, catering, taxes and gratuities. While we appreciate this version of the Code introduces an 'exemption request', we respectfully submit that the Commissioner is not envisioning exemption requests for every single event as would be

required. And, if a gathering were possible in the most limited of circumstances, tracking each POH over rolling 12-month periods will be impossible. Given this, it will equally be impossible for the OCL to enforce these provisions.

What a lobbyist can offer a POH in terms of hospitality should logically align with what a POH can accept under their respective codes or conflicts of interest legislation, and we acknowledge that the $30 low-value limit appears to come out of efforts by the Conflict of Interest and Ethics Commissioner to establish a specific monetary value.

Our members have told us that this will severely limit or effectively end the ability of many associations, charities and organizations to host receptions, lunches or even provide coffee at meetings in cases where there are multiple engagements with a POH in a 12-month period. In particular, industry associations often hold receptions more than once a year as a useful means to inform and have discussions with Parliamentarians and other POHs. Many of our members have told us they will have to cancel these planned engagements if the $30 low-value limit is adopted.

We submit this is not the result legislators desired when Parliament created the various statutes that have become our ethics and lobbying regimes. In doing so, the Conflicts of Interest and Ethics Commissioner and Commissioner of Lobbying will be moving beyond enforcing their statues and regulations, and will in fact be creating law, a role strictly reserved for Parliamentarians.

Establishing such a restrictive definition of hospitality even appears to be in direct contravention of the *Conflict of Interest Act*, which states (in section 11 (2) (c)) that a public office holder is permitted to accept anything which, “is a normal expression of courtesy or protocol, or is within the customary standards that normally accompany the public office holder’s position.”

Public office holders attend receptions because they are efficient ways to meet and share information with many stakeholders rather than holding individual meetings with each stakeholder. Providing coffee or wine and cheese at a reception should certainly fall within the definition of “normal expression of courtesy” and should not therefore be limited to one event during a 12-month period.

Since most associations, by practice, open their events to all Parliamentarians, it is nearly impossible to know who will attend until the event takes place and not reasonable to expect associations to “police the door” and bar entry to any Parliamentarian or POHs who may have attended another reception or coffee meeting in the previous 12 months. As many receptions take place within the Parliamentary precinct, it is even possible that barring certain MPs and Senators from entering these receptions would infringe on their Parliamentary privilege.

Presently, the Code functions on the basis that lobbyists should be limited to providing reasonable hospitality. Public office holders subject to the *Conflict of Interest Act* are already required to disclose gifts totaling over $200 in value over a 12-month period. In our view, these provisions already prevent lobbyists from offering any unreasonable level of hospitality over a 12-month period. For greater clarity, we would support having these limits, which have been duly established by statue, included in the definitions section of the *Lobbyists' Code of Conduct*

Both the *Lobbying Act* and the *Conflict of Interest Act* prohibit gifts that could be reasonably seen to have been offered to influence the public office holder or create a sense of obligation. It is unreasonable to suggest that $31 worth of coffees or drinks at a reception over the course of 12 months could compromise the integrity of POHs and influence their decisions.

It is in the public interest that POHs are able to take advantage of the efficiency of receptions, coffee meetings or working lunches to become better informed and build working relationships with stakeholders. It simply acknowledges the limited bandwidth in a public office holders schedule. It is our sincere hope that a more reasonable and workable standard for low-value hospitality can be set in the Code and we recommend that the Commissioner of Lobbying submit the draft code to the appropriate House and Senate Standing Committees for review to ensure it aligns with a regime that Parliamentarians agree is reasonable and supports open access to government, transparency and a positive public policy environment where stakeholder can freely engage officials.

To be clear, GRIC and PAAC respectfully submit that the low-value limit must be amended. The notion that a POH receiving more than $30 of hospitality in a twelve-month period somehow calls into question their integrity is simply unreasonable and will severely impact the ability for associations and charities to engage POHs.

Rule 6 - Political Work

GRIC and PAAC still firmly believe that any limitation on registrable activities as a result of political activity is a prima facie violation of Section 2 and Section 3 of the *Charter of Rights and Freedoms*. The appropriate venue for limiting Charter rights is not a consultation on a non-statutory instrument such as the Code.

Knowing that the rights of Canadian citizens are being potentially compromised, it is for Parliament to be deliberate in its considerations of this serious matter. We urge the Commissioner to ask Parliament to be precise in its instructions to the Commissioner and successors on what should be part of a Code of Conduct.

Supporting this view, in June 2010, the Canadian Bar Association (CBA) issued its *Opinion Respecting the Constitutionality of Rule 8 of the Lobbyists' Code of Conduct*[1]. In its opinion, CBA expresses its, "… fundamental concern with the Guidance, and in particular, questions whether the Guidance on Rule 8 *(political activities)* is consistent with the Charter of Rights and Freedoms." Ultimately CBA finds that OCL's treatment of political activities under Rule 8 to be a violation of 'lobbyists' freedom of expression under s2(b) of the Charter and . . . not reasonably justified in a free and democratic society under s. 1 (of the Charter)."

Rule 7.2 – Sense of Obligation

This rule is completely new in this version of the Code and we submit that it is impractical, wholly unnecessary and unenforceable. It relies on consultant lobbyists having foreknowledge of every prior personal relationship a prospective client may have had with a POH (or more to the point, that every single employee who works for any prospective client may have had with a POH). This one-step-removed conflict-of-interest calculation is unreasonable in an environment where every person we may encounter from time-to-time has worked with or knows every other person we've ever encountered in our careers.

In the case of organizations and corporations, the issue is precisely the same. It is impossible to source out every single relationship with board members and employees that may exist in various forms across hundreds, sometimes tens of thousands, of employees worldwide.

If OCL has evidence that a consultant lobbyist is being employed by client because the client wants to circumvent other of the Code's provisions, it already has sufficient scope to act on that matter, based on the specific fact-case, as that would constitute a conflict of interest under current definition/application of the Code (i.e., do not put clients or POHs in a conflict of interest).

This is an unworkable overreach, and we believe it is a solution in search of a problem given that, to our knowledge, the OCL has never reported on a single circumstance where a consultant lobbyist was engaged solely so a client can circumvent any other conflict of interest provision relating to a prior relationship with a POH.

The wording in Rule 7.1 on sense of obligation already covers situations not already captured in the Code. Rule 7.2 should be omitted from this version of the Code. It is, of course, possible for a lobbyist to manage their own relationships, but to know of every single client and client company's employees' relationships is impossible and unenforceable.

[1] https://www.cba.org/CMSPages/GetFile.aspx?guid=3e929d62-045b-47bc-a5ea-3826d9118420

Definition of Close Personal Relationships

We believe the previous version of the Code was clearer in that a close personal relationship was defined as a "special kinship that extends beyond simply being acquainted". That phrase was removed in the latest version of the Code and we believe it was clearer with the original language.

Conclusion

GRIC and PAAC believe that the *Lobbyists' Code of Conduct* plays an important role in ensuring that our members work in an industry that adheres to the highest standards of integrity, honesty, openness, professionalism and transparency.

The Code is built around ensuring transparency and preventing actions that would create a sense of obligation for a public office holder. These are undeniably the right principles, and the Code must be detailed in a manner that permits lobbyists to clearly understand their obligations. Virtually all lobbyists, since the Code has been established, have followed it and the pursuit of greater Code clarity can only ensure that continues.

Specifically, GRIC and PAAC respectfully recommend the following:

- **Hospitality: The $30 low-value limit will eliminate receptions on the Hill with parliamentarians – a key means of communicating with busy parliamentarians. It is impossible for all 338 Members of Parliament to accept one-on-one meetings with every interest group. Receptions permit opportunities for organizations to reach out more broadly in a less resource-heavy way. Furthermore, the 12-month aspect of measuring this low-value limit will be impractical, if not impossible. It will be unenforceable and may infringe on the Parliamentary privilege afforded to our elected officials. Lobbyists should be able to offer what public office holders are able to accept.**

- **Newly proposed Rule 7.2 places a one-step-removed conflict-of-interest calculation on registered lobbyists that is both impossible to address and unenforceable. Rule 7.1 already provides the Commissioner coverage to address any issues related to sense of obligation not already outlined in the Code. Rule 7.2 must be omitted from the final version of the Code.**

- **Close personal relationships: We prefer the wording from the previous version of the draft Code which specified the personal relationships contemplated are those holding a "special kinship that extends beyond simply being acquainted".**

- **Political activities: A limitation on registrable activities as a result of political activity is a prima facie violation of Section 2 and Section 3 of the Charter of Rights and Freedoms. The appropriate venue for limiting Charter rights is not a consultation on a non-statutory instrument.**

We appreciate the Commissioner holding another round of consultation on proposed changes to the *Lobbyists' Code of Conduct*. We encourage the Commissioner to consider submitting the finalized draft Code to honourable members of the appropriate House and Senate committees to seek their advice on certain aspects of the current draft that will curtail their ability to freely engage with stakeholders of all stripes.

We are available to meet to discuss any of this feedback or to provide additional details in support of ensuring Canada continues to have lobbying rules and a regime of which we can all be proud.

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