

February 6, 2023

Standing Committee on Access to Information, Privacy and Ethics
Sixth Floor, 131 Queen Street
House of Commons
Ottawa ON K1A 0A6
Canada
Via email: ETHI@parl.gc.ca

RE: THIRD EDITION OF THE LOBBYISTS' CODE OF CONDUCT

Dear Committee Members,

We appreciate the opportunity to provide feedback to your committee on the draft third edition of the *Lobbyists' Code of Conduct* published in November 2022.

The Government Relations Institute of Canada (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.

GRIC has participated in all rounds of consultation on the draft Code. We commend the Commissioner of Lobbying for holding a multi-stage consultation and acknowledge that she has made significant improvements in each subsequent draft of the Code. We would like to commend the Commissioner for updating the preamble and 'Integrity and Honesty' sections of the Code to acknowledge that transparent and ethical lobbying is a legitimate activity that supports informed decision making by public officials. This is an important point to highlight as government relations efforts in Canada are undertaken by Canadians from coast to coast to coast, representing various sectors, not-for-profits, charities, unions, industry and industry associations.

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 stakeholders who are the most knowledgeable about an issue or will experience the greatest impact from decisions being made.

While we appreciate improvements made by the Commissioner to various items over the consultation, some serious areas of expressed concern would inhibit the ability of POHs to engage with stakeholders.

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

GRIC has consulted our members on this issue and it is clear that there continues to be widespread concern about the proposed hospitality section – especially from members who represent associations and charities. Events for POHs that include reasonable hospitality are legitimate and regular occurrences for organizations, industry associations and charities, to engage with many public office holders efficiently and collectively in a single occurrence.

The Commissioner has set a "low value" limit for hospitality in the latest edition of the draft Code to \$40 twice per year per POH before tax, gratuities, catering and rental or service charges. Beyond the

challenge of conducting a reception or event for this average amount in most places in Canada, particularly given the rising cost of events due to inflation, and 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. We do not believe legislators intended this when they gave the Commissioner of Lobbying the authority to create a *Lobbyists' Code of Conduct*. In fact, previous versions of the Code opted not to provide a precise dollar cap and focused on hospitality being “reasonable” and within the bounds of what a POH can accept.

These concerns appear quite valid given the Commissioner herself has recognized this “low value” limit is quite restrictive and has proposed that any organization can request an exemption to the “low value” or annual limit on hospitality expenses. While we appreciate that the Code provides an opportunity for an “exemption request”, we respectfully submit that the Commissioner is not envisioning exemption requests for every single event as would likely be required given the cost of hosting a breakfast or evening reception in 2023. Moreover, the Commissioner has not outlined how she arrived at this \$40 limit or the criteria for providing an exemption request. Therefore, this leaves the Office of the Commissioner of Lobbying with almost complete control over which events can and cannot go forward for POHs on an annual basis.

Additionally, the hospitality limits proposed under Rule 4 are likely to create additional burden and pressure on the Commissioner of Lobbying and their office due to undoubtedly consistent exemption requests. It’s important to note that the Commissioner has already suggested they do not have enough staff or budget to keep up with existing obligations.

The updated Code, as currently written, would make it extremely difficult to host POHs at events on an ongoing basis. We submit that this differs from the result legislators desired when Parliament created the various statutes that comprise our ethics and lobbying regimes. In doing so, the Commissioner of Lobbying is moving beyond enforcing their statutes and regulations and will create 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 refreshments at a reception or breakfast should certainly fall within the definition of “normal expression of courtesy.” The Commissioner’s proposal will impact the ability of POHs to engage stakeholders and in return, it will limit the types of stakeholders to one-on-one meetings, rather than hosting receptions or breakfasts that help advance the discourse and educate our elected officials on important public policy issues.

Presently, the Code functions on the basis that lobbyists should be limited to providing reasonable hospitality. It allows for flexibility and there has never been, to our knowledge, a case where undue sense of obligation was created where a POH was simply attending an event in the parliamentary precinct. POHs 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. Moreover, the Commissioner has not justified why the new Code would have the ability to penalize an organization for giving a Member of Parliament hospitality at a level they are allowed to accept under the *Conflict of Interest Act*. For greater clarity, we would support having these limits, which have been duly established by statute, included in the definitions section of the *Lobbyists' Code of Conduct*.

Political Work

GRIC firmly believes 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 consideration of this serious matter. We urge the Committee and Parliament to be precise in their instructions to the Commissioner and successors on what should be part of the Code of Conduct.

While the Commissioner has adjusted how they calculate the cooling off period based on the strategic importance of a role in a campaign, the Commissioner has extended the cooling off period to apply to any official and their "associates". In the case of a Minister this would include any Parliamentary Secretary or staff that works with the Minister, effectively banning someone from engaging with an entire Ministry due to putting up campaign signs as a volunteer during an election.

GRIC and our members strongly oppose this section and believe it is an overreach by the OCL. Prior to 2015, political work was not within the Code. The OCL is responsible for the Code of Conduct for lobbyists as it relates to registrable activity by lobbyists. Therefore, if the Commissioner wants the Code to extend beyond its scope and cover political activity, it is a decision that Parliament should deliberate and not through a non-statutory instrument such as the Code.

Conclusion

GRIC believes 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 create a sense of obligation for a public office holder. These are undeniably the right principles, and the Code must be detailed to permit lobbyists to understand their obligations clearly. Virtually all lobbyists, since the Code has been established, have followed it and the pursuit of greater Code clarity can only ensure that continues.

We appreciate your Committee reviewing the proposed changes and considering what's appropriate. Please do not hesitate to reach out if further details are required.

Sincerely,



Megan Buttle
President, Government Relations Institute of Canada