

Is political activity dead for Canada's lobbyists?

Lobbyists have to stand down from any senior or strategic role in federal political campaigns.

J. STEPHEN ANDREWS

Lobbyists, for the most part, are political junkies. They live to work on political campaigns of all kinds—from municipal races to national elections. Lobbyists often play key strategic roles in political campaigns, which include the following activities: strategy development, rapid response communications, party platform development, tour management, fundraising, debate preparation, and local campaign management.

These activities often bring lobbyists into close contact with those individuals seeking elected office, either current Members of Parliament or candidates for various political parties. The cut and thrust of intense campaigns fought over the course of several weeks or months often results in new personal relationships being formed.

These kinds of relationships to politicians matter to lobbyists: they establish a kind of credibility in the eyes of many organizations with interests in government policy since they assume that lobbying is (or is at least in part) about

communication to these elected officials in an effort to influence policy outcomes. The perception is that the more relationships a lobbyist has with elected officials the greater the likelihood of being able to advance the cause of an organization's policy objectives.

Lobbying in Canada is regulated. Lobbying statutes exist federally and in every provincial jurisdiction in Canada except for Prince Edward Island.

The cities of Ottawa and Toronto also have lobbying bylaws that regulate communications of lobbyists to government officials. A number of jurisdictions have "codes of conduct" for lobbyists that spell out ethical and professional rules to guide the activities of lobbyists. Federally, the Commissioner of Lobbying, Karen Shepherd, administers the Lobbying Act and Lobbyists' Code of Conduct and instructs lobbyists on various matters involving their interactions with government officials.

One key area relates to conflict of interest and the perception of a conflict of interest. As she states: "Any conflict of interest impairs the public confidence in government decision making." For this reason, the Lobbyists' Code of Conduct, introduced in 1997, prohibits lobbyists from placing public office holders in a conflict of interest. Rule 8 of the Lobbyists' Code of Conduct states: lobbyists shall not place public office holders in a conflict of interest

by proposing or undertaking any action that would constitute an improper influence on a public office holder."

For the past year, the commissioner has been consulting with the lobbying industry on possible changes to the Lobbyists' Code of Conduct. The draft, updated code of conduct was released in early June but has not yet come into force. The draft, updated code contains additional criteria spelling out possible conflicts of interest. For example, the revised code outlines "preferential access" as a source of conflict. Proposed new rules 7 and 8 state: "A lobbyist shall not arrange for another person a meeting with a public office holder when the lobbyist and public office holder share a relationship that could reasonably be seen to create a sense of obligation; a lobbyist shall not lobby a public office holder with whom they share a relationship that could reasonably be seen to create a sense of obligation."

In addition, in the revised code "political activities" is now explicitly mentioned as a source of conflict between lobbyists and public office holders. Proposed new rule 9 states: "When a lobbyist undertakes political activities on behalf of a person, which could reasonably be seen to create a sense of obligation, they may not lobby that person for a specified period if that person becomes a public office holder. If that person is elected, the lobbyist shall also not lobby staff in their Office(s)."

In addition, in June 2015, the federal commissioner issued a "guidance" that spells out the kinds of "political activities" that may violate Rule 9. The guidance makes it clear that playing a *strategic* or *senior role in political campaigns* could create the appearance of a conflict of interest between a lobbyist and a successful political candidate, if a lobbyist were to lobby that individual after he or she assumes office. The rationale is that a member of Parliament may feel obligated to the lobbyist who assisted in his or her campaign and this in turn may impair their judgment about what is in the public interest vs. what is in their private interest (for instance, getting elected or re-elected). Put another way, it is the creation of a sense of obligation to the lobbyist that establishes the perceived conflict of interest.

What follows from all of this? Obviously, playing a strategic role in federal political campaigns for lobbyists and lobbying those successful candidates subsequently is likely to run afoul of the federal Lobbyists' Code of Conduct. This in turn will result in the lobbyist being investigated and possibly named in a public report to Parliament. This public report will damage the reputation of the named lobbyist and likely impair his or her career significantly. In addition, the lobbying profession as a whole will suffer since they will be viewed as trading on relationships for personal gain. And the perceived integrity of government decision-making will also

take a hit because politicians will be viewed as making decisions to support their private interests.

The federal lobbying commissioner has made it very clear that she will view strategic political activity and the subsequent lobbying of elected officials by lobbyists as a violation of the conflict-of-interest rules in the Lobbyists' Code of Conduct. Examples of strategic political activity outlined in the guidance include: serving as a campaign chair; serving in a named position on behalf of a candidate or electoral district association; leading the preparation of a candidate for debates or providing strategic advice in the context of debate preparation; and organizing a fundraising event.

Lobbyists should therefore stand down from any senior or strategic role in federal political campaigns or at least refrain from lobbying those they assist in campaigns for some period of time. For example, running a "war room" or serving as a paid staff person on a campaign are clearly ruled out. Moreover, lobbyists should pay close attention to the growing pressure on provincial lobbyist registrars to institute similar conflict of interest rules related to political activities. Political activity for lobbyists therefore appears to be coming to an end.

J. Stephen Andrews is a government relations adviser at Borden Ladner Gervais LLP. news@hilltimes.com
The Hill Times