

**STANDING COMMITTEE ON ACCESS TO
INFORMATION, PRIVACY AND ETHICS**



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

**COMITÉ PERMANENT DE L'ACCÈS À
L'INFORMATION, DE LA PROTECTION
DES RENSEIGNEMENTS PERSONNELS ET
DE L'ÉTHIQUE**

Ottawa, 20 March 2023

Nancy Bélanger, Commissioner of Lobbying

Dear Commissioner Bélanger:

The House of Commons Standing Committee on Access to Information, Privacy and Ethics (the Committee) devoted three meetings in February 2023 to the study of the proposed third edition of the *Lobbyists' Code of Conduct* (the updated Code).

Having transparent and ethical lobbying in Canada is vital to foster public confidence in federal institutions. The *Lobbyists' Code of Conduct* serves to reinforce transparent and ethical lobbying. That is a worthy goal. The Committee is of the view that to achieve that goal, clarity is key. You appear to share that view.

As you know, following your appearance before the Committee on February 3rd 2023, the Committee heard various stakeholders, some of whom participated in the consultation process your office has conducted. The Committee also received written submissions, including your letter addressing certain issues raised by the witnesses dated 3 March 2023 (March letter).

Despite the consultation process that your office undertook prior to the publication of the updated Code, which most witnesses agreed was fair and appropriate, it appears that three rules are still causing concern for stakeholders: rule 3 (gifts), rule 4 (hospitality) and rule 6 (political work).

Rule 3 (gifts) and rule 4 (hospitality)

Concerns relating to certain types of gifts under rule 3

The definition of “gift” in the updated Code provides a list of examples of gifts. The list includes “travel, excursion, transportation.”

The Committee received two written submissions raising concern that as currently written, the low-value limit of \$40 and the annual limit of \$80 in the updated Code would prohibit sponsored travel offered to parliamentarians by organizations that may be registered as lobbyists.

The Committee agrees that sponsored travel, where it serves a legitimate purpose, should be exempted from the application of the low-value limit and the annual limit in rule 3.

Another concern pertaining to rule 3 relates to the possibility that a registered lobbyist would not be able to offer gifts given as expressions of cultural tradition to public office holders (POHs). Mr. Wetatawabin, the Chief Executive Director of the National Aboriginal Capital Corporations Association gave the example of gifting moccasins.

The Committee acknowledges, as you have indicated in your March letter, that rule 3 explicitly confers discretion upon the Commissioner to take any relevant circumstances into account in granting an exemption or in adjusting the low-value and/or annual limit. That includes considering both local market prices and gifts given as customary expressions of courtesy and protocol.

However, the Committee is of the view that rule 3 could be clearer with respect to the circumstances in which an exemption will be granted and that it should carve out automatic exemptions for certain types of gifts – to avoid registered lobbyists having to ask you for an exemption in each instance in which they wish to offer such gifts.

Therefore, the Committee recommends:

- Adding language in rule 3 that identifies certain types of gifts (such as sponsored travel or gifts of reasonable value given as expressions of cultural tradition) which are automatically exempted from the low-value limit and the annual limit, where they serve a legitimate purpose.

That clarification may also reduce the number of requests for exemptions your office will receive under rule 3.

Low-value limit and annual limit for gifts and hospitality

As you know, some witnesses expressed the view that the low-value limit for hospitality and the annual limit for gifts and hospitality set out in the updated Code, are too low and will impede their ability to engage with POHs.

Some witnesses have recommended that a defined limit for hospitality be eliminated from rule 4. According to them, “reasonable hospitality” should remain the rule. You reminded the Committee in your March letter, that the term “reasonable” is not found in the current rule relating to gifts (rule 10 of the 2015 edition of *Lobbyists’ Code of Conduct*). The term “reasonable” is found in guidance from the Office of the Commissioner of Lobbying relating to gifts (that also address the holding of receptions).

One witness mentioned that clear spending limits with respect to hospitality could help level the playing field for organizations who do not have unlimited spending power.

Some witnesses mentioned during the study that POHs already have an obligation to disclose gifts and benefits with a total value of \$200 or more under the *Conflict of Interest Code for Members of Parliament* (MP Code) and the *Conflict of Interest Act*. One witness suggested adding these “limits” in the definitions of the updated Code.

The Committee recognizes that the above-noted \$200 in the MP Code and the *Conflict of Interest Act* is not a limit on the value of gifts or hospitality that certain public office holders and MPs are allowed to accept. It is a disclosure threshold.

Nevertheless, and having considered all testimony and written submissions, including yours, the Committee recommends:

- Replacing the term “low-value” in rule 4 with “reasonable.” Definitions should be modified accordingly.
- Increasing the annual limit in the updated Code for gifts and hospitality to \$200.

Disclosure of value of gifts and hospitality by registered lobbyists

In your March letter, you indicated that you would support increasing transparency by requiring lobbyists to publicly report the value of the gifts and hospitality they provide to POHs, but that such a change would, in your view, require an amendment to the *Lobbying Act* and the *Lobbyists Registration Regulations*.

The Committee agrees with you that this issue should only be dealt with through legislative amendments.

Concerns relating to the application of rule 4

As you have noted in your letter dated 3 March 2023, some witnesses also raised concerns that rule 4, as currently written in the updated Code, will require registered lobbyists to keep track of how much POHs attending their events or receptions consume in order to respect the low-value limit and the annual limit.

Considering our recommendation that the low-value limit for hospitality be removed and replaced with the word reasonable, that issue may be less relevant.

However, to quell any concern that registered lobbyists may have about the potential burden that rule 4 could impose on them, to ensure that rule 4 is as clear as possible, and should you maintain a low-value limit for hospitality in the final version of the updated Code, the Committee recommends:

- Adding specific language in rule 4 or the definitions to clarify how the rule is applied, and how registered lobbyists will be able to confirm they respect limit set out in the updated Code, without having to “track” the value of hospitality consumed by POHs attending their receptions or events.

Rule 6 (political work)

Concerns relating to cooling-off periods

In terms of the cooling-off periods found in rule 6, with the exception of the Member from the New Democratic Party (NDP), the Committee agrees with the cooling-off periods that you have proposed in the updated Code. The NDP Member would have maintained the status quo with respect to cooling-off periods.

However, as you have noted in your March letter, many witnesses have raised concern with respect to the application of the one-year cooling off period. Considering the current definition of the term “other political work” in the updated Code, they are of the view that rule 6 has the potential to deter a person, who is a registered lobbyist or could become one, to participate in the democratic process.

The Committee understands that you are of the view that the impact of the one-year cooling-off period set out in rule 6 has been significantly overstated. Nevertheless, you indicated in your March letter that you were considering defining the following terms: “frequent and interactive interactions,” and “full-time” and “near-full-time.” The Committee is pleased with that suggestion and recommends:

- That a definition of the terms “frequent and interactive interactions”, and “full-time” and “near-full-time” be added in the updated Code to ensure that registered lobbyists who are subject to the updated Code have a very clear understanding of how cooling off periods may apply to them.

You have also indicated in your March letter that you were considering defining the term “strategic, high-profile and important” with respect to the two-year cooling off period. The Committee encourages you to do so.

Further, one stakeholder, speaking on behalf of various organizations and individuals, has raised the concern that rule 6, as currently written, would allow a registered lobbyist to raise significant amounts of money in political donations (without frequent or extensive interactions with an official nor working for a political campaign on a full-time or near-full-time basis) without having to submit to any cooling-off period.

The Committee understands, as you have indicated in your March letter, that you are of the view that such scenario, while not caught by the definition of political work in the updated Code, would be caught under rule 7 (sense of obligation). Rule 7 prevents registered lobbyists from lobbying officials who could reasonably be seen to have a sense of obligation toward them.

Nevertheless, and always with the goal of clarity, the Committee is of the view that it may be appropriate to clarify, in the definition of “political work,” in rule 6 of the updated Code, that any significant political fundraising (whether or not it involves frequent or extensive interactions with a candidate or official or working full-time or

near-full time for a candidate, official or political party), is considered political work, and will lead to a cooling-off period for the registered lobbyist.

Conclusion

In our view, the above-noted recommendations would ensure that the third edition of the *Lobbyists' Code of Conduct* provide clear rules to registered lobbyists. The Committee hopes that you will carefully consider them before publishing the final version of the updated Code in the *Canadian Gazette*.

The Committee thanks you for your patience in allowing us to conduct our study of the third edition of the *Lobbyists' Code of Conduct*.

Yours sincerely,

John Brassard, MP for Barrie—Innisfil
Chair of the House of Commons Standing Committee on Access to Information, Privacy and Ethics.