



Lobbying and Government Communications: New Legislation for the Voluntary Sector

This In Brief provides a summary of new and existing legislation that pertains to government communications and lobbying efforts of the nonprofit sector in Alberta. It points to the potential impact of proposed regulations on the work of these groups.

The provincial and federal governments have both recently introduced new legislation regarding lobbying - or communicating - with government. Regulations are not yet in force. While some of the requirements have been defined, much remains unclear and subject to legal interpretation.

Already, significant concerns have been raised regarding the impact the new Acts could have on the voluntary sector. The provincial *Lobbyists Act* (Bill 1), in particular, casts an extremely wide net in terms of who would be affected, what information would require reporting, and what work would no longer be permitted. Its implications for the sector are of considerable concern, and it is our sincere hope that regulations under the Alberta *Lobbyists Act* will be developed with the nonprofit sector in mind.

Federally, the *Lobbying Act* will also require increased reporting from nonprofits. Unlike the provincial Act, however, it includes a minimum threshold provision and applies to far fewer organizations. It is also less restrictive in terms of the work allowed.

In addition to these two new Acts, registered charities have a third piece of legislation governing their political communications and activities: the *Income Tax Act*. The Act is not new; however it is important that registered charities in Alberta recognize they will fall under all three Acts, each with different rules and requirements.

Below is an overview of the new provincial and federal legislation. These two new Acts and the *Income Tax Act* are compared in a table that follows.

BILL 1: PROVINCIAL LOBBYISTS ACT (ALBERTA)

Who it Affects

The act affects all Alberta registered charities, incorporated nonprofits, and un-incorporated interest or community groups (regardless of size) who have paid staff involved in any "communication to influence" the provincial government or individuals appointed to provincial entities (who may be nonprofit representatives themselves). Organizations that hire government relations consultants or professional lobbyists should also familiarize themselves with this Act.

While most nonprofits don't see themselves as "lobbyists," a significant number of organizations qualify for the title under the new Acts.

Greatest Impacts

Unlike legislation in other jurisdictions, Alberta's *Lobbyists Act* has no minimum threshold and will require considerable documentation from groups that communicate with the Province. Every communication "to influence" the provincial government would have to be tracked and reported as would other information, including the names of donors giving \$1000 or more towards lobbying activities (regardless of donor requests for anonymity). Compliance would need significant administrative resources and take away from the mission-focused work of the voluntary sector.

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IN BRIEF

New Legislation for the Voluntary Sector



The Act forbids organizations from provincial lobbying if their staff, spouses/partners, Board members or other associates have been contracted by the Province to advise government on the same topic. Given the collaborative nature of the nonprofit sector and the broad definition of “associates”, the conflict of interest rule could have huge implications for many organizations. It could negatively affect volunteer recruitment and collaboration with other organizations, cause a “chilling” affect by reducing the motivation to communicate with government, and disrupt staff and Board relations generally.

Alberta’s *Lobbyists Act* could also exact the highest financial penalties in the country and hold senior-level employees, not their organizations, personally responsible for compliance.

What Activities are Unlimited/Unregulated

Unlimited and unregulated activities include communication that is already of public record, such as committee submissions; simple requests for information; communication that is initiated by a public office holder (a rule that could enable certain “favoured” organizations more access to government); lobbying by volunteers (unless the organization is providing paid advice on the same topic); and lobbying of an MLA by a constituent.

Where to Find Information

The Legal Resource Centre of Alberta, on behalf of the Muttart Foundation, produced a thorough analysis of the Bill and its significant implications for the sector. We strongly suggest you visit www.calgarycvo.org/LobbyistAct.htm to read the analysis and get links to relevant government web pages.

What You Can Do

The government invited public submissions by August 24, 2007, and general comments can be provided anytime. Visit www.calgarycvo.org/LobbyistAct.htm for more information.

FEDERAL LOBBYING ACT

Who it Affects

The Act applies to registered charities and incorporated nonprofits with paid staff who meet the 20% threshold for communicating with federal public officials. The threshold is met if an organization’s total staff time spent on federal lobbying is equal to 20% of one employee’s duties (approximately 32 hours per month total). Additionally, organizations that hire government relations consultants or professional lobbyists should also familiarize themselves with this Act.

Greatest Impacts

Although specific rules and administrative details are still in development, the Act is expected to build on the current federal *Lobbyists Registration Act* and include: a broader description of what is considered lobbying, a massive increase in fines for noncompliance, and the requirement for detailed reporting on lobbying activities every month, rather than twice a year.

The Act will continue to include a minimum threshold so that organizations that rarely engage federal public office holders will not be required to register as lobbyists or file reports. For those that must register and report, however, the administrative requirements will increase and continue to take away from mission-focused work.

What Activities are Unlimited/Unregulated

The Act does not limit or require reporting of formal submissions to government that are a matter of public record or requests for information or clarification of current legislation or regulations as they pertain to the operations of an organization.

Where to Find Information

Find information, search the lobbyists registry, register as a lobbyist, and provide your comments, suggestions and concerns at www.orl-bdl.gc.ca.

The provincial Act casts an extremely wide net in terms of who would be affected, what information would require reporting, and what work would no longer be permitted.

The new federal Act is expected to include a broader definition of lobbying, massive fines for noncompliance, and the requirement for detailed, monthly reporting. Thankfully, organizations that rarely engage federal public office holders will not need to register or report.



LOBBYING AND POLITICAL ACTIVITIES: LEGISLATION AFFECTING NONPROFITS IN ALBERTA

	NEW		ONGOING
	Bill 1: Lobbyists Act (provincial)	Federal Accountability Act: Lobbying Act (will replace the current Lobbyists Registration Act)	Income Tax Act
Who it Affects	The new Act pertains to all nonprofits, charities, coalitions and interest groups (incorporated or not) that have paid staff who “communicate to influence” the Alberta government. Paid consultants who lobby, and the organizations who hire them, are also affected.	Similar to the current Act, the new Act pertains to nonprofits and charities with paid staff who regularly communicate with the federal government. Paid consultants who lobby, and the organizations who hire them, are also affected.	Federally registered charities
When the Law Comes into Force	Introduced in March 2007, the Act is through second reading and regulations could be created and in force as early as fall 2007. Until this is announced, there is no provincial lobbying legislation.	The new Act has received Royal Assent. It is unclear when the regulations will be completed and the new Act will come into force to replace the current Act.	This Act is in force.
Key Points	<ul style="list-style-type: none"> • All government communication (except Permitted Activities) must be tracked and reported, requiring significant administrative time. • Highly restrictive conflict of interest rules prohibit simultaneous lobbying and contracting for paid advice on the same subject by organizations and their “associates”. • Identifying and monitoring all “associates” (including staff, Board members and spouses) could be almost impossible. The conflict of interest rules endanger collaborations and could make recruitment more difficult. 	<p>The new Act’s regulations and reporting requirements have not been developed but are expected to be similar to the current Act.</p> <p>An organization must register and report as a lobbyist if the total staff time spent on federal lobbying is equal to 20% of one employee’s duties.</p> <p>For example, an organization with a 40-hour work week must register if the total lobbying time of all staff equals at least eight hours per week – or 32 hours per month). Time spent on research, travel, communication, etc. is included in the calculation.</p>	<ul style="list-style-type: none"> • Requirements and regulations are completely separate from lobbying legislation • Limits regulated activities, below, to approximately 10% (on a sliding scale) of a charity’s financial and human resources • Prohibits all partisan political activities (eg: promoting a political party or providing one-sided information) and political activities that are not mission-related
Permitted Political Activities (no limitations or reporting requirements)	<ul style="list-style-type: none"> • Responses to government requests for information • Anything of public record (eg: committee submissions) • Questions about the implementation or administration of programs, policies, etc. directly related to the organization • Lobbying by volunteers, even if on organization’s behalf (see the Act for how this applies) • Lobbying of an MLA by a constituent 	<p>Regulations have not been developed for the new Act. Current legislation permits:</p> <ul style="list-style-type: none"> • Anything of public record (eg: committee submissions) • Questions about the implementation or administration of programs, policies, etc. directly related to the organization • Lobbying by volunteers, even if on behalf of an organization or coalition 	<ul style="list-style-type: none"> • Direct communication with elected representatives (meetings, letters, etc.) • Public release of complete presentations provided to elected representatives (if no call to action is added)

Continued on the next page.

IN BRIEF

New Legislation for the Voluntary Sector



	NEW		ONGOING
	Bill 1: Lobbyists Act (provincial)	Federal Accountability Act: Lobbying Act (will replace the current Lobbyists Registration Act)	Income Tax Act
Regulated Activities (allowed, with limitations)	<p>Communication "intended to influence" the provincial government is allowed (if not in conflict of interest) but must be reported.</p> <ul style="list-style-type: none"> • "Government" includes provincial employees, officers, and members of prescribed provincial entities (including people appointed to government task forces or serving on committees, many of whom work or volunteer in the nonprofit sector) • "Influence" areas include the introduction, development or amendment of provincial legislation, policies, etc., and funding agreements including Grants and Contributions and decisions by the Executive Council about goods and services 	<p>Regulations for the new Act, including its definition of lobbying, have not yet been defined.</p> <p>Under the current Act, nothing is prohibited but organizations above the 20% threshold (see Key Points) must report communication between paid staff and federal designated public office holders regarding:</p> <ul style="list-style-type: none"> • The introduction, development or amendment of any bill, resolution, policy, program, etc. • The awarding of federal Grants and Contributions or any other financial benefit <p>Staff lobbyists must disclose any previous government positions or offices held.</p>	<p>The following activities are allowed, as long as they are relevant to the organization's mission and take up no more than 10% of the organization's human and financial resources:</p> <ul style="list-style-type: none"> • Instigating calls to action (e.g.: asking people to write to an MP about an issue) • Providing non-partisan (inclusive) information about political candidates • Providing balanced information about an issue
Reporting Requirements (note that report contents will be publicly available)	<p>Reports must be submitted twice a year, including:</p> <ul style="list-style-type: none"> • Specific details of provincial lobbying activities performed in past six months and planned for next six months • Names and business addresses of donors giving \$1000+ towards lobbying • Description of membership, activities and services • Names of staff who lobby • Government funding received • A declaration that provincial lobbying has not occurred while under contract or being associated with anyone under contract to provide paid advice to the Province on the same topic 	<p>The new Act is expected to require <i>monthly</i> reporting, including the names, dates and topics of communications with federal designated public office holders.</p> <p>Under the current legislation, federally registered lobbyists must only submit reports twice a year. Reports contain:</p> <ul style="list-style-type: none"> • Specific details on lobbying activities from past six months and planned for next six months • Names of paid staff who lobby • Description of membership • Funding received from ALL levels of government 	<p>Basic information on whether or not a charity has undertaken permitted or prohibited political activities is recorded on charitable tax returns (the T3010A) and submitted annually.</p> <p>Charities should keep records of human and financial resources allocated to political activities.</p>
Who Files Reports	The most senior paid employee is responsible. If there are no paid employees, no reporting is required.	Regulations have not yet been developed but individuals required to register are expected to be responsible for reporting. Currently, the most senior paid employee is responsible.	Not specified (could be an executive director, volunteer, board member, external accountant or auditor, etc.)
Penalties for Non-Compliance	Individual report filers are personally liable for fines up to \$200,000.	The new Act has a maximum \$200,000 fine and two years in jail for noncompliance, compared to \$25,000 and six months in jail for the current Act. To date, no charges have been laid.	Noncompliance could result in loss of charitable status.
Regulating Body	The Office of the Ethics Commissioner	The federal Office of the Commissioner of Lobbying will regulate the new Act. The current Act is regulated by the federal Office of the Registrar of Lobbyists.	The federal Canada Revenue Agency (CRA) Charities Directorate
Who to Contact	Visit www.calgarycvo.org/LobbyistAct.htm for links to government web pages (to make comments, view the Bill, or provide a formal submission by August 24, 2007) and to view a thorough analysis of the Bill completed by the Legal Resource Centre of Alberta.	Find information, search the lobbyists registry, register as a lobbyist, and provide comments or suggestions at www.orl-bdl.gc.ca .	Visit www.cra-arc.gc.ca/tax/charities for CRA information on charities.

This In Brief is provided for general information only. While we have done our best to research its content, we cannot guarantee accuracy. Some information, including details regarding external consultants hired as lobbyists, has been left out due to its limited relevance to the overall sector. Please seek legal advice with respect to your specific circumstances.