O.R.L.
office of the registrar of lobbyists
BRITISH COLUMBIA

GUIDANCE DOCUMENT

LOBBYIST GIFTS

Revised: April 16, 2020

PURPOSE OF THIS GUIDANCE DOCUMENT

This guidance document explains the gift-giving prohibition in the *Lobbyists Transparency Act* (LTA), the limited exception to the prohibition, and the reporting requirements related to gifts. The LTA prohibition and reporting requirements apply to a gift or other benefit. In this guidance document, any reference to "gift" should be read to include "gift or other benefit".

Lobbyists are prohibited from giving gifts to public office holders they are lobbying. Under the LTA, there is no prohibition against lobbyists giving gifts to public office holders they are ***not*** lobbying. Lobbyists must declare ***all*** gifts given or promised to ***all*** public office holders they are lobbying. *

In brief, where gifts are allowed, the LTA requires transparency and contains limits on giving or promising gifts. The key message is that lobbyists in BC should be cautious about offering any gift to a public office holder they are lobbying. Promising or offering a gift can be viewed as an attempt to influence a public office holder. A public office holder may feel a sense of obligation if they receive a gift from a lobbyist. Even when a gift does not create a sense of obligation, or otherwise influence a public office holder, it could create the perception that the public office holder may be subject to undue influence.

* The term "public office holder" is defined in section 1(1) of the LTA and includes MLAs and MLAs' political staff members; cabinet ministers and cabinet ministers' political staff members; government employees, including deputy ministers and everyone in a ministry under the level of deputy minister; an officer, director or employee of any government corporation as defined in the *Financial Administration Act*; and a person appointed to any office or body by or with approval of a minister or cabinet.

GIFT GUIDANCE

What are the three key elements of the LTA regarding gifts?

1. **Prohibition:** The LTA prohibits a lobbyist from giving or promising to give, directly or indirectly, any gift to any public office holder the lobbyist is lobbying.
2. **Exception test:** A gift to a public office holder whom the lobbyist is lobbying is only acceptable if it meets both parts of the two-part test in the LTA:
    - The gift is given or promised under the protocol or social obligations that normally accompany the duties or responsibilities of office of the public office holder; AND

- The total value of gifts given or promised to the public office holder by the lobbyist in accordance with protocol or social obligations over any given 12-month period is less than $100.

3. **Reporting requirement:** The LTA requires that **ALL** gifts given or promised to be given by a lobbyist to **ALL** public office holders the lobbyist is lobbying must be declared.

What are some examples of gifts given or promised "under the protocol or social obligations that normally accompany the duties or responsibilities of office of the public office holder"?

- ❖ A token of gratitude or courtesy when a public office holder has an official function such as keynote speaker, moderator, or ribbon-cutter.

- ❖ A gift offered by a lobbyist as a token of gratitude or courtesy when a public office holder does not have an official role at the event but attendance of the public office holder is generally part of their duties (for example, where an MLA attends an event in their constituency, such as the opening ceremonies of a public event or a charity fundraiser).

- ❖ A gift offered to a public office holder attending an event, meeting, conference, or other function in an official capacity, whether or not the public office holder has an active role, if given by a lobbyist representing a cultural or social group that traditionally offers gifts to express gratitude or commemorate an occasion.

What is considered a gift?

A gift is anything of value given or promised for free or at a reduced rate. Gifts may include:

- meals, beverages or other hospitality
- invitations to receptions
- money in any form (cash, cheque, bank draft, gift certificate)
- tangible gifts such as gift baskets, alcoholic beverages, flowers, chocolate, art, or jewelry
- tickets to sporting, cultural or speaking events
- box seats
- VIP passes not available to the public
- a service (spa, ski pass, transportation such as car & driver or private aircraft)
- use of property or facilities (use of a vehicle, golf facilities, hotel room, residence, or other accommodation)

Hospitality

- A free meal is considered a gift under the LTA.
- Lunches, dinners, or drinks at restaurants, coffee shops and bars do <u>not</u> generally meet the exception test for gifts under the LTA.

- Receptions and luncheons *may* be acceptable in *certain circumstances*. Widely-issued invitations to receptions or luncheons intended to raise awareness of issues are generally acceptable because the duties of public office holders include communicating with stakeholder groups to understand their concerns.

- Invitations to receptions or luncheons for this purpose, where modest refreshments will be served, must be assessed on a case-by-case basis. They could meet both parts of the exception test, depending on factors such as: whether the value of the food and refreshments is modest and reasonable, and whether the invitation was broadly issued to a group of public office holders.

- Other examples of hospitality that *may* be acceptable, depending on the circumstances, include:
  - a meal or light refreshments proportionate to the occasion provided at an event where the public office holder is performing an official function;
  - sandwiches or other modest refreshments provided for a working lunch at a place of business; and
  - providing one or two complimentary drink tickets at a reception, which would be considered "modest refreshments," whereas an open bar would not.

Tokens of appreciation

- Items of minimal value such as pens, mugs, or books, given as tokens of appreciation in the context of an official interaction, generally meet both parts of the exception test.

Tickets and passes

- Tickets or VIP passes that include box seats offered by business executives do not meet the exception test, even if the public office holder is performing an official function at the event. Box seats provide guests a level of privacy that is contrary to a public office holder's obligation to provide a public show of support for local or provincial events.

- If a corporate donor, or other third party that lobbies, offers to pay for tickets to a fundraiser for the public office holder's favorite charity, this does not meet both parts

of the exception test. To meet the “social obligation” part of the test, the tickets must be offered by the organizers of the fundraiser.

- Complimentary tickets or passes generally meet both parts of the exception test if they primarily serve a public rather than a private purpose. Complimentary tickets to a fundraiser for a non-profit or charitable organization, offered by the organizers of the fundraiser, would generally meet the exception test because the attendance of public office holders may encourage others to attend and provide financial support to the non-profit or charitable organization.

- A pass to a cultural, sporting, artistic, or charitable event taking place in British Columbia, offered by the organizing committee – especially if the Province provided some funding for the event and/or the public office holder is performing an official role – could meet the exception test. In this example, the visible presence of the public office holder at the event would reflect the provincial government’s support of such events and attendance of the public office holder would be considered part of the social obligations of their particular office.

- If a public office holder has an official role at an event such as a conference, charity fundraiser, or awards dinner hosted or sponsored by an organization that is lobbying, we do not consider the cost of admission to the event to be a gift from the conference host/sponsor, and it does not need to be reported in the Lobbyists Registry. Examples of official roles include keynote speaker, panel member, or making awards presentations. Note that if a meal is provided to the public office holder in the course of the event, the value of the meal must be reported as a gift.

Which gifts from a lobbyist to a public office holder must be declared in the Lobbyists Registry?

ALL gifts given by a lobbyist, or by an organization that employs lobbyists, to a public office holder the lobbyist is lobbying, must be declared.

Are gifts under $100 acceptable no matter what?

No. The value of a gift from a lobbyist to a public office holder they are lobbying does not determine whether it is acceptable.

If the gift does not meet the first part of the exception test, then the gift is prohibited, regardless of value.

Once gifts from a lobbyist to a public office holder they are lobbying exceed $100 in value, when can another gift be given or promised to that public office holder?

Lobbyists are prohibited from exceeding the $100 limit in any given 12-month period. **This is a rolling calculation**. Lobbyists must keep track of gifts given or promised to each public office holder they are lobbying to ensure they do not exceed $100 per public office holder per lobbyist in any given 12-month period.

How do lobbyists declare gifts to public office holders?

All gifts given or promised by a lobbyist to a public office holder the lobbyist is lobbying must be declared in the lobbyist's Registration Return. This includes gifts that meet the exception test.

A gift given or promised but not declared is a contravention of the LTA, including those that are incident to protocol or social obligations and under the $100 limit.

Which gift details need to be declared?

If a lobbyist or an organization that is lobbying gives or promises a gift to a public office holder they are lobbying, they must declare:

- the name of the public office holder
- a description of the gift
- the value of the gift
- the date the gift was given or promised, and
- the circumstances under which the gift was given or promised.

Which public office holders are covered by the provisions regarding gifts in the LTA?

In addition to MLAs and ministers and their political staff, the term "public office holder" includes public service employees of core government, Crown corporations, universities, health authorities, and other Provincial entities.

Are there other rules about gifts that public office holders can accept?

The *Members' Conflict of Interest Act* governs what elected members of the legislative assembly (MLAs), including members of cabinet, may accept in the way of gifts. The Conflict of Interest Commissioner oversees that Act. coibc.ca/about/

- BC Public Service employees subject to the Standards of Conduct for Public Service Employees may not accept a gift that arises out of employment unless the gift is of nominal value, the exchange creates no obligation, reciprocation is easy,

and it occurs infrequently. Public service employers are responsible for overseeing the Standards of Conduct.
www2.gov.bc.ca/assets/gov/careers/managers-supervisors/managing-employee-labour-relations/standards_conduct.pdf

- Political staff such as ministerial or executive assistants in a minister's office, who are subject to the Standards of Conduct for Political Staff Regulation, may not accept a gift that arises out of employment unless the gift is of nominal value, the exchange creates no obligation, reciprocation is easy, and it occurs infrequently. Managers of political staff and/or the chief of staff to the premier are responsible for overseeing the Standards of Conduct for Political Staff.
www.bclaws.ca/civix/document/id/complete/statreg/67_2014

How is the value of a gift calculated?

The total market value (including fees and service charges) of the item, service, or hospitality offered to the public office holder for free, or at a discount, must be taken into account.

For tickets to events, the market value is the face value amount plus any fees and service charges that any member of the public would pay for the ticket.

For events where food, beverages, entertainment, or other hospitality will be provided, lobbyists must determine the value of what is offered to each public office holder invited to the event by taking into account the total cost of the event (including venue rental costs, food/catering costs, bar/beverage costs, service costs, music or entertainment costs, transportation costs, and any other costs involved in hosting the event) and then dividing that total cost by the total number of people invited to attend.

How is the value of a gift calculated for a guest of a public office holder?

If a gift is offered to a guest of a public office holder, the same considerations apply as if it were offered to the public office holder directly. The value of the gift to the guest must be included in the total value of what is offered to the public office holder.

When more than one public office holder is invited, how should the value of hospitality for each public office holder be calculated and declared by each lobbyist?

Calculation:

The cost of hospitality to be declared is the total cost divided by the number of people invited. For example, a group of 40 MLAs is invited to a luncheon paid for by an industry association wanting to inform the MLAs of its concerns regarding a particular

aspect of proposed legislation. Five in-house lobbyists from the industry association attend and speak to the MLAs. The cost of the luncheon is $25 per person X 45 people invited (40 MLAs plus 5 in-house lobbyists) = $1,125.00.

Declaration:

The organization declares a $25 gift for each public office holder invited.

This is the case even if not all of the public office holders invited attend the event.

This is the case even if not all of the organization's in-house lobbyists attend the event because it is the organization that sponsored the event, not the individual in-house lobbyists.

Other than invitations to receptions or luncheons, if a lobbyist offers a gift that is not accepted by the public office holder, does the gift or promise need to be declared?

No.

What if a lobbyist gives a public office holder (they are lobbying) a gift but does not declare it?

Failing to declare a gift given or promised is a contravention of the LTA.

What if a lobbyist gives a public office holder gifts that add up to more than $100 in a given 12-month period?

Giving a gift to a public office holder (whom the lobbyist is lobbying) that does not meet both parts of the exception test is a contravention of the LTA.

What if I have more questions about gifts?

After reading this guidance document, if you have questions, contact the Office of the Registrar of Lobbyists for BC at info@bcorl.ca

Note: *This document is for information purposes only and does not constitute a decision or finding by the Registrar of Lobbyists for British Columbia or his or her delegates. This guidance does not affect the powers, duties or functions of the Registrar of Lobbyists, or his or her delegates, regarding any investigation or other matter under the* Lobbyists Transparency Act*, respecting which the Registrar and his or her delegates will keep an open mind. Responsibility for compliance with the* Lobbyists Transparency Act *remains with each client, lobbyist and public office holder.*