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BRITISH COLUMBIA

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SPEECH TO THE
SPECIAL COMMITTEE TO REVIEW THE LOBBYISTS TRANSPARENCY ACT

December 10, 2025

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Good morning, Chair and members of the Committee. I would like to begin by respectfully acknowledging the land on which we are meeting today, on the traditional territories of the Lək̓ʷəŋiṅəŋ people, of the Songhees and Esquimalt First Nations. I am grateful to live and work with people from across many traditional and unceded territories, covering all regions of British Columbia.

With me today are Deputy Registrar oline Twiss and Policy Analyst Nick Rowlands.

I want to begin by thanking you for inviting me and my team here today, to discuss our recommendations as part of your work in this inaugural statutory review of the *Lobbyists Transparency Act*.

In my last appearance, I spoke about the important role that lobbying plays in our society, and the role of the Lobbyist Registry in promoting transparency in who is influencing decision-makers for BC.

Let me underscore the importance of lobbying to our democracy: government, legislators and other public officials can understand the society they are charged with governing better when they are meeting with lobbyists from organizations and associations, whether for profit or not-for-profit. Simply put, lobbyists can often provide substantive information about their needs, expertise, preferences and pressures to inform the decisions being made to govern this province.

When lobbying happens without transparency, accountability suffers and trust is damaged.

This is where the LTA has an essential role in contributing to trust. The overarching goal of the rules set out in the Act is to ensure that there is transparency in who is paid to communicate with you, and other public office holders, in an attempt to influence your decisions.

If I think back to the primary policy objective that this Legislative review can accomplish, I'd say the Act as a whole is in good shape. As I remarked when I appeared before you previously, it is seen as a leading statute in Canada, and even beyond.

The main reason is the high level of transparency the LTA provides for people living in British Columbia about who is trying to influence public office holders. Now, that said, there are of course some things that can be refined, and we will focus on five specific recommendations that, in our view, will improve transparency and the administration of the Act.

But before I get into our specific recommendations, I would like to draw your attention to our strategic plan, which we developed over the course of the past year and released in October. In that plan we recognized that awareness of the Act and the need to simplify administration of the Act are two areas that require our specific focus.

On the issue of awareness, we have prioritized a multi-pronged approach to reach lobbyists who may not be aware of the Act and therefore may be unknowingly lobbying and not registering their lobbying as is required by the Act. We are looking at ways to reach them through networks and associations, through public office holders themselves, and through other creative means. However, we are also committed to improving our education and outreach to currently registered lobbyists, with a focus on simplifying and streamlining our guidance documents, so that lobbyists are better informed on how to comply with the Act.

And in terms of simplifying the administration of the Act, we know parts of it are complicated, and that even those who have been working with the Act for a long time can be confused by how it is supposed to operate. In our view it is not so much that the Act is complicated, but often that *reality* is complicated – the lobbying community is diverse, there are numerous different types of public office holders and the types of activities that are involved in influencing them are numerous and varied. So, applying the requirements of the ideas to many different fact circumstances is where the complication comes in. This is an unavoidable feature of modern democratic governance.

Even on Friday, there were a number of things that were said in presentations to this Committee that are not accurate. I would like to clarify, briefly and for the record, just a few of those now so that both the public, and the Committee, are not left with incorrect conclusions. And I would be

glad to address any other questions after this appearance today, that you may have on specific provisions of the Act that may have raised questions throughout your deliberations.

For example, a few presentations put forward that jail time is a potential result from contravening the Act. I will say with absolute certainty that this is not the case. The LTA provides me with the authority to issue administrative monetary penalties of up to $25,000, which I should say we have never come close to, or to issue an administrative penalty that prohibits an individual from lobbying for a period of two years. Again, my office has never had to exercise that function.

Another point of possible confusion I heard on Friday relates lobbying that is conducted via social media platforms. Only social media posts *directed at* public office holders where the content of the post also meets the definition of "lobby" requires reporting in the Lobbyists Registry. When I say "directed at" I mean the post would need to tag the public office holder. Simply posting about a public policy issue on social media with no direction at a public office holder would not be lobbying. Additionally, a post whose content is not an attempt to influence any of the items listed in the definition of lobby, would not be viewed as lobbying. So, for example, if an individual posts a photo of themselves with a public office holder to a social media platform without content that attempts to influence public policy, that would not be considered lobbying.

I would also like to clarify that meetings that are requested with Public Office Holders, but never set up, do not need to be reported. Further, if a lobbyist is arranging a meeting with a public office holder just for themselves, guidance from my office is that they do not have to report the "arranging", i.e. the request for the meeting. They just report the actual meeting when it happens.

Finally, for assurance for those that have appeared as part of this process before you, presenting to a Committee of the Legislative Assembly that is part of a public record, such as this one today, does not need to be reported.

Again, me and my team would be happy to provide follow up to any detailed questions you may have after today.

I will now take some time to walk you through five recommendations that I believe will enhance the transparency purpose of the LTA. For ease, we have organized our recommendations into two themes: Enhancing Transparency and Simplifying understanding. I will start with the two recommendations under enhancing transparency. The first is to increase transparency around those that have a direct interest in a lobbying activity.

As my submission notes, transparency in lobbying means more than identifying who conducts lobbying – it also requires transparency on who drives and ultimately benefits from the lobbying. And there are provisions in the LTA that support this, that are designed to shed light on the behind-

the-scenes actors that control, fund and benefit from a lobbying activity. However, there are gaps in the current requirements that can potentially cloud who is ultimately behind the lobbying activity .

For example, there are situations where a group of organizations, typically businesses, create a proxy organization to lobby their shared interests. It is those founding organizations and businesses that will truly benefit from the lobbying of the proxy. In this example, the Act requires the proxy organization to register any lobbying activity in the Registry, but may *not* require the proxy organization to disclose its connection to the founding businesses or actors. While this is a legitimate practice and form of lobbying, and an efficient way to lobby public office holders based on a shared message and interest, under the current LTA it can lack transparency in that it deprives the public of being able to see whose interests an individual organization lobbies, by concealing the true beneficiaries of the lobbying.

Take, for example, a group of international like-minded organizations that want to join forces to lobby for a common cause. They could form a joint-venture company as a proxy to conduct lobbying on their behalf. However, the way the Act is currently written, only the proxy company would need to register their lobbying activity, with no reference to the bigger international organizations that are benefitting from the lobbying activity. You can see in this example how this defeats the transparency purposes of the LTA, as it deprives the public from access to information in the Registry about the interests behind the proxy organization.

This transparency gap can be addressed by introducing a provision under s. 4(1) that requires a Designated Filer to disclose whether members of their organization's or client's board of directors or governing body are employed by, have a membership, or interest with external organizations that have a direct interest in the lobbying activity of the organization and if so, what those interests are.

The Organization for Economic Co-operation and Development is a recognized international knowledge hub for best practices in public policy on issues ranging from AI, gender equality, climate mitigation, and transparency. As part of their work, they put out recommendations and standards for lobbying regulation worldwide, and is used as the international standard for lobbying regulation. This recommendation aligns with their Recommendations on Transparency and Integrity in Lobbying and Influence. We endeavour to align our work and recommendations with OECD standards whenever feasible.

The second recommendation we have to enhance transparency is intended to bring clarity in the type of communications used for lobbying. Currently, the LTA does not require lobbyists to indicate the type of communication used when registering their lobbying activity.

When I say type of communication, I mean *how* the lobbying was conducted: by in-person meetings, over the phone, by letters, emails, or done through social media, to name a few examples.

We have heard from lobbyists that adding this requirement will provide the public with a more complete picture of which organizations and lobbyists are getting face-to-face meetings with public office holders, and which are lobbying via channels that may or may not carry as much influence, such as social media.

This will give the public information to infer, for example, whether a lobbyist who has in-person meetings and phone calls on a specific issue has the same weight of influence as a lobbyist who lobbies solely through social media posts mentioning the Public Office Holder.

I withhold any opinion on which communications carry more influence. However, I can understand that the context of *how* communications occur can provide enhanced transparency about whether communications that do happen are effective in influencing decision making.

Therefore, I recommend introducing provisions under sections 4(1) and 4.2(2) that require Designated Filers to report the type of communication used when lobbying. This recommendation aligns with the majority of other Canadian, provincial, territorial, and federal lobbying legislations.

I will now move onto the second theme I mentioned: simplifying understanding. We recognize that simplicity will help drive compliance: an Act that people can understand is one that is easier to comply with and enforce.

The three recommendations I put forward under this theme show that it is possible to prioritize simplicity in lobbying registration while still maintaining the legislations' core purpose of transparency and accountability.

The first is clarifying the definition of "Provincial entity."

Currently, the Regulation sets out two definitions for "Provincial entity" under section 3: one definition is used by lobbyists, the other by current and former public office holders.

For lobbyists, the definition under section 3(a) is used to determine whether they are lobbying a public office holder, and if so whether they are required to register their lobbying activity. However, assessing whether an organization meets this definition of Provincial entity is a complex process. Lobbyists must first navigate a cascading series of regulations and statutes.

They must also have an understanding of an organization's governance or ownership structure to determine whether the individual they are lobbying is a public office holder employed at a Provincial entity.

Conversely, the definition used by current and former public office holders is defined in a quick and clear way. One way to help describe the contrast between the two definitions is that the definition under section 3(a) is deductive, in that it outlines criteria that a lobbyist must navigate along the way, while the definition under section 3(b) is simply an Appendix'd list of Provincial entities.

You may be wondering: why can't lobbyists rely on the definition under section 3(b)? While there is overlap between the two definitions, they are not identical in scope. The definition used by lobbyists under section 3(a) is broader than section 3(b), so simply creating one table that applies to both would narrow the scope of 3(a) or would broaden the scope of 3(b).

So, in the spirit of simplicity, maintaining two separate lists would assist in simplifying understanding and limiting misinterpretation while maintaining the appropriate scope, as intended by legislators.

My team has seen firsthand how the complexity of section 3(a) can lead to confusion among lobbyists about whether a reporting obligation exists. We regularly assist lobbyists that come to our office for guidance on this issue, but we are concerned that lobbyists that are unaware of the requirement or who mistakenly believe a reporting obligation does not exist based on their journey through the various regulations could unintentionally be non-compliant with the Act.

Therefore, we recommend establishing and maintaining a schedule of Provincial entities that is applicable for section 3(a) of the Regulation, similar to how the definition under section 3(b) is represented. This will provide clarity for lobbyists and support compliance.

My next recommendation assists with simplifying understanding by giving my office the statutory authority to issue advisory opinions and interpretation bulletins. While I do have the authority under section 9.4 of the LTA to issue guidance, I am limited to just that – guidance. I do not have the ability to clarify for a lobbyist that come forward whether a fact circumstance would contravene the LTA, in the form the of an advisory opinion or an interpretation bulletin. This amendment would provide me with the authority to provide certainty to lobbyists that are coming forward and asking for a predetermination on a matter, so that they can do the right thing.

Adding this authority to the Act would give the Registrar the ability to offer direct advice to a lobbyist on a complex or unique matter *before* it becomes an issue of non-compliance. This ultimately benefits lobbyists, who often come to my office seeking specific advice and who want to do the right thing.

An example may help illustrate this point. We often get organizations that come to us looking for clarification on whether a specific gift would be allowed under the narrow exception to the LTA's gift prohibition. As a refresher, gifts are prohibited under the LTA with a few exceptions. For example, they can be given under the protocol of social obligations that would normally accompany the duties and responsibilities of the office of the public office holder AND the total value of gifts promised or given is less than $100 over a 12-month period.

However, under the LTA as it stands, we cannot give advice on whether the exception would be valid in the circumstance, we can only provide general guidance on how the exception generally applies, and the organization must then interpret their situation to determine if an exception applies on their own. With the authority to issue advisory opinions, we would have the ability to provide direct advise to an organization based on the specific fact circumstances before us.

Similarly, the ability to issue public-facing interpretation bulletins would enhance clarity for lobbyists seeking to understand the Act. The bulletins would provide a publicly available interpretation of how specific provisions of the Act are applied in common but complex situations.

I have heard from many lobbyists about the need for this added authority. We know that while our guidance is useful and a valuable tool for lobbyists, it is just that. It is not advice or direction, and again lobbyists are left frustrated when they simply want to comply with the Act and are unsure how to do so.

This recommendation aligns with other Canadian provincial and federal jurisdictions, with the sole exception of Saskatchewan. Aligning our Act in BC would give lobbyists in this province access to the same level of clarity and support as the rest of Canada.

My final recommendation is something that is already done generally in practice, but would benefit from being captured in the legislation. In general, the Ministry of the Attorney General consults with the ORL prior to amending the LTA or any accompanying regulation. This advance consultation is valuable for many reasons. First, it gives my office the opportunity to advise if there will be costs required to update the Registry to accommodate any proposed changes, and of the time needed before they could feasibly be implemented. It also gives my office time to develop updated guidance and education in advance of any changes taking place, to support lobbyists in meeting their obligations when any new changes come into effect.

While I have no indication that the Ministry would cease this practice of advance consultation in the future, codifying it into the Act is an appropriate safeguard to ensure lawmakers have all of the information necessary when making changes that affect the Registry. Therefore, I recommend introducing a provision that requires the Ministry responsible for the LTA to consult with the Registrar prior to introducing legislative or regulatory amendments.

Before I conclude my remarks and welcome your questions, Chair, I would like to take a bit of time this afternoon to address some of the commentary you have already heard as part of your consultation process.

First, and in general, I would like to emphasize that we are sympathetic and supportive to recommendations that are consistent with the transparency purposes of the Act, especially if they lead to simplifying processes that can ultimately lead to increased compliance.

I'll first speak to the issue of gifts, which was raised in many submissions to the Committee. While I believe the gift prohibition is serving its purpose of safeguarding public trust in the practice of lobbying, I do recognize that the $100 annual limit introduced five years ago may be out of date considering inflation and the rising costs of hospitality. Therefore, I would not be opposed to adjusting that annual limit, within reason, in a way that still reflects and maintains the purpose of mitigating undue influence.

I also would not be opposed to adjusting the time-period for the gift calculation to shift from a rolling 12-month period to a calendar year. And I do not have significant concerns about exempting gifts that are offered – or "promised" in the language of the LTA – but never given, from the gift prohibition and reporting requirements. As I just mentioned, the underlying purpose of the gift prohibition is to prevent undue influence. There has been research to show that any gift - be it a small token of appreciation, or a meal or a cup of coffee - can influence a decision maker. The gift prohibition's narrow exception allows for instances of modest gift-giving in situations where that is socially expected. Relaxing these rules or carving out categories of gifts from the prohibition risks opening the door to exploitation and undermines the purpose of the gift prohibition.

I also would not be concerned about focusing the requirements related to government funding an organization or client receives. One of the benefits of reporting government funding received from governments outside British Columbia, is that it shines a light on situations where non-BC governments and foreign governments attempt to indirectly influence BC public policy by funding lobbying activities in this Province. With that said, we agree that including in the Registry information about funding received by organizations lobbying in this province that has nothing to do with the actual lobbying activity or outcomes undermines the transparency purpose of the Act – the Registry should contain information that is relevant to lobbying. We think, through careful legislative drafting, it would be possible to craft a requirement in the Act that focuses transparency on government funding that relates to the lobbying activity of an organization.

The other area I would like to comment on is the issue of value neutrality when it comes to how the LTA is applied. You have heard throughout your consultations that some lobbyists recommend that some categories of lobbyists should be excluded from the Act, and that a two-tiered structure would eliminate the burden placed on lobbying that is done "in the public interest".

I disagree. The strength of the LTA is that it is a value neutral legislation that applies to anyone who is paid to influence BC public office holders. A two-tiered structure threatens the transparency provisions of the Act and would introduce value judgements that are impossible to make. What one person believes is in the public interest will vary from another. It is a positive feature of the Act that it does not make these value decisions.

Organizations that lobby "in the public interest" are among a broad array of actors that seek to influence public office holders. We know that the lobbying they do is legitimate and necessary to assist public office holders with making decisions.

The transparency purpose of the Act allows the public to scrutinize who is seeking to influence government decisions. It's critical that the public have transparency on who is talking to government. Equally important is transparency on who is not part of those discussions. By making transparent all actors who lobby government, the LTA ensures the public can see who is communicating with government and who is being left out of those important conversations.

Further, I would point out that the public's voice is mostly missing from these discussions. I note that there were few submissions to this committee from members of the public. It is not lost on me that the general theme of those submissions was a call for more regulation of lobbyists, not less.

Fortunately, the public has you, their elected members, to bring forward the voices of the average person listening to the news on the radio or reading the paper in the morning. You have heard a lot over the past few months from those that are paid to talk to you, and while those voices are important, I would encourage you to remember the role the Act plays for your constituents at home, and the transparency mechanisms in the Act that were developed for *their* benefit.

Before I conclude, I would like to leave you with a philosophy I raised in my previous appearance, that I believe has been reinforced throughout the consultations you have had during this process: Keep it simple, keep it simple, keep it simple.

Now I'm not saying simplicity means less requirements, please don't take that as a signal from me to de-regulate… rather I would simply enforce that an effective regulatory environment can still be a simple environment, with clear guardrails in place.

With that, Chair and Members, I welcome your questions.