

Curb your (lobbying) enthusiasm? Navigating Canada's lobbying regulations – insights for the pharmaceutical industry



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One of the primary reasons companies and individuals lobby is to shape legislation and policy in a way that is favourable to their interests. This can include efforts to influence the drafting of new laws, the modification of existing ones or the implementation of regulations or policies that affect their industry or personal interests. Individuals or entities may also lobby to prevent the passage of legislation or regulations that could negatively impact them. This could involve advocating against certain measures or working to amend them to minimize their adverse effects.

Lobbying provides a means for companies and individuals to build and maintain relationships with policymakers. Lobbyists often serve as a source of information for policymakers, providing expertise, data and insights that can inform the decision-making process. This exchange can be beneficial for both parties, as it helps the government make more informed decisions and allows lobbyists to highlight the implications of various policy options.

The complexity of lobbying arises from the interplay of legal frameworks, ethical considerations and the diverse array of stakeholders involved. While lobbying is a legitimate part of the democratic process, if not reported it can raise concerns about transparency, fairness and the disproportionate influence of certain interests.

Generally, lobbyists fall into two broad categories: in-house lobbyists and consultant lobbyists. In-house lobbyists are employees of an organization who may lobby on behalf of that organization. Consultant lobbyists are individuals who are paid to lobby on behalf of a third party. Typically, somewhat different rules which apply to the two types of lobbyist.

This article focuses on the laws and regulations applicable to in-house lobbyists and highlights the role of lobbying, particularly in the pharmaceutical industry. We also provide an overview of the regulatory landscape across Canada as it pertains to the regulation of lobbying activities.

'Prett-ay, prett-ay, prett-ay good': Lobbying, with transparency, is a good thing!

Free and open access to government is an important matter of public interest.^[1] Lobbying is a legitimate activity that serves as a channel for individuals, companies and organizations to influence public policy and decision-making. The motivations behind lobbying can be diverse and complex, often depending on the specific interests and goals of those engaging in the practice. Transparency is therefore a key aim in designing laws and regulations pertaining to lobbying.

Pharmaceutical companies, for example, are required to interact with provincial and federal governments in order to bring drug products to the market. In some cases, communications with government officials will rise to the level of lobbying. Below, we provide some high-level guidance on what constitutes lobbying and what steps should be taken in order to ensure compliance with applicable laws.

'I'm trying to elevate small talk to medium talk': What counts as lobbying in Canada?

Canada has federal lobbying legislation, as do nearly all provinces and territories and some Canadian municipalities.^[2] All of the lobbying statutes are highly similar; however, there are jurisdiction-specific variations (e.g., definitions of lobbying and reporting requirements). At a very high level, the act of lobbying is

1. **paid communication**^[3] (on behalf of a client or organization)
2. with a **public office holder**^[4] (as defined by the applicable statute)
3. regarding **government decisions, policies, legislation/regulation**^[5]

There are some exceptions to this high-level definition of lobbying, which vary by jurisdiction. In general, communications which are transparent by nature (e.g., public Parliamentary Committee hearings), or which deal exclusively with requests for information of a public office holder, likely do not rise to the level of lobbying activity. In addition, it is often the case that communications with a public office holder regarding the enforcement, interpretation or application of any existing law or policy by that public office holder with respect to that organization is not considered lobbying.

There are also examples specific to the pharmaceutical industry, involving communications which may (or may not) constitute lobbying, discussed below.

Health Canada drug submissions

While Health Canada employees are considered public office holders, communicating in the context of a specific active drug submission process is likely not lobbying, assuming that all communication is in furtherance of submission approval under an existing regulatory regime. However, communications about the submission process in general (i.e., not as applied to a specific submission or seeking deviations from the process) may be considered lobbying activity.

Interactions with public drug plans/formularies

The staff of provincial formularies/drug programs likely fall within the meaning of public office holders as listed in the applicable statutes. However, communications limited to the normal listing process and the application of the associated regulations (e.g., requesting information about how a drug is listed on a formulary) are likely not lobbying. Communications regarding public policy (e.g., communications regarding whether a product or category of products should be listed), however, may constitute lobbying.

'Let me just say this...': What do you do if you've been lobbying?

Individuals and organizations engaging in lobbying are required to register formally as a lobbyist and to report the lobbying activity once the applicable threshold is met. The requirements for in-house lobbyists vary by jurisdiction and the requirement to report is often tied to the aggregate amount of time spent on lobbying activities by the organization's in-house lobbyists:

Jurisdiction	Registration threshold (in-house lobbyists)
Federal	20% of employee's time ("significant part of duties") ^[6] (including preparation)
Yukon	> 20 hours lobbying time (not including preparation) ^[7]
British Columbia	<i>any lobbying activity</i> ^[8]
Alberta	> 50 hours lobbying time or duty to lobby > 50 hours (including preparation) ^[9]
Saskatchewan	> 30 hours lobbying time (including preparation) ^[10]
Manitoba	> 100 hours lobbying time (including preparation) ^[11]
Ontario	> 50 hours lobbying time (not including preparation) ^[12]
Québec	> 12 work days per year (a "significant part" of the job or function, including preparation) ^[13]
New Brunswick	lobbying activity is at least 20% of working time in a three-month period ^[14]
Newfoundland and Labrador	lobbying activity is at least 20% of working time in a three-month period ^[15]
Nova Scotia	lobbying activity is at least 20% of working time in a three-month period ^[16]
Prince Edward Island	lobbying activity is at least 50 hours in a three-month period ^[17]

There are also registration/reporting requirements for consultant lobbyists, who typically must register as such within a specified time of agreeing to lobby on behalf of a client.^[18]

Each jurisdiction that regulates lobbying has an office or commissioner of lobbying, which maintains a publicly searchable register of lobbyists. Among other things, these registries identify

- the individual or organization engaged in lobbying
- the names of each individual lobbyist
- the government department/agency/individual lobbied
- the subject matter of the lobbying communications

If lobbying activity has occurred, and the registration threshold has been met, the

organization and lobbyist must register and report the activity in the applicable jurisdiction(s) within the applicable timeframe. Where the communication has been made in the context of a meeting where public office holders from multiple jurisdictions were involved, registration/reporting must be made for each jurisdiction. It is important to note that in addition to an initial registration and report, there are ongoing reporting and updating requirements in each jurisdiction. Notably, certain jurisdictions require that specific types of communications be reported upon shortly following their occurrence.

Failure to comply with the registration and reporting requirements is an offence and can lead to fines and/or a prohibition on future lobbying.

'Having said that...': Conclusion and additional considerations

Lobbying is a complex and nuanced activity that requires careful attention to the legal and ethical frameworks that govern it. The ultimate aim of these laws and regulations is to foster a culture of openness and accountability in the interactions between lobbyists and public office holders.

As a legitimate and beneficial part of the democratic process, lobbying aims to inform and influence public policy and decision-making in various sectors, including the pharmaceutical industry. To ensure transparency and compliance with the legal and ethical frameworks that govern lobbying, individuals and organizations should carefully consider the nature, scope and intent of communications with public office holders. Further, individuals and organizations engaging in lobbying must comply with the registration and reporting requirements that apply to their lobbying activities.

Federal and provincial lobbying offices often provide helpful guidance on the definitions, thresholds and exceptions that apply to lobbying activities, as well as the procedures and deadlines for registration and reporting. Developing an internal process for tracking and reporting in-house lobbying activities can help minimize the risks associated with non-compliance.

[1] Preamble to the federal *Lobbying Act*, R.S.C., 1985, c. 44 (4th Supp.).

[2] The only exceptions are the Northwest Territories and Nunavut, both of which do not have lobbying legislation. A proposal to introduce a lobbyists registry for the Northwest Territories was defeated in 2015, and no similar legislation has since been put forward.

[3] "Communication" includes all forms of communication, whether written or oral, and "paid" can include salary or the like for an employee.

[4] A "public office holder" is often very broadly defined in lobbying legislation and includes elected officials and their staff, public servants, and political or government staff.

[5] Lobbying generally includes communications regarding the making, amending or repealing of any current or proposed law, regulation, policy, program or financial benefit.

[6] *Lobbying Act*, R.S.C., 1985, c. 44 (4th Supp.), at s. 7(1). See also: The Office of the Commissioner of Lobbying of Canada, "A significant part of duties ('The 20% rule')".

[7] *Lobbyists Registration Act* [PDF], S.Y., 2018, c. 13, at ss. 11(1) and 12.

[8] *Lobbyists Transparency Act*, S.B.C., 2001, c. 42, at s. 3(3).

[9] *Lobbyists Act*, S.A., 2007, c. L-20.5, at ss. 1(1)(h) ("organization lobbyist") and 5(1)(a).

[10] *The Lobbyists Act* [PDF], S.S., 2014, c. L-27.01, at ss. 2(1)(h) and 7(1).

[11] *The Lobbyists Registration Act* [PDF], C.C.S.M., c. L178, at ss. 1(2) and 5(1)(a). See also s. 2 of the *Lobbyists Registration Regulation* [PDF], Man Reg 34/2012.

[12] *Lobbyists Registration Act*, 1998, S.O. 1998, c. 27, Sched., at ss. 5(1)(a), 5(7), 6(1)(a), 6(5).

[13] *Lobbying Transparency and Ethics Act*, C.Q.L.R., c. T-11.011, at ss. 3, 10, 14 (regarding "enterprise" or "organization lobbyists"). See also: interpretation *Notice No. 2005-07* [PDF].

[14] *Lobbyists' Registration Act* [PDF], S.N.B. 2014, c. 11, at ss. 10(1)(a) and 15(1)(a). See also *NB Regulation 2017-11* [PDF] at s. 3.

[15] *Lobbyist Registration Act*, S.NL 2004, c. L-24.1, at ss. 6(1)(b) and 6(2)(a).

[16] *Lobbyists' Registration Act* [PDF], S.N.S 2001, c. 34, at ss. 6(1)(b), 6(2)(a), and 7(2)(a). See also *Lobbyists' Registration Regulations*, N.S. Reg. 116/2002, at s. 5.

[17] *Lobbyists Registration Act* [PDF], R.S.P.E.I. 1988, c. L-16.01, at ss. 6(1)(b), 6(2)(a), 7(1)(b), and 7(2)(a).

[18] See, for example, the federal *Lobbying Act*, R.S.C., 1985, c. 44 (4th Supp.), at ss. 5(1) and 5(1.1).