



## **Will Ontario's amended *Lobbyists Registration Act* achieve its intended goals and at what cost to the nonprofit sector? An ONN Issues Paper**

### **Summary:**

*ONN agrees that the Ontario Government has to carefully safeguard good public policy process and ensure that the objectives of accountability, transparency, and robust public engagement are met. With recent changes to the Lobbyists Registration Act, however, we believe that the right balance has not been struck.*

*ONN has the following concerns about the Lobbyists Registration Act:*

- The definition of “lobbying” is not adequately clear for nonprofit organizations that work on a daily basis with government.*
- The time involved in tracking and/or filing is not insignificant: compliance requires either registering or tracking hours and imposes more administrative burden on thousands of organizations that will have limited capacity to comply.*
- The new enforcement provisions have the effect of requiring nonprofits to monitor their hours of lobbying if they do not meet the registration threshold so that they can “prove” they are not above it in case of third-party complaints.*
- Forcing public-benefit nonprofits and charities working in communities to register as lobbyists alongside private-sector lobbyists will not be understood by the public, donors, and many of the sector’s funders. It may harm the sector, its work and the public interest.*
- The rule changes mean that significant lobbyist registrations - notably those that relate to the awarding of private contracts - will be buried in the registry by hundreds, if not thousands, of dutiful but insignificant filings of nonprofits merely going about their daily business of delivering services on behalf of government.*

*While the intent of the legislative change is positive, its implementation may result in unintended consequences that, like federal “political activities” rules for charities, could create confusion among nonprofits about working with government, add to their administrative burden, and create barriers to engaging in public policy debate. The net result of this policy change is that the health of our democracy will be undermined, not strengthened.*

## Introduction

ONN recently became aware of changes to the *Lobbyists Registration Act* (LRA) through our members, some of whom have expressed concern at the significant lowering of the threshold for the number of lobbying hours required to register. For details on the changes that took effect July 1, 2016, see ONN's "[Six Things You Need to Know About the Lobbyists Registration Act.](#)"

Given our sector's ongoing relationships with government on funding and regulatory compliance as well as on policy development and legislative reform, a significant number of small and mid-sized nonprofit organizations may now have to register under the Act. We are continuing to seek clarification to understand the rationale behind these changes. The nonprofit sector's relationship with government is so different from the private sector that treating the two sectors the same way under this legislation may not achieve the objective of fairness. Indeed we believe it will do precisely the opposite.

### **Under the *Lobbyists Registration Act*, to "lobby" means,**

- (a) in relation to a consultant lobbyist referred to in section 4 and an in-house lobbyist referred to in section 5 or 6, to communicate with a public office holder in an attempt to influence,
  - (i) the development of any legislative proposal by the Government of Ontario or by a member of the Legislative Assembly,
  - (ii) the introduction of any bill or resolution in the Legislative Assembly or the passage, defeat or amendment of any bill or resolution that is before the Legislative Assembly,
  - (iii) the making or amendment of any regulation as defined in Part III (Regulations) of the *Legislation Act, 2006*,
  - (iv) the development or amendment of any policy or program of the Government of Ontario or the termination of any program of the Government of Ontario,
  - (v) a decision by the Executive Council to transfer from the Crown for consideration all or part of, or any interest in or asset of, any business, enterprise or institution that provides goods or services to the Crown or to the public,
  - (vi) a decision by the Executive Council, a committee of the Executive Council or a minister of the Crown to have the private sector instead of the Crown provide goods or services to the Crown,
  - (vii) the awarding of any grant, contribution or other financial benefit by or on behalf of the Crown.

ONN staff, in consultation with advisors, have read the legislation and the material on the Office of the Integrity Commissioner of Ontario (OICO) website, including the

Interpretation Bulletins provided as guidance by the OICO for specific audiences. We do not believe that this legislation will achieve its intended purpose, that is, “to ensure government activities are conducted openly, fairly and transparently while protecting the government from undue influence,” as expressed by the Chair of the Management Board when the Act was first introduced. Indeed, with the lowering of the registration threshold to 50 hours a year of lobbying activity across an organization, we think the effectiveness of the registry will be further diluted, not enhanced.

We understand that the intent of the *Lobbyists Registration Act* is transparency - to enable the public to know who is trying to influence government. Typically, lobbyist registries are created to address concerns about groups (often private interests) that spend significant funds gaining access to policy makers to enhance their corporate opportunities and profits. In the words of one MPP during debate on the introduction of the LRA in 1998, the concern is about the “highly paid professional who has as his or her resources literally hundreds of thousands if not millions of dollars to wine and dine and influence the decision-makers of government.”<sup>1</sup> The goal of shining a light on such activities is one that the nonprofit sector supports in principle. The question is whether the public policy activities of nonprofits should be included in the same category.

In the past, nonprofits and charities in Ontario registered only if they were embarking on a major initiative. Reviewing Ontario’s existing registry, we estimate that approximately 100 nonprofit organizations registered over the past 17 years since the registry was created, and they did so primarily because they had hired external government relations consultants. They tended to register only for the duration of special initiatives, such as campaigns to end child poverty, to call for regulations to reduce the prevalence of drinking and driving, and to create smoke-free workplaces.

Now, by so significantly lowering the registration threshold, the lobbyist registry will capture those thousands of charities and nonprofit organizations that work every day in their communities and interact with government in the course of their work. Many of these organizations will be permanently listed on the registry, as elements of their day-to-day relationships with government delivering services to communities could fall under the broad definition of lobbying.

**(1) The definition of “lobbying” is not adequately clear in the case of nonprofits that communicate on a regular basis with government for service delivery purposes**

Our outstanding questions begin with the definition of lobbying under the Act as distinct from other activities that involve the ongoing relationship between the Ontario Government and nonprofit organizations. The Ontario nonprofit sector does not lobby for personal or financial gain but advocates and engages government for the public

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<sup>1</sup> Mike Colle, MPP (Lib, Oakwood). Bill 69 Second Reading. Hansard, Oct. 19, 1998. [http://ontla.on.ca/web/house-proceedings/house\\_detail.do?Date=1998-10-19&Parl=36&Sess=2&locale=en#P401\\_104717](http://ontla.on.ca/web/house-proceedings/house_detail.do?Date=1998-10-19&Parl=36&Sess=2&locale=en#P401_104717)

benefit, typically resulting in improved services and supports. Nonprofits and charities give voice to the needs and concerns of communities as they partner with government to deliver essential services and supports. When does this activity of working with government become lobbying under the Act? The sector needs clarification from government to understand where and when to draw this line.

Registered charities have been through a parallel process at the federal level in trying to determine what counts as “political activity” under the *Income Tax Act* (ITA). The sector has had tremendous difficulty in complying with the Canada Revenue Agency’s ITA regulations because the definition of political activity was unclear. This lack of clarity has proved problematic for both the government and charities in doing their jobs. Good laws and regulations are those that can be understood by those expected to comply and that can be consistently enforced by those charged with ensuring compliance. Without comprehensible laws and regulations, compliance is impossible.

The definition of lobbying under Ontario’s *Lobbyists Registration Act* suffers from the same lack of clarity regarding the political activities of charities federally. How do those organizations working with government differentiate between day-to-day contract and program design, budget negotiations, and lobbying? Where is the line between these activities? The guidelines for the *Lobbyists Registration Act* must provide greater clarity for nonprofit organizations that deal with government on an ongoing basis.

There are unintended consequences of requiring nonprofits and charities to register as lobbyists including a renewed “advocacy chill.” Feedback from the sector is that lobbyist registration will definitely affect donor relations and make them ineligible for some funding. Moreover, charities worry it could ultimately affect an organization’s charitable status if it is also a registered lobbyist. While the *Lobbyists Registration Act* was created in part to recognize the “legitimacy of lobbying”<sup>2</sup> in the public policy process, the full impact for nonprofits and charities of being labelled a lobbyist is unknown. To avoid this label, some nonprofits and charities may therefore shy away from engagement in the public policy process. Is this good for the health of our democracy? [We do not believe so.](#)

## **(2) The new enforcement provisions have the effect of requiring all nonprofits to monitor their hours of lobbying even if they do not meet the threshold - and this adds to their administrative burden**

The audit and enforcement responsibilities of the Integrity Commissioner and the significant financial penalties and lobby prohibitions for noncompliance have the effect of requiring all nonprofits to monitor their hours of lobbying regardless of whether they meet the threshold so they can *demonstrate* that they are not above the threshold. In other words, this legislation requires all nonprofits to “prove a negative” in that the onus falls on them, in the event of a third-party complaint, to demonstrate that their lobbying

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<sup>2</sup> Ed Doyle (PC, Wentworth East). Bill 69 Second Reading. Hansard, Oct. 19, 1998. [http://ontla.on.ca/web/house-proceedings/house\\_detail.do?Date=1998-10-19&Parl=36&Sess=2&locale=en#P401\\_104717](http://ontla.on.ca/web/house-proceedings/house_detail.do?Date=1998-10-19&Parl=36&Sess=2&locale=en#P401_104717)

activities fell below the 50-hour annual threshold across an organization. Does this mean tracking all staff hours so that an organization can show that lobbying hours were not undercounted? What kind of tracking system would be required to capture and verify this information?

This is a significant additional administrative burden on nonprofit organizations, particularly since there is such confusion regarding lobbying activities. Furthermore, these requirements do nothing to advance the policy objective of the legislation, i.e., to protect the government from undue influence. It is worth asking why nonprofits under the 50-hour threshold should have to track their lobbying activities and defend their accounting upon demand, while well-funded private sector lobbyists merely need to register without tracking or publicly reporting the volume of their lobbying activities. A lobbyist simply needs to appear on the registry and is then at liberty to meet with government staff and the minister's office every day. And yet the public will have no sense of exactly how much access they have in relation to a small nonprofit that simply registered to avoid tracking their hours. How can the public know when the lobbyist has reached the threshold of "undue" influence when the registry does not indicate the volume of interactions over this threshold?

We have also heard the argument that nonprofits can avoid the burden of tracking their lobbying hours by registering if they undertake *any* lobbying activities. There is, however, an unintended consequence to creating an incentive for more organizations to register than are technically required by law: the more significant lobbyist registrations - those that relate to the awarding of private contracts, for instance - will be buried in the registry by hundreds, if not thousands, of dutiful but insignificant filings of nonprofits that merely want to report a meeting with government on a program issue but do not want the burden of having to track their lobbying hours.

How will making thousands of organizations register for activity they undertake for the benefit of their communities serve to make government more responsive to Ontarians? It will certainly add yet another administrative requirement to these community organizations - with whom the Ontario Government is working [on other fronts](#) to try to *reduce* the administrative burden – without a clear benefit to the public interest.

### **(3) The Ontario Government did not consult with the nonprofit sector**

Despite being affected by these legislative changes, the nonprofit sector was not consulted on them during their development. The *Lobbyists Registration Act* changes were brought in as part of omnibus Bill 8. There was no debate in the Legislature on how these changes would affect our sector and there was no attempt to consult or even educate the nonprofit sector on the impact of the bill during the legislative development process. In fact, there were so many statutes changed by Bill 8 that the *Lobbyists*

*Registration Act* was not even mentioned when Bill 8 was first introduced.<sup>3</sup> Such a process does not seem consistent with the goal of transparency.

It is worth pointing out that the elements of the amended *Lobbyists Registration Act* that apply to nonprofits appear to solve a problem that does not exist. Public concern over lobbying activity is overwhelmingly focused on the well-financed lobbyists paid by the private sector to influence policy or secure contracts that benefit corporate profits. Other than the Integrity Commissioner, no representatives appeared before the Standing Committee on General Government during Bill 8 hearings to say that nonprofits should be subject to more stringent lobbying rules. The only reference to nonprofits in the legislative debates on these changes, aside from the basic outline from the Government on how the LRA would be amended, took place when the Integrity Commissioner herself addressed the Standing Committee on General Government asking that nonprofits be subject to the same rules as for-profit corporations. All other references to lobbying activities during the debates focused on the need for increased transparency when the private sector stood to profit from their lobbying activities.

There are those who argue that nonprofits have their own interests aside from the public interest, and that they should therefore be treated like for-profit corporations when it comes to their attempts to influence government. While this may be true of industry associations and other member-serving organizations (which use the not-for-profit corporate form), the vast majority of nonprofit organizations have public-serving missions. It is misleading to characterize their policy advocacy work as equivalent to for-profit corporations attempting to influence legislation or the awarding of contracts. The federal government recently decided to end the “political activities” audits that it uses to investigate charities for engaging in policy advocacy. We encourage the Government of Ontario to similarly value the contribution of the nonprofit sector to public service and policy debate. The *Lobbyists Registration Act* must be updated to meet the needs of nonprofits and communities while actually increasing transparency

## **In sum**

The changes to the *Lobbyist Registration Act* will have a significant impact on nonprofits and could have negative consequences for democratic engagement. Because the scope of “lobbying” is unclear with respect to nonprofits’ ongoing service delivery work with government, and because the Act implicitly imposes a reverse-onus tracking requirement and explicitly allows third-party complaints, there is real potential for harm to the sector, its work, and the public interest. Moreover, the fact that many nonprofits may register as a precautionary measure means that the registry could be flooded with insignificant filings that will obscure the filings of those that regularly and actively lobby for significant private benefit. The changes to the Act, therefore, have not struck the

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<sup>3</sup> Deb Matthews, MPP (Lib., London-North-Centre), President of the Treasury Board. Bill 8 First Reading. Hansard, July 8, 2014. [http://www.ontla.on.ca/web/house-proceedings/house\\_detail.do?locale=en&Date=2014-07-08&detailPage=%2Fhouse-proceedings%2Ftranscripts%2Ffiles\\_html%2F08-JUL-2014\\_L004.htm&Parl=41&Sess=1#para541](http://www.ontla.on.ca/web/house-proceedings/house_detail.do?locale=en&Date=2014-07-08&detailPage=%2Fhouse-proceedings%2Ftranscripts%2Ffiles_html%2F08-JUL-2014_L004.htm&Parl=41&Sess=1#para541)



right balance. The net result will undermine, rather than strengthen, the health of our democracy.

- October 7, 2016

*The Ontario Nonprofit Network's (ONN) vision is to support thriving communities and a dynamic province through a strong and resilient nonprofit sector. We are the provincial network for the 55,000 nonprofit organizations across the province of Ontario. ONN brings the diverse voices of the sector to government, funders and the business sector to create and influence systemic change. ONN activates its volunteer base and the network to develop and analyze policy, and work on strategic issues through its working groups, engagement of nonprofits and charities and government.*