



Complying with Lobbying Laws

What the OHBA Needs to Know About
Municipal, Provincial and Federal Laws

Tuesday, December 12, 2023
by Guy W. Giorno & Kyle M. Morrow



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Overview

- Where is Lobbying Regulated?
- What are the Types/Categories of Lobbyists?
- What is Lobbying?
 - What is Exempt? What is not Lobbying?
- What are the Legal, Financial and Reputational Risks?
- What is the Process for Registering to Lobbying?
 - How, When and Where do I file a lobbyist registration?
- What are the Ethical Restrictions?
 - Can I lobby family and friends? Can I offer public office holder a gift or benefit?



Where is Lobbying Regulated?



Regulated Jurisdictions



- Municipal
 - Only in: Barrie,* Brampton, Burlington, Collingwood, Hamilton, Niagara Region, Ottawa, Peel Region, Pickering, Toronto and Vaughan
- Provincial
- Federal

*Will come into force on January 1, 2024



Jurisdictions Considering Lobbyist Registration

- Approval in principle in Jan. 2023; staff reporting back with final proposed text of by-law in Jan. 2024:
 - Blue Mountains
- Staff directed to examine and report back to Council:
 - Caledon (no deadline for report)
 - Guelph (report requested Q1 2024)
 - Markham (no report yet; had been expected Q2 2023)



What are the Types/ Categories of Lobbyists?



Types/Categories of Lobbyists



- When am I lobbyist for the OHBA?
- When am I lobbyist for my employer/member company?
- When am I lobbyist for both?

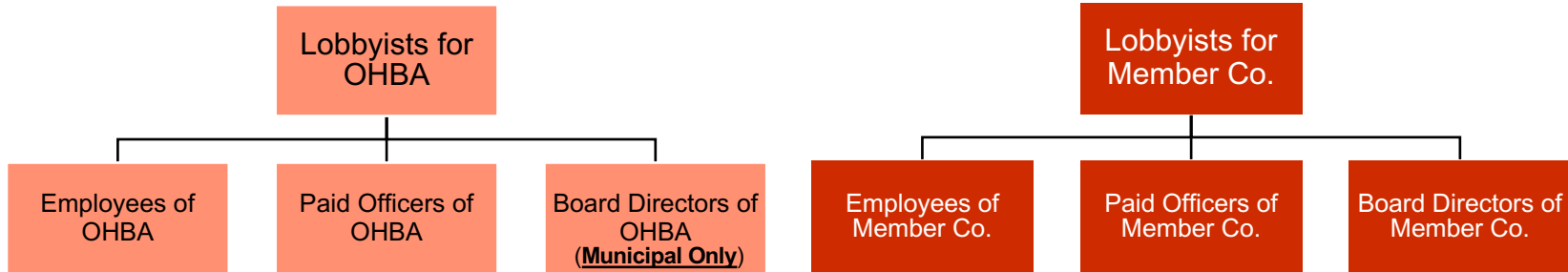


Types/Categories of Lobbyists



- In-House Lobbyists
 - Lobby, for compensation, on behalf of an employer
- Consultant Lobbyists
 - Lobby, for compensation, on behalf of a non-employer (e.g., a client)
- Voluntary/Unpaid Lobbyists (Municipal Only)
 - Lobby, without being compensated, on behalf of a commercial entity.

Types/Categories of Lobbyists





Who Am I Lobbying on Behalf of? (OHBA, Member Company or Both?)

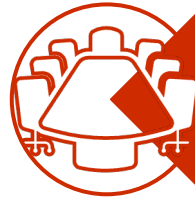


- **Example:**

- John is a volunteer board director for the OHBA. John is also a paid employee/officer of John M. Smith Housing Co.
- John meets with a City Councillor in the City of Toronto. He discusses two topics: (i) the OHBA's campaign to increase housing supply and (ii) John M. Smith Housing Co.'s development approval application for a specific project.
- John should register to lobby on behalf of OHBA and John M. Smith Housing Co. with the Office of the Lobbyist Registrar for Toronto.



What is Lobbying?



Communication



Public Office Holder



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Communication



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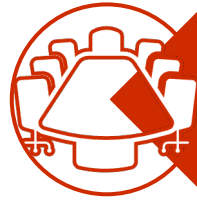
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Communication



- Lobbying may occur in any setting
 - Formal or informal; domestic or abroad
- Lobbying may occur through any form of communication
 - Emails, letters, text messages, phone calls, webinars, formal meetings, etc.



Public Office Holder



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Public Office Holders



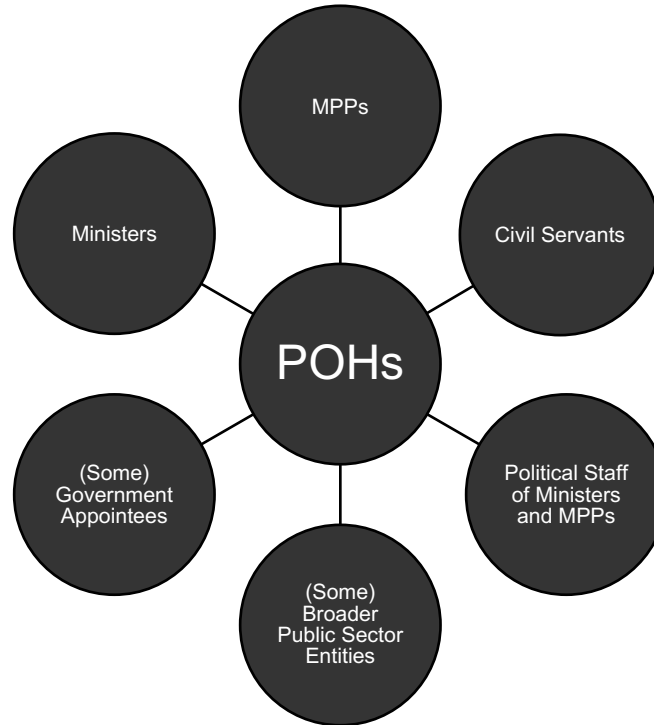
- “Public office holder” is defined broadly
- Public office holders include anyone who works for the government, regardless of rank or seniority.



Provincial Public Office Holders



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Provincial Public Office Holders



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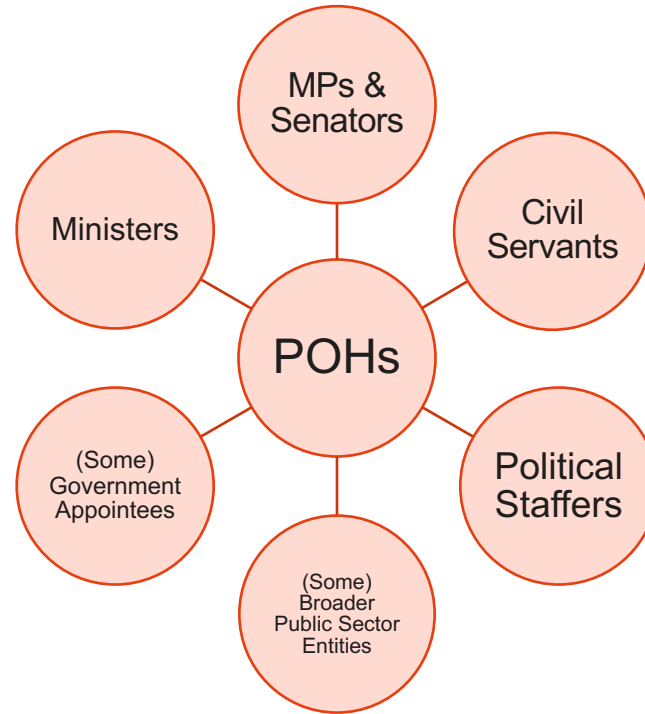
Some Examples of Public Sector Entities that Employ “Public Office Holders” under the Ontario *Lobbyists Registration Act*

College of Trades Appointments Council and Classification Roster	Greenbelt Council	Ontario Infrastructure and Lands Corporation (Infrastructure Ontario)
Alcohol and Gaming Commission of Ontario	Human Rights Tribunal of Ontario	Ontario Land Tribunal
Assessment Review Board	Independent Electricity System Operator	Ontario Mortgage and Housing Corporation
Building Code Commission	Invest Ontario	Provincial Land and Development Facilitator
Building Materials Evaluation Commission	Landlord and Tenant Board	Workplace Safety and Insurance Board

Note: Tarion employees are not public office holders

Full list: <https://www.ontario.ca/laws/regulation/100146>

Federal Public Office Holders



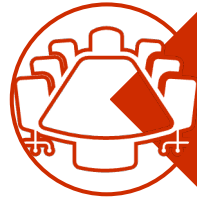
Federal Public Office Holders



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Some Examples of Broader Public Sector Entities that Employ “Public Office Holders” under the *Canadian Lobbying Act*

Business Development Bank of Canada (“BDC”)	Canada Revenue Agency (“CRA”)	Office of the Federal Housing Advocate
Canada Development Investment Corporation	Federal Economic Development Agency for Northern Ontario	Parks Canada
Canada Infrastructure Bank	Federal Economic Development Agency for Southern Ontario	Standards Council of Canada
Canada Mortgage and Housing Corporation (“CMHC”)	National Capital Commission	Statistics Canada



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Government Decisions



- Bills and Resolutions
- Legislation and Regulations
- Policies and Programs
- Directives and Guidelines
- Grants, Contributions and Financial Benefits
- Government Contracts
- Privatizing and Outsourcing Decisions



Municipal* Government Decisions



- Government decisions also include approvals, permits and licences at the municipal level.
 - “The approval, approval with conditions, or refusal of an application for a service, grant, planning approval, permit or other licence or permission by the City.” (Hamilton Lobbying By-Law)
 - “Approving, approving with conditions, or denying an application for a service, grant, planning approval, permit or other licence or permission.” (Toronto Lobbying By-Law)
 - ...

*Barrie, Brampton, Burlington, Collingwood, Hamilton, Niagara Region, Ottawa, Peel Region, Pickering, Toronto and Vaughan.



Municipal* Government Decisions



- Examples of approvals, permits and licences:
 - Development Approval Application
 - Official Plan Amendment Application
 - Zoning By-law Amendment Application
 - Plan of Subdivision Application
 - Plan of Condominium Application
 - Site Plan Control Approval Application
 - Part Lot Control Exemption Application
 - Committee of Adjustment Application
 - Rental Housing Demolition and Conversion: Application
 - Telecommunications Towers Application

*Barrie, Brampton, Burlington, Collingwood, Hamilton, Niagara Region, Ottawa, Peel Region, Pickering, Toronto and Vaughan.

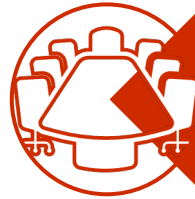


Municipal* Government Decisions



- Government decisions also include approvals, permits and licences at the municipal level.
 - There are some exceptions, which we will talk about later in this presentation in the exemption section.

*Barrie, Brampton, Burlington, Collingwood, Hamilton, Niagara Region, Ottawa, Peel Region, Pickering, Toronto and Vaughan.



Communication



Public Office Holder



**Government
Decision**

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What is Lobbying? (Cont'd)



Grass-roots Communication

(a form of indirect lobbying)



- Grass-roots communication is regulated municipally, provincially and federally.



Grass-roots Communication

(a form of indirect lobbying)



- “... appeals to members of the public through the mass media or by direct communication that seek to persuade members of the public to communicate directly with a public office holder...”



Grass-roots Communication

(a form of indirect lobbying)

- Under federal law, any combination of strategic activities and operational activities requires registration:
 - **Strategic Activities:** (i) approving the campaign, (ii) providing advice about the campaign, (iii) undertaking research/ analysis for the campaign, (iv) drafting messages for the campaign and (v) preparing content/ materials for the campaign
 - **Operational Activities:** (i) disseminating content/ materials, (ii) interacting with members of the public, and (iii) participating in the day-to-day management of the campaign



Arranging Meetings



- Arranging a meeting for a colleague may also be lobbying, even if you do not actually attend the meeting. The specific rules vary from jurisdiction-to-jurisdiction.



What is Not
Lobbying?



What is Not Lobbying?

- Communications that were limited to a request for information, where there was no attempt to influence a government decision.
- Communications made before a legislative or parliamentary committee, such as the Legislative Assembly's Standing Committee on Finance and Economic Affairs.



What is Not Lobbying?

- Communications about the “enforcement, interpretation or application” of a law or regulation to the OHBA and/or a member company – such as communications made to the Ontario Land Tribunal
- Communications that are part of an investigation or enforcement proceeding, such as a Ministry of Labour investigation or an Auditor General request to provide information related to an AG audit



What is Not Lobbying?

- In some instances, responding to a request from the government for advice or comment is not lobbying. That said, it depends on the jurisdiction and the type of government request.

Responding to Government Requests (when is it not lobbying?)



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Responding to <u>Written</u> Requests from Government		Responding to <u>Oral</u> Requests from Government	
Never Lobbying	Could be Lobbying	Never Lobbying	Could be Lobbying
Provincial (Ontario)			Federal (Canada)
Municipal† (Ottawa, Toronto, etc.)	Federal (Canada)	--	Provincial (Ontario)
			Municipal (Ottawa, Toronto, etc.)

† Response must be made to same public office holder who made request



What is Not Lobbying?

(municipal* approvals, permits and licences)



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- Recall, in general, the term government decision includes approvals, permits and licences at the municipal* level.
- That said, when are communications about approvals, permits and licences not lobbying?

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What is Not Lobbying? (municipal* approvals, permits and licences)



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- Rules vary from jurisdiction-to-jurisdiction and regulator-to-regulator.
 - City of Toronto exempts:
 - **Communication restricted to providing general information or to inquire about the application review process [s. 140-5F(1)]**
 - **Communication with employees assigned to review the application [s. 140-5F(2)]**
 - **Communication at Public Meetings and Consultations [s. 140-5B(2)]**
 - **Technical information [s. 140-12]**



What are the
Enforcement Risks?



Legal and Reputational Risks



- Types of Proceedings
 - Administrative proceedings
 - Court-based proceedings
 - Formally known as “prosecutions”
 - Other proceedings
 - Committee investigations, public inquiries, AG investigations, etc.



Legal and Reputational Risks



- Types of Penalties*:

- Incarceration (up to two years)
- Monetary penalties (up to \$200,000)
- Lobbying bans (up to two years)
- Procurement debarment (up to 10 years)
- Revocation of government funding
- Damage to reputation
- Legal costs

*Penalties vary from jurisdiction-to-jurisdiction



What is “Due
Diligence”?



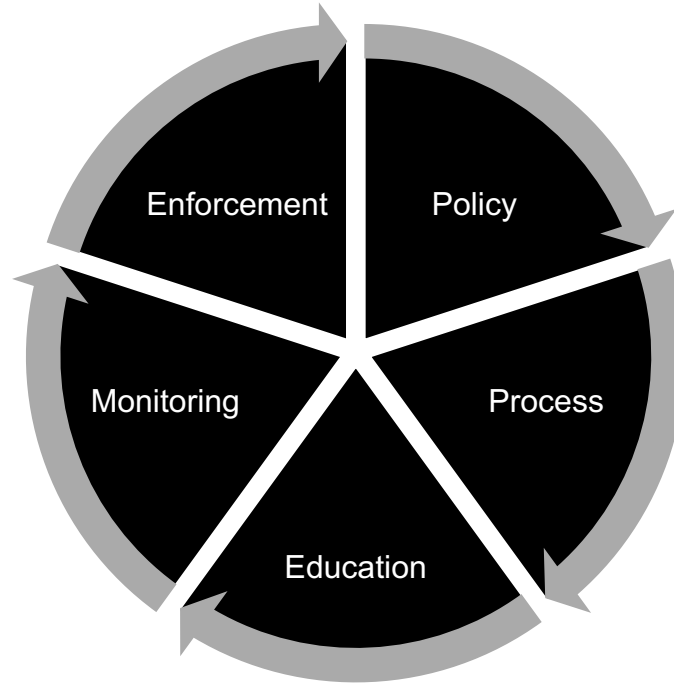
Due Diligence



- Due diligence is defence to prosecution for strict liability offences
- Due diligence means taking all reasonable steps to comply with the law
- In administrative enforcement, due diligence can, in some cases, mitigate penalty

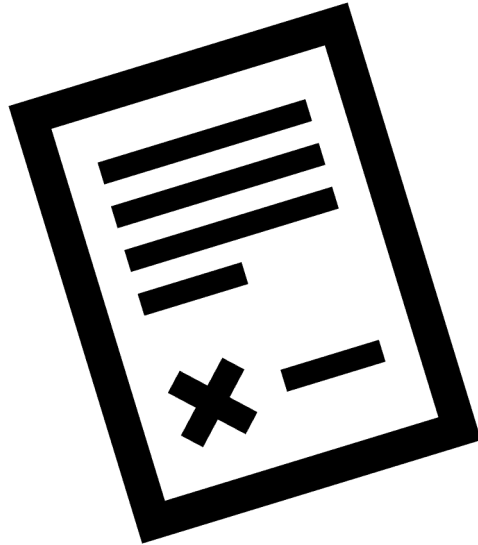


Due Diligence





What is the Process for Registering to Lobbying?



Registration Contents



Registration Content: General*



- Information on Lobbying Activities
 - Subject matters
 - Public office holders
 - Government institutions
- Information on Corporate Structure
 - Parent and subsidiary corporations
 - Controlling and directing interests

*Registration content varies from jurisdiction to jurisdiction.



Registration Content: General*



- Information on Funding
 - From foreign or domestic governments
 - From private sector entities (to support lobbying)
- Information on Lobbyists
 - Former public office holders
- Legal Attestations

*Registration content varies from jurisdiction to jurisdiction.



Filing and Updating Registrations



Registration Thresholds

(When does a Member Need to Register?)

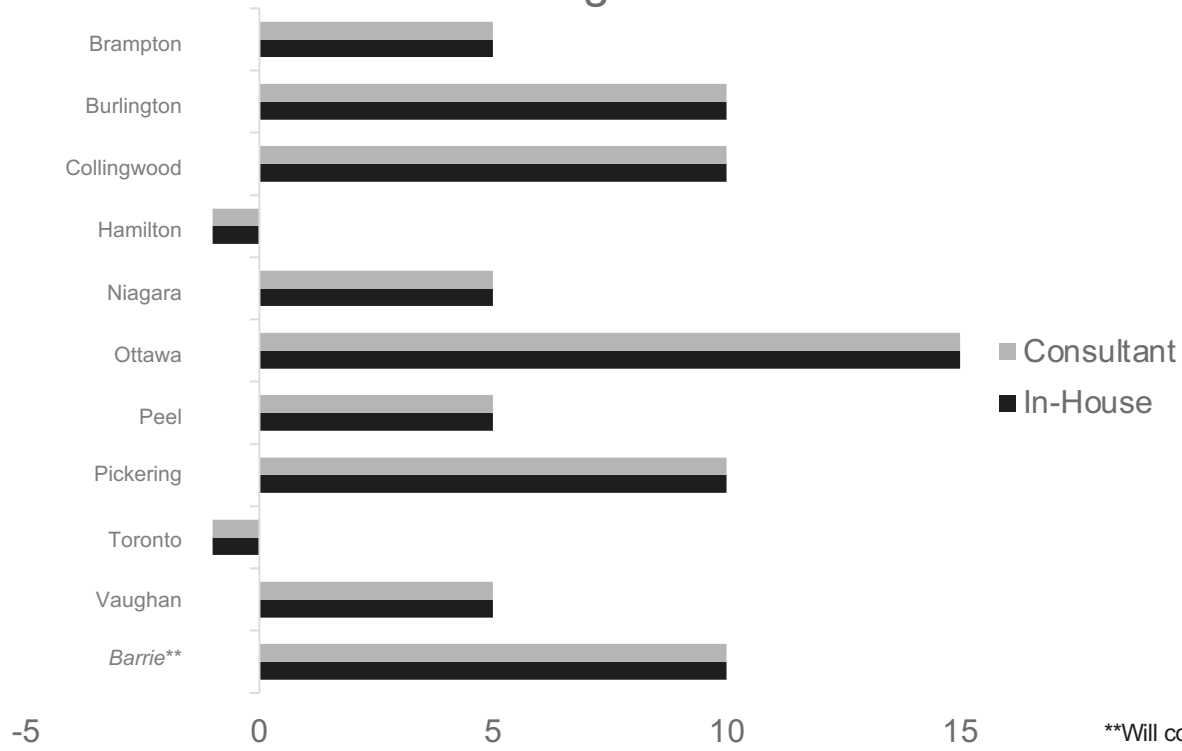


- All lobbying by employees, officers and directors of a member needs to be registered at the municipal level in Barrie*, Brampton, Burlington, Collingwood, Hamilton, Niagara Region, Ottawa, Peel Region, Pickering, Toronto and Vaughan.
 - There is no registration threshold in these jurisdictions.

*Will come into force on January 1, 2024.



Deadlines to File Initial Registrations



**Will come into force on January 1, 2024.



Registration Thresholds

(When does a Member Company Need to Register?)



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- Lobbying by employees, officers and directors of member companies at the provincial and federal level only needs to be registered if it surpasses the relevant threshold.

*Will come into force on January 1, 2024.



In-House Registration Thresholds

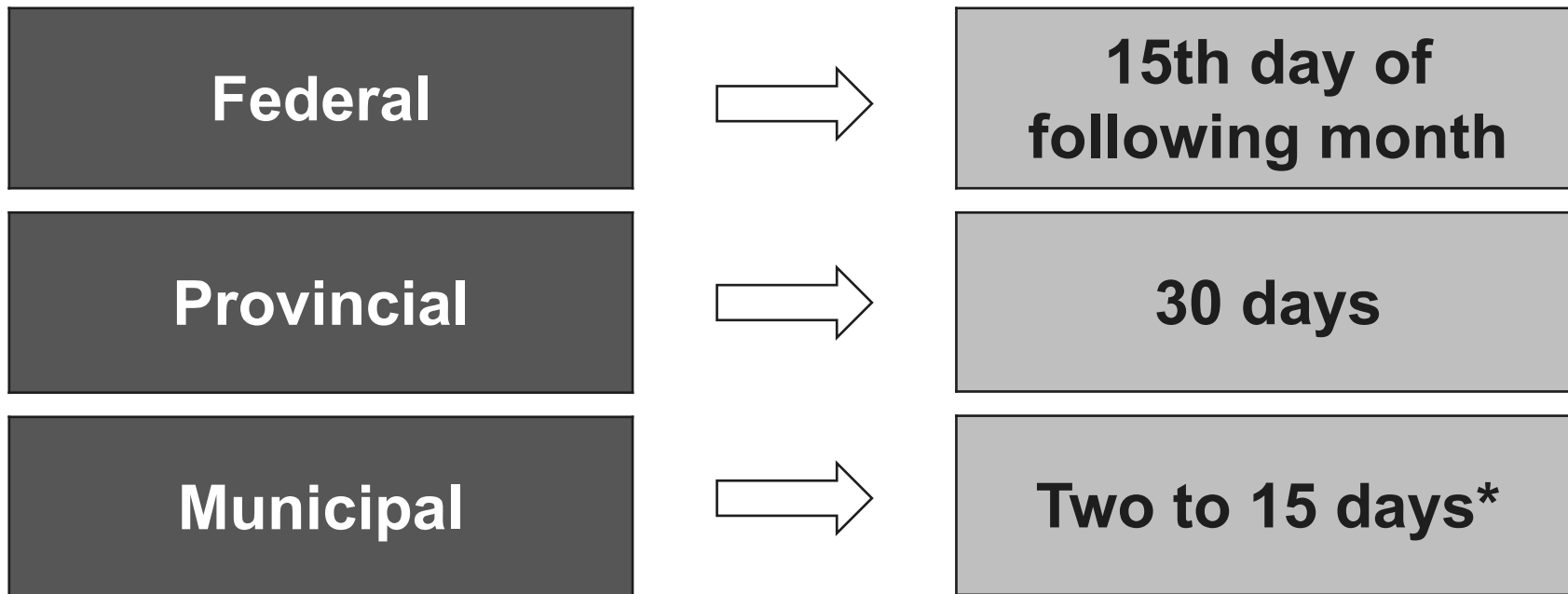
(When does a Member Company Need to Register?)



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Jurisdiction	Threshold	Period of Calculation
Federal	20% employee equivalent	one month
Ontario	50 hours	calendar year

Deadlines for Subsequent Updates



*Varies from jurisdiction to jurisdiction.



Federal Monthly Returns

- Each federal monthly return must include:
 - Date of communication
 - Name of “designated public office holder”
 - Subject of communication



Federal Monthly Returns



- Designated Public Office Holders (DPOHs):
 - Members of Parliament, Senators, Parliamentary Secretaries, Ministers
 - Political staffs of MPs, Senators, Parliamentary Secretaries, Ministers
 - Deputy ministers, associate deputy ministers and assistant deputy ministers (and equivalent positions)
 - Senior ranks within the Canadian Armed Forces
 - Senior executives of some federal agencies, boards, commissions and crown corporations



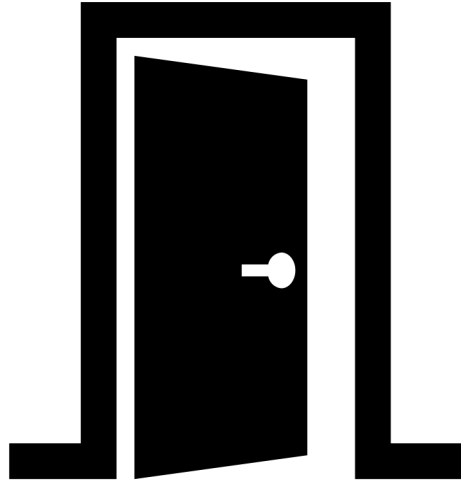
What are the Ethical Restrictions?



Ethical Restrictions



- Specific ethical restrictions vary from jurisdiction-to-jurisdiction
- Ethical restrictions set-out in a variety of legal instruments, including laws, regulations and codes of conduct



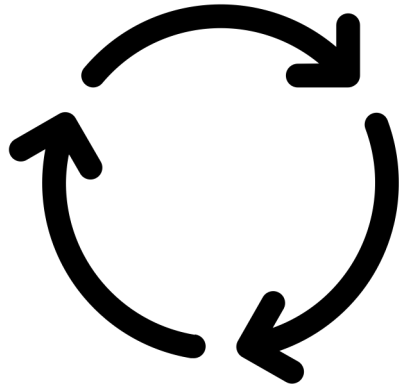
Former Public Office Holders



Former Public Office Holders



- “Cooling-off” provisions
- Prohibitions on disclosing confidential information
- Public disclosure of previous employment in lobbyist registration
- Other post-employment restrictions



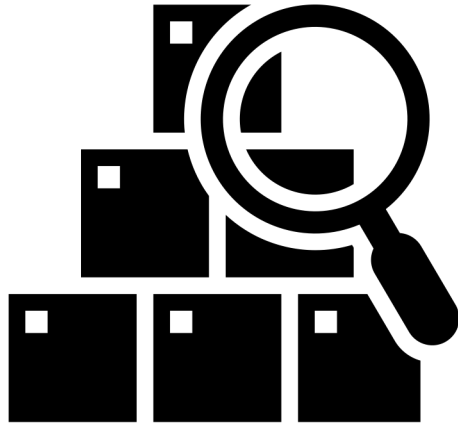
Simultaneously Advising and Lobbying



Simultaneously Advising and Lobbying



- Some jurisdictions restrict individuals/organizations from **simultaneously** lobbying the government and being paid to advise the government

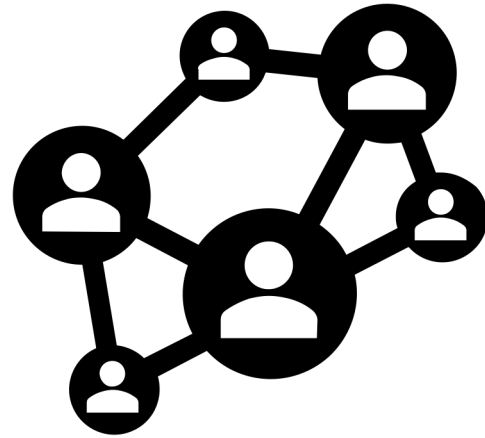


Misleading Information



Misleading Information

- Many jurisdictions expressly prohibit lobbyists from providing misleading information.
 - See, for example, Rule 2.1 of the *Canadian Lobbyists' Code of Conduct* which states that lobbyists cannot provide misleading information and should “take reasonable steps to not mislead” public office holders and the public.



Close Relationships



Close Relationships



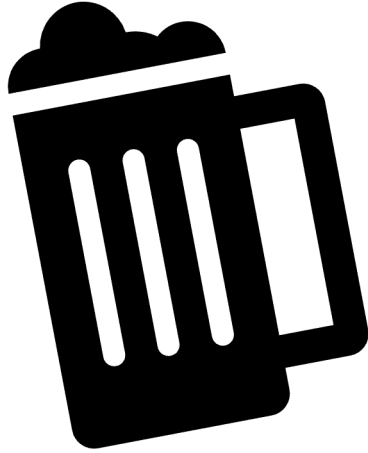
- Many jurisdictions directly or indirectly prohibit lobbyists from lobbying their family, friends or close relationships who work for the government.
 - See, for example, Rule 4.1 of the *Canadian Lobbyists' Code of Conduct*



Close Relationships



- At the federal level, a “close relationship” is defined as a “close bond... that extends beyond simply being acquainted”
 - Examples: close family relationships, close personal relationships, close working relationships, close business relationships, close financial relationships



Gifts & Hospitality

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Gifts and Hospitality

- Labyrinth of legal rules apply to public sector gifts, hospitality and entertainment
 - Rules that apply to public office holders who accept gifts—and rules that apply to lobbyists who offer gifts
- Different sources: lobbying laws, lobbyist codes of conduct, conflict of interest laws, criminal law, etc.



Gifts and Hospitality



- Strongly recommended that businesses and organizations consult legal counsel before offering gifts, hospitality, or entertainment to anyone in the public sector



Gifts & Hospitality



- Many jurisdictions directly or indirectly prohibit lobbyists from giving (or offering to give) gifts, hospitality and entertainment to public office holders they will/are lobbying.
 - Some jurisdictions have exceptions. In most instances, an exempt gift must meet a quantitative test **and** a qualitative test.



Political Work



Political Work



- Many jurisdictions directly or indirectly prohibit lobbyists from lobbying elected officials, if the lobbyist had previously performed political work for the elected official.
 - See Rule 4.2 of the *Canadian Lobbyists' Code of Conduct* and section 3.4(2) of the *Ontario Lobbyists Registration Act*.



Questions & Answers



Need Assistance?

- If your company needs assistance preparing/submitting its regulatory filings and/or if your company has specific questions about its legal obligations, Fasken would be happy to assist you. Please feel free to reach out to one of the speakers for more information.

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