emocracy Watch
émocratie en surveillance

P.O. Box 821, Stn. B, Ottawa K1P 5P9
Tel: 613-241-5179 Fax: 613-241-4758
Email: info@democracywatch.ca Internet: http://democracywatch.ca

Stopping Secret, Unethical Foreign Interference Through "Proxy" Lobbyists

How Unregulated and Weakly Regulated Lobbying Activities Facilitate Secret, Unethical and Undemocratic Foreign Interference in Politics Across Canada, and How to Prevent These Activities

Policy Paper Submitted to the Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institutions

(October 2024)

Table of Contents

1 Summary of How Unregulated and Weakly Regulated Lobbying Activities Facilitate Secret, Unethical and Undemocratic Foreign Interference

There are significant loopholes and flaws in several federal Canadian laws (and provincial and territorial laws) that have made it legal to date to secretly, unethically and undemocratically interfere in Canadian politics, especially given that enforcement of many of the laws is ineffective. The loopholes are in the elections, political finance, lobbying, ethics, anti-money laundering and border security laws, including loopholes that allow for anonymous, secret online disinformation and misinformation campaigns.

One area in which there are significant loopholes is that many lobbying activities are completely unregulated, and all existing regulations of lobbying activities, and related political ethics rules, are weak and allow for secret, unethical and undemocratic influence in elections and political policy-making processes across Canada.[1] This policy paper sets out details concerning the lack of regulations and loopholes in federal lobbying regulations that the Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institutions (the "Inquiry") should address during the Policy Phase because they have been largely ignored during the Factual Phases, and this paper also sets out proposals for key changes to close these loopholes that the Inquiry should strongly recommend in its final report in December 2024, including calling on all federal parties to work together to make the changes as soon as possible, and definitely before the next federal election.

Because many lobbying activities are unregulated, or existing regulations for lobbying and related political ethics standards have loopholes, no government agency or official has had any power to track, monitor, investigate, prosecute or penalize many unethical and undemocratic foreign interference activities that are allowed to be done in secret. As a result it is, in fact, impossible to determine the extent and effects of foreign interference and influence activities in the past and now – before and during and between the 2019 and 2021 federal elections. This will remain impossible as long as these loopholes and flaws in the laws exist and enforcement remains ineffective.

While this policy paper addresses only the lack of rules and weak rules concerning unregulated and weakly regulated lobbying activities, and related weak

[1] For details see the PhD thesis of Democracy Watch's Co-founder Duff Conacher, which details in Chapters 4 the loopholes in Canada's political ethics and lobbying rules that allow for secret, undemocratic and unethical influence in federal politics, including by foreign governments and entities and their proxies, and which sets out in Chapter 7 workable, best-practice recommendations for closing these loopholes. Click here to see the thesis on the University of Ottawa's uO Research site.

political ethics rules, it is important to note that almost all the enforcement entities for all the key laws that protect Canada's democracy from foreign interference lack independence, and are ineffective, underfunded, slow to act, secretive and largely unaccountable. Many are also subject to political interference by the ruling party Cabinet which chooses them all through secretive, partisan processes, and most serve at the Cabinet's pleasure.

The enactment of Bill C-70 has only closed some of the loopholes in terms of regulating lobbying activities, and none of the loopholes in political ethics rules, and it establishes a very weak, ruling-party Cabinet controlled enforcement system, with no requirement that enforcement will be effective, well-resourced, transparent, timely or accountable. Democracy Watch submitted to the Inquiry in mid-September a document entitled "Response to the *Preparatory Document on the Policy Aspect of the Public Inquiry into Foreign Interference*" ("Democracy Watch Response") that sets out the gaps left by Bill C-70. Click here to see Democracy Watch's full submission to the House of Commons on Bill C-70, and click here to see a summary of the submission.[2] And to see analyses of Bill C-70 from three law firms that make similar points about the loopholes in the Bill and weak enforcement system, click here and click here and click here.

It would be very naïve to believe that all, or even many, foreign agents will comply with the provisions of Bill C-70 that require registering and disclosing their foreign interference arrangement and activities, or that they will comply with the provisions prohibiting such activities. What is most likely is that, in response to Bill C-70, foreign governments, entities and individuals will use networks of foreign entities and individuals as intermediaries who will have arrangements with networks of individual Canadians and permanent residents, and the organizations they are involved in, to act as "proxy" foreign agents here. These networks will obscure and make it very difficult to prove that anyone or any organizations is directed by, or has an arrangement with, a foreign government, entity or individual.

The extensive evidence of how the loopholes and weak enforcement systems in Canada's key democracy laws have been exploited by Canadians and Canadian businesses and organizations to secretly, undemocratically and unethically interfere in Canadian politics over the past few decades makes it clear not only that foreign governments and entities have also likely been exploiting these loopholes and weak systems through proxies and intermediaries, but also makes it clear that the only way to stop foreign interference in Canadian political processes, including through disinformation, is to close these loopholes and correct these flaws to prevent it.

[2] NOTE: Because Bill C-70 was rushed through Parliament, little time was provided to analyze it. As a result, please disregard point #B1 in the submission on Bill C-70 as it was made due to a misreading of one of the Bill's provisions.

Foreign interference activities will only be effectively prevented if changes are made to all of Canada's key democracy laws to prohibit and penalize all secretive, undemocratic and unethical ways of interfering in and influencing political processes across Canada, and if changes are made to ensure the enforcement of all these laws is fully independent, effective, well-resourced, transparent, timely and accountable.

As in so many areas of public policy, an ounce of prevention in the area of foreign interference is worth a pound of cure. If loopholes are left open or flaws left uncorrected in any law that foreign governments, entities and individuals can exploit to have secret, undemocratic or unethical influence over contestants, candidates, riding associations, party leaders, politicians, and public officials, those loopholes and flaws will likely be exploited. And if enforcement is tainted by political influence and is ineffective, secretive, underfunded, delayed and unaccountable, they will likely be exploited more.

Even if all the loopholes are closed and all the flaws corrected, if the enforcement system is ineffective then likely violators will be let off the hook. A weak enforcement agency that lacks funding and resources will likely only catch a foreign agent violating a law years after they have influenced a political process, and then the agency will likely keep the violation secret, and likely no penalty will be imposed.

There is extensive evidence that weak, secretive enforcement results in violators being let off the hook from the weak, secretive enforcement records over the past two decades by the federal Conflict of Interest and Ethics Commissioner, Commissioner of Lobbying, RCMP and Commissioner of Canada Elections and Elections Canada, as detailed in sections 2, 3, 7 and 11 of Democracy Watch's Response submitted to the Inquiry in mid-September.

In other words, changes must be made to effectively prevent foreign interference activities, and if those changes are not made then the activities will not only occur, but also activities will only be caught long after the interference has occurred, and the process that follows will take years more, with often no one being held accountable.

Part 2 of this policy paper sets out how the three principles of the Supreme Court of Canada's egalitarian model provides a perfect framework upon which the Inquiry should base all of its recommendations for changes to prevent foreign interference in Canadian politics. If the rules in every area of Canadian politics are changed to comply with the three principles (and, again, enforcement is strict and strong), foreign interference will be effectively prevented because it will be clearly illegal for anyone, or any entity, to secretly, unethically or undemocratically interfere in or influence any Canadian political process, including through misleading voters with disinformation or misinformation. In other words, all political processes will be

effectively required to offer a substantively equal opportunity for substantively equal participation and influence in the process, and all participation will be effectively required to be honest, ethical, transparent, representative and democratic.

In addition, using the three principles of the Supreme Court's egalitarian model as the basis for the Inquiry's recommendations will ensure that the changes that the Inquiry recommends will comply with Canada's *Constitution*, as the Court's model was developed through court rulings concerning sections 2 and 3 of the *Charter*.

Part 3 of this paper sets out how the rules, and lack of rules, for federal lobbying activities, and related political ethics rules, violate one or more of the three principles of the Court's egalitarian model. Part 4 sets out the proposals for key changes needed to lobbying and related political ethics rules to comply with all the principles of the Court's egalitarian model and, thereby, to effectively prevent foreign interference.

2 The Supreme Court of Canada's Egalitarian Model

In its 1997 ruling in the case *Libman v. Quebec*, the Supreme Court ruled for the first time since the *Charter* was enacted in 1982 on the issue of statutory restrictions on political spending, specifically in that case on spending during a referendum campaign period. Mr. Libman challenged the very restrictive statutory provisions in Quebec's *Referendum Act* that allowed only minimal spending by individuals or groups that did not become affiliated organizations of official, registered yes or no "national committees" in any referendum. Only spending up to $600 in expenses for travelling and up to $600 total for events were allowed. The Supreme Court overturned the Québec courts' rulings that the restrictive provisions infringed freedom of expression but were justifiable as a reasonable limit under section 1 of the *Charter*, and instead found that the limits were unreasonably low and, therefore violated the section 1 requirement that restrictions only "minimally impair" *Charter* rights.[3]

In *Libman*, the Supreme Court first set out key factors and principles that form the basis of what came to be called the "egalitarian model" for political processes. One of the factors established by the Court is that the rules and practices in each process are assessed based on the system itself, not based on outcomes that result from the system, such as the result of an election.[4] The first key principle is that the

[3] *Libman v. Quebec (Attorney General)*, 1997 CanLII 326 (SCC), [1997] 3 SCR 569, paras. 74-77 ("*Libman*").
[4] *Harper v. Canada (Attorney General)*, [2004] 1 SCR 827, 2004 SCC 33 (CanLII), paras. 64 and 95-99 ("*Harper*"). *Figueroa v. Canada (Attorney General)*, [2003] 1 SCR 912, 2003 SCC 37 (CanLII), para. 29.

system should uphold, as much as possible, while taking into account "a broad range of social factors"[5] and also practical considerations to ensure effective representation,[6] the fundamental democratic equality principle of one person, one vote[7] so as to ensure that, again as much as practically possible, every voter has a close to substantively equal opportunity to participate in, or influence, the electoral system or the government public policy-making system.[8]

The second key principle is that the public must perceive, and have confidence in, the fairness and integrity of every aspect of the system. To express this in reverse, every aspect of the system must appear to be fair and to have integrity, and actually be fair and have integrity, in order for the public to have confidence in the system.[9]

And the third key principle is that limits on spending cannot be so low as to prohibit expression and participation in the election at a level that is meaningful nor to prohibit the flow of adequate information for voters to make informed decisions[10] and, by extension, information provided to voters must be required to be accurate or they will not be able to make informed decisions.

As is clear from the above, ensuring rules for all political processes comply with these three principles will ensure that all political processes will be effectively required to offer a substantively equal opportunity for substantively equal participation and influence in the process, and all participation will be effectively required to be honest, ethical, transparent, representative and democratic. This will actually prevent foreign interference. In contrast, half-measures that leave open loopholes and flaws will facilitate ongoing secret, unethical and undemocratic foreign interference activities.

Extending the egalitarian model's principles into the area of lobbying regulation, the following principles for lobbyists who give the gifts or favours, and for the lobbying system overall, align with the key principles of the Supreme Court's egalitarian model:

1. Overall, the rule that should apply to all political situations and processes is that lobbyists are prohibited from doing or proposing anything that places any public official in an apparent of conflict of interest, and from lobbying in any

[5] *Figueroa v. Canada (Attorney General)*, [2003] 1 SCR 912, 2003 SCC 37 (CanLII), paras. 24 and 108 ("*Figueroa*"), citing *Reference re Prov. Electoral Boundaries (Sask.)*, 1991 CanLII 61 (SCC), [1991] 2 SCR 158, pp. 181 and 184.
[6] *Reference re: Prov. Electoral Boundaries*, paras. 170, 183-85 and 188.
[7] *Libman*, paras. 41, 47 and 61; *Harper*, paras. 61-63.
[8] *Reference re: Prov. Electoral Boundaries*, pp. 183; *Harper*, para. 73.
[9] *Harper*, paras. 23-24, 63, 79, 82-83, 91-92, 97, 99, 101-104, 108-109, 120, 122, 142 and 146; *Libman,* paras. 41, 52 and 84.
[10] *Libman*, para. 41; *Harper*, paras. 15, 61-63 and 67-70.

way that is improper (so that the public can have full confidence in the appearance of, and actual, fairness and integrity of all processes);
2. Comprehensive, loophole-free requirements to require registration of, and public disclosure of, all lobbying and lobbying spending and sources of funding (to inform voters), and;
3. Relative, substantive equality of opportunity for relative equality of participation and influence in the government and political decision-making system, based on actual level of voter support (with no more than a 5-10 percent variation in the equality of opportunity and influence).

As detailed in Part 3 below, the current federal lobbying rules do not comply with any of these principles and, as a result, secret, unethical lobbying is allowed, including by "proxy" lobbyists for foreign governments, entities and individuals.

3 How Lobbying Statutory Rules Violate the Three Principles of the Egalitarian Model and Facilitate Secret, Unethical and Undemocratic Foreign Interference

Lobbying public office holders (meaning not only politicians but also political staff and appointees, and government employees) is based on the historical right granted to barons by the English King John in the *Magna Carta* of 1215 – which at the time was a limited right to petition the King for redress.[11] Over the next 450 years, the right expanded to become, in chapter 5 of the English *Bill of Rights* of 1689 which states: "Right to petition: That it is the Right of the Subjects to petition the King and all Commitments and Prosecutions for such Petitioning are Illegall (*sic*)."[12]

[11] "English Translation of Magna Carta" British Library, online: <http://www.bl.uk/magna-carta/articles/magna-carta-english-translation#sthash.tOfR7yfx.dpuf> as cited in "Rights of Assembly and Petition" online: *CRS Annotated Constitution*, Legal Information Institute, Cornell University School of Law <https://www.law.cornell.edu/anncon/html/amdt1efrag7_user.html#amdt1e_hd17>. Clause 61 of the original Magna Carta, 1215 version, stated: "If we, our chief justice, our officials, or any of our servants offend in any respect against any man, or transgress any of the articles of the peace or of this security, and the offence is made known to four of the said twenty-five barons, they shall come to us - or in our absence from the kingdom to the chief justice - to declare it and claim immediate redress [English translation of Latin original]." While this clause only gave the right to petition to 25 barons, it was the first written expression of the right.

[12] *Bill of Rights [1688]* online: The National Archives <http://www.legislation.gov.uk/aep/WillandMarSess2/1/2/introduction> as cited in "Rights of Assembly and Petition" online: *CRS Annotated Constitution*, Legal Information Institute, Cornell University School of Law <https://www.law.cornell.edu/anncon/html/amdt1efrag7_user.html#amdt1e_hd17>.

Canadian courts have ruled that the *Magna Carta* and the *Bill of Rights* are not Canadian constitutional documents,[13] including in the context of a challenge to a prosecution under the federal *Lobbying Act*.[14] However, the fact that the preamble to Canada's *Constitution Act, 1867* states that Canada was established "with a Constitution similar in Principle to that of the United Kingdom" means the rights set out in these documents were inherited into Canadian law.[15] As well, several Canadian statutes have explicitly enacted many of these historical rights into Canadian law. For example, the Preamble in the federal Canadian *Lobbying Act* states that "free and open access to government is an important matter of public interest" and that "lobbying public office holders is a legitimate activity."[16]

The initial legal restrictions on lobbying were only aimed at preventing outright bribery – criminal prohibitions on corruptly giving a benefit of any kind in respect of an action or decision by a public office holder. These restrictions date back to the oldest ethics and legal codes that have been discovered. For example, taking a bribe was prohibited in the codification of Babylonian law by King Hammurabi around 1754 BC.[17] The enactment of disclosure requirements for lobbyists, and ethics codes that restrict ways lobbyists have used to gain favour from public office holders, has only happened in the past few decades in Canada and elsewhere. Beyond the disclosure requirements, these rules also aim in some cases to prohibit gifts or favours of any kind from lobbyists that create a conflict of interest for the office holder.

The federal Canadian *Lobbying Act* states in its preamble that "it is desirable that public office holders and the public be able to know who is engaged in lobbying activities"[18] while the objectives of the *Lobbyists' Code of Conduct* that was enacted pursuant to the *Act* include "to foster transparent and ethical lobbying of federal officials" and "that officials and the public should be able to know who is carrying out lobbying activities.[19]

While the Supreme Court of Canada has not ruled on the issue, the Ontario Superior Court has held that a statutory requirement to disclose lobbying activities

---

[13] For an example of a Canadian court ruling on the Magna Carta and Bill of Rights, see *R. v. Jebbett*, 2003 BCCA 69 (CanLII), <https://canlii.ca/t/5dnn>.
[14] *R. v. Carroll*, 2016 ONCJ 213 (CanLII), <https://canlii.ca/t/gpjb9>, paras. 2-8 (hereinafter "*R v. Carroll* (2016)"), affirmed in *R. v. Carroll*, 2017 ONSC 2261 (CanLII), <https://canlii.ca/t/h36jj>, paras. 2, 6, 10-15 (hereinafter "*R v. Carroll* (2017)").
[15] *Constitution Act, 1867* 30 & 31 Victoria, c.3 (U.K.).
[16] *Lobbying Act*, R.S.C., (1985) c.44 (4th Suppl.).
[17] Philip M. Nichols and Diana C. Robertson, *Thinking About Bribery: Neuroscience, Moral Cognition and the Psychology of Bribery* (Cambridge: Cambridge University Press: 2017) 1 (hereinafter "Nichols and Robertson, *Thinking About Bribery*").
[18] *Lobbying Act*, *supra*.
[19] Commissioner of Lobbying, *Lobbyists' Code of Conduct*, online: <https://lobbycanada.gc.ca/en/rules/the-lobbyists-code-of-conduct/lobbyists-code-of-conduct-2015/> (hereinafter "*Lobbyists' Code* (2015)").

does not violate the section 2(b) Canadian *Charter* right to freedom of expression, as it "is intended to ensure transparency and openness, allowing the public to know the identity of the paid lobbyists who are communicating with public office holders and which interests these lobbyists represent."[20] In other words, the statutes and codes, and courts interpreting them in rulings, draw a line between legitimate lobbying which is covered by the rights to free expression and free association (when done transparently and ethically) and illegitimate lobbying which is done secretly and includes gifts and/or favours that cause conflicts of interest. These legal lines, and the principles upon which they are based, align with the key facets and principles of the Supreme Court's egalitarian model.

As noted above, federal Canadian lobbyists are regulated by the *Lobbying Act*[21] in terms of disclosure of their activities, and similar disclosure laws have been enacted in all 10 Canadian provinces, and in the Yukon Territory, and at the municipal level in Toronto and Ottawa, so only the Northwest Territories and Nunavut do not have laws along with almost all municipalities.[22] Provisions in lobbying laws or separate codes that regulate the ethics and integrity of lobbying activities exist at the federal level in the *Lobbyists' Code* which was first enacted in 1997,[23] with an amended version coming into force on December 1, 2015,[24] and further amended version coming into force on July 1, 2023,[25] and in the lobbying laws in British Columbia (B.C.), Ontario, Quebec and Saskatchewan, and in Ottawa's and Toronto's lobbying codes in their city by-laws.

---

[20] *R v. Carroll* (2016), *supra*, paras. 2, 9-40 (esp. 39), affirmed in *R v. Carroll* (2017), *supra*, paras. 2 and 16-19.

[21] *Lobbying Act*, *supra*.

[22] The laws in the provinces and Yukon Territory, in alphabetical order, are as follows: Alberta – *Lobbyists Act*, SA 2007, c L-20.5; B.C. – *Lobbyists Transparency Act* [SBC 2001], ch. 42; Manitoba - *The Lobbyists Registration Act*, CCSM c L178; Newfoundland and Labrador - *Lobbyists Registration Act*, SNL2004, c. L-24.1; New Brunswick – *Lobbyists' Registration Act*, 2014, c. 11; Nova Scotia - *Lobbyists' Registration Act*, 2001, c. 34; Ontario - *Lobbyists' Registration Act*, 1998, S.O. 1998, c. 27, Sched.; Prince Edward Island (P.E.I.) - *Lobbyists Registration Act*, c. L-16.1; Quebec – *Lobbying Transparency and Ethics Act*, CQLR, c. T-11.011; Saskatchewan, *Lobbyists Act*, SS 2014, c. L-27.01; Yukon Territory - *Lobbyists Registration Act*, SY 2018, C. 13. City of Ottawa, Lobbyist Registry (By-law No. 2012-309), online: <https://ottawa.ca/en/living-ottawa/laws-licences-and-permits/laws/laws-z/lobbyist-registry-law-no-2012-309#section-fe5987f1-f0e9-43d7-9eeb-c06f77e756ab> (hereinafter "Ottawa by-law"). City of Toronto, Toronto Municipal Code, Chapter 140: Lobbying, online: <https://www.toronto.ca/legdocs/municode/1184_140.pdf> (hereinafter "Toronto by-law"). See also Office of the Commissioner of Lobbying of Canada, *Improving the Lobbying Act: Preliminary recommendations*, (February 2021), online: <https://lobbycanada.gc.ca/en/reports-and-publications/improving-the-lobbying-act-preliminary-recommendations/> (hereinafter "*Improving the Lobbying Act*").

[23] Registrar of Lobbying, *Lobbyists' Code of Conduct*, (1997), online: <https://web.archive.org/web/20170823151218/https://lobbycanada.gc.ca/eic/site/012.nsf/eng/01195.html/>.

[24] *Lobbyists' Code* (2015), *supra*.

[25] Commissioner of Lobbying, *Lobbyists' Code of Conduct*, online: <https://lobbycanada.gc.ca/en/rules/the-lobbyists-code-of-conduct/> (hereinafter "*Lobbyists' Code* (2023)").

As detailed below, due to loopholes in the rules that allow for secret, unethical lobbying, Canada's lobbying laws does not comply in several ways in all three areas of the extended egalitarian model summarized above.

3.1 How Lack of Regulation Allows for Secret Lobbying, Which Facilitates Secret Foreign Interference Through "Proxy" Lobbyists

Canada's federal lobbying law does not comply with the egalitarian model's principle of ensuring voters have adequate information to make decisions about political processes because it does not require all lobbying to be registered and disclosed. Generally, the federal *Act* requires registration by anyone paid as a consultant on contract by any entity to communicate with a public office holder[26] in respect of their decisions concerning making, developing or amending of federal legislative proposals, bills or resolutions, regulations, policies or programs; the awarding of federal grants, contributions or other financial benefits, and; (for consultant lobbyists only) the awarding of a federal government contract and arranging meetings for others to lobby,[27] including by appealing to the public to contact the office holder.[28] The requirement to register and disclose lobbying activities applies unless the communication is in an open forum that is publicly recorded with the identities of all the participants and details of the discussions publicly disclosed, such as testimony before a parliamentary committee or a public consultation meeting.[29]

However, there are many secret lobbying loopholes in the federal *Act*. The loophole is that a person is only required to register as a lobbyist if they are paid for their lobbying (defined broadly to cover various forms of payment, compensation and other considerations). This loophole allows a lobbyist to arrange with a client to be paid for strategic advice, while lobbying for their client for free, unregistered. This loophole also allows retired executives of businesses, unions and other organizations, who may have extensive, good relations with government officials or other public office holders, and who may still be receiving a pension or other retirement benefits from their former employer, to lobby for their former employer without registering. This loophole exists in all lobbying laws across Canada except

[26] Including staff of MPs and Senators who, as noted above in section 4.2, are not covered by any of the ethics rules that cover other office holders. See the *Lobbying Act*, *supra*, subsection 2(1) definition of "public office holder" clause (a).
[27] Commissioner of Lobbying "Frequently Asked Questions," (May 30, 2022), question 1. What is Lobbying?, online: <https://lobbycanada.gc.ca/en/registration-and-compliance/frequently-asked-questions/>.
[28] *Lobbying Act*, *supra*, sections 5 and 7, and clauses 5(2)(j) and 7(3)(k) re: grass-roots communications.
[29] Commissioner of Lobbying, "Exclusion from the Act: Submissions to parliamentary committees and to other proceedings of public record," (September 2024), online: <https://lobbycanada.gc.ca/en/rules/the-lobbying-act/advice-and-interpretation-lobbying-act/exclusion-from-the-act-submissions-to-parliamentary-committees-and-to-other-proceedings-of-public-record/>.

in Ottawa's and Toronto's lobbying by-laws under which voluntary lobbying activities are also required to be registered and disclosed publicly.[30]

The registration requirement in the federal *Act* also applies to lobbying by a paid employee of any type of organization (except a Crown or Departmental corporation or shared governance organization)[31] who spends a significant amount of their work time lobbying; any officer of any organization who spends any of their time lobbying; any director on the board of a business or organization who is paid more than their expenses and lobbies,[32] and; the senior officer of any business or organization whose employees collectively lobby more than 20 percent of total work time (including their time spent preparing to lobby).[33] The second secret lobbying loophole is that an employee who is lobbying for a business is not required to be listed in the federal Registry of Lobbyists[34] if they lobby less than 20 percent of their work time (including time spent researching and preparing to lobby, but not time spent arranging meetings with office holders).[35] The business is required to register if the collective time spent lobbying by its employees adds up to 20 percent of work time if they were one individual – for example, if a business had five employees who lobby who each spend 4.1 percent of their work time lobbying, then 5 x 4.1 = 20.5 percent and the business would be required to register. However, the only person required to be listed in the business' registration would be the senior officer, as none of the five employees spend more than 20 percent of their work time lobbying. As a result, the public cannot access key information concerning the extent and nature of the business' lobbying.

---

[30] Ottawa by-law, *supra*, section 1. Toronto by-law, *supra*, Article IV. See laws across Canada, *supra*.

[31] Commissioner of Lobbying, "Crown corporations and registrable activities under the Lobbying Act," (March 2010), online: <https://lobbycanada.gc.ca/en/rules/the-lobbying-act/advice-and-interpretation-lobbying-act/crown-corporations-and-registrable-activities-under-the-lobbying-act/>. Commissioner of Lobbying, "Departmental corporations and registrable activities under the Lobbying Act," (March 2010), online: <https://lobbycanada.gc.ca/en/rules/the-lobbying-act/advice-and-interpretation-lobbying-act/departmental-corporations-and-registrable-activities-under-the-lobbying-act/>. Commissioner of Lobbying, "Shared governance organizations and registrable activities under the Lobbying Act," (March 2010), online: <https://lobbycanada.gc.ca/en/rules/the-lobbying-act/advice-and-interpretation-lobbying-act/shared-governance-organizations-and-registrable-activities-under-the-lobbying-act/>. Commissioner of Lobbying, "Registration requirements related to the academic sector," (March 2010), online: <https://lobbycanada.gc.ca/en/rules/the-lobbying-act/advice-and-interpretation-lobbying-act/registration-requirements-related-to-the-academic-sector/>.

[32] Commissioner of Lobbying, "Boards of directors: Application of the Act to outside chairpersons and members," (February 2009), online: <https://lobbycanada.gc.ca/en/rules/the-lobbying-act/advice-and-interpretation-lobbying-act/boards-of-directors-application-of-the-act-to-outside-chairpersons-and-members/>.

[33] *Lobbying Act*, *supra*, section 10.3, and subsections 2(1) "organization" and "public office holder", 4(2), 5(1), 5(6), 7(1) and 7(6).

[34] Commissioner of Lobbying, Registry of Lobbyists, online: <https://lobbycanada.gc.ca/app/secure/ocl/lrs/do/guest?lang=eng>.

[35] *Lobbying Act*, *supra*, clause 7(1)(b). See also: Commissioner of Lobbying, "A significant part of duties ("The 20% rule")," (May 11, 2022), online: <https://lobbycanada.gc.ca/en/rules/the-lobbying-act/advice-and-interpretation-lobbying-act/a-significant-part-of-duties-the-20-rule/>.

This loophole exists in some form in the lobbying laws across Canada, except in Ottawa's by-law which requires all lobbying to be registered no matter how much time it takes,[36] and in Toronto's by-law but it has the significant exception that a not-for-profit corporation is not required to register any of its lobbying activities unless it hires a consultant lobbyist to represent it or if it is lobbying for grant application, award or other financial benefit (unless it is a not-for-profit community service organization and then it is also exempt from this financial benefit registration requirement), and in B.C. which also has a significant exception.[37] B.C. requires all lobbying to be registered and disclosed, with an exception for lobbying by a business or organization with fewer than six employees who collectively lobby less than 50 hours a year (unless the organization's primary purpose is to represent its members or to promote or oppose issues, and then it is required to register all of its lobbying).[38] Quebec also has a distinct threshold that requires registration of all lobbying by an executive or director or lobbying about anything that would have a significant impact on the business or organization, as well as all lobbying about anything for which the officers, directors or employees lobby a total of 12 days or more over a fiscal year,[39] with lobbying by non-profit citizen organizations (other than unions and professional or management associations) exempted from the requirement to register.[40]

Under the federal *Act*, for citizen organizations like unions and non-profit advocacy groups, if the combined time spent lobbying by employees crosses the 20 percent threshold (calculated as if they were one person), then not only is the organization required to register, but also all the employees involved in lobbying are required to be identified in the organization's registration.[41] That is how the calculation concerning both business or organization employees, officers and directors are required to be listed as lobbyists in a lobbying registration is also done for the purpose of the thresholds in almost all jurisdictions across Canada, with a few provinces not including lobbying time by officers and directors who are not compensated in the calculation.[42] In other words, it is only under the federal *Act* that more full disclosure is required of the lobbying activities of often cash-strapped citizen groups than of the lobbying by the biggest, wealthiest businesses in Canada.

---

[36] Ottawa by-law, *supra*, section 1.
[37] Toronto by-law, *supra*, ss. 140-1, 140-27, 140-11.
[38] See B.C. law, *supra*, subsection 1(4). *Improving the Lobbying Act*, *supra*, pp. 4-5.
[39] Commissaire au lobbyisme du Québec, Avis no. 2005-07, (June 30, 2005), online: <https://lobbyisme.quebec/wp-content/uploads/2021/07/Avis_2005_07.pdf>, p. 2.
[40] *Lobbying Transparency and Ethics Act Exclusions Regulation*, CLQR, chapter T-11.011, r. 1, subsection 1(11).
[41] *Lobbying Act*, *supra*, clause 7(3)(f).
[42] See laws across Canada, *supra*: Alberta (clause 1(1)(h)); B.C. (1(40(b)(i)) – unless the organization falls within the exemption); Manitoba (subsections 1(2) and (3)); Newfoundland and Labrador (clause 6(1)(b) – but only employees' lobbying time is counted)); New Brunswick (subsections 9(a) and (b) and 14(a) and (b) and Regulation 2017-11); Nova Scotia (clauses 6(1)(a) and (b)); Ontario (subsections 5(7) and 6(5)); P.E.I. (subsections 6(1) and 7(1)); Saskatchewan (clause 2(1)(h)) and the Yukon (subsection 12(3)). In Ontario, P.E.I., Saskatchewan and the Yukon, time spent lobbying by officers/directors who are not compensated is not included in calculation.

In addition to failing to inform voters of the extent of big business lobbying, these contrasting federal provisions also do not comply with the egalitarian model's principle of equal opportunity for equal participation in political processes.

While it could be viewed as a third loophole if the objective is to ensure the public knows about absolutely all lobbying, given they are intergovernmental communications as opposed to lobbying as it is usually defined, the federal *Act* does not require registration or disclosure of communications by the following people when they are acting in their official role: members of a provincial legislature, municipal council, *Indian Act* band council or indigenous people's government or their staff; or by provincial, municipal, band council or indigenous government employees; or by diplomatic representatives of foreign governments or United Nations agencies or other international organizations recognized by Parliament.[43] This same exemption applies in every jurisdiction across Canada.[44] However, government officials in Canada should be at least required to disclose each communication occurrence, the identity of the representative of the other government or international organization, and the general subject matter of each communication, to uphold the public's right to know whether their government is under pressure from another government concerning anything at any particular time.

Another part of the threshold for registering lobbying is whether a "public office holder" is being lobbied, and the definition in the federal *Lobbying Act* is fairly comprehensive as it includes all federal MPs and senators, their staff, Cabinet ministers and their staff and appointees, and all government employees.[45] The definitions in lobbying laws across Canada are essentially the same covering politicians, their staff and government employees.[46] As well, the office of the Commissioner of Lobbying has concluded that the definition of public office holder does include employees of the caucus research bureaus for officially recognized parties in the House of Commons. In effect, staff of these bureaus are working for a party as Parliament defines and recognizes parties (i.e. only parties with 12 or more MPs in the House are recognized and received funding for a research bureau). [47]

However, the fourth loophole is that the definition of office holder does not include other political party officials at the federal level[48] or in any jurisdiction in Canada.[49] As a result, lobbying of these people is not required to be disclosed. This

[43] *Lobbying Act*, *supra*, section 4(1).
[44] See laws across Canada, *supra*.
[45] *Lobbying Act*, *supra*, subsection 2(1) "public office holder".
[46] See laws across Canada, *supra*.
[47] R. Paul Wilson, "The work of Canadian political staffers in parliamentary caucus research offices," (July 5, 2020) Vol. 63-3 *Canadian Public Administration* 498.
[48] Commissioner of Lobbying, "Application of the Lobbying Act to political parties," (May 11, 2022), online: <https://lobbycanada.gc.ca/en/rules/the-lobbying-act/advice-and-interpretation-lobbying-act/application-of-the-lobbying-act-to-political-parties/>.
[49] See laws across Canada, *supra*.

is significant because these people are in regular contact with senior politicians and staff in each party, and so they can easily and regularly pass on communications they have received from lobbyists.

Another part of the threshold for registering lobbying is the topic of the lobbying, and several loopholes exist in the laws across Canada. The fifth secret lobbying loophole is that lobbying by any person or entity of an enforcement agency concerning the enforcement of a law that applies to the person or entity is not required to be registered.[50] This loophole allows for secret lobbying by, for example, businesses concerning inspections, audits and other enforcement actions by regulatory agencies. This loophole exists in lobbying laws across Canada.[51]

The sixth loophole is that, even though tax credits are a financial benefit, the federal Commissioner of Lobbying decided in 2009 to designate them as not a financial benefit and, as a result, lobbying the federal government for tax credits does not have to be registered, so another area of lobbying in which mostly businesses engage remains hidden from public view.[52]

The seventh loophole is that lobbying for a federal government contract by the officers or employees of a business or organization does not have to be disclosed – only if the business or organization hires a consultant lobbyist on contract would the consultant be required to register and disclose the lobbying.[53]

The eighth loophole is that only federal consultant lobbyists, not employees of businesses, are required to register for time spent arranging meetings for others to lobby an office holder.[54]

Ninth, the delay in requiring registration of some lobbying denies voters key, real-time information. The federal *Act* requires consultant lobbyists to register within 10 days of beginning to lobby, but gives business and organization in-house lobbyists two months to register their lobbying, which can hide lobbying through a whole policy-making process. In contrast, the by-law in Ottawa requires all lobbyists to register within 15 days (subsection 6(1)) while Toronto's by-law requires registration before lobbying begins (subsections 140-14B and 140-21B).

---

[50] *Lobbying Act*, *supra*, clause 4(2)(b).
[51] See laws across Canada, *supra*.
[52] Commissioner of Lobbying, "Registration requirements related to tax credits," (May 11, 2022), online: <https://web.archive.org/web/20240222053129/https://lobbycanada.gc.ca/en/rules/the-lobbying-act/advice-and-interpretation-lobbying-act/registration-requirements-related-to-tax-credits/>. The Commissioner's advisory opinion was removed from the Commissioner's website in February 2024, but the author confirmed with the Commissioner's office in September 2024 that they still advise lobbyists that lobbying for a tax credit is not required to be registered.
[53] *Lobbying Act*, *supra*, clauses 5(1)(a)(vi) and 7(1)(a).
[54] *Lobbying Act*, *supra*, clause 5(1)(b).

The tenth loophole is that not all lobbying communications are required to be disclosed in the Registry. Lobbyists are only required to disclose each month in the Registry their communications with "designated public office holders" that are oral, pre-arranged and (with one exception for communications concerning financial benefits) initiated by the lobbyist.[55] This means that almost all communications initiated by a public office holder do not have to be disclosed publicly.[56] As well, for a business, industry association, union or other type of organization, only the senior officer registers and is listed in those monthly communications registrations, even if the senior officer does not even participate in the communication.[57]

The eleventh loophole is that, unlike the rules in the *Canada Elections Act* ("*CEA*") that require disclosure of third-party (individual and interest group), federal lobbying businesses and organizations (including industry associations) and individuals who lobby are not required to disclose who is funding them. In contrast, the laws in Alberta (Sched. 1, clause 2(d)(ii)) and Sched. 2, clause 2(d)) and Newfoundland and Labrador (clauses 5(4)(g) and (h) and 6(4)(f) and (g)) require disclosure in the lobbying return of any individual or entity that contributed $1,000 or more to pay for the lobbying activities of a consultant lobbyist's client, or to pay for the lobbying activities of an individual, business or organization. The laws in Nova Scotia (clauses 5(4)(g) and (h) and 6(4)(h) and (i)), Ontario (clauses 4(4)(7) and (8) and 5(3)(7) and (8)), P.E.I. (clauses 4(4)(g) and (h) and 6(4)(h) and (i)) and Saskatchewan ((clauses 8(1)(d)(i) and (ii) and 6(4)(h) and (i)) require disclosure of any individual or entity that contributes more than $750 to a lobbying activities.

The twelfth loophole is that how cash-strapped citizen groups are compared to the lobbying efforts of big businesses cannot be determined because, also unlike the rules in the *Canada Elections Act* that require disclosure of third-party (individual and interest group) spending on advertising and other activities in the pre-election and election periods, federal lobbyists are not required to disclose the amount they spend on lobbying, including on fees for consultant lobbyists, for or against any specific change to government decision-making. In contrast, the U.S. federal law

---

[55] *Lobbying Act*, *supra*, subsections 5(3) to 5(4.3), and 7(4) to 7(4.4). *Lobbyists Registration Regulations* (SOR/2008-116), sections 6-7 and 9-10. See also: Commissioner of Lobbying, "Communicating with designated federal public office holders," (May 11, 2022), online: <https://lobbycanada.gc.ca/en/rules/the-lobbying-act/advice-and-interpretation-lobbying-act/communicating-with-designated-public-office-holders/>. Commissioner of Lobbying, "Interpretation of "Comparable rank" for designated public offices," (May 11, 2022), online: <https://lobbycanada.gc.ca/en/rules/the-lobbying-act/advice-and-interpretation-lobbying-act/interpretation-of-comparable-rank-for-designated-public-offices/> (hereinafter "Commissioner of Lobbying, "Comparable rank" bulletin (May 11, 2022)"). Commissioner of Lobbying, "Acting appointments in designated public office holder positions," (May 11, 2022), online: <https://lobbycanada.gc.ca/en/rules/the-lobbying-act/advice-and-interpretation-lobbying-act/acting-appointments-in-designated-public-office-holder-positions/> (hereinafter "Commissioner of Lobbying, "Acting DPOH" bulletin (May 11, 2022)").

[56] *Lobbyists Registration Regulations* (SOR/2008-116), sections 6 and 9.

[57] *Lobbying Act*, *supra*, subsections 7(4) to 7(4.4). *Lobbyists Registration Regulations* (SOR/2008-116), sections 9-10.

requires registered lobbyists to disclose how much is being spent on a lobbying effort, including the amount spent on fees for consultant lobbyists and, if it is a coalition lobbying, the amount that each member of the coalition has donated to the lobbying effort, as well as a semi-annual disclosure of the amount donated to candidates and political committees (which are roughly equivalent to third parties in Canada).[58] The B.C. lobbying law also requires lobbyists to disclose donations to parties, candidates and third parties (clause 4.2(2)(f)).

The related thirteenth secret lobbying loophole, is that federal consultant lobbyists are not required to disclosed how much they make in fees for any lobbying effort, and overall annually, and so the public cannot determine how valuable lobbyists are perceived to be by their clients, especially lobbyists who are former ministers, top government officials or their staff. In contrast, Quebec's law requires consultant lobbyists to disclose the range of compensation they have received for their lobbying, from less than $10,000, from $10,000 to $50,000, from $50,000 to $100,000 and $100,000 or more (subsection 9(9)).

All of these secret lobbying loopholes make it easy for foreign governments, entities and individuals to use "proxies" in Canada to secretly interfere in and influence political processes.

3.2 How Lack of Regulation Allows for Unethical Lobbying, Which Facilitates Unethical Foreign Interference Through "Proxy" Lobbyists

The second general area of the federal Canadian lobbying system that does not comply with the egalitarian model is that the ethics rules for lobbyists, politicians, their staff and government employees allow for avenues of secret, unethical influence that hide key information from voters, which justifiably undermines the public's confidence in the integrity of public processes.

The first area of concern is that if person raises money to explore becoming a nomination contestant or party leadership contestant, and then does not register as a contestant, or if a person wins a nomination contest and then decides not to register as a candidate, the contributors of the money are not required to be disclosed, including if the person receives money, property, use of property, services or other benefits (including a job offer) to not run for whatever reason (such as to give someone else a better chance of winning). This is a problem particularly if the person exploring running or making the decision not to run is a sitting MP and/or a Cabinet minister, and it is unclear whether the *Conflict of Interest Code for Members*

[58] Craig Holman and William Luneburg, "Lobbying and transparency: A comparative analysis of regulatory reform," (2012), Vol. 1(1), *Interest Groups and Advocacy* 75 at 83-84 and 87-88.

of the House of Commons[59] (*MP Code*) gift rules cover such contributions, gifts or other offerings and prohibit or, at least, require them to be disclosed publicly. It is also unclear whether the section 119 prohibition on bribery in the *Criminal Code* would apply, as it only applies to actions of an MP "in their official capacity" and it is unclear in law whether an MP exploring running in a nomination or leadership contest, or deciding not to run as a candidate, is an action undertaken in their official capacity as an MP.

A second, related gap in Canadian law that opens MPs up to being bribed is that it is unclear exactly when a successful candidate becomes an MP or, in the term used in the *Criminal Code*, an "official" who holds an office.[60] When Parliament is dissolved for an election, MPs cease being MPs and, if they are running for re-election again, become candidates soon after dissolution or, in the case of a fixed election date, will likely have been confirmed as the candidate for their electoral district association (EDA) some time before dissolution. After the election, candidates cease being candidates but, if they have won, are not yet MPs. While the *Parliament of Canada Act* specifies that they begin being paid as an MP from election day on, and the *CEA* specifies that the election results are confirmed when the writ for each returned by the returning officer for each EDA to the Chief Electoral Officer (CEO), and the *House of Commons Procedure and Practice* book states that the CEO provides the final, certified list of MPs to the Clerk of the House, and that MPs have a right to take their seat and vote in the House after they take their oath, none of these documents state plainly exactly when a person who won election becomes an MP.[61] The *Parliament of Canada Act* is silent on the definition of an MP.

Let's assume that there is, in law, at least some time period, perhaps between election day and the day the results are confirmed and certified by the CEO and sent to the Clerk of the House, during which everyone knows that a person has been elected as an MP but they have not yet taken office. During this period the person can be offered, and can accept, bribes that are not covered by the anti-bribery, anti-corruption provisions in sections 119, 121 and 122 in the *Criminal Code*, nor by sections 41 to 41.5 of the *Parliament of Canada Act*, as those provisions only apply to people who have taken office. A similar gap exists for senators, as there is a time period between the announcement by the Prime Minister that s/he has appointed someone to the Senate and the Senator taking their oath of office and seat in the Senate, and it is unclear if the anti-bribery provisions in the *Criminal Code* and in section 16 of the *Parliament of Canada Act* apply during that time period.

---

[59] House of Commons, *Conflict of Interest Code for Members of the House of Commons*, House of Commons Standing Orders, Appendix I, online: <https://www.ourcommons.ca/procedure/standing-orders/Appa1-e.html> (hereinafter "*MP Code*").
[60] *Criminal Code*, section 118, definition of "official".
[61] Andre Barnes, *When Does an Elected Candidate Become a Member of the House of Commons?* (Ottawa: Library of Parliament, February 2010), online: <https://publications.gc.ca/collections/collection_2015/bdp-lop/eb/YM32-5-2010-07-eng.pdf>.

These gaps do not comply with the egalitarian model because it allows for unlimited gifts and favours to someone who will likely be a public office holder. Whatever this time period is currently, it should be eliminated, and these laws changed, to make it clear that it is illegal to give any gift, benefit or advantage or do any favour to anyone who, based on the initial election results, could become an MP, and illegal for the potential MP to solicit or accept any gift, benefit, advantage or favour.

The third area of concern is that sections 477.89 and 477.9 of the *CEA* clarify that an election candidate is prohibited from accepting gifts (other than campaign donations, courtesy/hospitality gifts, or inheritances) that might reasonably be seen to be given to influence the candidate if they are elected. Under 477.9(3) to 477.95, all gifts received during the election period that are worth more than $500 are required to be disclosed to the Chief Electoral Officer within four months after the election. The disclosure is to the CEO only, who is required to keep the disclosure statement confidential.[62] This secrecy clearly violates the egalitarian model's principle of informing voters. As well, given that the CEO has no enforcement powers under the *MP Code* – or under the *Conflict of Interest Act*[63] (*COIA*) which applies to Cabinet ministers, their staff and top government officials), this secrecy raises the question of how a conflict of interest created by the gift can be addressed after an MP is elected if only the CEO knows about it?

A fourth area of concern is that the rules in the MP Code and *Ethics and Conflict of Interest Code for Senators* (*Senate Code*)[64] do not cover the staff of MPs or Senators. As a result, staff: are allowed to receive unlimited gifts and hospitality from lobbyists and others; are not required to disclose any private interests they or their family members or friends have; are allowed to further the private interests (even specific private interests) of themselves, their family and friends and lobbyists who have done favours for them and; overall are allowed to act unethically in secret. While MPs and Senators remain the ultimate decision-makers on positions they take on policies and other matters, it is not difficult to see how their decision-making could be distorted by their staff advocating positions that further their own or others' private interests. The simple solution is to extend the current ethics rules to cover MP and Senator staff.

A fifth area of concern is that the *MP Code* (which was enacted in 2004) seems to set a high standard in subsection 2(e) as it states MPs are expected "not to accept any gift or benefit connected with their position that might reasonably be seen to compromise their personal judgment or integrity…" However, that subsection

---

[62] *CEA*, subsection 477.94(2).
[63] *Conflict of Interest Act*, (S.C. 2006, c. 9 s. 2)
[64] Senate of Canada, *Ethics and Conflict of Interest Code for Senators*, (August 3, 2021), online: <https://seo-cse.sencanada.ca/en/code/ethics-and-conflict-of-interest-code-for-senators/>, (hereinafter "*Senate Code*").

goes on to say “except in accordance with the provisions of this Code” and section 3.1 makes it clear that every part of section 2 is only aspirational, not actually enforceable, as it says that the Ethics Commissioner may only “have regard to” the provisions of section 2 when enforcing “members’ obligations under this code.”

As a result, the actual gifts rule is set out in subsection 14(1) of the *MP Code* which begins by setting out a similar standard as subsection 2(e) by stating:

> “Prohibition: gifts and other benefits. 14. (1) Neither a Member nor any member of a Member’s family shall accept, directly or indirectly, any gift or other benefit, except compensation authorized by law, that might reasonably be seen to have been given to influence the Member in the exercise of a duty or function of his or her office.”

This seemingly very strong rule is further clarified by subsection 14(1.1) which states that gifts/benefits (a) relating to charitable or political events or (b) received from a caucus of MPs from all parties established concerning any subject are both covered by the rule.

However, subsection 14(2) then sets out exceptions to the rule which allow a Member or their family to accept courtesy, protocol, or hospitality gifts that are normal for MPs to receive. As well, while subsection 3(1) of the *MP Code* defines “benefit” as including money if no obligation exists to repay it and “a service or property, or the use of property or money that is provided without charge or at less than its commercial value,” it also contains the loopholes of excluding “a service provided by a volunteer working on behalf of a Member” or “a benefit received from a riding association or a political party.” As a result of these loopholes in the general prohibitions on accepting gifts, MPs are allowed to accept: volunteer help from anyone (including lobbyists) in secret; a secret benefit from their electoral district association (EDA) or party such as payments for personal expenses or other favours that would increase their loyalty to their party leader (and, thereby, possibly undermine them representing and addressing the concerns of the voters in their district). As well, they and their family members (defined in subsection 3(4) of the *MP Code* as including any spouse or common-law partner and any of his/her or the MP’s dependents) are allowed to accept courtesy/hospitality and gifts/benefits that could also cause a conflict of interest for them. The *Senate Code* contains similar loopholes that allow for unethical gifts.[65]

As well, the *MP Code* allows MPs to receive the benefit of “a service provided by a volunteer working on behalf of a Member” which means that lobbyists can volunteer for MPs without it being considered to create a conflict of interest for the

---

[65] *Senate Code*, *supra*, sections 2, 7.1, 7.2, 8-10, 11(1) and 11(2), 17-19. See also Senate Ethics Officer, *Guideline on Gifts and Other Benefits (Section 17 of the Code)*, (June 28, 2021), online: <https://seo-cse.sencanada.ca/en/guideline-on-gifts-and-other-benefits-section-17-of-the-code/> (hereinafter “Senate Ethics Officer, *Gifts Guideline*”).

MP that is prohibited by the *MP Code*. In addition, on March 30, 2023 the House of Commons approved the recommendation of a House Committee to add another loophole to the rules concerning gifts and benefits by exempting sponsoring interns from the definition of "benefit" in the *MP Code*, and the *Code* was changed to exempt services provided by interns from the definition of prohibited benefits in subsection 3(1) of the *Code*.[66] The sponsor of an intern in an MP's office is not required to be disclosed. This loophole allows foreign governments, entities and individuals to flow money to Canadian "proxies" (whether businesses, organizations or individuals) and have them sponsor interns who can act as spies in MP offices. It seemed in late 2022 that the difficulty of the House approving such a recommendation increased when Global News reported that the Canadian Security Intelligence Service informed Prime Minister Trudeau of not only organizations sponsored by China's government supporting 11 federal election candidates in the 2019 federal election, but also "placing agents in the offices of MPs in order to influence policy."[67] As well, in late November 2022, the *Globe and Mail* reported that the Parliamentary Internship Programme (PIP), one of the main internship programs and an initiative of the Canadian Political Science Association (CPSA) and the Speaker of the House of Commons, is financed by donations from dozens of businesses and other organizations that lobby federal politicians and, if they donate enough, representatives of the businesses and organizations are invited to three annual events with MPs and senior parliamentary staff, an annual reception, and an annual celebration of the program attended by many MPs and Senators and former interns who now work in government or for an MP, Senator or political party.[68] Representatives of the businesses and organizations also serve on the board of PIP.[69] As a result, the internships are, in effect, a benefit provided by these lobbying businesses and organizations to MPs. As the *Globe* article noted, Parliament is the only legislature in Canada that does not fund its own internship program, and such funding would resolve the conflicts created by privately sponsored interns. However, as noted above, despite the clear conflicts, the House approved amending the *Code* to allow lobbyists/lobby groups, including those who are fronts for foreign governments, entities and individuals, to sponsor interns in MP offices.

A related loophole is that a federal government employee can receive written approval from their deputy head to solicit "gifts, hospitality, other benefits or transfers

---

[66] Procedure and House Affairs report (June 2022), *supra*, at 11-16. House of Commons Standing Committee on Procedure and House Affairs, Review of the Conflict of Interest Code for Members of the House of Commons: Report and Government Response, online: <https://www.ourcommons.ca/Committees/en/PROC/StudyActivity?studyActivityId=11467254>.
[67] Sam Cooper, "Canadian intelligence warned PM Trudeau that China covertly funded 2019 election candidates: Sources," (November 7, 2022), GlobalNews.ca, online: <https://globalnews.ca/news/9253386/canadian-intelligence-warned-pm-trudeau-that-china-covertly-funded-2019-election-candidates-sources/>.
[68] Marie Woolf, "Commons tops up Parliamentary interns' pay amid questions over 'cash for access' by private sponsors," (November 28, 2022), *Globe and Mail*, online: <https://www.theglobeandmail.com/politics/article-ottawa-parliamentary-interns-pay-increase/>.
[69] Parliamentary Internship Programme, Governance, online: <https://pip-psp.org/governance/>.

of economic value from outside entities or individuals that have had or may have dealings with the organization."[70] Beyond allowing for activities that do not ensure the integrity of the system, there is no requirement that these written approvals be disclosed to the public. In these ways, the system does not comply with the egalitarian model's objective of informing voters. This inconsistency should be resolved in favour of prohibiting the acceptance of all gifts beyond a very low-value gift given infrequently, and requiring disclosure of all gifts, as that would accord with the egalitarian model's objective of ensuring public confidence in the integrity of political processes, and informing voters.

A sixth area of concern is the section 15(0.1) exception to the subsection 14(1) general prohibition on accepting gifts, which states that MPs may accept the gift of "sponsored travel" from anyone, and take any guest(s) they want with them on the trip, as long as the trip "arises from or relates to his or her position" as MP. The same unlimited gift of travel is allowed to be given to Senators under the *Senate Code*.[71] For general gifts/benefits as defined under the *MP Code*, MPs are required under subsections 14(3) and (4) – and under subsections 15(1) and (2) for sponsored travel – to disclose to the Ethics Commissioner within 60 days of receipt if gifts/benefits/travel received within a 12-month period from one source have a total value of more than $200 (before October 20, 2015, the threshold was $500).[72] For Senators under the *Senate Code* the threshold is $500.[73] Under the *COIA*, it is legal to give a minister, their staff, and senior government officials, and their family members, multiple gifts or other advantages that will not be disclosed publicly as long as each gift or advantage is worth less than $200. In addition, the rules in the *COIA* have another exemption, which does not exist in the *MP Code* or the *Criminal Code*, that says Cabinet MPs and their family members are allowed to accept a gift or other advantage from a relative or friend (clause 11(2)(b)). These gift loopholes are significant avenues that allow for secret, unethical foreign influence over federal politicians by lobbyists.

---

[70] Government of Canada, *Directive on Conflict of Interest*, online: <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=32627> (hereinafter "*Directive*"), clause 4.2.17. See also: Government of Canada, Conflict of Interest and Post-Employment, (Date modified: 2021-02-05), online: <https://www.canada.ca/en/treasury-board-secretariat/topics/values-ethics/code/conflict-interest-post-employment.html>.

[71] *Senate Code*, *supra*, section 18. See also Senate Ethics Officer, *Guideline on Sponsored Travel (Section 18 of the Code)*, (June 28, 2021), online: <https://seo-cse.sencanada.ca/en/guideline-on-sponsored-travel-section-18-of-the-code/> (hereinafter "Senate Ethics Officer, *Sponsored Travel Guideline*").

[72] House of Commons Standing Committee on Procedure and House Affairs, "Thirty-ninth Report," online: (June 2015) <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=8040054&Language=E&Mode=1&Parl=41&Ses=2> (hereinafter "Standing Committee on Procedure and House Affairs, "Thirty-ninth Report").

[73] *Senate Code*, *supra*, subsection 17(3).

A seventh area of concern is the offer of a future job or benefit to an MP by an individual, business or other entity because such an offer can create a conflict of interest for an MP. Clause 119(1)(a) and (b) of the *Criminal Code* prohibit offering an MP and an MP accepting, directly or indirectly, an "office, place or employment" or "valuable consideration" but the prohibition only applies if the offer is conditional on the MP doing or not doing something. The prohibition on gifts in section 14 of the *MP Code* does not cover such offers at all. As a result, it is legal for an MP to have a clear offer of a future job or other benefit, and not disclose it, and not recuse themselves from any discussion, vote or decision-making process. Section 10 of the *COIA* states that a Cabinet MP (or their staff or appointees) shall not "allow himself or herself to be influenced in the exercise of an official power, duty or function by plans for, or offers of, outside employment." However, subsection 24(1) of the *COIA* only requires them to disclose a "firm" offer of outside employment within seven days to the Ethics Commissioner, and "firm" is not defined. As a result, it is essentially legal for a Cabinet MP and other office holders to have a fairly clear offer of a future job or other benefit and not disclose it.

Anyone who questions whether these gifts and favours can influence a politician's or public official's decision-making is essentially saying that these people are not human. Click here to see a summary of the clinical studies conducted worldwide that show that even small gifts and favours influence the decisions of the recipients, and larger gifts and favours have more influence.

In addition, under section 7 of the *MP Code*, MPs are allowed, without disclosing it to the Ethics Commissioner or publicly, to have another job or profession, carry on a business, be a director of corporation, association, trade union or non-profit organization or a partner in a partnership "as long as they are able to fulfill their obligations" required by the *Code*. This allows secret "contributions" to be made to an MP through a constituent or lobbyist employing them or being their customer. As well, MPs are allowed to have investments in businesses, including through open-ended mutual funds that are not required to be disclosed to the public, and to hold them in a so-called "blind" trust which doesn't really distance them from the MP as the MP knows what they put into the trust, chooses the trustee and the trustee can inform the MP of an "extraordinary event" that "is likely to materially affect" an investment in the trust, and also about tax requirements due to the investments.[74] Cabinet MPs and their staff and Cabinet appointees are allowed to invest directly in stocks/shares of businesses and other securities that are publicly traded on the stock market. All they are required to do is put them in a so-called "blind" trust which doesn't prevent them from knowing which stocks they own because they are allowed to choose the trustee and give them initial instructions

[74] *MP Code*, *supra*, section 17, 19, and clause 24(3)(j).

about what to do with whatever is put into the trust.[75] Their spouses and dependents are also allowed to have these investments, with no requirement to put them in a trust. Public disclosure of the existence of the trust is required, but not what is in the trust.[76] As well, a Cabinet MP and their staff and Cabinet appointees are allowed to have investments in businesses through open-ended mutual funds that are not required to be disclosed to the public.[77] All of these provisions do not comply with the egalitarian model because they allow for secret financial interests, including in foreign businesses, that create real conflicts of interest, and they allow all of these people to profit personally, or plan to profit in the future, using the resources, connections and relations they develop in their public office.

This is all made more possible by the eighth area of concern, which is that the *MP Code* has another, very significant loophole. While MPs are prohibited from hiring staff and using the office and other resources they are given through the House of Commons in ways that further their or their family's interests,[78] the loophole allows an MP to be in a significant financial conflict of interest, and take part in decisions that advance their own, their family's, friends' or associates' financial interests, and still be considered to be fulfilling their obligations required by the *Code*. The loophole is in the definition of "private interest" in subsection 3(3) of the *MP Code* which says an MP cannot have a private interest when deciding or acting on a matter that applies generally or affects them in a similar way as a broad class of the public is affected.[79] The *COIA* has the same loophole.

This means when participating in a discussion, debate, vote or decision-making process to change any of the federal government's laws, policies, taxes or subsidies, or spending, granting or service programs, that apply generally or affect a broad class of the public (which almost all of them do), ministers, their staff, top government officials and MPs and their staff are all allowed to have a financial, social or political conflict of interest and still participate in the decision-making process. In other words, the rules only apply to decision-making processes that make very specific decisions, such as handing out a government contract. This loophole may be even broader, as the House Committee that reviewed the *MP Code* in 2022 decided that, even though the Ethics Commissioner recommended it, the rules in

---

[75] *COIA*, *supra*, section 20 definition of "controlled asset" and subsections 27(1) to (9). See also Conflict of Interest and Ethics Commissioner, *Categories of Assets*, (January 2020) online: <https://ciec-ccie.parl.gc.ca/en/rules-reglements/Pages/CategoriesAssets-CategoriesBiens.aspx>, and; Conflict of Interest and Ethics Commissioner, *Divestment of Assets and Blind Trusts*, (June 2020) online: <https://ciec-ccie.parl.gc.ca/en/rules-reglements/Pages/INDivestmentBlindTrust-AIDessaisissementFiducies.aspx>.
[76] *COIA*, *supra*, subsections 25(2) and 27(8), and clause 26(2)(a).
[77] *COIA*, *supra*, section 20 definition of "exempt asset" (clause (h)) and subsection 25(2).
[78] House of Commons Board of Internal Economy, *Member's By-Law*, (June 16, 2022), online: <https://www.ourcommons.ca/DocumentViewer/en/boie/by-law/10000>, sections 4-9, 62(1), 65(1), 66(1), 95 (and, for House Officers, also 89(1), 92(1) and 93(1)) and several other sections concerning office use and expenses, travel and accommodation expenses, (hereinafter "*Member's By-law*").
[79] See also *MP Code*, *supra*, section 13.1.

subsections 3(2) and 3(3) of the *Code* should not specify that furthering the interests of a "person" includes legal persons (i.e. businesses, interest groups and other entities).[80] As a result, it is possible that the Ethics Commissioner could decide that the *MP Code* does not apply at all when an MP is participating in a decision-making process that involves furthering the interests of a business, interest group or entity to which they, their family or friends are connected. If a rare situation arises in which an MP has a conflict and is participating in a specific decision-making process, the MP is required to disclose it publicly and recuse themselves from the process.[81]

The *Senate Code* has very similar loopholes that allow senators who are not Cabinet ministers to engage in outside activities (section 5), although other Senate rules prohibit using Senate resources for personal, business or party purposes,[82] and loopholes that only apply the *Code* rules to senators' financial interests (subsection 11(1)), and that allow senators to have investments (sections 21-26 and 28), and that also say that a senator cannot have a private interest when deciding or acting on a matter that applies generally or affects them in a similar way as a broad class of the public is affected.[83]

However, in contrast to the *MP Code*, Senators added in June 2014 three binding rules to the *Senate Code* that at least somewhat override these loopholes -- subsection 2(1) which requires senators to give precedence to fulfilling their duties and functions as a Senator over any other activity; section 7.1 which requires Senators to act at all times, on the job and in every other action, in ways that uphold highest standard of dignity (subsection 7.1(1), and prohibits them from acting in ways that reflect adversely on position of Senator or the Senate (subsection 7.1(2)) and; section 7.2 which requires Senators to perform their duties and functions as a senator with dignity, honour and integrity.[84]

It is unclear exactly how much these rules override the conflict of interest loopholes in the *Code*. The Senate Ethics Officer stated clearly in his annual report issued in June 2022 that, because of rules 2(1), 7.1 and 7.2, combined with expectations set out in the original version of the *Code* that Senators will avoid even the appearance of a conflict of interest (subsections 2(2)(b) and (c)), he is advising

---

[80] Procedure and House Affairs report (June 2022), *supra*, at 40.
[81] *MP Code*, *supra*, sections 12-13.
[82] Senate of Canada, *Senate Administrative Rules*, (June 23, 2022), online: <https://sencanada.ca/media/szhn5ciq/sars_complete_b.pdf>, Division 1:00 Interpretation, Chapter 1:02 Principles, subsections 3(b) and 4(b) and clause 4(c)(ii); Division 1: Interpretation, Chapter 1:03 Definitions, section 1 definition of "parliamentary functions" and "public business" and; Division 3:00 Senate Resources, Chapter 3:01 Allocation and Use of Senate Resources, sections 1 and 5 (hereinafter "*Senate Rules*").
[83] *Senate Code*, *supra*, subsection 11(2) and 16.
[84] *Senate Code*, *supra*. See also on section 7.1: Standing Committee on Ethics and Conflict of Interest for Senators, *Ethics and Conflict of Interest Code for Senators Directive 2015-02*, (July 27, 2015), online: <https://seo-cse.sencanada.ca/media/yf4biy0c/directive-2015-02-rules-of-general-conduct.pdf>.

senators (if they ask) that they cannot take part in decisions if they have outside interests that cause even an appearance of a conflict of interest.[85] However as of October 2024 he had not issued a ruling on such a situation.

The ninth area of concern is that, as noted above, while ministers, their staff, top government officials, MPs and Senators are required to disclose conflicts of interest and to recuse themselves from policy-making processes when in a conflict (despite the many loopholes detailed above that exempt them from most conflicts), they are only required to disclose, for themselves and their family members, assets, liabilities worth more than $10,000 (including, for MPs, a credit card balance of more than $10,000 if it has been outstanding for more than six months), although Senators are not required to disclose cash on hand or on deposit at a financial institution, guaranteed investment certificates or financial instruments issued by any Canadian government or agency (and it is unclear whether MPs or Senators are required to disclose holdings of cryptocurrency or other digital/intangible assets).[86]

In contrast, the disclosure threshold for income earned in the previous 12 months (or expected to be earned in the next 12 months) is $1,000 for MPs and their family members (disclosed to the Ethics Commissioner only – the public disclosure threshold is $10,000) and $2,000 for Senators and their family members.[87] Lowering the disclosure threshold for assets and liabilities to $1,000 would add another legal measure that helps make it clear that giving a valuable gift to an MPs and Senators is prohibited, as they would be required to disclose a gift worth $1,000 or more as a new asset by notifying the Ethics Commissioner within 60 days (MPs) or the Ethics Officer within 30 days (Senators).[88]

A tenth area of concern is that under clause 121(1)(b) of the *Criminal Code* it is legal for the head of a government institution to approve in writing a person or entity that has "dealings of any kind with the government" giving, with respect to those dealings, a commission, reward, benefit or advantage directly or indirectly to a government official or employee, or to a member of their family, or to anyone else for the benefit of the official or employee, and clause 121(1)(c) allows the head to approve in writing the official or employee etc. receiving the commission etc.[89]

---

[85] Senate Ethics Officer, *2020-2021 Annual Report*, (June 22, 2021), online: <https://seo-cse.sencanada.ca/media/fmkldmms/annual-report-2020-2021.pdf> at 16-18. Senate Ethics Officer, *2021-2022 Annual Report*, (June 22, 2022), online: <https://seo-cse.sencanada.ca/media/lz4ooi2r/annual-report-2021-2022.pdf> at 19-21.
[86] *MP Code*, *supra*, sections 20-24, with the exemptions set out in subsections 21(1)(a) and 24(3)(a). *Senate Code*, *supra*, sections 27-33, with the exemptions set out in clause 28(1)(h), subsection 28(4) and clause 31(1)(h). See also Standing Committee on Ethics and Conflict of Interest for Senators, *Ethics and Conflict of Interest Code for Senators Directive 2015-01*, (June 29, 2015), online: <https://seo-cse.sencanada.ca/media/4ask2utu/directive-2015-01-failure-of-the-duty-to-disclose.pdf>.
[87] *MP Code*, *supra*, subsections 21(1)(b) and 24(3)(b). *Senate Code*, *supra*, clauses 28(1)(d) and 31(1)(d).
[88] *MP Code*, *supra*, subsection 21(3). *Senate Code*, *supra*, subsection 28(6).
[89] *Criminal Code*, *supra*.

An eleventh area of concern is that loopholes, weaknesses and inconsistencies in the rules that apply to politicians and government officials after they leave their public position raise the first concerns in this area. First, the *MP Code* and the *Senate Code* do not include a cooling-off period for MPs, Senators or their staff that restricts their activities after they leave office.

However, the requirements in the *COIA* that apply to Cabinet MPs (ministers, ministers of state and parliamentary secretaries) and almost all Cabinet appointees (deputy ministers, associate deputy ministers and most appointed heads of government institutions, and Cabinet staff except people who work on average less than 15 hours per week)[90] state that a Cabinet minister and a minister of state for two years, and everyone else for one year, cannot:

i. "enter into a contract of service with, accept an appointment to a board of directors of, or accept an offer of employment with" an entity; or
ii. "make representations whether for remuneration or not, for or on behalf of any other person or entity to any department, organization, board, commission or tribunal"

if they had direct and significant official dealings during the period of one year immediately before their last day in office.[91] The rules for the one-year cooling-off period for government employees after they leave their position are the same, as well as a provision that they not share secret information about programs and policies of their former government institution and others they were connected to in a direct and substantial way, and they can apply for an exemption.[92] Cabinet ministers and ministers of state are also prohibited for two years from making representations to ministers and ministers of state who were in Cabinet with them.[93]

Any of these people can request that the Ethics Commissioner grant a waiver or reduction of their cooling-off period for various reasons, including the circumstances of them leaving office, their job prospects, their degree of power while in office, and how that may give an advantage to their new employer and the "facilitation of interchange between the private and public sector" – and the Commissioner must publish any waivers granted.[94] Also, a former ministerial staff person who worked less than 15 hours per week in essentially a low-level

[90] The people who are not required to comply with the one-year cooling-off period are ministerial staff who work on average less than 15 hours per week, and; reporting public office holders (i.e. heads of some government institutions and others) that are not Cabinet or minister-appointed in some way covered by the definition of "reporting public office holder" in the *COIA*, *supra*, subsection 2(1), and are not designated under subsections 62.1(2) and 62.2(2) of the *COIA*. For the list of office holders designated under subsections 62.1(2) and 62.2(2) see the *Order Designating Public Office Holders and Reporting Public Office Holders under Section 62.2 of the Conflict of Interest Act* (SOR/2014-200).
[91] *COIA*, *supra*, subsections 35(1) and (2), and section 36.
[92] *Directive*, *supra*, clauses 4.2.19, 4.2.20 and Appendix A, clause A.2.2.4.
[93] *COIA*, *supra*, subsections 35(3) and 36(2).
[94] *COIA*, *supra*, sections 39 and 42.

administrative position that "did not include the handling of files of a political or sensitive nature, such as confidential cabinet documents" can request that the Ethics Commissioner grant a waiver of their one-year cooling-off period, and the Commissioner must publish any waivers granted.[95]

The questions that these rules raise are: Why do they not apply to all heads and deputy heads of all government institutions (including ambassadors and other senior diplomats)? Why do they only apply to people and entities that the office holder has had direct, significant and official dealings during their last year in office? Why do the cooling-off periods only last for one to two years? and; Why can exemptions be granted for such broad and varying reasons that contradict the purpose of the *COIA* of preventing conflicts of interest?

There are other rules set out below that apply to the relationships and interactions between registered lobbyists and politicians and public officials but, as described in the above sub-part 3.1, lobbying is legal without registering and so those rules do not apply to all lobbyists. Any decision concerning what to set as the length of a cooling-off time period after someone leaves a public office is somewhat arbitrary because it is difficult to determine in some cases whether a relationship or connection has created an appearance of a conflict of interest. However, it seems particularly arbitrary to say that only relationships and connections developed through direct, significant, official dealings during the last 12 months on the job create an advantage for a former public office holder and/or conflict of interest for the office holders who remain in government, and also that the conflict somehow disappears only 12 to 24 months afterwards.

Three other very broad rules in the *COIA* apply to Cabinet MPs and a longer list of Cabinet appointees[96] and they seem to say that these people can never advocate or advise individuals, businesses or other entities in their dealings with the federal government as long as any of their former colleagues or officials they interacted with are in the government. However, the rules have not been enforced that way by the Ethics Commissioner. The rules are that these office holders cannot ever "take improper advantage" of their former public office; "act for or on behalf of any person or organization in connection with any specific proceeding, transaction, negotiation or case to which the Crown is a party" and the office holder acted for or provided advice to the Crown, or; "give advice to his or her client, business associate or employer using information that was obtained in his or her capacity as a public

[95] *COIA*, *supra*, sections 38 and 42.

[96] The people exempt from these three rules include heads of diplomatic missions (embassies etc.), a deputy commissioner of the RCMP, lieutenant governors, judges or military judges, and public office holders (i.e. heads of some government institutions and others) that are not covered by the definition of "public office holder" in the *COIA*, *supra*, subsection 2(1), and are not designated under subsections 62.1(1) and 62.2(1) of the *COIA*. For the list of office holders designated under subsections 62.1(1) and 62.2(1), see the *Order Designating Public Office Holders and Reporting Public Office Holders under Section 62.2 of the Conflict of Interest Act* (SOR/2014-200).

office holder and is not available to the public."[97] The first rule has been interpreted by the current Ethics Commissioner essentially to mean that, as long as the office holder complies with the other rules of their cooling-off period, anything they do after leaving their position will be deemed as not taking improper advantage of their former position.[98]

With regard to the third broad rule, given it is not possible to unlearn what you have learned, it seems that the rule would prohibit any former office holder from advising anyone or any entity, given that their advice would always be based on (i.e. "using") secret information they learned while on the job. However, former Ethics Commissioner Mary Dawson ruled in January 2014 on a situation involving former Cabinet minister Chuck Strahl (who left politics in spring 2011) lobbying the B.C. government for Enbridge concerning their approval of Enbridge's proposed Northern Gateway Alberta-B.C. pipeline, which also required some federal government approvals and had been considered by the federal Cabinet when Mr. Strahl was a minister. Commissioner Dawson's ruling stated that, for her even to investigate, she would have to be presented with "specific information" proving that a former office holder actually gave advice using secret information they learned while in office.[99] Current Ethics Commissioner Mario Dion essentially echoed that requirement in a ruling in January 2022.[100]

These rulings essentially mean that it is effectively legal to violate this third broad rule, for three reasons. First, such specific information would likely never be disclosed unless someone inside the client business or organization of a former office holder blew the whistle and disclosed the documents giving the advice. Secondly, if a former public office holder gave the advice without citing the secret information it was based on, even if the advice was disclosed it would be impossible to prove that it was based on the secret information. Thirdly, if the office holder gives the advice only verbally, and no one records it, it would be impossible to prove that the advice was even given.

For example, one of the key things that anyone or any entity wants to know is who is the actual decision-maker concerning whatever statutory, code, tax, subsidy, program or other change is the focus of the lobbying effort. This information is often not known to the public – the Cabinet minister whose mandate includes the policy area may not actually have any decision-making power, as the Prime Minister may actually make all the decisions in the area, and may rely entirely on one of her/his

---

[97] *COIA*, *supra*, sections 33-34.
[98] Conflict of Interest and Ethics Commissioner, Letter dated January 17, 2022, online: <https://democracywatch.ca/wp-content/uploads/EthicsCommRulingOnBartonJan172022.pdf>, fourth and fifth paragraphs (hereinafter "Ethics Commissioner (Jan. 17, 2022)").
[99] Conflict of Interest and Ethics Commissioner, Letter dated January 23, 2014, online: <https://democracywatch.ca/wp-content/uploads/StrahlLetter-to-D.-Conacher_January-23-2014.pdf>, fourth paragraph.
[100] Ethics Commissioner (Jan. 17, 2022), *supra*, fifth paragraph.

advisers to actually make any decisions. Knowing that this adviser is the actual decision-maker is valuable information for any lobbying effort, and a former public office holder can easily pass on this information verbally without leaving any provable trace.

With regard to making representations to federal politicians, political staff or government institutions in ways that would require registering as a lobbyist under the *Lobbying Act*, the *Act* and a regulation under the *Act* state that all MPs, Cabinet staff, the staff of the Leader of the Official Opposition, and Cabinet appointees ("designated public office holders" – essentially deputy ministers, heads of government institutions, associate deputy ministers, assistant deputy ministers and other comparable top government officials) are all prohibited from doing registered lobbying for five years after they leave office.[101] However, as detailed in the previous sub-part 3.1, the loopholes in the lobbying registration requirements in the *Act* make it very easy to lobby without registering. In fact, the Prime Minister could resign and legally lobby the government the very next day as an employee of a business, without registering or disclosing their lobbying, as long as the former PM was careful about which business they lobbied for, and about whom they lobbied.

An additional disclosure loophole is that a former designated public office holder is not required under the *Lobbying Act* to report to the Commissioner of Lobbying whenever they are lobbying during the five-year cooling-off period. But under the *COIA*, the former office holder is required to file a return, during their one- to two-year cooling-off period, to the Ethics Commissioner if they communicate with or arrange a meeting with (i.e. lobby) any federal office holder as defined by the *Lobbying Act*.[102] It is not fully clear, but it seems from a provision in the *COIA*[103] that the Ethics Commissioner would be prohibited from sharing the information about the lobbying with the Commissioner of Lobbying.

In addition, the five-year prohibition does not apply to a former designated public office holder who worked for the federal government under its employee exchange program Interchange Canada, which allows people from business and other sectors to go and work for the government for up to three years and then return to their private sector position (public officials can also go and work in the private sector and then return to their federal government position).[104] As well, no matter

---

[101] *Lobbying Act*, *supra*, section 10.11, and *Designated Public Office Holder Regulations (SOR/2008-117)*. See also: Commissioner of Lobbying, "Comparable rank" bulletin (May 11, 2022) *supra*; Commissioner of Lobbying, "Acting DPOH" bulletin (May 11, 2022), *supra*.
[102] *COIA*, *supra*, sections 37 and 40.
[103] *COIA*, *supra*, sections 40 and 43.
[104] Commissioner of Lobbying, "Disclosure of previous public offices," (May 11, 2022), online: <https://lobbycanada.gc.ca/en/rules/the-lobbying-act/advice-and-interpretation-lobbying-act/disclosure-of-previous-public-offices/>. Government of Canada, Interchange Canada, (September 2, 2016), online: <https://www.canada.ca/en/treasury-board-secretariat/services/professional-development/interchange-canada.html>.

what their connections or relationships with top political decision-makers or government officials, the five-year prohibition does not apply to other public office holders who are not "designated" – including the staff of MPs and senators, caucus research office staff, government employees below the rank of assistant deputy minister or a comparable position, and it also does not apply to staff of political parties even if they regularly communicate with or have a close relationship with Cabinet ministers and their staff.[105]

Beyond these loophole-riddled cooling-off periods under the *COIA* and the *Lobbying Act* that apply to former politicians, Cabinet staff and other appointed federal public officials (to varying degrees), and the rules that apply to government employees, the federal *Lobbyists' Code* sets out ethics rules that apply to all federal registered lobbyists that are essentially the flipside of the rules that address giving gifts/benefits/advantages to MPs and Cabinet MPs.[106] While not a statute, the *Lobbyists' Code* is legally binding and applies to anyone who should be[107] or is registered as a lobbyist under the federal *Lobbying Act*. It is important to note this because, as summarized above, loopholes allow for lobbying without registering, which means that lobbyists whose activities fit within those loopholes are exempt from the *Code*'s rules[108] and can lobby unethically in secret.

The *Act* and *Lobbyists' Code* together allow lobbyists to secretly fundraise and campaign for, or assist politicians and parties in other ways, and then lobby them right afterwards or soon afterwards. Lobbyists can do this with nomination contestants, election candidates, electoral district associations (EDAs), MPs, Senators, party leaders and Cabinet ministers and parties. The Commissioner of Lobbying is also allowed to secretly reduce the time period during which a lobbyist is prohibited from lobbying after doing favours for a policy-maker. Click here to see details about these loopholes in the *Act* and *Code*. All of these loopholes facilitate secret, unethical foreign interference using lobbyists as "proxies".

[105] *Lobbying Act*, *supra*, subsection 2(1) definition of "public office holder".
[106] *Lobbyists' Code*, *supra*.
[107] *Makhija v Canada (Attorney General)*, 2010 FC 141 at paragraph 18.
[108] *Lobbying Act*, *supra*. See a summary of the loopholes in Democracy Watch, Op-ed: Before making any other changes, make the 5-year ban on federal lobbying an actual ban, and make it fair, and strengthen enforcement, (May 6, 2016), online: <http://democracywatch.ca/before-making-any-other-changes-make-the-5-year-ban-on-federal-lobbying-an-actual-ban-and-make-it-fair-and-strengthen-enforcement/>.

4 How to Make Lobbying Rules Egalitarian and Prevent Foreign Interference by Third-Party "Proxy" Lobbyists

Part 3 above provides details concerning how and why almost all of Canada's lobbying rules, and related political ethics rules, do not comply with the three key principles of the egalitarian model of ensuring, in all political processes: close to equal opportunity for close to equal participation and influence; the appearance of, and actual integrity, of the process, and; adequate information for voters to make informed choices, all of which facilitates foreign interference.

All of these loopholes and flaws make it easy for foreign governments, entities and individuals to use "proxy" lobbyists to interfere in and influence elections and political policy-making processes across Canada. Listed below are key changes needed to make Canada's lobbying rules, and related ethics rules, egalitarian for all political processes and, thereby, to prevent foreign interference in Canadian politics using third-party "proxies". Given the details set out above in Part 3, only a summary of the reasons for each proposed change is set out below, other than for some proposed changes which are addressed in more detail:

1. Current rules should be changed in the *Criminal Code*, *Parliament of Canada Act* and/or the federal ethics statute, codes and directives to prohibit giving or promising to give anything more than one very low-value gift (including travel), courtesy, hospitality, benefit or advantage to anyone who (based on the initial election results) could become an MP or whom the Prime Minister has announced has been appointed as a Senator, and to prohibit the potential MP or Senator from soliciting or accepting any gift, benefit, advantage or favour or promise to give to or do anything for them. No more than a combined total of $30 should be allowed from everyone (as a combined total) who is connected to the same business, organization, family or lobbying effort) or doing or promising to do any favour should be prohibited. These rules should apply to gifts etc. even from a relative or a friend if the relative or friend is lobbying or will be lobbying the federal government, and it should also apply to prohibit inheritances if the person who made the testamentary gift is connected with an ongoing lobbying effort that is happening or will happen while the politician or public official is in office.
2. Current rules should be changed in the *Parliament of Canada Act* and/or the *MP Code* and *Senate Code* to require potential MPs and Senators to disclose to the Ethics Commissioner (for Senators, the Senate Ethics Officer all gifts, benefits etc. received (or promised to be given) within 30 days of receiving them or the promise to give them. The Ethics Commissioner and Senate Ethics Officer should be empowered and

required to audit gifts regularly to ensure compliance with the rules. The Ethics Commissioner and Senate Ethics Officer should also be required to disclose within 30 days in an online, searchable database the total number of gifts given to each politician and official, the value of the gifts, and the sources by category (lobbyist/lobbying firm, community organization, business/organization/family connected to a lobbying effort, relative connected to lobbying effort, friend connected to lobbying effort).

3. All existing rules in the *MP Code* that cover MPs, and in the *Senate Code* that cover Senators, should be extended to cover all staff of an MP or Senator, and should apply from when they are offered the staff position, with the rules adapted as applicable and, unless otherwise specified, all of the changes proposed in the proposals through the rest of this chapter that cover "public officials" should cover the staff of MPs and Senators. As well, the *MP Code*, *Senate Code* and the codes that apply to government employees should be enacted as statutes to ensure they are enforceable (which has been an issue before the courts – see *Peet v. Canada (Attorney General) (T.D.)*, 1994 CanLII 3484 (FC), [1994] 3 FC 128) to ensure a full public debate of any changes instead of allowing the current secretive processes (described further below) for making changes.
4. The *Criminal Code* section 121(1)(b) and (c), and the federal ethics statute, codes and directives, should all be changed to prohibit giving or promising to give to all politicians and public officials (combined with their staff) anything more than one very low-value gift or benefit (including sponsored travel or a sponsored intern) or courtesy or hospitality each year (no more than $30 each year should be allowed from everyone (as a combined total) who is connected to the same business, organization, family or lobbying effort). This rule should apply to gifts, courtesy or hospitality even from a relative or a friend if the relative or friend is lobbying or has dealings (or has lobbied or had dealings recently, or will soon in the future) with the federal government, and it should also apply to prohibit inheritances if the person who made the testamentary gift is connected with a lobbying effort that is happening or has happened while the politician or public official was in office.
5. The federal ethics statute, codes and directives should be changed to require all politicians and public officials to disclose to the Ethics Commissioner (for Senators and their staff, the Senate Ethics Officer) all gifts or benefits received (or promised to be given – including sponsored travel) within 30 days of receiving them or the promise to give them. The Ethics Commissioner and Senate Ethics Officer should be empowered and required to audit gifts regularly to ensure compliance with the rules. The Ethics Commissioner and Senate Ethics Officer should also be required to disclose within 30 days in an online, searchable database the total number

of gifts given to each politician and official, the value of the gifts, and the sources by category (lobbyist/lobbying firm, community organization, business/organization/family connected to a lobbying effort, relative connected to lobbying effort, friend connected to lobbying effort).

6. The definition of "benefit" in subsection 3(1) of the *MP Code* should be amended to change the wording of the exemption from "other than a service provided by a volunteer or intern working on behalf of a Member" to "other than a service provided by a volunteer or intern working on behalf of a Member, unless the volunteer or intern is connected directly or indirectly to any registered or unregistered lobbying activities aimed at the Member or anyone in the Member's political party, in which case the combined total limit of the combined total of volunteering and intern time allowed by all volunteers and interns connected to the lobbying effort is the market value of their time spent volunteering or as an intern that adds up to $30 annually."
7. The rules for Cabinet MPs and their staff and appointees should prohibit all outside activities. The rules for MP and Senators should prohibit outside work and jobs, and for their staff, and government employees, other activities should be allowed only if they don't create an apparent conflict of interest. The only exception for all politicians and Cabinet staff should be work required to be done to remain qualified as a professional. All offers of another job or outside work should be required to be disclosed to the Ethics Commissioner within one week after an offer is received.
8. The rules for Cabinet MPs, Cabinet appointees, MPs and Senators should prohibit all investments except in government bonds and guaranteed investment certificates that are not connected to any business or organization. The rules for Cabinet staff and MP and Senator staff should, like for government employees only allow investments in businesses that do not create an apparent conflict of interest, with full disclosure. The only exception for all politicians and public officials should be if their family owns a business or farm, and that should be disclosed publicly.
9. The rules for all federal politicians and public officials should prohibit them from participating in a policy-making process if they have an apparent conflict of interest (and the rules should make it clear that an apparent conflict exists whether or not they know about the conflict, and whether or not the interest aligns with the public interest), with the only exception being if they are participating in process concerning a law, regulation, code, policy etc. that applies to themselves in the same way as it applies to a broad group of people, and does not apply in any way that especially furthers the specific financial, social or political interests of themselves, their family, their close friends or associates or entities to which these people have direct connections. An example of when the exception would

apply is if a politician or public official is considering changes to general rules for income taxes, pensions, social welfare benefits or other general financial rules that apply to themselves, their family, friends or associations in the same way as they apply to many or all Canadians. As well, the two purposes in the *COIA* that contradict the objective of preventing apparent conflicts of interest should be removed, and the word "improperly" should be defined in all ethics rules broadly as, essentially, an anti-avoidance clause that prohibits all activities that appear to be unethical and overrides any technical loopholes in the rules.

10. Because it is a vague rule that exempts from all the other rules in the *MP Code* anything an MP does that s/he "normally and properly" does on behalf of their constituents, section 5 should be deleted from the *Code*.

11. As the *COIA* and rules for government employees do, the *MP Code* and *Senate Code* should be extended to cover political and social conflicts of interest.

12. The *MP Code* and *Senate Code* should also be changed to cover conflicts of interest caused by the interests of more of their family members (e.g. their parents, grandparents, aunts and uncles, and their siblings' families), with public disclosure of the main interests of those members.

13. As the Ethics Commissioner recommended for the *MP Code*, the rules for all politicians and public officials should be changed to cover conflicts of interest caused by the interests of their friends, with all required to disclose a list of friends and their main interests to the Ethics Commissioner, Senate Ethics Officer or, for government employees, their deputy head.

14. The federal *Voluntary Sector Code of Good Practice on Policy Dialogue* should be strengthened by adding key measures, and then enacted as law, along with changing the *MP Code*, *Senate Code* and *COIA* to prohibit all federal politicians, and Cabinet staff and appointees from giving preferential treatment to anyone during a policy-making process before the decision is made.

15. The rules for federal politicians and public officials and their immediate families should be changed to lower the threshold for requiring disclosure to assets and liabilities worth $1,000 or more (including cryptocurrencies, NFTs and other digital/intangible assets) with the disclosure document filed with whomever enforces the rules that apply to them. Still, assets and liabilities worth more than $10,000, and all assets and liabilities that create an apparent conflict of interest, of all politicians and public officials and their extended family members should be disclosed publicly. As well, the connections of politicians and public officials and their immediate family members to charities, businesses and other organizations that can benefit

from donations, grants and loans should be disclosed to whomever enforces their ethics rules.

16. The rules for federal politicians and public officials should be changed to require public disclosure at the time, and within one week in a searchable online database, every time they recuse themselves from a policy-making process because of a real or apparent conflict of interest.

17. The *Lobbying Act* should be changed to require that every communication in respect of each political and government decision-making and policy-making process be disclosed in the Registry of Lobbyists, including unpaid communications of any kind about any decision, arranging meetings, and communications with and through senior officials of political parties including their caucus research bureaus. The only exception should be if a voter signs on to an interest group's petition or letter-writing initiative, as the group would disclose the initiative on behalf of everyone who signs.

18. The *Lobbying Act* should be changed to require that politicians and public officials, including staff of MPs and Senators, and senior officials of political parties, and staff in party caucus research bureaus, disclose every communication in respect of each political and government decision-making and policy-making process.

19. The *Lobbying Act* should be changed to make it clear that the assumption of the Commissioner of Lobbying is that lobbying communications with lower-level public officials are passed onto the deputy minister or minister, unless the lower-level official has been delegated in writing complete control and discretion concerning the decision-making or policy-making process.

20. The *Lobbying Act* should be changed to require lobbyists to disclose in the Registry of Lobbyists how much is being spent on a lobbying effort, including the amount spent on fees for consultant lobbyists, and the amount spent on gifts and hospitality and which public officials were offered or given any gift or hospitality. If it is a coalition lobbying, the amount that each member of the coalition has donated to the lobbying effort should be disclosed. If a business or organization has received funding from another organization, it should be required to disclose that funding.

21. The *Lobbying Act* should be changed to require consultant lobbyists to disclose in a separate listing in the Registry of Lobbyists how much their fees received from each lobbying effort they assisted. Businesses and organizations should be required to disclose how much they pay each staff person involved in lobbying. This information will inform the public and media whether former politicians and public officials have higher market value than other lobbyists.

22. The *Lobbying Act* should be changed to require lobbyists to disclose in the Registry of Lobbyists every quarter how much they have donated, granted, loaned and fundraised for each political party, electoral district association (EDA), candidate, nomination contestant and/or party leadership contestant, and also to charities, business and other organizations that are connected to politicians, public officials and their families. For a business or organization, this would require disclosing how much its lobbyists, executives and family members have contributed in any of those ways, and also its employees if they have been asked in any way to donate. As well, details concerning gift and other benefits given to politicians and other public officials should be disclosed in these quarterly reports.
23. The *Lobbying Act* should be changed to prohibit lobbyists (and lobbying businesses and organizations) from donating, granting or loaning to charities, business and other organizations that are connected to politicians, public officials and their families if they are lobbying the politician or official and their contribution will, therefore, create an apparent conflict of interest.
24. The *Lobbying Act* should be changed to require lobbyists to disclose in the Registry of Lobbyists every quarter how much they have worked or volunteered for each political party, EDA, candidate, nomination contestant and/or party leadership contestant. For a business or organization, this would require disclosing how much its lobbyists, executives and family members have worked and volunteered, and also its employees if they have been asked in any way to do work or volunteer.
25. The *Lobbying Act* should be changed to require that the Commissioner of Lobbying re-work the Registry of Lobbyists so that an online search can easily produce a full report of the identity of each lobbyist involved in the lobbying effort, and the spending (including on fees for consultant lobbyists and staff salaries), donations, grants, loans and fundraising connected to the effort, and past volunteering or work by any lobbyists involved for political parties, EDAs, contestants and candidates, and government institutions. The Commissioner should also be required to allow the Registry to be searched by every field so that overall statistics can be easily found concerning total spending, fees, salaries, donations, grants, loans, volunteering and work and former work with the government.
26. To inform the setting of the length of cooling-off periods during which a public official is prohibited from lobbying after leaving office, a comprehensive study should be conducted by a fully independent commission of the number of registered lobbyists each year for the past decade who were formerly a politician or formerly worked for a federal government politician or as a public official or volunteered at a senior level or worked for a political party, EDA, contestant or candidate (on a

campaign or between elections in any role, including fundraising), and to compare their fees and salaries based on which role they had in their past government or political volunteer or work, and with other lobbyists who do not have that volunteer or work experience. The study should also take into account the difficulty of establishing whether lobbyists' past assistance to policy-makers, connections and relationships produce desired results, given that policy-makers can help individuals, businesses and organizations in many cases as much through inaction as through actions.

27. Based on the comprehensive study of the market and influence value of lobbyists who have former work experience as a federal politician or public official (including participants in employee exchange positions between the government and the private sector through Interchange Canada) and/or former volunteer or work experience with parties, EDAs, etc., a sliding scale of cooling-off periods should be set for former politicians and public officials taking into account their connections with whomever is still working in government and/or political parties and the positions and policy-making powers those people have, and the relationships those people have with others who have policy-making powers. To ensure that the Commissioner of Lobbying does not grant favours in setting cooling-off periods, the *Lobbying Act* should be changed to set specific time periods for each type of relationship/connection. The study suggested in proposal #193 should also be used to inform setting a sliding scale of cooling-off periods prohibiting people from lobbying after assisting parties, EDAs, candidates or contestants.

28. The *Lobbying Act* should be changed to prohibit, during a cooling-off period, not only lobbying but also advising anyone or any entity that is lobbying.

29. The *Lobbying Act* or *Lobbyists' Code* should be changed to require lobbyists to disclose to any politician or public official they are lobbying the identities of others who may become involved in the policy-making process and have a conflict of interest because the lobbyist has assisted them (or their party) directly or indirectly in the past.

30. It should be made clear in the *Lobbyists' Code* that if a person does any of the activities listed in the *Code* that mean they have a cooling-off period that prohibits them from lobbying whichever person or entity they assisted (and everyone who works for that person or entity), the prohibition applies whether or not the person was a registered lobbyist when they did the activities.

31. The *Lobbyists' Code* should state clearly that if a person assists party headquarters or a party overall in any way, the person should be prohibited from lobbying every MP and Senator in the party, and their staff, and all party officials, for the duration of their cooling-off period. As well,

as proposed above in proposal #187, it should be made clear in the *Lobbying Act*, and the ***Lobbyists' Code*** (including in the definition of "associates") that lobbying a lower-level politician or public official is considered to be lobbying a higher-level person unless the lower-level person has full decision-making power concerning the lobbying issue.

If all of the above changes are not made, it will remain easy for foreign governments, entities and individuals to use "proxy" lobbyists to secretly and unethically interfere in and influence elections and political policy-making processes across Canada through the secret fundraising, campaigning those "proxies" do for politicians, party leaders and parties, and the unethical gifts and favours they give to politicians and public officials.

However, again, even if all the changes listed above are made to close all the loopholes and correct all the flaws in the regulation of lobbying activities and related political ethics rules, if enforcement is tainted by political influence and is ineffective, secretive, underfunded, delayed and unaccountable (as the enforcement agency that will be established under Bill C-70 will likely be) then likely violators will be let off the hook.