



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SIXTH LEGISLATURE

Bill 80

Lobbying Transparency and Ethics Act

Introduction

**Introduced by
Mr Paul Bégin
Minister of Justice**

**Québec Official Publisher
2002**

EXPLANATORY NOTES

The purpose of this bill is to foster transparency in the lobbying of public office holders and to ensure that lobbying activities are properly conducted.

First, the bill defines what constitutes lobbying or a lobbying activity and distinguishes between consultant lobbyists, enterprise lobbyists and organization lobbyists.

The bill further provides that certain information concerning lobbyists and their activities will be entered and kept up to date in a public registry, notably information as to the subject-matter of lobbying activities. A Lobbyists Registrar will be designated to keep the registry of lobbyists.

As well, a Lobbyists Commissioner will be appointed by the National Assembly to monitor and control the activities of lobbyists. The Lobbyists Commissioner will also be responsible for drafting a code of conduct for lobbyists and for making inquiries and inspections with respect to any contravention of the provisions of the Act or the code of conduct.

In addition, the bill prohibits certain practices by lobbyists and provides for disciplinary measures and penalties for any breach of the provisions of the Act or the code of conduct.

Bill 80

LOBBYING TRANSPARENCY AND ETHICS ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

CHAPTER I

PURPOSE AND APPLICATION

1. The purpose of this Act is to foster transparency in the lobbying of public office holders and to ensure, while recognizing the legitimacy of lobbying, that lobbying activities are properly conducted.

2. Any oral or written communication with a public office holder in an attempt to influence or that may influence

(1) the development, introduction, amendment or defeat of any legislative or regulatory proposal, resolution, policy or program, or

(2) the awarding of any contract, grant or other financial benefit, the issue of any permit, licence, certificate or other authorization or the granting of any other form of benefit determined by government regulation,

constitutes lobbying or a lobbying activity within the meaning of this Act.

Arranging a meeting between a public office holder and any other person is considered to be a lobbying activity.

3. Consultant lobbyists, enterprise lobbyists and organization lobbyists are considered to be lobbyists for the purposes of this Act.

In this Act,

“consultant lobbyist” means any person, whether or not a salaried employee, whose occupation or mandate consists, in whole or in part, in lobbying on behalf of another person in return for compensation;

“enterprise lobbyist” means any person a significant part of whose job or function within a profit-seeking enterprise consists in lobbying on behalf of the enterprise; and

“organization lobbyist” means any person a significant part of whose job or function consists in lobbying on behalf of an association or other non-profit group the majority of whose members are profit-seeking enterprises or representatives of profit-seeking enterprises.

4. The following persons are considered to be public office holders for the purposes of this Act :

(1) government ministers and members of the National Assembly, as well as persons on their staff ;

(2) government employees ;

(3) persons appointed to a government agency or enterprise within the meaning of the Auditor General Act (R.S.Q., chapter V-5.01), as well as employees of any such agency or enterprise ;

(4) persons appointed to a non-profit agency established for the purpose of managing and providing financial support for activities of a public nature out of funds originating principally from the Government, without itself delivering products or services to the public, as well as employees of any such agency ; and

(5) mayors, municipal or borough councillors, wardens, chairs and other members of the council of a metropolitan community, as well as persons on their staff and employees of municipalities and municipal bodies referred to in section 18 or 19 of the Act respecting the Pension Plan of Elected Municipal Officers (R.S.Q., chapter R-9.3), if they exercise their functions within a municipality or body belonging to a class determined by regulation.

5. This Act does not apply in respect of

(1) any submission made in or prior to judicial or adjudicative proceedings ;

(2) any submission made to a parliamentary committee of the National Assembly or at a public meeting of a municipal council or municipal body ;

(3) any submission made in public proceedings, or in proceedings that are a matter of public records, to any person or body having jurisdiction or powers conferred by an Act, an order in council or a ministerial order ;

(4) any submission made by a person other than a consultant lobbyist concerning the granting of financial benefits, authorizations or other forms of benefits referred to in subparagraph 2 of the first paragraph of section 2, where the public office holder having the power to make the decision is only authorized in this regard to ascertain whether the legal requirements for the granting of such benefits are satisfied ;

(5) any submission made in the negotiation, subsequent to the awarding of a contract, of conditions for the performance of the contract ;

(6) any submission made by public office holders when acting in their official capacity ;

(7) any submission made in response to an express request from a public office holder, including any submission made in response to a call for tenders issued under the public office holder's authority ; or

(8) any submission the disclosure of which could reasonably be expected to threaten the safety of a lobbyist or a lobbyist's client, a public office holder or any other person.

6. This Act does not apply to any of the following persons when acting in their official capacity :

(1) members of the Senate or House of Commons of Canada, the legislative assembly of another province, the council or legislative assembly of a territory, or persons on the staff of such members ;

(2) employees of the Government of Canada or of the government of another province or of a territory ;

(3) members of the council of a band as defined in section 2 of the Indian Act (Revised Statutes of Canada, 1985, chapter I-5) or of the council of an Indian band established by an Act of the Parliament of Canada, or persons on the staff of such members or employees of such a council ;

(4) diplomatic agents, consular officers or official representatives in Canada of a foreign government ;

(5) employees of a specialized agency of the United Nations in Canada or employees of any other international governmental organization to whom privileges and immunities are granted by law ;

(6) official representatives in Québec of the government of a province, state or any similar division of a foreign country.

CHAPTER II

DISCLOSURE OF LOBBYING ACTIVITIES

DIVISION I

REGISTRATION OF LOBBYISTS

7. Every person who lobbies a public office holder must be registered in the registry of lobbyists.

Registration is effected by the lobbyists themselves in the case of consultant lobbyists and by the senior officer of the enterprise or group on whose behalf a lobbyist is acting in the case of enterprise lobbyists or organization lobbyists.

§1. — *Initial return*

8. A consultant lobbyist is registered on the filing of a return setting out the following information :

(1) the name and address and the business name and address of the consultant lobbyist ;

(2) the name and address of the client and the name and address of any person, partnership or association that, to the knowledge of the consultant lobbyist, controls or directs the activities of the client and has a direct interest in the outcome of the consultant lobbyist's activities on behalf of the client ;

(3) if the client is a legal person, the name and address of each subsidiary that, to the knowledge of the consultant lobbyist, has a direct interest in the outcome of the consultant lobbyist's activities on behalf of the client ;

(4) if the client is a subsidiary of a legal person, the name and address of that legal person ;

(5) if the client is funded, in whole or in part, by a government or a municipality or by a government or municipal body or agency, the name of the government, municipality or body or agency, and the amount of funding involved ;

(6) the name and address of any person, partnership or association that contributes toward the consultant lobbyist's activities on behalf of the client ;

(7) the subject-matter of the consultant lobbyist's activities, and particulars to identify such subject-matter ;

(8) the duration of the lobbying activities ;

(9) the name of any parliamentary, government or municipal institution in which any public office holder is employed or serves with whom the consultant lobbyist has communicated or expects to communicate, as well as the ministerial, deputy-ministerial, managerial, professional or other nature of the functions of the public office holder ;

(10) the range, among the following, within which the amount or value of any financial or other compensation received or to be received in return for the lobbyist's activities falls: less than \$10,000, from \$10,000 to \$50,000, from \$50,000 to \$100,000 and \$100,000 or more ;

(11) the techniques of communication the consultant lobbyist has used or expects to use ; and

(12) if applicable, the nature and term of any public office the consultant lobbyist held in the two years preceding the date on which the consultant lobbyist was engaged by the client.

9. An enterprise lobbyist or an organization lobbyist is registered on the filing of a return setting out the following information :

(1) the name and address of the senior officer of the enterprise or group on whose behalf the lobbyist is acting, the name and address of the enterprise or group, and the name and address of the lobbyist ;

(2) if the enterprise or group is a legal person, the name and address of each of its subsidiaries that, to the knowledge of the person filing the return, has a direct interest in the outcome of the lobbyist's activities on behalf of the enterprise or group ;

(3) if the enterprise or group is a subsidiary of a legal person, the name and address of that legal person ;

(4) if applicable, the financial year of the enterprise or group ;

(5) a description in summary form of the business or activities of the enterprise or group, and any information to identify such business or activities ;

(6) if the enterprise or group is funded, in whole or in part, by a government or a municipality or by a government or municipal body or agency, the name of the government, municipality or body or agency, and the amount of funding involved ;

(7) the name and address of any person, partnership or association that contributes toward lobbying activities on behalf of the enterprise or group ;

(8) the subject-matter of the lobbying activities, and particulars to identify such subject-matter ;

(9) the duration of the lobbying activities ;

(10) the name of any parliamentary, government or municipal institution in which any public office holder is employed or serves with whom the lobbyist has communicated or expects to communicate, as well as the ministerial, deputy-ministerial, managerial, professional or other nature of the functions of the public office holder ;

(11) the techniques of communication the lobbyist has used or expects to use ; and

(12) if applicable, the nature and term of any public office the lobbyist held in the two years preceding the date on which the lobbyist was engaged by the enterprise or group.

10. A legal person is considered to be a subsidiary of another legal person if

(1) securities of the legal person to which are attached more than 50% of the votes that may be cast to elect directors of the legal person are held,

otherwise than by way of security, by or for the benefit of the other legal person; and

(2) the votes attached to such securities are sufficient to elect a majority of the directors of the legal person.

11. Two or more enterprise lobbyists or two or more organization lobbyists may be registered by the filing of a single return containing the required information concerning each of the lobbyists.

12. A lobbyist must be registered no later than the tenth day after the lobbyist begins to conduct lobbying activities on behalf of a client, enterprise or group.

§2. — *Updating and renewal*

13. Any change in the information contained in the return concerning a lobbyist, including the termination of his or her engagement or any new lobbying activities, must be stated in a notice of change filed in the registry no later than the tenth day following the occurrence of the change.

14. The registration of a consultant lobbyist must be renewed no later than the tenth day following the anniversary of the initial registration; the registration of an enterprise lobbyist or organization lobbyist must be renewed no later than the tenth day following the end of the financial year of the enterprise or group.

15. Notices of change or renewal are filed by the lobbyists themselves in the case of consultant lobbyists and by the senior officer of the enterprise or group on whose behalf the lobbyists are acting or acted in the case of enterprise lobbyists or organization lobbyists.

§3. — *Certification and receipt*

16. Returns and notices filed in the registry of lobbyists must bear a certification by the person filing the return or notice that the information they contain is true.

Returns and notices are deemed to be filed at the time they are received by the Lobbyists Registrar.

DIVISION II

LOBBYISTS REGISTRAR

17. The Personal and Movable Real Rights Registrar is responsible, as Lobbyists Registrar, for keeping a registry of lobbyists.

The registry shall be available for public inspection, on the registry premises or by remote access, during the time the Registrar may determine.

18. The Registrar may examine whether the returns and notices submitted contain all the required information and whether they are submitted in the prescribed form and manner.

19. The Registrar may refuse to accept, or remove from the registry, any return or notice that does not contain all the required information or that is not submitted in the prescribed form or manner.

The Registrar shall inform the person having submitted the return or notice of the reason for the refusal or removal and, if practicable in the circumstances, may allow the person to make the required corrections within the time determined by the Registrar.

If the required corrections are not made within the allotted time, the Registrar shall maintain the refusal or proceed with the removal.

20. The Registrar may issue and publish notices concerning the form, contents and filing of the returns and notices provided for in this Act.

21. Any return or notice received by the Registrar may be recorded by means of any information storage device, including any system of mechanical or electronic data processing, that is capable of reproducing the stored return or notice in intelligible form within a reasonable time.

In any prosecution for an offence under a provision of this Act, a copy of a return or notice so reproduced that is certified by the Registrar as a true copy is admissible in evidence without proof of the certification or official capacity of the certifier and, in the absence of any evidence to the contrary, has the same probative force as the original would have if it were proved in the ordinary way.

22. No later than 30 September each year, the Registrar shall submit a report to the Minister with regard to the Registrar's activities for the preceding year. The report shall include any information prescribed by the Minister.

The Minister shall lay the report before the National Assembly within the next 15 days or, if the Assembly is not sitting, within 15 days of resumption.

CHAPTER III

REGULATION OF LOBBYING ACTIVITIES

DIVISION I

PROHIBITED ACTS

23. No person may lobby a public office holder without being registered in the registry of lobbyists in respect of such lobbying activities.

24. No lobbyist may act in return for compensation that is contingent on the achievement of a result or the lobbyist's degree of success.

Furthermore, no lobbyist may act in return for compensation derived from a grant or loan received from the Government, a municipality or a government or municipal body or agency.

25. No person having held a public office during one year or more in the two years preceding the date on which the person ceased to be a public office holder may lobby a public office holder as a consultant lobbyist.

This prohibition applies only if the person held the office of

(1) member of the Executive Council, secretary of State, government house leader, chief government whip or chair of the government party caucus ; or

(2) member of the executive staff, other than the support staff, of a person holding an office referred to in subparagraph 1, deputy minister or other holder of a position referred to in section 55 of the Public Service Act (R.S.Q., chapter F-3.1.1) or holder of a position referred to in section 57 of that Act.

26. No person may lobby a public office holder who is employed or serves in the same parliamentary, governmental or municipal institution in which the person held a public office in the year preceding the date on which the person ceased to be a public office holder or in such an institution with which the person had significant and direct official relations during that year.

This prohibition applies only if the person held the office of

(1) member of the Executive Council, secretary of State, government house leader, chief government whip, chair of the government party caucus or, in the case of a municipality or metropolitan community belonging to a class referred to in paragraph 5 of section 4, mayor, borough chair, warden, chair of the council of a metropolitan community or member of the executive committee of a municipality or metropolitan community ; or

(2) member of the executive staff, other than the support staff, of a person holding an office referred to in subparagraph 1, deputy minister or other holder of a position referred to in section 55 of the Public Service Act, holder of a position referred to in section 57 of that Act or, in the case of a municipality

or metropolitan community belonging to a class referred to in paragraph 5 of section 4, director general or assistant director general of a municipality or metropolitan community or secretary-treasurer of a municipality governed by the Municipal Code of Québec (R.S.Q., chapter C-27.1).

27. The prohibitions established by sections 25 and 26 apply for a period of two years or one year from the date on which the person ceased to hold an office referred to in those sections, according to whether the person held an office referred to in subparagraph 1 or 2 of the second paragraph of the section concerned.

28. No person may derive undue advantage in the course of lobbying activities from having held a public office, or lobby in respect of a procedure, negotiation or other specific operation in which the person was involved in or in connection with the exercise of that office.

29. No person may, in the course of lobbying activities, disclose confidential information obtained in or in connection with the previous exercise of a public office, or advise anyone on the basis of information that is not available to the public concerning either the parliamentary, governmental or municipal institution in which the person held a public office, or a person with which the person had significant and direct relations in the year preceding the date on which the person ceased to hold a public office in that institution.

DIVISION II

LOBBYISTS COMMISSIONER

§1. — Appointment

30. On the proposal of the Prime Minister and with the approval of two thirds of its members, the National Assembly shall appoint a Lobbyists Commissioner, who shall be responsible for monitoring and controlling the lobbying of public office holders.

The remuneration, employment benefits and other conditions of employment of the Commissioner shall be determined by the Assembly in the same manner.

The function of Commissioner shall be exercised on a full-time basis.

31. The Commissioner shall be appointed for a fixed term which shall not exceed five years. At the end of the term, the Commissioner remains in office until he or she is reappointed or replaced.

The Commissioner may resign at any time by giving notice in writing to the President of the National Assembly. The Commissioner may be removed only by a resolution of the Assembly approved by two thirds of its members.

32. The Commissioner shall prepare annual budgetary estimates and submit them to the Office of the National Assembly, which shall approve them with or without modification.

The members of the personnel of the Commissioner shall be appointed in accordance with the Public Service Act (R.S.Q., chapter F-3.1.1).

§2. — *Code of conduct*

33. No later than (*insert here the date occurring six months after the date of assent to this Act*), the Commissioner shall submit a draft code of conduct for lobbyists to the President of the National Assembly.

In preparing the draft code of conduct, the Commissioner may consult any person, partnership or association that is interested in its object.

34. The President of the National Assembly shall lay the draft code of conduct before the National Assembly within the next 15 days or, if the Assembly is not sitting, within 15 days of resumption, so that it may be examined by the appropriate committee of the National Assembly.

After receiving the report of the committee, the Commissioner shall adopt the code of conduct with or without amendments.

35. As soon as the code of conduct is adopted, the Commissioner shall publish it in the *Gazette officielle du Québec*.

The code of conduct comes into effect on the fifteenth day following its publication.

§3. — *Inquiries, inspections and reports*

36. The Lobbyists Commissioner may, on the Commissioner's own initiative or on request, conduct inquiries if the Commissioner believes on reasonable grounds that there has been a breach of any provision of this Act or of the code of conduct.

The Commissioner may specially authorize any person to conduct such inquiries.

37. The Commissioner and any person specially authorized by the Commissioner to conduct an inquiry have, for the purposes of the inquiry, the powers and immunity conferred on commissioners appointed under the Act respecting public inquiry commissions (R.S.Q., chapter C-37), except the power to order imprisonment.

38. The Commissioner may authorize any person to act as an inspector to determine whether the legislative provisions or the provisions of the code of conduct are being complied with.

A person authorized to act as an inspector may

(1) enter, at any reasonable time, the establishment of a lobbyist or a public office holder or the establishment where the lobbyist or the public office holder engages in his or her activities or exercises his or her functions ;

(2) require the persons present to provide any information concerning the activities engaged in or the functions exercised by the lobbyist or the public office holder, and to produce any book, register, account, record or other related document ; and

(3) examine and make copies of documents containing information relating to the activities engaged in or the functions exercised by the lobbyist or the public office holder.

Every person who has custody, possession or control of the documents referred to in this section must, on request, give access to them to the person conducting the inspection and facilitate their examination.

39. The persons authorized by the Commissioner to act as inspectors must, on request, identify themselves and produce a certificate of their authorization.

The authorized persons may not be prosecuted for anything done in good faith in the exercise of their functions.

40. The Commissioner must submit every inquiry report in which the Commissioner ascertains a breach of a provision of this Act or the code of conduct to the Attorney General.

41. The Commissioner may, on summary examination, dismiss any application for an inquiry the Commissioner judges to be frivolous or clearly unfounded.

Where that is the case, the Commissioner shall inform the applicant and the other persons concerned.

42. No later than 30 September each year, the Commissioner shall submit an activity report for the preceding calendar year to the President of the National Assembly.

The President shall lay the report before the National Assembly within the next 15 days or, if the Assembly is not sitting, within 15 days of resumption.

43. No civil action may be instituted by reason of the publication of a report of the Commissioner or the publication in good faith of an extract from or a summary of such a report.

44. Neither the Commissioner nor the persons authorized by the Commissioner to conduct inquiries may be compelled to give testimony relating to information obtained in the exercise of their functions or to produce any document containing such information.

45. Except on a question of jurisdiction, no remedy under article 33 of the Code of Civil Procedure (R.S.Q., chapter C-25) or extraordinary recourse within the meaning of that Code may be pursued and no injunction may be granted against the Commissioner or the persons authorized by the Commissioner to conduct inquiries or to act as inspectors.

A judge of the Court of Appeal may, upon a motion, annul on summary examination any decision, order or injunction issued or granted contrary to the first paragraph.

CHAPTER IV

DISCIPLINARY MEASURES AND PENALTIES

DIVISION I

DISCIPLINARY MEASURES

46. If the Lobbyists Commissioner ascertains that a lobbyist has gravely or repeatedly breached the obligations imposed on lobbyists by this Act or the code of conduct adopted under this Act, the Commissioner may prohibit the registration of the lobbyist in the registry of lobbyists or order the cancellation of all entries in the registry concerning the lobbyist.

The prohibition or cancellation period may not exceed one year from the effective date of the decision of the Commissioner.

47. Before issuing a decision, the Commissioner must inform the lobbyist of the intended decision and the reasons therefor, and give the lobbyist the opportunity to present observations.

48. The Commissioner's decision is enforceable according to the terms and conditions stated therein provided the lobbyist has received a copy of the decision or has otherwise been advised of it.

49. On receiving a copy of a decision of the Commissioner to such effect, the Lobbyists Registrar shall cancel all entries in the registry concerning the lobbyist.

The Registrar shall refuse to make any entry in the registry concerning the lobbyist until the expiry of the prohibition or cancellation period.

50. A decision of the Commissioner may, upon a motion served on the Commissioner, be appealed by the lobbyist concerned before a judge of the Court of Québec.

The appeal does not suspend the decision of the Commissioner unless the judge decides otherwise.

The decision of the judge is final.

51. On receiving an inquiry report from the Commissioner ascertaining that a lobbyist has in any way breached the obligations imposed on lobbyists by this Act or the code of conduct, the Attorney General may claim from the lobbyist the amount or value of any financial or other compensation received by or payable to the lobbyist on account of the activities having occasioned the breach.

In such a case, the lobbyist is liable toward the State for the amount established in the Attorney General's claim.

The enterprise or group within which the lobbyist was acting at the time of the breach is solidarily liable with the lobbyist for payment of the amount claimed by the Attorney General.

52. The measures provided for in this division are prescribed three years after the occurrence of the breach.

DIVISION II

PENALTIES

53. Any person who contravenes any provision of Division I of Chapter II or of sections 25 to 29 is guilty of an offence and liable to a fine of \$500 to \$25,000.

54. Any person who files in the registry of lobbyists a return or a notice containing information that the person knows to be false or misleading or who contravenes any provision of section 23 or 24 is guilty of an offence and liable to a fine of \$1,000 to \$25,000.

55. Any person who hinders the work of the Lobbyists Commissioner or of a person authorized by the Commissioner to exercise a power under section 37 or 38 is guilty of an offence and liable to a fine of \$500 to \$5,000.

56. Any lobbyist who contravenes any provision of the code of conduct adopted under this Act is guilty of an offence and liable to a fine of \$500 to \$25,000.

57. Any lobbyist who engages in lobbying activities in contravention of a decision of the Lobbyists Commissioner prohibiting the registration of the lobbyist in the registry of lobbyists or ordering the cancellation of all entries in the registry concerning the lobbyist is guilty of an offence and liable to fine of \$5,000 to \$25,000.

58. The fines provided for in this division shall be doubled in the case of a second or subsequent offence.

CHAPTER V

REGULATIONS

59. The Government may make regulations

(1) determining other forms of benefits in respect of which decisions may be influenced within the meaning of subparagraph 2 of the first paragraph of section 2;

(2) determining classes of municipalities and bodies for the purposes of paragraph 5 of section 4;

(3) excluding persons, bodies or agencies or lobbying activities from the application of this Act or determining special conditions under which persons, bodies or agencies or lobbying activities are subject to its application;

(4) prescribing media and modes for the transmission of returns and notices of change required for the registration of a lobbyist in the lobbyists registry or for the updating of the information entered in the registry, as well as forms to be used for the filing of returns and notices;

(5) prescribing fees, which may vary according to the medium or mode of transmission used, for the filing of returns and notices of change in the lobbyists registry, as well as fees for the consultation of the registry on the registry premises or by remote access;

(6) determining, according to the medium and mode of transmission used, the time at which the returns and notices of change required by this Act are considered received by the Lobbyists Registrar;

(7) prescribing any additional information to be included in returns filed in the lobbyists registry; and

(8) prescribing any other measure that is necessary for the carrying out of this Act.

CHAPTER VI

MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

60. The Minister of Justice is responsible for the administration of this Act.

61. Within five years of (*insert here the date of assent to this Act*), the Minister shall report to the Government on the implementation of this Act and of the code of conduct adopted under this Act and on the advisability of amending them.

The report shall be laid before the National Assembly within the next 15 days or, if the Assembly is not sitting, within 15 days of resumption.

62. The provisions of this Act are applicable to lobbying activities in progress on *(insert here the date of assent to this Act)*, subject only to the following exceptions :

(1) the ten-day period provided in section 12 for the filing of returns concerning those activities in the registry of lobbyists is increased to 60 days and runs from *(insert here the date of coming into force of this paragraph)* ;

(2) the prohibitions set out in sections 25 to 27 are not applicable to persons who are not otherwise subject to such prohibitions pursuant to a directive or to an agreement and are already engaged in such activities on *(insert here the date of assent to this Act)*.

63. This Act comes into force on *(insert here the date of assent to this Act)*, except the provisions of Division I of Chapter II, the second paragraph of section 17, sections 18 to 22, section 23, section 49, section 53 insofar as it relates to a provision of Division I of Chapter II, section 54 insofar as it relates to section 23 and paragraph 1 of section 62, which come into force on 1 October 2002 or on a later date to be fixed by the Government.