



A GUIDE TO THE LOBBYISTS ACT

REGISTRAR, *LOBBYISTS ACT*
OFFICE OF THE ETHICS COMMISSIONER
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TABLE OF CONTENTS

INTRODUCTION.....	1
TYPES OF LOBBYISTS	1
1. Organization Lobbyist.....	1
2. Consultant Lobbyist	2
WHO IS NOT A LOBBYIST	2
WHAT IS LOBBYING?	3
ACTIVITIES THAT ARE NOT LOBBYING ACTIVITIES	4
DUTY TO FILE - CONSULTANT LOBBYISTS.....	5
Who?	5
When?	5
Content of Return	5
DUTY TO FILE - ORGANIZATION LOBBYISTS	7
Who?	7
When?	8
Content of Return	8
SUBSEQUENT FILINGS	10
Amendments and Clarifications	10
Completion or Termination of an Undertaking	11
Change in Organization or Consultant Lobbyist.....	11
REGISTRATIONS.....	11
Form of submission of registration	11
Certification of documents and date of receipt	11
Fees.....	11
Offences and Penalties	12
CONTRACTING PROHIBITIONS AND PAYMENT INFORMATION	14
Prohibitions and Restrictions	14
Payment Information.....	14
DEFINITIONS	15
1. Organization.....	15
2. Subsidiary Corporation.....	15
3. Person associated with a person.....	15
4. Public Office Holder	16
5. Former Public Office Holder	16
6. Provincial entity	16
7. Department.....	16
8. Payment.....	16
9. Contract for providing paid advice	17
10. Undertaking.....	17
11. Grassroots communication.....	17

INTRODUCTION

This Guide is intended to assist persons or organizations who are required to register under the *Lobbyists Act*. Additionally, it is intended to provide information to citizens in understanding the legislation and its objectives.

The Preamble of the *Lobbyists Act* states the following basic principles:

- free and open access to government is an important matter of public interest;
- lobbying public office holders is a legitimate activity;
- it is desirable that the public and public office holders be able to know who is engaged in lobbying activities;
- a system for the registration of paid lobbyists should not impede free and open access to government; and
- it is desirable that the public and public office holders public know who is contracting with the Government of Alberta and Provincial entities.

The *Lobbyists Act* contains a provision for an automatic review of the legislation in two years after the Act comes into force and every five years thereafter.

TYPES OF LOBBYISTS

The *Lobbyists Act* identifies two types of lobbyists:

1. **Organization Lobbyist**

An Organization Lobbyist is an employee, officer or director of an organization who receives a payment for the performance of his or her functions, or a sole proprietor, or a partner in a partnership

- who lobbies or whose duty is to lobby on behalf of the organization at least 100 hours annually, or
- whose lobbying or duty to lobby on behalf of the organization together with the lobbying or the duty to lobby of other persons in the organization amounts to at least 100 hours annually.

2. Consultant Lobbyist

A “consultant lobbyist” means a person who, for payment, undertakes to lobby on behalf of a client. The term also includes an individual engaged by a consultant lobbyist to lobby in respect of an undertaking.

A consultant lobbyist engaged by a prescribed Provincial entity is considered to be a consultant lobbyist.

WHO IS NOT A LOBBYIST

For the purposes of the *Lobbyists Act*, the following persons are not considered to be consultant or organization lobbyists when acting in their official capacity:

- Members of the Legislative Assembly and members of the Executive Council, and any individuals on their staff;
- Officers and employees of the Legislative Assembly Office under the *Legislative Assembly Act*;
- individuals appointed under the *Public Service Act*;
- employees, officers, directors and members of a prescribed Provincial entity;
- any other individuals or category of individuals prescribed in the regulations.

The *Lobbyists Act* does not apply to any of the following persons when acting in their official capacity:

- 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 individuals on the staff of any of those Members.
- Employees of the Government of Canada or of the Government of another province or of a territory.
- Members of a Council or other statutory body charged with the administration of the civic or municipal affairs of a municipality, or individuals on the staff of any of those members.
- Officers or employees of municipalities.

- Members of a Metis Settlement Council or the General Council under the *Metis Settlements Act* or individuals on the staff of any of those members.
- Officers or employees of a Metis Settlement or the General Council under the *Metis Settlements Act*.
- Members of the Council of a Band as defined in subsection 2(1) of the *Indian Act* (Canada) or of the Council of an Indian Band established by an Act of the Parliament of Canada, individuals on the staff of any of those members, or employees of any of those Councils.
- Diplomatic agents, consular officers or official representatives in Canada of a foreign government.
- Directors, officers or employees of an organization referred to in section 1(1)(f)(iv) not constituted to serve management, union or professional interests nor having a majority of members that are profit-seeking enterprises or representatives of profit-seeking enterprises;
- Officials of a specialized agency of the United Nations in Canada or officials of any other international organization to whom privileges and immunities are granted by or under an Act of the Parliament of Canada.
- Members of the Boards of Trustees under the *School Act*, individuals on the staff of any of those members, or officers or employees of the Boards;
- A person acting as a volunteer who does not receive a payment;
- Any other individuals or categories of individuals prescribed in the regulations.

WHAT IS LOBBYING?

The Act says “lobbying” means communicating with a public office holder in an attempt to influence:

- the development of any legislative proposal by the Government or a prescribed Provincial entity or by a Member of the Legislative Assembly (MLA);
- the introduction of any Bill or resolution in the Legislative Assembly, or the amendment, passage or defeat of any Bill or resolution that is before the Legislative Assembly;

- the development or the enactment of any regulation or any Order in Council;
- the development, establishment or amendment or termination of any program, policy, directive or guideline of the Government or a prescribed Provincial entity;
- the awarding of any grant or financial benefit by or on behalf of the Government or a prescribed Provincial entity;
- a decision by the Executive Council or a member of the Executive Council to transfer from the Crown for consideration all or part of, or any interest in or asset of, any business, enterprise or institution that provides goods or services to the Crown or a prescribed Provincial entity or to the public, or
- a decision by the Executive Council or a member of the Executive Council to have the private sector instead of the Crown provide goods or services to the Government.

In relation to a consultant lobbyist, the term also includes:

- arranging a meeting between a public office holder and any other individual, or
- communicating with a public office holder in an attempt to influence the awarding of any contract by or on behalf of the Government or a prescribed Provincial entity.

ACTIVITIES THAT ARE NOT LOBBYING ACTIVITIES

The *Lobbyists Act* does not apply in respect of a submission made in any matter

- in proceedings that are a matter of public record to a committee of the Legislative Assembly or to any body or person having jurisdiction or powers conferred by or under an Act.
- to a public officer holder on behalf of a person or organization concerning
 - (i) the enforcement, interpretation or application of any Act or regulation by the public office holder with respect to the person or organization, or
 - (ii) the implementation or administration of any program, policy, directive or guideline by the public office holder with respect to the person or organization.

- to a public office holder on behalf of a person or organization in response to a request initiated by a public office holder for advice or comment on any matter referred to in section 1(1)(e)(i) of the Act.
- to an MLA in his or her capacity as an MLA by a constituent of the Member, unless the submission concerns the introduction, passage or amendment in the Legislative Assembly of a Private Bill for the special benefit of that constituent.

DUTY TO FILE - CONSULTANT LOBBYISTS

Who?

The “designated filer” means

- the senior officer of an organization who occupies the highest ranking position in that organization and receives payment for the performance of his or her functions, or
- if there is no senior officer, the organization lobbyist or consultant lobbyist, as the case may be.

When?

The designated filer in respect of an undertaking entered into by a consultant lobbyist shall file a return in the prescribed form and containing the information required in Schedule 1 of the Act with the Registrar not later than 10 days after entering into the undertaking.

The designated filer is required to file only one return even though a consultant lobbyist named in the return may, in connection with that undertaking, communicate with one or more public office holders on one or more occasions or arrange one or more meetings between a public office holder and any other individual.

If the consultant lobbyist is performing an undertaking at the time the section relating to a consultant lobbyist’s duty to file comes into force, the designated filer shall file a return with the Registrar not later than 30 days after the relevant section comes into force.

Content of Return

The following information must be provided by the designated filer in the return with respect to the undertaking:

- the name and business address of the designated filer required to file the return and whether the person is a designated filer described in section 1(1)(c)(i) or (ii) of the Act;

- if the return is filed by a designated filer described in section 1(1)(c)(i), the name of each consultant lobbyist who will be engaged in lobbying with respect to the undertaking;
- if applicable, the name and business address of the firm where the consultant lobbyists named in the return are engaged in business;
- the name and address of the client and of any individual or organization that, to the designated filer's knowledge after reasonable inquiry,
 - (i) controls or directs the client's activities and has a direct interest in the outcome of the consultant lobbyist's activities on behalf of the client, or
 - (ii) contributed during the individual's or organization's financial year that precedes the filing of the return \$1,000 or more toward the consultant lobbyist's activities on behalf of the client;
- the date the undertaking was entered into;
- if the client is a corporation, the name and business address of each subsidiary of the corporation that, to the knowledge of the designated filer after reasonable inquiry, has a direct interest in the outcome of the lobbying activities on behalf of the client;
- if the client is a corporation that is a subsidiary of any other corporation, the name and business address of that other corporation;
- if the client is a coalition, the name and business address of each organization that is a member of the coalition;
- particulars to identify the subject-matter concerning which any consultant lobbyist named in the return has undertaken to lobby and any other prescribed information respecting the subject-matter;
- particulars to identify any relevant legislative proposal, Bill, resolution, regulation, Order in Council, program, policy, directive, guideline, decision, grant, financial benefit or contract that is or will be the subject of lobbying;
- if applicable, whether the payment to the consultant lobbyist is, in whole or in part, contingent on the degree of success in lobbying;
- if any consultant lobbyist named in the return is a former public office holder, the nature and term of office of the office the consultant lobbyist formerly held;
- the name of any government or government agency that funds the client, in whole or in part, and the amount of the funding;

- the name of any department or prescribed Provincial entity in which any public office holder is employed or serves whom a consultant lobbyist named in the return has lobbied or is expects to lobby during the relevant period;*
 - whether a consultant lobbyist has lobbied or expects to lobby during the relevant period any MLA or any individual on the MLA staff;*
 - whether a consultant lobbyist named in the return has lobbied or expects to lobby during the relevant period any member of the Executive Council or any individual on a member's staff;*
 - the techniques of communication, including grassroots communication, that a consultant lobbyist named in the return has used or expects to use to lobby;
 - a declaration stating that every consultant lobbyist named in the return and, to the designated filer's knowledge after reasonable inquiry, every person associated with those consultant lobbyists, are not in contravention of section 6 of the Act (regarding contracts for providing paid advice);
 - a statement stating whether any consultant lobbyist named in the return holds a contract for providing paid advice to a department or prescribed Provincial entity and, if so, the name of the department or Provincial entity;
 - a statement stating whether, to the designated filer's knowledge after reasonable inquiry, any person associated with a consultant lobbyist named in the return holds a contract for providing paid advice to a department and, if so, the name of the department or Provincial entity;
 - if a return is filed by a designated filer described in section 1(1)(c)(i), the name of any consultant lobbyist named in the last return filed who has ceased to be engaged with respect to the undertaking;
 - any additional information that is prescribed respecting the identity of a client but not including the names of individuals or other information that might identify individuals if their names are not otherwise required.
- * The "relevant period" means the period beginning on the date on which the undertaking for which the return is filed was entered into and ending on the date of completion or termination of the undertaking.

DUTY TO FILE - ORGANIZATION LOBBYISTS

Who?

The "designated filer" means

- the senior officer of an organization who occupies the highest ranking position in that organization and receives payment for the performance of his or her functions, or
- if there is no senior officer, the organization lobbyist or consultant lobbyist, as the case may be.

When?

The designated filer of an organization that has an organization lobbyist shall file with the Registrar a return in the prescribed form and containing the information required in Schedule 2 of the Act

- within 2 months after the day on which an individual in that organization becomes an organization lobbyist, and
- within 30 days after the expiration of each 6-month period after the date of filing the previous return.

A designated filer is required to file only one return even though an organization lobbyist named in the return may communicate with one or more public office holders on one or more occasions.

If an organization has an organization lobbyist at the time the section relating to a designated filer's duty to file comes into force, the designated filer of the organization shall file a return with the Registrar within 2 months after the day on which the relevant section comes into force and after that in accordance with section 5(1)(b) (as noted above).

Content of Return

The following information must be provided by the designated filer or organization lobbyist in the return:

- the name and business address of the designated filer required to file the return and whether the person is a designated filer under section 1(1)(c)(i) or (ii);
- the name and business address of the organization;
- if the return is filed by a designed filer described in section 1(1)(c)(i), the name of each organization lobbyist in the organization;
- the name and address of any individual or organization that, to the knowledge of the designated filer after reasonable inquiry, contributed during the individual's or organization's financial year that preceded the filing of the return \$1,000 or more toward the lobbying activities;

- if the organization is a corporation, the name and business address of each subsidiary of the corporation that, to the designated filer's knowledge after reasonable inquiry, has a direct interest in the outcome of the lobbying activities on behalf of the corporation;
- if the organization is a subsidiary of another corporation, the name and business address of that other corporation;
- a general description of the membership of the organization, including the names of the directors and officers of the organization;
- a description in summary form of the organization's business or activities and any other prescribed information to identify its business or activities;
- particulars to identify the subject-matter concerning which any organization lobbyist named in the return has lobbied during the period for which the return is filed, or expects to lobby during the next six-month period, and any other prescribed information respecting the subject-matter;
- particulars to identify any relevant legislative proposal, Bill, resolution, regulation, Order in Council, program, policy, directive, guideline, decision, grant, or financial benefit that is or will be the subject of the lobbying;
- if any organization lobbyist named in the return is a former public office holder, the nature of the office formerly held by the organization lobbyist and the term of office;
- the name of any government or government agency that funds the organization, in whole or in part, and the amount of the funding;
- the name of any department or prescribed Provincial entity in which any public office holder is employed or serves whom an organization lobbyist named in the return has lobbied during the period for which the return is filed, or expects to lobby during the next six-month period;
- whether an organization lobbyist named in the return has lobbied an MLA or an individual of the MLA's staff during the period for which the return is filed, or expects to lobby an MLA or any individual on the MLA's staff during the next six-month period;
- whether any organization lobbyist named in the return has lobbied a member of the Executive Council or individual on the member's staff during the period for which the return is filed, or expects to lobby a member of the Executive Council or an individual on the staff of the member during the next six-month period;

- the techniques of communication, including grassroots communication, that any organization lobbyist named in the return has used to lobby during the period for which the return is filed or expects to use to lobby during the next six-month period;
- a declaration stating that every organization lobbyist named in the return and to the knowledge of the designated filer after reasonable inquiry, any person associated with an organization lobbyist, are not in contravention of section 6 of the Act (regarding contracts for providing paid advice);
- a statement stating whether any organization lobbyist named in the return holds a contract for providing paid advice to a department or prescribed Provincial entity, and, if so, the name of the department or Provincial entity.
- a statement stating whether, to the designated filer's knowledge after reasonable inquiry, any person associated with an organization lobbyist named in the return holds a contract for providing paid advice to a department or a prescribed Provincial entity and, if so, the name of the department or Provincial entity;
- if a return is filed by a designated filer described in section 1(1)(c)(i), the name of any organization lobbyist named in the last return filed who has ceased to be an organization lobbyist;
- any additional information that is prescribed respecting the identity of the designated filer, the organization, an organization lobbyist or any department or prescribed Provincial entity referred to in clause 2(m) of Schedule 2.

SUBSEQUENT FILINGS

Amendments and Clarifications

A designated filer shall provide the Registrar with the following information within the applicable period:

- particulars of any change to the information in the return, within 30 days after the change occurs;
- any information required to be provided in a return under section 4 or 5 of the Act, the knowledge of which the designated filer acquired only after the return was filed, within 30 days after the knowledge is acquired;
- any information request by the Registrar to clarify any information provided by the designated filer under section 10, within 30 days after the request is made.

Completion or Termination of an Undertaking

The designated filer who filed the return shall inform the Registrar of the completion or termination of the undertaking within 30 days after the completion or termination.

Change in Organization or Consultant Lobbyist

Within 30 days after an individual named in a return as an organization lobbyist ceases to be an organization lobbyist or ceases to be an employee of the employer named in the return, the designated filer shall so inform the Registrar.

Where a return has been filed by a designated filer described in section 1(1)(c)(i) of the Act, the designated filer shall inform the Registrar, within 30 days after an individual becomes an organization lobbyist or is engaged as a consultant lobbyist with respect to an undertaking.

REGISTRATIONS

Form of submission of registration

Subject to the regulations, any return or other document that is required to be filed with or submitted to the Registrar may be filed or submitted in electronic or other form by the means and in the manner specified by the Registrar.

Any return filed or other document that is submitted to the Registrar is deemed to have been received by the Registrar at the time provided for in the regulations. See also the following section: “certification of documents and date of receipt.”

Certification of documents and date of receipt

A designated filer who files a return or submits a document to the Registrar shall certify on the return or document, or in the manner specified by the Registrar if the return or document is filed or submitted in electronic or other form, that, to the best of the designated filer’s knowledge and belief, the information contained in the return or document is true.

Subject to sections 8(2) and 11(8) of the Act, the date on which a return is received by the Registrar is the date on which the return is considered to have been filed, and the date on which information or a document other than a return is received by the Registrar is the date on which the information is considered to have been provided or the document to have been submitted to the Registrar.

Fees

The Lieutenant Governor in Council may make regulations requiring a fee to be paid on the filing of a return or a category of return or for any service provided by the Registrar.

Additionally, regulations may prescribe the amount of any fee required to be paid or the manner of determining the amount of the fee, and providing for different fees or for the waiver of a fee based on one or more of the following:

- the manner in which a return is filed;
- the time at or within which a return is filed;
- the category of lobbyist by or in relation to whom a return is filed.

Offences and Penalties

Administrative Penalties

Where the Registrar is of the opinion that a person has contravened a provision of the Act or the regulations, the Registrar may, subject to the regulations, by notice in writing served on the person personally or by mail, require that person to pay to the Crown an administrative penalty in the amount set out in the notice for each contravention. The maximum amount of an administrative penalty that may be imposed is \$25,000.

A person who pays an administrative penalty in respect of a contravention may not be charged under the Act with an offence in respect of that contravention.

A person who has been served with a notice of administrative penalty shall pay the amount of the penalty within 30 days from the date of service of the notice.

Subject to the right to appeal, where a person fails to pay an administrative penalty in accordance with the notice of administrative penalty and the regulations, the Registrar may file a copy of the notice of administrative penalty with the Clerk of the Court of Queen's Bench and, on being filed, the notice has the same force and effect and may be enforced as if it were a judgment of the Court.

The Lieutenant Governor in Council may make regulations

- prescribing the form and contents of notices of administrative penalties;
- prescribing contraventions in respect of which an administrative penalty may be imposed and prescribing the amounts or the manner of determining the amounts of the administrative penalties that may be imposed;
- regarding the composition and manner of appointment of the appeal body respecting appeals from notices of administrative penalties
- regarding the evidence to be considered and the factors that the appeal body is to consider in reaching its decision;

- regarding the powers of the appeal body to confirm or reverse a notice of administrative penalty and to vary the amount of an administrative penalty;
- regarding the procedure to be followed in an appeal and the procedure before the appeal body;
- respecting any other matter necessary for the administration of the system of administrative penalties.

Offences

A person who contravenes section 4, 5, 6 or 10 or a prohibition imposed under section 19(5) is guilty of an offence.

A person who lobbies without a return being filed as required by this Act is guilty of an offence.

A person who provides false or misleading information in a return filed or other document submitted to the Registrar is guilty of an offence. The person is not guilty of an offence if the person did not know at the time the information was provided that it was false or misleading and, with the exercise of due diligence, could not have known that it was false or misleading.

A person who is guilty of an offence is liable to a fine of not more than \$25,000 for a first offence and to a fine of not more than \$100,000 for a second or subsequent offence.

If a person is convicted of an offence under the Act, the Ethics commissioner may, if satisfied that it is necessary in the public interest, taking into account the gravity of the offence and the number of previous convictions or administrative penalties imposed, if any, prohibit the person who committed the offence for a period of not more than two years from lobbying and from filing or having a return filed in respect of the person. The Ethics Commissioner may make public the nature of an offence, the name of the person who committed it, the punishment imposed and, if applicable, any prohibition. If the Ethics Commissioner imposes a prohibition, the information relating to the prohibition shall be entered into the registry by the Ethics Commissioner.

A prosecution for an offence may not be commenced more than two years after the date on which the contravention occurred.

CONTRACTING PROHIBITIONS AND PAYMENT INFORMATION

A “contract for providing paid advice” means an agreement or other arrangement under which a person directly or indirectly receives or is to receive payment for providing advice to the Government or a prescribed Provincial entity. Payment does not include reasonable remuneration received for serving on a board, commission, council or other similar body established by or under the authority of an enactment on which there are at least 2 other members who represent other organizations or interests.

Prohibitions and Restrictions

No person shall lobby on a subject-matter if that person is holding a contract for providing paid advice on the same subject-matter.

No person shall enter into a contract for providing paid advice on a subject-matter if that person lobbies on the same subject-matter as that of the contract.

The Ethics Commissioner may exempt a person from the application of these prohibitions but only if the Ethics Commissioner is of the opinion that it would be in the public interest to do so.

The Ethics Commissioner may impose terms and conditions on any exemption given, and must provide reasons for giving an exemption. The Ethics Commissioner must ensure that information relating to the exemption, including any terms and conditions imposed, and the reasons for giving the exemption are entered into the registry.

If on the coming into force of the section relating to contracting prohibitions, a person, or a person associated with that person, holds a contract for providing paid advice on a subject-matter and either the person or the associated person lobbies on the same subject-matter, the person holding the contract must cease to hold the contract, or the person lobbying must cease to lobby on that subject-matter, within 60 days of the coming into force of the section.

Payment Information

The President of the Treasury Board shall, in accordance with the regulations, publish information relating to payments made by departments.

Prescribed Provincial entities shall, in accordance with the regulations, publish information relating to payments made by those Provincial entities.

DEFINITIONS

Certain definitions are set out in Section 1 of the *Lobbyists Act*, or elsewhere as indicated. The definitions of “lobbying,” “organization lobbyist,” and “consultant lobbyist” have already been described in this Guide.

1. Organization

“Organization” includes any of the following, whether incorporated, unincorporated, a partnership or a sole proprietorship:

- a business, trade, industry, enterprise, professional or voluntary organization or institution;
- a trade union or labour organization;
- a chamber of commerce or board of trade;
- a non-profit organization, association, society, coalition or interest group;
- a government other than the Government of Alberta.

2. Subsidiary Corporation

A corporation is a subsidiary of another corporation if

- (a) securities of the corporation to which are attached more than 50% of the votes that may be cast to elect directors of the corporation are held, otherwise than by way of security only, directly or indirectly, whether through one or more subsidiaries or otherwise, by or for the benefit of the other corporation, and
- (b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation.

3. Person associated with a person

A person is associated with a person or entity if that person or entity is

- (a) the person’s spouse or adult interdependent partner;
- (b) a corporation of which the person is a director or senior officer;
- (c) a private corporation carrying on business or activities for profit or gain if the person owns or is the beneficial owner of shares of the corporation;
- (d) an individual, partnership or corporation of which the person is an employee;
- (e) a partnership of which the person is a partner, or of which one of the partners is a corporation directly associated with the person by reason of clause (b) or (c); or
- (f) a person or group of persons acting as the agent of the person and having actual authority in that capacity from the person.

4. **Public Office Holder**

A “public office holder” means

- a Member of the Legislative Assembly and any person on an MLA’s staff;
- an employee of a department;
- an employee, officer, director or member of a prescribed Provincial entity.

5. **Former Public Office Holder (defined in Schedule 1 and Schedule 2)**

For purposes of returns filed by consultant and organization lobbyists, a “former public office holder” means

- a former member of the Executive Council and any individual formerly employed in the former member’s former office;
- any individual who formerly occupied
 - a senior executive position in a department, whether by the title of deputy minister, chief executive officer or by some other title, or
 - the position of assistant deputy minister or occupied a position of comparable rank;
- any individual who formerly occupied a prescribed position with a prescribed Provincial entity.

6. **Provincial entity**

A “Provincial entity” means a Provincial agency as defined in section 1 of the *Financial Administration Act* and includes any body or entity referred to in the List of Government Entities set out in the most recent Government Estimates and any body or entity set out in the most recent Government of Alberta Annual Report.

7. **Department**

“Department” means a department established under section 2 of the *Government Organization Act*.

8. **Payment**

“Payment” means money or anything of value and includes a contract, promise or agreement to pay money or anything of value, but does not include a reimbursement of expenses. [This definition does not apply to the contractor information reported by the President of the Treasury Board as set out in section 7 of the *Lobbyists Act*.]

9. **Contract for providing paid advice (section 6)**

A “contract for providing paid advice” means an agreement or other arrangement in which a person directly or indirectly receives or is to receive payment for providing advice to the Government or a prescribed Provincial entity.

10. **Undertaking**

An “undertaking” means, with respect to a consultant lobbyist, an undertaking to lobby on behalf of a client. A “client” means an individual or an organization on whose behalf a consultant lobbyist undertakes to lobby.

11. **Grassroots communication**

“Grassroots communication” means appeals to members of the public through the mass media or by direct communication that seek to persuade members of the public to communicate directly with a public office holder in an attempt to place pressure on the public office holder to endorse a particular opinion.