



BRIEFING NOTE

Canada's lobbyist registries
What can they tell investors about corporate lobbying?

Author: Brittany Stares and Kevin Thomas

Editing and review: Peter Chapman, Norah Murphy

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Introduction

Institutional investors have increasingly been attuned to the question of how the corporations in which they invest are contributing to public policy debates and development. Each year in the US, dozens of shareholder proposals are filed asking boards of directors to report on the resources committed to lobbying activity, the organizations that the corporation is supporting financially, and its own lobbying on policy issues.

The practice is growing in Canada as well, with six shareholder resolutions being filed in the past two years, and a much larger number of requests being made privately by investors.

Because lobbying activity carries with it risks of poor oversight, reputational risk, and misalignment with shareholder value and priorities,¹ investor inquiries into the governance and practice of lobbying activity is a positive development.

In Canada, corporations have responded by referring to the public lobbyist registries operated by federal and provincial governments as a readily-available source of information for their shareholders (and the public) on the company's activities. While attractive in principle, this reliance on public registries suffers from three shortcomings:

- Investors may be required to consult many different sources of information in different jurisdictions rather than a central source;
- Disclosure may be incomplete, either because the investor is not aware of which registries to consult, or because jurisdictions in which the corporation is actively lobbying do not have publicly-available registries; and
- The quality and scope of information disclosed varies considerably between different registries.

Investors are best served when the corporation provides complete disclosure, with relevant explanations, in one central location. However, where corporations do rely on disclosures made in public registries, it is in the best interest of investors (and the public) to identify gaps in that disclosure and advocate for improvements.

Accordingly, we examined public lobbyist registries in Canada and evaluated the type and level of disclosure available in each. We rated each registry based on factors that interest investors and have made recommendations for improvements that would assist those registries in serving the information needs of investors without creating undue burdens on either regulators or corporations.

Our study

Which jurisdictions have registries?

Most provincial jurisdictions in Canada have some form of lobbyist registry. British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Newfoundland and Labrador, and, as of July 2017, New Brunswick all have registries for lobbying activity at the provincial level.² A federal registry exists for lobbying activity directed at federal officials. As of this writing, Prince Edward Island has lobbyist registration legislation tabled but not yet passed.

Yukon, the Northwest Territories and Nunavut do not currently have lobbyist registries nor any legislation for such in development, although a public lobbyist registry was among the promises made by the winning Yukon Liberal Party in the 2016 territorial election. Some municipalities in Canada also have lobbyist registries for local lobbying; however, these were beyond the scope of our study.

How we rated the registries

We evaluated the federal and all provincial lobbyist registries in Canada along six dimensions.³ Registries were assigned a score for each category, for a total possible score of 11. Half points were added or deducted on a discretionary basis, as needed. The six categories are as follows:

- **Accessibility:** Does the jurisdiction have a public lobbyist registry available online and how searchable is it? (max. 2 points)
- **Transparency of Lobbyist Activity:** Do registered lobbyists have to reveal which specific pieces of legislation they are seeking to influence? (max. 2 points)
- **Transparency of Expenditures and Compensation:** Are registered lobbyists required to disclose the dollar amounts spent on lobbying activity for any particular time period, and/or the fees they collect from clients? (max. 2 points)
- **Reporting Thresholds:** What is the threshold under which a lobbyist does not have to register?⁴ (max. 2 points)
- **Transparency of Communications:** Is the lobbyist required to report individual communications with government officials? (max 2 points)
- **Disclosure of Participants:** Is the lobbyist required to report which company representatives participated in meetings? (max. 1 point)

The full scoring criteria is available as an appendix of this report. In scoring the registries, we considered legislation, regulation and guidance, including the content of lobbyist registration forms, to determine whether each disclosure in question was “required.”

What we found

Lobbyist registries in Canada scored between 2 and 6.5 out of a possible 11 points. Registries generally received high marks for accessibility, but low marks for transparency of compensation and expenses, transparency of communications, and disclosure of participants. Registries varied in terms of reporting thresholds and transparency of lobbying activities.

The best

The highest-scoring registries were: the Quebec lobbyist registry (6.5 points), the federal lobbyist registry (5.5 points), and the Ontario lobbyist registry (5 points).

All registries in Canada require lobbyists to disclose the subject matter of their lobbying; however, the Ontario and Quebec registries go further, requiring lobbyists to disclose the aim of their lobbying activity. While jurisdictions such as B.C. and Manitoba require lobbyists to identify the broad objective of their lobbying from pre-defined lists on their registration forms (i.e. the “development, establishment, amendment or termination of any program, policy or decision”), Ontario and Quebec require lobbyists to disclose more specifically what they are trying to accomplish. In Ontario, the “goal of lobbying activity” is included within the legislation and the Registrar says explicitly that it will refuse to accept vague, “catch-all” answers in filings.⁵ In Quebec, disclosing specific lobbying goals is not mandated within the *Lobbying Transparency and Ethics Act* but made explicit in accompanying guidance.⁶ For investors and the public, these requirements provide the clearest picture of which decisions lobbyists are attempting to influence, and how.

Quebec’s registry is unique on two fronts. First, it is the only registry in Canada that requires any disclosures on compensation – consultant lobbyists must report on the range of compensation they receive for their lobbying activities. Second, Quebec uses both qualitative and quantitative requirements to determine when lobbyists must register. Like other jurisdictions, Quebec requires that in-house lobbyists register when a given amount of time, counted in aggregate, is spent on lobbying activity (in this case, the equivalent of twelve working days for one employee). However, Quebec lobbyists must also register when their activities can be considered of “significant importance” to an organization, or when they are carried out by senior officials of the organization or enterprise, regardless of whether or not the quantitative threshold has been reached.

The federal lobbyist registry is weaker than Ontario’s or Quebec’s in terms of transparency of lobbying aims; however, it is the only jurisdiction in Canada that requires lobbyists to report on individual communications with government officials. In monthly communications filings, registered lobbyists must disclose each oral and arranged communication with designated public office holders. Admittedly, this fails to account for impromptu lobbying or written communications;⁷ it also does not require lobbyists to specify what type of communication took place (phone call, in-person meeting, etc.). Still, this requirement provides greater transparency about the amount and persistence of lobbying efforts than other jurisdictions, which require only that lobbyists register their intention to communicate with public officials within a given timeframe.

The rest

The remaining registries scored between 2 and 4 points out of a possible 11. All registries are publicly available online for free. Newfoundland and Labrador's registry had ongoing technical issues that restricted accessibility, for which half a point was deducted. Most registries are searchable by lobbyist, client and subject; the exceptions were Newfoundland and Labrador (which is not searchable by subject), and Nova Scotia and New Brunswick (which are searchable by department being lobbied instead of subject).

Each registry in this category has a quantitative threshold beneath which lobbying activity does not need to be registered. Typically, the threshold for registration, counted in aggregate in an organization or company, is 100 hours or more spent on lobbying activities per year, or when lobbying activity reaches the equivalent of 20 percent or more of one employee's duties in a given timeframe. However, jurisdictions vary on what applies towards this threshold. In Saskatchewan, for instance, the 100-hour threshold includes preparation and travel time for lobbying activities. In Alberta, only time spent communicating with public officials applies. Needless to say, a substantial amount of lobbying could be done without spending more than one hundred hours in meetings with officials.

With regard to the transparency of lobbying activity, most jurisdictions have similar legislative requirements for registered lobbyists: they must disclose both the general subject matter of lobbying and "particulars to identify" any relevant bills, laws, regulation, etc. under discussion. Two jurisdictions are exceptions to this: British Columbia's Lobbyists Registration Act does not include the latter clause, and New Brunswick's *Lobbyists Registration Act* includes neither, though its registration form for lobbyists compels them to disclose the general subject matter of lobbying activity. The remaining registries ask for different levels of detail to fulfil these two requirements. In Alberta, official guidance states that lobbyists must provide 2-3 sentences of specific "subject matter details" for each topic under discussion. In other jurisdictions, lobbyists may have more discretion over the amount they disclose about their lobbying subject matter. Of note for us across jurisdictions was the number of actual filings that did not identify the pieces of legislation, regulation, etc. being discussed, despite the statutory requirement to do so. This was particularly the case in Nova Scotia and Newfoundland and Labrador. In Nova Scotia, descriptions of lobbying subject matter as vague as "communications with government departments on energy, environmental and natural resource issues and policies"⁸ were found.

Notable gaps in Canada's lobbyist registries

Numerous gaps exist in Canada's lobbyist registries, undermining the transparency of lobbying activity. Such gaps effectively allow for "secret," unreported lobbying and exist in varying forms across all registries.

"Lobbying Activity"

A serious shortcoming among Canada's lobbyist registries is that only some types of activity intended to influence public officials need to be registered as lobbying.

For instance, registries do not consistently take into account "grassroots lobbying"

(lobbying that involves appealing to members of the public to communicate a certain position on an issue to public office holders). Currently, Nova Scotia is the only jurisdiction to include grassroots communication in their legislative definition of lobbying, though Ontario and the federal registrar's office have issued guidance to the same effect. There is greater ambiguity in Saskatchewan, Alberta and Newfoundland and Labrador, where grassroots communication is considered a type of "reportable communication," but not included in the definition of lobbying. Critically, the lobbyist registries of British Columbia, Quebec, Manitoba and New Brunswick do not capture grassroots lobbying at all.

In reporting activities by registered lobbyists, only "oral and prearranged" communications with designated public office holders need to be disclosed in the federal registry's monthly communications reports, meaning that written or spontaneous lobbying, such as a "chance" encounter at an event, do not need to be disclosed. This also means that lobbyists can avoid reporting lobbying activities relatively easily – for instance, by calling the public office holder at an unscheduled time.

Lobbyist Exemptions

In Alberta, Manitoba, Saskatchewan and Quebec, certain types of non-profits do not need to register lobbying activity; only those constituted to serve management, union or professional interests, or those that have a majority of members that are profit-seeking enterprises or representatives of profit-seeking enterprises are required to register. This rule has permitted even organizations with lobbying mandates and/or paid lobbyists on staff to escape registration.⁹ In Nova Scotia, and as proposed for Prince Edward Island,¹⁰ lawyers do not need to register lobbying activity if it applies to the drafting of legislation. Across registries, the requirement that only paid lobbyists register (payment includes anything of value or a contract, as well as money) means that "volunteer" lobbying may not be documented.

Difficult-to-reach quantitative thresholds

While the amount of time spent on lobbying activities that triggers a requirement to register is similar across jurisdictions (Ontario's threshold is an outlier, at 50 hours rather than 100 hours), key differences exist in what activities count towards this threshold. Jurisdictions that do not apply research, preparation and/or travel time to this threshold make it more difficult to reach, and in doing so, may allow greater amounts of undisclosed lobbying to take place. The most glaring example of this is Alberta, where only lobbyists who spend 100 hours or more communicating with public officials need to register (the equivalent of playing 25 rounds of golf).

Conclusions and recommendations

Investors, like the broader Canadian public, have an interest in the credibility, openness and accountability of the public policy process. They also have an interest in understanding the extent and focus of the policy activity undertaken by their investee companies. If investors are expected to rely upon the current quality and scope of Canadian lobbyist registries to address either of those interests, they will come up lacking.

While the number of lobbyist registries in Canada has grown, and in some cases the scope of disclosure has expanded, considerable room for improvement remains. We have identified five key recommendations to enhance the transparency and usefulness of lobbyist registries in Canada.

1. **Re-evaluate thresholds for registration to ensure that a fuller range of lobbying activity is captured than is presently the case**

To address the problem of “difficult to reach” thresholds discussed above, we recommend that all jurisdictions include preparation and travel time, as well as time spent communicating with public officials, in their reporting thresholds. We also recommend that jurisdictions follow Quebec’s lead and adopt an additional qualitative threshold for registration that is based on the perceived importance of lobbying outcomes to the organization/firm, regardless of how much time is spent on lobbying activities.

2. **Require disclosure of lobbyists’ expenses and compensation**

While some jurisdictions require consultant lobbyists to disclose if they receive contingency fees (though some jurisdictions do not permit the use of contingency payments at all), only Quebec requires lobbyists to disclose any measure of compensation, and no Canadian jurisdiction requires lobbyists to report expenses. This makes it difficult to assess the relative importance of a given lobbying activity to an organization or firm. This also stands in contrast to jurisdictions elsewhere: the majority of U.S. states require registered lobbyists to disclose expenditures in one form or another, and more than twenty states require lobbyists to disclose earnings received from a client or employer for lobbying.¹¹ To the extent possible, disclosure rules should apply to both consultant and in-house lobbyists. Quebec’s requirement for disclosing compensation, for example, applies only to consultant lobbyists. That said, we recognize that quantification of in-house expenditures may be difficult and in some cases may not accurately represent the relative importance of a lobbying matter to the company. However, even if it is not perfectly accurate, it may be the closest proxy indicator available to us.

3. **Increase the transparency of lobbying subject matter by ensuring that lobbyists disclose: a) the general topic of lobbying, b) the specific pieces of legislation, regulation, etc. under discussion, and c) the specific aim of their lobbying activity**

Best practice dictates that lobbyists disclose not only the general subject matter of lobbying, but also the specific policy, piece of legislation, or regulation under discussion. Here, New Brunswick and British Columbia face the longest uphill climb, as neither jurisdiction has codified this requirement within its legislation, regulation or guidance. Among the remaining jurisdictions, we observed that the requirement for registered lobbyists to provide “particulars to identify” relevant bills, regulation, etc. was not always enforced. As such, we recommend that registries adopt stricter guidance or enforcement practices, similar to Ontario. To maximize the transparency of lobbying activity to the public, we also recommend that registries follow the lead of Ontario and Quebec by requiring

lobbyists to disclose specific aims of lobbying activity (not to be confused with the broad, pre-defined list of “intended outcomes” on forms in jurisdictions like Manitoba and B.C., which do not require lobbyists to identify their respective positions on issues).

4. Introduce reporting requirements on individual communications and ensure that these include what type of communication took place in each instance

Currently, only the federal lobbyist registry requires reporting on (some) individual communications. This means that in all other jurisdictions, it is impossible to assess the frequency and thus aggressiveness of lobbying. To address this, we recommend that all provinces introduce reporting requirements on individual communications. We also recommend that all jurisdictions, including the federal level, require lobbyists to disclose what type of communication took place in each instance (meeting, phone call, etc.), as this can be a useful indicator of its importance.

5. Increase disclosure about meeting participants

In the federal lobbyist registry’s monthly communication reports, the lobbying client and designated public office holders involved in each communication are disclosed, but not who specifically represented the client. To quote the US-based Sunlight Foundation, this “obscures useful data,” as attendees may or may not be the same individuals registered as lobbyists, and as the “seniority of the person representing the client is an important signal of the intensity of that client’s interest.”¹² As such, we recommend that jurisdictions increase reporting requirements to capture all meeting attendees from the lobbying firm or organization.

For companies tasked with reporting on lobbying activities by their investors, balance is required between providing detailed information that accurately represents the company’s policy activity and governance thereof, and providing too much detail such that the information becomes overwhelming. It is not unreasonable to refer to public registries for some disclosure since it would be neither helpful nor feasible to disclose every government communication in investor-facing materials. However, as this report indicates, the disclosure in public registries may be vague, inconsistent or, in some jurisdictions, non-existent. Investors are not equipped to identify all the registries and jurisdictions in which the company may be active.

For this reason, companies can and should report broadly on the policy activity they undertake, as well as any memberships in and contributions to outside organizations engaged in policy advocacy (e.g. trade associations, think tanks, etc.). This reporting should include:

1. Company policy and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications;
2. Payments or dues paid by the company that may be used for (a) direct or indirect lobbying or (b) grassroots lobbying communications, in each case including the amount of the payment and the recipient;

3. The company's membership in and/or payments to any tax-exempt organization in Canada, the U.S., and other relevant jurisdictions that writes and endorses model legislation or advocates for policy change; and
4. Description of the decision-making process and oversight by management and the Board for making payments described in sections 2 and 3 above.

If the company also relies on public registries in its disclosures, it should identify the jurisdictions in which it is involved, and indicate whether or not these jurisdictions have searchable lobbyist data.

As shareholder requests for disclosures along these lines increase in Canada, both investors and companies alike will need to understand the limits of public lobbyist registries, and advocate for strategies to address any significant gaps in reporting.

Appendix A

The scorecard

	JURISDICTION													
	Quebec	Canada (Federal)	Ontario	Alberta	Saskatchewan	Manitoba	British Columbia	Nova Scotia	Newfoundland and Labrador	New Brunswick	Prince Edward Island	Yukon	Northwest Territories	Nunavut
Online Searchable Registry Does the jurisdiction have a searchable lobbyist registry available online?	2	2	2	2	2	2	2	1	0.5 ⁴	1	**	n/a	n/a	n/a
Lobbyist Activity Do lobbyists have to reveal which pieces of legislation they are seeking to influence?	2	1	2	1	1	1	0	1	1	0	TBD	n/a	n/a	n/a
Expenditure and Compensation Transparency Are lobbyists required to disclose the dollar amounts spent on lobbying activity for any particular time period, and/or the fees they collect from clients?	1 ¹	0	0	0	0	0	0	0	0	0	TBD	n/a	n/a	n/a
Scope What is the threshold under which a lobbyist does not have to report?	1.5 ²	1	1	1	1	1	1	1	1	1	TBD	n/a	n/a	n/a
Communications Is the lobbyist required to report the individual communications?	0	1.5 ³	0	1	0	0	0	0	0	0	TBD	n/a	n/a	n/a
Participation Is the lobbyist required to report the individuals that participated in meetings with officials? (more specific than just those registered to lobby)	0	0	0	0	0	0	0	0	0	0	TBD	n/a	n/a	n/a
Total Score	6.5	5.5	5.0	4.0	4.0	4.0	3.0	3.0	2.5	2.0	‡	‡	‡	‡

¹ Range of compensation disclosed

² Qualitative and quantitative threshold

³ Lobbyists are required to report on individual communications; however, they do not need to disclose what type of communication occurred

⁴ with half point deducted for accessibility issues

** Legislation in development

‡ Unscored

Appendix B

Full scoring criteria

Points

Accessibility: Does the jurisdiction have a searchable lobbyist registry available online?

- 2 Lobbyist registry is available and searchable by subject, lobbyist and client
- 1 Lobbyist registry is available but only searchable by one of subject, lobbyist or client
- 0 Lobbyist registry is not available online

No score Lobbyist registry does not exist

Transparency of Lobbyist Activity: Do lobbyists have to reveal which pieces of legislation they are seeking to influence?

- 2 Lobbyists report the legislation/regulation/policy discussed and position taken
- 1 Lobbyists report the legislation/regulation/policy discussed (e.g. "Bill C-27" or "Energy East project")
- 0 Lobbyists report the general subjects of lobbying (e.g. "energy policy" or "taxation")
- 1 Lobbyists are not required to report the subject of lobbying

Transparency of Expenditures and Compensation: Are lobbyists required to disclose the dollar amounts spent on lobbying activity for any particular time period, and/or the fees they collect from clients?

- 2 Lobbyists report fees and expenses
- 1 Lobbyists report fees or expenses but not both
- 0 Lobbyists do not report fees or expenses

Reporting Thresholds: What is the threshold under which a lobbyist does not have to register?

- 2 There is no threshold
- 1 An aggregate threshold triggers a requirement for individuals to register (i.e. more than 100 hours spent on lobbying collectively within the organization)
- 0 An individual rather than collective threshold triggers a requirement to register (i.e. 100 hours spent on lobbying individually)

Transparency of Communications: Is the lobbyist required to report individual communications?

- 2 Lobbyist is required to report each communication and what type of communication occurred (phone call, email, meeting)
- 1 Lobbyist is required to report that a communication occurred during a particular reporting period
- 0 Lobbyist is not required to report individual communications

Disclosure of Participants: Is the lobbyist required to report which company representatives participated in meetings?

- 1 Lobbyist is required to report the names of individual company representatives that participated in meetings with government officials
- 0 Lobbyist is not required to report the names of individual company representatives that participated in meetings with government officials

Endnotes

- ¹ See SHARE, "Dollars, Democracy and Disclosure", January 2015. Available at: http://share.ca/documents/investor_briefs/Governance/2014/Dollars_Democracy_Disclosure.pdf
- ² In Quebec, lobbying at the municipal level is also covered by provincial legislation.
- ³ These criteria were adapted from a US study of lobbyist registries conducted by the Sunlight Foundation, available at <https://sunlightfoundation.com/2015/08/12/how-transparent-is-your-states-lobbying-disclosure>
- ⁴ Applicable to in-house lobbyists; consultant lobbyists must register regardless of time spent lobbying.
- ⁵ <http://www.oico.on.ca/home/lobbyists-registration/lobbying-activity>
- ⁶ http://www.lobby.gouv.qc.ca/servicespublic/informationnel/Inscription/Interpretation_2004-003.aspx
- ⁷ Written communications are included in the definition of lobbying, so they are enough to merit registration. However, they do not need to be reported in monthly communications reports – those are triggered by oral and arranged communications. For more info, see: <https://lobbycanada.gc.ca/eic/site/012.nsf/eng/00884.html>.
- ⁸ <https://novascotia.ca/sns/lobbyist/consultant/confirmation.asp> (#1217, active as of June 2017)
- ⁹ https://www.albertalobbyistregistry.ca/i/themes/itrac_theme/ext/December_1_2016_FINAL_Recommendations_document.pdf
- ¹⁰ <http://www.cbc.ca/news/canada/prince-edward-island/p-e-i-lobby-registry-has-room-for-improvement-says-advocate-1.3903724>
- ¹¹ <https://sunlightfoundation.com/2015/08/12/how-transparent-is-your-states-lobbying-disclosure>
- ¹² <https://sunlightfoundation.com/2014/05/05/transparency-case-study-lobbying-disclosure-in-canada>



Box 11171, Royal Centre, 26th Floor,
1055 West Georgia Street
Vancouver, BC V6E 3R5

T: 604 408 2456
F: 604 408 2525
E: info@share.ca

www.share.ca