



September 10, 2020

Sent by e-mail

Office of the Integrity Commissioner of Ontario
Attn: Honourable J. David Wake
2 Bloor Street West, Suite 2100
Toronto, ON M4W 3E2

Dear Commissioner Wake,

Re: Office of the Integrity Commissioner of Ontario (“OICO”) Interpretation Bulletins

On behalf of the Public Affairs Association of Canada’s (PAAC) Ontario chapter, I am writing with respect to the April and June 2020 updates and amendments to the OICO’s interpretation bulletins (the “IBs”) and the OICO’s publication of new IBs. We understand that the OICO updated its IBs and published new IBs to respond to frequent questions raised by consultant and in-house lobbyists.

As discussed during our meeting on July 10th, 2020, PAAC will always encourage its members to comply with the Ontario *Lobbyist Registration Act*, 1998 SO 1998, c. 27 (the “LRA”) and the IBs. Although the IBs are not black letter law, they provide insight as to how the Commissioner will enforce the LRA. Despite attempting to respond to frequent requests for clarification by lobbyists, the newly published IB #11 – *What is a conflict of interest and how does it affect my lobbying?* has raised many questions by PAAC members as to how to best comply with this new IB. We have compiled our members’ questions and we have provided constructive comments below that reflect the position of consultant and in-house lobbyists in Ontario and provide insight into the reality of the practice of lobbying in Ontario.

Comments on Interpretation Bulletin #11

IB #11 requires further clarity for Ontario consultant and in-house lobbyists to understand what constitutes a conflict of interest. PAAC endorses the approach taken by the Federal Office of the Commissioner of Lobbying (the “OCL”) and its amendments to the Lobbying Code of Conduct (the “Code”). The guidance published by the OCL on Rules 7 and 8 of the Code provide more detail on the types of relationships (friends, family, and business partnerships) that will create “preferential access” than currently provided in IB #11. The IB would benefit from adopting this level of detail to provide clearer guidance to potential registrants.

IB #11 also identifies gifts as triggering a conflict of interest. The IB provides examples of the types of gifts in question (meals, tickets to events, trips or gift baskets and flowers) and then



identifies a limited exception for accepting a small token of appreciation, such as a meal, for speaking at an event. This is one example of an inconsistency that the IB should clarify to provide more guidance to registrants and potential registrants as to when a gift might result in placing a public office holder in a conflict of interest.

A number of PAAC's members, and lobbyists generally, have past political careers and have worked closely with provincial elected officials. IB #11 focuses on conflicts of interest arising from political activity by lobbyists and creates "high risk" and "low risk" categories for prior political engagement. Unlike the guidance published by the OCL, there is no "no risk" category identified for prior political engagement. This may result in a person with past political engagement being unable to lobby, at least for an, as yet, undetermined amount of time.

PAAC recommends that the OICO consider creating a "no risk" category in IB #11. PAAC also recommends that the OICO create a detailed list of the positions that may create a "higher risk" of a conflict of interest. Not all "senior positions" in a leadership or election campaign may create a "sense of obligation" between an elected official and their prior political staff. PAAC would be happy to provide further comments on the types of senior positions that may give rise to a conflict of interest and warrant a "cooling-off" period.

PAAC further submits that the IB should be refined to address the "cooling-off" period. The IB should create a prescribed "cooling-off" period for each kind of prior political activity (position held) and level of engagement (including the amount of time spent in this position). A statement that a "cooling-off" period is "often one year after the end of the political activity" is ambiguous and does not provide the appropriate guidance to lobbyists who have had various levels of prior political engagement. Currently, it is not clear whether the "cooling off" period applies equally to volunteers and those who held strategic positions in a former political capacity.

The IB also targets lobbyists who express "personal political views" as being at a "lower risk" for creating a conflict of interest. The Commissioner may have inadvertently broadened the application of a conflict of interest by not providing more detail to describe what kind of activities by a lobbyist with "personal political views" would attract sanction under the LRA.

PAAC also suggests that the Commissioner should announce a streamlined process for obtaining Advisory Opinions from the OICO regarding certain compliance obligations. The IB #11 suggests contacting the OICO at various points to obtain an Advisory Opinion as to whether a certain activity violates the LRA. A formal process for requesting Advisory Opinions, with a guaranteed response time, would be helpful for lobbyists seeking confirmation that their activities do not violate the LRA. For example, the IBs encourage lobbyists to seek the opinion of the OICO with respect to conflicts of interest arising from gifts, or family relationships, and the amount of time required for a "cooling-off" period in IB #11,



We respectfully request that the Commissioner consider these comments and suggested amendments and work with PAAC to clarify IB #11. We believe that these clarifications will help the OICO balance citizen participation in government and law making with transparency.

Yours Truly,

A handwritten signature in black ink, appearing to read "A. Greco", with a long horizontal flourish extending to the right.

Alex Greco
President
PAAC Ontario