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**Lobbyists Registration Act, 1998
(Ontario)**

ANNUAL REPORT

January 15, 1999 - March 31, 2000

Office of the Integrity Commissioner

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Lobbyists Registration Office

Office of the Integrity Commissioner

Bureau d'enregistrement des lobbyistes

Bureau du Commissaire à l'intégrité

The Honourable Robert C. Rutherford
M.B.E., C.D., Q.C., LL.B
Registrar

L'honorable Robert C. Rutherford
M.B.E., C.D., C.R., LL.B
Registrateur

June 19, 2000

The Honourable Gary Carr
Speaker of the Legislative Assembly
Room 180, Legislative Building
Queen's Park
Toronto, Ontario
M7A 1A2

Dear Mr. Speaker:

I have the honour and pleasure to present the first Annual Report with respect to the administration of the *Lobbyists Registration Act, 1998, S.O. 1998, c.27* for the fourteen-month period of January 15th, 1999 to March 31st, 2000.

This Report is submitted pursuant to s.10 of the *Lobbyists Registration Act, 1998*, and s. 24 of the *Members' Integrity Act, 1994*.

Yours very truly,

**The Honourable Robert C. Rutherford,
Integrity Commissioner**

TABLE OF CONTENTS

	<u><i>Page Number</i></u>
Background	1
Purpose of the Act	1
Description of the Act	2
Offences and Penalties	3
Lobbyist Registrar	4
Registration Process	5
A. Electronic Filing	5
B. Manual Filing	5
Public Registry	7
Statistics	
A. Registrations	8
B. Subject Matter of Lobbying Activities	9
C. Government Ministries and Agencies	10
Appendices	
Appendix “A” – Advisory Opinion No. 1	11
Appendix “B” – Interpretation Bulletin No. 1	13
Appendix “C” – Interpretation Bulletin No. 2	14

This is the first Annual Report of the *Lobbyists Registration Act, 1998, S.O. 1998, c.27* covering the fourteen-month period, January 15th, 1999 to March 31st, 2000.

BACKGROUND

On October 6, 1998, the Chair of Management Board of Cabinet, The Honourable Chris Hodgson, introduced *An Act to amend the Members' Integrity Act, 1994 and to enact the Lobbyists Registration Act, 1998* stating:

"This government is committed to managing its business operations in an open, accountable and accessible manner. Lobbying is part of the democratic process, but the public has a right to have access to information about organizations and individuals that are seeking to influence government decision-making.... A public record of paid lobbyists will ensure that the process of lobbying government is kept open and transparent and that the public interest is protected from undue influence."

The Canadian federal government, the United States federal government and many U.S. state governments have lobbyist registration laws in place, and the *Lobbyists Registration Act*, which is similar to the Canadian federal government's lobbyist legislation, made Ontario the first Canadian province to enact legislation establishing a lobbyist registry.

The *Lobbyists Registration Act, S.O. 1998, c.27*, was proclaimed on January 15, 1999.

Unlike the federal Act, this legislation does not include a Code of Conduct. Various mechanisms already exist which regulate the relationship between lobbyists and their clients and public office holders, and professional codes of conduct establish the behaviour for associations and industries. For example, lawyers are regulated by a professional code of conduct, and lobbyists have their own industry codes. Similarly, legislation such as the Criminal Code, Public Service Act, and the Members' Integrity Act also regulate lobbyists and public office holders, along with government procurement and conflict of interest policies and directives, safe-guarding the integrity of the government.

PURPOSE OF THE ACT

Lobbying is a legitimate activity providing free and open access to government and protecting the integrity of the provincial government from undue influence. It is a registration system, not a regulation, and the *Act* provides the public, public office holders and lobbyists with the opportunity and means to know who is talking to whom in government about what.

DESCRIPTION OF THE ACT

Lobbying is defined as a communication between a paid lobbyist and a public office holder in an attempt to influence government decisions about:

- Legislative proposals, bills and regulations
- Changes to policies, programs and decisions
- Awarding of grants, contributions and other financial benefits
- Privatization and outsourcing

The *Act* recognizes that some communications between government and individuals, firms or organizations are purely consultative and essential to public policy making, however, for the purposes of this legislation, lobbying does not include:

- Oral and written submissions to legislative committees;
- Oral and written submissions made to a public office holder with respect to the enforcement, interpretation, or application of any act, policy, programme, directive, or guideline;
- Oral and written submissions made in direct response to written requests for advice or comment;
- Routine constituency communications between MPPs and constituents.

A public office holder is broadly defined and includes cabinet ministers, MPPs and staff, public servants under the Public Service Act, persons appointed to office by Order-in-Council, members of the Ontario Provincial Police and officers, directors and employees of provincial government agencies, boards and commissions. This does not include the broader sector entities such as hospitals, universities, local government institutions, Legislative Officers, judges and justices of the peace.

The *Act* provides for three categories of lobbyists:

- (1) A consultant lobbyist is retained by a client for a fee to communicate with a public office holder in Ontario. Examples include government relations consultants, lawyers and accountants.
- (2) An in-house lobbyist is employed by a corporation or partnership that carries on commercial activities for financial gain and lobbies as a significant part of their duties.
- (3) An in-house lobbyist is employed by a non-profit organization. Examples include associations, Chambers of Commerce, community-based organizations, charitable organizations and advocacy groups. The most senior compensated officer of the organization is required to provide the name of each in-house lobbyist employed by the organization when the accumulated lobbying activity of all such employees constitutes a significant part of the duties of one employee.

All lobbyists are required to register within a specified time limit from the commencement of lobbying activities and provide information as set out in the *Act*, including, the name of the client or organization or corporate employer; the subject matter of lobbying; a description of the specific legislative proposals, bills, regulations, policies, programs, grants, contributions or contracts sought; the ministries, agencies, boards, and commissions and MPPs lobbied; the source and amount of government funding received by the lobbyist's client or employer; the name of any non-government entity or organization which, in the fiscal year prior to the date of filing, provided \$750 or more to the client/employer in support of the lobbying activity; and the communication techniques used to lobby. In-house corporate lobbyists and in-house organization lobbyists must also provide a general description of their business activities.

OFFENCES AND PENALTIES

A lobbyist as defined under the *Act* may be committing an offence if:

- (1) lobbying activities as defined in the *Act* are conducted and a registration form is not submitted within the time frames set out in the *Act*;
- (2) the required information is not provided in a registration form;
- (3) changes to a registration form, new information or clarification of information as requested by the Lobbyist Registrar is not provided;
- (4) false or misleading statements are provided;
- (5) the lobbyist knowingly places a public office holder in a position of real or potential conflict of interest.

Any person who contravenes the Ontario *Lobbyists Registration Act* is liable on summary conviction to a fine of up to \$25,000, a penalty which is consistent with the provisions of other provincial statutes for serious provincial offences.

We are pleased to advise that there have been no violations under the *Lobbyists Registration Act*.

LOBBYIST REGISTRAR

The responsibility for the administration of the public registry has been assigned to the Integrity Commissioner, who has authority to delegate his or her powers and duties under the *Act*.

The *Act* provides that the Registrar review all registrations, identify omissions and/or inconsistencies and seek clarification of information submitted by the lobbyist where necessary; and has the authority to verify the information provided. The Registrar is also required to ensure public accessibility to the lobbyist register and submit Annual Reports on the administration of the *Act* to the Legislative Assembly.

During the first six months of start-up of the Lobbyists Registration Office (“LRO”), education programs were conducted by the Lobbyist Registrar with lobbyist groups and discussions with public office holders, consultant lobbyists and industries and associations provided information with respect to the interpretation of the *Act*. These discussions continue from time to time and we welcome the opportunity to meet with any individual or group to discuss the *Act* or provide advice under the *Act*.

In addition to the above responsibilities, the Lobbyist Registrar may issue advisory opinions and interpretation bulletins as required with respect to the enforcement, interpretation or application of the *Act*.

During the past 18 months, the LRO received a number of inquiries with respect to the definition of lobbying as it applies to broader sector entities. Generally speaking, where entities in the broader sector have a specific statutory mandate to conduct certain activities related to legislation, these activities are not considered to be lobbying. However, any communication activities outside the activities identified in the legislation may meet the definition of lobbying under the *Act*, and would require registration if the entity meets the definition of significant part of their duties.

During the reporting period of this Report, one advisory opinion was issued with respect to the definition of “public office holder” and its application to Ontario Hydro, which under legislation was divided into five successor corporations. Advisory Opinion No. 1 is attached as Appendix “A” to this Report.

Interpretation Bulletins Nos. 1 and 2 were also issued with respect to:

- (1) the definition of “the period for which the return is filed” and “the next following six-month period”; and
- (2) the definition of “a significant part of duties” .

These Bulletins are attached as Appendices “B” and “C” to this Report.

All Opinions and Bulletins are available on the LRO website <http://lobbyist.oico.on.ca>

REGISTRATION PROCESS

All persons who meet any of the definitions of lobbyist under the *Lobbyist Registration Act, 1998* must register their activities on the lobbyist registry, which is accessible through the LRO website <http://lobbyist.oico.on.ca>. This site is the principle means of disseminating information relevant to public office holders, the public and lobbyists with respect to those working to influence government activities.

Lobbyists are required to file registration forms and have a choice to file manually or electronically, through the LRO website.

A. Electronic Filing

The electronic format permits the lobbyist to submit via the internet the required information for approval purposes. Before a lobbyist can use the electronic filing process, identification information and an executed User Agreement must be submitted. The lobbyist is then provided with a unique identification and secure access to their registration.

The Registrar's approval is acknowledged with the lobbyist by email and the registration is automatically placed on the public registry.

Registration on-line is free of charge and in accordance with the *Act* gives lobbyists the ability to electronically file Initial Registrations, Notices of Change to Information, Renewals and Terminations.

Although not required by legislation, the LRO has implemented an automatic email reminder system to all lobbyists when registrations are due for renewal. The *Act* provides that consultant and in-house commercial lobbyists must renew on an annual basis and in-house organizations are required to renew every six months.

B. Manual Filing

Those lobbyists who do not have the required computer resources are able to use the facilities available in the Lobbyists Registration Office to file registrations electronically, failing which, paper forms are available from the LRO. A registration fee applies to manual registrations.

Upon receipt of a manual registration, the information is entered into the database by the LRO staff and once approved by the Registrar, is automatically placed on the public registry. Lobbyists who use this form of filing are notified by mail with respect to approvals and renewal notices.

There is no fee charged for Notices of Change and Terminations, however, there is a fee for each Renewal.

As with any new program, start-up was not without its growing pains, however, our experience over the first few months enabled our technical consultants to develop not only a new look to the registration process, but also easier access to prepare and edit registration forms.

Initially, approximately 86 percent of lobbyists filed on line, however, by the end of the fiscal year, approximately 98.7 per cent have registered electronically.

PUBLIC REGISTRY

When this legislation was introduced, the Chair of Management Board stated,

“A public record of paid lobbyists will ensure that the process of lobbying government is kept open and transparent and that the public interest is protected from undue influence.”

All information submitted by lobbyists on the registration forms becomes part of the public record and is available in the lobbyists registry through the LRO website. The public can access information as to who has lobbied, who is lobbying, the clients and employers of lobbyists, parent and subsidiary companies of corporations that benefit from the lobbying, a description of the corporation and association business activities, what subject matters are the focus of the lobbying activities, including legislative proposals, bills, resolutions, regulations, policies, programs, decisions, and grants, privatization and outsourcing decisions, and the government ministries or agencies being lobbied. Also available is information as to whether a client or organization is funded in whole or in part by any government, whether there is any private funding related to the lobbying activities and the communication techniques being used.

Users can search the registry to produce their own reports and obtain copies of a lobbyist's registration form, free of charge, either through their own computers or through the facilities available at the Lobbyists Registration Office. However, if the report is produced by the staff at the Lobbyists Registration Office, a service fee is applied.

STATISTICS

A. Registrations

Since the implementation of the *Lobbyists Registration Act*, on January 15, 1999, and as of March 31st, 2000, there were 684 active registrations and 297 inactive registrations. Inactive registrations include undertakings which have been completed or terminated.

Consultant lobbyists are required to file a registration for each client and undertaking, and 188 active consultant lobbyists were registered as of the fiscal year end, representing a total of 511 registrations.

During the past 14 months, 78 employees registered on behalf of their corporate employer when their lobbying activity represented a significant part of their duties. These employees represented the interest of 50 corporations.

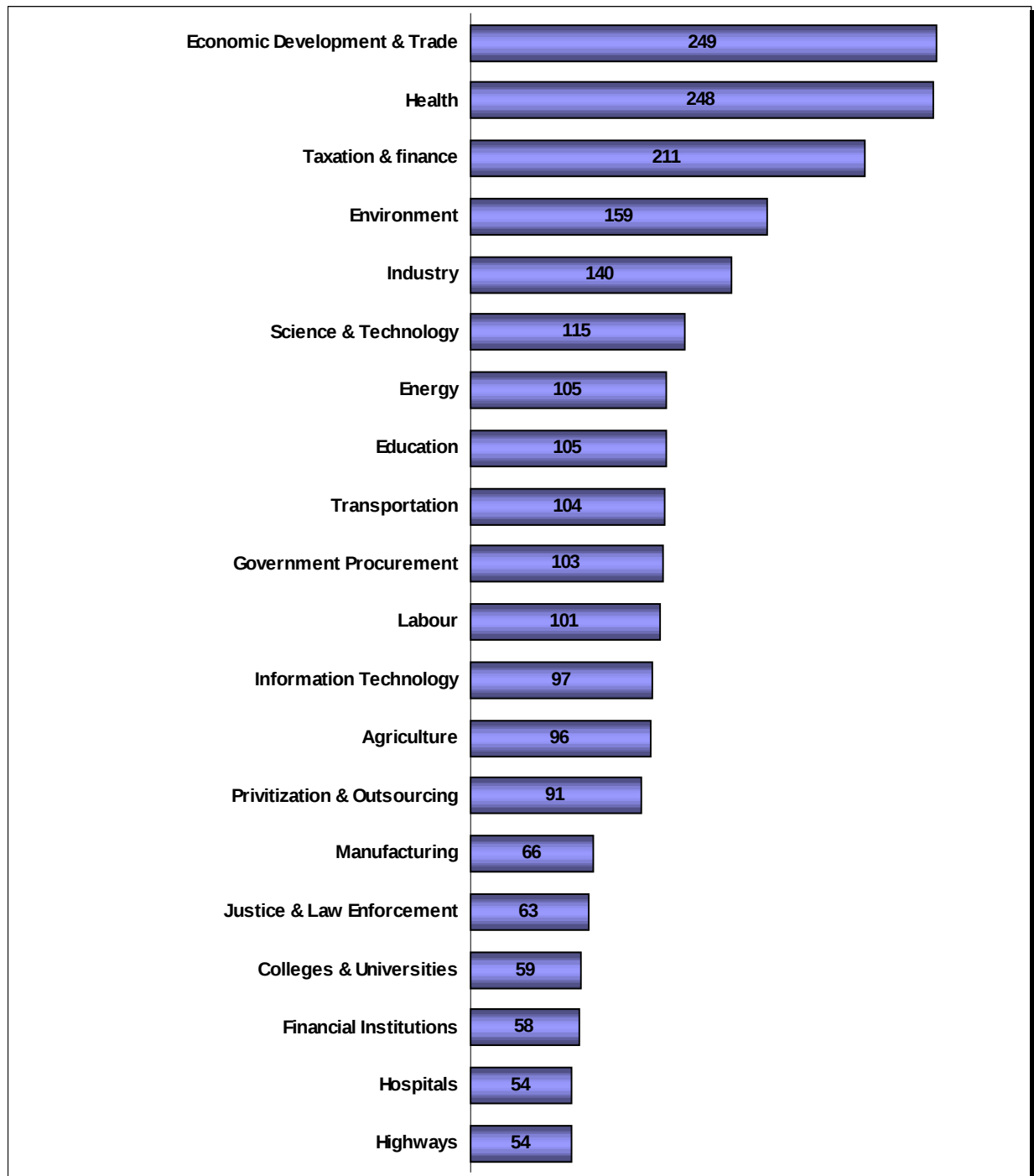
As of March 31st, 2000, 95 compensated senior officers were registered on behalf of their in-house organizations and the paid employees who lobby the Ontario government as a significant part of their duties. This group included industry, business and professional groups, together with charitable organizations.

REGISTRATIONS AS OF MARCH 31, 2000

	Consultant Lobbyists	In-House Lobbyists (Persons & Partnerships)	In-House Lobbyists (Organizations)
Lobbyists	188	78	95
Registrations	511	78	95
Terminations	286	3	8

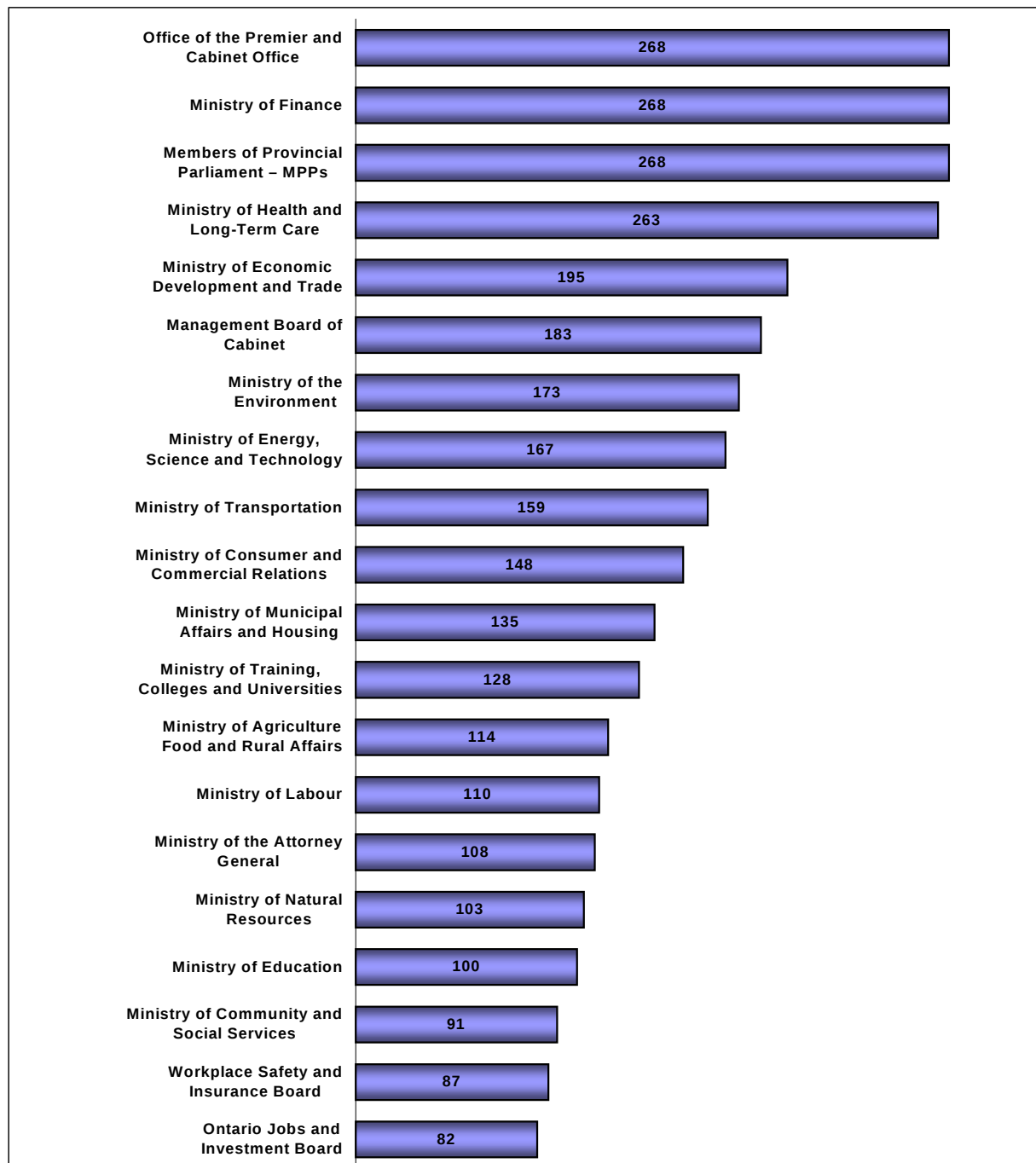
B. Subject Matter of Lobbying Activities

All lobbyists are required to disclose the areas of interest that identify the subject matter of their lobbying activities, and the following chart represents the 20 areas of interest most frequently identified by the lobbyists in active registrations as of March 31st, 2000.



C. Government Ministries and Agencies

All lobbyists are required to disclose the names of the ministries and agencies that they are in contact with or expect to be in contact with during the course of their lobbying activities. The chart below represents those 20 Ontario government ministries and agencies most frequently identified by the lobbyists as of March 31st, 2000.



APPENDIX “ A ”

LOBBYISTS REGISTRATION ACT, 1998

ADVISORY OPINION NO. 1

PUBLIC OFFICE HOLDERS: APPLICATION OF THE ACT TO ONTARIO HYDRO

Pursuant to s.15 of the *Lobbyists Registration Act, 1998*, (hereinafter referred to as the “Act”), this advisory opinion is issued by the Lobbyists Registrar to provide guidance on the application of the Act.

Under s.1 of the Act, a ‘public office holder’ is broadly defined and includes Cabinet Ministers, Members of Provincial Parliament and their staff, virtually all public servants unless otherwise exempted by regulation, officers, directors and employees of provincial government agencies, boards and commissions (but does not include broader public sector entities such as hospitals, universities and local government institutions), persons appointed to office by Order-in-Council and members of the Ontario Provincial Police.

The *Electricity Act, 1998* is Schedule A to the *Energy Competition Act, 1998* S.O. 1998, c.15, the Act which, in effect, creates or authorizes the creation of the following five successor corporations to Ontario Hydro:

- (1) Independent Electricity Market Operation (“IMO”) to ensure fair and open market access and to oversee GENCO and SERVC.
- (2) Ontario Electricity Generation Corporation Inc. (“GENCO”) to own and operate the generation facilities.
- (3) Ontario Electric Services Corporation (“SERVCO”) to own and operate the transmission and distribution systems through subsidiaries of the Corporation.
- (4) Ontario Electricity Financial Corporation to manage the provincial guaranteed debt of the former Ontario Hydro.
- (5) Electrical Safety Authority to oversee the installation and inspection of electrical equipment.

Sections 6 and 51 of the *Energy Competition Act* specifically state that the IMO, GENCO and SERVC are not “agent(s) of Her Majesty for any purposes, despite the Crown Agency Act.” Therefore, IMO, GENCO and SERVC are not public office holders for purposes of the *Lobbyists Registration Act*.

Section 56 of the *Energy Competition Act* provides that the Ontario Electricity Financial Corporation “is an agent of Her Majesty for all purposes.” It follows then, that the Ontario Electricity Financial Corporation is a public officer holder for purposes of the *Lobbyists Registration Act*.

The purpose of the *Safety and Consumer Statutes Administration Act, 1996* is

“...to facilitate the administration of designated Acts named in the Schedule by delegating to designated administrative authorities certain powers and duties relating to the administration of those Act.”

The Electrical Safety Authority was designated by Ontario Regulation No. 89/99 under the *Electricity Act, 1998*, and effective March 29th, 1999 an administrative agreement was entered into between the Minister of Consumer and Commercial Relations and the Electrical Safety Authority. This agreement defines the relationship between the Crown and the Electrical Safety Authority as a ‘designated administrative authority’ defined as:

“... a not-for-profit corporation without share capital incorporated under the laws of Ontario or Canada that operates in Ontario but that does not form part of the Government of Ontario, any other government or an agency of a government;”

In addition, s.9(2) of the *Safety and Consumer Statutes Administration Act, 1996* states:

“Persons whom a designated administrative authority employs or whose services the authority retains under subsection (1) and members, officers, directors and agents of a designated administrative authority are not Crown employees and shall not hold themselves out as Crown employees.”

Therefore, the Electrical Safety Authority, as a designated administrative authority, does not fall within the definition of a “public office holder” for purposes of the *Lobbyists Registration Act*.

For more information, please contact:

Lobbyist Registrar

Lobbyists Registration Office

13th Floor

101 Bloor Street West

Toronto, Ontario, M5S 2Z7

Telephone: (416) 327-4053

Fax: (416) 327-4017

Email: lobbyist.registrar@oico.on.ca

APPENDIX “ B ”

LOBBYISTS REGISTRATION ACT, 1998

INTERPRETATION BULLETIN NO. 1

**“THE PERIOD FOR WHICH THE RETURN IS FILED” AND
“THE NEXT FOLLOWING SIX-MONTH PERIOD”**

Pursuant to s.15 of the *Lobbyists Registration Act, 1998*, (hereinafter referred to as the “Act”), this interpretation bulletin is issued to provide a better understanding of “the period for which the return is filed” and “the next following six-month period” as found in section 6(3)10, 12, 13, and 14 of the *Act*, and applied to in-house organization lobbyists.

Section 6 of the *Act* requires that every six months, in-house organization lobbyists must disclose the subject-matters on which they are currently lobbying, and expect to lobby; whether they lobby and intend to lobby any ministry of the Crown, any agency board of commission of the government, a member of the Legislative Assembly or a member of his or her staff; and the communication techniques being used and expected to be used.

“During the period for which the return is filed” is the six-month period commencing the date of filing of the registration form, and “the next six-month period” is the six months following the present six-month period.

For more information, please contact:

Lobbyist Registrar

Lobbyists Registration Office

13th Floor

101 Bloor Street West

Toronto, Ontario, M5S 2Z7

Telephone: (416) 327-4053

Fax: (416) 327-4017

Email: lobbyist.registrar@oico.on.ca

APPENDIX “ C ”

LOBBYISTS REGISTRATION ACT, 1998

INTERPRETATION BULLETIN NO. 2

“A SIGNIFICANT PART OF DUTIES”

Pursuant to s.15 of the *Lobbyists Registration Act, 1998* (hereinafter referred to as the “*Act*”), and *Ontario Regulation 722/98*, January 15, 1999 (hereinafter referred to as the “*Regulation*”) this interpretation bulletin is issued to provide a better understanding of “a significant part of duties” as found in sections 5 and 6 of the *Act* and s. 5 and 6 of the *Regulation* and applied to in-house persons and partnerships and in-house organizations.

In-House Lobbyists (Persons and Partnerships)

Section 5(1) of the *Act* provides that an employee who, as a significant part of their responsibilities as an employee, attempts to influence the Ontario government or any agency, board or commission, on behalf of the employer who carries out commercial activities, must register within two months of becoming a lobbyist, i.e. when their lobbying constitutes a “significant part of their duties”.

The in-house lobbyist must register when the lobbying activity for their employer begins and must renew the registration annually when lobbying is ongoing. New information must be reported within 30 days, together with any changes to information previously submitted, and when lobbying activities cease or the employee has ceased to be employed by the employer.

An annual renewal of the registration is required within two months after the end of the employer’s financial year or, if the employer does not have a financial year, within two months of the commencement of the calendar year.

“Significant part of duties” is said by s.5 of the *Regulation* to occur when the accumulation of lobbying activities over a three-month period reaches the threshold of 20% for the individual employee’s time. This definition applies to time actually spent lobbying and not creating research papers, making submissions to a committee of the Legislative Assembly which are a matter of public record, submissions to public office holders about the enforcement, interpretation or application of any act or regulation, submissions in direct response to written requests for advice or comments and routine constituency communications.

Assuming a five-day work week, over a three-month period, a commercial in-house lobbyist would have to lobby a minimum of four days per month to reach the 20% threshold.

In-House Lobbyists (Organizations)

Section 6(1) of the *Act* provides that an individual, employed by a non-profit organization, must be registered when a significant part of their duties is to attempt to influence the Ontario government, or agency, board or commission, on behalf of the organization, if these duties together with the lobbying duties of other employees would constitute a “significant part of the duties of one employee”.

The most senior officer of the organization who is compensated for the performance of his or her duties, must register within two months of the organization meeting the definition of lobbying and must renew the registration within thirty days after the expiration of each six-month period after the filing of the previous return.

“Significant part of duties” is said by s.6 of the *Regulation* to occur when the accumulation of lobbying activities over a three-month period reaches the threshold of 20% for either an individual employee’s time, or the combined times of more than one employee. This definition applies to time actually spent lobbying and not creating research

papers, making submissions to a committee of the Legislative Assembly which are a matter of public record, submissions to public office holders about the enforcement, interpretation or application of any act or regulation, submissions in direct response to written requests for advice or comments and routine constituency communications.

Assuming a five-day work week, over a three-month period, a lobbyist, or group of employees, would lobby a minimum of four days per month to reach the 20% threshold.

For more information, please contact:

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