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A GUIDE TO THE BC LOBBYISTS REGISTRATION ACT FOR BC ENVIRONMENTAL NON-PROFITS AND CHARITIES

A Paper on the Application of BC's new Lobbyists Registration Act to non-profit organizations and in particular to registered charities

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ABSTRACT

BC's new *Lobbyists Registration Act* may require that non-profit organizations register their employees as in-house lobbyists if a "significant" part of the employee's duties involve communications with public officials for the purpose of influencing various provincial government decisions.

The Act applies to efforts to influence development and changes to legislation, regulations, programs and policies, and to communications to influence the awarding of contracts. It does not apply to the implementation or administration of programs and policies. It thus appears to exclude activities like making submissions on whether a pollution permit should be issued under the Waste Management Act. It does not apply to direct responses to written requests for comment on legislation, regulations, policy or program. In most cases this will exclude responses to government discussion papers. It does not apply to submissions that are a matter of public record to tribunals or persons having jurisdiction under an Act. This excludes submissions to bodies such as the Environmental Appeal Board. It does not include time spent preparing research papers.

The Act only requires registration once an employee's lobbying becomes "significant part of their duties". "Significant part of duties" has been interpreted to mean roughly 20 per cent of an individual employee's time. Moreover, lobbying does not include communications for purposes other than influencing government decisions, and the Act does not prevent an organization from contacting the provincial government if they are not registered.

There is not necessarily any contradiction between being registered as a charity under the *Income Tax Act* and filing a return under the *Lobbyists Registration Act*. However, care should be taken to comply with the requirements of both Acts. A charity which files a return under the *Lobbyists Registration Act* must take care to ensure that its activities comply with the *Income Tax Act*.

Please Note: This brief does not constitute legal advice. The duty to register may turn on individual facts not foreseen in this paper. Organizations should seek legal advice if they have any questions regarding whether they are required to register.

INTRODUCTION

The provincial government passed the *Lobbyists Registration Act* (the "LRA") in August 2001, and came into force October 28, 2002. The ostensible purpose of the LRA is to provide for openness and transparency in lobbying. When it was introduced in the Legislature, the Attorney General stated:

> Bill 20 is another step in implementing this government's commitment to open, accessible and accountable government. The bill implements a throne speech commitment made at the outset of the current legislative session. Lobbying is a fact of political life, and lobbyists can have considerable effect on government policy. This bill will create a new act and a new process that will require lobbyists who are paid to lobby government to register and to have their actions and intentions open for public scrutiny.[1]

Notwithstanding the stated intentions of the Minister, many non-profit organisations are left wondering whether they are now restricted in their access to government. Do they need to register in order to talk to government agents?

Moreover, given federal restrictions on lobbying by charitable organisations, some charities have expressed concern that if they register under the LRA, they will be putting their charitable tax status in jeopardy.

The purpose of this paper is to examine the LRA and to outline the obligations placed upon charitable organisations. Secondly, we will examine the relationship between the LRA and charitable tax status. This paper is intended for non-profit NGOs that employ staff who communicate with the provincial government.

Public information and forms for registering are available on the website of the Office of the Registrar of Lobbyists, at http://www.ag.gov.bc.ca/lra. As the Act is new, changes can be expected. Information provided by the Registrar may affect the conclusions reached in this paper. Specific questions about the LRA or the Lobbyist Registry System can be directed to the Registrar's office at Lobbyist.Registry@gems1.gov.bc.ca or (250)387-2686. Please also note that West Coast Environmental Law is seeking guidance from the Registrar on several points.

OBLIGATIONS UNDER THE LRA

The LRA creates a Lobbyists Registry and requires that a return be filed by "consultant lobbyists" or by the senior officer of an organization employing an "in-house lobbyist". Employees of NGOs working on government policy issues may well come within the definition of "in-house lobbyist".

An in-house lobbyist is defined as a person employed by a person or organisation, "a significant part of whose duties as an employee is to lobby on behalf of … the employer" or a subsidiary of the employer. A consultant lobbyist is defined as an "individual who, for payment, undertakes to lobby on behalf of a client."

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[1] Hansard, Monday, August 20, 2001, Afternoon Sitting, Vol. 2, No. 21, p. 619.

NON-GOVERNMENTAL ORGANISATIONS AND LOBBYISTS

It is clear from the LRA that an employee or consultant hired by a non-profit organisation may be a lobbyist.[2] Two questions are worth considering in evaluating whether or not to file a return on behalf of an NGO:

(a) Does the organisation, through its employees and contractors, engage in lobbying? and

(b) If yes, is the extent to which the employees lobby "significant"?

DOES THE ORGANISATION ENGAGE IN LOBBYING?

The starting point to determine whether an organization is lobbying is to look at the activities of the organization and compare them to the definition of lobbying in the Act and the various exemptions under the Act.

Definition of Lobbying

Lobbying is defined under the Act as:

> (a) … to communicate with a public office holder in an attempt to influence
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> > (i) the development of any legislative proposal by the government of British Columbia or by a member of the Legislative Assembly,
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> > (ii) 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,
> >
> > (iii) the making or amendment of any regulation as defined in the Regulation Act or any order in council,
> >
> > (iv) the development or amendment of any program or policy of the government of British Columbia, or
> >
> > (v) the awarding of any contract or financial benefit by or on behalf of the government of British Columbia, and
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> (b) in relation only to a consultant lobbyist, to arrange a meeting between a public office holder and any other person…[3]

Communications with a Public Office Holder

The communications must be with a public office holder to constitute lobbying. A public official under the LRA includes provincial Cabinet Ministers, MLAs and their staff, virtually all public servants, persons appointed to office by Order-in-Council or by a

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[2] *Lobbyists Registration Act*, Legislature of British Columbia, Bill 20, 2001, available at www.legis.gov.bc.ca/37th2nd/3rd read/gov20-3.htm . s. 1, "organization", (d). The Act is in the process of being amended by the *Lobbyists Registration Amendment Act*, Bill 72, 2002 (not yet passed). This amendment would allow for the Lieutenant Governor in Council to make regulations allowing for different fees or a waiver of fees depending on the manner in which a return is submitted, time at which a return is submitted, or *class of lobbyist by whom the return was submitted.*.

[3] Ibid ., section 1," lobbying".

Minister, and an officer, director or employee of any government corporation. Judges, justices of the peace, and officers of the Legislative Assembly (e.g. Ombudsman, Information and Privacy Commissioner) are not considered public office holders under the Act.[4]

Communications with officials from other levels of government – federal, local, aboriginal – are also not covered by the Act, although the federal government has its own rules concerning lobbyist registration.

Attempt to Influence vs. Educating Public Office Holders

A key to the definition lies in "attempts to influence" government decision-makers. It is not all communication with government officials that constitutes lobbying. For example, communications for the purpose of obtaining information would not constitute lobbying.

At least in theory, communication with a public official for the purpose of providing general information — but not influencing a decision — would also not constitute lobbying. Indeed, the Lobbyists Registrar has stated that preparation of research papers are not considered lobbying.[5] Forwarding a balanced discussion paper that presented multiple points of view without advocating any particular result, for example, might not be considered lobbying.[6] In determining whether a given communication represented lobbying or information, a Court would likely look to a variety of factors which could indicate the intention of the employee and the NGO.[7]

However, communications prepared by NGOs for public officials are often intended to advocate a particular position, even if no explicit recommendations are made, and if the issues are at all controversial, it is probably safer to view preparation of materials that are primarily intended to educate public officials as lobbying. In any event, NGOs should be honest with themselves about their intentions, and not try to characterize work that they hope will change government opinion as "educational".

Communication with a Public Office Holder vs. Communications with the Public

It is important to note that there is a distinction between communications prepared for public officials and communications prepared primarily for public consumption.

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4 *Ibid*.

5 Office of the Registrar, A Guide to the Lobbyists Registration Act: For Lobbyists, available at the Lobbyist Registry website: http://www.ag.gov.bc.ca/lra

6 As will be seen below, Revenue Canada takes the position that making balanced educational information available to government is not a political action, but related to education.

7 Factors to be considered might include:

(a) Presentation;
(b) Whether or not particular conclusions are drawn or pointed to;
(c) The level of controversy around the subject;
(d) Use of emotional or controversial language;
(e) Reporting of scientific or expert opinion;
(f) Balanced presentation of more than one side of a controversy;
(g) Statements made by the Society, in public or in private, as to its goals and intentions; and
(h) Whether the information is distributed for educational purposes more broadly than to government.

Communication with the public in general, even if it is intended to have an indirect effect on government policy, will not be considered lobbying. (Such activities may, however, be considered a political activity and raise issues for charities. See below.)

While this distinction is important, it involves a significant degree of judgement. Many reports prepared by NGOs fulfill a duel function: trying to sway the public and policy makers. A court would likely look at a variety of factors such as: who is sent copies of the report; are the contents of the report primarily of interest to those developing law, policy or programs; is the report available on the internet; was it released with a public announcement. When in doubt as to whether a report is primarily intended for public consumption or for the purpose of communicating to public officials, it is best to assume its preparation constitutes lobbying. West Coast Environmental Law has asked the registrar to provide guidance on this issue.

Communications regarding laws, policies and programs vs. communication regarding administration, application and enforcement

Another important aspect of the definition is that the communications will usually have to be broader than discussions related to a particular incident or instance. The definition of lobbying applies to efforts to influence the development, introduction or amendment of laws, policies and programs. It does not apply to

- oral or written submissions made to a public office holder about enforcing, interpreting or applying any act or regulation.
- oral or written submissions made to a public office holder about implementing or administering any policy, program, directive or guideline.

This generally excludes communications such as:

- submissions to Ministry of Water, Land and Air Protection regarding whether an industrial facility should be given a permit to pollute, or what the terms of that permit would be.
- submissions pushing for enforcement of the law in a particular case.

However, if communications regarding a particular case of non-enforcement or a particular Waste Management Act permit are used to argue for changes in policy or programs, the communications become lobbying.

EXEMPTIONS

Section 2 of the LRA exempts a number of international, federal, provincial and local government officials from its application.[8] These exemptions will not ordinarily apply to NGOs or to private lobbyists.

The LRA also exempts particular communications, which might otherwise be considered lobbying, from the ambit of the Act.

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[8] Federal MPs and Senators, and their staff, MLAs and their staff from other provinces, employees of federal or provincial governments, members or staff of municipal councils, regional districts, or other local government authorities, members and staff of an aboriginal governing body, diplomatic agents and other representatives of Canada or foreign governments, or officials of various international agencies: LRA, Ibid., s. 2(1).

2(2) This Act does not apply in respect of an oral or written submission made as follows:

(a) made 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;

(b) made to a public office holder by an individual 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;

(c) made to a public office holder by an individual on behalf of a person or organization in direct response to a written request from a public office holder for advice or comment on any matter referred to in paragraph (a) of the definition of "lobby" in section 1(1);

(d) made to a member of the Legislative Assembly by or on behalf of a constituent of the member with respect to any personal matter of the constituent.

Responses to Discussion Papers, Written requests for input

Notable among these exemptions is the provision that communications, which are solicited by a public official, will not fall within the LRA. This means that organizations which are invited (in writing) to participate in government processes do not need to register under the LRA (at least in respect of the communications which fall under that invitation). Generally, most legislative and policy discussion papers are circulated to the public with a written request for comment. Direct responses to such requests would be thus excluded.

Participation in Multi-stakeholder Processes

Until recently it was quite common for government to convene representatives of different stakeholders (e.g. business, labour, NGOs, federal, provincial and local government) to provide advice on matters of policy, program or law reform. Participants in these processes negotiate findings and recommendations to government, or a reporter provides government decision makers with the range of feedback received. It is not clear whether participation within these processes constitutes lobbying under the Act. The quasi-public nature of multi-stakeholder processes clearly distinguish them from the "backroom lobbying" at which the Act appears to be primarily aimed. However, communicating at these processes does fall within the definition of lobbying.

NGOs are advised to treat participation in these multi-stakeholder processes as lobbying unless they have a written request from government to participate in the process in order to give advice to government, or provide comments to government, on the development, introduction or amendment of policies, programs, regulations or legislation. West Coast Environmental Law has requested the Registrar to provide guidance on this issue.

Submissions to Tribunals

Similarly, submissions " made 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" is a significant exclusion. It is our opinion that this excludes submissions to administrative tribunals such as the Environmental Appeal Board or the Farm Practices Board. However, the references to "proceedings" and "matter of public record" suggest that this only applies to formal tribunals that have a written record and that it does not necessarily submissions to public officials who have decision making power under an Act – e.g. submissions to Regional Waste Managers regarding issuance of a pollution permit. (However, as noted above, these communications often fall outside the definition of lobbying because they are communications relating to the administration of programs.)

Engagement of the NGO in Lobbying

After reviewing whether activities constitute lobbying, it is also important to consider whether an organization employs a person to lobby on its behalf. The most senior paid officer of an NGO (usually the Executive Director) has an obligation to register only if the organization employs an in-house lobbyist. (Lobbyists who undertake to lobby on behalf of clients for pay, and in-house lobbyists not employed by corporations or individuals have separate registration requirements.)

Lobbyists under the Act must be paid (if not in cash, at least through something of value). Lobbying by volunteers need not be registered.

For an employee, setting up a meeting between a public official and representatives of the organisation is not lobbying (although if the employee, or another paid representative of the organization, is present at the meeting that will likely constitute lobbying). However, for a consultant lobbyist, even setting up such a meeting is lobbying.

Finally, lobbying must be "on behalf" of the employer (or client). There *may* be individual cases where NGO staff undertake unpaid advocacy with a public official on behalf of a third party. West Coast Environmental Law, for example, will on occasion speak to government officials on behalf of individual environmentalists who have a problem with a particular government decision.[9] However, care should be taken not to interpret this type of situation overly broadly. For example, a poverty rights organization, in opposing restrictions on welfare, could not claim to be representing all welfare recipients, or even a particular individual. From a legal perspective, the organization is advancing its purposes (ie. the elimination of poverty), and not representing particular individuals.[10]

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[9] This type of situation may also be exempted from the LRA by virtue of section 2(2)(b) which exempts communications related to the enforcement, interpretation or application of any Act or regulation, or the implementation or administration of any program, policy, directive or guideline, "in respect of" the person or organization.

[10] There is also an argument that "on behalf" implies a private interest, and does not apply to charitable purposes, or perhaps to public interest purposes generally. However, given the purpose of the LRA is to allow the public to determine who is attempting to influence government policy, it is probably safer to assume that "on behalf" refers to acting pursuant to the goals of the employer, even if they are charitable.

In summary, communications must be (a) with a government official, (b) for the purpose of influencing a government decision, and (c) on behalf of the NGO (or an affiliate) or a third party who is paying, before they potentially trigger the requirement to register. However, care should be taken to be honest and realistic about how communications will be seen, and NGOs should err on the side of caution in evaluating whether a communication will be considered to be lobbying or not.

IS THE EXTENT OF LOBBYING "SIGNIFICANT"?

While hiring a consultant to influence government opinion will inevitably bring the LRA into play, an "in-house" lobbyist is defined more narrowly. Someone only becomes an "in-house lobbyist" (which requires registration) when a "significant part" of their job involves lobbying "on behalf of their employer".

In its October 2002 *Guide to the Lobbyist Registration Act* the Office of the Registrar stated that the term "significant part of duties" means roughly 20 per cent of an individual employee's time or the combined times of more than one employee if it would make up 20 per cent or greater of one full-time employees time. They provide the example that, assuming a full time employee works a five-day week, the senior officer would have to register if four employees each lobby an average of one day per month.

In November 2002, West Coast Environmental Law wrote a letter to the Registrar of Charities arguing that his interpretation of "significant part of duties" was based on an incorrect legal interpretation. WCEL noted that, in the Act "significant part" is tied to the definition of "in-house lobbyist" and thus tied to the time spent by the individual employee, not the total amount of lobbying done on behalf of an organization.[11] WCEL also noted that the registrar's interpretation created an unfairness whereby a logging company or other commercial corporation employing 100 people that worked 19% of the time on lobbying would not have to register, but an Environmental Non-Profit employing 10 people who each spent 2% of their time lobbying would have to register.

In a letter dated December 18, 2002, from the Registrar of Lobbyists to West Coast, the Registrar said that he has "directed that the *Guide to the Lobbyist Registration Act* be revised to reflect the Act's focus on activities of each individual, not the aggregate of individuals' activities. The 20% figure will remain our administrative guidance for determining whether specific individuals are lobbyists."

Based on this letter, our advice is that organizations who do not employ any individual who spends 20% or more of their time lobbying do not need to registrar. If any individual spends 20% or more of their time lobbying, they must register. The 20% figure only applies only to time actually spent lobbying and not creating research papers etc.[12] Please note that, if a non-profit employee begins to spend more time lobbying and exceeds the 20% figure, the head of the non-profit must register within two months.

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[11] The Registrar has followed the lead of the Lobbyists Registrars of the Federal Government and the Government of Ontario, both of which use a variation of the 20% rule. However, the legislation creating both of those offices in both cases has provisions considering the lobbying done by an organization, and not merely the individual: Lobbyists Registration Act, R.S.C. 1985, c. 44 (4th Supp.), s. 7(1); and Lobbyists Regulation Act, 1998, S.O. c. 27, Sched., s. 6(5).

[12] *Supra*, note 5.

SHOULD AN NGO FILE A RETURN?

If an organization examines its activities and find that its employees or contractors are engaged in lobbying within the meaning of the LRA, and, in the case of employees, that the lobbying is a significant part of their responsibilities, then a return must be filed under the LRA. In the case of consultant lobbyists, this must be done by the consultant. For in-house lobbyists, the senior officer of the organization will be required to file a return.

Moreover, further returns must be filed every 6 months, along with amendments to the returns if the information contained in them should change.

We strongly recommend that an organization that has any doubts as to whether its activities could be considered to be lobbying or significant, obtain legal advice on this question. Assistance may also be available from the Registrar's office.

LOBBYING BY CHARITIES

A Registered Charity is an organization that is registered with Revenue Canada as a charity. Individuals making donations to such organisations receive a tax break as a result, meaning that registered charities are often able to fundraise more effectively than organisations without such a status. Consequently, charitable status can be a significant asset to an NGO.

However, charities are not supposed to have political goals. The law takes the position that a charity may exist to carry out some purpose of clear benefit to the community without doing a political act.

The NGO community today is very aware of the political context in which it operates. The distinction between political action and charitable action sometimes seems artificial, particularly for those who are activists. Nonetheless, the Courts decline to classify anything which is political as a charity, arguing that they are not there to decide whether a political change will result in an improvement to society:

> The abolition of religious tests, the disestablishment of the Church, the secularization of education, the alteration of the law touching religion or marriage, or the observation of the Sabbath, are purely political objects. Equity has always refused to recognize such objects as charitable… a trust for the attainment of political objects has always been held invalid, not because it is illegal, for everyone is at liberty to advocate of promote by any lawful means a change in the law, but because the Court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift.[13]

Consequently, some NGOs have expressed concern that their charitable tax status might be affected if they file a return under the LRA.

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[13] *Bowman v. Secular Society*, [1917] A.C. 406 at 442 (H.L.), quoted with approval in *Everywoman's Health Centre Society* (1988) v. M.N.R., [1992] 2 F.C. 52 and *Human Life International in Canada Ltd. v. Minister of National Revenue*, [1998] F.C..

However, while a charity cannot pursue a political goal, this does not mean that a charity cannot participate in any political activity. Revenue Canada has noted:

> Charities engage in political activities, and they have done so for centuries. Nothing in the law says political activity is incompatible with charitable status. Indeed, people from the charitable sector can often enrich public-policy debate by making their knowledge and experience available to the public and politicians. As well, intervening politically can sometimes be a reasonable way to help achieve a charitable purpose. It may on occasion even be a necessary means, when government policy or legislation directly affects an organization's ability to carry out its charitable mandate.[14]

Under the *Income Tax Act*, a Charity is limited in what political activities it can pursue:

> (6.2) For the purposes of the definition "charitable organization" in subsection 149.1, where an organization devotes substantially all of its resources to charitable activities carried on by it and
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> (a) it devotes part of its resources to political activities,
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> (b) those political activities are ancillary and incidental to its charitable activities, and
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> (c) those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office,
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> the organization shall be considered to be devoting that part of its resources to charitable activities carried on by it.[15]

If a charity engages in a political activity, it must be "ancillary and incidental" to its purposes, and "substantially all" of the charities' resources must be used for charitable activities. Discussion of the meaning of these terms may be found in two main Revenue Canada publications: *Registered Charities: Education, Advocacy, and Political Activities*,[16] and *Registered Charities — Ancillary/Incidental Political Activities*.[17]

Generally, "ancillary and incidental" political activities are directly related to the charitable purposes of the organization. Such activities must form a relatively minor (subordinate) part of the organization's activities and be closely connected to the organization's purposes.

According to Revenue Canada, "substantially all" of an organization's resources will usually be at least 90% of an organization's resources, but this is not a definite formula, and the actual interpretation will depend upon the facts of a particular case.

> What constitutes "substantially all" depends upon the situation and the resources involved. Resources include not only money, but everything the charity can use, such as its staff and volunteers, its premises, and its

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[14] Registered Charities: Education, Advocacy and Political Activites. Revenue Canada, RC 4107E Draft #2, p. 8.

[15] *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), 149.1(6.2).

[16] RC4107E Draft #2, Revenue Canada, supra, note 15.

[17] IC87-1 Reg. Charities, Revenue Canada.

> equipment. As a rule of thumb, we usually consider "substantially all" to mean at least 90 per cent. Certainly, any charity using at least this amount of its various resources for its charitable work can be assured that we will not question the extent of its political activities. This is sometimes called a "safe harbour" provision.[18]

However, there may be circumstances in which an organization may exceed the 90% "safe harbour", sometimes even by a substantial amount in the short term, while still devoting "substantially all" of its resources to charitable purposes, particularly where the political activities are strongly related to the charitable purposes and are of limited duration.[19] Any charity which will be engaged in a significant amount of political activity is advised to obtain legal advice on what the effects of such activity is likely to be on its charitable tax status and to explore ways of structuring its affairs to retain charitable tax status.

The LRA and the *Income Tax Act*, therefore, use different tests regarding political activity. Under the *Income Tax Act*, incidental and ancillary political activity uses are acceptable provided that "substantially all" of an organization's resources go to the charitable purposes. This will generally mean that 10% or less of an organization's resources should be used, but under special circumstances it may be appropriate to dedicate a larger portion of the organization's resources.

The LRA, on the other hand, defines an in-house lobbyist in terms of someone who has lobbying as a "significant part of their duties". Lobbying will virtually always be political in nature. As noted, "a significant part", refers to activities which take about 20% of the equivalent of a full time position.

Filing a return under the LRA is in not necessarily inconsistent with charitable tax status.

As noted, Revenue Canada recognizes that a charity may exceed the 10% figure under certain circumstances, particularly for a short duration. The LRA, by contrast, requires filing even if the level of "lobbying" engaged in by an employee only becomes "significant" for a short period of time.

In some cases an organization with significant resources might be able to dedicate one or more employees to full time lobbying without exceeding 10% of its resources. Any employee spending more than 20% of their time on lobbying would almost certainly be an in-house lobbyist within the meaning of the LRA.

It is possible that Revenue Canada may look to registration under the LRA as one factor in assessing whether a charity is engaged in political activities. However, as long as the charity can demonstrate compliance with the *Income Tax Act*, registration should not, in itself, have an impact on charitable tax status.

RESPONSIBILITIES OF LOBBYING CHARITIES

If an organization does have one or more employees that qualify as "in-house lobbyists", it will be required to file a return under the LRA. The "senior officer" of the organization

[18] Supra, note 15, p. 15.

[19] Supra, note 15, p. 15.

must file a return within 2 months of (a) the Act coming into force, or (b) the date on which the organization first employs an in-house lobbyist (or on which an existing employee becomes an in-house lobbyist). Thereafter, the senior officer must file a further return for every 6-month period during which the organization employs an in-house lobbyist.

Similar requirements exist for consultant lobbyists, except that the filing of a return must be done by the lobbyist.

For a return filed by the senior officer of an organization, the registration information must include:

- name of the senior officer;
- name of the organization;
- summary of the organization's business or activities, along with information required by the regulations;
- name(s) of in-house lobbyists employed by the organization;
- name of any government or government agency that funds or partly funds the organization and the amount of the funding;
- particulars of the subject matter of lobbying which the in-house lobbyist(s) have done or expects to do during organization's financial year;
- particulars of any legislative proposal, bill resolution, regulation, program, policy, contract or financial benefit which may be the subject of lobbying;
- the name of any government ministry or institution in respect of which lobbying has or will occur; and
- any other information required by the regulations related to the identity of the organization, the senior officer or the lobbyist.[20]

Slightly different material is required in respect of returns filed by a consultant lobbyist or by an in-house lobbyist who is not employed by an organization, but the basic approach is the same.

A charity may have concerns about several of these requirements, which generally require the organization to characterize its activities in terms of political action. This may have public relations repercussions. Moreover, while Revenue Canada recognizes that charities can, and do, engage in lobbying which is "incidental and ancillary" to its purposes, the return might be considered as a factor in determining whether an organization was involved in an inappropriate amount of lobbying.

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[20] LRA, supra, note 2, s. 4(1).

In addition, the filing requirements may get in the way of the flexibility that NGOs require to pursue their charitable purposes. If the lobbying described in a return does not reflect the lobbying that actually occurs, an organization will have to file an amendment within 30 days.[21]

It may be that these problems can probably be addressed to some extent by careful drafting of a return. The following may be advisable to protect the interests of a charity:

- Summary of the organization's business and activities — The summary should be framed in terms of the purposes of the charity. Beyond this, the organization's programs should be characterized fairly generally, unless the Registrar or Regulations require additional information.

- Identity and/or Particulars of the Lobbying — At some point in the return, the charity should indicate if lobbying is a relatively small portion of the "in-house lobbyist's" responsibilities. It is not clear at this point whether this information is most appropriate in the section concerning identity or the particulars of lobbying to be conducted, but regardless of whether the form for a return lends itself to this information, limits of actual lobbying occurring should be emphasized. Without such information, the return will give an inaccurate impression of the actual extent of the charity's political action, which could have an impact on Revenue Canada's assessment of the charity's political activity.

- Particulars of the Lobbying — The return should emphasize that the lobbying expected to be done is "incidental and ancillary" to the charities' purposes. The Registrar has asked that the particulars include "the subject matter of the lobbying including specific information such as the relevant legislative proposal, bill, resolution, regulation, program, policy, contract or financial benefit."[22] While such details should be provided to the extent they are available, a charity may wish to frame these details, as well as potential lobbying, in terms of a catch-all statement about the purpose of lobbying, such as:: "The Society exists to further its purposes, listed above. Any lobbying which Society employees engage in is generally in response to specific government initiatives which impact upon those objectives and as such is incidental and ancillary to the purposes of the Society."

- Particulars of legislation, etc. and government ministries — The purposes of the society may also determine which legislation and government ministries lobbying can appropriately take place in relation to. Care should be taken to ensure that lobbying described is actually "ancillary and incidental" to the charity's purposes.

Until the Registrar has indicated what approach he or she will take, it is difficult to assess the extent to which the above measures can be adopted by a charity.

It should be noted that the requirement that organizations file returns frequently (every 6 months), and the further requirement that amendments be filed if any changes occur, suggest that a fair level of detail will be required in the returns. They are not intended as

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21 LRA, supra, note 2, s. 4(2).

22 Supra., note 4, p. 7.

general documents which can simply be affirmed from time to time. Consequently, the Registrar may require organizations to file a relatively high level of information about lobbying, notwithstanding that non-profit organizations will frequently be unable to predict with any accuracy what lobbying they will take in the next 6 months (due to the reactive nature of such work).

Throughout all of the above, it is paramount that a charity ensure that it continues to abide by the limitations on political activity imposed on it by virtue of its charitable tax status. Moreover, the fact that the charity is abiding by this limitation should be reflected, to the extent possible, in any return filed under the LRA.

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