

September 10, 2007

Our File: P-07-994

Harvey Cenaiko
Chair, Standing Committee on Government Services
c/o Jody Rempel
Committee Clerk
801 Legislature Annex
9718 – 107 Street
Edmonton, AB T5K 1E4

Dear Mr. Cenaiko:

RE: Bill 1 – *Lobbyists Act*

I am writing to express the Environmental Law Centre's (ELC) concerns about Bill 1, the *Lobbyists Act*. The ELC is an Edmonton-based registered charity that has acted as a public source of information on environmental and natural resources law and policy for Albertans since 1982. The ELC's activities include public legal education, and legal research, commentary and reform, and our organization has participated in the development of many of Alberta's environmental laws and policies over our 25-year history. The ELC's mission is to ensure that laws, policies and legal processes protect the environment.

We adopt and support the submission previously filed by the Muttart Foundation, titled *Bill 1: Problems for Alberta's Voluntary Sector*, as well as the related report by the Legal Resource Centre titled *Bill 1 Lobbyists Act – A Preliminary Assessment of its Implications for Not-for-Profit Organizations in Alberta*. However, there are further implications for environmental organizations that result from the methods of consultation and law and policy development that have been used by the Alberta government for environmental matters for almost two decades. As the Bill currently stands, it has the potential to significantly impact how Alberta's environmental laws and policies are developed in the future and to undermine public trust in these processes.

Background

Since the early 1990s and the development of the *Environmental Protection and Enhancement Act*, Alberta Environment has consistently worked on a cooperative, multi-stakeholder basis with environmental organizations and many other interests, including industry, municipalities and landowner organizations. Often this cooperation has included the establishment of government-appointed committees that have worked on law

and policy development based on consensus decision-making, with the provision of stakeholder support (honoraria for preparation and meeting time; reimbursement of travel expenses) for environmental and landowner organizations to allow a balancing of resources and ensure the benefit of all viewpoints in these processes. More recently, other provincial government bodies such as the Energy and Utilities Board, Alberta Agriculture and Food, and the Natural Resources Conservation Board have used these types of cooperative processes.

Concerns

The primary concerns about Bill 1 that may particularly affect environmental organizations are:

1. The scope of “public office holder” as defined in section 1(1)(j);
2. Implications of the contracting prohibitions set out in section 8; and
3. The exemption created for requests initiated by government, set out in section 3(2)(c).

Each of these provisions may adversely affect the operations of environmental organizations and the way environmental laws and policies are developed in Alberta.

Our comments below include suggestions for amendments to Bill 1. We wish to emphasize that the ELC’s primary position is that the voluntary sector, including charities and non-profit organizations, should be exempted from Bill 1, and that our recommendations below are based on the assumption that such an exemption would not be included in the Bill.

Section 1(1)(j) – “Public office holder”

The definition of “public office holder” includes “an individual who is appointed to any office or body by or with the approval of the Lieutenant Governor in Council or a member of the Executive Council”. Bill 1 will require organizations to report when they lobby public office holders, which will potentially cover a wide range of interactions due to the broad definition of “lobbying”.

It has been common in Alberta for Alberta Environment, as well as other provincial government bodies, to create multi-stakeholder committees or groups with members appointed by the relevant Minister, that participate in law and policy development or otherwise provide advice to government. It is understood by participants that the appointees are involved to ensure that the broad range of perspectives on a matter are represented and heard as part of the process.

However, Bill 1 may produce the absurd result that these appointees or their organizations may be required to report internal discussions related to their participation on these committees because they likely fall within the definition of “public office holder”. As an

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example, during 2007, ELC staff have held three different ministerial appointments to advisory committees. Over the course of our regular operations, these staff members will discuss the proceedings of these committees with fellow staff members. These discussions may include consideration of future input on the committees by our staff. Given that all ELC legal staff will likely be considered “organization lobbyists”, this would put the ELC in the unusual position of having to report internal discussions between staff members. Certainly this would also be the case with other environmental organizations, and would extend to catch discussions between environmental organizations with common interests, where one of the organizations’ members holds a provincial appointment. We assume that this conundrum would not be unique to environmental organizations, but would also apply to industry representatives, particularly where they participate on behalf of their industry organization (for example, the Canadian Association of Petroleum Producers).

While there are many instances where lobbying of provincial appointees should be publicly reported, the ELC does not agree that this should apply to discussions internal to an organization or a sector with its representative on a multi-stakeholder advisory committee. To require such reporting undermines the integrity of such multi-stakeholder processes and attacks the independence of the participant organizations. The ELC suggests that Bill 1 be amended to either specifically exempt appointees to multi-stakeholder advisory committees from the definition of “public office holder” or to enable such exemptions to be made by regulation.

Section 8 – Contracting prohibitions

Section 8 creates dual prohibitions that prevent lobbyists, and those associated with them, from lobbying on a matter if they or their associated persons provide paid advice to the provincial government on the same matter, and also prevents these persons from providing paid advice on a matter that they, or their associated persons, lobby on.

Of most concern to environmental organizations is the prohibition against lobbying where one also provides paid advice. This is due to a lack of clarity in relation to what constitutes payment, as well as what constitutes advice. As mentioned above, in various instances, the provincial government will provide environmental and landowner organizations with honoraria and expense reimbursement to facilitate their participation in consultations, multi-stakeholder committees, or other law and policy exercises. Based on information in Alberta Justice’s guide to Bill 1, it appears that the scope of “payment” will include receipt of honoraria. If this is the case, section 8’s prohibition would prevent organizations whose representatives receive an honoraria from speaking otherwise on an issue.

Such an interpretation will likely cause environmental organizations, many of whom have a real need for such stakeholder support to effectively participate in these processes, to have to make a choice between participating in government processes or retaining the ability to speak independently on particular issues. This would definitely be counter-productive to the intent and spirit of the many multi-stakeholder processes that the provincial government undertakes on environmental matters, and would lead to a more polarized and

less cooperative approach to environmental management in Alberta. To address this concern and avoid these likely results, the ELC suggests that Bill 1 be amended to specifically state that receipt of honoraria and reimbursement of expenses do not constitute a “contract for providing paid advice”.

Another concern arising out of section 8 is its application to “persons associated with a lobbyist”. As outlined in the Muttart Foundation’s submission and the Legal Resource Centre’s report, this will create significant problems for non-profit organizations, and these problems will apply equally to environmental organizations. It is always a challenge for non-profit organizations to find strong, committed and engaged individuals to act on their Boards of Directors, and the same is true for the environmental sector. The environmental sector is small enough in Alberta that often members of one organization’s Board of Directors may be staff members of another environmental organization or professionals, such as lawyers, who represent clients on environmental issues. To require non-profit organizations to apply the section 8 prohibitions not only to their staff, but also to their Board members, who are usually carrying on their own activities wholly independent of that organization, is to create unwieldy and unmanageable restrictions on the activities of the organizations and all individuals concerned. Additionally, such a broad restriction may act as a disincentive for qualified and conscientious individuals to serve as directors of environmental and other non-profit organizations.

Such a requirement will be particularly problematic for the ELC, where we have both staff and Board members who are lawyers and are bound by the Law Society of Alberta’s Code of Professional Conduct to hold our clients’ interests confidential. This obligation, together with the section 8 prohibition, will put the ELC and the lawyers on its Board in the impossible situation of breaching either the *Lobbyists Act*, as we will not be able to determine where there may be non-compliance with section 8, or the Law Society’s Code of Professional Conduct, thus rendering us liable to disciplinary proceedings.

The ELC suggests, as is set out in the Muttart Foundation’s submission, that Bill 1 be amended to make clear that directors of non-profit organizations not be subject to the *Lobbyists Act* unless such directors receive payment specifically to lobby on behalf of the organization.

Section 3(2)(c) – Exemption for advice or comment requested by government

Section 3(2)(c) provides that submissions made to public office holders in response to their request for advice or comment are not subject to Bill 1’s requirements. The ELC is concerned that this exemption offers the provincial government the temptation to pick “favorites” and offer an easier road to those voices that may be more favorable to government positions. Such an approach flies in the face of democratic discussion and exchange of ideas. It would seriously undermine any value and trust seen by the public in the cooperative, multi-stakeholder approaches that have been used in environmental management in Alberta, and push all parties back to a more polarized and partisan situation. The ELC suggests that this exemption be removed from Bill 1.

Conclusion

The ELC encourages the Standing Committee on Government Resources to seriously scrutinize Bill 1 and to incorporate the suggestions made in this letter, as well as those made by the Muttart Foundation and the Legal Resource Centre. While Bill 1 is undoubtedly aimed at ensuring public transparency and confidence in government dealings, its broad application to the voluntary sector and its lack of clarity have the potential to weaken the sector and its participation in building a stronger Alberta, and to undermine the same public confidence that it seeks to bolster.

Comments have been made in the media that there is no difference between a corporate lobbyist and an advocate from the voluntary sector. However, the ELC would beg to differ. Corporate lobbyists seek to gain the best advantage for the private interests of their clients, while advocates from the voluntary sector pursue broad societal interests and concerns that affect all Albertans and our society's well-being as a whole. Certainly it cannot be the intent of Albertans, through Bill 1, to restrict and hamper the value that the voluntary sector brings to our society.

Thank you for the opportunity to provide comments on Bill 1. We look forward to continued involvement as discussion on the Bill progresses.

Yours truly,



Cindy Chiasson
Executive Director

cc: Hon. Rob Renner, Minister of Environment
Dr. David Swann, Liberal environment critic
David Eggen, ND environment critic
Alberta Environmental Network