



Notice no. 2003-01

February 14, 2003

This notice is issued and published by the Lobbyists Commissioner pursuant to section 52 of the *Lobbying Transparency and Ethics Act* (R.S.Q., c.T-11.011).

Subject: Interpretation of the expression «a significant part » used in the definitions of enterprise lobbyist and of organization lobbyist in section 3 of the *Lobbying Transparency and Ethics Act*.

Web site : www.commissairelobby.qc.ca

Section 3 of the *Lobbying Transparency and Ethics Act* ("the Act") defines three categories of lobbyists: the consultant lobbyist, the enterprise lobbyist and the organization lobbyist. Whereas any person, whether or not a salaried employee, whose occupation or mandate consists, in whole or in part, in lobbying on behalf of another person in return for compensation is considered a consultant lobbyist, the definitions of enterprise lobbyist and of organization lobbyist refer to any person "a significant part" of whose job or function consists in lobbying on behalf of a designated enterprise or organization.

For the purposes of determining the meaning of "a significant part", it is important to consider that it is the enterprise or the organization that is first and foremost subject to the requirements of the Act with regard to the lobbying activities engaged in *on their behalf* by persons holding jobs or functions within the enterprise or the organization. It is indeed telling to note that section 8 of the Act imposes on the senior officer of the enterprise or organization the obligation to register any lobbyist acting on behalf of the enterprise or the organization.

Reference to "a significant part" necessarily implies the assessment of the relative importance of the duties of the person's job or function that are devoted to lobbying activities. This assessment may be quantitative, which means computing the time spent on lobbying activities, or qualitative, which means taking into account the strategic importance of those activities for the enterprise or the organization. Thus, the relative importance of a matter involving lobbying activities may be inferred from the scale of the human, financial and material resources the enterprise or organization invests in the preparation, performance and follow-up of those lobbying activities.

By referring to the texts applicable in the federal and provincial jurisdictions where similar laws are in force, one finds that to conclude to "a significant part", a proportion of twenty percent of the time is generally used. However, these texts show significant variations as to the application of that percentage.

While it is appropriate to use the twenty percent rule, its application should not be strictly quantitative in that only the periods of time devoted *stricto sensu* to oral or written communications with public office holders would be used as a basis for calculating that percentage. The activity of the person should instead

be gauged in relation to the resources invested by the enterprise or organization to support and engage in the lobbying of public office holders.

A mixed approach should therefore be used, where the assessment of the relative importance of the lobbying activities with regard to the job or function includes both the time spent by the person on communications with the public service holders and the time spent by that person, or under his or her direction, on the preparation and follow-up of those communications. Any time devoted by any other person, on behalf of the enterprise or organization, to work that is directly linked to the preparation and follow-up of the lobbying activities, should also be taken into consideration.

Consequently, the expression "a significant part" should be interpreted and applied in the following manner:

A person whose job or function consists in spending at least twenty percent of the time he or she devotes to the enterprise or organization on lobbying activities is a person "a significant part" of whose job or function consists in lobbying, within the meaning of section 3 of the Act.

Furthermore, a person whose job or function consists in spending less than twenty percent of the time he or she devotes to the enterprise or organization on lobbying activities is, in the circumstances described below, also considered to be a person "a significant part" of whose job or function consists in lobbying on behalf of the enterprise or organization within the meaning of section 3.

To determine whether lobbying activities of a person who spends less than twenty percent of the time he or she devotes to the enterprise or organization on such activities amount nonetheless to "a significant part" of his or her job or function, the senior officer of the enterprise or organization must examine all the lobbying-related tasks performed by the person on behalf of the enterprise or the organization.

The senior officer must take into account not only the time spent by the person on communications with public office holders, but also the time spent on the preparation and follow-up of those lobbying activities that is part of the person's job description or duties. The senior officer must take into account time so spent by that person, by persons acting under his or her direction or by other persons carrying out, on behalf of the enterprise or organization, tasks directly related to the preparation or the follow-up of such lobbying activities.

If all those elements together amount to at least twenty percent of the time the person engaging in lobbying activities devotes to the enterprise or organization, the person will then be considered an enterprise lobbyist or an organization lobbyist, as the case may be, within the meaning of section 3 of the Act.

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Lobbyists Commissioner**