



Twenty-Sixth Legislature
Third Session

Standing Committee on Government Services

NOVEMBER 2007

Report on Bill 1: *Lobbyists Act*



Standing Committee on Government Services

801 Legislature Annex
Edmonton, AB T5K 1E4
(780) 644-8621

GovServ.Committee@assembly.ab.ca



November, 2007

To the Honourable Ken Kowalski
Speaker of the Legislative Assembly of Alberta

The Standing Committee on Government Services has the honour to submit its Report containing recommendations on Bill 1, *Lobbyist Act*, for consideration by the Legislative Assembly of Alberta.

Harvey Cenaiko, MLA
Calgary Buffalo
Chair
Standing Committee on Government Services

Mo Elsalhy, MLA
Edmonton-McClung
Deputy Chair
Standing Committee on Government Services

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**MEMBERS OF THE
STANDING COMMITTEE ON GOVERNMENT SERVICES**

26th Legislature, Third Session

Harvey Cenaiko, MLA
Chair
Calgary-Buffalo (PC)

Mo Elsalhy, MLA
Deputy Chair
Edmonton-McClung (L)

Moe Amery, MLA
Calgary-East (PC)

Richard Marz, MLA
Olds-Didsbury-Three Hills (PC)

Dr. Neil Brown, MLA
Calgary-Nose Hill (PC)

Brian Mason, MLA
Edmonton-Highlands-Norwood (NDP)

David Coutts, MLA
Livingstone-Macleod (PC)

Bridget A. Pastoor, MLA
Lethbridge-East (L)

Alana DeLong, MLA
Calgary-Bow (PC)

George VanderBurg, MLA
Whitecourt-Ste. Anne (PC)

Heather Forsyth, MLA
Calgary-Fish Creek (PC)

Temporary Substitutions*

For Brian Mason:

For Heather Forsyth:

Dr. Raj Pannu, MLA
Edmonton-Strathcona (NDP)

Jack Hayden, MLA
Drumheller-Stettler (PC)

David Eggen, MLA
Edmonton-Calder (NDP)

*Substitution pursuant to Temporary Standing Order 56(2.1-2.3).

1.0 Introduction

Bill 1: *Lobbyists Act* was introduced by the Hon. Ed Stelmach and received First Reading on March 7, 2007. The Bill passed Second Reading on March 22, 2007. It was referred to the Standing Committee on Government Services on May 29, 2007. Public hearings were held on Bill 1: *Lobbyists Act* in Edmonton on September 27 and 28, 2007 (see Appendix B).

2.0 Order of Reference

Excerpt from the *Votes and Proceedings of the Legislative Assembly of Alberta*, Tuesday, May 29, 2007:

Government Motions

21. Moved by Hon. Mr. Stevens on behalf of Hon. Mr. Stelmach (Amended):

Be it resolved that the Legislative Assembly refer Bill 1, *Lobbyists Act*, to the Standing Committee on Government Services for the committee's consideration, review, and comment, and request the committee to report to the Assembly on or before the first week of the Fall 2007 sitting.

A debate followed.

The question being put, the motion was agreed to.

3.0 Recommendations

3.1 Proposed Amendments to Bill 1:

The Standing Committee on Government Services recommends that Bill 1, *Lobbyists Act*, proceed with the following proposed amendments:

LOBBYISTS ACT

___ Section 1(1) is amended

(a) by renumbering clause (a) as clause (a.1) and by adding the following before clause (a.1):

(a) “client” means an individual or organization on whose behalf a consultant lobbyist undertakes to lobby;

(b) in clause (a.1) by adding “, subject to subsection (2),” after “means”;

(c) by striking out clause (g) and substituting the following:

(g) “organization lobbyist” means, subject to subsection (2), an employee, officer or director of an organization who receives a payment for the performance of his or her functions, or a sole proprietor, or a partner in a partnership,

(i) who lobbies or whose duty is to lobby on behalf of the organization at least 100 hours annually, or

(ii) whose lobbying or duty to lobby on behalf of the organization together with the lobbying or the duty to lobby of other persons in the organization amounts to at least 100 hours annually;

(d) in clause (h) by adding “but subject to section 6” after “7”;

(e) in clause (j)

(i) by adding “and” at the end of subclause (ii) and striking out subclause (iii);

(ii) by striking out the portion of clause (j) following subclause (iv).

___ **Section 3 is amended**

(a) in subsection (1) by adding the following after clause (i):

- (i.1) members of the boards of trustees under the *School Act*, individuals on the staff of any of those members, or officers or employees of the boards;
- (i.2) a person acting as a volunteer who does not receive a payment;

(b) by striking out subsection (2)(b) and (c) and substituting the following:

- (b) to a public office holder 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) to a public office holder on behalf of a person or organization in response to a request initiated by a public office holder for advice or comment on any matter referred to in section 1(1)(e)(i);

___ **Section 6 is struck out and the following is substituted:**

Contracting prohibitions

6(1) In this section, “contract for providing paid advice” means an agreement or other arrangement under which a person directly or indirectly receives or is to receive payment for providing advice to the Government or a prescribed Provincial entity.

(2) For the purpose of this section, payment does not include reasonable remuneration received for serving on a board, commission, council or other similar body established by or under the authority of an enactment on which there are at least 2 other members who represent other organizations or interests.

(3) No person shall lobby on a subject-matter if that person, or a person associated with that person, is holding a contract for providing paid advice on the same subject-matter.

(4) No person shall enter into a contract for providing paid advice on a subject-matter if that person, or a person associated with that person, lobbies on the same subject-matter as that of the contract.

(5) The Ethics Commissioner may exempt a person from the application of subsection (3) or (4) but only if the Ethics Commissioner is of the opinion that it would be in the public interest to do so.

- (6) The Ethics Commissioner may impose terms and conditions on any exemption given.
- (7) The Ethics Commissioner must provide reasons for giving an exemption and must ensure that information relating to the exemption, including any terms and conditions imposed, and the reasons for giving the exemption are entered into the registry.
- (8) If on the coming into force of this section a person, or a person associated with that person, holds a contract for providing paid advice on a subject-matter and either the person or the associated person lobbies on the same subject-matter,
- (a) the person holding the contract must cease to hold the contract, or
 - (b) the person lobbying must cease to lobby on that subject-matter,
- within 60 days of the coming into force of this section.

___ **Section 11 is amended**

(a) **in subsection (2) by striking out** “except those powers, duties or functions set out in sections 14, 17 and 19(5), (6) and (7)”;

(b) **by striking out subsection (5) and substituting the following:**

(5) The Registrar shall establish and maintain a registry, which shall include a record of all returns filed and other information submitted to the Registrar and any information that is required to be entered in the registry.

___ **Section 14 is amended by striking out “Registrar” and substituting “Ethics Commissioner”.**

___ **Section 17 is amended**

(a) **by striking out subsection (1) and substituting the following:**

Report

17(1) After an investigation has been conducted by the Registrar, the Ethics Commissioner shall prepare a report of the investigation, including the findings and conclusions and reasons for the Registrar’s conclusions, and submit the report to the Speaker of the Legislative Assembly.

(1.1) On receiving the report from the Ethics Commissioner, the Speaker shall lay the report before the Legislative Assembly if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting.

(1.2) If the Legislative Assembly is not sitting when the Ethics Commissioner submits the report to the Speaker, the Speaker shall forthwith distribute a copy of the report to the office of each Member of the Legislative Assembly.

(1.3) After the copies of the report have been distributed under subsection (1.2), the Ethics Commissioner may make the report public.

(1.4) Despite subsection (1.2), if there is no Speaker or if the Speaker is absent from Alberta, the Clerk of the Assembly shall comply with subsection (1.2) as if the Clerk were the Speaker.

(b) in subsection (2) by striking out “Registrar” and substituting “Ethics Commissioner”.

___ **Section 19 is amended**

(a) by adding the following after subsection (1):

(1.1) A person who lobbies without a return being filed as required by this Act is guilty of an offence.

(b) by striking out subsection (4) and substituting the following:

(4) A person who is guilty of an offence under subsection (1), (1.1) or (2) is liable

(a) for a first offence, to a fine of not more than \$25 000, and

(b) for a 2nd and each subsequent offence, to a fine of not more than \$100 000.

(c) in subsections (5), (6) and (7) by striking out “Registrar” wherever it occurs and substituting “Ethics Commissioner”.

(7) If the Registrar imposes a prohibition under subsection (5), the Registrar shall ensure that information relating to the prohibition is entered into the registry.

(8) A prosecution for an offence may not be commenced more than 2 years after the date on which the contravention occurred.

___ **Section 20(e) is struck out and the following is substituted:**

(e) respecting the determination of what constitutes “to communicate with a public office holder” for the purpose of section 1(1)(e);

(e.1) respecting the determination of what constitutes time spent lobbying for the purpose of section 1(1)(g);

___ **Section 21 is amended by striking out “Within 5 years” and substituting “Within 2 years”.**

___ **Schedule 1 is amended in section 2(d) by striking out “business”.**

___ **Schedule 2 is amended in section 2**

(a) in clause (d) by striking out “business”.

(b) by striking out clause (k) and substituting the following:

(k) if any organization lobbyist named in a return is a former public office holder, the nature of the office the organization lobbyist formerly held and the term of office;

3.2 Other Recommendations

Committee discussion resulted in the following recommendations:

MOVED by Ms DeLong that the Standing Committee on Government Services recommend that any fees for online lobbyist registration be waived through regulation.

CARRIED

MOVED by Ms DeLong that the Standing Committee on Government Services recommend to the Minister of Justice and Attorney General that the Lieutenant Governor in Council not prescribe commercial enterprises and commercial Crown controlled corporations as provincial entities in regulations under Bill 1, *Lobbyists Act*.

CARRIED

MOVED by Ms DeLong that the Standing Committee on Government Services not recommend reversing the reporting onus contained in Bill 1, *Lobbyists Act*, but that this issue be considered first during the next review of the legislation in question.

CARRIED

MOVED by Mr. Elsalhy that the Standing Committee on Government Services recommend that an education campaign about Bill 1, *Lobbyists Act*, be undertaken before the Act comes into force.

CARRIED

Appendix A: Explanatory Notes

Committee Rationale for Proposed Amendments to Bill 1

Section 1(1)(a) – Definition of Consultant Lobbyist

The addition of a definition of “client” will clarify that consultant lobbyists hired by individuals or organizations must register.

Section 1(1)(g) – Definition of Organization Lobbyist

The addition of a threshold of 100 hours of lobbying activity annually will exempt, among other groups, small not-for-profit/charitable organizations from the Bill. It was felt that these organizations, which provide services or facilities for the benefit of the community and for whom lobbying may only be a minor, ancillary activity, should not be penalized or prevented from carrying out their core functions.

Section 1(1)(h) – Definition of Payment

This proposed amendment would clarify how the definition of “payment” applies respecting the contracting prohibitions of Section 6.

Section 1(1)(j) – Definition of Public Office Holder

This proposed amendment would address concerns that reference to individuals appointed by the Lieutenant Governor in Council or a member of the Executive Council in the definition of public office holder would result in many appointees unintentionally being considered public office holders.

Section 3(1) – Exemption of Persons Acting in their Official Capacity

This proposed amendment is recommended because school boards are publicly elected bodies, like municipal governments, and should be similarly excluded. This amendment also clarifies that unpaid volunteers would be exempt from the legislation.

Section 3(2) – Exemption of Certain Submissions

This proposed amendment would clarify that the exemption of certain submissions extends to submissions made on behalf of individuals as well as those made on behalf of organizations.

Section 6 – Contracting Prohibitions

This proposed amendment reflects the Committee’s concern that the prohibition against performing a dual role (of being paid to provide advice to government and lobbying) should not extend to persons who serve on multi-stakeholder committees. Persons are appointed to these committees due to their expertise in their field. The intention of the legislation is not to penalize a person or organization for participating on advisory boards and committees. The proposed amendment is also intended to clarify that the contracting prohibitions are in effect regardless of whether the threshold level has been met. Further, the Committee recommends that the Ethics Commissioner have the ability to exempt individuals from this prohibition if he/she feels the exemption is in the public interest. The Ethics Commissioner must provide reasons for the exemption and any other terms and conditions and enter that information in the registry. It was also felt by the Committee that 60 days allow sufficient time for persons to comply with the legislation after it comes into force.

Section 11(2) – Appointment and Duties of the Registrar

The phrase struck out is no longer necessary given proposed amendments to other sections of the Bill, which clarify the role of the Ethics Commissioner.

Section 14 – Advisory Opinions and Interpretation Bulletins

This proposed amendment clarifies that only the Ethics Commissioner may issue advisory opinions and interpretation bulletins.

Section 17 – Report

This proposed amendment provides authority for making reports submitted to the Speaker public when the Assembly is not in session and clarifies the role of the Ethics Commissioner.

Section 19(1) – Offences and Penalties

This proposed amendment addresses concerns that only the designated filer is guilty of an offence if a lobbyist conducts lobbying activity while knowing that the designated filer has not registered or filed a return on his or her behalf.

Section 19(4) – Offences and Penalties

This proposed amendment is to bring the maximum fines in the Bill in line with the maximum fines in similar legislation in other jurisdictions. There was also the concern that the large fines may discourage some smaller organizations from lobbying due to the fear of inadvertent mistakes leading to prohibitively large fines.

Section 20(e) – Regulation

This proposed amendment would give the Lieutenant Governor in Council the authority to make determinations regarding the definitions of “time spent lobbying” and “to communicate.” The Committee felt that this was necessary so that adjustments can be made to the legislation regarding what constitutes lobbying under the proposed 100-hour threshold for organization lobbyists.

Section 21 – Review of the Act

This proposed amendment would reduce the time before the first review from five years to two years. Given the nature of the proposed legislation, the Committee believed an earlier first review is warranted.

Schedule 1, Section 2(d) – Consultant Lobbyist Return

This proposed amendment is to clarify what information must be provided when the client is an individual and not an organization.

Schedule 2, Section 2(d)(k) – Organization Lobbyist Return

This proposed amendment in subsection 2(d) clarifies that a business address does not have to be provided for an individual. The rewording of clause (k) is for the purposes of increased clarity.

Appendix B: List of Presenters

The Standing Committee on Government Services invited written submissions on the Bill from identified stakeholders and advertised for written submissions from the public. The Committee received 29 written submissions. Public hearings on the Bill were held on September 27 and 28, 2007, in Edmonton. The Committee heard 19 oral presentations. A list of both those who provided written submissions and those who made oral presentations follows.

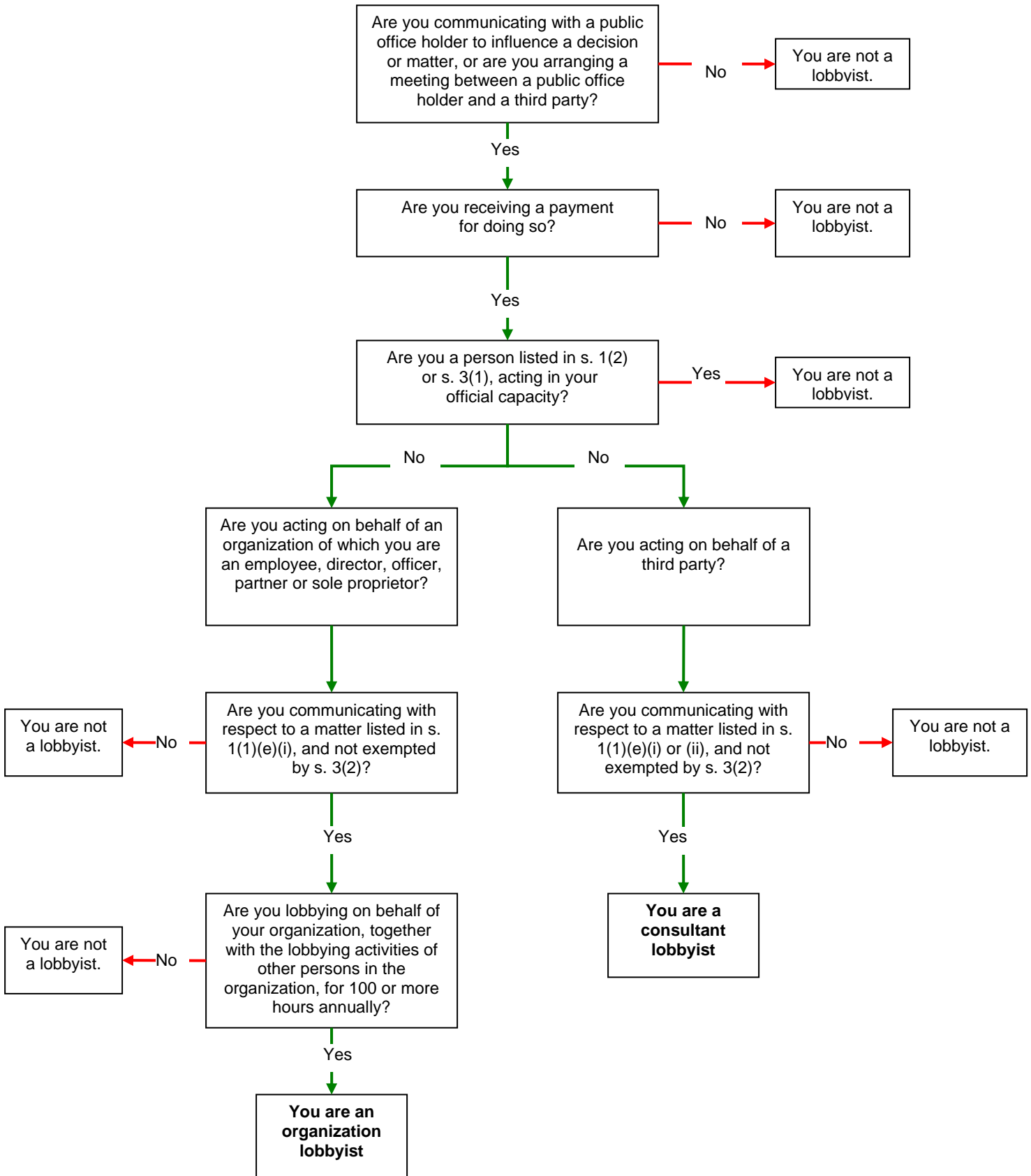
Written Submissions

| Name | Organization |
|---|--|
| 1. Trevor Gladue | Alberta Association of Colleges and Technical Institutes |
| 2. Adrienne Waller | Alberta Beef Producers |
| 3. Ken Kobly and Brad Cody | Alberta Chambers of Commerce |
| 4. Ronald A. Kustra | Alberta Medical Association |
| 5. Heather Douglas | Calgary Chamber of Commerce |
| 6. Liz Viccars | Canadian Cancer Society |
| 7. Allison Barry | Calgary Sport Council and Sport Alberta (joint submission) |
| 8. John Nicholls | Confederation of Alberta Faculty Associations |
| 9. Graham Wetter | Credit Union Central Alberta Limited |
| 10. Debra Evans | Private Citizen |
| 11. Duff Conacher | Democracy Watch |
| 12. Jonathan Moser | Dow Chemical Canada Inc. |
| 13. Martin D. Salloum and Greg Christenson | Edmonton Chamber of Commerce |
| 14. Cindy Chiasson | Environmental Law Centre |
| 15. Sharon Read | The Excel Society |
| 16. Morten Paulsen | Fleischman-Hillard Canada Inc. |
| 17. Cindy de Bruijn | Gateway Association for Community Living |
| 18. Guy W. Giorno | Fasken Martineau DuMoulin, LLP Barristers and Solicitors |
| 19. Dr. Geoffrey Hale | University of Lethbridge |
| 20. Shirley Mahon | Grande Yellowhead Regional Division no. 35 |
| 21. Doug Noble | Hill & Knowlton |
| 22. Brian Livingston | Imperial Oil Limited |
| 23. Bob Wyatt | The Muttart Foundation |
| 24. Peggy Loescher | Private Citizen |
| 25. Craig Chandler | Progressive Group for Independent Business |
| 26. Heather MacIntosh | Sheldon Chumir Foundation |
| 27. Ken Cudmore | Technology Strategies Group Inc. |
| 28. Drs. Indira Samarasekera, Harvey Weingarten, William Cade and Fritz Pannekoek | University of Alberta, University of Calgary, University of Lethbridge and Athabasca University (joint submission) |
| 29. Karen Lynch | Volunteer Alberta |

Public Presentations

| Name | Organization |
|---|--|
| 1. Tim Schultz | Alberta Association of Colleges and Technical Institutes |
| 2. Ken Kobly | Alberta Chambers of Commerce |
| 3. Tom Olenuk | Alberta Environmental Network |
| 4. Dr. Darryl D. LaBuick, Ronald Kustra and Shannon Rupnarain | Alberta Medical Association |
| 5. Gerry Osmond | Alberta Museums Association |
| 6. Heather Welwood and David Anderson | Alberta School Boards Association |
| 7. Cathy MacDonald | Association of Fundraising Professionals |
| 8. Katherine van Kooy | Calgary Chamber of Voluntary Organizations |
| 9. Sandra Anderson and Rod Griffiths | Canadian Mental Health Association – Edmonton Region |
| 10. Carol Wodak | Private Citizen |
| 11. Colleen Huston and Denise Young | Disability Action Hall |
| 12. Russ Dahms | Edmonton Chamber of Voluntary Organizations |
| 13. Cindy Chiasson | Environmental Law Centre |
| 14. Guy W. Giorno | Fasken Martineau DuMoulin, LLP Barristers and Solicitors |
| 15. Shirley Mahon | Grande Yellowhead Regional Division No. 35 |
| 16. Bob Wyatt and Lois Gander | The Muttart Foundation |
| 17. Tim Weis | The Pembina Institute |
| 18. Phyllis Clark | University of Alberta, University of Calgary, University of Lethbridge and Athabasca University (Joint Presentation) |
| 19. Karen Lynch and Scott Lundell | Volunteer Alberta |

Appendix C: Are You a Lobbyist?*



* This chart is provided for information only, based on recommendations of the Committee.