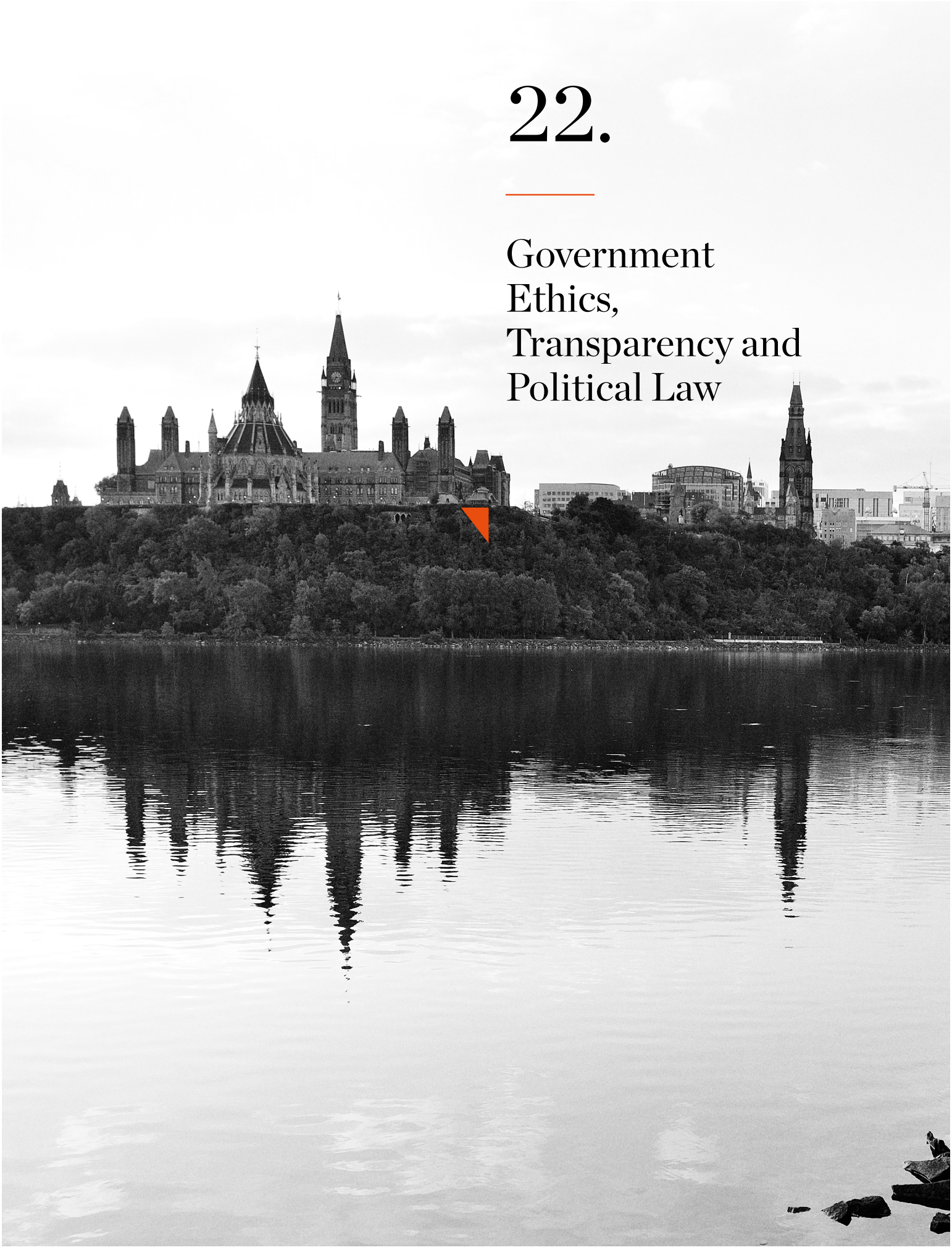
22.

Government Ethics, Transparency and Political Law



Increased scrutiny and expectations for transparency in government make compliance with ethics and transparency rules as well as political laws an important strategy in helping to mitigate the risk of reputational damage and protect current and future business opportunities with government.

Lobbying Law

Lobbying in Canada is currently regulated at the federal level and in all ten provinces (Alberta, British Columbia, Saskatchewan, Manitoba, Newfoundland and Labrador, Nova Scotia, New Brunswick, Ontario, Prince Edward Island and Quebec) and one territory (Yukon). Many municipalities have also passed similar lobbying laws. At the provincial-territorial level, only the Northwest Territories and Nunavut do not have lobbying laws in place.

The laws typically distinguish between lobbyists who are working for clients and employees who lobby as part of their jobs. The former are called consultant lobbyists. The latter are known as in-house lobbyists (or enterprise lobbyists or organization lobbyists (Quebec), or organization lobbyists (Alberta)).

When employees of an organization communicate with government officials on behalf of an organization, they are subject to the in-house lobbyist provisions of the laws. In their coverage of in-house lobbying, some of the laws treat all in-house lobbyists the same, while others distinguish between in-house lobbyists for business corporations and in-house lobbyists for other (mostly not-for-profit) entities.

Not all communication with government is subject to lobbyist registration. Further, in most places, a certain volume of in-house lobbying must occur before registration is required.

Failure to register, accurately and completely, is an offence. In addition to the potential for conviction and fine, failure to comply with the law can cause reputational damage. With enforcement on the rise in recent years, it is important for corporations and organizations to understand applicable lobbying registration laws and to implement effective internal compliance mechanisms to deal with this emerging and complex field of law.

Conflicts of Interest, Gifts and Hospitality

The federal government, all provinces and territories, and many municipalities in Canada have conflict of interest laws that include rules that govern the acceptance of gifts and hospitality by government officials and public servants. Further, individual departments, agencies and Crown corporations often have their own conflict of interest rules that may apply as well.

In the majority of jurisdictions, no dollar-value limit determines whether a gift, hospitality or other benefit to a government official is acceptable. However, in every jurisdiction, government officials and public servants are prohibited from accepting any gift, hospitality or other benefit that may, either in fact or in appearance, influence their decision.

While a dollar-value limit does not usually determine whether a gift may be accepted, most jurisdictions do establish a threshold - at least for elected officials - that determines whether the gift must be disclosed. The responsibility for disclosure lies on the government official (recipient), not the giver. In some jurisdictions, disclosures become public; in other jurisdictions, disclosures remain with the appropriate ethics authority.

Even though it is the acceptance of the gift, and not necessarily the giving of the gift, that is caught by the rule, on a practical level, this distinction is immaterial. The acceptance of an improper gift or hospitality poses a significant risk of reputational damage if it were exposed, and could jeopardize future business opportunities with government as well.

Election Law

The amounts that can be donated to political parties and candidates, who is eligible to make these donations, and the amounts that parties and candidates can spend during election campaigns, are heavily regulated.

Corporate political contributions are prohibited federally, as well as in most provinces. In the provinces where corporate contributions are allowed, contributions by non-residents are prohibited and the amount of any contribution is capped.

Non-monetary contributions such as office space or non-market discounts on services may also contravene federal and provincial election contribution rules.

The amounts that individuals can contribute are capped by federal law and in most provinces. By US standards, the limits are very low (e.g., as of January 2023, the annual contribution limits at the federal level are $1700 in total to each registered party, $1700 in total among all the registered associations, nomination contestants and candidates of a party, and $1700 in total among all leadership candidates in a particular federal leadership contest).

Spending by political parties and candidates is also capped in federal and provincial elections. In federal elections, the limits are determined primarily by the population of the electoral district and by US standards are low. The spending limit is proportionately reduced if a party fields candidates in fewer than all 338 electoral districts. This spending limit adjusts upward for each day that a campaign is longer than the minimum 37 days.

Political contribution rules vary significantly from jurisdiction to jurisdiction, and donations are heavily scrutinized by regulators. Improper donations can lead to significant reputational damage, and impact a corporation's or organization's ability to do business with government. For these reasons, it is very important to understand applicable election law before becoming involved in any way with the political process in Canada.