

Update

Communications Law

June 25, 2008

Changes to Canada's Lobbying Regime – Implementation of the Lobbying Act

The *Lobbying Act* (the “Act”), and its related Regulations¹, will come into force on July 2, 2008, bringing with it new accountability and transparency rules for lobbyists, along with increased penalties for non-compliance with the regime.

Are You Affected?: Definition of “Lobbying”

If you are compensated (either as an in-house or consultant lobbyist) for communicating with public officer holders with respect to the following matters:

- changing federal laws, regulations, policies or programs (subject to certain exceptions);
- obtaining a financial benefit (e.g. a grant or contribution);
- in certain cases, obtaining a government contract; or
- for consultant lobbyists, arranging a meeting between a public office holder and another person/organization,

your activities are likely considered lobbying and you are, under both the current and new regime, required to register with the Federal government.

Additionally, the Act imposes additional requirements and obligations on lobbyists as well as makes several significant changes to the lobbying regime overall. The following is a brief overview of some of the key changes that will be implemented on July 2, 2008.

Key Changes: What You Need to Know

- **Commissioner of Lobbying** - the position of Registrar of Lobbyists will be abolished and a new, independent Commissioner will be appointed, with powers to enforce the Act and the *Lobbyists' Code of Conduct*. The Commissioner will also have enhanced powers of investigation under the Act.
- **Offences and Penalties** - the Act extends from two to ten years the period during which potential summary conviction infractions may be investigated and prosecuted. The Act also doubles the monetary penalties for lobbyists who are found guilty of breaching the requirements of the Act to \$50,000 (and/or six months' imprisonment) on summary conviction and \$200,000 (and/or two years' imprisonment) on indictment.
- **Designated Public Office Holders (“DPOHs”)** - the Act creates a new class of public office holder known as Designated Public Office Holders (“DPOHs”). These are certain officials responsible for high-level decision-making in government including, among others, ministers, ministers of state and ministerial staff, deputy ministers, associate and assistant deputy ministers and chief executives of departments and agencies and officials in those organizations. The Act imposes increased reporting requirements regarding communications with DPOHs, as well as certain obligations and responsibilities on DPOHs themselves (as described below).
- **Monthly Reporting** – the existing registration requirement for all lobbyists (in-house and consultant) has not changed. However, the Act also requires lobbyists to file monthly returns regarding oral communications arranged in advance with DPOHs (in certain circumstances, a return must be submitted even if a communication was initiated by a DPOH). Returns must disclose the date of each communication, the name and title of the DPOH involved, the institution in which they serve/are employed, and the subject matter.

¹ *Designated Public Office Holder Regulations and Lobbyists Registration Regulations.*

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A return must be submitted no later than 15 days after the end of the month if: (a) communication with a DPOH took place during the subject month; (b) information previously filed is incomplete or no longer correct; (c) lobbying activities have terminated or no longer require registration; and/or, (d) five months have passed since the end of the last month for which a return was filed (i.e. six months is the longest period that may pass without a return being filed). The first monthly returns under the new regime are due August 15, 2008.

- **Verifying Returns** - under the new regime, the Commissioner may verify the content of monthly returns directly with the DPOH involved. DPOHs will have thirty days to respond to a verification request and either confirm or correct the information submitted by the lobbyist. Should the Commissioner find the information submitted to be incorrect or incomplete, the matter will be pursued with the lobbyist.
- **5 Year Prohibition on Lobbying by Former DPOHs** - subject to certain exceptions (or a successful exemption application), the new regime prohibits, among others, former DPOHs from lobbying the Government of Canada (as a consultant or in-house lobbyist) for five years after leaving their former position.
- **Contingency Fees Banned** - currently, lobbyists are permitted to base fees on the success of their efforts so long as such arrangements are disclosed. Under the new regime, the payment or receipt of contingency payments (even partial) are banned entirely with respect to consultant lobbyists and their clients (note, this restriction does not apply to in-house lobbyists).

If you would like to know more about the lobbying regime or have any questions with respect to the foregoing, please do not hesitate to contact:

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