

q | Lobbying



Communications between individuals representing a corporation or its employees and government officials may be subject to a requirement that those communications be reported. Specific rules apply to the lobbying of officials in the Canadian federal government, in some provinces and in some municipalities. Each of these governmental bodies has its own rules, and it is wise to gain an understanding of them before undertaking communications with government officials.

At the federal level, the *Lobbying Act* provides that some types of communications between individuals and “public office holders” must be reported. Under the Act, individuals who work with or deal with governmental officials or employees may have an obligation to disclose certain information in relation to those discussions. Corporate employees may also be subject to the *Lobbying Act*, depending on the nature of their work and the time invested in interacting with any employee of the Government of Canada, including politicians, officials and representatives of Canada.

1. Registrable Communications

Not all types of communications with public office holders constitute lobbying activities. If the communications with public office holders fall within the following categories, it is likely that such communications must be registered:

- The development of any legislative proposal by the Government of Canada or by a member of the Senate or the House of Commons;
- The introduction, passage, amendment or defeat of a bill or resolution in the federal Parliament or in a provincial parliament;
- The making or amendment of any regulation as defined in subsection 2(1) of the *Statutory Instruments Act*;
- The development or amendment of any policy or program of the Government of Canada;
- The awarding of any grant, contribution or other financial benefit by or on behalf of the Government of Canada;
- The awarding of any contract by or on behalf of the Government of Canada; or
- The arrangement of a meeting between a public office holder and any other person to discuss the subjects above.

In addition, in some provincial jurisdictions, any communications made in the normal course of selling an individual’s or a corporation’s products or services, or in entering into a contract with a provincial government, are also registrable as lobbying activity.

2. Lobbying

a. Public Office Holder

An individual representing an interest group or the employee of a corporation entering into discussions with a public office holder may be considered to be involved in lobbying activities. Pursuant to the *Lobbying Act*, the term “public office holder” refers to any officer or employee of the Government of Canada, including:

- A member of the Senate or the House of Commons and any person on the staff of such a member;
- An appointee to any office or body by or with the approval of the governor in council or a minister of the Crown, other than a judge receiving a salary under the *Judges Act* or the lieutenant-governor of a province;
- An officer, director or employee of any federal board, commission or other tribunal as defined in the *Federal Courts Act*;
- A member of the Canadian Armed Forces; and
- A member of the Royal Canadian Mounted Police.

b. Designated Public Office Holder

The *Lobbying Act* includes a specific category of individuals as “designated public office holders” (DPOH), who are defined as officials responsible for high-level decision-making in government. Specific registration requirements are provided for any communications with a DPOH. The DPOH category includes the following positions:

- A minister of the Crown or a minister of state and any person employed in his or her office;

- The leader of the Opposition or the senior staff in the offices of the leader of the Opposition, both in the House of Commons and the Senate;
- A member of Parliament and any person on the staff of such a member;
- A senator and any person on the staff of such a member;
- Any public office holder who occupies the senior executive position in a department, whether by the title of deputy minister, chief executive officer or by some other similar title;
- An associate deputy minister or an assistant deputy minister or a person who occupies a position of comparable rank;
- The chief of the defence staff, the vice-chief of the defence staff, the chief of maritime staff, the chief of land staff, the chief of air staff, the chief of military personnel or a judge advocate general;
- Any position of senior adviser to the Privy Council to which the office holder is appointed by the governor in council; and
- The comptroller general of Canada.

Lobbyists are obligated to provide information to the Office of the Commissioner of Lobbying about the communications they have with designated public office holders. The *Lobbying Act* provides for monthly reporting requirements for lobbyists when they lobby a DPOH, need to change their initial registration or terminate or complete their lobbying undertaking.

A monthly report is necessary if a lobbyist initiates oral and arranged communication with a DPOH (e.g., a meeting or telephone conference) that amounts to lobbying as defined under the Act. The monthly report must provide the name of the DPOH; position title of the DPOH; the name of the branch or unit and the name of the department or other governmental organization in which the DPOH is employed; the date of the

communication; and the subject matter of the communication.

c. Employees or In-house Lobbyists

At the corporate level, registration is required when one or more employees communicate with public office holders on behalf of the employer and the communications constitute a significant part of the duties of one employee (or would constitute a significant part of the duties of one employee if they were performed by a single employee). This evaluation must be conducted on a monthly basis.

In evaluating whether a significant part of an employee's duties is invested in communications with public office holders, a rule of 20 per cent applies. If 20 per cent or more of an employee's time each month, or of a number of employees taken together, is attributed to communications with public office holders, the activities are likely registrable.

Evaluating whether 20 per cent or more of an employee's duties are in relation to communications with public office holders involves tracking time spent in preparation (i.e., in research, drafting, planning, compiling, travelling, etc.) and the time spent actually communicating with public office holders. For instance, a one-hour meeting may require seven hours of preparation and two hours of travel time. In this case, the time related to lobbying with a public office holder would be a total of 10 hours.

Under the *Lobbying Act*, the legislative reporting obligation (relating to both public office holders and designated public office holders) rests with the employee of a company that occupies the most senior position in the business and who is paid for the performance of these duties, usually the president, CEO, or executive director. If a report is not filed, or if it is filed incorrectly, incompletely, or late, then liability rests with the CEO, who is then subject to possible investigation or prosecution.

Although a CEO charged with a strict liability offence under the Act could argue that he or she took all reasonable care and exercised due diligence in order to comply with the *Lobbying Act*, the onus would lie on the CEO to prove such care was taken. Of even greater concern than the stiff financial penalties that may be levied under the *Lobbying Act* is the damage to reputation that would result from having the business name tainted in the media and by opposition-party politicians.

d. Infractions and Enforcement

The Office of the Commissioner of Lobbying has significant investigatory powers and a mandate to enforce compliance. As an independent agent of Parliament, the commissioner can ask DPOHs to verify the accuracy and completeness of contact report information submitted by lobbyists and, if necessary, report to Parliament the names of those who do not respond.

The commissioner also has the power to prohibit lobbyists convicted of any offence from communicating with the government as paid lobbyists for up to two years and publish the names of violators in parliamentary reports. As well, the *Lobbying Act* provides for criminal monetary fines of \$50,000 on summary convictions for lobbyists who do not comply with the requirements of the Act, and \$200,000 on proceedings by way of indictment, not to mention the possibility of up to six months of imprisonment for the former and up to two years of imprisonment for the latter.

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