

CMC-Canada Information Bulletin: May 2008

Major Changes in the Federal Lobbyist Act and Regulations

As part of the *Accountability Act*, amendments were made to the legislation governing the registration and conduct of federal lobbyists. Those new rules come into force and effect on July 1, 2008. Following, for the benefit of CMC-Canada members who deal with the federal government, is our summary of the rules and their implications for our membership.

Obviously, the legislation is brand new and there are no precedents to guide either lobbyists, public office holders, or the Commissioner of Lobbying. What follows is our best attempt at interpreting the statute and the regulations.

Registration is required when an individual is paid to contact a public office holder on behalf of a person or organization in relation to the development of a legislative proposal; the introduction of or amendment to a Bill or resolution; making or amending any regulation, policy or program; or the awarding of a grant or contribution, tax credit or any other financial benefit. In the case of a consultant lobbyist, this would also include the awarding of any contract.

Previously, lobbying was deemed to occur when an individual was paid to communicate, on behalf of any person or organization, with a public office holder "in an attempt to influence" the latter. The *Act* now states that lobbying will consist of "any oral or written communication made to a public office holder." In addition, the *Act* removes the exception for written communications initiated by a public office holder. This definition will clarify the enforcement of the *Act*, as it will now rest on an objective criterion rather than on a person's intentions.

Examples of communications that would not normally require registration:

- Inquiries solely to obtain publicly available information;
- General enquiries about the terms and conditions of programs and application processes;
- Participation in consultations, hearings, roundtables, or similar activities when the name of the participants, the participating government organizations and the subject-matters are readily available publicly.
- Communication with respect to the enforcement, interpretation or application by public office holders of any current federal statute or regulation; and
- Preparation and presentation of briefings to parliamentary committees.

Examples of communications which would likely require registration:

- Enquiries about a specific application for a grant, a contribution, a tax credit or a contract;
- Communication to determine what additional information is required to have the application or project approved; and
- Negotiations about terms related to a specific financial benefit.

CMC-Canada members who contract with the Government of Canada, either in their own right or as employees, will be particularly interested in their registration requirements.

- Persons who are working on contracts **need not** register;
- Persons who are involved in the development of proposals in response to a public tendering process (e.g. an RFP, RFQ or RFI) **need not** register when contacting a public office holder within the terms and conditions of the RFP, RFQ or RFI.
- Persons marketing their services, or promoting a contract, or a contract extension outside of a public tendering process **need to** register.

Other Significant Amendments to the Act

- Replacement of the position of Registrar of Lobbyists with that of Commissioner of Lobbying, an independent Agent of Parliament, with expanded investigative powers and an education mandate;
- Identification of a new category of public office holder within the federal government, called Designated Public Office Holder, (DPOH);
- Imposition of a five-year, post-employment prohibition on becoming a lobbyist once a Designated Public Office Holder has left office;
- New filing requirements for lobbyists and an obligation, when requested by the Commissioner of Lobbying, for DPOHs or former DPOHs to confirm information that is provided by lobbyists about communications with DPOHs;
- A ban on making or receiving any payment or other benefit that is contingent on the outcome of any consultant lobbyist's activity(i.e. a success or contingency fees)
- Extension from two to ten years of the period during which possible infractions or violations under the *Lobbying Act* and the *Lobbyists' Code of Conduct* may be investigated and prosecuted.
- Doubling the monetary penalties for lobbyists who are found guilty of breaching the requirements of the *Lobbying Act*;
- A prohibition for up to two years on all lobbying activities for people convicted of offences under the Act.

New Regulations

Consultant Lobbyist

In addition to the required information indicated on the prescribed forms, the **consultant** lobbyists shall also include:

Initial returns

- a) In the case of a corporate client, indications as to whether the consultant lobbyist is a member of the client's board of directors.
- b) Reasons for consideration for exemption to the five year "cooling off" period for **designated public office holders (DPOH)** to become consultant lobbyists.
- c) Reasons for consideration for exemption to the five year "cooling off" period for Conservative government transition team members (to Jan 24th 2006) to become consultant lobbyists.
- d) Identifying key contacts within the client's organisation.

Monthly Returns (by the 15th of each month)

- a) Details of conversations with DPOHs around the awarding of government grants or contracts, other than in compliance with the terms and conditions of the public tendering process.
- b) The officials' names, positions, departments and dates on which communication with one or more DPOHs took place regardless of which party initiated the communication.

In-House Lobbyist (employees of corporations and organisations whose job it is to lobby for the corporation or organization)

In addition to the required information indicated on the prescribed forms, the **appointed officer** for the in-house lobbyists' organisation or corporation shall also include:

Initial returns

- a) Reasons for considerations for exemption to the five year "cooling off" period for DPOHs to become in-house lobbyists.
- b) Reasons for consideration for exemption to the five year "cooling off" period for conservative government transition team members (to Jan 24th 2006) to become in-house lobbyists.

Monthly Returns

- c) Details of conversation with DPOHs around the awarding of government grants or contract, other than in compliance with the terms and conditions of the public tendering process.
- d) The officials' names, positions, and departments and dates on which communication with one or more DPOHs took place regardless of which party initiated the communication.

Clarifications and Corrections

Clarifications of returns have to be submitted within ten days of the initial filing of the return in question, and corrections have to be made within 30 days of the initial filing of the return in question.

This communication is not intended to constitute legal advice. Circumstances will vary from member to member, time to time and situation to situation. When in doubt, members are advised to seek advice from the Commissioner of Lobbyists or another appropriately qualified person

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CMC-Canada points out that there are no fees relating to registration, filing returns, etc. Accordingly, particularly during the early stages after implementation of the legislation, members may wish to err on the side of caution and simply register in situations that are not clear-cut one way or the other.