

public policy and government relations bulletin

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Changes to the Federal Lobbyists Registration Act

Important changes to the Federal “Lobbyists Registration Act” take effect on July 2, 2008. The newly-named “Lobbying Act” increases both the reporting requirements for registered lobbyists and the penalties for non-compliance. The major changes in the Act are summarized below.

What’s new?

Contingency Fees are Banned: Consultants hired to lobby for a client will no longer be allowed to receive contingency fees based on the success of the lobbying effort.

New Monthly Reporting Requirements: The new Act requires registered lobbyists to specifically report each month instead of every six months when lobbying a new category of federal officials called “Designated Public Office Holders”¹. While, in general, only calls or meetings that are arranged in advance and initiated by the lobbyist need be reported, they must be reported when they relate to a grant, contract or similar financial benefit, even if the communication is initiated by the government official. Written communications need not be reported monthly.

More Detailed Reporting Requirements: The new monthly reports will require much more information than before. Lobbyists must now disclose the date of the communication and the name and position of the public official who was lobbied. Corporations must now also list all senior officers or employees engaged in lobbying activity, even those that do not engage in lobbying as a “significant” part of their duties. Finally, employers must provide more detailed information about former public officials on their payrolls.

A More Powerful Enforcement Regime: The new Act creates the position of “Commissioner of Lobbying”, who will be an independent agent of Parliament. The Commissioner will have expanded powers compared to the Registrar under the old Act, including a lower threshold for triggering an investigation. Under the new Act an investigation is triggered when the Commissioner believes that an investigation is

¹ The definition for Designated Public Office Holder includes Ministers, Ministers of State and individuals employed in their offices, as well as senior executives of federal departments, including deputy ministers, CEOs, associate deputy ministers, assistant deputy ministers, and individuals of comparable rank.

necessary to ensure compliance with the Code or the Act. The Commissioner will also have the power to request that Designated Public Office Holders verify the information provided by lobbyists in their monthly reports. The Commissioner's post-investigation and annual reports will be tabled in Parliament.

More Aggressive Penalties: Fines under the new Act are quite a bit higher. The fines for failing to file a return, or for making false or misleading statements, or for otherwise failing to comply with the Act, are increased to \$50,000 for summary convictions and \$200,000 for convictions by way of indictment. Limitation periods are also extended to five years from the previous two-year limit.

Failure to file a return will also become punishable by imprisonment under the new Act for up to six months for summary convictions and up to two years if indicted.

A Longer Cooling-Off Period for Public Officials: Designated Public Office Holders in office on or after July 2, 2008 will now have to wait five years after leaving government before they can begin lobbying activities. This is an increase from the current two-year requirement.

What do these changes mean?

Because the new Commissioner will have to power to confirm the details of the new monthly lobbying reports with the federal officials named in those reports, both lobbyists and federal officials should review and update their record-keeping systems to ensure accurate reporting and compliance with the new Act.

Lobbyists and companies will need to maintain accurate lists of the federal officials that qualify as Designated Public Office Holders and they should confirm the Designated Public Office Holder status of any person with whom they meet. Communications with Designated Public Office Holders that took place before July 2, 2008 do not need to be reported.

Registrations that are certified and active under the old Act will remain active under the new Act, but accounts that

have been inactive for a year or more must be reactivated with a new user agreement. Similarly, registered lobbyists that previously reported involvement of former public office holders in their activities will need to update the information on those former officials after July 2, 2008.

Implications for a corporation

The most senior officer of a corporation remains responsible for registering the corporation as a lobbying organization, if required, and for certifying monthly reports as necessary. Penalties for failure to file are much stiffer under the new Act – if in doubt, file. The deadline for initial registration remains two months from the date that the duty arises, and the first monthly report must include the entire period starting from the date that the requirement arose.

Implications for industry associations and similar groups

Associations, charities and similar entities that do not act for financial gain are referred to as "organizations" in the Act. These organizations will continue to register as in-house lobbyists, and the organization's registration will continue to cover all of its direct employees. Individuals who serve on the board of directors of such organizations or serve it in some similar capacity, and who receive payment to lobby for the organization, should register separately as consultant lobbyists. The new Act allows such individuals to clearly indicate that are not professional lobbyists when they register as consultant lobbyists.

Implications for consulting lobbyists

The requirement to register is triggered by any undertaking to conduct regulated lobbying activity on behalf of a client, and the deadline for initial registration remains 10 days from the date of the undertaking. The first monthly report must include the full period from the date of the undertaking. The individual consulting lobbyist and not the client is responsible for registration and liable for any non-compliance with the Act.

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

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