



Office of the Registrar of Lobbyists

Overview of the Canadian Federal *'Lobbying Act'*

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by

Pierre Ricard-Desjardins

Director of Operations

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Government
of Canada

Gouvernement
du Canada

Canada

What is Lobbying at the Canadian Federal Level?

Lobbying is communicating with a public office holder, for payment in respect of:

- ❖ The development of any legislative proposal;
- ❖ Introduction, defeat or amendment of any Bill or resolution;
- ❖ Making or amendment of any regulation;
- ❖ Development or amendment of any policy or program;
- ❖ Awarding of any grant, contribution or other financial benefit;
- ❖ Awarding of any contract (consultant lobbyists only); and
- ❖ Arranging a meeting between a public office holder and any other person (consultant lobbyists only).



The Three Types of Registered Lobbyists

Consultant Lobbyist

- ❖ A person who is hired and paid to communicate on behalf of a client.
- ❖ Registration must be filed within ten days of undertaking to carry out a lobbying activity. Any modification to the information must be made within one month of the change.
- ❖ Details of the lobbyist, the client, departments to be lobbied, subject matter(s), lobbying methods and other specified information.

In-house Lobbyist (Corporation)

- ❖ A person who works for compensation in an entity that operates for profit.
- ❖ The entity is registered by the most senior officer and the details about certain individuals who communicate with public office holders are listed in the registration.
- ❖ The most senior officer must register the entity within two months of beginning lobbying activities. Any modification to the information must be made within one month of the change.
- ❖ Details of the corporation, its parent and subsidiaries, departments lobbied, subject matter(s), communication techniques and other specified information.

In-house Lobbyist (Organization)

- ❖ A person who works for compensation in a non-profit entity.
- ❖ The entity is registered by the most senior officer and the details about certain individuals who communicate with public office holders are listed in the registration.
- ❖ The most senior officer must register the entity within two months of beginning lobbying activities. Any modification to the information must be made within one month of the change.
- ❖ Description of the organization's business or activities and its membership, departments lobbied, subject matter(s), communication techniques and other specified information.

History of the Lobbyists Registration Act

- ❖ Bill C-82, the first *Lobbyists Registration Act*, came into force in 1989.
 - During the following decade, the new Ethics Counsellor was made responsible for the lobbyists' registry and an updated Act came into force, which included a *Lobbyists' Code of Conduct*.
- ❖ In 2005 more amendments to the Act came into force and the Office of the Registrar of Lobbyists was established.
- ❖ In 2006, the Office of the Registrar of Lobbyists became an independent department in the Treasury Board portfolio, with the Registrar being designated as a deputy head.
 - As well, the Office of the Registrar of Lobbyists formally reorganized into an Operations Directorate to handle the registration process and an Investigations Directorate to deal with enforcement of the Act and the Code.
- ❖ In April 2006, Bill C-2 (the proposed *Federal Accountability Act*) was tabled in Parliament and subsequently received Royal Assent on December 12, 2006. The majority of Bill C-2's lobbying provisions have not yet come into force.

Purpose of the Federal Legislation

Lobbyists Registration Act (LRA)

- ❖ Four basic principles are set out in the preamble to the Act:
 - Free and open access to government is an important matter of public interest;
 - Lobbying public office holders is a legitimate activity;
 - It is desirable that public office holders and the public be able to know who is engaged in lobbying activities;
 - The system for the registration of paid lobbyists should not impede free and open access to government.

- ❖ The LRA is mostly a transparency tool providing assurance that government decision making is done ethically and in the public interest. All information collected under the LRA and its regulations is a matter of public record. A central feature of the LRA is the public registry, which allows for quick access to the information via the Internet or by writing, telephoning or visiting the office of the Registrar.

Lobbying Act

- ❖ The principles and the preamble of the Act will not change.

- ❖ However, the amended Act will shift from being mostly a disclosure instrument, to one that will regulate, to a certain extent, registrable lobbying activities. The new *Lobbying Act* will address identified weaknesses with the current Act namely by:
 - Improving compliance with registration requirements by enhancing the Commissioner's investigative powers, giving him/her the explicit duty to provide outreach and educational programs, and by increasing penalties

 - Improving transparency by increasing the information to be provided in returns – lobbyists will now have to record their contacts with designated public office holders on a monthly basis

 - Giving the Commissioner of Lobbyists the independence needed by making him an Agent of Parliament.

Public Office Holders

Lobbyists Registration Act

- ❖ Lobbying involves individuals who are paid to communicate with public office holders. A public office holder is defined broadly as “any officer or employee of Her Majesty in right of Canada.” This includes:
 - Members of the Senate or of the House of Commons (Senators, Members of Parliament, Ministers) and their staffs;
 - Persons appointed to an office by a Minister of the Crown or the Governor in Council (GIC);
 - An officer, director or employee of any federal board, commission or other tribunal;
 - Members of the Canadian Armed Forces;
 - Members of the Royal Canadian Mounted Police; and
 - Employees of federal departments.

Lobbying Act

- ❖ *Public Office Holder* will remain in the amended Act and will continue to be used to define lobbying. The *Lobbying Act* will introduce a new category entitled *Designated Public Office Holder*. This new category is a subset of public office holder and includes:
 - a Minister of the Crown or a Minister of State and any person employed in his or her office who is appointed under subsection 128(1) of the Public Service Employment Act (exempt staff);
 - any other public office holder who, in a department within the meaning of paragraph (a) (a.1) or (d) of the definition of “department” in section 2 of the *Financial Administration Act*:
 - (i) occupies the senior executive position, whether by the title of deputy minister, chief executive officer or by some other title, or
 - (ii) is an associate deputy minister or an assistant deputy minister or occupies a position of comparable rank, and any individual who occupies a position as a public office holder and is designated by regulation.
- ❖ *Designated Public Office Holder* excludes: members of Parliament (Senate and House), Parliamentary Secretaries, House, Senate and Parliamentary Library staff, Parliamentary officers, GIC appointees and all other employees of federal departments not at ADM level and above.
- ❖ Individuals who are identified by the Prime Minister as having been members of a transition team are not designated public office holders, but are treated in a similar manner under the *Lobbying Act*.

Rules Respecting Contingency Fees

Lobbyists Registration Act

- ❖ Under the LRA, consultant lobbyists must simply indicate whether they charge contingency fees (fees based on the degree of success of the lobbying undertaken).
- ❖ However, there are existing rules within policies or agreements on contingency fees relating to federal contracts, grants and contributions and other transfer payments that must be respected.

Lobbying Act

- ❖ The amended Act prohibits consultant lobbyists from charging and accepting contingency fees and prohibits clients from paying contingency fees. Consultant lobbyists will have to indicate in their initial return that they did not accept a contingency fee.
- ❖ The *Financial Administration Act* will also be amended to allow the Governor in Council (the Cabinet) to fix terms in contracts that prohibit payments of a contingency fee relating to any contractual arrangements with the federal government.



Education Mandate

Lobbyists Registration Act

- ❖ The Registrar may issue advisory opinions and interpretation bulletins to help lobbyists understand the Act's registration provisions. These are not considered statutory instruments. He also provides some education and communications programs to help facilitate compliance with the Act.

Lobbying Act

- ❖ No change with respect to the interpretation bulletins. However, to help ensure compliance with the Act, the Commissioner has been assigned the explicit duty to develop and implement educational programs to foster public awareness.



Powers of Investigation

Lobbyists Registration Act

- ❖ Where the Registrar believes “on reasonable grounds” that a person has breached the Code, the Registrar must investigate. He does not have similar powers to investigate breaches under the Act.
- ❖ For the purpose of conducting an investigation, the Registrar may summon and enforce the attendance of persons and compel them to give oral or written evidence on oath and to produce any documents or other things that the Registrar considers necessary for the investigation, including any record of a payment received, disbursement made or expense incurred by lobbyists in respect of any matter regarding a registrable activity.
- ❖ The investigations must be conducted in private. If, during his investigation, the Registrar believes that a person has committed an offence under the Act, he must cease his investigation and advise a peace officer that has jurisdiction to investigate the alleged offence.

Lobbying Act

- ❖ The amended Act will give the Commissioner the power to investigate for the purpose of ensuring compliance with the Code and the Act.
- ❖ The Commissioner will now have enhanced powers to investigate. By amending the Act with the term “reason to believe”, it allows the Commissioner to more easily use these powers.
 - He/she will continue to have the power to summon individuals and compel any documents or other things that he/she considers relevant, in a similar manner as a superior court of record.
 - Investigations will continue to be conducted in private, with the Act imposing specific obligations to keep information confidential.
 - The Commissioner will cease an investigation and refer the matter to a peace officer if he/she feels the Act has been contravened.
 - The Commissioner will have the ability to not investigate or to cease an investigation if he/she feels that the matter: could be more appropriately dealt with under another law, is not sufficiently important, the incident occurred too long ago and the investigation would serve no purpose, or any other valid reason.
- ❖ As a complement to his/her new investigative powers, the amended Act stipulates that the Commissioner may send to any current or former designated public office holder (DPOH), information that concerns them derived from monthly returns filed, so that the DPOH may confirm its accuracy – in the prescribed time, form and manner.

Sanctions

Lobbyists Registration Act

- ❖ The Act provides for substantial penalties for lobbyists if they fail to register, or make false or misleading statements in their registration forms. The Registrar does not have the power to impose sanctions. If he or she suspects that the Act has been violated he must suspend his investigation and refer the matter to a peace officer who has authority to investigate the alleged breaches under the *Criminal Code*.
- ❖ Contraventions of the Act or its regulations may carry fines of up to \$25,000 or jail terms of up to two years upon summary conviction. Individuals who knowingly make false or misleading statements in any return or other documents submitted to the Registrar is guilty of an offence and liable:
 - On a summary conviction, to a fine up to \$25, 000 or to imprisonment for a term not exceeding six months or to both;
 - On a indictment to a fine not exceeding \$100,000 or to imprisonment for a term exceeding two years or both.
- ❖ Violations of the Code of Conduct are not subject to criminal penalties.
- ❖ The legislation sets a two-year limitation period from the date of the alleged offence for enforcement proceedings, after which no charges can be laid.

Lobbying Act

- ❖ The amendments will set out new offences and punishment for violations of the Act. The monetary fines will be increased as follows:
 - Increasing monetary fines for knowingly giving false or misleading statements in returns (this includes the new monthly reports) to \$50, 000 on summary conviction; \$200,000 on indictment;
 - Contravention of the Act or Regulations other than the requirements to file a return or compliance with the Code of Conduct is guilty of an offence and could be fined up to \$50,000.
- ❖ In addition, the Commissioner will be given new non-monetary enforcement power. If a person is convicted of an offence the commissioner may, if he/she deems it in the public interest, prohibit the person from lobbying as described in the Act for a maximum period of two years. The Commissioner may make public the name of the individual, the nature of the offence and the punishment imposed.
- ❖ Former or current public office holders, who fail to respond or respond in an unsatisfactory way to a request by the Commissioner to confirm lobbying information, are not subject to the above-mentioned sanctions. However the Commissioner will include this incident in either his/her annual report or in a special report to Parliament.
- ❖ Breaches of the Code of Conduct are not subject to any criminal penalties.
- ❖ New limitations on proceedings are set so that a summary conviction of an offence may be instituted five years after the day on which the Commissioner became aware of the matter and ten years after the day on which the subject matter arose.

Reports tabled in Parliament

Lobbyists Registration Act

Investigation Report

- ❖ To be prepared after each investigation, the report should include the findings, conclusions and reason for the conclusion as well as other details that the Registrar feels would be in the public interest to publish. It is to be submitted to the President of the Treasury Board, who shall table it in Parliament within the first 15 sitting days of the House sitting after the date it was received.

Annual Report (Special)

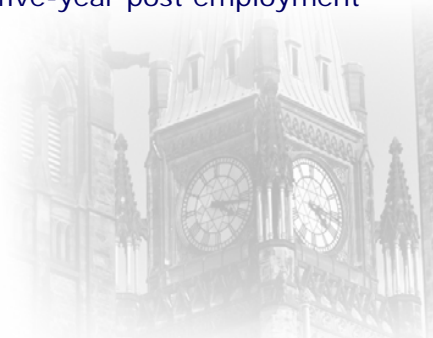
- ❖ Within three months after the end of each fiscal year, the Registrar must prepare a report on the exercise of the powers, duties and functions conferred on him or her under the Act during the fiscal year and submit it to the President of the Treasury Board, who must table it in Parliament within the first 15 sitting days of the House sitting after the date it was received.

Annual Report

- ❖ Within three months after the end of each fiscal year, the Registrar shall prepare a report on the administration of the Act other than sections 10.2 to 10.6 (Code of Conduct, Investigations and the investigation and special reports).

Lobbying Act

- ❖ The amendments will bring on several changes to the reporting requirements:
 - Investigation reports will be tabled by the Commissioner directly in Parliament, the content of the reports will remain the same but will now include information regarding investigations under the Act and the Code.
 - The Commissioner may, at any time, make a special report to Parliament on any matter within the scope of the powers, duties and functions where the Commissioner feels he/she cannot defer reporting until the next annual report.
 - The Commissioner will table directly to Parliament an annual report on the administration of the Act within three months after the end of each fiscal year.
 - The Commissioner can include in either a special, investigative or annual report the names of designated public office holders who do not respond or respond in an unsatisfactory way to the request to confirm lobbying information.
 - The Commissioner will make public without delay, the names and the reasons why designated public office holders have been exempted from the five-year post employment prohibition.



Registrar / Commissioner of Lobbying

Lobbyists Registration Act

- ❖ The LRA states that the Registrar of Lobbyists is to be designated by the Registrar General from the office of the Registrar General, who is the Minister of Industry. The Registrar used to be at the EX-04 level.
- ❖ An Order-in-Council dated February 6, 2006, transferred the Office of the Registrar of Lobbyists from Industry Canada to the Treasury Board portfolio and designated the Registrar as the deputy head of the Office of the Registrar of Lobbyists.

Lobbying Act

- ❖ The Registrar's position will be repealed under the new Act, creating the position of Commissioner of Lobbying, an Agent of Parliament to be set up in a similar way as the Privacy Commissioner's position.
- ❖ The Commissioner will be appointed by the GIC after consultation with the leader of every recognized party in the Senate and House of Commons and approval of the appointment by resolution of the Senate and House.
- ❖ The Commissioner will hold office on good behaviour for a term of seven years. His/her salary and other expenses will be set by the GIC.
- ❖ The Act sets out certain restrictions on the delegation of his/her authority, including the development of a *Lobbyist's Code of Conduct*, issuing Interpretation Bulletins, all reporting requirements and his/her power to prohibit lobbying.

Post-Employment Prohibition

Lobbyists Registration Act

- ❖ The LRA has no post-employment prohibitions.
- ❖ The 2006 Conflict of Interest and Post-Employment Code for Public Office Holders did impose a five-year post employment prohibition on ministers, senior public servants (defined as Deputy Minister and Associate Deputy Minister levels) and designated ministerial staff from acting as consultant lobbyists or accepting employment as in-house lobbyists. This prohibition is monitored by the Ethics Commissioner and not the Registrar.

Lobbying Act

- ❖ The amended Act will impose three categories of prohibition on lobbying by former Designated Public Office Holders and transition team members for five years after they leave office:
 - Prohibition on lobbying as a Consultant Lobbyist;
 - Prohibition on lobbying as an In-House Organization Lobbyist;
 - Prohibition on lobbying as an In-House Corporation Lobbyist if lobbying would constitute a significant part of their duties (20%)
- ❖ Former designated public office holders would be prevented from accepting positions in the above categories that involve lobbying the federal government.
- ❖ The Commissioner will have discretionary power to exempt designated public office holders from the five-year prohibition, upon application.
- ❖ Individuals who hold designated public office positions only because they are participants in an employment exchange program (i.e. from the private sector or other level of government) will be automatically excluded from the five-year lobbying prohibition.
- ❖ All senior officers (e.g., CEOs and direct reports) of registered corporations, whether they are former designated public office holders or not, who spend less than 20% of their duties communicating with the federal government on a range of issues specified under the Act, would continue to submit their names to the Registry, as per the amended registration requirements.

Statistical Review as at March 31st, 2007

Type of Lobbyist	Registrations <u>2005/06</u>	Registrations <u>2006/07</u>	% increase
Consultant:	5347	7775	+ 45%
In-house (Corporations):	617	793	+ 29%
In-house (Organizations):	<u>1030</u>	<u>1088</u>	+ 6%
Grand Totals:	<u>6994</u>	<u>9656</u>	

Note: Total registrations increased globally by 38 percent for all three categories of lobbyists.



For more information ...

**Office of the Registrar of Lobbyists
255 Albert Street
10th Floor
Ottawa, Ontario K1A 0R5
613-957-2760**

www.orl-bdl.gc.ca

