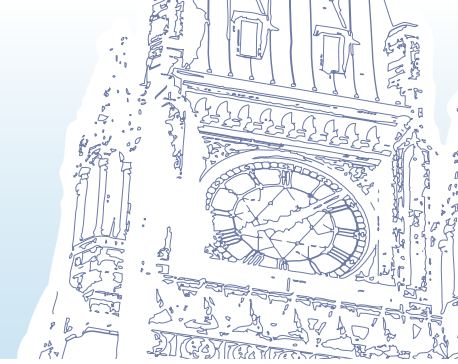




Lobbying Act Implementation Notice #3



The Five-Year Prohibition on Lobbying

Date: February 1, 2009

Background

The *Conflict of Interest and Post-Employment Code for Public Office Holders*, introduced in February 2006, prohibited certain public office holders from lobbying for a period of five years after leaving public office. The *Lobbying Act* replaces and extends this prohibition to a broader group of individuals – specifically, former designated public office holders (DPOHs) and identified former members of a Prime Minister's transition team. This prohibition applies in the following situations:

- An individual may not act as a consultant lobbyist for a period of five years after they cease to be a DPOH or cease to be an identified member of a Prime Minister's transition team.
- An individual who is employed by a not-for-profit corporation or other organization as defined in the *Lobbying Act*, may not lobby for a period of five years after they cease to be a DPOH or cease to be an identified member of a Prime Minister's transition team.
- An individual who is employed by a corporation that operates for profit may not lobby for a period of five years after they cease to be a DPOH or cease to be an identified member of a Prime Minister's transition team, if lobbying would constitute a significant part (currently interpreted as meaning 20% or more) of the individual's duties.

The prohibition does not apply to individuals who hold a designated public office only because they are participating in an employment exchange program.

Implementation Dates

The effective dates of this prohibition are the following:

- For identified transition team members, the prohibition is effective for individuals who ceased to carry out their function after January 24, 2006.
- For all DPOHs, except Assistant Deputy Ministers and individuals of a comparable rank, the prohibition is effective for those who ceased to carry out such duties after July 2, 2008.

- For Assistant Deputy Ministers and individuals who are of a "comparable rank", the prohibition is effective for those who ceased to carry out such duties on or after January 3, 2009.

Exemptions

The Commissioner of Lobbying is empowered to grant exemptions to the five-year prohibition on lobbying in certain situations described in the *Lobbying Act*. The exemptions may be on any conditions that the Commissioner specifies. For example, the Commissioner may decide that a particular person is exempt from the ban for the last two years of the five-year period. Another example could be a very specific exemption from the ban which would permit lobbying of a specific department for a particular undertaking, after which the full ban would again apply.

The circumstances or factors that the Commissioner must take into consideration when deciding whether to grant an exemption are different for DPOHs and identified members of a Prime Minister's transition team. For a former DPOH, an exemption may be granted if the Commissioner is of the opinion that the exemption would not be contrary to the purposes of the *Lobbying Act*, having regard to any circumstances that the Commissioner considers relevant, including whether the person:

- was a DPOH for a short period,
- was a DPOH on an acting basis,
- was employed under a student employment program, or
- had administrative duties only.

For identified former members of a Prime Minister's transition team, an exemption may be granted having regard to any circumstances that the Commissioner considers relevant, including:

- the circumstances under which the person ceased to perform their functions as a member of the transition team;
- the nature, and significance to the Government of Canada, of information that the person possessed by virtue of the functions performed as a member of the transition team;
- the degree to which the person's new employer might gain unfair commercial advantage by hiring the person;
- the authority and influence that the person possessed while performing their functions as a member of the transition team; and
- the disposition of other cases.

All exemptions, whether for a former DPOH or an identified member of a Prime Minister's transition team, must be made available to the public by the Commissioner without delay, along with the reasons for the Commissioner's decision.

Applying for an Exemption

Former DPOHs and identified members of a Prime Minister's transition team must apply to the Commissioner if they wish to request an exemption. The Commissioner has developed a process for considering and dealing with exemption requests, which is available on the Office of the Commissioner of Lobbying's website, www.ocl-cal.gc.ca

Implications for Registration

During the registration process, registrants will be asked to disclose whether they have ever held a position as a DPOH or as an identified member of a Prime Minister's transition team. If they answer yes, they will be asked to disclose the last date on which they held such a position. If the date is less than five years from the effective date of the registration, the registration will be carefully reviewed by the Registration Unit of the Office of the Commissioner of Lobbying.

Former DPOHs or former identified members of a Prime Minister's transition team who are employed as in-house lobbyists (corporations) are permitted to lobby providing that the lobbying does not constitute a significant part of their duties. However, the *Lobbying Act* requires that certain senior employees be listed in the registry if lobbying constitutes any part of their duties.

To assist in making registrations transparent and in ensuring that the five-year prohibition is being respected by these lobbyists, the registrations of in-house lobbyists (corporations) will display two lists of lobbyists. One list will include employees and senior officers for whom lobbying represents a significant part of their duties. The other list will include only senior officers for whom lobbying represents any part of their duties. Former DPOHs and identified member of a Prime Minister's transition team who do not have an exemption may only be included on the latter list. The registration process will collect the information required to create these lists automatically.

Transition measures

On July 9 2007, most of the requirements previously included in the February 2006 *Conflict of Interest and Post-Employment Code for Public Office Holders*, were incorporated in the subsequent Conflict of Interest and Post-employment Act, except the provision dealing with the five-year prohibition on lobbying. During the transition period set between July 9 2007 and the coming into force of the *Lobbying Act* on July 2, 2008, the five-year prohibition on lobbying continued without the possibility of requesting an exemption. Since July 2, 2008, the five-year prohibition on lobbying is administered under the authority conferred upon the Commissioner of Lobbying by the *Lobbying Act*. Individuals who left a DPOH position between July 9 2007 and July 2, 2008 are subject to a five-year prohibition on for which no exemption may be granted.

Related Documents

"Exemption Review Process for the Five-Year Lobbying Prohibition"

Guide to Registration (2008) – Consultant Lobbyists
Guide to Registration (2008) – In-house Lobbyists (Corporations)

Guide to Registration (2008) – In-house Lobbyists (Organizations)

Interpretation Bulletin: *"A Significant Part of Duties ("The 20% Rule")"*

