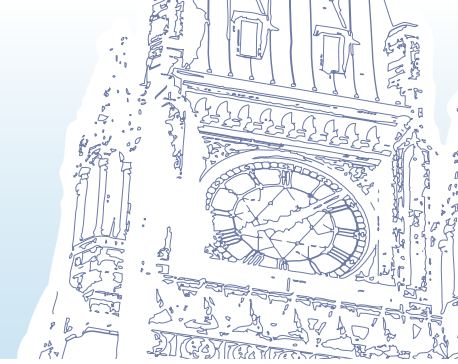




Lobbying Act Implementation Notice #5



Communication with a Designated Public Office Holder

Date: February 1, 2009

Background

The *Lobbying Act* introduced a requirement that consultant lobbyists file a return with the Commissioner of Lobbying if they communicate with a designated public office holder (DPOH) under certain conditions. Similarly, the senior officer of a corporation or organization which employs one or more in-house lobbyists must file a return with the Commissioner of Lobbying if such communications occur. In both cases, returns must be filed on a monthly basis.

This requirement should not be confused with the initial requirement to file a return, which is continued from the *Lobbyists Registration Act*. If the conditions for registration set out in the *Lobbying Act* are met, an initial return must be filed whether communication with a DPOH will take place or not.

Types of Communications That Must Be Reported

The *Lobbyists Registration Regulations* require that oral and arranged communications with a DPOH must be reported. Communications must be both oral and arranged in advance for reporting to be required.

Example #1 A lobbyist is registered to lobby Health Canada on a policy issue. She calls the office of the Minister of Health and arranges for her client and herself to meet with the Minister's Chief of Staff the following week. The meeting takes place as scheduled. In this example, the provisions of the *Lobbying Act* relating to communication with a DPOH would apply as follows:

- A monthly return containing certain details about the meeting with the Chief of Staff must be filed no later than the 15th day of the month following the meeting.

Example #2 A professional association is registered as an in-house lobbyist (organization) to lobby Environment Canada with respect to proposed legislation that is of interest to the association's members. The Vice-President, Government Relations, for the association, who is listed as being one of the association's registered lobbyists, is having lunch at a downtown restaurant. As he is leaving, he notices an Assistant Deputy Minister from Environment Canada in the cloakroom. He introduces himself, briefly states his association's interest in the proposed legislation, and arranges to meet the ADM over lunch the following week. The lunch meeting takes place as scheduled. In this example, the provisions of the *Lobbying Act* relating to communication with a DPOH would apply as follows:

- No monthly return would be required with respect to the meeting in the cloakroom.
- A monthly return containing certain details about the meeting must be filed no later than the 15th day of the month following the arranged lunch meeting.

Example #3 A consultant lobbyist is registered to lobby Industry Canada on behalf of a client who is seeking a repayable contribution to help develop a new product. He calls the office of the Deputy Minister and arranges for his client and himself to meet with the Deputy Minister the following week. The meeting takes place as scheduled but the lobbyist is unable to attend. In this example, the provisions of the *Lobbying Act* relating to communication with a DPOH would apply as follows:

- No monthly return would be required regarding the meeting with the Deputy Minister.

Example #4 A company is registered as an in-house lobbyist (corporation) to lobby several federal government departments with respect to a new policy that will affect manufacturing. Over the course of several months, meetings take place with officials at the Director-General and Director level and with members of Parliament who are not designated public office holders. In this example, the provisions of the *Lobbying Act* relating to communication with a DPOH would apply as follows:

- No monthly returns regarding communication with a DPOH would be required for any of the months during which this lobbying took place

Exceptions

The *Lobbyists Registration Regulations* exclude certain oral and arranged communications from the monthly reporting requirement when the communications are initiated by a public officer holder. Consultant lobbyists must only report communications initiated by a designated public office holder if they relate to the awarding of contracts, grants, contributions or other financial benefits. In-house lobbyists must only report communications initiated by a designated public office holder if they relate to the awarding of grants, contributions or other financial benefits.

It is important to note that the exceptions relate only to the requirement to file a monthly return regarding communications with a DPOH, not to the initial and ongoing requirement to register and to file monthly returns for other reasons that are set out in the *Lobbying Act*.

Example #5 A company is registered as an in-house lobbyist (corporations) to lobby several departments with respect to changes in tax policy and legislation. An Assistant Deputy Minister at the Department of Finance contacts the company, along with some other companies in the financial sector to obtain their views on a proposed tax measure. The meeting takes place and is attended by the President of the company, who is listed as a lobbyist in the company's registration.

In this example, the provisions of the *Lobbying Act* relating to communication with a DPOH would apply as follows:

- No monthly return regarding communication with a DPOH would be required for this meeting.

Example #6 A consultant lobbyist is registered to lobby the National Research Council on behalf of a client who is seeking a repayable contribution to help develop a new product. The Minister of Industry has expressed interest in learning more about the product. His staff calls the lobbyist and arranges for a briefing with the Minister and the Deputy Minister. In this example, the new provisions of the *Lobbying Act* relating to communication with a DPOH would apply as follows:

- A monthly return containing certain details about the meeting must be filed no later than the 15th day of the month following the arranged briefing.

Content of the Monthly Report

The information related to communication with a DPOH that must be included in a monthly return is set out in the *Lobbying Act* and the *Lobbyists Registration Regulations*. The information required, which is the same for all lobbyists, is as follows:

- the name of the DPOH with whom the communication took place,
- the position title of the DPOH,
- the name of the branch or unit and the name of the department or other government institution in which the DPOH is employed or serves at the time of the communication,
- the date of the communication, and
- the subject matter of the communication.

Since July 2, 2008, the *Lobbyists Registration System* allows entry of this information in a return. Lobbyists are also able to carry out the following:

- Enter the names of additional DPOHs in the same report, if more than one DPOH was present during a communication;
- Choose subject matter that has already been registered from an automatically generated list; and
- Add new subject matter if it arose during the communication.

Identifying DPOHs

In order for lobbyists to fulfil their reporting responsibilities, they must know whether the public office holder with whom they are communicating is a DPOH. The Office of the Commissioner of Lobbying has undertaken a number of outreach activities to inform DPOHs of their status under the *Lobbying Act* which will enable DPOHs to be certain of their status so that they can confirm it to a lobbyist when asked. The *Lobbying Act* however, places the obligation upon lobbyists to ensure that they are aware if they communicate with a DPOH.

Confirmation by DPOHs of the Content of a Monthly Return

The *Lobbying Act* provides the Commissioner of Lobbying with the power to require DPOHs to confirm information that has been submitted by lobbyists in monthly returns and, if necessary, to correct or complete it. Some important aspects of this provision include the following:

- The provision applies to both current and former DPOHs. Consequently, the Commissioner may ask a retired DPOH, for example, or a DPOH who has transferred to another position in the government, to verify the content of a return.
- The *Lobbying Act* is not specific about the number of returns that the Commissioner may choose to have confirmed, nor about the frequency of confirmations. Depending on the volume of such returns, the number could range from confirmation of all returns to confirmation of some portion based on a sampling method.
- DPOHs will have 30 days to respond to a request for confirmation of a return from the Commissioner.
- The Commissioner may report to Parliament on the failure of a present or former DPOH to respond to a request for confirmation or on the provision of an unsatisfactory response to such a request.

The *Lobbying Act* does not specify that DPOHs must keep records, only that they confirm the information provided by a lobbyist. However, it would be reasonable to expect that as DPOHs hold senior positions in nearly all cases, some means of keeping track of arranged meetings or telephone calls would be maintained pursuant to existing government records management policies and practices. It would be particularly important to have such records available in the event that a DPOH disagrees with the information reported by a lobbyist.

Related Documents

Lobbying Act Implementation Notice #2 –
Designated Public Office Holders

Lobbying Act Implementation Notice #4 –
Monthly Returns

