

The Lobbying Act

*A Summary of
New Requirements*

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Canada

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Introduction

On July 2, 2008 the *Lobbying Act* will come into force, bringing with it new accountability and transparency rules for lobbyists. Unlike the current *Lobbyists Registration Act*, the *Lobbying Act* also includes new obligations for the clients of lobbyists and for certain public office holders.

This brochure provides information:

For Canadians, on

- A definition of lobbying
- A description of the Registry of Lobbyists

For Lobbyists, on

- Monthly reporting on communications with Designated Public Office Holders
- Other new reporting requirements
- A prohibition on charging contingency fees

For Clients of Lobbyists, on

- A prohibition on paying contingency fees

For Designated Public Office Holders, on

- A five-year post-employment prohibition on lobbying
- The requirement to verify monthly reports made by lobbyists, if requested by the Commissioner of Lobbying

Lobbying

The *Lobbying Act* defines activities that, when carried out for compensation, are considered to be lobbying. These activities are detailed in the *Lobbying Act*. Generally speaking, they include communicating with public office holders with respect to changing federal laws, regulations, policies or programs, obtaining a financial benefit such as a grant or contribution, in certain cases, obtaining a government contract, and in the case of consultant lobbyists (see below), arranging a meeting between a public office holder and another person.

Public office holders include employees of the federal public service, Members of Parliament, Senators and many others in government.

The *Lobbying Act* provides exemptions for certain types of communication, such as simple requests for information, and for certain individuals, such as members of another level of government in Canada.

Lobbyists

The *Lobbying Act* defines three types of lobbyists:

Consultant Lobbyist: A person who is hired to communicate on behalf of a client. These individuals may be professional lobbyists but could be any individual who, in the course of their work for a client, communicates or arranges meetings with a public office holder.

In-house Lobbyist (Corporation): A person who is employed by an entity that operates for profit, such as a bank or a manufacturer. The entity is registered by its most senior paid officer as a corporation that lobbies. Details about certain individuals who communicate with public office holders are listed in the registration.

In-house Lobbyist (Organization): A person who is employed by a non-profit entity such as a university, a charity or an association. The entity is registered by the most senior paid officer as an organization that lobbies. Details about certain individuals who communicate with public office holders are listed in the registration.

The Registry of Lobbyists

The Registry of Lobbyists is the principal means provided under the *Lobbying Act* to ensure transparency with regard to lobbying of public office holders. Using the Internet, the online Registry may be searched free of charge, 24 hours a day, seven days a week at www.lobbycanada.gc.ca. The Registry contains, but is not limited to, detailed information about lobbyists and their activities including:

- Lobbyist or registrant's name
- Client name
- Federal institution being lobbied
- Subject matter and particulars of the lobbying
- Lobbying methods used
- Government funding received by the client or employer
- An indication whether a lobbyist was a former public office holder as well as details about offices held
- For in-house lobbyists, the name of the corporation or organization, and the names of lobbyists employed there
- Information on oral and arranged communications with certain public office holders (see page 4 of this brochure)

The New Lobbying Act

The *Lobbyists Registration Act* has been in place since 1989. Under the *Federal Accountability Act* it has been amended and renamed the *Lobbying Act*. Major changes included in the *Lobbying Act* are:

- A new Commissioner of Lobbying, who is an independent Agent of Parliament with authority to enforce the *Lobbying Act* and the *Lobbyists' Code of Conduct*
- Introduction of the concept of designated public office holder (DPOH). This group includes Ministers, certain senior officials and others who may be designated as DPOHs
- Monthly disclosure by lobbyists of certain details about their lobbying activities
- A five-year post-employment prohibition for DPOHs and designated members of Prime Minister's transition teams, on lobbying the Government of Canada
- A ban on any payment and receipt of any benefit that is contingent on the outcome of a consultant lobbyist's activity

- Extension from two to ten years of the period during which potential summary conviction infractions under the *Lobbying Act* may be investigated and prosecution may be initiated
- Doubling of the monetary penalties for lobbyists who are found guilty of breaching the requirements of the *Lobbying Act*.

Not all the changes mentioned above are described in this brochure. This document highlights key new requirements and obligations that lobbyists, their clients and certain public office holders must fulfill as of July 2, 2008. More details on the *Lobbying Act* and how it will work are available at www.lobbycanada.gc.ca.

New: Monthly Reporting of Communications

The *Lobbyists Registration Act* requires lobbyists or registrants to register in an initial return, all types of communication with public office holders. This filing requirement has not changed under the *Lobbying Act*. However, in addition to the current initial registration, the new *Lobbying Act* contains provisions that will require lobbyists to file monthly returns if they carry out oral and arranged communications with designated public office holders.

Designated public office holders (DPOHs) are key decision makers within government. They include but are not limited to: Ministers, Ministers of State and their exempt staff; Deputy Heads; Associate Deputy Ministers; Assistant Deputy Ministers; any positions that have been designated by regulation, such as certain senior members of the Canadian Forces, and others.

Oral and arranged communications include telephone calls, meetings and any other communications that are arranged in advance.

The return must disclose, for each communication that took place in a given month: the date of the communication with a DPOH; the name and title of all designated public office holders who were the object of the communication; and the subject of the communication. The return must be submitted to the Commissioner of Lobbying no later than the 15th day after the end of the month covered by the report.

The first monthly returns will be due no later than August 15, 2008. The Lobbyists Registration System and the Registry have been modified to accept and display these new monthly returns as of July 2, 2008.

New: Verifying Monthly Returns

The Commissioner of Lobbying may require any present or former DPOH to verify information derived from one or more monthly returns.

- The Commissioner will contact DPOHs directly to request verification.
- DPOHs will have 30 days to respond to a verification request made by the Commissioner. The response may be:
 - a written response confirming the accuracy and completeness of the information, or
 - a written response containing corrected and completed information
- Where a DPOH has found the information provided by a lobbyist in a return to be incorrect or incomplete and informs the Commissioner of Lobbying of this, the Commissioner will pursue the matter with the lobbyist. The DPOH may be contacted by the Commissioner if further information is required.
- Every return will not necessarily be verified. The Commissioner may develop a sampling method to verify a proportion of returns.
- The Commissioner may report to Parliament on:
 - the failure by a present or former DPOH to respond to a verification request, or
 - the provision by a present or former DPOH of an unsatisfactory response

New: Ban on Contingency Fees

Some lobbyists base part or all of the fee that they charge on the degree of success achieved through their work. For example, if the grant, contribution or contract that they are helping to obtain is awarded to their client, or if a desired law, regulation or program change is implemented, they are paid in full. If not, they receive a lesser amount or perhaps nothing at all. This type of arrangement is called a contingency fee, because payment is contingent on the success of the undertaking.

The existing *Lobbyists Registration Act* does not forbid the receipt or payment of contingency fees but does require lobbyists to disclose such arrangements.

The new *Lobbying Act* bans contingency fees entirely.

- Consultant lobbyists are not permitted to receive any payment that is in whole or in part contingent on the outcome of their lobbying.
- Clients of consultant lobbyists are not permitted to make any such payment to a consultant lobbyist that they have retained.

The *Lobbying Act* provision banning contingency fees applies only to consultant lobbyists and their clients. It does not apply to in-house lobbyists employed by a corporation or by an organization.

New: Five-year Prohibition on Lobbying

The *Lobbying Act* prohibits former designated public office holders and former designated members of Prime Minister's transition teams from lobbying during a period of five years after they cease to carry out those responsibilities. This prohibition applies in the following situations:

- An individual may not act as a consultant lobbyist for a period of five years after he/she ceases to be a designated public office holder or ceases to be a designated member of a Prime Minister's transition team.
- An individual who is employed as an in-house lobbyist (organization) may not lobby for a period of five years after he/she ceases to be a designated public office holder or ceases to be a designated member of a Prime Minister's transition team.
- An individual who is employed as an in-house lobbyist (corporation) may not lobby for a period of five years after he/she ceases to be a designated public office holder or ceases to be a designated member of a Prime Minister's transition team, if lobbying would constitute a significant part of the individual's work.

The effective dates of this prohibition are the following:

- For transition team members, the prohibition is effective for individuals who ceased to carry out their functions after January 24, 2006.
- For all designated public office holders, except Assistant Deputy Ministers and individuals who hold positions of an equivalent rank, the prohibition is effective for those who cease such duties on or after July 2, 2008.
- For Assistant Deputy Ministers and individuals who are of an equivalent rank, the prohibition is effective for those who cease such duties after the six-month period following July 2, 2008.

Individuals who hold a designated public office only because they are participating in an employment exchange program are not subject to this prohibition. In addition, the Commissioner of Lobbying is empowered to grant exemptions to the five-year prohibition on lobbying in certain situations described in the *Lobbying Act*.

New: Other Changes

A number of changes to the registration process and to the Registry itself will come into effect on July 2, 2008, as a result of the *Lobbying Act* and its regulations. They include:

- a requirement to file a monthly return if there are changes to the information in a return; if lobbying activity has terminated or if six months have passed since the last return was filed
- reduction from 30 days to 10 days of the time limit for making corrections to a registration when changes are requested by the Commissioner of Lobbying
- acceptance of online returns only, unless registrants are unable to use a computer due to a physical disability or lack reasonable access to a computer system
- a mandatory requirement for registrants to provide information about the subject matter and particulars regarding their lobbying activities
- elimination of the requirement for in-house lobbyists to provide information every six months regarding retrospective and prospective lobbying activities
- streamlining of the account creation and login procedures
- implementation of a new version of the online Lobbyists Registration System, featuring improved help and new capabilities to permit disclosure of additional information required under the *Lobbying Act*
- implementation of new procedures to allow individuals who lobby to identify themselves as members of boards of directors or as members of organizations.

For More Information

The Office of the Registrar of Lobbyists has prepared detailed information and tools to assist individuals in understanding the *Lobbying Act* and meeting its requirements:

- Implementation Notices for lobbyists, their clients, designated public office holders and others interested in details of how the *Lobbying Act* will work
- a new tutorial to assist lobbyists in using the Lobbyists Registration System.
- Powerpoint presentations on the *Lobbying Act* that may be downloaded and used for education within organizations.
- updated versions of Frequently Asked Questions and the Guide to Registration.

All of these products will be available prior to July 2, 2008 in both official languages at www.lobbycanada.gc.ca.

Questions may also be directed to:

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or

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