

U.S. Companies Beware: Canada's Tough New *Lobbying Act*

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On July 2, 2008, the new Canadian federal *Lobbying Act* became law. This new law includes features not seen before in federal or provincial lobbying legislation. With increased enforcement, larger criminal monetary penalties, and heightened scrutiny of lobbying-related matters, U.S. corporate counsel and businesses that lobby the federal government must be aware of the more stringent federal lobbying rules under this area of the law and the significant risks associated with non-compliance.

A major new development in federal lobbying related law is the introduction of monthly reporting requirements. Monthly reporting requirements exist for lobbyists when they lobby a Designated Public Office Holder (DPOH), need to make a change to their initial registration, or terminate or complete their lobbying undertaking.

With respect to DPOH's, a monthly report is necessary if a lobbyist initiates oral and arranged communication (e.g., a meeting or telephone conference) that amounts to lobbying as defined under the Act, with a DPOH. If this happens, a monthly report will have to provide the name of the DPOH, position title of the DPOH, the name of the branch or unit and the name of the department or other governmental organization in which the DPOH is employed, the date of the communication, and the subject-matter of the communication.

The fact that job titles are not uniform across the federal bureaucracy and that the *Lobbying Act* provides that DPOH's can occupy positions of comparable title and rank to those specifically mentioned in the Act, means that lobbyists will find it increasingly difficult to sort out whether the person they are lobbying is a DPOH or someone holding a lesser rank.

These new monthly reporting obligations mean that U.S. (and other foreign and Canadian) companies unaccustomed to these developments in Canadian lobbying law will have to adjust their practices in order to comply with the law. At the same time, U.S. companies, associations, partnerships and non-governmental organizations that deal with the Canadian government can expect their legislative and compliance related costs to increase.

In order to effectively address these new requirements, the Office of the Commissioner of Lobbying has enhanced investigatory powers and a mandate to enforce compliance. The Commissioner of Lobbying, an independent agent of Parliament, can ask DPOH's to verify the accuracy and completeness of contact report information that lobbyists submit and, if necessary, report to Parliament the names of those who do not respond.

The Commissioner also has the power to prohibit lobbyists convicted of any offence from communicating with the government as paid lobbyists for up to two years, in addition to publishing the names of violators in Parliamentary reports. As well, the *Lobbying Act* provides for criminal monetary fines of \$50,000 on summary conviction for lobbyists who do not comply with the requirements of the Act, and \$200,000 on proceedings by way of indictment, not to mention the possibility of up to six months imprisonment for the former and up to two years imprisonment for the latter.

Under the *Lobbying Act*, the legislative reporting obligation rests with the employee of companies that occupies the most senior position in the business and is paid for the performance of these duties, usually the president, CEO, or executive director. If a report is not filed, or if it is filed incorrectly, incompletely, or late, then liability rests with the CEO and they are subject to possible investigation or prosecution.

Although a CEO charged with a strict liability offence under the Act could argue that he or she took all reasonable care and exercised due diligence in order to comply with the *Lobbying Act*, the onus would lie on the CEO to prove such care was taken. Nevertheless, despite stiffer financial penalties under the *Lobbying Act*, they may be less powerful than the loss of reputation to a business, which would almost certainly have its name publicly tainted by the media and opposition political parties.

In the end, given the new tougher *Lobbying Act*, and the heightened compliance enforcement related mandate of the Commissioner of Lobbying, U.S. corporate counsel and in-house lobbyists need to be aware of and understand the recent changes to federal lobbying law in Canada ushered in by the new federal *Lobbying Act*.

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