



LOBBYIST REGISTRATION ACT AMENDMENTS

If your organization deals with the BC provincial government on a regular basis, you likely will be affected by the *Lobbyist Registration Amendment Act, 2009* which comes into effect on April 1, 2010.

This Act significantly expands the class of people considered to be "in-house lobbyists".

If your organization has an employee who meets the new definition of in-house lobbyist, then you must take action before April 1, 2010.

This newsletter deals with the changes to the *Lobbyist Registration Act* and compares the amended Act to the *Federal Lobbying Act*, which deals only with lobbying the federal government and federal public office holders.

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THE PROVINCIAL ACT AMENDMENTS

As of April 1, any individual or group of individuals in an organization who spend more than 100 hours per year lobbying the BC government or a public office holder on behalf of an employer will be required to register as an "in-house lobbyist." Prior to the amendments, the Act only required an employee to register if a "significant part" of their duties, determined to be 20% of an employee's time, involved lobbying.

In addition, the definition of "lobby" has been expanded. Lobbying now includes communicating with a public office holder¹ in an attempt to influence:

1. the development, enactment or repealing of a regulation or any program, policy, or directive of the Government or a Provincial entity²;
2. the awarding, amendment or termination of any contract, grant or financial benefit by or on behalf of the Government or a Provincial entity; and
3. a decision by the Cabinet to privatize a government service; or
4. a decision by the Cabinet to have the private sector deliver goods or services to the Government or a Provincial entity instead of the Crown.

Lobbyists are now prohibited from holding a government contract while they also provide paid advice to the Government regarding the same matter.

While the definition of "lobby" has been expanded, there continues to be certain areas where

communication with the Government or government officials is not considered lobbying. Oral and written submissions regarding the following are not considered to be lobbying:

1. Submissions which are a matter of public record made to a committee of the Legislative Assembly or to any body or person having jurisdiction or powers conferred by an Act;
2. Submissions concerning the enforcement, interpretation or application of any Act or regulation by the public office holder or with regards to the implementation or administration of any program, policy, directive or guideline by the public office holder; and

¹ The definition of "public office holder" includes members of the Legislature, officers or employees of the government of British Columbia, a person appointed to any office or body by or with approval of the

Lieutenant Governor in Council, a person appointed to any office or body by or with the approval of a minister, or an officer, director or employee of any government corporation.

² At this time the term "Provincial entity" has not been defined by regulation.



3. Submissions made to a public office holder in direct response to a written request from a public office holder for advice or comment.

REQUIRED FILINGS

A designated filer, defined as being (i) the most senior officer of the organization who receives payment for performing his or her function, or (ii) if there is no senior officer who receives payment, the most senior in-house lobbyist of an organization must file a return with the Registrar every 6 months.

The type of information required to be submitted to the Registrar has been expanded. Generally, the information required to be submitted for in-house lobbyists includes the name of the lobbyist and the organization the individual is working for, who is being lobbied, any affiliates of the organization which may benefit from the lobbying, and a summary of the business or activities of the organization.

This information is public information and is made available on the Ministry of Attorney General's website.

PENALTIES

First offences under the Act will continue to carry a maximum fine of up to \$25,000. Second offences now carry a maximum fine of up to \$100,000. The Registrar will have the power to bar a person who has committed an offence from lobbying for a maximum period of two years.

UPDATED FILINGS

Organizations which have employees that will fall under the new definition of "lobbyist" who are not currently registered must file returns before April 1, 2010. If returns have previously been filed with regards to an in-house lobbyist, the organization has until May 1, 2010 to file any amendments.

FURTHER CHANGES EXPECTED

We expect further substantive changes when new regulations are introduced and adopted.

THE FEDERAL ACT

The federal Act has similar requirements for lobbyist registration as the provincial Act. The definition of public office holder and lobbying are similar, except that the federal Act only applies to federal public office holders

and functions. An in-house lobbyist must be registered within two months of commencing to lobby.

The federal Act requires that the most senior paid officer file the required returns for the whole corporation, and responsibility lies with that individual regardless of whether they lobby or not.

IMPORTANT DIFFERENCES

While the provincial Act and the federal Act are quite similar, there are a number of important differences to note:

1. The federal Act requires a lobbyist to be registered if a "significant" part of their duties involve lobbying. The Office of the Commission of Lobbying of Canada takes the position that 20% or more of an employee's duties is a significant part.

2. Under the federal Act monthly communications reports are required to be filed when a prescribed communication occurs between an in-house lobbyist and a Designated Public Office Holder³. The following communications between an in-house lobbyist and Designated Public Office Holders are required to be reported:

- (i) the development of any legislative proposal by the Government of Canada or a member of Parliament;
- (ii) the introduction, passage, defeat or amendment of any Bill or resolution in Parliament;
- (iii) the making or amendment of regulations, the development or amendment to any policy; or
- (iv) the awarding of any grant, contribution or other financial benefit by or on behalf of the Government of Canada;

3. If no monthly return is required to be filed for five straight months, then a return must be filed to that affect; and

4. Penalties for violating the federal Act are a maximum fine of up to \$50,000, six months in jail or

³ The definition of Designated Public Office Holder includes: (a) 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*, (b) any other public office holder who, in a department (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 (c) any individual who occupies a position that has been designated by regulation under paragraph 12(c.1).



both and, in egregious situations, to a maximum fine of up to \$200,000, two years in jail or both.

WHERE CAN I GET MORE INFORMATION

THE PROVINCIAL ACT

Designated filers may complete all the required registration and renewal documents online at: <http://www.ag.gov.bc.ca/lra/index.htm>.

The *Lobbyist Registration Act*, as currently in force: http://www.bclaws.ca/Lobbyist_Registration_Act

Lobbyist Registration Act Regulations: http://www.bclaws.ca/LRA_Regs

Lobbyist Registration Amendment Act, 2009: http://www.leg.bc.ca/39th1st/3rd_read/LRAA

THE FEDERAL ACT

The Office of the Commissioner of Lobbying of Canada website:

<http://www.ocl-cal.gc.ca/>

The *Lobbying Act*:

http://laws.justice.gc.ca/Lobbying_Act

The content of this Newsletter is intended to provide information on Bull, Housser & Tupper LLP, our lawyers and recent developments in the law. The information contained herein is summary in nature, and does not constitute legal advice. For additional details or advice concerning specific situations please contact Bill McFetridge at 604.641.4825 or wjm@bht.com, or any member of our Business Group.

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