



Lobbying in Canada

How will the new Federal Accountability Act affect your current lobbying practices?

The *Federal Accountability Act* has now received Royal Assent. It's a mammoth legislative attempt in the wake of the "Sponsorship Scandal" to "change the way business is done in Ottawa forever," according to Prime Minister Harper. The Act amends scores of existing laws, including several amendments to the *Lobbyists Registration Act* (renamed the *Lobbying Act*). Many of the lobbying-related amendments are not yet in force. However, it's important for Canadian companies, associations and non-governmental organizations in the food industry that deal with the government of Canada to be aware of the existing and upcoming legislative and regulatory compliance issues (and penalties associated with non-compliance) that will arise out of the new *Lobbying Act*.

The *Lobbying Act* will not include any changes to the scope of communication covered by the Act. Similar to the *Lobbyists Registration Act*, the *Lobbying Act* will apply to communications that paid individuals have with government in respect to government decisions. It will not apply to submissions made to government that are a matter of public record, requests to government for information, or communications with respect to the enforcement, interpretation or application of statutes or regulations. However, there will now be a ban on any payment or other benefit that is contingent on the outcome of any consultant lobbyist's activities. Perhaps the most onerous amendment is the one that increases reporting requirements by lobbyists who communicate with Designated Public Office Holders (DPOH).

DPOHs include ministers and their staff, and any other public office holder who occupies the senior executive position of a department or agency, or is an associate deputy minister or assistant deputy minister within a prescribed federal department under the *Financial Administration Act*. This includes specified divisions or branches of the federal public administration and departmental corporations. Both "consultant" and "in-house" lobbyists will be required to file a monthly return during any month in which they communicate with a DPOH. This must detail the name of the DPOH, the date of the communication, particulars to identify the subject matter of the communication, and any other information that is prescribed in regulations. There are huge privacy and confidentiality issues here that will have to

be considered.

Another important change is that in addition to advising if they were former public office holders and providing descriptions of the offices held, lobbyists will be required to include in their returns which of those offices, if any, under the new *Lobbying Act* qualified the individual as a DPOH, and the date on which the individual last ceased to hold the designated public office. With few exceptions, those who held DPOH positions will be restricted from lobbying for five years after holding public office.

The new *Lobbying Act* will also establish the Office of the Commissioner of Lobbying, who will have expanded investigative powers. The Commissioner will have the authority to launch investigations of alleged breaches of the *Lobbying Act* or the *Lobbyists' Code of Conduct*. In addition there will be increased time allowed for the investigation and initiation of prosecution for possible infractions or violations under the Code or the Act (previously the limitation period was two years; now it is up to 10 years).

Everyone in the food industry who engages in lobbying activities with the federal government must be aware of these changes, and conduct their lobbying activities so as to meet their legal obligations under the *Lobbying Act*. Penalties for contravening the *Lobbying Act* will be twice as much as under the *Lobbyists Registration Act*, and the two levels of penalties will be \$50,000 and/or up to six months imprisonment for lesser offences, and \$200,000 and/or up to two years imprisonment for more serious offences. In addition, if convicted, lobbyists could be prohibited from lobbying for two years.

Until the new *Lobbying Act* regulations are enacted, there will continue to be uncertainty with respect to the kinds of measures that will be implemented in order to ensure lobbyists comply with the new requirements of the Act. As a result, companies will want to closely monitor the changes as they come.

Thank you to Catherine Beaudoin, an associate at Gowlings who has become a specialist on the new rules and provided the basic content for this article.

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