Communications between individuals representing a corporation or its employees and government officials may be subject to strict reporting requirements. Specific rules apply to the lobbying of officials in the Canadian federal government, and in some provinces and municipalities. Each of these governmental bodies has its own rules, and it is wise to gain an understanding of them before undertaking communications with government officials.

At the federal level, the Lobbying Act provides that certain types of communications between individuals and "public office holders" must be reported. Under the Act, individuals who work with or deal with governmental officials or employees may have an obligation to disclose information relating to these discussions. Corporate employees may also be subject to the Lobbying Act, depending on the nature of their work and the time invested in interacting with Government of Canada employees, such as politicians, officials and representatives of Canada.

1. Registrable communications
2. Lobbying

1. Registrable communications

Not all types of communications with public office holders constitute lobbying activities. However, if they fall into one of the following categories, it is likely that the communications should be registered:
The development of any legislative proposal by the Government of Canada, or by a member of the Senate or the House of Commons

The introduction, passage, amendment or defeat of a bill or resolution in the federal Parliament or in a provincial parliament

The making or amendment of any regulation as defined in subsection 2(1) of the Statutory Instruments Act

The development or amendment of any policy or program of the Government of Canada

The awarding of any grant, contribution or other financial benefit by or on behalf of the Government of Canada

The awarding of any contract by or on behalf of the Government of Canada

The arrangement of a meeting between a public office holder and any other person to discuss the subjects above

As well, in some provincial jurisdictions, any communications made in the normal course of selling an individual's or a corporation's products or services, or in entering into a contract with a provincial government, are also registrable as lobbying activities.

2. Lobbying

a. Public office holder

Pursuant to the Lobbying Act, the term "public office holder" refers to any officer or employee of the Government of Canada, including:

- A member of the Senate or the House of Commons and any person on their staff
- An appointee to any office or body by or with the approval of the governor in council, or a minister of the Crown other than a judge receiving a salary under the Judges Act or the lieutenant-governor of a province
- An officer, director or employee of any federal board, commission or other tribunal as defined in the Federal Courts Act
- A member of the Canadian Armed Forces
- A member of the Royal Canadian Mounted Police

If an individual representing an interest group or the employee of a corporation enters into discussions with a public office holder, they may be considered to be involved in lobbying activities.
b. Designated public office holder

The Lobbying Act includes a specific category of individuals called "designated public office holders" (DPOHs), who are defined as officials responsible for high-level decision-making in government. The DPOH category includes the following positions:

- A minister of the Crown or a minister of state and any person employed in his or her office
- The leader of the Opposition or the senior staff in the offices of the leader of the Opposition, both in the House of Commons and the Senate
- A member of Parliament and any person on their staff
- A senator and any person on their staff
- Any public office holder who occupies the senior executive position in a department - whether by the title of deputy minister, chief executive officer or by some other similar title
- An associate deputy minister or an assistant deputy minister, or a person who occupies a position of comparable rank
- The chief of the defence staff, the vice-chief of the defence staff, the chief of maritime staff, the chief of land staff, the chief of air staff, the chief of military personnel or a judge advocate general
- Any position of senior adviser to the Privy Council to which the office holder is appointed by the governor in council
- The comptroller general of Canada

Lobbyists are obligated to provide information to the Office of the Commissioner of Lobbying about their communications with DPOHs. The Lobbying Act requires lobbyists to produce a monthly report detailing when they lobby a DPOH, need to change their initial registration, or when they terminate or complete their lobbying undertaking. If a lobbyist initiates oral and arranged communication with a DPOH - e.g., a meeting or telephone conference - that amounts to lobbying as defined under the Act, they will need to include it in the report.

The monthly report must provide:

- The name of the DPOH
- Position or 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
• The subject matter of the communication

c. Employees or in-house lobbyists

At the corporate level, registration is required when one or more employees communicate with public office holders on behalf of their employer, and those communications constitute a significant part of one employee's duties (or would constitute a significant part of one employee's duties if they were performed by a single person). This evaluation must be conducted on a monthly basis.

A rule of 20 per cent applies when evaluating whether a significant part of an employee's duties is invested in communications with public office holders. If 20 per cent or more of an employee's time each month - or of a number of employees' total time each month - is allocated to communications with public office holders, the activities are likely registrable.

Evaluating whether 20 per cent or more of an employee's duties are in relation to communications with public office holders involves tracking time spent in preparation - i.e., in research, drafting, planning, compiling, travelling, etc. - and time spent actually communicating with public office holders. For instance, a one-hour meeting may require seven hours of preparation and two hours of travel time. In this case, the time related to lobbying a public office holder would be a total of 10 hours.

Under the Lobbying Act, the legislative reporting obligation (relating to both public office holders and DPOHs) rests with the company employee who occupies the most senior position in the business and who 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, who is then subject to possible investigation or prosecution.

Although a CEO charged with a strict liability offence under the Act could argue that they took all reasonable care and exercised due diligence in order to comply with the Lobbying Act, the onus would lie on them to prove that such care was taken. Of even greater concern than the stiff financial penalties that may be levied under the Lobbying Act is the damage to reputation that would result from having the business' name tainted in the media and by opposition party politicians.

d. Infractions and enforcement

The Office of the Commissioner of Lobbying has significant investigatory powers and a
mandate to enforce compliance. As an independent agent of Parliament, the commissioner can ask DPOHs to verify the accuracy and completeness of contact report information submitted by lobbyists 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 an offence from communicating with the government as paid lobbyists for up to two years, and can publish the names of violators in parliamentary reports. As well, the Lobbying Act provides for criminal monetary fines of $50,000 on summary convictions 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 of imprisonment for the former and up to two years of imprisonment for the latter.

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