
The Office of Commissioner of Lobbying

by Karen E. Shepherd

The Office of Commissioner of Lobbying was established under the Federal Accountability Act in 2006 although the Lobbying Act itself has only been in force for about one year. This article provides a brief history of Canadian lobbying legislation in order to focus upon the changes to the federal lobbying regime contained in the Lobbying Act and how those changes have been implemented to date. It also identifies challenges in the legislation and how they have been addressed.

The first *Lobbyists Registration Act* came into force in 1989, but, for all practical purposes, the disclosure requirements were no more than what you would find on a business card. In 1996, the *Lobbyists Registration Act* was amended to require lobbyists to disclose more information such as which departments they were lobbying, the subject matter and means of communication they were using. The 1996 legislation also introduced a requirement for the former Ethics Counsellor to establish a code of conduct for lobbyists. The *Lobbyists' Code of Conduct* was developed by the Ethics Counsellor and came into force in 1997.¹

At that time, the Ethics Counsellor was responsible for administering the *Lobbyists' Code of Conduct*. However, he was also the Prime Minister's Ethics Counsellor, providing general advice to the Prime Minister regarding ethical matters, advising public office holders on the Conflict of Interest Code, in addition to maintaining overall responsibility for the administration of the *Lobbyists Registration Act*. This situation remained in place for nearly 10 years.

In 2004, the *Parliament of Canada Act* was amended to separate the lobbyists registration function from the ethics regime and the conflict of interest counselling functions. The newly created positions

of Ethics Commissioner and Senate Ethics Officer reported directly to Parliament, while the Registrar of Lobbyists became a part-time position in the Lobbyists Registration Branch of Industry Canada. Industry Canada's Assistant Deputy Minister of Comptrollership and Administration assumed the responsibilities of the Registrar of Lobbyists at that time.

Significant amendments to the *Lobbyists Registration Act* came into force in June 2005. At that time, the Registrar's position and the Office of the Registrar of Lobbyists were moved out of Industry Canada's offices, into separate ones. The Registrar ceased to sit on Industry Canada's management committee and began to function more independently of Industry Canada. This increasing independence of the lobbyists registration function has been heightened over the past few years.

In early 2006, the new government made further significant changes to the Office of the Registrar of Lobbyists (ORL) by means of a rearrangement of the public service, making the Office a separate government department, with the Registrar of Lobbyists as the Deputy Head of that department. The Office was moved from within Industry Canada to the Treasury Board portfolio, so that reporting to Parliament was through the President of the Treasury Board.

A number of major changes to federal lobbying law were contained in the *Federal Accountability Act*. While

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the *Federal Accountability Act* was enacted in December 2006, the amendments to the *Lobbying Act* came into force on July 2, 2008. The coming into force of the *Lobbying Act* created the position of Commissioner of Lobbying as an officer of Parliament and the Office of the Commissioner of Lobbying (often referred to as the OCL).

I was initially appointed as the Interim Commissioner of Lobbying in 2008, and I was appointed on June 30, 2009 as the Commissioner of Lobbying for a term of seven years. This change was made to increase the independence of the person responsible for administering the Act and the *Lobbyists' Code of Conduct*.

The Office of Commissioner

The position of the Commissioner of Lobbying is one of seven Officers or Agents of Parliament. I am responsible for carrying out the mandate for the OCL that is set out in the *Lobbying Act*. My Office is required to report directly to Parliament on the administration of the Act and is accountable directly to Parliament regarding those reports. The Office no longer reports to Parliament through a Minister of the Crown, and in that respect, is clearly independent from the government of the day.

Accountability is the foundation upon which Canada's system of responsible government rests. Strong accountability assures Parliament and Canadians that its departments and agencies are using public resources efficiently and effectively and that they are promoting and safeguarding ethical practices. Transparency and accountability in the lobbying of public office holders contributes to the confidence and integrity of government decision-making. One of our goals at the OCL is to implement and administer the *Lobbying Act* in accordance with the clear direction of Parliament and the desire of Canadians for increased transparency and integrity within federal institutions.

As Commissioner of Lobbying, I believe that my principal responsibility is to ensure that lobbying activities conducted at the federal level are carried out in a transparent and ethical manner. The *Lobbying Act* aims to improve transparency by making it a requirement for lobbyists to register their lobbying activities and to file monthly communication reports when they are meeting with certain types of Public Office Holders. Increased disclosure requirements allow Parliamentarians and Canadians to know who is meeting with senior holders of federal public offices.

My Office's mandate includes maintaining a registry of lobbyists that is readily accessible to lobbyists and to the public, developing and implementing educational

programs to foster public awareness of the Act, and enforcing the provisions of the Act and the *Lobbyists' Code of Conduct*. I think that we can summarize the Office's mandate as seeking to ensure the transparency of lobbying activities, in order to preserve and enhance the Canadian public's confidence and trust in the federal government. In turn, this helps to provide Canadians with assurance that the government will make decisions that are ethical, equitable and impartial. My Office reports directly to both the House of Commons and the Senate, through the Speakers of each Chamber. This transparency in reporting helps to fulfill this mandate.

Implementation Challenges

There were a number of implementation challenges associated with the changes to the *Lobbying Act* contained in the *Federal Accountability Act*. The changes to the reporting requirements for lobbyists meant that significant modifications to the Lobbyists Registration System were required. In addition to amended reporting requirements, an entirely new additional reporting requirement was added. Lobbyists are now required to report "oral and arranged" communications with certain "designated public office holders" on a monthly basis. Although a person looking at the OCL website will see a seamless interface of the Lobbyists Registration System and the reporting of monthly communications, this is actually a new system developed for the purpose of monthly reporting that has been built and incorporated into the existing system for the registration of lobbyists. The development of this additional functionality and others for the website took many months, and actually began *before* the passage into law of the *Federal Accountability Act* in December 2006.

No transitional provisions were incorporated into the amendments to the *Lobbying Act*. On July 2, 2008, the changes became law and every registered lobbyist was, in effect, required to review their registration and update it. In addition, the requirement to report communications with designated public office holders came into effect at that time. This created a challenge for the OCL, as it was necessary to implement a new registration system, remind all registered lobbyists to update their registrations, and ensure that the new system for reporting communications with designated public office holders was functioning properly. This was accomplished over several months.

With respect to the reporting of communications with designated public office holders, the OCL has developed a method of monitoring the monthly reporting of communications as a means of quality

control for the reports. This process includes seeking confirmation from designated public office holders of the details of their communications with lobbyists. This is designed to ensure that the reports are accurate, and thus have value in ensuring the transparency of this reporting. In addition, although the accuracy of the reports has been quite high (over 90% accuracy), continued diligence will ensure that the quality of the reports remains consistent.

The *Lobbying Act* created a new five year ban on lobbying activity for designated public office holders and the authority for the Commissioner to grant exemptions from that prohibition. This created a new line of work for the Investigations Directorate of the OCL – reviews of requests for an exemption. Initially, a policy regarding an exemption review process was developed, based in large measure upon the administrative review process for allegations of impropriety under the *Lobbying Act* or the *Lobbyists' Code of Conduct*. To date, eleven applications for an exemption have been received. I have granted two, and a total of seven have been either denied or withdrawn. Two exemption reviews remain underway. (Decisions to grant exemptions are publicly available and posted upon the website.) The granting of exemptions has represented a challenge, for while it is clear that I may grant an exemption from the five-year prohibition, it is also very clear that Parliament considers this prohibition to be important. The Act clearly states that exemptions may not be granted if to do so would be contrary to the purposes of the Act. This was a key component of the changes to the *Lobbying Act* contained in the *Federal Accountability Act*. As a result, I have taken a strict view, choosing to use my authority to provide exemptions only in the most extraordinary circumstances.

I would like to mention three other substantial amendments to the *Lobbying Act* that are relevant. First, the Act now bans both the giving and receiving of contingency fees in relation to the services of consultant lobbyists. This new prohibition will certainly have an impact upon the manner in which consultant lobbyists are hired and paid. Second, the Commissioner has been given increased authority to

investigate alleged breaches of both the *Lobbying Act* and the *Lobbyists' Code of Conduct*, along with the ability to cease investigations. This will provide me with more flexibility to carry out my responsibilities. Third, a longer limitation period for purposes of prosecutions of offences under the *Lobbying Act* has been added. Each of these changes will impact positively upon the ability of my Office to enforce the Act and the Code.

I think that it is worth repeating the principles that are set out in the Preamble to the *Lobbying Act*, which did not change because of the passage of the *Federal Accountability Act*. Those principles have remained unchanged through the recent changes to the *Lobbyists Registration Act* and the *Lobbying Act* amendments. They are as follows:

- Free and open access to government is an important matter of public interest;
- Lobbying public office holders is a legitimate activity;
- It is desirable that public office holders and the public be able to know who is engaged in lobbying activities;
- A system for the registration of paid lobbyists should not impede free and open access to government;

The principles set out in the Preamble to the Act continue to guide our interpretation and application of the Act. They set out Parliament's view of the purpose of the *Lobbying Act* and provide a *raison d'être* for federal lobbying legislation.

As a final point, I will note that changes to the Act in the future may still occur. The Act provides for a parliamentary review five years after the previous legislative changes were made in 2005. As a result, the Act is eligible for parliamentary evaluation beginning in 2010.

Notes

1. For more information on the history of lobbying at the Federal level, see "Key Events in the History of the Canadian Lobbyists Registration Regime", at: http://ocl-cal.gc.ca/eic/site/lobbyist-lobbyiste1.nsf/eng/h_nx00267.html.