British Columbia enacts strict new rules in its lobbyist registration regime

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Sweeping changes in British Columbia's lobbyist regulatory regime came into force in May 2020 with amendments to the *Lobbyist Registration Act*, now renamed the *Lobbyist Transparency Act* (LTA), and new regulations. Under these changes, companies and other organizations communicating with public office holders in British Columbia, using in-house lobbyists or consultant lobbyists, must update internal compliance policies to account for these amendments, update active registrations, and determine whether they have triggered a new registration requirement.

The major changes that impact current and future registrants in British Columbia include:

- The elimination of the 100-hour registration threshold for in-house lobbyists;
- An immediate 10-day registration obligation for organizations employing in-house lobbyists;
- A welcome change in the timing requirement of registration for consultant lobbyists. They must now register within 10 days of **commencing lobbying activities**, rather than, under the former rule, within 10 days of entering into an undertaking to lobby on behalf of a client;
- An increase in the detailed information collected through the registration process;
- A new undertaking by registrants to file detailed "monthly returns" in addition to the initial "registration return";
- A prohibition on gift giving to public office holders; and
- Stricter administrative penalties for failure to comply with the LTA, including a two year prohibition on lobbying activities.

Registration thresholds and registration returns

The LTA eliminated the 100-hour lobbying threshold for in-house lobbyists to file registration returns and now most businesses must register within 10 days of communicating with a public officer holder (which includes virtually all provincial public servants) on a lobbying matter. The definition of lobbying remains broadly construed, however, it now includes the act of arranging a meeting between a public office holder and any other individual that seeks to influence a lobbying subject matter.

Consultant lobbyists must file a return within 10 days after "beginning to lobby on behalf of a client." This eliminates the uncertainty that existed surrounding when an "undertaking to lobby" begins, and what that meant. In-house designated filers of organizations (the most senior paid officer of the organization) must file a registration return within 10 days of the date the organization "first has an in-house lobbyist." This means both in-house lobbyists and consultant lobbyists must register within 10 days of their first lobbying activity. For example, the day a consultant or in-house lobbyist makes a telephone call or sends an e-mail to arrange a meeting, or the date of their first communication with a public office holder on a lobbying subject matter.

This strict registration threshold has a limited exception: any business or organization with fewer than six employees who collectively spend fewer than 50 hours lobbying over any consecutive 12-month period are not required to register. Despite meeting the requirements of the limited exception, any organizations whose primary purpose is to promote or oppose issues or represent the interests of their members must register. To determine whether a company's activities trigger a registration, the registrar recommends maintaining a record of time spent lobbying on an ongoing basis.

Designated filers (consultant lobbyist and in-house designated filers) are required to make "reasonable enquiries" to include new required third-party information in their registration returns:

- Provide the name and address of any third party that "controls or directs the activities of the client or organization" and "has a direct interest in the outcome of the lobbying activities"; and
- Provide the name and business address of any third party with a "direct interest in the outcome of the lobbying activity" that contributed at least $1,000 within the preceding 12 months to the reported lobbying activity.

The new "monthly return" obligation

All designated filers under the LTA, in-house and consultant lobbyists alike, must file a monthly return in the registry within 15 days of the end of the preceding month. While a registration return contains information about the lobbying that a consultant or in-house lobbyist may intend to do, a monthly return contains information about the lobbying completed in the preceding month.

A monthly return contains the following information:

- The name and position title of the senior public officer that was lobbied;
- The date of the lobbying activity;
- The names of the lobbyists who participated in the activity;
- The subject matter of the lobbying activity;
- Any information required to update, correct or clarify a registration;
- Information with respect to political, sponsorship or recall contributions given to the senior public office holder who was the object of the lobbying activity (or their political party or constituency association) or to a third party promoting the election of that public office holder or their political party if made on or after the date the writ was issued for the last provincial election; and
- Information with respect to any gifts promised or given to a public officer holder.

A “senior public office holder” means a provincial cabinet minister, parliamentary secretary, member of the legislative assembly (MLA), members of a minister’s, parliamentary secretary’s, or MLA’s office staff (other than administrative staff) including ministerial assistants, executive assistants, legislative assistants and senior members of the provincial public service. Companies should take care to ensure contact with such persons is identified and is properly recorded in monthly returns.

No monthly return is required if there is no lobbying activity in the applicable month and there are no updates, changes or clarifications to a current registration. Inactive registrants must still file a return every six months to declare that no lobbying activity occurred during that period. Failure to file a monthly return after six months will result in termination of registration within 30 days after the monthly return was due.

Prohibition on lobbyist gift giving

The LTA now includes a broad prohibition on gift giving (direct or indirect) by lobbyists to the public office holder that they are lobbying. The only exception is for gifts given under a protocol or social obligation that normally accompanies the responsibilities of the public office holder, such as a token of appreciation when acting as a keynote speaker and the total value of gifts given or promised to a public officer holder in a 12-month period is less than $100.

All gifts given or promised to be given by a lobbyist to all public office holders being lobbied by that lobbyist must be declared in the lobbyist’s registry.

Conclusion

All current registrations (active and terminated) have been migrated to the new registry in British Columbia. The LTA contains a short transition period from May 4, 2020 to June 15, 2020 for lobbyists to ensure their registrations are compliant and to file their first monthly return. Given the COVID-19 pandemic, the government of British Columbia extended the transition period for front-line businesses until September 15, 2020.

Companies should take advantage of the updated guidance documents and the Frequently Asked Questions provided by the Officer of the Registrar of Lobbyists to understand their compliance obligations with the LTA. Compliance with these new changes are extremely important as violations include administrative monetary penalties of up to $25,000 and a prohibition on lobbying for up to two-years.

If you have questions about the amendments to the LTA or want to better understand your registration and reporting obligations and the risks that non-compliance pose for your business, please contact a member of our Public Policy & Government Relations team.

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