Federal lobbying commissioner proposes broad amendments to Lobbying Act

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The Office of the Commissioner of Lobbying of Canada recently released a report with 11 preliminary recommendations (the Recommendations) to amend the federal *Lobbying Act* (the Act). The Recommendations aim to enhance the values of transparency, fairness, clarity, and efficiency under the Act and they address registration, compliance, and the administration and enforcement of the Act.

If Parliament accepts the Recommendations, and the Act is amended, there will be broad compliance implications for consultants and in-house lobbyists. For example, the Recommendations will impact compliance with the Act in the following ways:

- Corporations and organizations will be required to automatically register for all lobbying activities, regardless of the amount of lobbying activity undertaken. This will increase the number of corporations/organizations that are required to register under the Act.
- The amendments will significantly shorten the registration deadline for corporations/ organizations with in-house lobbyists (from two months to 15 days).
- The registration deadline for consultant lobbyists will be extended by five days (from 10 days to 15 days).
- Organizations will need to disclose information about any controlling relationships that have an interest in the outcome of an organization's lobbying activities in their registration.
- Corporations will need to list all employees engaged in lobbying activities and not just those employees whose lobbying activities includes a "significant part of [their] duties". As a result, more of a corporation's employees will be subject to the requirements under the Lobbyists' Code of Conduct.
- Corporations and organizations will need to list in their registrations all paid board members (deemed as employees) who undertake lobbying activities on behalf of the corporation/organization.
- All registrants must file monthly communication reports for all oral communications with designated public office holders (DPOH) and must include more contextual information, including naming all persons present during an oral communication, and identifying whether the lobbying occurred during a sponsored trip or a lobbyist event, if gifts were offered, and if political donations were provided.

- Consultant lobbyists must report all meetings between DPOHs and their clients, even if they are not present at the meeting.

From an enforcement perspective, the commissioner seeks to enhance its investigative powers by making any order issued under the Act an order of the Federal Court. The commissioner also seeks to refer ongoing investigations to provincial lobbying authorities where alleged non-compliance with provincial acts is uncovered in the course of an investigation. Registrants may also be subject to a variety of new sanctions for non-compliance with the Act, including the application of Administrative Monetary Penalties, the requirement of mandatory training, and the issuance of temporary prohibitions from lobbying activities. These amendments seek to expand the enforcement tool kit from the limited criminal sanctions currently offered under the Act.

The Recommendations are as follows:

Recommended amendments to *Lobbying Act*	**Current requirements under the *Lobbying Act* and regulations**
1. With respect to in-house lobbyists, to removed the "significant part of duties" registration threshold and replace it with an automatic obligation to register all lobbying activities, subject to limited exemptions	In-house lobbyists only trigger a registration requirement under the Act if collectively the lobbying activities of all employees of the corporation or organization amount to 20 per cent or more of the duties of a single full-time employee.
2. Amend the registration deadline for consultant and in-house lobbyists to 15 days.	In-house lobbyists have two months after reaching the “significant part of duties” threshold to register under the Act. Consultant lobbyists must register within 10 days after entering into an undertaking to lobby.
3. Harmonize the disclosure requirements for “corporations” and “organizations”, including the requirement to list all employees engaging in lobbying communications and to disclose all entities that have a direct interest in the outcome of the lobbying activity.	Organizations must list each employee that engages in in-house lobbying, but are not obligated to provide information about other controlling relationships that may have an interest in the outcome of an organization’s lobbying. In contrast, corporations must list the name of each senior officer that engages in any lobbying activity and only employees whose lobbying activities constitute a “significant part of [their] duties” and must list all parent and subsidiary corporations that have a direct interest in any lobbying activities.
4. Deem paid members of boards of directors to be employees of corporations and organizations.	Board members are not considered employees of the corporations or organizations that they serve. Therefore, board members do not qualify as in-house lobbyists for registration purposes and their activities are not captured as part of in-house lobbyist registrations. If board members do lobby, they are required to register as consultant lobbyists.

5. Require monthly communication reports for all oral communications with DPOHs. The reports must list all participants, including the name, position title and employer of all persons participating in an oral communication. Consultant lobbyists should be required to report meetings between their clients and DPOHs, even if the consultant was not present.	Under the Act, registrants must file monthly communication reports where an oral communication with a DPOH is "arranged in advance" and "initiated" by a lobbyist. Communications initiated by public office holders concerning the award of a grant, contribution or other financial benefit and communications with a consultant lobbyist concerning awarding a contract also trigger the filing of a monthly communication report. The monthly communication reports only require a listing of the DPOHs that participated in the communication.
6. Require registrants to disclose prescribed contextual information in monthly communication reports (*i.e.* whether the lobbying occurred during a sponsored trip or a lobbyist event, if gifts were offered, if political donations were provided).	Monthly communication reports are required to include the name of the DPOH that was the subject of the communication (including their title and the name of the branch or unit and the name of the department employing the DPOH), the date of the communication, and the subject matter of the communication.
7. Monthly communication reports are required to include the name of the DPOH that was the subject of the communication (including their title and the name of the branch or unit and the name of the department employing the DPOH), the date of the communication, and the subject matter of the communication.	Former DPOHs may engage in in-house lobbying on behalf of corporations if the lobbying activities do not amount to a significant part of their work. In contrast, DPOHs are prohibited from in-house lobbying on behalf of organizations.
8. Add more compliance measures to address contraventions of the Act, including training, administrative monetary penalties, and temporary prohibitions.	It is a criminal offence to: • fail to register lobbying activities; • fail to file a monthly return; • knowingly make a false or misleading statement in response to a request from the commissioner to confirm the accuracy and completeness of a registration or monthly return; or • to contravene any other provision of the Act or its related regulations. The commissioner may prohibit persons from lobbying for up to two years following a conviction under the Act. Breaches of the Lobbyists' Code of Conduct are excluded from the criminal offence provisions under the Act.
9. Make orders under the Act (*i.e.* summonses and production orders) orders of the Federal Court.	Make orders under the Act (*i.e.* summonses and production orders) orders of the Federal Court.
10. Make orders under the Act (*i.e.* summonses and production orders) orders of the Federal Court.	The commissioner must suspend an investigation and refer a matter to a peace officer *(i.e*. the

	RCMP) when the commissioner believes that a person has committed an offence under the Act or any other federal or provincial act.
11. The commissioner must suspend an investigation and refer a matter to a peace officer (i.e. the RCMP) when the commissioner believes that a person has committed an offence under the Act or any other federal or provincial act.	The commissioner must suspend an investigation and refer a matter to a peace officer (*i.e.* the RCMP) when the commissioner believes that a person has committed an offence under the Act or any other federal or provincial act.

BLG will continue to monitor the Recommendations. If you have questions about the proposed amendments 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.

By

Julia Webster, Alan Ross, Milos Barutciski

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BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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