Corporate communications with government in the pandemic: Maintaining compliance with lobbying laws

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Routine business communications with government in normal times are not typically covered by lobbying laws and registration requirements. The COVID-19 pandemic is not a normal time.

Business executives are now communicating with government officials to influence rapidly evolving policies and laws relating to the pandemic, including the scope of essential business, and criteria for employment and economic relief. These communications, whether face-to-face, electronic or written, are more likely to fall within the definition of lobbying under federal, provincial and municipal laws. When they do, and relevant thresholds for a given jurisdiction are satisfied, companies are required to register with and provide detailed information to lobbying regulators. The registrations and information are disclosed in online public registries of lobbying activity.

Companies with in-house government relations staff, or that rely on government relations firms to lobby government on their behalf, will likely have lobbying policies and monitoring processes to stay compliant. For many businesses, however, interacting with government to influence laws, policies and programs is a new experience. These kinds of communications are more likely to trigger a requirement to register than routine information requests, and regulatory compliance and reporting communications.

This bulletin sets out the essential steps for securing compliance with Canadian federal, provincial and municipal lobbying rules. The specific requirements vary by jurisdiction, but the frameworks are broadly similar.

To determine whether your business must register under lobbying laws, you must address the following questions for each jurisdiction where you communicate with government officials:

1. Are corporate employees, officers or directors communicating with “public office holders”?

- "Public office holder" is broadly defined and includes elected officials as well as officials and employees of government departments/ministries and agencies.
- All methods of communication are captured, including face-to-face meetings, phone calls, e-mails and other electronic or written communications.

2. Do the communications fall within the definition of "lobbying"?

- If the communications relate to – or aim to influence – proposals to introduce or make changes to government policies, programs, laws or regulations, they are likely to be lobbying.
- Mere requests for information and routine regulatory compliance and reporting communications are not lobbying.

3. Do the company's lobbying communications in a specific jurisdiction meet the cumulative time threshold to trigger registration?

- Most jurisdictions require companies to register when they meet a cumulative threshold of time engaged in lobbying activity.
- The time threshold varies by jurisdiction but can be as little as 50 hours in a 12-month period *(e.g.*, Ontario and Alberta).
- In some provinces a single lobbying communication may trigger an obligation to register (*e.g.*, Québec and, after May 4, 2020, British Columbia).
- In some jurisdictions, preparation and travel time is included in the lobbying time count (*e.g.* federally), whereas other jurisdictions exclude preparation time from the count (*e.g.* Alberta and Ontario).

4. **Who must register and what information must be disclosed?**

- Registration is done online by the senior officer of the corporation, regardless of whether that individual engages in lobbying communications themselves.
- The registration requires, among other things, identifying information for the business, its parent corporation and subsidiaries that have an interest in the lobbying, particulars of the lobbying subject matter, the government departments and agencies that are being lobbied and other information prescribed by the relevant jurisdiction.

5. What follow-up is required?

- The federal and certain provincial regulators enforce codes of conduct for persons engaged in lobbying to promote ethical conduct.
- All jurisdictions require registrations to be kept up to date, notably if the subject matter of the lobbying and target agencies change.
- Federal law also requires monthly reporting of certain individual communications with "designated public office holders", namely ministers and their political staff, deputy, associate- and assistant-deputy ministers, their equivalent ranking officials in federal agencies, and senior officials designated by regulation.

6. How do regulators investigate and penalize non-compliance?

- Lobbying regulators have broad authority to monitor compliance, conduct investigations and enforce administrative sanctions including, in some instances, monetary penalties.
- Violation of the lobbying laws can also be referred to enforcement authorities and result in prosecution, fines and/or imprisonment.

Conclusion

The COVID-19 pandemic has prompted rapid and evolving changes in laws and policies at every level of government. This has led to more active and frequent communications between businesses and governments regarding the pandemic situation and the applicable legal and policy environment. The line between routine communications with public office holders and lobbying can be very fine. Businesses should be mindful of the distinction and be proactive about seeking legal advice.

For legal advice on the topics discussed in this article, please contact any of the authors below.

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