

## **THE FEDERAL LOBBYISTS REGISTRATION SYSTEM**

Nancy Holmes  
Law and Government Division

8 March 2006

**The Parliamentary Information and Research Service of the Library of Parliament works exclusively for Parliament, conducting research and providing information for Committees and Members of the Senate and the House of Commons. This service is extended without partisan bias in such forms as Reports, Background Papers and Issue Reviews. Analysts in the Service are also available for personal consultation in their respective fields of expertise.**

**CE DOCUMENT EST AUSSI  
PUBLIÉ EN FRANÇAIS**

## TABLE OF CONTENTS

	<b>Page</b>
INTRODUCTION .....	1
LEGISLATIVE HISTORY .....	1
PRESENT SYSTEM .....	3
A. Organizational Structure .....	3
B. The Act.....	4
C. The <i>Lobbyists' Code of Conduct</i> .....	5
CURRENT ISSUES.....	6
CONCLUSION.....	8



CANADA

LIBRARY OF PARLIAMENT  
BIBLIOTHÈQUE DU PARLEMENT

## THE FEDERAL LOBBYISTS REGISTRATION SYSTEM

### INTRODUCTION

The term “lobbying” refers generally to any effort to communicate with legislators or other public officials against or in favour of a specific cause. Lobbying at the federal level in Canada is governed by the *Lobbyists Registration Act*, which came into force in 1989 and established a registration system intended to foster the public’s right to know and to be informed regarding who is trying to influence government policy in this country. This paper will provide an overview of the lobbyists registration system in Canada. It will look at the legislative history of the *Lobbyists Registration Act*, review the current regime, and canvass some of the issues that have arisen recently in this area.

### LEGISLATIVE HISTORY

On 30 September 1989, following extensive consultations and considerable debate,<sup>(1)</sup> the *Lobbyists Registration Act* came into force in Canada. The legislation sought to make transparent the activities of lobbyists without impeding access to government. The Act was a response to the public perception at the time that individuals seeking to influence the government through political or personal contacts were abusing the system. Indeed, between 1965 and 1985, over 20 private Members’ bills were introduced in the House of Commons on the subject of lobbyist regulation in response to political scandals or public outcry.<sup>(2)</sup>

- 
- (1) Essentially, two principal viewpoints on how to regulate the lobbying industry in Canada emerged from a series of hearings on the subject held by the House of Commons Standing Committee on Elections, Privileges and Procedure in 1986-1987. Some argued against a registration system for lobbyists, asserting that it would involve too much paperwork, high administrative costs, and would interfere with client confidentiality. They suggested that a system of self-regulation by the lobbying industry would be a more cost-effective and less objectionable means of achieving ethical standards of behaviour. Others, however, contended that a registration system would endow lobbying with a sense of legitimacy. It would ensure the public’s right to know and be informed regarding who is trying to influence government policy, thereby ensuring the health of Canadian democracy. The Standing Committee sided with the proponents of a registration system and six months after it had tabled its report, the government introduced Bill C-82, the *Lobbyists Registration Act*.
  - (2) Testimony of Karen Shepherd, Director, Lobbyists Registration Branch, Industry Canada, before the House of Commons Standing Committee on Access to Information, Privacy and Ethics, 14 June 2005.

With the enactment of the *Lobbyists Registration Act*, it was believed that a reliable and accurate source of information on the activities of lobbyists would dissipate much of the mystery surrounding lobbying and thus remove the atmosphere of conjecture and innuendo that can accompany such activities. The Act requires *paid* lobbyists<sup>(3)</sup> to register and disclose certain information through a public registry. The Act does not attempt to regulate lobbyists or the manner in which lobbying is conducted.

The *Lobbyists Registration Act* has evolved significantly since 1989,<sup>(4)</sup> in large part due to a statutory review provision in the legislation that requires periodic parliamentary reviews of the provisions and operation of the Act.<sup>(5)</sup> The most recent review was conducted in 2001 by the House of Commons Standing Committee on Industry, Science and Technology. In its report, *Transparency in the Information Age: The Lobbyists Registration Act in the 21<sup>st</sup> Century*,<sup>(6)</sup> the Committee made several recommendations aimed at improving the operation of the Act. Bill C-15, An Act to amend the Lobbyists Registration Act, responded to some of the major recommendations of the Industry Committee's report. Specifically, it sought to improve investigation and enforcement of the Act; simplify and harmonize the registration requirements for lobbyists; clarify and improve the language of the Act; and give effect to several technical amendments.<sup>(7)</sup>

Although Bill C-15 received Royal Assent on 11 June 2003, it did not come into force until 20 June 2005 along with *Regulations Amending the Lobbyists Registration Regulations*.<sup>(8)</sup> The delay was necessary in order to update the *Lobbyists Registration*

---

(3) Only persons who are paid to communicate with federal public office holders are subject to the Act (see the section below headed "Part B, The Act"). Thus, for example, volunteers are not required to register pursuant to the legislation.

(4) Initially, the reporting procedures of registered lobbyists were kept to such a minimum that many people argued that the *Lobbyists Registration Act* was simply a "business card" law. The Act has since been amended in 1995, 1996, 2003 and 2004.

(5) For more on what took place during these parliamentary reviews see Paul Pross, *The Lobbyists Registration Act: Its Application and Effectiveness*, research paper prepared for the Commission of Inquiry into the Sponsorship Program and Advertising Activities, at: [http://www.gomery.ca/en/phase2report/volume2/CISPAA\\_Vol2\\_5.pdf](http://www.gomery.ca/en/phase2report/volume2/CISPAA_Vol2_5.pdf).

(6) Available on Industry Canada's Web site at: <http://strategis.ic.gc.ca/epic/internet/inlobbyist-lobbyiste.nsf/en/nx00064e.html>.

(7) See Geoffrey P. Kieley, *Bill C-15: An Act to Amend the Lobbyists Registration Act*, LS 443E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 19 March 2003.

(8) Both the *Regulations Amending the Lobbyists Registration Regulations* and *An Act to Amend the Lobbyists Registration Act* can be found on the Web site of Industry Canada's Lobbyists Registration Branch at: <http://strategis.ic.gc.ca/lobby>.

*Regulations* as well as the electronic filing system for on-line registrations.<sup>(9)</sup> Indeed, on 20 June 2005, a new, more user-friendly lobbyist registration system was launched to ensure that Canadians have full and easy access to the information compiled and developed by the Office of the Registrar of Lobbyists. It is worth noting as well that the delay in coming into force of Bill C-15 has served to delay the next five-year statutory review of the *Lobbyists Registration Act* until 2010.

## PRESENT SYSTEM

### A. Organizational Structure

In March 2004, Bill C-4, An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer), received Royal Assent and changed the reporting structure under the *Lobbyists Registration Act*. Bill C-4 eliminated the position of Ethics Counsellor in the lobbyists registration system,<sup>(10)</sup> and the Registrar of Lobbyists then reported to Parliament through the Registrar General,<sup>(11)</sup> rather than through the Ethics Counsellor. By Order in Council dated 6 February 2006, the Office of the Registrar of Lobbyists became a federal government department, with the Registrar serving as its deputy head, for the purposes of the *Financial Administration Act*. The Office was also transferred from the Industry to the Treasury Board portfolio, thereby giving the control and supervision of the Office of the Registrar of Lobbyists to the President of the Treasury Board. The government has indicated that this transition will increase the independence of the Office of the Registrar of Lobbyists until forthcoming revisions are made to strengthen the *Lobbyists Registration Act*.<sup>(12)</sup>

---

(9) According to the Office of the Registrar of Lobbyists, the reorganization brought about by Bill C-4 (see the section below headed “Organizational Structure”) also contributed to the delay in the coming into force of Bill C-15.

(10) In 1994, the Office of the Ethics Counsellor was established within Industry Canada. The Ethics Counsellor was a Governor-in-Council appointee who was required to provide the Minister of Industry with an annual report on the exercise of his/her powers, duties and functions in relation to the *Lobbyists’ Code of Conduct*. The report to the Minister was then transmitted to Parliament. The Ethics Counsellor’s mandate at that time also included the administration of the *Conflict of Interest and Post-Employment Code for Public Office Holders*.

(11) Pursuant to the *Department of Industry Act*, the Minister of Industry served as Registrar General in the federal lobbyists registration system, and he or she designated the person to serve as Registrar of Lobbyists.

(12) Office of the Prime Minister, News Release, 6 February 2006, at: <http://www.pm.gc.ca/eng/media.asp?id=684>.

The Registrar of Lobbyists is responsible for administering the information disclosure provisions of the *Lobbyists Registration Act* and maintaining the public registry. The Registrar issues advisory opinions and interpretation bulletins regarding the legislation. He or she is also responsible for the development of, and ensuring compliance with, the *Lobbyists' Code of Conduct*.

The Office of the Registrar of Lobbyists is responsible for managing the day-to-day operations of the registry system. It examines all submitted forms for completeness and clarity. It also oversees investigations of complaints made under the Code of Conduct and the Act, and it provides the Registrar with the necessary information to render decisions in these areas. The Office also serves lobbyists in registering and reporting on their activities, as well as assisting the public in learning about lobbying activities.

## **B. The Act**

As mentioned above, the *Lobbyists Registration Act* applies only to *paid* lobbyists who communicate with federal public office holders on behalf of a third party.<sup>(13)</sup> Public office holders, as defined under the Act, are virtually all persons occupying an elected or appointed position in the federal government, including members of the House of Commons and the Senate and their staff.<sup>(14)</sup> Lobbyists subject to the Act are required to register and disclose certain information<sup>(15)</sup> which is made available to the public through an Internet-based registry system. Registrations must be updated or renewed every six months. Section 11(1) of the *Lobbyists Registration Act* requires the tabling of an annual report before Parliament on the administration of the Act.

- 
- (13) Bill C-15 modified the definition of lobbying, which used to apply to situations where a person or organization communicated with a public office holder in an attempt to influence government decisions. The phrase “in an attempt to influence” had, however, given rise to interpretive and therefore enforcement problems under the Act. Now the Act states that lobbying will consist of any oral or written communication made to a public office holder by a paid individual on behalf of any person or organization with respect to the development of legislative proposals; introduction, passage, defeat or amendment of bills or resolutions in Parliament; the making or amendment of regulations; the development of public policies and programs; and the awarding of grants and contracts. There is no longer an exemption from registration if a public office holder initiates contact with a lobbyist; however, an exclusion does exist for persons making simple enquiries or requests for information from public office holders.
- (14) This definition is much broader than that under the *Conflict of Interest and Post-Employment Code for Public Office Holders*, which defines public office holders as: ministers of the Crown and individuals working for them who are not public servants; Governor-in-Council appointees; federally appointed judges; RCMP officers; and certain other designated persons.
- (15) Information is submitted in the form and manner prescribed by regulation; the forms and regulations function as an integral part of the implementation of the *Lobbyists Registration Act*. The information includes the name of the client or employer, some descriptive information about the company or association, the subject-matter lobbied, the federal department or agency contacted, the communication technique used to lobby, and, if formerly a public office holder, the public office(s) held.

Three types of lobbyists are identified by the Act:

1. Individuals who lobby on behalf of clients must register as **consultant lobbyists**.
2. Senior officers of corporations that carry on commercial activities for financial gain must register as **in-house lobbyists (corporate)** when one or more employees lobby and where the total lobbying duties of all employees would constitute a significant part of the duties of one employee (20% or more).
3. Senior officers of organizations that pursue non-profit objectives must register as **in-house lobbyists (organizations)** when one or more employees lobby and where the total lobbying duties of all employees would constitute a significant part of the duties of one employee (20% or more).

The Act sets out penalties for non-compliance (e.g., failure to register) and for submitting false or misleading information. There is a two-year statutory limitation period for contraventions of the Act relating to registration requirements. The Registrar has no powers to investigate under the Act; however, where an administrative review by the Lobbyists Registration Branch indicates a possible contravention of the Act, the matter is turned over to the RCMP.<sup>(16)</sup> As well, the Registrar is required to notify police forces where there are reasonable grounds to believe that a criminal offence has been committed under the Act. To date, no charges have been laid for contraventions of the Act, and this has led some observers to conclude that the legislation, as it is currently drafted, cannot be adequately enforced.

### **C. The Lobbyists' Code of Conduct**

Canada was the first country to reinforce its lobbyist disclosure rules with a code of conduct. Section 10.6 of the *Lobbyists Registration Act* provides for a mandatory code of conduct for lobbyists and the submission of an annual report to Parliament on this code. After extensive consultations (including all registered lobbyists, parliamentarians, journalists and academics), review by the House of Commons Standing Committee on Procedure and House Affairs, and publication in the *Canada Gazette*, the *Lobbyists' Code of Conduct* came into effect on 1 March 1997.

---

(16) Administrative reviews are initiated following requests or complaints received from the general public, media, members of Parliament or organizations, or when officials of the Lobbyists Registration Branch believe there is a possible contravention of the Act or the Code. An administrative review is not a formal investigation. It is merely the assembling and reviewing of factual evidence to determine whether a formal investigation is warranted.



The Code establishes standards of conduct for all lobbyists communicating with federal public office holders, and forms a counterpart to the obligations that federal officials are required to observe in their interactions with the public and with lobbyists. The Code begins with a preamble setting out its purpose and context. This is followed by a series of principles which, in turn, are followed by specific rules. The principles establish the operational parameters of the Code and set a framework in terms of the goals and objectives to be attained, but they do not establish precise standards. The rules provide detailed requirements for behaviour in certain situations. The specific obligations or requirements under the Code can be broken down into three categories: transparency, confidentiality and conflict of interest. The onus to comply with the Code rests with the lobbyist.

The Registrar of Lobbyists is responsible for investigating possible breaches of the Code; such investigations are required by the Act to be conducted in private. Where a formal investigation has been conducted, however, the Registrar shall table a report to Parliament citing the investigation's findings, conclusions and reasons for those conclusions. The *Lobbyists Registration Act* does not prescribe penalties for breaches of the Code; neither does it specify how Parliament is to respond to a reported breach of the Code. There is also no limitation period for breaches of the Code.

## **CURRENT ISSUES**

A number of consistent themes have emerged from the various parliamentary reviews of the lobbyists registration system. Time and again, discussions have centred on such issues as the inclusiveness of the registry, adequacy of the disclosure requirements, enforcement of and compliance with the requirements of the Act and the Code, and the independence of the Registrar of Lobbyists.<sup>(17)</sup>

---

(17) As noted earlier, while Bill C-4 (An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence) created a more independent Ethics Commissioner, it left the Registrar of Lobbyists still under the control of a Cabinet minister (the Minister of Industry). It has been contended that, as an employee of a government department, the Registrar could be subject to government influence and therefore could not fairly and impartially enforce the *Lobbyists' Code of Conduct*, which contains rules that restrict lobbyists' relationships with Cabinet ministers and other public officials. As pointed out, the President of the Treasury Board is now the Minister responsible for the Office of the Registrar of Lobbyists, and the government has indicated an intent to deal with the issue of independence through amendments to the *Lobbyists Registration Act*.

Recently, in his 1 February 2006 report on the Inquiry into the Sponsorship Program and Advertising Activities, Justice John Gomery focused on the issues of non-compliance with respect to the federal lobbying system. It was noted that although lobbying is a legitimate activity which can play a useful role in the political process, if the rules of the game are not followed, then such values as transparency and accountability lose their meaning. Justice Gomery found that while improvements have been made in terms of the disclosure requirements of the law, the government's duty to enforce compliance with the lobbyists registration system is not being adequately fulfilled.<sup>(18)</sup>

As a result of its findings, the Gomery Commission recommended that the Registrar of Lobbyists be freed from the requirement of reporting to a Cabinet minister and instead report directly to Parliament on matters concerning the application and enforcement of the *Lobbyists Registration Act*. Moreover, the Commission recommended that the Office of the Registrar of Lobbyists be provided with sufficient resources to publicize and enforce the requirements of the Act, including investigation and prosecution by its own personnel. The Commission further suggested that the limitation period for investigation and prosecution under the Act be increased from two to five years from the time the Registrar becomes aware of an infringement (Recommendation 15).

The lobbyists registration system was also a topic of interest to the House of Commons Standing Committee on Access to Information, Privacy and Ethics during the 38<sup>th</sup> Parliament. The Committee's mandate gives it responsibility for matters related to reports of the Registrar of Lobbyists, tabled pursuant to the *Lobbyists Registration Act*. Several meetings were held by the Committee with the Registrar of Lobbyists on his annual reports and on changes to the *Lobbyists Registration Act* and the *Lobbyists Registration Regulations*. Although the Committee raised a number of issues that it indicated it wished to pursue with respect to the lobbyists registration system, it was unable to follow up on these matters due to the dissolution of Parliament in November 2005. However, on 24 November 2005, just prior to that dissolution, the Committee agreed to recommend to the government that the *Lobbyists Registration Act* be amended to remove the Registrar of Lobbyists from Industry Canada, and that the Registrar of Lobbyists be given the authority and independence of an Officer of Parliament, similar to the Ethics Commissioner.

---

(18) Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Restoring Accountability: Recommendations*, 1 February 2006, Chapter 9, pp. 172-173.

## CONCLUSION

In its 2001 report on the *Lobbyists Registration Act*, the House of Commons Standing Committee on Industry, Science and Technology concluded its study by viewing the lobbyists registration system as a “work in progress.” The Committee noted that just as our thinking must continue to evolve on the subjects of transparency and access to government, so too must our legislative framework remain flexible and responsive to change. Certainly, with recommendations from the Gomery Commission along with proposals by the Standing Committee on Access to Information, Privacy and Ethics and the current government to address issues in this area, one can expect that the lobbyists registration system will be a topic of consideration during the 39<sup>th</sup> Parliament.