

Dealings with Government officials and government relations

To what extent can or should counsel engage officials at Transport Canada or other government offices on behalf of an issue or a client?

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Contracts for Dredging or Environmental Maintenance or remediation of navigable waterways and harbours

Grants under Structured Financing Facility Program for the Canadian Shipbuilding and Industrial Marine Industry.

CMLA Seminar June 2013

■ Lobbying Act R.S.C., 1985, c. 44 (4th Supp.)

■ Exempt Activities s. 3(2)

(a) any oral or written submission made to a committee of the **Senate or House of Commons** or of both Houses of Parliament or to any body or person having jurisdiction or powers conferred by or under an Act of Parliament, **in proceedings that are a matter of public record**;

(b) any oral or written communication made to a public office holder by an individual on behalf of any person or organization **with respect to the enforcement, interpretation or application of any Act of Parliament or regulation by that public office holder** with respect to that person or organization; or

(c) any oral or written communication made to a public office holder by an individual on behalf of any person or organization **if the communication is restricted to a request for information.**



■ ■ What is Lobbying? S. 5(1)



P Individual

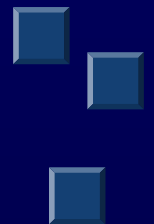
P On behalf of person or Organization

P Undertakes for Payment

P To communicate with Public Office Holder

P For described purposes

P Must register





Individual


- 
1. Consultant Lobbyist
 - 2 In house lobbyist

Consultants

Employed individuals


where **any part of whose duties** is to communicate with public office holders on behalf of the employer or, if the employer is a corporation, on behalf of any subsidiary of the employer or any corporation of which the employer is a subsidiary

Anti-dilution test - where those duties constitute a **significant part** of the duties of one employee or would constitute a significant part of the duties of one employee if they were performed by only one employee. S . 7(1)






Organization includes

- (a) a business, trade, industry, professional or voluntary organization,
 - (b) a trade union or labour organization,
 - (c) a chamber of commerce or board of trade,
 - (d) a partnership, trust, association, charitable society, coalition or interest group,
 - (e) a government, other than the Government of Canada, and
 - (f) a corporation without share capital incorporated to pursue, without financial gain to its members, objects of a national, provincial, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional or sporting character or other similar objects;
- 



Payment

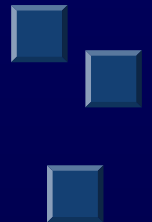


means money or anything of value and includes a contract, promise or agreement to pay money or anything of value;

- P Existence of written contract for consultant lobbying not necessary - key test did consultant receive payment for lobbying - http://oclc.ca.gc.ca/eic/site/012.nsf/eng/h_00247.html

- P Definition covers situations in which remuneration has not actually taken place, but is expected in the future: <http://oclc.ca.gc.ca/eic/site/012.nsf/eng/00432.html#views>

- P Employment whose duties include lobbying






Communicate



Very broad reporting requirements

Requests for government funding are considered to be "communication in respect of the awarding of a grant, contribution or other financial benefit" even if the requests are not lengthy and detailed proposals: http://ocl-cal.gc.ca/eic/site/012.nsf/eng/00424.html#key_lessons

Includes leaving an unanswered voicemail message for a described purpose <http://ocl-cal.gc.ca/eic/site/012.nsf/eng/00627.html#views>





Public Office Holder



Includes defined and designated public office holders

P any officer or employee of Her Majesty in right of Canada and includes

P M P s Senators and their staff


P Office holders appointed by the Cabinet or Ministers (except Judges and provincial lieutenant-governors)

P an officer, director or employee of any federal board, commission or other tribunal as defined in the Federal Courts Act,

P member of the Canadian Armed Forces or RCMP, and


P anyone who occupies the senior executive position, whether by the title of deputy minister, chief executive officer or by some other title,

P is an associate deputy minister or an assistant deputy minister or occupies a position of comparable rank





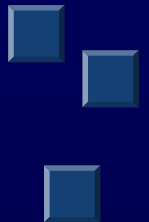
Described Purposes

- P development of any legislative proposal by the Government of Canada or by a private member of either House,
 - P introduction, passage, defeat or amendment of any Bill or resolution in either House of Parliament
 - P making or amendment of any regulation
 - P development or amendment of **any policy or program** of the Government of Canada,
 - P awarding of any grant, contribution or other financial benefit by or on behalf of Her Majesty in right of Canada,
 - P awarding of any contract by or on behalf of Her Majesty in right of Canada; or
 - P arranging a meeting between a public office holder and any other person.
- 

■ Registration and Filing of Returns ss.5, 7

■ Detailed content prescribed by regulation, including

- P Lobbyist particulars
- P Client, parents, subsidiaries and related coalitions
- P Individuals or organizations who control or direct client's activities and have a direct interest in the outcome
- P Whether client funded by any domestic or foreign government institution
- P Departments or organisations communicated with
- P Communication techniques
- P Relevant legislation, programme or grant

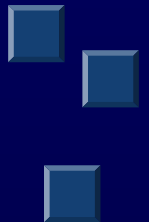




Registration and Filing

By Consultant Lobbyist or or Officer of In house lobbyist employer

- P Individual - not later than 10 days after undertaking to lobby and continuing monthly reporting of communications
- P In house lobbyist employers - within 2 months of beginning reportable lobbying activities and monthly thereafter
- P Individuals need to register end of engagement and employers end of lobbying duty employment
- P Registry of Lobbyists https://ocl-cal.gc.ca/eic/site/012.nsf/eng/h_00000.html
- P Includes portal for registrations and searchable archive
- P registration is required whether or not a lobbyist achieves the desired outcome or the lobbyist has been explicitly hired as a "lobbyist" by the client : http://ocl-cal.gc.ca/eic/site/012.nsf/eng/00424.html#key_lessons





Sanctions



Administrative and Criminal

- P Lobbyists Code of Conduct https://oclc.ca.gc.ca/eic/site/012.nsf/eng/h_00014.html
 - P Individuals and in house lobbyists have duty to comply with Code - s 10.3
 - P Code of Conduct breach suffices to permit investigation
 - P Failure to advise client of need to register and to introduce oneself as lobbyist when communicating with government are Code breaches
 - P Contingent lobbyist fees prohibited s. 10.1
 - P Primary enforcement technique is Commissioners' Investigation
 - P Failure to register, to file accurate information or other contraventions of Act are offences s. 14
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