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Legal update

Amendments to the Alberta lobbyists act – What you need to know

May 2018
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Bill 11, the *Lobbyists Amendment Act, 2018* (Bill 11), passed first reading in the Legislative Assembly of Alberta on April 11, 2018. Bill 11 aims to introduce new rules to enhance transparency respecting lobbying of Alberta government representatives and employees. If passed, these amendments to the *Lobbyists Act, 2007*, c L-20.5 (the *Act*) will impose some of the strictest restrictions on lobbying activity in Canada. Key changes in the proposed amendments include increased restrictions on lobbyists, changes to the "public comment" exemption, and changes to the administrative monetary penalty regime. It appears likely that Bill 11 will largely take effect before the end of the current legislative session, in early June 2018.

The proposed amendments

More organizations will need to register their lobbying activities

The most significant proposed amendment is a lower threshold at which organizations will be required to register the lobbying of officers, employees, and directors.

Under the existing law, lobbyists working on behalf of their own organizations ("organization lobbyists") must register with the ethics commissioner if they communicate with politicians and government decision-makers for more than 100 hours each year. Proposed amendments in Bill 11 lower that annual threshold to 50 hours, and the threshold will now include time spent in both preparation and communication with Alberta public office holders.

Practically, this change would give Alberta the second-lowest lobbyist registration threshold in the country.[1] The result will be that more Alberta companies and other organizations would be required to register the lobbying activities of their employees, officers, and directors. Failure to register may result in fines of up to $100,000, which can now be levied directly against an organization's chief executive personally.

More public office holders

Whether a communication constitutes "lobbying" for the purposes of the *Act* depends on whether the communication is made to an individual that is a "public office holder," as statutorily defined under the *Act*.

Bill 11 expands the definition of "public office holder." The new definition includes: (i) Members of the Legislative Assembly and their staff; (ii) Cabinet ministers; (iii) staff in the premier's office and ministers' offices; (iv) individuals

appointed to certain boards, committees, or councils established under Section 7 of the *Government Organization Act*, RSA 2000, c G-10; and (v) any employee, officer, director or member of a provincial government department or certain public sector entities (as prescribed under Schedule 1 of the *Lobbyists Act General Regulation*, AR 247/2009).

New restrictions on government relations activity

Bill 11 will also affect how organizations manage their government relations and deal with public officials. The amendments prohibit contingency fee arrangements based upon the success of a consultant lobbyist. Further, gifts, favours, or other benefits may not be given to public office holders where they are being lobbied (or intended to be lobbied).

Changes to the public comment exemption

Under the current *Act*, communications with public office holders are not considered lobbying if they are in response to a request initiated by a public office holder for advice or comment on certain matters, including developing legislation, introducing or amending a bill, and establishing or terminating a program or policy.

Bill 11 would limit the exemption to only allow for comment if the individual is participating on a board, commission, council or other similar body established by a public office holder, the government or a prescribed provincial entity. This amendment results in a much broader range of activities being considered lobbying for purposes of the *Act*.

The following activities, however, will remain exempted from the definition of lobbying:

- requests for information or clarification from public office holders;
- submissions made on the public record in formal proceedings; and
- communications concerning the enforcement, interpretation, application, implementation, or administration of existing laws, regulations, policies, and programs.

Other proposed amendments

Other proposed amendments would make the *Act* clearer by removing ambiguities, confirming existing interpretations, or increasing fairness. For example:

- confirming that grassroots communication is a form of lobbying;
- clarifying that grassroots communication does not include communication between an organization and its members, officers, or employees, or between a business and its shareholders, partners, officers, or employees;
- clarifying that lobbying does not include time spent preparing for and participating in public procurement processes;
- confirming that lobbying does not include communications with public office holders by individuals who are recognized elders of an Aboriginal community;
- setting out additional details of the fair procedure that must be followed before the registrar imposes an administrative penalty or removes a return from the registry;
- confirming the right of appeal of an administrative penalty to the Court of Queen’s Bench of Alberta.

Conclusion

Organizations dealing with government organizations must be mindful of these likely changes to the *Act*, and take appropriate steps to ensure compliance with the legislation. A comprehensive compliance program that includes a corporate policy, employee training, compliance audits, and appropriate lobbyist registrations is central to avoiding serious consequences for non-compliance with the *Act*.

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Footnote

[1] In Quebec, the *Lobbying Transparency and Ethics Act*, CQLR c T-11.011, stipulates that an enterprise or organization must register when the amount of time that its employees collectively spend on Quebec lobbying adds up to the equivalent of at least 12 days of work in any year. This "12-Day Rule" includes time spent arranging, preparing for, travelling to, and participating in meetings with public office holders. However, this threshold will not apply in the case of lobbying activities that are of significant importance to the development of the organization or if they are carried out by senior officers of the enterprise or organization. Once the registration requirement arises, an enterprise or organization must disclose all lobbying activities in its registration, regardless of the foregoing threshold.

For further information, please contact one of the following lawyers:

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