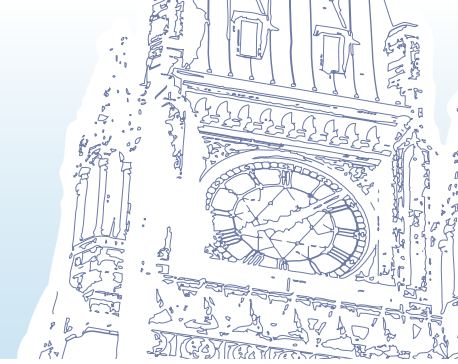




Lobbying Act Implementation Notice #2



Designated Public Office Holders

Date: February 1, 2009

Background

The *Lobbyists Registration Act* defined a “public office holder” as any officer or employee of the federal government including members of the Senate or House of Commons and members of their staff, Governor in Council appointees, ministers, officers, directors or employees of any federal board, commission or tribunal, members of the Canadian Armed Forces and members of the Royal Canadian Mounted Police. This definition is maintained in the now *Lobbying Act*.

The *Lobbying Act* also introduced the term “designated public office holder” (DPOH), to refer to those officials, generally, who are responsible for high-level decision making in government. While an individual is a DPOH, lobbyists who have oral and arranged communications with them must report these communications on a monthly basis to the Commissioner of Lobbying.

After an individual ceases to be a DPOH, they are subject to a five-year post-employment prohibition on lobbying; however, they may apply to the Commissioner of Lobbying for an exemption from this prohibition. If, after being granted an exemption, they register as a lobbyist, they must disclose certain information relating to their former DPOH positions.

Identification of DPOH

The *Lobbying Act* defines DPOHs as follows:

- A minister of the Crown or a minister of state and any person employed in his or her office who is appointed under subsection 128(1) of the *Public Service Employment Act* (i.e. exempt staff).
- Any other public office holder, who, in a department within the meaning of paragraph (a), (a.1) or (d) of the definition “department” in section 2 of the *Financial Administration Act*, occupies the senior executive position, whether by the title of deputy minister, chief executive officer or by some other title, or is an associate deputy minister or an assistant deputy minister or occupies a position of comparable rank.

- Any individual who occupies a position that has been designated by regulation under the relevant revision of the *Lobbying Act*.

The *Lobbying Act* further defines “any person identified by the Prime Minister as having had the task of providing advice and support to him or her during the transition period leading up to the swearing in of the Prime Minister and his or her ministry”, as being subject to the *Lobbying Act* as if they were a DPOH. The *Federal Accountability Act* included a transitional provision which effectively made this provision retroactive to January 24, 2006 with respect to the five-year prohibition on lobbying.

An additional eleven positions or classes of positions have been designated so far by way of regulation. They are:

- Chief of the Defence Staff (Canadian Forces)
- Vice Chief of the Defence Staff (Canadian Forces)
- Chief of Maritime Staff (Canadian Forces)
- Chief of Land Staff (Canadian Forces)
- Chief of Air Staff (Canadian Forces)
- Chief of Military Personnel (Canadian Forces)
- Judge Advocate General (Canadian Forces)
- Any positions of Senior Advisor to the Privy Council Office to which the office holder is appointed by the Governor in Council
- Deputy Minister (Intergovernmental Affairs) (Privy Council Office)
- Comptroller General of Canada
- Any position to which the office holder is appointed pursuant to paragraph 127.1(1)(a) or (b) of the *Public Service Employment Act*

More positions can be designated by the Governor in Council, although this is not expected to occur frequently.

Interpretation of “a position of comparable rank”

The variety of structures, titles and responsibilities and salaries of senior officials within government creates a challenge for lobbyists and for officials in determining who, other than the specific positions and titles named in the *Lobbying Act* and regulations, should be considered to be a DPOH by virtue of their occupying a position of “comparable rank.”

In interpreting the phrase “comparable rank”, the Commissioner has taken an approach which provides specific criteria that will allow for the identification of nearly all “comparable” DPOHs, while allowing the possibility of further, specific interpretations of those positions where doubt may remain about DPOH status. In setting the criteria, the Commissioner interpreted that Parliament’s intent was to designate those who:

- hold positions which, by any title, have comparable decision-making or advisory responsibilities to Associate Deputy Ministers and Assistant Deputy Ministers;
- are remunerated at least as much as the minimum salary of an Assistant Deputy Minister; and,
- report to a DPOH, as do Associate Deputy Ministers and Assistant Deputy Ministers.

For a position to be considered of comparable rank to an associate or assistant deputy minister, it must meet the following criteria:

- A) (i) The position must be classified at the EX-04 level or higher;

or

- (ii) The position’s salary must be at the EX-04 minimum or higher, exclusive of performance pay (\$138,400 as of April 1, 2007). This excludes EX-03s whose salaries have crossed into the EX-04 salary band through duration in the position;

and

- B) The position must report directly to a DPOH.

If criteria [A(i) or A(ii)] and B are present, then it should be concluded that the position is of comparable rank to either an Associate or Assistant Deputy Minister and is therefore a DPOH position.

For more information, refer to the Interpretation Bulletin: “Interpretation of “Comparable Rank” for Designated Public Offices,” available at www.ocl-cal.gc.ca.

Related Documents

Interpretation Bulletin: “*Interpretation of “Comparable Rank” for Designated Public Offices*”

Lobbying Act Implementation Notice #3 – *The Five-Year Prohibition On Lobbying*

Lobbying Act Implementation Notice #4 – *Monthly Returns*

Lobbying Act Implementation Notice #5 – *Verification of Monthly Returns*

