Legislative Summary **LS-443E**

BILL C-15: AN ACT TO AMEND THE LOBBYISTS REGISTRATION ACT

Geoffrey P. Kieley
Law and Government Division

13 November 2002
Revised 19 March 2003

Library of Parliament
Bibliothèque du Parlement

Parliamentary Research Branch

LEGISLATIVE HISTORY OF BILL C-15

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
First Reading:	23 October 2002	First Reading:	19 March 2003
Referred to Committee:	25 October 2002	Second Reading:	3 April 2003
Committee Report:	4 December 2002	Committee Report	14 May 2003
Report Stage and Second Reading:	25 February 2003	Report Stage:	15 May 2003
Third Reading:	18 March 2003	Third Reading:	28 May 2003

Message sent to the House of Commons: 28 May 2003
Concurrence in Senate amendments: 6 June 2003

Royal Assent: 11 June 2003
Statutes of Canada 2003, c. 10

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Peter Niemczak

CE DOCUMENT EST AUSSI PUBLIÉ EN FRANÇAIS

TABLE OF CONTENTS

CANADA

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

BILL C-15: AN ACT TO AMEND THE LOBBYISTS REGISTRATION ACT*

BACKGROUND

Bill C-15, An Act to amend the Lobbyists Registration Act, received first reading in the House of Commons on 23 October 2002. On 25 October 2002 it was referred for study prior to second reading to the House of Commons Standing Committee on Industry, Science and Technology ("the Committee"). It received third reading on 18 March 2003.

In June 2001, the Committee reported on its five-year statutory review of the *Lobbyists Registration Act* ("the Act"). The report, entitled *Transparency in the Information Age: The Lobbyists Registration Act in the 21st Century* (hereinafter, the "Committee Report") made several recommendations aimed at improving the operation of the Act. The amendments in Bill C-15 respond to some of the recommendations in that report.

The Committee study of Bill C-15 ran concurrently with broader changes being considered by the House of Commons Standing Committee on Procedure and House Affairs, proposed as part of the Government's so-called "ethics package." Collectively, the changes, if enacted, would remove the Ethics Counsellor from any involvement with monitoring or investigating lobbying activity, and transfer that role to the Registrar of Lobbyists. This change responds to recommendations in the Committee Report.

A. Three Categories of Lobbyists

The Act defines lobbyists as individuals paid to make representations with the goal of "influencing" federal public office holders. The Act requires lobbyists to register and

---

* Notice: For clarity of exposition, the legislative proposals set out in the Bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

disclose certain information, which is made public through a computerized registry system. The Act distinguishes among three types of lobbyists:

- A *Consultant Lobbyist* is an individual who lobbies on behalf of a client;
- An *In-house Lobbyist (Corporate)* is an employee of a corporation whose job involves spending a significant amount (20% or more) of his or her time lobbying for the employer;
- An *In-house Lobbyist (Organization)* is an employee of an organization. The organization must register if the total lobbying duties of *all* employees taken together constitute a significant part (20% or more) of the duties of one employee.

B. Application of the Act

Unpaid lobbyists are not covered by the Act. Only paid lobbyists are required to register. The statute covers only direct attempts to influence certain government decisions. Thus, lobbyists have to register only if there has been some form of direct contact or communication with a person holding public office. The Act aims only at disclosing lobbying efforts; it does not attempt to regulate lobbyists or the manner in which lobbying is conducted.

The Act sets out penalties for non-compliance or for submitting false or misleading information. There is a two-year statutory limitation period for enforcement proceedings commenced by way of summary conviction. More serious violations are punishable on indictment, for which there is no limitation period.

C. Registration Requirements

The Act requires that lobbyists submit prescribed information in returns and notify the Registrar of any changes to information previously submitted, including termination of lobbying activity. Responsibility for administration of the information disclosure provisions of the Act and maintenance of the public registry is assigned to the Registrar of Lobbyists, a position designated by the Registrar General of Canada (Minister of Industry). The Registrar heads the Lobbyists Registration Branch. The Registrar has no powers to investigate under the Act; matters requiring investigation are turned over to the RCMP. Branch staff examine all forms submitted for completeness and clarity. Inconsistencies or obvious omissions are communicated to the lobbyist for correction or for supplementary information. The Registrar

may verify and demand clarification of information submitted by lobbyists. The Act also authorizes the Registrar to issue advisory opinions and interpretation bulletins to provide greater certainty regarding the registration provisions.

To give lobbyists an efficient system for registering and to give the public broad access to the information on lobbyists, both electronic registration, as well as access to data through the Industry Canada server, are free of charge.

D. The Lobbyists' Code of Conduct

The Act, when it was first enacted, authorized the Ethics Counsellor to develop a *Lobbyists' Code of Conduct* ("the Code"); the Ethics Counsellor introduced the Code in March 1997. The Code establishes standards of conduct for all lobbyists communicating with federal public office holders. The Code forms a counterpart to the obligations that federal officials are required to observe in their interactions with the public and with lobbyists. The onus to comply with the Code rests with the Consultant Lobbyist, the In-house (Corporate) Lobbyist, or the senior officer of the organization doing the lobbying, as the case may be.

The Act does not prescribe penalties for breach of the Code; neither does it specify how Parliament is to respond to a reported breach of the Code.

E. The Role of the Ethics Counsellor

The Ethics Counsellor is charged with investigating breaches of the Code. Where the Ethics Counsellor believes on reasonable grounds that a person has breached the Code, the Ethics Counsellor investigates to determine whether a breach has occurred. The Ethics Counsellor may, in the same manner and to the same extent as a superior court of record,

- summon and enforce the attendance of persons before the Ethics Counsellor and compel them to give oral or written evidence on oath;
- compel persons to produce any documents or other things that the Ethics Counsellor considers necessary for the investigation; and
- administer oaths and receive and accept information, whether or not it would be admissible as evidence in a court of law.

After conducting an investigation, the Ethics Counsellor prepares a report and submits it to the Registrar General of Canada, who in turn lays it before each House of Parliament on any of the first 15 sitting days on which that House is sitting.

DESCRIPTION AND ANALYSIS

Bill C-15 has several objectives:

- To improve investigation and enforcement of the Act;
- To simplify and harmonize the registration requirements for In-house (Corporate) and In-house (Organization) Lobbyists;
- To clarify and improve the language of the Act; and
- To give effect to several technical amendments.

Clause 1 replaces the phrase in the preamble "attempting to influence government" with the phrase "engaged in lobbying activities." This change is reflected in other amendments in C-15, and is designed to resolve certain enforcement issues that have arisen from the wording of the current Act.

The Act currently applies to every individual who for payment on behalf of a client undertakes to "communicate" with public office holders "in an attempt to influence" public decision-making. The phrase "in an attempt to influence" has given rise to interpretive and, therefore, enforcement problems. First, it requires that the Crown show evidence that the lobbyist *intended* to influence government – and, typically, intent is very difficult to prove. Also, the phrase presents problems because of its similarity to section 121 of the *Criminal Code*. That section, which deals with frauds on the government, states that everyone commits an offence who "having or pretending to have *influence* with the government or with a minister of the government or an official, demands, accepts or offers or agrees to accept for himself or another person a reward, advantage or benefit of any kind as consideration for … exercise of *influence* ... in connection with … any matter of business relating to the government, or a claim against Her Majesty or any benefit that Her Majesty is authorized or is entitled to bestow."

The intention of Parliament in enacting the Act was not to make lobbying a criminal activity, but rather only to ensure that lobbyists should register, so that the public would

be able to see who is lobbying what department on what issue. In practice, the Act has been interpreted to apply to a person who, for payment, communicates with a public office holder to discuss government business (i.e., legislation or awarding contracts). The new wording is thought to better reflect Parliament's original intent, and to resolve the enforcement difficulties with the Act. The change from "attempt to influence" to "communicate in respect of" is reflected in several other amendments.[1]

Clause 2 adds "trust" to the definition of "organizations" that are required to register as lobbyists.

Clause 3(1) amends section 4 of the Act, which lists persons who, acting in their official capacity, are not required to register as lobbyists. Currently, paragraphs 4(1)(d.1) and (d.2) exempt governing bodies (and their staff or employees) named in Schedule II of the *Yukon First Nations Self-Government Act*, as well as members of the Nisga'a Government. These two paragraphs are replaced by one section that exempts members of any aboriginal government or institution that exercises jurisdiction under a self-government or land claims agreement.

Clause 3(2) amends section 4(2)(c) of the Act. That section currently exempts a lobbyist from the obligation to register if the lobbyist is responding to "a written request from a public office holder, for advice or comment." The purpose of the exemption is to permit public office holders a degree of freedom in discussing government business with lobbyists (who are, for many public office holders, a valuable source of information and analysis) without triggering the Act's registration requirements. However, some critics of the registry system suggest that this constitutes a "loophole": the public office holder and the lobbyist could keep their discussions "off the radar" simply by having the public office holder write a letter "requesting advice or comment." The letter would suggest that it was the public office holder who initiated the contact even if it were, in fact, the lobbyist who initiated the contact. The effect of the exemption is that a public office holder may solicit "advice" or "comment" from lobbyists without the public becoming aware of it. Critics say that this undermines the principle of transparency, i.e., the public should be able to find out what information public office holders are receiving from lobbyists, since this will affect the public decision-making process.

---

(1) The United States uses similar language: a "lobbying contact" is any oral or written communication to a covered executive branch official or a covered legislative branch official "that is made on behalf of a client with regard to" legislation, regulations, the administration or execution of a federal program or policy, or the nomination or confirmation of a person for a position subject to confirmation by the Senate. See Title 2, United States Code, Sections 1601-1612, the *Lobbying Disclosure Act of 1995* as amended by the *Lobbying Disclosure Technical Amendments Act of 1998*.

The Committee recommended that section 4(2)(c) be deleted altogether, and Bill C-15 proposes to do so. A new section 4(2)(c) replaces the current section and, although the wording appears similar, the intent of the new section 4(2)(c) is quite different. The new section exempts lobbyists from registering where the only purpose of the communication is to request information from the public office holder. Without this exemption, any "communication" on any public business would trigger the registration requirement.

Clause 4(1) amends section 5. Currently, subsection 5(1) requires individual Consultant Lobbyists to file a return notifying the Registrar:

- Of the commencement of any lobbying undertaking, within 10 days of entering into the undertaking;
- Of any changes to, or the completion of, an existing undertaking, within 30 days.

Bill C-15 would extend these time frames. New subsections – 5(1.1), (1.2) and (1.3) – would not alter the timing of the initial registration, which would remain at 10 days. However, the timing of subsequent filings would change to:

- "not later than thirty days after the expiry of every six-month period after" the initial registration; and
- "not later than thirty days after the expiry of every six-month period after" the last change was filed.

Clauses 4(2) to 4(5) merely alter the wording and/or arrangement of existing clauses of the Act to make them more readable and the language less "legalistic." For example, "where an individual has undertaken" becomes "if an individual undertakes," etc. Where required, sections are also amended to change "influence" to "communicate" (see explanatory note for clause 1, above).

Clause 4(6) repeals subsection 5(4) of the Act. Currently, subsection 5(4) requires that Consultant Lobbyists who complete or terminate an undertaking advise the Registrar by filing a return not later than 30 days after the undertaking ends. This has proven to be problematic in practice, as many Consultant Lobbyists neglect in good faith to deregister

within the 30 days, and thus become subject to the full weight of the penalties prescribed by the Act.[2] The Committee viewed the matter this way:

> … [W]hile tardiness in deregistering could lead to confusion, it is not immediately clear whether any genuine harm would result to the public interest. It might equally be argued that there is considerable advantage for the public office holder in having a list of the clients whom the lobbyist has represented over the preceding year, and the issues that the lobbyist has addressed.[3]

The change also better reflects the reality of the relationship many Consultant Lobbyists have with their clients: in practice, many Consultant Lobbyists enter into, withdraw from, and then re-enter client relationships. Many are engaged on retainer to provide services over a longer period of time, i.e., on long-term legislative initiatives, etc. As a result, a particular project may become dormant, without actually terminating or being completed. Removing the strict 30-day requirement would permit Consultant Lobbyists some time to determine with certainty whether the undertaking has, in fact, ended.

The proposed change responds in part to recommendation 11 of the Committee Report, which recommended that the 30-day deregistration requirement be removed from the Act, and placed instead in the Code. The effect would be to make 30-day deregistration a "best practice" rather than a legal obligation. The second part of the recommendation – amending the Code – would require action on the part of the Ethics Counsellor; however, it is not clear that the Ethics Counsellor has authority under the Act to amend the Code. Section 10.2 merely states that the Ethics Counsellor "shall develop" the Code; it is not clear whether this authorizes the Ethics Counsellor to amend the Code on an ongoing basis.

The discussion may be academic: even in the absence of a "best practice" rule for deregistration in the Code, Consultant Lobbyists would still be required to deregister six months (plus 30 days) after the undertaking ends; moreover, there is nothing to prevent the Consultant Lobbyist from deregistering before the expiry of that time. The six-month (plus 30 days) period is the longest time that a completed or terminated undertaking would remain on the Registry.

---

(2) Section 14.(1) states that "every individual who contravenes any provision of this Act, other than subsection 10.3(1), or the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding twenty-five thousand dollars."

(3) *Transparency in the Information Age*, p. 27.

Clause 4(7) clarifies subsection 5(7) of the Act without altering its meaning.

Clauses 5, 6 and 7 together amend the Act so that that both In-house (Corporation) and In-house (Organization) Lobbyists are subject to the same filing requirements. Under the current subsections 6(2) and 7(2), the corporation or organization, as the case may be, must make its first filing within two months of the "significant part" threshold being reached. Bill C-15 would also make the "significant part" test apply in the same manner to both a corporation and an organization: if the time spent lobbying by all employees taken together would amount to a "significant part" (i.e., 20% or more) of the duties of one employee if the duties were performed by one employee, then the organization or corporation must file. In both cases, only one filing is required.

The filings are largely similar for corporations and organizations, but differ in at least one respect. Organizations must list all their employees who do lobbying; corporations are required to list any senior officer who is doing lobbying, and any employee who individually meets the "significant part" threshold. The justification for the different treatments lies in the different nature of lobbying as practised by organizations and corporations. Corporations are large; many employees may be involved in a lobbying campaign, but their involvement is often quite limited, e.g., a phone call. Listing all such employees would be onerous; instead, only employees who spend a significant amount of time lobbying will register. With organizations, lobbying work is more commonly shared among many employees or volunteers, with the result that no single employee may spend a "significant amount" of time lobbying. Therefore, applying a "corporation" rule to organizations would, in many cases, result in no registration at all from the organization. Similarly, an "organization" approach to corporations would result in the corporation being required to list many more names than, in reality, actually do any meaningful lobbying work. **As a result of an amendment made at report stage in the House of Commons, Bill C-15 was amended to require lobbyists to identify if they were formerly public office-holders and, if so, the public office they held.**

Subsequent filings must be made according to the standard time frames, i.e., "not later than 30 days after the expiry of every six-month period."

Clause 8, 9 and 10(1) make consequential amendments to several sections, i.e., the amendment is required as a *consequence* of the changes created by clauses 5, 6 and 7. The amendments do not change the substantive meaning of the sections.

Clause 10(2) amends subsection 10.4(6). That section sets out the conditions under which the Ethics Counsellor (and every person acting on behalf of or under the direction of the Ethics Counsellor) may disclose to authorities "any information that comes to their knowledge in the performance of their duties and functions under this section." Currently, section 10.4(6) lists two grounds: for the purpose of conducting an investigation; or in respect of an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made to the Ethics Counsellor. The amendment would add a third ground, which would permit disclosure "if the Ethics Counsellor believes on reasonable grounds that the disclosure is necessary" for the purpose of advising a peace officer in investigating any provincial or federal offence.

Clause 10(3) also amends section 10.4 of the Act, with the addition of three new subsections, (7), (8) and (9). Subsection (7) requires the Ethics Counsellor to advise a peace officer if, during the course of the investigation, the Ethics Counsellor believes on reasonable grounds that a person has committed an offence under any Act of Parliament. Subsection (8) requires the Ethics Counsellor to suspend any investigation relating to a breach of the Code if the Ethics Counsellor believes on reasonable grounds that the person has committed an offence under any other federal or provincial act, *or* if the Ethics Counsellor learns that the same matter is being investigated to determine whether such an offence has been committed. Subsection (9) requires the Ethics Counsellor's investigation be suspended until any investigation or charge has been finally disposed of.

Clauses 11 and 12 are consequential amendments to sections 10.5(2) and 12(a). They do not change the substantive meaning of the provisions.

Clause 13 adds a new section after section 14. New section 14.1 mandates a "comprehensive review of the provisions and operation" of the Act every five years by a Committee of the Senate, of the House of Commons or of both Houses of Parliament, "that may be designated or established for that purpose." The Committee is required to report within one year after the review is undertaken, or within any further period that the Senate, the House of Commons or both Houses as the case may be, may authorize.

Clauses 14 to 18 are transitional provisions. The amendments set out in Bill C-15 come into force on a day to be fixed by the Governor in Council.

COMMENTARY

Bill C-15 responds to the major substantive recommendations of the Committee Report, which aimed at increasing transparency, while at the same time reducing the administrative burden on stakeholders by harmonizing and simplifying the registration requirements.

Increased transparency is the aim of the Bill's most significant amendment: Clause 3(2), which amends section 4(2)(c) of the Act, eliminates the so-called "loophole" that exempts a lobbyist from registering where the lobbyist is responding to a direct request from a public office holder for advice or comment. We cannot know how much the exemption was being used (since it permits lobbyists *not* to register), and therefore cannot anticipate whether eliminating it will result in a significant increase in registration activity. The new exemption also suggests concerns about its breadth: how much lobbying activity will be exempted under the guise of "information-gathering"?