

Office of the Commissioner  
of Lobbying of Canada



Commissariat au lobbying  
du Canada

Ottawa, Canada K1A 0R5

APR 29 2009

Mr. Perrin Beatty  
President and Chief Executive Officer  
Canadian Chamber of Commerce  
360 Albert Street, Suite 420  
Ottawa, ON K1R 7X7

Dear Mr. Beatty:

I am writing in response to your letter dated July 14, 2008 in which you sought clarity on a number of issues related to the *Lobbying Act*. Since then, our office has met with Ms. Susanna Cluff-Clyburne and Ms. Shirley-Ann George from the Canadian Chamber of Commerce on two occasions to discuss these issues. Each of your questions is answered below in the order they appeared in your letter. These are fairly general responses reflecting not only our thinking but also our discussions with your staff. Please keep in mind while reading this letter that the application of the *Lobbying Act* depends, of course, upon the facts of each particular situation.

1. What is meant by a pre-arranged communication that is initiated by someone other than the Designated Public Office Holder (DPOH)? Does this mean that someone from the Canadian Chamber of Commerce, or someone on behalf of the Canadian Chamber, has to initiate the communication? What if the opportunity for the communication was arranged in advance, but not at our request? For example, what is the reporting protocol for receptions/events where the Canadian Chamber and DPOHs are both invited by the group organizing the function? What is the reporting protocol if someone from the Canadian Chamber were situated at a head table containing a DPOH for lunch at an event organized by a third party? Are purely social conversations reportable?

**Answer:**

Reportable activities are oral, pre-arranged, and generally involve the lobbyist communicating to the DPOH regarding changing federal laws, regulations, policies or programs, obtaining a financial benefit such as a grant or contribution, in certain cases, obtaining a government contract, and in the case of consultant lobbyists, arranging a meeting between a public office holder and another person.

What are not reportable activities are purely social conversations and those not related to changes to the “state of play”.

Note that, whether or not an oral and arranged communication is disclosed in a monthly communication report, it still needs to be covered by the underlying registration, particularly in terms of subject-matter, government institution and means of communication.

2. We are uncertain how to determine who “occupies a position of comparable rank” to associate and/or assistant deputy ministers and is thus a DPOH. For example, do those on a full-time secondment to a government department (such as a visiting scholar in residence) occupy a position of comparable rank? Do Canadian ambassadors? Are interactions with members of advisory panels established by the Minister ones that must be reported?

**Answer:**

A Designated Public Office Holder (DPOH) is:

- A minister of the Crown, 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.
- 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.
- Any individual who occupies a position that has been designated by regulation:
  - 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

- Any individual who occupies a position of comparable rank:
  - The position is classified at the EX-04 level or higher; **or**
  - The position's salary is 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**
  - The position reports directly to a DPOH.

Crown Corporation executives are not DPOHs.

3. Representatives from the Canadian Chamber are frequently invited by DPOHs to events or meetings where other DPOHs are present. In such instances, a pre-arranged oral communication frequently takes place with a DPOH, but was initiated by a different DPOH. Are such communications subject to reporting requirements?

**Answer:**

As explained in Question 1, if the communication involved the lobbyist discussing “changing the state of play” with a DPOH, then it is reportable. If not, then the communication is not reportable.

4. It is unclear whose communications need to be reported, as there seems to be a discrepancy in the legislation. In the return filed under section 7, we are required to name each of our employees that engage in any lobbying activities. However, the monthly return must contain all oral, pre-arranged communications with a DPOH. Do we need to include in the monthly return those instances where employees who do not engage in lobbying activities have occasion to speak with a DPOH, for example at a reception/event? Or is it only the reportable communications made by those employees listed in our section 7 return?

**Answer:**

As explained in Question 1, only arranged and oral communications are reported.

- 5a. We would also like greater clarity regarding when a communication is initiated by a DPOH. Frequently, the Canadian Chamber is contacted by those working at a division or branch of the Federal Public Administration in order to arrange a meeting with the Senior Executive of this division or branch. Those arranging the meeting are doing so on behalf of the DPOH. We understand that this interaction would not have to be reported, as it is initiated by a DPOH. Do you agree?

**Answer:**

A communication initiated by a DPOH is not reportable unless the “subject matter refers to the awarding of grants, contributions or other financial benefits and the awarding of any contract”.

5b. The Canadian Chamber sits on numerous government advisory committees at the request of the government, under the signature of a DPOH. Are oral communications associated with these committees, including follow-up meetings, reportable?

**Answer:**

If the committee meetings are not arranged by a lobbyist and they only deal with communications made to a public office holder by an individual on behalf of any person or organization with respect to the enforcement, interpretation or application (not changes to) of any Act of Parliament or regulation by that public office holder with respect to that person or organization, then they are not reportable in a monthly report. In addition, if the meeting details, notes or minutes are made publicly available, then this further ensures that the meetings are not registrable.

6. Another issue arises in respect of the subject matter of the communication. In some instances, for example on issues of national security, providing greater detail on the subject of communication can be seen to imperil Canada's national security. What level of detail regarding the subject matter is required in such instances?

**Answer:**

Only those subject matters that have already been declared in the initial registration must be reported in a monthly return.

7. We have some questions regarding communications that involve grants, contributions, contracts or other financial benefits. Does the need to always report such interactions pertain if the funding decision being discussed regards a funding decision to a third party and there are no direct financial benefits for the party inquiring?

**Answer:**

The communication must be reported if it involves “changing the state of play”, a financial benefit or a contract. Questions of a general nature do not need to be reported if they don't relate to a specific application or contract.

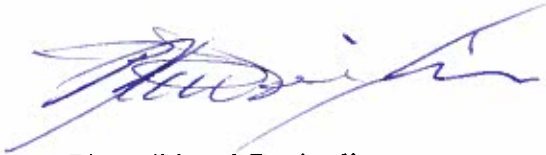
8. The Canadian Chamber often invites DPOHs to meetings with our members. We understand that we must report these meetings. Would the attendees need to report as well?

**Answer:**

Reporting is the responsibility of the individual lobbyist. Communications considered reportable must be disclosed by the individual lobbyist or his/her employer. Therefore, if an attendee undertakes a reportable communication, he/she must report it. If no reportable communication occurred, then no reporting is required. For example, the Canadian Chamber of Commerce would only disclose reportable discussions that one or more of its employees had with a DPOH and not what was discussed by the group.

I hope this will answer your questions. Your staff was most helpful and generous of its time in working with us to define more precisely how the Chamber interacts with public office holders. Do not hesitate to communicate with us should you or your staff have additional questions.

Sincerely,



Pierre Ricard-Desjardins  
Director of Operations