

Amendments to the *Lobbyists Registration Act* (British Columbia) come into Force on 1 April 2010: Lobbyist Registrar Granted Strengthened Investigative and Enforcement Powers

11 January 2010

Introduction

Amendments to British Columbia's strengthened *Lobbyists Registration Act* (the "**Act**") will take effect on 1 April 2010. Bill 19, the Lobbyists Registration Amendment Act, was passed by the British Columbia legislature on 17 November 2009. This bulletin provides a brief overview of the major amendments to the Act contained in Bill 19. If you have an issue involving the Act, or have any questions regarding the amendments or the Act, please contact Clayton Whitman by [email](#) or at 604-661-1728.

Bill 19 makes several significant amendments to the Act, including:

- A new definition of an in-house lobbyist;
- An expanded definition of lobbying;
- New investigative and enforcement powers for the Registrar; and
- A new prohibition on lobbying on a matter on which a lobbyist holds a contract with the government.

New Definition of In-House Lobbyist

The definition of an in-house lobbyist has been amended in an attempt to make it easier for people to determine whether they are required to register or not. Prior to the amendments, an in-house lobbyist was defined as an individual who is employed by a person or organization and a significant part of whose duties as an employee is to lobby on behalf of (a) the employer, or (b) if the employer is a corporation, on behalf of any subsidiary of the employer or any corporation of which the employer is a subsidiary.

The amendments remove the "significant part of duties" test and replace it with an objective test based on the amount of time spent lobbying. The Act now defines an in-house lobbyist as an employee, an officer or a director of an organization:

(a) who receives a payment for the performance of his or her functions, and

(b) whose lobbying or duty to lobby on behalf of the organization or an affiliate, either alone or together with other individuals in the organization,

(i) amounts to at least 100 hours annually, or

(ii) otherwise meets criteria established by the regulations.

The regulations, when promulgated, will provide guidance on how the 100 hour requirement is to be calculated.

Expanded Definition of Lobbying

The definition of lobbying in the Act has been expanded to include communications regarding the privatization of government interests or assets or the contracting out of the provision of goods or services to government.

Starting on 1 April 2010, communications with a public office holder in an attempt to influence:

(a) a decision by the Executive Council or a member of the Executive Council to transfer from the Crown for consideration all or part of, or any interest in or asset of, any business, enterprise or institution that provides goods or services to the Crown, a Provincial entity or the public, or

(b) a decision by the Executive Council or a member of the Executive Council to have the private sector instead of the Crown provide goods or services to the government of British Columbia or a Provincial entity

will fall under the definition of lobbying in the Act.

Registrar Granted Powers to Conduct Investigations

The amendments grant the Registrar the power to conduct an investigation to establish whether there is or has been compliance with the Act if he or she considers it necessary.

If the Registrar determines that a person has not complied with the Act, the Registrar must make a public report of his or her findings, setting out the reasoning and conclusions and the amount of any fine, which must not exceed \$25,000. The Registrar may not impose a fine if more than two years have passed since the date of the contravention.

A person who has been found to be in contravention of the Act may request that the Registrar reconsider this decision, and any decision of the Registrar may be judicially reviewed within 60 days of notice of the decision.

The Registrar has also been granted the power to compel a person to testify and to produce records, including personal information. A person who does not comply with an order to testify or to produce records may be liable for contempt.

Strengthened Enforcement Provisions for Offences Under the Act

Anyone charged with an offence under the Act will face increased penalties, including higher fines and the possibility of being prevented from registering as a lobbyist.

Prior to the amendments, the maximum fine for an offence under the Act was a fine of \$25,000. With the amendments the maximum fine for a first offence remains at \$25,000 but the maximum fine for a second offence has increased to \$100,000. In addition to a fine, the Registrar may prohibit a person who is convicted of an offence under the Act from filing a lobbyist return for up to two years.

Prohibition on Certain Contracting

The amendments to the Act introduce a specific prohibition against lobbying on a particular matter at the same time that a lobbyist or any person associated with that lobbyist holds a contract for providing paid advice to government in relation to the same matter.

Under this new prohibition, a person must not (a) lobby on a matter in relation to which the person, or a person associated with that person, holds a contract for providing paid advice, or (b) enter into a contract for providing paid advice on a matter in relation to which the person, or a person associated with that person, is lobbying. The purpose of this prohibition is to ensure that lobbyists are not in a position where they have either a real or perceived conflict of interest between their objectives as a lobbyist and the duty they may owe as a contracting partner with government.

The Registrar may exempt a person from this prohibition if the Registrar is convinced that it is in the public interest. If the Registrar decides to exempt a person from this prohibition, the Registrar must make note of the exemption in the registry and the reasons for the exemption.

This section has a transition period for lobbyists who would be in contravention of the prohibition. If a person is in contravention of this provision on 1 April 2010, the prohibition does not apply to the person until 1 June 2010.

This bulletin contains a summary of the amendments to the *Lobbyists Registration Act* (British Columbia) that come into force on 1 April 2010 and should not be relied on as legal advice. For more information on compliance with the *Lobbyists Registration Act* (British Columbia), please contact Clayton Whitman by [email](#) or at 604-661-1728.