A Lobbyist's Observations on the Lobbying Act

by Kim Doran

An Ottawa based Lobbyist reflects on how changes to the Federal Accountability Act have affected the day to day work of lobbyists. Lobbyists have a series of regulatory filings that are mandatory. The interaction between the regulatory and the regulated can often slow the Act's cited goal of transparency.

Let me begin by noting that lobbying is a profession and is recognized in law as a legitimate activity. Many in Ottawa have an understanding of how policies, regulations and consultations are developed, however, to many companies and organizations in the private sector and in the NGO sector, government decision-making can look very opaque. My fellow lobbyists and I sometimes say we act as a Global Positioning System and sometimes as translators of "what" government is saying and "how" the processes work. We are problem solvers, we provide creative solutions and we work on a variety of ever-changing files. In addition to complying with the *Lobbying Act* and its regulations, we are self-regulated through the Government Relations Institute of Canada.

I have been a Tier 1 lobbyist since 1993 and it is a job that I very much enjoy. I have worked with many different government administrations over that time and I have had a front line view of the various changes to the reporting requirements for lobbyists. When I first started all of the forms were paper, were filed and basically never seen again. Now the system has evolved to where I have my own personal website in the Office of the Commissioner of Lobbying and I can see the status of my files.

Let me say a few things about how the relationship between lobbyists and government regulators has evolved over the years. For one thing we now have a five year ban on lobbying by certain individuals based on their involvement in the political process. I feel very lucky to be part of the "grandfathered" pool of Tier One lobbyists. I came to lobbying after being a Legislative Assistant to a Member of Parliament. I was able to learn the system of government, first hand, and I realized early on that it is the system of government that is important not your individual access to a "blue" or "red" government.

The current pool of lobbyists has been shrunk considerably by the new laws. Many who work for government today would make wonderful lobbyists because they have specific sector experience. They understand how regulations are drafted, how government works in advancing a program area and how government makes decisions. From my perspective the ban limits the pool of people who can become my direct competitors. But I believe from a public policy perspective that there is a need to continually refresh the Lobbyist pool with people who can bring additional energy and perspective.

Currently, you can leave the Hill and become an "advisor" or a "public affairs specialist" but the toolkit that you offer a client is limited if you cannot also cross the threshold to become a lobbyist on their behalf.

Turning the ban another way, I also believe that it limits the abilities of government to attract people to work for Ministers in Ottawa. Prior to the ban I believe that Ministerial offices and senior levels of the civil service benefited from being able to attract people from the private sector who had specialized knowledge; or who had been in government before and had institutional memory and significant experience.

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There are possible exemptions from the five year ban and there have been a couple of exceptions granted but the average staffer or senior civil servant will not apply for the exemption.

Another issue I want to address is the distinction between a lobbyist and a public affairs specialist. How does one cross the threshold and what makes me a lobbyist on a file? This is not an easy issue to understand. About 99.9 percent of my day I am a public affairs advisor. The .1 percent is if I put in a meeting request on behalf of a client or if I have a conversation about my client's perspective with a designated public office holder (DPOH). But the confusion about contact and conversation is endless in the lobbying community under the current web of rules.

For example, I have never met Lobbying Commissioner Karen Shepherd before. However, what if I am on a panel with her as I am today. I am advocating changes to policies that she implements. Am I lobbying? Should I be filing a DPOH communication report?

A constituent of an Member of Parliament running into their MP over the holidays and complaining about the Harmonized Sales Tax (HST) is not required to register their lobbying. MPs are exempt from the DPOH list. However, Ottawa is a small city and it is quite normal to run into a Minister, senior political staff, and ADM level bureaucrats at events and on the street. In the holiday season I have lots of invites in my e-mail in-box – I do not know "who" is attending these events. Casual conversation does not need a filing – but how is casual conversation defined and what happens if I am asked about my files. I respond and a complaint is made by someone who overhears this conversation.

The filing of meetings with Designated Public Office Holders has had two obvious effects: First, it is used by consultants as a marketing tool. Second, it is used as intelligence to track activities by competitors on specific files and on specific issues.

Do these filings provide the average Canadian with greater transparency? Yes, in the sense that they know who is being met with. But recording meetings is just that - a record that a meeting took place with someone at a senior level of government.

The web of rules imposed as a result of the *Federal Accountability Act* has added much complexity to lobbying. Minister's offices want to know the Lobbyist registration number of a client when we call in. Sometimes we have it – sometimes we do not.

Lobbyists are often added very quickly , and late, to an issue – the filing process with the Commissioner's office can take weeks if not months. Sometimes an email is received announcing the official registration on the same day as the requirement for the six-month communication update is due. Conversely, by the time a lobbyist is registered they are then filing a deregistration.

Our answer to Minister's offices that we have filed is not a very useful one. They generally prefer to see proof. Therefore, having a slow registration system has a direct and negative impact on our business. The Commissioner and her staff do not intend this. Let us call it unintended consequences of the web of rules.

I believe that the complex rules around filing actually impede my ability to do the best job I can for clients. The filing requirements itself leads to operational problems. The changes to the *Federal Accountability Act* have meant that an ever-expanding group of officials within the Office of the Commissioner of Lobbying are becoming educated as to terminology and policy development but how much information do they really need?

Let me give some examples. An official working in the OCL calls a lobbyist to ask for greater clarity under subject matter which concerns an issue featured in one of the recent Budgets. The lobbyist answers that they would love to give those details but can only work off what is provided in the budget. A bit of a stalemate ensues as the official tries to narrow the policy area and the lobbyist really does not know and is not in the world of guess work. We can be penalized for filing incorrectly, so we do not guess.

Second, calls go out from the Commissioner's staff to a private sector company asking for greater detail on a policy area, including what their objectives are. Great confusion on the part of the private company as they have registered their interest area but are not going to provide competitive information as to the specific intrinsic details of the policy changes sought. Nowhere in the *Lobbying Act* does it say we have to reveal what our clients hope to achieve.

Three, great debate between officials and Tier 1 lobbyists as to "what" the regulation or policy involves. Explaining how a regulation is drafted and the various stages to finalization; or how a policy process is working can take some time. In the meantime, the lobbyist application has not been approved and the public is unaware of the activity.

The solutions to these issues will have to be worked out over time but I think at the minimum we need a greater understanding by staff at the Commissioner about current public policy issues and the nature of regulations and policy making in Agencies and Departments.