Toronto Computer Leasing Inquiry

Research Paper

LOBBYIST REGISTRATION

Volume 1: Comparative Overview

November 2003

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Part 1
Introduction

Overview

Volume1 is the first of three volumes on Lobbyist Registration. This report focuses on the legal definitions, structures, and reporting requirements of lobbyist registration programs in Canada and the United States.

The purpose of this first volume is to provide a comparative overview of the nature of lobbying and lobbyist registration programs, including the wide variety of approaches that exist.

Drawing on the research, we also examined the various approaches to lobbyist registration in the context of the unique structural and cultural elements of the Canadian and U.S. systems of government. Based on this examination, we developed an analytical framework that looked at possible correlations between different approaches to lobbyist registration and key features of different systems of government.

Volume 1 also lays the groundwork for the second and third reports:

- Volume 2 is more qualitative/analytical in nature. Drawing on interviews with experts, including academics, public servants, and practitioners, we highlight and discuss the various issues associated with lobbyist registration, with particularly emphasis on relative and comparative effectiveness.
- Volume 3 focuses more specifically on the City of Toronto, including a discussion of current and previous City policies, the specific lobbying environment and issues related to lobbying at the City, and

recommendations for changes to enhance the City's current proposal for a lobbyist registry.

Scope

This volume focuses primarily on lobbyist registration programs in place in the following jurisdictions:

- Canada: Ontario, British Columbia, Nova Scotia and the Government of Canada.
- United States: All 50 states and the U.S. Government as well as selected municipalities.

The focus on the above jurisdictions reflects the fact that lobbyist registration is a primarily North American phenomenon. Other major Western/Commonwealth nations do not appear to have similar traditions of lobbying or at least have not implemented lobbyist registration systems. Having said that, there are two important caveats to note:

- The European Parliament recently implemented a minimalist form of lobbyist registration. Given the very limited nature of this approach, we have addressed it in the form of an Appendix (*see Appendix I*) rather than as an integrated part of our analysis.
- There is a body of evidence to suggest that other jurisdictions are thinking about how to move beyond traditional lobbying or special interest approaches to public consultation. This early thinking includes potential next-generation approaches to *e-government* that could potentially render lobbyist registration systems redundant. Britain, for example, is developing a process of Internet-based public consultation that emphasizes transparent on-line discussion of competing positions and views on a standing set of issues. While the purpose appears to be consistent with at least one of the purposes of a lobbyist registration

system (greater transparency in the process of engagement with government), the approach is obviously quite different from the typical North American lobbyist registry.

Also, this volume does not include any discussion of the current approach to lobbyist registration at the City of Toronto given that we will be dealing with the specifics of the Toronto situation in our third volume in this series on lobbyist registration, including City proposals to strengthen their current requirements.

Structure of the Report

Volume I has five sections:

1. Introduction, including the scope and structure of the report and the research approach.

2. A definitional overview, including a discussion of what lobbying is and is not and the various definitions that jurisdictions have in place.

3. A discussion of the U.S. system of lobbyist registration, including detailed information on registration requirements.

4. A discussion of the various Canadian approaches to lobbyist registration.

5. Our attempt, as noted above, to develop a high-level analytical framework with respect to the applicability of different components of lobbyist registration in different systems of government.

These five sections are following by various appendices.

Our Research Approach

In the preparation of the three volumes on lobbyist registration, we reviewed over 1,200 pages of documents and conducted 29 key informant interviews.

Documentary resources focused on publicly available material (either in print or electronic format), including legislation, annual reports, hearing transcripts, correspondence, handbooks, newsletters, opinion pieces, speeches, policy statements, and research reports, etc. Sources for these documents included various departments/branches of governments, research and advocacy/watchdog organizations, citizen groups, industry associations, academic organizations, and the media.

Our key informant interviews included current and former public officials in selected Canadian and U.S. jurisdictions, practitioners/lobbyists, researchers/academics, municipal provincial associations, and ethics advocates.

Part 2
Definitions

This section deals with various definitions:

- What is lobbying?
- Is lobbying a legitimate activity?
- What does lobbying look like when it happens?
- What are the different types of lobbyists?
- Who are public office holders for the purpose of lobbying?
- Who is not considered to be a lobbyist?
- What is not considered to be lobbying?

We begin with these definitions because there are many popular conceptions (or misconceptions) as to what constitutes lobbying in both its legal and illegal contexts. Therefore, it is important to have a common, up-front understanding of what various jurisdictions mean by “legal lobbying” before delving into the details of the various registration systems.

What is Lobbying?

In the U.S. federal government, individual states, and a smaller number of municipalities, as well as in four Canadian jurisdictions, lobbying (as opposed to types of lobbyists) is defined in relatively consistent terms, although with differences in scope as will be discussed.

U.S. Examples

The following are examples from U.S. jurisdictions:

- Influencing or attempting to influence legislative action or non-action through oral or written communication or attempting to obtain the goodwill of a member or employee of the Legislature. (*State of Florida*).
- Communicating by any means, or paying others to communicate by any means, with any legislative official for the purpose of influencing any legislative action. (*State of Illinois*)
- Communicating with a public official for the purpose of influencing the passage, defeat, amendment, or postponement of legislative or executive action. (*State of Utah*)
- An attempt by a paid lobbyist to communicate with a public office holder in any attempt to influence the passage or defeat of any local law, ordinance or regulation by a municipality or subdivision thereof or adoption or rejection of any rule or regulation having the force and effect of local law, ordinance or regulation or any rate making proceeding by any municipality or subdivision thereof. (*New York State definition of lobbying at the municipal level)*
- Attempts by paid lobbyists to influence public officials, with influence meaning promoting, supporting, opposing or seeking to modify or delay any action on municipal legislation by any means, including but not limited to providing or using persuasion, information, statistics, analyses or studies. (*City of Los Angeles)*

It is important to note that much of the emphasis in the U.S. is clearly on the legislative process. As will be discussed in more detail in Part 4 of this report, this is a reflection of the much greater emphasis on governing through legislation in the U.S. compared to Canada and a generally much more central and high profile role for individual legislators.

Also, in the U.S. form of government, the executive and legislative branches are very separate. Most states have lobbyist registration systems that deal with both branches of government (e.g. Utah). Others, such as New Hampshire, deal only with the State Legislature. Still others have separate policies in place for each branch. This will be discussed in more detail in Part 3 of this volume, dealing specifically with the U.S. model.

Canadian Jurisdictions

The following are examples of Canadian definitions. There are some obvious differences that will be noted.

- As will be discussed in Parts 3 and 4 of this volume, legislation plays a much more dominant role in U.S. governance compared to Canada, where more executive authority and flexibility is vested in Cabinet and Ministers (e.g. Minister's orders, regulations, orders in council, etc.). This can be seen through a comparison of the volume of legislation in New York State and Ontario over a 12-month period in 2002. During that time, the New York State legislature dealt with 19,000 pieces of legislation compared to a figure of less than 300 for Ontario.
- In Canadian jurisdictions, our system of government integrates the legislative and executive branches with the public service as an extension of the executive. As such, lobbyist registration systems apply to each of these. There are, of course, variations within the different systems. These are discussed in more detail in Part 4 of this volume.
- In the absence of such a strong focus on the legislative process in Canada, and also as a reflection of our integration of the executive and the legislature, the scope of the Canadian definition of lobbying goes well beyond legislatures and the development of legislation. It also covers the executive, the legislature, and government departments, and appears to

deal with a broader range of government decision-making, e.g. policy and program decisions, grants, contracting, etc.

Similar to the situation between the U.S. federal government and individual states, Ontario, B.C., Nova Scotia and the Canadian government have very similar definitions.

Ontario

Lobbying occurs when a paid lobbyist communicates with a public office holder in an attempt to influence:

- The development of any legislative proposal by any member of the Legislative Assembly.
- The introduction, passage, defeat or amendment of any bill or resolution.
- The making or amendment of any regulation.
- The development, amendment or termination of any policy or program.
- Any decision about privatization or outsourcing.
- The awarding of any grant, contribution or other financial benefit by or on behalf of the Crown.
- The awarding of any contract (consultant lobbyists only).
- The arrangement of meetings between a public office holder and any other person (consultant lobbyists only).

British Columbia

Lobbying occurs when a paid lobbyist communicates with a public office holder in an attempt to influence:

- The development of any legislative proposal.
- The introduction, passage, defeat or amendment of any bill or resolution that is before the Legislative Assembly.
- The making or amendment of any regulation.
- The development or amendment of any government policy or program.
- The awarding of any contract, grant, contribution or other financial benefit by or on behalf of the government of British Columbia
- The arranging of a meeting between a public office holder and any other person (consultant lobbyists only).

Nova Scotia

Under the *Lobbyists Registration Act*, lobbying means to communicate with a public servant in an attempt to influence:

- The development of a legislative proposal.
- The introduction, passage, defeat or amendment of a bill or resolution.
- The making or amendment of a regulation.
- The development, amendment or termination of a policy or program.
- A decision about privatization or outsourcing.
- The awarding of a grant, contribution or other financial benefit by or on behalf of the government.
- The awarding of a contract by or on behalf of the government for consultant lobbyists only.
- The arrangement of a meeting between a public servant and another person

Government of Canada

[*Please note: the following definitions represent the current status of federal requirements. Changes to the federal Lobbyists Registration Act were passed earlier this year (Bill C-15) but have yet to be enacted. In our discussions with federal officials, we were unable to obtain information about when promulgation might take place, but it is expected to do so once regulations have been changed. A description of the changes is provided in Appendix II.*

Lobbying involves communication by individuals who are paid to attempt to influence government decisions through its public office holders. This includes arranging meetings with public office holders, attempting to influence legislative proposals, bills or resolutions, regulations, policies, programs, awards of grants or contributions or other financial benefits, award of contracts.

Is Lobbying a Legitimate Activity?

In general, the research answers this in the affirmative.

Most if not all U.S. and all Canadian jurisdictions have made some form of statement in principle expressing the view that lobbying is a legitimate form of expression and a recognized part of the public policy development process.

U.S. Jurisdictions

Lobbying in the U.S. is very political in a recognized and transparent sense. In many cases, lobbyists see themselves as policy makers that are playing important and active roles alongside legislators and executives. One expression

of this view is the fact that registered lobbyists often have special access privileges, including access to government buildings after hours.

Many U.S. jurisdictions have formal statements indicating lobbying is a recognized and legitimate part of the public policy development process. This is supported strongly in the literature (both academic and otherwise) in that lobbying is viewed in the U.S. as not only legitimate, but something that is:

- Universally viewed as guaranteed as per the First Amendment of the U.S. Constitution with respect to free speech and the right of citizens to petition their government for the redress of grievances.
- An important and encouraged part of the process and of government's role to understand and balance competing interests (as a Rutgers academic phrased it: lobbyists are an inextricable "part of the system of representation".)
- Essential to the democratic process where federal and state legislators have little or no staff or money to carry out research on issues and where lobbyists can help to clarify positions for the public official.

The following are some examples of these statements:

State of Florida

The Legislature finds that the operation of open and responsible government requires the fullest opportunity to be afforded to the people to petition their government for the redress of grievances and to express freely their opinions on legislative actions. Further, the Legislature finds that preservation of the integrity of the governmental decision making process is essential to the continued functioning of an open government.

State of New York Municipal Lobby Registration

> The legislature hereby declares that the operation of responsible democratic government requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to appropriate officials their opinions on legislation and governmental operations; and that, to preserve and maintain the integrity of the governmental decision-making process in this state, it is necessary that the identity, expenditures and activities of persons and organizations retained, employed or designated to influence … be publicly and regularly disclosed.

Canadian Jurisdictions

Compared to the U.S., Canada does not have a similar constitutional basis for establishing the legitimacy of lobbying. Instead, the Canadian federal government has established a set of principles that sets the tone for Ontario and more recently for B.C. and Nova Scotia.

As will be seen below, the federal principles (not dissimilar to the U.S. general approach) attempt to strike a balance between lobbying as a legitimate activity, and the importance of transparency in government.

- Free and open access to government is an important matter of public interest.
- Lobbying public office holders is a legitimate activity.
- It is desirable that public office holders and the public be able to know who is attempting to influence government.
- The system for the registration of paid lobbyists should not impede free and open access to government.

What does Lobbying look Like?

The conventional view is often that lobbying involves some form of questionable interaction with government. This typically would include arm-twisting, providing gifts and favours, quiet back room meetings, favourable decision in exchange for campaign contributions, using friends of politicians to get meetings that would not otherwise have been granted without the lobbyist's intervention, etc.

However, as will be discussed in this section of our report, many writers and commentators in Canada and the U.S. from academics to industry representatives, stress a more neutral or "professional" approach. This is not to suggest that the above archetypal negative behaviours do not exist in the U.S. or Canada, but rather that Lobbyist Registries are, for the most part, about regulating *legal* activities. In effect, they capture what is considered "legal" lobbying. In that sense, they are not generally intended to prevent illegal or unethical behaviour on the part of the lobbyists or public officials.

In most jurisdictions, illegal or unethical behaviour is generally dealt with through other pieces of legislation or administrative policy. These, for example, include conflict of interest policies and legislation governing public officials, whistle blowing policies and legislation, components of procurement policies dealing with conflict of interest or inappropriate behaviour on the part of bidders and their lobbyists, campaign financing legislation, etc.

Examples of Lobbying in its Ideal Form

The literature indicates that there is something akin to an "ideal" form of lobbying that is positioned for the most part as a form of strategic or tactical intelligence for organizations that want to be effective in their dealings with government.

Below, we provide two representative excerpts that articulate this ideal role (*other examples are provided in Appendix III*). The first excerpt is from a U.S. non-profit association that provides advice to other non-profits on how to lobby effectively. The second excerpt is from a major Canadian government relations firm. Embedded in these examples (and in the additional examples in *Appendix III*) are some key "national" differences worth noting:

- The significant emphasis in the U.S. system of government (relative to the Canadian system) on specific pieces of legislation and the role of individual legislators in that process and therefore the primary focus of lobbying in the U.S.

- The emphasis in the U.S. on direct contact between lobbyists and elected officials and their staff as an appropriate and desirable form of interaction and a core component of the culture of government.

- The lack of emphasis in the Canadian examples on lobbyists having direct contact with public officials other than in a background/information gathering/sharing information context.

It is important to note that each of these examples stresses the role of the lobbyist as a strategist/advisor who is knowledgeable about how government works in practice as opposed to theory, e.g. decision-making processes, culture, current political priorities, relative priority of issues, alternative viewpoints, etc. All three examples come from the perspective that government decision-making

processes are not generally transparent or easily understood by “outsiders” and that the reality of the process differs considerably from the published theory.

Most professional government relations or lobbying firms (consultant lobbyists) characterize their service offerings very much along the “ideal” lines – with the primary role of the lobbyist as strategist/advisor in the background. However, it is also important to note that there is no information or analysis that we have been able to identify through our literature search or in discussion with experts and public officials with respect to whether and to what extent the reality of lobbying conforms to this ideal.

In addition, over time, large lobbying firms in Canada have moved in the direction of providing a broader range of public relations and communications services, of which government relations (lobbying) is only one offering. At the same time, firms that were primarily communications focused have added government relations practices. In both cases, the broader range of services often includes:

- Marketing and other forms of consumer-oriented communication.
- Corporate communications.
- Crisis/issues management.
- Public opinion and social research.
- Internet services.
- Media monitoring.

Observers suggest that this horizontal integration has happened as firms attempted to capture a larger slice of their clients’ communications requirements. The thinking has been that by providing a “full service” suite to clients, one is less likely to face competition from one or more consulting firms working for the same client. In addition, Canadian firms have been faced with the business reality that lobbying in the Canadian context has been and will likely continue to be a much more limited activity compared to the U.S. Their businesses become more sustainable/profitable through this diversification of services.

Finally, we want to make a distinction between the activities of lobbyist consultants, as opposed to organization lobbyists (commercial or non-profit).

As one might expect, Canadian government relations firms (consultant lobbyists) do not generally advertise that they have "special access" to decision makers or that they can "get a meeting" with a politician or civil servant that a client organization could not otherwise get themselves.

To an extent, this is borne out in the experience of senior public servants. Using Ontario as an example, our interviews suggest that senior public servants are rarely approached directly by consultant lobbyists. However, this may not be the case with respect to political officials and their staff. There are no studies available in this regard.

However, there is some anecdotal evidence to suggest that there appears is a somewhat greater emphasis on the part of Canadian government relations/consultant lobbyist firms on recruiting former political staff, as opposed to civil servants. The inference one could draw is that at a minimum, "political intelligence gathering" (as distinct from more blatant "getting a meeting" or "directly arguing on behalf of clients") is an important part of consultant lobbyist services.

The same thing, however, is not necessarily true of organization lobbyists. Generally, these organizations have as part of their mandate to deal directly with government officials at the bureaucratic and political level. That means that the employee lobbyists within these organizations are not intended to be "background strategists" but rather are paid to be in regular contact with government officials on their organization's issues of interest.

Excerpt #1

The Legislative Process and Your Lobbyist

From the Non-profit Lobbying Guide by Bob Smucker

Published by The Independent Sector, 1999

It is important to have a volunteer or staff person in your organization who knows the basics of how your legislature works, because you will need that information to know how to target your efforts. For example, you may be trying to block legislation averse to your group, help support pending legislation backed by your organization, or arrange the introduction of legislation vital to your group. In the typical legislature, to achieve any of these aims, you will have to gain the support of the committee designated to consider your issue. It follows that you will need to know something about the composition of that committee. For example, if you are seeking to have legislation introduced, it is usually possible to recruit a committee member to introduce your bill. But you won't want just any member. You will want a person of influence, and that usually means a senior committee member whose party is in the majority and therefore controls the committee.

It is incidentally helpful to know that many decisions on legislation are often made in a last-minute frenzy as legislators prepare to adjourn for the legislative session. The lobbyist (whether a volunteer or a paid staff member) who is following your issue in the legislature should have enough understanding of how the legislative process works so that your group can make the right move at the right place and time (for example, knowing whether to support or oppose an amendment that suddenly comes up).

Your lobbyist needs to recognize, for example, whether this is the last chance to modify your bill or if you still have a reasonable chance for the

changes you want in the other house of the legislature. A lobbyist who knows (among other things) the best legislator to introduce your bill and how and when decisions are made in your legislature is referred to as an inside lobbyist.

Having a seasoned insider available to your organization can save you enormous time and effort. Perhaps volunteers or staff people bring such experience to your group from their work with other nonprofits. If not, such groups as the League of Women Voters can help your group develop an understanding of how your legislature really works. Former legislators or those currently in office can also be very helpful. Nationally, the Advocacy Institute, INDEPENDENT SECTOR, and Charity Lobbying in the Public Interest, among other organizations, can provide how-to information about lobbying by nonprofits.

To get started, your lobbyist needs to know or be able to learn quickly the following things:

- *The basics about the legislative process and the key committee members or other legislators who have either jurisdiction or influence over your legislation and can affect its movement;*
- *The details of the bill you are supporting and why its provisions are important to the legislators' constituents and to your organization; and*
- *The organizational structure of your group and how it communicates with its grassroots.*

More important, the person who will be your lobbyist should have strong skills in interpersonal relations. A prospective lobbyist for your group may bring great understanding of government, its processes, and its key members, but if the relationship skills are absent, don't give him or her the

job. This candidate will lack the most fundamental attribute of a good nonprofit lobbyist. It would be better to take on a person who has no lobbying experience but has demonstrated interpersonal skills and the ability to organize.

Most such persons can be taught to lobby, but chances are that you will not be able to change the performance of the person who brings understanding of the process but lacks sound interpersonal skills.

You will be tempted to take the person who lacks the relationship skills but has the knowledge, especially if he or she is articulate. If you do, however, over time you will probably find yourself following after the lobbyist at the state capitol and trying to mend relationships.

Worse yet, word won't get back to you about your lobbyist because of people's natural reluctance to pass along negative information; you will just find that your lobbyist is having difficulty gaining access. Again, if you have to make the choice, go with the relationship and organizing skills. The principal responsibility of your organization's lobbyist is to work effectively for enactment of your group's legislation. The success or failure of your legislation depends considerably on how well your lobbyist can orchestrate the movement of your bill through the legislature and on how effective he or she is in mobilizing your grassroots. Both tasks require an understanding of the legislative process. More important, the movement of your legislation requires that you recruit a strong member of the legislature to take the lead on your measure.

Excerpt #2
Government Relations Consulting Services Description
From GPC Government Policy Consultants, Ottawa, Canada 2003

The Cornerstones of Effective Government Relations

Effective advocacy depends on reliable information, insightful strategic advice and timely, decisive intervention. It also means never losing sight of our client's business imperatives. GPC applies a proactive approach to public affairs that allows clients to stay close to developments within government and to intervene effectively on the issues that impact their commercial success.

Issue Monitoring

Issue monitoring demands far more than simply reading newspapers, following legislative debates or staying current with the published sources that policy makers read for information on issues. It demands a proactive and comprehensive approach.

GPC monitors issues through ongoing contact and information exchange with the officials, politicians, political advisors and other decision makers - as well as interest groups - who are relevant to a client's commercial interests. This approach ensures that our clients remain aware of the evolving climate of opinion within government on their priority issues and are the first to know about emerging threats or opportunities.

Issue monitoring activity begins the critical process of helping our clients to develop positive working relationships with the decision-makers close to their issues. In this way, it serves as the basis for effective advocacy.

Analysis

Having established a regular flow of timely, reliable and relevant information through proactive issue monitoring, GPC provides ongoing analysis of events, helping our clients to understand them in their appropriate political and policy contexts. By identifying and assessing developments in terms of their impact on the client's short or long-term business goals, this analysis enables clients to short-circuit unwanted surprises before they can develop into problems.

Strategic Advice

Strategic advice is at the heart of GPC's value to clients. Drawing upon unrivalled experience, judgement and sectoral knowledge, our consultants provide ongoing strategic advice that is relentlessly focused on the client's needs. In this way, GPC ensures that our insight and expertise always add value to our client's business.

Advocacy/Lobbying

Clients are their own best advocates when they have the information they need to intervene on key issues early in their development.

Through daily contact with key decision-makers, GPC is positioned to provide political intelligence and advice on an ongoing basis. This process enables our clients to be well positioned to influence emerging demands, changing priorities and new policies - long before problems arise.

Ongoing contact with government serves another important purpose: it enables our consultants to keep decision-makers informed about our client's requirements, while providing a channel for officials and political advisors to pass on their views.

In those instances where a client needs to intervene in the process, GPC supports these efforts by conducting preparatory briefings with government advisors, preparing clients for meetings, and undertaking any required follow up. In addition, GPC develops targeted advocacy materials for clients including letters, position papers, fact sheets, advocacy brochures, briefing documents, as well as formal submissions to government.

What are the Different Types of Lobbyists?

U.S. Jurisdictions

U.S. jurisdictions are for the most part consistent in who they define as lobbyists. The U.S. approach focuses on two tiers of definitions: employers of lobbyists and the individual lobbyists themselves.

The following definition, from the State of Indiana, is typical of this approach:

- *Employer lobbyists:* organizations, associations, corporations, partnerships, firms, or individuals that compensate another to perform lobbying services on behalf of the employer lobbyist.
- *Compensated lobbyist:* an individual, organization, association, corporation, partnership or firm that receives compensation for lobbying services render on behalf of a client.

A variation on this theme exists in the City of Los Angeles, which distinguishes "consultant lobbyists" from "in-house lobbyists". Los Angeles defines four categories of lobbyist:

- *Lobbying firms:* a commercial entity that receives payment to lobby on behalf of one or more municipal lobbying clients must be registered.

- *Lobbyists within lobbying firms:* employees, partners, shareholders, etc. of lobbying firms that are engaged in lobbying.
- *Independent lobbyists:* sole-practitioner lobbyists who receive payments to lobby on behalf of one or more municipal lobbying clients must register both as a lobbyist and as a "lobbying firm."
- *In-house lobbyists:* employees of organizations who are paid by their employer to provide lobbying services on behalf of the organization.

In Los Angeles, employers of in-house lobbyists are not required to register. However, clients of lobbying firms that are actively engaged in lobbying on the client's behalf are required to register.

In the "employer" category, most U.S. jurisdictions do not set up separate categories of lobbyists for commercial/for-profit organization, vs. not-for-profits.

As demonstrated above, U.S. jurisdictions are generally quite specific that a key defining component is compensation. As such, volunteers are excluded from being considered lobbyists. Further more, many, but not all, jurisdictions include a specific minimum threshold of compensation for a lobbyist below which registration as a lobbyist is not required. The following are some examples:

- **U.S. federal government:** The exemption threshold is $5,000 in lobbying income (for consultant lobbyists) for a particular client or $20,000 in expenses for an organization whose employees engage in lobbying.

- **State of Washington:** Individuals engaged in a total of four days of lobbying in a three-month period or incurring less than $25 in expenditures on behalf of or for public officials are exempt from registration.

- **State of Indiana:** Exempted individual must not receive any compensation or incur any expenses for or on behalf of public officials.

- **City of Los Angeles:** Individuals that receive no compensation and incur only reasonable travel expenses are exempt from registration. Individuals that receive compensation must make at least one contact with government officials per quarter and receive at least $4000 for their efforts to be subject to registration.

- **State of Michigan:** To be eligible for registration a lobbyist must make expenditures in excess of $1,875.00 dollars to lobby a number of public officials, or in excess of $475.00 dollars to lobby a single public official, during any 12-month period.

- **State of Massachusetts:** To be eligible for registration, a lobbyist must not spend more than fifty (50) hours or earn less than five thousand dollars ($5000) for lobbying efforts during a 6-month reporting period.

Canadian Jurisdictions

In Canada, the federal government, Ontario, British Columbia, and Nova Scotia use consistent definitions of who is considered a lobbyist. Three categories of lobbyist have been specified.

As illustrated below, the primary distinction is between “consultant lobbyists” and “in-house” lobbyists. The former category focuses on external consultants hired by organizations (commercial or otherwise) to provide lobbying services. The latter category focused on employees of organizations that include significant amounts of lobbying as part of the job responsibilities.

Within this second category, there are two sub-categories:

- Commercial organizations – in effect, business interests of all types.
- Other types of organization – including provincial/industry associations, non-profit organizations, charities, etc.

The following definition, for illustrative purposes, is taken from Ontario:

- Consultant lobbyists are paid to lobby on behalf of a client, e.g. government relations consultants, lawyers, accountants or other professionals who provide lobbying services for their clients;
- In-house lobbyists employed by persons (including corporations) and partnerships that carry on commercial activities for financial gain;
- In-house lobbyists employed by non-commercial organizations such as advocacy groups and industry, professional and charitable organizations.

In the case of in-house lobbyists (whether for commercial or non-commercial organizations), all four Canadian jurisdictions qualify their definition. To qualify as an in-house lobbyist, the employee in question must dedicate a minimum of 20 percent of their time to active lobbying activities, (as opposed to prepare research reports, etc.)

One of the very recent amendments to the federal legislation has refined the time threshold even further. With the changes in Bill C-15, there will soon be a requirement that if employees collectively or individually spend more than 20% of their time on lobbying, then the commercial entity must register (this means that the company must register, in addition to naming its senior officers, and any employees than spend any time lobbying).

All four Canadian jurisdictions also require the senior executives of non-commercial organizations engaged in lobbying through their employees to also

be registered. The same registration requirement does not apply for the senior executives of commercial organizations with in-house employee lobbyists (the exception is the federal government as mentioned above).

Consistent with the above, Canadian jurisdictions exempt unpaid volunteers from registration. However, there is no minimum compensation threshold below which an individual is not required to register.

Who are Public Office Holders?

Most jurisdictions also include definitions of who is considered to be a public office holder, i.e. would not be considered to be lobbyist, for the purposes of being clear with respect to who can be lobbied.

U.S. Jurisdictions

Federal Government

Public officials are defined as the President, the Vice President, a Member of Congress, or any other specific federal officer or employee, including certain high-ranking members of the uniformed service.

Indiana

Public officials include:

- Members of the general assembly, or any employee or paid consultant of the general assembly, or an agency of the general assembly.

- Employees of the state or federal government or a political subdivision of either of those governments.

Utah

Public officials are a) members of the Legislature, b) individuals elected to positions in the executive branch, or c) individuals appointed to or employed within the executive branch if they make policy, purchasing, or contracting decisions, if they draft legislation or make rules, if they determine rates or fees, or if they make adjudicative decisions.

New York State Legislated Municipal Requirements

Municipal officers and employees, including an officer or employee of a municipal entity, whether paid or unpaid, including members of any administrative board, commission, or other agency thereof and in the case of a county, shall be deemed to also include any officer or employee paid from county funds. No person shall be deemed to be a municipal officer or employee solely by reason of being a volunteer fireman or civil defence volunteer, except a fire chief or assistant fire chief.

City of Los Angeles

Any elected or appointed City officer, member, employee or consultant (who qualifies as a public official within the meaning of the *Political Reform Act*) of any agency, who, as part of his or her official duties, participates in the consideration of any municipal legislation other than in a purely clerical, secretarial or ministerial capacity.

Canadian Jurisdictions

In Canada, the definitions are very similar across jurisdictions, focusing on elected officials and their staff, government appointees and employees, including agencies, boards, and commissions, and the military/police.

Government of Canada

A public office holder is defined broadly as *"any officer or employee of Her Majesty in right of Canada."* This includes:

- Members of the Senate or the House of Commons (Senators, Members of Parliament, Ministers) and their staffs.
- Persons appointed to office by a Minister of the Crown or the Governor in Council.
- An officer director or employee of any federal board, commission or other tribunal.
- Members of the Canadian Armed Forces.
- Members of the Royal Canadian Mounted Police.
- Employees of federal departments.

Ontario

A public office holder is broadly defined and includes:

- Cabinet Ministers, Members of Provincial Parliament and their staff.
- Virtually all public servants unless otherwise exempted by regulation.

- Officers, directors and employees of provincial government agencies, boards and Commissions (this does not include broader public sector entities such as hospitals, universities and local government institutions).
- Persons appointed to office by Order-in-Council.
- A member of the Ontario Provincial Police.

British Columbia

A public office holder is broadly defined and includes:

- Cabinet Ministers, Members of the Legislative Assembly and their staffs
- Virtually all public servants
- Persons appointed to office by Order-in-Council or by a Minister
- An officer, director or employee of any government corporation as defined in the *Financial Administration Act*

Nova Scotia

A public servant, referred to in the Act as a public office holder, includes:

- An MLS, official, or servant of the House of Assembly and their staff;
- Officers, directors, and employees of Nova Scotia government departments, agencies, boards, and commissions;
- A person appointed by the Cabinet or a Minister to any office or body;
- An officer or employee of the government, or employee of an officer or Minister not otherwise specified.

Ontario and B.C. specifically note that the following are not considered to be public office holders:

- Judges
- Justices of the Peace
- Officers of the Legislative Assembly (for example, the Ombudsman, the Information and Privacy Commissioner)

Nova Scotia adds further to this list by including the following:

- Members, officers, and employees of a municipal council or village commission, and members, officers and employees of a school board
- Offices, directors, or employees of the Nova Scotia School Boards Association

Who is not considered a Lobbyist?

U.S. Jurisdictions

U.S. jurisdictions include a variety of specific exemptions from this list of those considered to be lobbyists. In general, these focus (as indicated in the State of Florida example below) on elected and appointed public officials (politicians and employees/civil servants), as well as the judiciary.

As indicated below, the U.S. federal government includes specific exemptions for foreign governments and non-business foreign entities, as well as churches and religious organizations.

It is important to note, however, that U.S. models generally anticipate the possibility that public officials may from time to time engage in lobbying on behalf of their agency. In these cases, the public officials, including agency employees, are required to register as lobbyists.

State of Florida

- Member of the Legislature
- Employee of the Legislature
- A Judge who is acting in their official capacity
- A State officer holding elective office or an officer of a political subdivision of the state holding elective office and who is acting in an official capacity.
- Persons appearing as witnesses for the purpose of providing information at the written request of a committee chair, subcommittee or legislative delegation.
- Persons employed by any executive, judicial, quasi-judicial department of the state or community college of the state that make a personal appearance before the House of Representatives or Senate.

U.S. Federal Government

- Any agent of a foreign government, foreign political party, or other foreign entity not organized for business.
- Any group of governments acting together as an international organization such as the World Bank.
- A church, its integrated auxiliary, convention or association of churches or religious orders, if directly contacting government officials, as opposed to hiring an outside firm.
- A professional association of elected officials who are exempted from registration as lobbyists.

City of Chicago

The City of Chicago includes a number of specific legal exemptions:

- Journalists with periodicals, newspapers, media, in the ordinary course of conducting their business.
- Officials of the City of Chicago, or of any other unit of government, who appear in their official capacities before any City agency for the purpose of explaining the effect of any legislative or administrative matter pending before such body.
- Persons who participate in drafting Municipal Code or other ordinance revisions at the request of the City.
- Persons who testify publicly before the City Council, a committee or other subdivision of the City Council, or any City agency, department, board or commission.

Again, one sees Chicago's inclusion of City officials in their official capacities for the purposes of explaining legislative or administrative matters. This is consistent with the general expectation in U.S. jurisdictions that employees of agencies of government may from time to time engage in lobbying on behalf of their agencies.

Canadian Jurisdictions

The Government of Canada, Ontario, British Columbia, and Nova Scotia have consistent definitions of who is not considered a lobbyist. The following are the exclusions when they are acting in their official capacities.

- Members of the legislature of a province or territory or their staffs.
- Employees of provincial and territorial governments.

- Members of local or municipal governments or their staffs.
- Employees of local or municipal governments.
- Members of the council of a band as defined in subsection 2 (1) of the *Indian Act* or of the council of an Indian band established by an Act of Parliament, or their staffs.
- Diplomatic agents, consular officers, or official representatives in Canada of foreign governments.
- Officials of a specialized agency of the United Nations or officials of any other international organization granted privileges and immunities by Parliament.

The federal government does not have provisions that would require public servants “lobbying” on behalf of their agencies or departments to be registered as lobbyists. It does, however, provide that if any of the above public officials or their organizations hires third party consultants to lobby, these consultant lobbyists would be subject to the registration requirements.

What is not considered to be Lobbying?

U.S. Jurisdictions

There is a variety of approaches in the U.S. as to what is not considered to be lobbying. The following is a representative selection of examples, with the general focus on attempts to influence decisions from regular citizen interaction with government officials as part of the normal course of business:

U.S. Federal Government

- Any communications contact that is required by subpoena, civil investigative demand, or otherwise compelled by statute, regulations, or other action of the Congress or an agency, including communications required by a Federal agency contract, grant, loan, permit, or licence.
- Communication that is limited to routine information gathering questions and where there is not an attempt to influence an official covered by the lobbying legislation.

City of Los Angeles

- Any request for advice or for an interpretation of laws, regulations or policies, or a direct response to an enforcement proceeding with the City Ethics Commission.
- Any ministerial action - action that involves no discretion by a City official or employee.
- A proceeding before the Civil Service Commission or the Employee Relations Board.
- Any action relating to the establishment, administration, or interpretation of a memorandum of understanding between a City agency and a recognized employee organization.
- Preparation or compilation of any radius map, vicinity map, plot plan, site plan, property owners or tenants list, photographs of property, proof of ownership or copy of lease, or neighbor signatures required to be submitted to the City Planning Department.

City of Chicago

Chicago provides a fairly comprehensive set of practical examples as to what it does not consider to be lobbying:

- A restaurant owner who applies to the Department of Revenue for food and liquor licenses.
- An accountant who responds to a Department of Revenue request to produce his client's business records for purposes of a tax audit.
- A supplier of goods who responds to an RFP (a Request for Proposals).
- A homeowner who submits an application for a building permit.
- An attorney who appears before the Department of Administrative Hearings on behalf of a client to contest a notice of violation.
- An officer of a not-for-profit corporation who meets with a representative of a City department to learn how to apply for a City grant.
- An individual who calls the Department of Zoning to inquire whether a particular business activity is authorized at a specific location.
- A property owner who testifies before the City Council Committee on Zoning against a proposed building project in his neighborhood.
- A lawyer, architect or other representative of a building developer who testifies before the Chicago Plan Commission in support of a proposed development, and who is identified as testifying on behalf of the developer.
- A constituent who calls her alderman to request an additional stop sign on her block.
- A group of developers who, at the invitation of a department head or alderman, tours a neighborhood.

- An engineering consulting firm that seeks from City employees a status report on a client's project or license application.
- An attorney who files a notice of appearance in a case in which the City is a codefendant.
- An attorney representing the City's adversary in litigation who comes to the Law Department to try to work out a compromise and reach a settlement.
- An attorney who represents a client before the Zoning Board of Appeals.
- A consultant hired by a manufacturer who assists the company in responding to an RFP (Request for Proposals). (The consultant receives a fee if the company's proposal is accepted.)
- A property owner who, on her own behalf, calls the Department of Planning and Development to urge the creation of a TIF (Tax Increment Financing district) in her area.
- A citizen who calls on behalf of her mother to make an inquiry about a notice her mother received about a building violation.
- A lawyer who calls on behalf of a client to seek information about a notice the client received about a food preparation violation.
- A lawyer who files a client's application for a liquor license and asks office staff some questions about the procedures and timing.
- A citizen who, on behalf of a neighborhood group, speaks to a meeting of the Community Development Commission, and urges that it adopt a particular plan for the neighborhood. The citizen states her name and identifies the neighborhood group she represents.
- A citizen who urges an alderman to do something to create more parking in the ward. The citizen is a member of a neighborhood group

seeking more parking, but was not asked by the organization to act on its behalf.

- Constituents who meet with their alderman to oppose a halfway house in the neighborhood; the constituents are in the process of forming an informal organization for this purpose.

Canadian Jurisdictions

The Government of Canada, Ontario and B.C. take similar approaches to what is not considered to be lobbying. The following are the core elements (the as yet to be promulgated changes to the federal legislation do not include any modifications):

- Public proceedings before parliamentary committees or other federal bodies.
- Submissions to a public official with respect to the enforcement, interpretation, or application of a law or regulation by that official.
- Submissions in direct response to written requests from the federal/provincial government for advice or comment.
- General requests for information.

Nova Scotia adds:

- A submission to an MLA on behalf of a constituent about a personal matter.
- Communication by a trade union regarding administration or negotiation of a collective agreement.
- Communication by a trade union related to representation of a member or former member who is or was employed in the public service.

- A submission by a barrister of the Supreme Court of Nova Scotia regarding drafting of a legislative proposal.

Part 3

Lobbyist Registration in the U.S.

In this section of our report, we address the following topics:

- The size of the lobbying industry.
- The constitutional basis for Lobbying in the U.S.
- The tradition of lobbying as an accepted and encouraged part of the political process, particularly in lieu of staff.
- The emphasis in the U.S. political system on legislators and legislation in the process of governing.
- The historical origins of lobbyist regulation.
- The emphasis on financial disclosure.
- A description of the various structural elements of current lobbyist registration programs in the federal government and individual states.

Size of the Lobbying Industry

According to the Centre for Public Integrity, in 2002 there were more than 42,000 lobbyists (of all types) registered at the state and federal levels in the U.S, with approximately 26,000 of those located in Washington. As the Centre notes, this works out to roughly six lobbyists per legislator (including all federal and state legislators).

The total value of lobbying directed at officials in 39 of 50 states during 2002 is estimated to be the in range of $750 million (U.S.) covering primarily perks for public officials, but also some consultant fees and lobbyist salaries and other direct lobbying-related expenses. (The Centre for Public Integrity noted to us in

an interview that the figure is accurate in the sense of the total of what is reported, but that states vary considerably in their reporting practices and that $750 million does not represent a “real” total for all 39 states in all categories of expenses, i.e. there is considerably more money that is unaccounted for.

For the same period, lobbying efforts – again, primarily perks for public offices holders – directed at the federal Congress are estimated to have totalled a minimum of $1.6 billion or a total of $3 million per federal legislator.

Constitutional Basis for Lobbying

It is generally accepted that the term “lobbying” first originated in the U.S. and had become a fixture of the American political lexicon by the 1830s, although historians suggest that the activity that became known at this time as lobbying appears to have been a component of American political life for decades before that.

It is also generally accepted that lobbying has a constitutional basis in the U.S. under the First Amendment, which protects the right of any person or group to “petition the government for a redress of grievances”. The concept as reflected in the First Amendment reflects two important early perspectives in American politics:

- One of the major concerns of the American colonists in pre-revolutionary America – the perceived lack of responsiveness of the British Parliamentary system to local concerns and that the process of governing did not facilitate direct representation of popular concerns.
- The express view of the original framers of the Constitution that the role of government in a pluralistic society is to play a broker role that establishes compromises among competing interests and that having a large number

of diverse interest groups would prevent any single group from dominating.

An Accepted and Encouraged Part of the Process

These constitutional notions are cited by academics as having prepared the ground in the U.S. culturally not just for the acceptance of lobbying as a legitimate form of citizen interaction with government, but also for the view, widely cited in the literature, that lobbying is an important and valued part of the public policy process in the United States.

This acceptance and even proactive support for lobbying as a legitimate part of the public policy process is widely discussed in the literature with the view being expressed that many Americans actually welcome the role of special interests in pressuring politicians as This is consistent with the views of the original framers of the Constitution, that on issues of interest to individual Americans, interest groups are seen as an appropriate link to government and that competing interests will balance out each other.

Another oft-expressed factor is the view that Americans (again relative to Canadian or European jurisdictions) have a more pronounced distrust of government and see a strong interest group system as part of a system of checks and balances.

Two additional aspect of the U.S. approach to government that contributes to the prevalence of lobbying and the widely held view that it is an important and legitimate part of the public policy process are:

- The fact that some states have only part-time legislators within limited time to focus on public policy issues in depth.
- The relatively small size of the bureaucracy that is in place to support legislators (keeping in mind that government departments in the U.S.

model report directly to the Executive Branch and, depending on the political orientation of the President/Governor, can be see as the “enemy” by one or both parts of the Legislative Branch).

Observers, including academics and watchdog organizations, point to these factors as contributing to what is seen as a legitimate reliance by legislators on external lobbying efforts to conduct research and provide them with advice on various pieces of legislation.

Emphasis on Legislation

One of the most obvious features of the U.S. model of lobbyist registration – particularly in comparison to the Canadian system – is its strong emphasis on legislation and the legislative process. Again, the reason for this goes back to the structure of the U.S. system of government, including the separation of the Legislative and Executive Branches of government and the emphasis on checks and balances.

In its original Constitutional conception, the Legislative Branch (House and Senate) is responsible for making laws and the Executive Branch (President/Governor and government departments) is responsible for their execution. The original framers of the Constitution saw the law-making power of the Legislature as essential, including their democratic notion that legislation could and should be initiated by any individual member of the Legislative Branch. They also saw the Legislature as an important check on potential abuses of power by the Executive. In effect, the Executive would be constrained to follow the will of the people, as expressed by the Legislative Branch in terms of policy direction and even how policies would be executed.

Over time, however, this relatively simple notion of individually active legislators as part of a legislative check on executive power has become increasingly

complex in its actual workings. One factor has been the evolution of the U.S. from a minimalist-government/small, agrarian nation to its current day more interventionist government/large-scale size, scope, and complexity. Another factor has been the rise of modern ideologically based political parties and, as a result, periodic increases in tension between one or both parts of the Legislative Branch and the Executive. As part of this, legislation often has as its focus a perceived need by legislators to be very prescriptive in terms of what the Executive and, through it, the various departments of government can and cannot do, including detailed allocations of funding.

The result in the present day is an emphasis on government-by-legislation that is almost unthinkable in the Canadian context. The Centre for Public Integrity estimates that between the federal government and the various states, over 100,000 pieces of legislation are initiated every year, with over 40,000 of these finding their way into law (29,000 of these at the State level). This figures does not include the various regulations that government departments, under the Executive, have been authorized to make by legislatures.

In Canada, by way of contrast, with our Parliamentary system of integrated Legislature and Executive, we find generally a much greater emphasis on broader and more flexible powers and latitude vested in the Executive (Premier and Ministers) to make policy, regulations, and/or take administrative actions.

One result of this is much less emphasis on actual legislation in the process of governing. For example, since January 2001, the Canadian House of Commons and Senate combined, introduced a total of 702 pieces of legislation. Of these, 94 actually receive Royal Assent. The Ontario Legislature, during the year 2002-2003, witnessed the introduction of 270 pieces of legislation, including 26 private member bills. Of these, 45 reached the third reading stage during the year and 15 were wholly or in part proclaimed.

The Historical Origins of Regulation

The origins of lobby registration in the U.S. combine both the gradual evolution of reform and ethics movements in American political life, and public policy responses to specific scandals or issues of concern.

The history of 18th and 19th century politics in the U.S. is full of documented examples – some high profile public incidents – of what would now be considered to be highly undesirable, unethical, or even illegal activities. These include kickbacks, bribes, arm-twisting, exchanging favours, campaign contributions in exchange for favourable decisions, etc. The following are some documented examples:

- During the First Congress (1798), a U.S. senator recorded in his diary that New York merchants had employed "treats, dinners, attentions" to delay passage of a piece of legislation.
- In 1833, renowned U.S. Senator Daniel Webster wrote bluntly to a bank president that if the bank wished him to oppose a particular application against the bank, then they should forward "the usual retainer".
- In 1872, an investigation revealed that congressional representatives received railroad stock in return for their support of railroad legislation.

During the latter part of the 19th century, historians note a significant increase in the amount and sophistication of lobbying and the increasing influence of what today would be called "consultant" lobbyists. This corresponds with a dramatically increased scope of federal legislative and government activity following the U.S. Civil War and the increasing complexity of pressures on the federal government. It was during this time, that congressional representatives started to become more dependent on the information and analysis that lobbyists and lobbying organizations could provide, in the absence of professional

research staff. During this period, historians note strong documentary evidence that money spent lobbying did significantly improve the chances of a favourable result.

Interestingly, historians have noted that many of the lobbying techniques of the latter 19th century would be easily recognizable today: writing speeches, preparing analysis, developing arguments in favour of a client's position or against an opposing position, gathering political intelligence through personal contacts with key public officials, and preparing/conducting grass roots campaigns. At the time, however, these were relatively new techniques, often used very indiscreetly and increasingly by former members of Congress. All of these factors combined to gradually heighten public concern.

The early 20th century saw the rise of the Reform Movement, directed at political and business corruption, including overpowering political machines at all levels of government and the influence of huge "trusts" such as Standard Oil and U.S. Steel. Lobbying was increasingly coming under fire even from the media and also from within government, although it is interesting to note that the concern of some legislators was not corrupt practices in the sense of bribes (not wishing to impugn the character of their fellow legislators), etc. but rather that lobbyists would systematically misrepresent the facts in an efforts to sway congressional opinion.

It was around this time that some and very limited efforts to regulate lobbying were enacted at the federal level. In 1919, Congress prohibited any lobbying efforts with appropriated (government) funds. However, the primary focus of reform was on breaking the power of political machines and the large trusts, and putting in place core ethics policies related to bribery, fraud, secret campaign funding, and coercion, and by the 1920's, campaign financing and disclosure requirements. Typical reforms included the introduction of secret ballots, allowing voters to petition state legislatures to consider a bill, introducing

referenda, allowing voters to have an elected official recalled or removed from office, and introducing direct primaries, whereby voters selected candidates for public office rather than party bosses.

Through the 20's and 30's attempts to introduce federal lobbyist registration legislation failed for lack of agreement between the House and Senate, while regular lobbying scandals continued to erupt.

Finally, after some particularly notorious scandals in the mid to late 1930's, Congress enacted its first lobbyist registration requirements, although limited to an industry sector-by-sector approach. Around this time, a number of states also began to introduce lobbyist disclosure requirements.

In 1946, Congress passed the Federal *Regulation of Lobbying Act*. The Act demonstrates the extent to which financial disclosure "follow the money" is an ingrained component of U.S. lobbyist registration. The Act required lobbyists to register not only their name and address with the Secretary of the Senate and the Clerk of the House, but also their salary expenses, including to whom and for what purpose. The Act also included a requirement to file quarterly reports on funds and for lobbyists to keep detailed accounts of campaign contributions.

Over the next several decades, through to the 1960's, however, the federal government and various states brought in legislative requirements. These were not so much anchored in ongoing reform debates, but more often in response to specific local circumstances.

For example, the Federal *Regulation of Lobbying Act* of 1946 attempted to control corruption and bribery in the practice of lobbying. California introduced its first legislation requiring disclosure of lobbyists and their financial lobbying activities in 1947. The legislation was a response to public outcry related to one

particular, very powerful lobbyist who dominated the political landscape in California for many years and by 1947, had become notorious in the public mind.

The 1970s marked the next era of the development of lobbyist legislation. Historians point to the general emergence during that time of heightened public concern about and interest in ethics in government. This included growing pressure on government for ethics-related legislation and programs, including conflict of interest rules, campaign financing, and lobbyist registration. In California, for example, the *Political Reform Act* was passed in 1974. This Act established the Fair Political Practices Commission in that State that continues today to deliver California's lobbyist registration program.

During the 70's, however, Watergate scandal is noted as marking the next major watershed in the U.S. ethics debate. Academics have suggested that in the wake of this scandal, the American public began to assume and accept as a given that there were problems with government. In light of increasing public pressure, the response of many legislatures was to put even further emphasis on ethics regulations in order "to be seen to be" addressing the issues. The result by 2003 is that the U.S. federal government, all 50 states, and many major U.S. cities have lobbyist regulation systems in place and that, depending on the jurisdiction, have undergone periodic reforms since the 1970's.

Some academics note that the move towards more ethical policies and practices was also, in part, a response to what has been described as the general revitalization of state legislatures during the 1970's and 80's. This revitalization has been characterized as a form of "professionalization" as part of which legislators increased the time spent on their tasks, established or expanded their staffs, streamlined procedures, enlarged their facilities, and put more focus on their ethics, including finances (e.g. campaign finances, gifts, etc.) and conflicts of interest. Academics point to a correlation between professional legislatures,

and in particular those with significant staff resources, as having made the most aggressive efforts to regulate lobbyists.

Academics, historians, and political observers also point during the past 25 years to the dramatic rise of political action committees (PACs) as having fundamentally changed the lobbying landscape in the U.S. through their (legal) efforts to funnel campaign contributions to candidates. Critics have charged that the high cost of running for office, particularly for federal seats, has made candidates and incumbents increasingly captive of external fundraisers.

Follow the Money: A Major Theme in the U.S. Model

Given the large number of jurisdictions involved (federal government, 50 states, and various large municipalities) there is a wide variation in the detailed policies, practices, and requirements of lobbyist registration across jurisdictions. However, the basic tenets of lobbyist registration are, for the most part, consistent and can be reduced to a few very basic and simple questions that are commonly asked in most, if not all jurisdictions:

- Who is doing the lobbying?
- What is being lobbied?
- How much money is being spent?

The basic questions of "who is doing the lobbying" and "what is being lobbied" are generally the same for both Canada and the U.S. (see Part 4 of this volume re the Structure of Lobbyist Registration in Canada). However, the dramatic emphasis on how much money is being spent by lobbyists in the U.S. represents a major difference between the U.S. and Canadian model of lobbyist registration.

This difference has, at its roots, a fundamentally different public ethic and public policy approach to campaign financing. At the risk of oversimplification, according to the non-profit Center for Public Integrity this translates into the generally held view that *money could lead to influence* and therefore it is very important, with respect to lobbyist registration, to know how much money (in campaign contributions but also in "perks", e.g. gifts, gratuities, dinners, golf games, trips, etc.) is changing hands.

This point to be made here is not that *using money in an effort to influence* is seen as somehow inappropriate with respect to public decision-making. Rather, it appears to be an accepted and, in some quarters, valued part of the U.S. approach.

This is not to say that U.S. citizens are not concerned about the relationship between money and political influence, particularly given the high cost of running for political office at all levels of government. The "soft money" debate that has been evident in the U.S. over the past several years is one indication of this concern.

However, to date, U.S. legislators, particularly at the federal level, have not demonstrated a willingness to significant modify their approach. For example, rather than putting in place the kind of strict campaign financing limits that we have in Canada (*see Appendix IV for a comparison of U.S. and Canadian federal approaches*), the U.S. model in general emphasizes the role of the individual legislator to make ethical decisions, within a system of checks and balances.

The four most important checks on unethical behaviour appear to be:

- Public disclosure of financial contributions and perks (i.e. direct spending on public officials by lobbyists).
- Some limits in most, but not all jurisdictions (the latter including the U.S. federal government) on various, but not all, forms of campaign

contributions and on the annual value of gifts and other perks that may be received by public officials.

- The belief/expectation that, not withstanding what are often by Canadian standards, extremely large financial contributions (i.e. attempts to influence using money), elected officials have an obligation to balance competing “special interests” in a responsible manner and for the most part “will do the right thing”.
- The fact that the U.S. system of government has what is viewed as a by-design or “built-in” check on undue influence by special interest groups in the separation of the Legislative and the Executive branches of government and the sub-division within the Legislative branch of the lower and upper houses, i.e. House of Representatives/State Legislature and the Senate.

The reality is that the cost for candidates to participate in elections is significantly higher in the U.S. compared to Canada and the literature notes that lobbyists/lobby organizations in the U.S. are viewed as playing a major role in raising funds for political campaigns.

The following are some of the highlights of the dramatic differences in size and scale between the Canadian and U.S. federal government that illustrate the relative importance of fundraising in the two systems (again, *see Appendix IV for a more fulsome comparison*):

- Jean Chrétien’s legal campaign expense limit in the 2000 General Election was calculated to be $61,925. His actual expenses were $60,000.

- The top 10 presidential candidates in 1999-2000 collectively raised over $600 million for the 2000 federal election. President Bush raised $193 million. Al Gore raised $133 million.

- Toronto MP Judi Sgro's (for example) legal expense limit in the 2000 General Election was calculated to be $59,500. Her actual expenses were $44,230.

- The top fundraising candidate for a seat in the House of Representatives for the 1999-2000 for the 2000 U.S. federal election raised $39 million. The 10th highest fundraising candidate raised almost $4 million.

- The total campaign expenditures by all 12 federally registered political parties during the 2000 Canadian federal election were $35 million.

- Reported campaign expenses for all candidates for the U.S. federal House, Senate, and Presidency in the 1996 federal election, totalled $1 billion.

Who administers the Registration Process?

Administration/oversight of lobbyist registries in the U.S. comes in a variety of formats. The most common of theset is an independent or outside body to regulate lobbying and, usually, other ethics policies. This often takes the form of a state or municipal ethics commission, sometimes as an appointed individual or a board of appointed commissioners. Other common approaches are to provide for the registry as a branch of a government department, e.g. within the Office of the Secretary of State, or provided by the Office of the City Clerk.

At the state level, 26 states designate independent or outside bodies to regulate legislative lobbying. Of the remainder, 18 states provide the function administratively through the office of the Secretary of State and six provide it

through the administrative offices of the Legislature itself. Three states designate separate agencies to regulate lobbying of the executive branch.

Role of the Registrar

Given the number of jurisdictions (federal, state, municipal) in the U.S. that have lobbyist registration systems in place, there is considerable variation in the detailed and individualized roles and responsibilities of registrars. Having said that, our analysis of a representative sampling of jurisdictions, indicates that there appears to be a consistent core of responsibilities. These core responsibilities include:

- Providing for some form of public education of lobbyists (and in some cases, the general public) with respect to legal requirements.
- Providing forms and other documents, including instruction manuals and advisory opinions.
- Maintaining a public access registry database.
- Publishing an annual directory of lobbyists.
- Preparing an annual report to the Legislature/Council.
- Developing and implementing administrative rules.
  Regularly reviewing monetary thresholds
- Auditing registrations and reports submitted by lobbyists
- Investigating complaints and in some jurisdictions, conducting hearings.
- Providing warning of non-compliance.
- Assessing fines.

Elements of Registration

Our research identified that there is significant variation from state-to-state with respect to many of the elements of registration. In our view – and as supported by other third party research – there is no consistent pattern or approach across the 50 states, the federal government, and various municipalities, beyond a core of commonly required elements.

Given the number of jurisdictions in the U.S. that have lobbyist registries in place, it was not possible within the scope of our study to conduct an exhaustive jurisdiction-by-jurisdiction comparison of the elements of registration. We would also argue that this level of analysis for so many jurisdictions would not be of particular value to Inquiry Counsel.

For the purposes of this section of Volume 1, we were fortunate to have access to a recently completed (July 2003) state-by-state analysis of lobbyist registries conducted by the Center for Public Integrity, a non-profit, Washington-based government watchdog organization. This study – apparently the first effort of its kind in the U.S. or Canada – paints a more aggregate picture of the U.S. experience and from this material, we were in a position to follow-up with individual jurisdictions to obtain clarification or actual examples. In our discussions with them, officials from the Center for Public Integrity stood behind the results of their study, but with important caveats related to:

- The difficultly of drawing direct comparisons on a state-by-state basis given the plethora of variations (as stated to us “the apples to apples” challenge.)
- The lack of completeness of the data available from various jurisdictions.
- The large number of “hidden” loopholes – some more significant than others – that the Center found in each state’s legislation.

Core and Variable Elements

For the purposes of registration, most states require the same kind of "tombstone data", including the following:

- Lobbyist's name, title, address
- Lobby firm and address
- Client name and business address

As noted earlier, however, beyond these core elements there is a wide variation in requirements, again with an overwhelming focus on financial disclosure. The following are the major variations:

Scope

- 27 states do not include executive branch lobbyists (the Governor and state departments) in their legislation, choosing to focus only on lobbying of the legislature.

Filing Timeframe

- 20 states require lobbyists to register before beginning lobbying activities.
- 17 states require registration within 1 to 5 days of beginning lobbying activities.
- The federal government requires registration within 45 days of beginning lobbying activities.

Lobbying Subject Matter

- 27 states require lobbyists to disclosure the broad subject matter of their lobbying, with the focus generally being on pieces of legislation.
- Of these 27 states, 16 require the exact bill numbers to be listed.

- The remaining 23 states do not require any disclosure of subject matter.
- Only five states require lobbyists to disclose whether they are opposed or in favour of a specific piece of legislation. No other details of their position are required, e.g. which sections of the legislation are of specific interest, the rationale for the position, etc.

Campaign Contributions

- 48 states allow lobbyists to make campaign contributions to legislators, either during the election season or at any time during the legislative cycle.
- Only 11 states require lobbyists to disclose campaign contributions as part of their spending reports.
- In most states, these contributions are not counted as "lobbying expenses" and are not captured in financial reporting requirements.

Reporting Fees and Salaries

- 32 states do not require individual lobbyists to report fees.
- 27 states do not require employers to report the salaries of in-house lobbyists.

Expenditure Reporting

- 12 states provide for monthly expense reporting.
- Seven states provide for quarterly expense reporting.
- 25 states and the federal government provide for twice-annual reporting.
- Only five states had what would be considered to be low (e.g. annual) reporting requirements.

- Only three states do not require individual lobbyists to file spending activity reports. In these states, the onus is on the companies/organizations that employ lobbyists to report spending.
- 30 states require lobbyists to disclose the identity of the client on whose behalf the expenditure was made. Seven states do not have this requirement. Information on the remaining 13 states was not available.
- 36 states require lobbyists to disclose the identity of the public officials who received a gift or other expenditure. 35 of those also require the disclosure of the date an itemized expenditure was made. 33 require a description of the itemized expenditure.
- 27 states and the federal government require lobbyists to list the bill number, that an itemized expenditure relates to, on their spending reports.
- 27 states require lobbyists to report spending on household members of public officials.

Gift Giving

- Nine states prevent lobbyists from giving gifts to legislators. 22 states limit the value of the gift to a specific amount and require disclosure of those gifts.
- The federal government limits gifts to public officials to $100 but does not require disclosure.
- Other states often use the phrase “of value” in preventing the giving of gifts to individual legislators without a concrete definition of what this means, which in turn leads to what are often viewed as significant loopholes.

Reporting

- 18 oversight agencies and the federal government do not provide overall spending totals for all lobbying activity that takes place in their state.

- Only four states provide some overall spending totals broken down by what industries lobbyists are representing.
- Only 10 states itemize all lobbyist expenses for ease of public access. 27 states provide details above a certain financial threshold. 12 states and the federal government have no detailed reporting requirements.

Enforcement

- 45 states have statutory penalties for late or incomplete filing of registration information. 46 states have statutory penalties for late or incomplete filing of spending reports.
- Only 13 states perform any mandatory review or audit of lobby filings.
- Oversight agencies in 14 states, as well as the federal government, lack the statutory authority to audit lobby filings.
- Only 11 state agencies publish lists of delinquent lobby filers.
- In the past year, 31 oversight agencies have levied fines on lobbyists for late filing. 33 agencies have levied penalties during the same period for incomplete spending reports.

Electronic Access

- On-line registration is enabled in 10 states. On-line lobbyist reporting is enabled in 14 states and the federal government.
- 21 states and the federal government provide a searchable on-line database of registration information. 9 states provide the public with a downloadable files/database of registration information.
- 16 states provide a searchable, on-line database of spending reports. Five states provide the public with downloadable files/database of spending reports.

Training

- 13 states and the federal government provide training to lobbyists about how to file reports.
- No statistical information is available with respect to how many jurisdictions provide lobbyists with training about what constitutes lobbying, ethical practices, etc.
- According to the Center for Public Integrity, a number of states have this kind of program in place and prefer this kind of activity/expenditure to traditional enforcement.
- Some jurisdictions include mandatory training (often in the form of an information session) as part of the registration requirements. A small number require that training to be repeated periodically.

Miscellaneous

- *Photos:* 11 states require lobbyists to submit photos along with their registration.
- *Cooling Off Periods:* 14 states do not have "cooling" off periods – in effect, a mandated break in the time between a legislator leaving office and becoming a lobbyist.
- *Business Ties:* In 21 states, lobbyists are required to disclose any direct business ties they might have with public officials.

Part 4
Lobbyist Registration in Canada

Size of the Lobbying Industry

Given that Canadian jurisdictions do not track lobbyist fees and expenses, there is not accurate way to estimate the value of lobbying efforts in Canada. However, the numbers of active lobbyists registered in each jurisdictions confirms the conventional view that legal lobbying in Canada, even taking population differences into account, is on a different scale than in the U.S. The following is a breakout of each Canadian jurisdiction:

- In 2002, the Government of Canada's lobbyist registry included a total of 1,442 lobbyists of all types. Approximately 60 percent (858) of these registrants were consultant lobbyists. In-house non-profit lobbyists totalled 233, and in-house corporate lobbyists totalled 351. This compares, as noted earlier in our report, to an estimated 26,000 federal U.S. lobbyists.
- Ontario during the same period had a total of 765 active lobbyists. Of these 28 percent (212) were consultant lobbyists, 82 (11 percent) were in-house corporate lobbyists, and 471 (61 percent) were in-house non-profit consultants.
- B.C. current has a total of 126 active lobbyists in its registry. Of these, 41 percent (52) are consultant lobbyists, 16 percent (20) are in-house corporate lobbyists, and 42 percent (54) are in-house non-profit lobbyists.
- Nova Scotia currently has a total of 65 active lobbyists in its registry.

Origins

As was the case in the U.S., lobbyist registration programs in Canada can be seen as a stage in the evolution and implementation of ethics policies and programs in government. As with the U.S., they take their place and are intended to work in conjunction with other initiatives such as conflict of interest rules, procurement policies, campaign financing requirements, etc. and part of a larger grouping of ethics policies.

Modern-day ethics initiatives began to emerge in Canada in the early 1970's. Again, similar to the U.S., the progress towards lobbyist registration and other ethics policies was a combination of an evolving public focus on ethics in government, and a response to specific incidents or "scandals".

Lobbyist registries are a relatively recent phenomenon in Canada. Following a decade and half of federal ethics efforts focused primarily on strengthening and broadening conflict of interest policies, the first federal lobbyist legislation was passed in 1988. Ontario passed its own legislation in 1999. B.C. and Nova Scotia's legislation came into force in the fall of 2002. Similar to developments in many other areas of public policy, the provincial approaches generally followed the pattern established earlier in the federal model. To our knowledge, no municipality in Canada has a comparable system of lobbyist registration in place.

A particular driving force in Canada in favour of lobbyist registries, according to observers, has been the need for positive public positioning of governments (regardless of political party). Generally, this has a few dimensions:

- The rise in the 1980's of a more U.S. style lobbying industry in Canada: This is not to say that lobbying was non-existent in Canada prior to this period. Indeed, Canada has its own historical tradition of lobbying at the provincial and federal levels and its own share of historical and more

contemporary scandals. However, by the 1980s, a more high profile and professional "government relations" industry was being established.

- Defensive responses by government as part of a move towards more alternative services delivery models, including contracting-out and/or privatization: By the 1980s and 1990s, governments were becoming more interested in downsizing, contracting out, and privatization. Anticipating more intensive advocacy from the private sector, lobbyist registries were put in place as part of an effort to assure the public that processes would be fair and transparent (for example, the federal government in the 1980's and Ontario in the later 1990's.)
- Proactive political reactions to perceived ethics problems in previous governments: There is evidence to suggest that in some cases, government action to strengthen existing legislation or put legislation in place for the first time (for example, federal Liberal Red Book commitments to strengthen the *Lobbyists Registration Act*, or the B.C. legislation) was part of an overall effort to position a previous administration as "ethically challenged" and to emphasize the new government's self-described commitment to ethics and transparency.

Overall Focus of the Canadian Model

We have made reference to a "Canadian model" in the title of this section because Ontario, B.C. and Nova Scotia have generally consistent approaches. In fact, each of these provinces has modeled its system after the federal model. Ontario introduced its legislation in 1998 and B.C. and Nova Scotia followed in 2002. The earliest legislation on lobbying was enacted by the federal government in 1989 and amended in 1995. As noted earlier in this volume, the federal *Lobbyist Registration Act* has recently been reviewed by a Parliamentary

Committee and more amendments are pending as a result of the passage of Bill C-15 (see *Appendix II*).

Unlike some U.S. jurisdictions, the Canadian model does not attempt to use a lobbyist registry to fix financial limits to gifts and hospitality to public officials, or campaign contributions. Canadian jurisdictions use other vehicles for establishing these kinds of limits, e.g. executive order policies or directives, conflict of interest guidelines, campaign financing/elections protocol, procurement policies related to bidding on government contracts.

Notwithstanding the preponderance of similarities, there are a few significant differences that should be noted:

- B.C.'s system of registration is more focused on MLAs and Cabinet Ministers than Ontario or the federal government. For example, B.C. requires that lobbyists indicate the names of MLAs, Cabinet Ministers, and their staff that will be lobbied.

- Ontario requires only that lobbyists indicate whether MPPs or their staff will be lobbied. A similar disclosure is not required for Cabinet Ministers and their staff. Information about whether a lobbyist intends to contact an MPP is not made available on the public-access website.

- The federal government currently requires neither whether an MP/Senator/Cabinet Minister (or their staff) will be lobbied nor the names of those individuals. Lobbyists are, however, required to report which department(s) will be lobbied.

- No jurisdictions require lobbyists to indicate whether or which civil servants will be lobbied. In the case of B.C., however, this is a relatively recent exclusion. When the B.C. legislation was put in place in October

2002 there was a provision requiring lobbyists to indicate the names of individual public officials they were "contacting or attempting to contact". Based on their initial experience, however, it was felt that this stipulation would prove too onerous for lobbyists since they had only ten days to register after initiating an "undertaking" and might need to contact many people in government. A recent amendment to the legislation was put into effect in July 2003 that removes the requirement to "name names" of civil servants, although there is still a requirement that the MLA or Cabinet Minister be specified.

- Nova Scotia officials noted to us in interviews that their approach places an onus on public servants as well as on lobbyists to ensure that those engaged in lobbying activities are registered. Through a Secretary of Cabinet directive, public servants are required to ensure that if they are being lobbied that the lobbyist has registered for those undertakings.

- Only the federal government includes a formal Lobbyist Code of Conduct as part of legislation and a legal obligation on the part of lobbyists to adhere to that Code.

Who Administers the Registration Process?

Ontario

The Lobbyist Register is administered by the Lobbyist Registration Office under the auspices of the Integrity Commissioner. The Integrity Commissioner is a Parliamentary Officer and is appointed by Order-in-Council.

British Columbia

The Lobbyist Register is administered by the Office of the Registrar, a component of the Office of the Information and Privacy Commissioner.

Nova Scotia

The Registry of Lobbyists is administered by the Nova Scotia Municipal Relations Office. The Registrar is responsible for the registration of Joint Stock Companies and of Lobbyists. There is no other governing body beyond the Registrar.

Government of Canada

The Lobbyists Registration Branch is located within Industry Canada, a line ministry/department of the Government of Canada, but functions under the authority of the federal Ethics Commissioner.

Role of the Registrar

The role of the Ontario Registrar appears to be fairly consistent across Canadian jurisdictions, including the following activities:

- Administering the lobbyist registration process.
- Clarifying information on a registration form or other submitted documents.
- Identifying omissions and inconsistencies and communicating with the lobbyist to ensure correction, or to request supplementary information.
- Providing advice and information about the registration system to lobbyists, public office holders, the public and other groups, e.g. the media.

- Submitting annual reports to the Legislative Assembly.
- Ensuring public accessibility to the information contained in the lobbyists registry.
- Removing a registration from the registry when the consultant lobbyist has failed to confirm that the return is still valid.
- Removing a registration from the registry when the consultant lobbyist or in-house commercial lobbyist has terminated the registered activities and not removed the registration from the registry.

Code of Conduct

As noted earlier, only the federal government includes a formal Lobbyist Code of Conduct as part of its lobbyist registration legislation, including a legal obligation on the part of lobbyists to adhere to that Code.

According to the Office of the Ethics Counsellor, the purpose of the Code of Conduct is to establish "*mandatory standards of conduct for all lobbyists communicating with federal public office holders and forms a counterpart to the obligations that federal officials must honour in their codes of conduct when they interact with the public and with lobbyists*."

The full text of the Code of Conduct is provided in *Appendix V*. It includes sections dealing with

- Principles (integrity, honesty, openness, professionalism)
- Rules (transparency, confidentiality, conflict of interest)

Ontario, B.C., and Nova Scotia have chosen to not put similar Codes in place. The reasons for this vary from province to province, but some consistent themes emerged from our interviews including views that:

- Establishing a lobby registry was sufficient to promote transparency in government.
- Adding a Code of Conduct at the same time as putting a lobby registry in place might make it appear that the lobby industry needed to be "cleaned up" and that lobbying was not a legitimate activity.
- Most lobbyists are members of professional associations that already have codes of conduct in place. As such, a separate code enshrined in legislation would not be necessary.

Web-Based Access

All four jurisdictions allow for on-line registration and maintain a web-based, publicly accessible database of current and former registrations. There are only relatively minor differences in terms of the accessibility/completeness of the information that is available, i.e. how easy it is for citizens to find out who is lobbying which departments and on what issues) and carry out relevant searches of the database.

All four jurisdictions allow for on-line information requests and searches according to the following criteria:

- Type of lobbyist.
- Name and organization/firm of lobbyist.
- Date of registration.

The following are variations on the above:

- B.C., Nova Scotia, and federal government, but not Ontario, also allow for searches by government department.
- B.C. is the only jurisdiction that allows for searches by MLA/Cabinet Minister.
- B.C. and Ontario gathers more information from lobbyists than is publicly accessible through the website. B.C. collects, but does not make electronically available, whether the organization that a lobbyist is working for also receives government funding. Ontario collects, but does not make electronically available whether a lobbyist intends to contact MPPs and/or their staff.
- The federal government is the only jurisdiction that allows for searches by City.
- Nova Scotia is the only jurisdiction that does not allow for searching according to the name of the senior executive of a lobbying organization.

In general, we would suggest that current accessibility appears to be based on a somewhat limited notion of transparency in the public decision making process – that citizens have a right to the details of each individual registration, but is limited in terms of more aggregate or trend-line information related to public decisions to be influenced.

One example of this kind of more aggregate information would be a citizen who is interested in the issue of privatization in any one of the four Canadian jurisdictions and specifically any companies that might have lobbied to purchase one or more government facilities. Simply put, it would be very difficult in the Canadian context, for a citizen to make that determination.

In some cases, there are technological limitations to what is made available on websites. In B.C. for example, registry officials we interviewed indicated that the

software developed for the registry has underperformed and not met the intended requirements. The expectation was that thorough searches could be made based on the information gathered from the lobbyist. The reality has been that some of the information has been captured, but not all.

On-line searches in these jurisdictions require that the individual making the search already have fairly specific information about a particular lobbyist or organization. It also requires that the individual making the search use the same terminology used by the Lobbyist to describe the government initiative. For example, a search for “long term care” would not also find results related to “seniors health” or “community access centres”. Searches cannot be conducted by issue (for example, a list of consultants who are lobbying the Ontario government on Hydro One privatization) or by client (which companies are lobbying the B.C. government for timber licences). And, as noted above, only B.C. allows for searches by MLA/Cabinet Minister.

To acquire the kind of broader information envisioned in our example above, an individual would have to review the details of each individual registration and perform their own tabulation of results.

Having said this, our observation is that the “lobbying subject matter” requirements in each Canadian jurisdiction are quite broad and generic, e.g. ”electricity restructuring policy” or “forest policy” as opposed to “interest in purchasing generating facility x” or “interest in timber licences located in this part of the province”.

As such, the information on each individual registration would be too broad to actually allow citizens to identify what the subject matter or interest/lobbying position is at a more specific level (as per the Hydro One and timber licence examples in the preceding paragraph).

Public Education/Training

Public education and training is not generally a component of lobbyist registration programs in Canada. All four Canadian jurisdictions issued media releases initially to the lobbying community to explain the intent and purpose of the registries and the obligations of the lobbyist. They also make explanatory information, typically in the form of a "handbook" available in downloadable format via the Internet that outlines the components of the program, and includes definitions, reporting requirements, and frequently asked questions.

Registry officials also note that they are available to field questions from the lobbying community. The most frequently asked questions relate to whether an individual is engaged in a lobbying activity as per the statutory definitions.

In our interviews, officials from Canadian lobbyist registries indicated that since the inception of the registries, there has not been demand for further education/training and therefore they do not feel the need to run the kinds of ongoing workshops or seminars that are offered by their counterparts in the U.S. In addition, the Canadian systems are generally seen as significantly less complex than the U.S. systems, specifically with reference to financial disclosure and therefore there is a sense that in-depth training is not required.

Advisory Opinions/Interpretive Bulletins

Advisory opinions and interpretive bulletins are formal communications from Lobbyist Registries to lobbyists and the public – typically in the form of a document posted on the registry website – that provides an official interpretation, most often based on a "real-life" question.

Since its inception in 1999, the Ontario Registry has not posted written advisory opinions or interpretive bulletins. The same is true B.C. and Nova Scotia, although this may be attributable to the relative newness of the program in those provinces. Nova Scotia's requirements make formal mention of the Registry's responsibility to issue bulletins about the enforcement, interpretation or application of the Act or its regulations. Registry officials anticipate that this will be included in their first annual report.

Since 1994, the federal government has posted four interpretive/advisory bulletins, dealing with:

- Definition of "significant part of the duties".
- Definition of "funding by government".
- Definition of "arrangement of meetings".
- Application of the Act to outside chairs and members of Boards of Directors.

All jurisdictions provide interpretations and guidance over the phone upon request.

Enforcement

Canadian Lobbyists Registrars generally do not have investigative powers through legislation. Therefore there is no legal basis for a Registrar to ensure compliance, but rather the onus is placed on the lobbyist to register. The Registrar can request clarification or ask for more information, but cannot undertake a full inquiry.

The general practice, as reported to us by registry officials, is that any "exploratory action" would typically be in response to complaints received.

At the federal level, while the Lobbyist Registrar does not have investigatory powers, the Ethics Counsellor, who has the statutory responsibility for the enforcement of the Lobbyists' Code of Conduct, has the full powers of an Inquiry Judge. This means that where the Ethics Counsellor believes on reasonable grounds that a person has breached the Code, an investigation will be carried out. Once the investigation is complete, the Ethics Counsellor presents a report to Parliament and, if appropriate, may call upon the RCMP to initiate a separate investigation (When Bill-C15 is promulgated, this referral to the RCMP will become a mandatory requirement).

All jurisdictions have clear penalties for non-compliance for non-compliance including fines of up to $25,000.

The Ontario, B.C., and Nova Scotia legislation is specific about the nature of potential offences, including the following:

- Conducting lobbying activities as defined in the Act and you do not file a return within the time frames set out in the Act.
- Not providing the required information in a return as stated in the legislation.
- Failing to provide the Lobbyists Registrar, as set out in the Act, with changes to a return, new information or clarification of information requested by the Lobbyists Registrar.
- Making false or misleading statements.

Other variations include:

- The federal government, Ontario and Nova Scotia also specify that it is an offence to knowingly place a public office holder in a position of real or potential conflict of interest.

- The federal lobbyist register posts its own complaints proceedings reports (three to date) on specific complaints against individual lobbyists/organization alleged to be in violation of the Act.

Since its inception, the Ontario Registry has received only four complaints: three from other lobbyists and one from a member of the public. In each case, Registry officials contacted the subject of the allegation and without disclosing the specific nature of the complaint, reminded them of the obligations under the Act. The result was three new registrations, and in the case of the fourth complaint, the individual withdrew from the activity that prompted the complaint.

Given the newness of the programs in B.C. and Nova Scotia (legislation promulgated in the fall of 2002 in both provinces), provincial officials believe it is still early to assess the need for enforcement. In B.C., for example, no complaints (and therefore, no follow-up action) have been received to date. Officials in both provinces suggested to us, however, that their ability to enforce is relatively limited without some form of specific statutory power and additional allocation of staff.

Annual Reporting

Annual reporting is undertaken by the Government of Canada and Ontario. B.C. and Nova Scotia intend to produce annual reports once their programs are fully operational and all of the necessary regulations are in place.

Government of Canada

Since 1994, Industry Canada has produced separate annual reports for the Lobbyist Registration program. In addition to the typical annual report

information about mandate, budget, organization, etc. the report includes statistical summaries of:

- Total number of active lobbyists by type.
- Number of new registration/terminations that year by type of lobbyist.
- Number of information request, compliance, and technology assistance calls received.
- Number of registrations by broad subject matter, e.g. environment, health, international trade, etc.
- Number of registrations by department of interest.

Ontario

The Ontario Lobbyist Registry has produced annual reports since 1999. In addition to typical annual report information about mandate, organization, etc. the reports provide statistical summary information, similar to what is provided in the federal annual report. In addition to the types of statistics provided in the federal report, Ontario also provides the:

- Number of active consultant lobbying firms (as opposed to individual lobbyists).
- Number of active organizations (commercial and non-profit) that employ lobbyists.

What has to be disclosed?

On the following pages are three tables that indicate the disclosure requirements for the three types of lobbyists generally defined in Canada (Consultant lobbyists, In-house corporate, In-house organization).

Across all four jurisdictions, registration must take place within 10 days of beginning a new lobbying undertaking and registration must be terminated within 30 days of the end of a registered lobbying undertaking.

For Consultant Lobbyists

Of the three types of lobbyists, consultant lobbyists have the largest number of reporting requirements, many of which are related to the identity of the client.

To be disclosed	***Ont.***	***B.C.***	***N.S.***	***Can.***
Lobbyist's name, title, address	Yes	Yes	Yes	Yes
Lobby firm and address	Yes	Yes	Yes	Yes
Client name and business address	Yes	Yes	Yes	Yes
Name of the principle representative of the client	Yes	No	No	Yes
Name and address of anyone who controls the client's activities	Yes	Yes	Yes	Yes
Name and address of the client's parent corporation and subsidiaries that would benefit from the lobbying	Yes	Yes	No	Yes
If a coalition, the names and addresses of members	Yes	Yes	Yes	Yes
Date when lobbying commenced	No	Yes	No	No
Subject matter including the specific legislation, bill, resolution, regulation	Yes	Yes	Yes	Yes
Name of each department lobbied	Yes	Yes	Yes	Yes
Source /amount of any government funding received by the client	Yes	Yes	Yes	Yes
Whether lobbyist compensation is in the form of a contingency or success payment	Yes	No	Yes	Yes
Communications techniques used, including grass roots lobbying	Yes	No	Yes	Yes
Whether an MP/MPP/MLA/Senator (including staff) is to be lobbied.	Yes	Yes	Yes	No
Whether a Cabinet Minister (including staff) is to be lobbied	No	Yes	No	No
Name of MPP/MLA or Cabinet Minister (including staff) to be lobbied	No	Yes	No	No

For In-House (Organization) Lobbyists

To be disclosed	***Ont.***	***B.C.***	***N.S.***	***Can.***
Name and position title of the senior officer	Yes	Yes	Yes	Yes
Name and business address of the organization	Yes	Yes	Yes	Yes
Names of employees who lobby including, as applicable, the senior officer	Yes	Yes	Yes	Yes
General description of the organization's business or activities	Yes	No	Yes	Yes
General description of the organization's membership	Yes	Yes	Yes	Yes
Subject matters including the specific legislative proposals, bills or resolutions, regulations	Yes	Yes	Yes	Yes
Policies, programs, grants or contributions or other financial benefits sought	Yes	Yes	Yes	Yes
Name of each department or other governmental institution lobbied	No	Yes	Yes	Yes
Source and amount of any government funding received by the organization	Yes	Yes	Yes	Yes
Communication techniques used, including grassroots lobbying.	Yes	Yes	Yes	Yes
Whether an MPP/MLA (including staff) is to be lobbied.	Yes	Yes	No	No
Whether a Cabinet Minister (including staff) is to be lobbied	No	Yes	No	No
Name of MPP/MLA or Cabinet Minister (including staff) to be lobbied	No	Yes	No	No

For In-House (Corporate) Lobbyists

To be disclosed	***Ont.***	***B.C.***	***N.S.***	***Can.***
The in-house lobbyist's name and business address	Yes	Yes	Yes	Yes
Employer's name and business address	Yes	Yes	Yes	Yes
If the client is a corporation, the name and business address of each subsidiary of the corporation that has a direct interest in the outcome of the in-house	Yes	Yes	Yes	Yes
A summary description of the employer's business or activities;	Yes	No	Yes	Yes
The financial year of the employer, if applicable;	Yes	Yes	Yes	No
The source and amount of any government funding received by the employer	Yes	Yes	Yes	Yes
The name of any non-government entity or organization which, in the fiscal year prior to the date of filing a registration, provided $750 or more to the employer in support of the lobbying activity	Yes	No	Yes	No
The subject matter of the lobbying: proposal, bill, resolution, regulation, etc.,	Yes	Yes	Yes	Yes
The name of any ministry, agency, board or commission that will be lobbied	Yes	No	Yes	Yes
Communication techniques used including grass-roots lobbying	Yes	Yes	Yes	Yes
Whether an MPP/MLA (including staff) is to be lobbied.	Yes	Yes	No	No
Whether a Cabinet Minister (including staff) is to be lobbied	No	Yes	No	No
Name of MPP/MLA or Cabinet Minister (including staff) to be lobbied	No	Yes	No	No

Part 5

Analytical Framework

As evidenced throughout this report, there are obvious and significant differences between Canada and U.S. jurisdictions with respect to:

- Prevalence of/extent to which lobbying takes place as part of the regular course of government decision making.
- Scope and extensiveness of reporting requirements, including the major emphasis in the U.S. on financial disclosure.

As is often the case, it is easy to come up with a quick *cultural stereotype* conclusion about why these differences exist. For example, is it something about the nature of Canadians and our culture versus that of Americans that leads to the different approaches, e.g. Canadians are more ethical, less likely to attempt to bribe public officials, more respectful of government process, etc.

Our research leads to the conclusion that it is, in fact, differences in how each country structures its government and related decision-making processes have much to do with the prevalence of lobbying in each jurisdiction and the extensiveness of lobbyist regulation.

The following section includes what admittedly are very high-level descriptions of what we believe to be key differences in government structure and process between the two countries that are relevant to a discussion of lobbyist registration. Following this section, and based on these descriptions, we suggest that consideration of these key structural differences may provide some insight into whether and to what extent the various aspects of different approaches to lobbyist registration might be applicable in the Canadian municipal context.

It is important to note that we are not suggesting at this stage that this represents a formula for lobbyist registration in the City of Toronto. As discussed earlier in this report, lobbyist registration is only one – and as we discuss in Volume 2, not necessarily the most effective – of a more fulsome set of ethics related policies that have been implemented by Canadian and U.S. jurisdictions. Rather, we are suggesting that these factors should be considered in any discussion of potential changes to lobbyist registration in Toronto (see Volume 3).

Key Structural Differences

Relationship between Legislative and Executive Branches

Canada

In the Canadian parliamentary tradition, the executive and legislative branches are integrated with the Executive (Premier and Cabinet) sitting in the legislature. The Executive requires a majority in the legislature in order to govern. Appointments, perks, and other special powers of the members of the legislature from the governing party are determined by the Executive. This provides the Executive with considerable power over the actions of legislators from the governing party.

With a Cabinet-style Executive, it also means that practically speaking, decision-making on most government issues – whether policy decisions, legislative proposals, regulations, etc – focuses on relatively few individuals. For example: at the political level, this might (but not always, depending on the issue) include variations of the following, the Premier and one or more of his key advisors, one or a handful of key ministers, full Cabinet on occasion, and, perhaps, their senior

advisors and a relatively small number of senior bureaucrats (one or at most a handful of Deputy Ministers, Assistant Deputy Ministers, and Directors).

United States

In the U.S. system of government, the Legislative and Executive branches (including government departments as part of the Executive Branch) are completely separate, which forms the basis for the American system of checks and balances. The Executive Branch does not require a majority in the legislative branch in order to govern, but is limited in scope to legislation passed by the Legislative Branch. Appointments, perks, and special powers of the members of the legislature are not determined by the Executive. As a result, the formal power of the Executive over the actions of individual legislators is much diminished compared to Canada.

Party System

Canada

The Canadian parliamentary model is a “strong party” system. Individual legislators are not generally free to vote according to their own dictates, but are required for the most part to vote along party lines as determined by the Executive (Prime Minister/Premier and Cabinet). The Canadian Parliamentary system has well developed structures, processes, and conventions in place (e.g. Party Whips) to reinforce this approach.

United States

Although it has only two political parties, the U.S. system has been described as a "weak" party system compared to the Canadian parliamentary model. In the absence of the requirement that the Executive have a majority in the legislature in order to govern, the notion of "party discipline" is not as rigidly enforced and as a result individual legislators are much freer to vote for their local interests or individual conscience, within broad political party parametres. As academics and observers have pointed out, this positions each individual legislator to be an independent actor to a much greater extent than in the Canadian Parliamentary approach.

Importance of Legislation and Individual Legislators

Canada

In the Canadian parliamentary system, legislation continues to provide the basis for government's legal powers. However, with the integration of the Legislative and Executive branches, legislation does not play the same central role that it does in the U.S. Legislation in the Canadian tradition is generally less prescriptive than in the U.S. model and allows the Executive to govern effectively through greater emphasis on vehicles such as policy decisions, regulations, and Orders-in-Council as authorized by legislation.

An example of this is in budget setting. The Executive develops and introduces the budget, relying on its majority in the legislature to ensure its passage. The budget includes line-by-line allocations, but again, these are usually proposed by the Executive and accepted (at least in majority Parliaments) without significant revision by the Legislature. In practice, it is primarily the Opposition parties

(usually a minority in Canadian legislatures) that view themselves as a check on the Executive.

United States

In the U.S. system, as evidenced by volume, there is a much greater emphasis on legislation as the basis of public decision-making. In part, this is a reflection of the much more focused role of Legislatures as a check and balance to Executive power. This is particularly true when the dominant party in the legislature is different than that of the Executive. With respect to budget development, for example, the Legislative Branch, including individual legislators and Committees, often play extremely active and influential roles. The budget process can be long, protracted and extremely public, with detailed negotiations taking place between and among individual legislators, between the House and Senate, as well between legislators and the Executive.

Campaign Financing

Canada

In terms of limits on political *donations* from individuals and corporations (as opposed to third party/"soft money"), approaches in Canada and the U.S. are not that far apart. (*See Appendix IV for a more detailed description of the different approaches to campaign financing*.)

However, the significant differentiators are:

- The capacity to raise "third party" or "soft" money in the U.S.
- The different approach to limiting political *expenses*, i.e. the maximum a politician is legally allowed to spend to be elected.

The latter point is particularly important. In Canada, these limits are prescribed by law and relative to the U.S. are set at very low levels. The simple reality is that, relative to the U.S., it is not as expensive to run as a candidate in Canadian elections and as a result:

- Candidates in Canadian elections are much less dependent on external organizations to create large "war chests".
- There is much less scope/opportunity for lobbyists and lobby organizations to use political contributions as a means to influence decision-making.

United States

In the U.S., particularly at the federal level, there are few limits in place and those that are in place are at significantly higher levels than in Canada. This means that fundraising in the U.S. context – and therefore the opportunity for lobbyists and lobbyist organizations to use fundraising as part of their efforts to influence decision-making – is a much more important part of the political process and there are countless studies demonstrating the high cost of becoming a candidate.

Size and Scope of Bureaucracy

Canada

The Canadian Parliamentary model is supported by the existence of what, relative to the U.S. on a per capita basis, is a large, professional bureaucracy. This bureaucracy is in place to support the Executive Branch in the formulation of public policy and the development of legislation, as well as the delivery of government services. The presence of this larger bureaucracy ensures that the Prime Minister/Premier and Cabinet – and through them, indirectly the individual legislators from the governing party – have access to wide ranging and

comprehensive public policy analysis that, in the ideal, would look at all sides of an issue, including an understanding of the full range of competing views.

This analysis is intended to be objective in nature (the notion of “best advice”) consistent with the principle that the public service is largely independent of political influence. For example, senior public servants, although appointed by the Prime Minister/Premier, are typically, (although always with exceptions) drawn from within the professional bureaucracy.

United States

In the U.S., the Executive and Legislative Branches are in a very different situation. While the Legislative Branch has historically had much higher profile role in the development of legislation in the U.S. compared to Canada, this Branch typically has a very small staff complement, including either personal staff of individual legislators or more formal research departments. As a result, U.S. legislators have always been much more reliant on information, analysis, and advice from sources outside government. This is so much the case that lobbying is viewed, again as noted earlier, as an essential part of the public policy development process.

In the U.S. model, government departments are accountable to the Executive Branch and generally do not provide ongoing policy development, research, analysis, etc. support to the Legislature. In addition, while federal departments by necessity can be quite large, state bureaucracies are often much smaller.

A 1999 Executive Resource Group study of the policy function in North American and Commonwealth countries, confirmed that individual states often have what would be considered in the Canadian model to be very minimalist government departments. These departments often view their role as facilitating, brokering, and negotiating public policy debates among external, third party interests (e.g.

lobbyist organizations) as opposed to the more developed capacity we have in Canada to define public policy issues, provide more comprehensive, neutral analysis, and to manage public policy consultation.

An Emerging Pattern

The above discussion of key structural differences begins to suggest the two following patterns:

Lobbying will be more pervasive and extensive in jurisdictions that have:

- A more diffuse (e.g. “checks and balances”) decision-making process (in “real” as opposed to “theoretical” terms”) that involves larger numbers of elected officials in a more public setting.
- Separation of the Legislative and Executive Branches of government and, in particular, the absence of a strong Executive presence or dominant Executive leadership in the Legislative Branch, supported by a clear majority of legislators.
- A weak party system that does not include strong party discipline and rigidly enforced voting blocks.
- Independent (as opposed to party-aligned) legislators with real or perceived equal status and a strong individual role in the legislative process.
- High financial cost to run for public office, in conjunction with few or no limits on campaign related expenses.
- Limited staff/bureaucracies without a well-developed capacity to provide objective research, analysis and advice, managed public consultation, etc.

Lobbyist registries in these kinds of jurisdictions will likely have a strong focus on financial disclosure.

Lobbying will be less pervasive in jurisdictions that have:

- A decision making process that is less diffuse and less public and that involves fewer numbers of more senior elected officials.
- Strong Executive Branch leadership/dominance in the Legislature (as in the Canadian parliamentary/Cabinet model).
- A strong party system that includes more rigid party discipline and enforced voting blocks as per the wishes of the Executive (e.g. Premier and Cabinet).
- A diminished role for individual legislators with a more limited individual capacity to influence the legislative process.
- Low financial cost to run for public office and significant limitations on campaign expenses.
- The presence of an extensive and trusted professional bureaucracy that can provide substantive, objective research, analysis and advice, as well as effectively manage public consultation across the full range of government issues and stakeholders.

Lobbyist registries in these kinds of jurisdictions will likely:

- Not have a strong focus on financial disclosure.
- Be in a position to rely more heavily on the bureaucracy to manage public consultation in a professional and open/transparency manner.

What might this mean for Ontario Municipalities?

Based on our separate research work on municipal governance, we have considered the structure of municipalities in light of the two patterns described above. At this stage (and potential subject to further refinement), we would suggest that Ontario municipalities fall somewhere in between the U.S. and Canadian parliamentary tradition.

By extension, this potentially means that neither approach would be wholly appropriate to an Ontario municipal setting (assuming that a lobbyist registry would be a useful and effective tool at the municipal level). Also, as noted elsewhere, is remains essential to view lobbyist registration programs as part of a larger package of ethics policies and practices.

At a very high level, we would describe the typical Ontario municipality as having a mix of structural characteristics – some of which would tend to encourage more lobbying along the lines of the U.S. model, and some of which that would mitigate against lobbying. The following illustrates this point:

- Structural characteristics that would tend to encourage more lobbying:
    - A more diffuse decision-making process (in both real and theoretical terms) that involves involving larger numbers of elected officials in a very public setting.
    - No elected Executive Branch of municipal government with statutory powers to lead/dominate decision making at the Council level.
    - An emphasis on substantial or at least equal powers, roles and responsibilities, and profiles for individual elected officials.

- The absence of a party-based system with party discipline and rigidly enforced voting blocks, in favour of a system, by design, of an ongoing series of what, according to observers, are usually political unaligned and constantly shifting coalitions.

- Structural characteristics of Ontario municipalities that would tend to mitigate against lobbying:

  - Low financial cost to run for public office and significant limitations on campaign expenses, thereby reducing the need for candidates to be dependent on large amounts of third-party/lobbyist-related campaign financing.

  - The presence of an extensive and trusted professional bureaucracy that can provide substantive, objective research, analysis and advice, as well as effectively manage public consultation across the full range of government issues and stakeholders.

While we are hesitant at this stage to offer firm conclusions with respect to anything that might resemble a “template” for Ontario municipalities, the above analysis suggests that:

- Municipalities in Ontario might legitimately be expected to be the subject of more of what we would call “legal lobbying” than would a provincial or federal legislature.
- The size and capacity of the bureaucracy, as well as the relatively low cost of running for municipal office are important mitigating factors.
- With respect to the bureaucracy, its capacity to mitigate the need for lobbying appears to be directly dependent on the extent to which it is trusted by Council and that Council is comfortable delegating

responsibility for public consultation and for the analysis, synthesis, and integration of competing positions from external organizations.

- It is apparent from our research on municipal governance that this form of delegation from Council to the staff often does not take place in Ontario to the extent that would be required for the bureaucracy to function as a check on lobbing. This appears to happen most often because of either:
    - A lack of trust in the bureaucracy based on real or perceived demonstrated performance.
    - The historical tradition or culture of the municipality has always been that politicians as opposed to bureaucrats will directly manage public consultations.

Appendix I

Lobbying in the Europe Union

This section of Volume 1 provides an overview of lobbying in the European Union.

As noted elsewhere, lobbying is widely viewed as an American phenomenon that has spread to other countries in the past 20 years as part of the increasing globalization of the economy and the spread into other countries of U.S. based economic interests.

This is consistent with the European experience.

Lobbyist registration in the EC is extremely limited in scope compared to the U.S. states and federal government and those Canadian jurisdictions that have registration systems in place. At present, only the European Parliament, among all of the EU institutions, has this very limited system in place. As such, the European system has not been the subject of much of our attention in this review.

The Rise of Lobbying in the European Community

The rise of lobbying (described in some places as a lobbying "boom") in the European Community (EC) corresponds with at least two developments. We should point out that these developments are related but not in a direct cause and effect manner:

- Changes in European legislation in the mid-80's as result of the creation of a single market and new responsibilities for the EU, including regulatory responsibilities, corresponding with general recognition of the increasing

importance of the European Community (EC) as a source of legislation and of funding. As a result, interest groups began to take a much greater interest in the role of EC public policy development and decision-making.

- At the same time, American lobbying/government relations firms began to establish operations in Brussels and various European capitals as part of a concerted effort to expand their businesses into the European markets.

This American incursion and, in particular, the style of American lobbying was not well received by the Europeans as reported in the literature and in first hand accounts by practitioners. The response was a modification of the approach/style of these firms to fit in much more with the structure and culture of the European policy development process. American firms entering into Europe were followed in the early 1990's by a number of Canadian examples.

A Different Political and Bureaucratic Culture

Writers point to a different culture in Europe with respect to lobbying, where the term has traditionally viewed much more pejoratively as implying inappropriate behaviour or as one writer put it, a "particularly American vice". In context of the European Union, the term lobbyist is reported as not generally being used, but rather reference is made to "special interests".

Academics have noted that lobbying in the European Union context does not have concept of individual rights to petition government as part of its origins. Rather, it arose out of the establishment and continuing evolution of an extensive system of public discussion/consultation mechanisms that have been put in place to engage these interests in what, relative to the American experience, is a more structured and managed approach to public policy development.

Current State of Lobbying

Not surprising, the literature generally points to a significantly lower incidence of lobbying activities in Brussels compared to Washington. At the same time, in absence of the kind of registry systems that are in place in U.S. and some Canadian jurisdictions, it is difficult to quantify the extent. A 1998 study commissioned by the City of Brussels is reported to have identified 6,635 people potentially engaged in activities that would meet a typical U.S. or Canadian definition of lobbying, including interest groups, consulting firms, law firms, diplomatic missions, etc. Other studies have estimated a range of 3,000 to 10,000 individuals.

There is some evidence to suggest that the extent of lobbying in the EU is cyclical, depending on the issues of the day. Observers report that lobbying activity in the EU boomed in the early 1990's when the much of the current European economic integration was negotiated and U.S. firms were concerned about an economic "fortress Europe" emerging. Others have suggested that the general presence in Brussels of U.S. lobbyists, whether in-house staff of U.S. based multinationals, or U.S. based consultant lobbyists has diminished somewhat. Having said that, a 1998 study found that 25% of all corporate Public Affairs offices (which would typically include government relations/lobbying-type activities) are American and that largest numbers of lobbyist consultant firms was shared by the U.S. and the U.K.

Other observers have noted that by the end of the 1990's, there was a "sharp increase" in the political activities of multinationals in Europe and that with the maturation of the EU over time, there has been increasing evidence of "privileged access" for individual and association lobbyists.

Registration

Since 1996, the European Parliament has required individuals wanting regular entry to government buildings "with a view to supplying information to Members within the framework of their parliamentary mandate in their own interests or those of third parties" to obtain passes. The passes are valid for one year.

As of May 1999, 2,300 persons had registered/received passes. Of these, 300 were staff persons of Members of the European Parliament. (Apparently, each MEP is allowed to have up to two official assistants and is required to register every additional person that works for them).

There are no requirements for lobbyists to file reports of any type and as such, it is impossible to gauge the extent of activity, amounts of money expended, departments contacted, etc. Since 1997, Members of the European Parliament (MEP) have been required to report on their extracurricular employment and financial support received from external sources, including corporations. The registration information exists only in paper format (in multiple binders), can only be reviewed in person at a single location in Brussels, is not electronically searchable, and cannot be photocopied. One researcher reported that the MEP disclosures are very often incomplete or blank.

Similar registration provisions have not been put in place for the other major EU institutions – the European Commission or the Council of Ministers.

A Reflection of Different Values

Again, however, the literature stresses that in the EC public policy development process, there is much greater emphasis on the more structured and managed

consultation processes as the formally recognized main channel of efforts to influence decision-making, with the bureaucracy as the initial point of contact.

The operating principles in this system are viewed as focusing on the development of consensus, multi-lateral approaches, etc., as opposed to majority-rule. This compares to the US model where one-off approaches to individual legislators as the first point of contact that are recognized as appropriate and where there is more systematic emphasis on being adversarial (competing interests, competition between the legislature and the executive, state-federal conflict).

One academic study reported the comments of an American manufacturing executive on this essential difference of individual vs. managed/group process:

> *"There is no accepted right of a company to be active [as an individual lobbying entity]…It's much more important to have influence in business groups because that's who they listen to."*

This is not to say that outside interests are not important to the EC. The literature notes more like the U.S. than Canada, the European Commission, as an example, has a relatively small bureaucracy (16,000 persons – likened by one writer as comparable to the bureaucracy of a large European city) and that as a result, organizations such as the European Parliament have a very significant reliance on information provided by outside organizations.

As reported by academics, these types of public consultation mechanisms are not only part of the traditional public policy process in Europe, they also serve as a vehicle to manage the proliferation of lobbyists, focus their activities, in general decrease the cost of interacting with the proliferation of groups. Some academics have suggested that the EU bureaucracy manages the structure of these various mechanisms to ensure a balance of interests and at times to blunt

particularly strong interests. U.S. observers note that Americans often interpret that this as a lack of flexibility in the policy development process results in lengthy decision-making processes.

Another important difference between the EU and the US is the distance between the EU and the local issues and individual citizens of each European country. This means that the traditional U.S. lobbyist focus on grass roots lobbying and on the lobbyist role in campaign financing are generally not applicable. As reported by a number of writers, this was part of the early learning curve of U.S. lobbying firms upon first arrival in Brussels – in effect, absorbing the reality that a lobbyist's emphasis at the EU is more effectively placed on information provision and effective participation in the more formal and bureaucratically managed public policy development system.

Potential for Future Changes

According to the Corporate Europe Observatory, a Dutch-based advocacy group that monitors the influence of corporations on European public policy making, there are no plans underway to make system in place for the European Parliament more rigorous or apply to the other EU institutions. The response of Parliamentary officials has been the concern that more regulatory requirements would discourage interaction with external organizations and that the Parliament's preference would be for some form of self-regulation.

Appendix II

Changes to the *Lobbyists Registration Act* (Bill C-15)

History

Parliament originally enacted the *Lobbyists Registration Act* ("the Act") in 1989. Extensive revisions were made and an amended Act came into force in 1996. The revised legislation called for a Parliamentary review of the Act after four years. Subject to this requirement, the House of Commons Standing Committee on Industry, Science and Technology conducted a comprehensive review between March and May 2001

As a result of the Standing Committees recommendations and debates in the House, further amendments were made to the Act in the form of Bill C-15. The Bill received Royal Assent in June 2003, but will not be promulgated until corresponding regulation changes have been completed. Federal officials were not in a position to disclose publicly the anticipated timeframe for completion.

The key amendments have been summarized below:

Broadening the Definition of Lobbying

Legal considerations in the mid 1990s resulted in a change in the new legislation to alter the definition of lobbying from "attempts to influence" public office holders with respect to legislation, regulations, policy changes, grants, contracts, etc. to a much broader "undertake to communicate" with public office holders for these same purposes.

According to interviews, the legal considerations involved an individual engaged in lobbying activities who had chosen not to register and was subsequently investigated by the Ethics Counsellor. When the Crown attempted to prosecute on the basis of the current (pre-Bill C15) definition of lobbying, the Crown could not find a legislative basis to prosecute because the language "attempt to influence " was considered to be too vague. Interestingly, the argument has been put forward by lobbyist watchdogs in the past that if "attempt to influence" was interpreted in the same way that the Criminal Code deals with "influence pedaling", all lobbyists on the registry would be engaging in illegal activity.

The Senate included one exception to the new provision with respect to "undertake to communicate" – situations where a lobbyist is simply calling for general information. In these cases, the lobbyist does not have to register the contact. However, the Senate indicated that this exemption should be monitored closely.

Our research for Volume 2 on lobbyist registration indicates that this direction of the federal government – that of broadening the definition of what constitutes lobbying – runs counter to the definitions in other jurisdictions, as well as concerns expressed by a number of academics/experts and other observers.

These concerns generally relate to what is already felt to be too broad a definition of lobbying (e.g. capturing too many of what are often legitimate organizations attempting to engage government on their issues of concern, including many corporate and non-profit organization's employee "lobbyists"). Concerns have also been expressed that the kind of "bad behaviour" that governments should be concerned about does not generally take place within the confines of registered lobby activity, i.e. registries focus their activities on "legal lobbying". Registry violations are less about catching archetypal bribery or arm-twisting, and more about failure to adhere to reporting content and timeframe requirements.

In response to our questions, federal lobbyist registry officials indicated that they anticipated a significant increase in the number of registrations that will be required with the new definition. However, they would not provide a more quantified estimate of the expected increase. They also indicated that they were currently upgrading their information technology to handle the increase in volume.

Harmonization of Registration Process for In-House Lobbyists (Corporate) and In-House Lobbyists (Organizations)

At present, the registration process for officers and employees of businesses is different from that for officers and employees of non-profit organizations.

Employees of corporations who spend 20 percent or more of their time lobbying for their employer are required to register. Conversely, the senior officer of a non-profit organization must register when one or more employees lobby as part of their jobs and the total amount of time spent lobbying by all employees is equivalent to 20 percent of the time of one employee (a form of full time equivalent calculation).

The Standing Committee felt that this created an unfair playing field that potentially benefited “for profit” businesses as compared to “not for profit” organizations. For example: if a “not for profit” had five employees spending 4 percent of their time (collectively 20 percent of an FTE) on lobbying activities, that organization would have to register. Conversely, unless an individual employee of a corporation was spending 20 percent of his/her time on lobbying they would not be required to register. This meant that many large companies could sidestep registration, through the use of more than one lobbyist employee, with total individual lobbying below 20 percent of their time.

The changes in Bill C-15 will create a level playing field with respect to what is known as “collectivization of time”. Employees – whether for-profit or non-profit – will be required to register if collectively or individually they spend more than 20 percent of time engaged in lobbying.

An additional, levelling change is the requirement that the senior officers of the company (e.g. President, Vice President, Chief Executive Officer) whose employees are engaged in lobbying must also be registered.

Recording of a Contact when initiated by a Public Official

Previously, if you received a written request from a public official, the lobbyist did not have to register as they had not initiated the contact. This created a situation where not all lobbying activities were captured by the registry.

With the changes in Bill C-15, the lobbyist has to register regardless of who initiates the contact.

Providing Information on Previous Employment with the Federal Government

As a way to ensure transparency with respect to former public servants who are now engaged in lobbying, Bill C-15 will require that lobbyists report where they have worked previously in the federal government or its agencies as part of the registration process.

Reporting Requirements

With the changes with Bill C-15, regardless of the type of lobbyist, all individuals are required to report semi annually.

Appendix III

Examples of Lobbying Activities

For the purposes of further illustration, the following are some additional examples drawn from Canadian and U.S. sources that give a sense of what lobbying looks like. The examples include:

- An additional example from another Canadian government relations firm.
- Additional examples from the Non-profit Guide to Lobbying.
- Information from the City of Los Angeles.

The Los Angeles examples illustrate two things worth noting:

- The importance of the financial threshold in determining what constitutes lobbying.
- The fact that an architect making an application to the City for a zoning change on behalf of a client would be considered to be a lobbyist (again, depending on the financial threshold).

The federal examples (from the Non-profit Guide to Lobbying) has a slightly different emphasis – differentiating activities that would be lobbying from those that would not be lobbying, but still has a very practical focus.

From Hillwatch Inc. Ottawa, Canada 2003

Legislative Lobbying: Need Help?

If your industry or group has an interest in a Parliamentary hearing, or the more ambitious goal of influencing the direction of a particular piece of legislation, then you have good reason to seek expert assistance. The

legislative process has particular characteristics that call for special skills and experience.

First, the process can be prolonged. It can take years for a departmental legislative proposal to make it through the Cabinet system and the various legislative stages of House of Commons and the Senate before finally receiving Royal Assent. After this legislative marathon, a six-month to one-year process is consumed in the detailed preparation of the departmental regulations. It takes persistence, patience, and experience to ensure your interests are put forward every step of the way.

Second, the process is arcane, subject to its own rules and culture. The way in which legislation develops and moves through the central agencies of government is not particularly transparent. The House of Commons and Senate operate on the basis of unique norms and rules that in some instances go back centuries. It is important to understand the culture and know the rules.

Third, the legislative process has a very public face. The process takes so long that any legitimate interest has the chance to organize public opposition against your position. You may have convinced government officials of the eminent good sense of your position but are you prepared for the give and take of public battle? Do you have champions in the system and strong public supporters? Do you know who will oppose your interests? Can you handle press inquiries and a vehement attack on your interests and your motives? Do you understand the Commons and Senate committees' public hearing process?

Fourth, once draft legislation or a policy issue enters the Parliamentary agenda, it becomes, by definition, a political issue. Political considerations drive a government's agenda and the interests of individual Members of Parliament. On any given issue, the political parties tend to

line up for and against. This can make your group an ill-prepared contestant in someone else's game show.

Here are some of the things you should expect a good legislative lobbyist to do for you:

- *Create a two-tracked strategy, one for the public service and one for Parliament;*
- *Help you understand the detailed nuances of the relevant bureaucratic and political processes;*
- *Identify possible supporters and opponents and, if necessary, pull together a coalition of interests;*
- *Research your arguments with a particular focus on what government and parliament has already said and done on the issue;*
- *Give objective, tough advice on the strengths and weaknesses of your position;*
- *Suggest innovative solutions with some political and policy appeal;*
- *Develop a bipartisan approach and coordinate meetings with officials, the Committee Chair, key Members of Parliament, and political staff;*
- *Arrange for your organization to appear before a House or Senate Committee;*
- *Draft letters, briefs, opening statements for Committee appearances and prepare Qs and As;*
- *Ensure your material is properly translated and distributed to the Members, Senators, the Clerk, and key Parliamentary Researchers;*

- *Attend Committee hearings to track supporters and opponent presentations and determine the biases and interests of individual committee members;*
- *Ensure you are thoroughly prepared, help you craft your oral message and run you through rehearsals before a Parliamentary Committee appearance;*
- *Coordinate the proper follow-up activities to any Committee appearance;*
- *Prepare suggested wording and technical amendments for the clause by clause stage of legislation;*
- *Help your group convey its interests in any detailed regulatory negotiation.*

Bottom-line: A good legislative lobbyist helps you hang in and hang on every step of the way to allow you to present your case in the best possible light and with the greatest possible, positive impact.

From the City of Los Angeles Lobbying Handbook

Example 1:

Flora Carbon, a lobbyist for the Coalition for Clean Air ("CCA"), is lobbying the state and the City of Los Angeles to enact legislation requiring at least two individuals in every vehicle during rush hour. During the first calendar quarter, she spends 30 percent of her time lobbying the state, and 70 percent lobbying the City. For this period, Flora is entitled to receive $10,000 from the CCA for attempting to influence the outcome of this proposal. For purposes of the City's lobbyist registration threshold, Flora determines that she earned $3,000 for lobbying the state and $7,000 for lobbying the City during the quarter. Though Flora earns this compensation during the first quarter, she

does not receive payment from the CCA until the second calendar quarter. The CCA is Flora's only client. Since Flora is entitled to receive $4,000 or more for lobbying the City during the first calendar quarter, she is required to register during the first quarter as a lobbyist with the City Ethics Commission. Flora should also contact the Fair Political Practices Commission about the state's lobbying regulations as they may apply to her regarding her lobbying of state decision-makers.

Example 2:

Stone Forest is an architect employed by Brick & Mortar Associates. As part of his job, he has appeared before the City Planning Commission to seek approval of various zoning changes for his firm's clients. In preparation for his appearances, he has performed research, written reports and communicated with department staff. His monthly salary is set at $5,000 and he does not receive bonuses or any other form of compensation. To determine if he qualifies and must register as a lobbyist, Stone must keep track of the time spent and the compensation earned for performing these lobbying activities. Stone determines that 25 percent of his time is spent performing lobbying activities to influence the outcome of the proposed zoning changes. Therefore, $1,250 of his monthly salary counts toward his lobbyist registration threshold. Earning only $3,750 during the calendar quarter for his lobbying activities, Stone does not qualify as a lobbyist since he does not meet the $4,000 compensation threshold.

From the Non-Profit Lobbying Guide

The following are practical examples of lobbying (and also examples that would not be considered to be lobbying) under the U.S. federal lobbying legislation.

Example #1

Issue

A mental health association has a position in support of legislation to provide a range of community services for homeless persons who are mentally ill. It provided information on the legislation, and the association's support for it, in the association's legislative alert to its members, as well as in its Annual Report and several other documents sent to its members. The information did not include a request that the readers of the publications contact their legislators in support of the legislation, nor did it give any legislator's name and address or provide a tear off petition to be mailed to a legislator.

Answer

The activity is not lobbying. The organization can refer to legislation, including the group's position on it, in its communication to its members, and that activity does not constitute lobbying, so long as the association does not ask its members to contact legislators in support of the measure, or give any legislator's name and address or provide a tear off petition to be mailed to a legislator.

Example 2

Issue

The same mental health group mentioned above provided information on the legislation and its position on it in a letter to members of the state legislature. The letter did not ask the legislators to support the legislation.

Answer

The activity is lobbying. By mentioning the legislation to legislators and the organization's position on it, the mental health group engaged in lobbying.

Example #3

Issue

An environmental organization focusing on safe drinking water was invited in writing by a committee of Congress to testify on legislation being considered by the Committee. The group's Board Chairperson testified and stated opposition to the legislation, maintaining that the measure would weaken the current law safeguarding drinking water.

Answer

The testimony was not lobbying because the Committee had invited the group in writing to testify. If the organization had requested to testify, or had been asked to testify by a single legislator instead of the Committee, the testimony would have been lobbying.

Example #4

Issue

An association providing disaster relief conducts exhaustive nonpartisan research on methods to respond more rapidly and effectively when disaster strikes. The research concludes that disaster relief legislation currently being considered by the state assembly should be supported. The organization distributed the research broadly to its members and

makes it available to the public. The research includes a full and fair exposition of the pertinent facts to permit the audience to form an independent opinion.

Answer

The research is not considered a lobbying expenditure even through it takes a position in support of the disaster relief legislation. The fact that the association's research included a full and fair exposition of the facts, made the material generally available, and did not include a direct call for the readers to take action, provides the basis for the research to be considered a non-lobbying expenditure.

Example #5

Issue

An education association that receives federal funds sends a letter to all members of Congress opposing legislation that would curtail the lobbying rights of nonprofits that receive federal funds.

Answer

The letter is not a lobbying expenditure because it is a "self-defense" activity. Lobbying legislators (but not the general public) on matters that may affect the organization's own existence, powers, tax exempt status, or the deduction of charitable contributions to it, do not count as direct lobbying expenditures. However, had the education association taken an ad in the newspaper calling on readers to oppose the legislation it would count as a lobbying expenditure. While self-defense lobbying activities do

not count as direct lobbying expenditures, that exception does not extend to grassroots legislative activities such as the newspaper ad.

Example #6

Issue

Volunteers with a statewide arts organization urge the organization's members from throughout the state to march on the capitol in support of arts funding. Four hundred members spend two days, at their own expense, meeting with legislators and the governor. Members planned and conducted the march, and used their own funds for promotional materials, getting the word out on the march, briefing sheets and all other activities related to the march. The arts organization spent no money on the march.

Answer

The march is not lobbying. Lobbying takes place only when there is an expenditure of a nonprofit's money on an activity that constitutes lobbying. If the arts organization had spent any funds urging its members to participate in our march, those amounts would have been considered lobbying expenditures.

Appendix IV

Canada and U.S. Election Financing Comparison

Canada

Election Expense Limits

- All candidates have a maximum election expenses limit based on the number of registered voters on the preliminary voters list of each riding.
- This does not include elections for leader of a party. These are governed privately by rules put in place by each party, although the federal government recently announced its intention to require more transparency in this area as well.

Donations

- All donations over $200 have to be reported with name and address of contributor. If a numbered company, must include name of CEO/president.
- Political parties must report on the financial activities of any trust funds established for use in an election.
- For donations up to $200, a tax credit of 75% if offered. Maximum credit of $500 per calendar year.
- Excess funds (in excess of what is spent, consistent with the limit noted above) raised must be transferred to the national Party or the local riding association. In the 2000 Canadian general election, the Liberal Party transferred a total of $2.9 million. The Alliance transferred a total of $2.9 million as well. Total federal transfers for all parties federally in the 2000 election were $7 million.

Third Party Advertising

- Third party advertising is limited to $3,000 per riding or $150,000 nationally by individuals or groups to oppose or promote a political candidate, party or leader. A minimum third party expenditure of $500 is necessary before federal filing is required.
- A total of 50 organizations and individuals registered as third party advertisers for the 2000 election.
- A sampling of 10 of those 50 organizations and individuals revealed that of the 10, the Canadian Medical Association and C.U.P.E. were highest at $62,000 and $146,000 respectively. The remaining eight samples ranged from $800 to 10,000, with the average being $5,200.

Transparency

- Statistics for individuals and parties and third party advertising are reported on-line by Elections Canada. Examples include:

    - Jean Chrétien's legal campaign expense limit in the 2000 General Election was calculated to be $61,925. His actual expenses were $60,000.

    - Paul Martin's legal expense limit in the 2000 General Election was calculated to be $67,900. His actual expenses were $51,161.

    - Judi Sgro's (Toronto MPP) legal expense limit in the 2000 General Election was calculated to be $59,500. Her actual expenses were $44,230.

- Total political contributions by BCE Inc. (as an example) to all parties were $5,000.

- The top 10 contributors to the Liberal Party of Canada in the 2000 General Election were actually local Liberal riding associations. The average contribution was about $50,000.

- The top individual contribution to the Liberal Party was $27,000

- The top private corporation donor to the Liberal Party was a company called *Coinamatic* with a donation of $25,000

- The total expenditure by all 12 federally registered political parties during the 2000 federal election was $35 million. Of this $12.5 million was spent by the Liberals, $9.6 million by the Alliance, and $9 million by the PCs.

- Total value of all political contributions from all sources to all individual candidates of all 12 registered federal parties in the 2000 election: $42 million. Total actual expenses: $37 million.

- *Importance of corporate contributions:* Corporate sponsorship of political parties in Canada may not be at the level that most Canadians would expect it to be. A recent Compass poll of Canadian CEOs revealed that half gave donations or worked for companies that did. The primary reason for giving was ideological rather than expectations of gain. Most said donations were motivated by the desire to support competent politicians, back the party process, support ethical politicians or support free enterprise. Using donations to support the corporations' business affairs or networking objectives was a less important benefit. Most CEO respondents did not perceive much corporate benefit from providing

political donations. In fact, more were likely to see it as a greater risk due to public or media backlash against unfair or improper influence.

- *Importance of contributions from Associations:* The evidence suggests that contributions from associations are not significant factors for federal political parties. For example, during the 2000 election year, the Federal Liberals collected over $20 million in contributions. Businesses provided 59% of that total, individual donors another 34%, and associations only 5.6% or about $1.1 million. However, 81% of those Association donations actually came from related provincial and constituency Liberal associations.

- In Canada, the national party organizations are partially subsidized by provincial or constituency associations who raise funds locally and then transfer monies to the national organization. This pattern holds across all the major parties. For example, in 2000, the Bloc Quebecois raised $195,000 from Associations but $166,000 of that came in a single donation from the Parti Quebecois. Party associations routinely dominate the list of top 100 donors to any the major parties whether the Liberal, Alliance, Bloc or Conservatives. The exception is the NDP, which is reported to rely more heavily on Unions.

U.S. Federal

Election Expense Limits

President

- The FEC sets limits on Presidential campaign expenses during the actual presidential campaign itself and period immediately preceding the campaign, once each of the two national parties has selected their official nominee. In 1996, the limit per candidate was set at $100 million. Additionally, each party was allowed to spend a further $12 million on their candidate of choice.
- These limits are calculated based on the voting age population of the various states.
- Of the $100 million per candidate, $62 million was provided directly by the U.S. Treasury to be used by each candidate during the official election campaign. During that time, Presidential candidates are not allowed to use outside/other sources of campaign funds.
- There are no upper limits on Presidential campaign expenses of the two official candidates outside the actual presidential campaign itself and the period immediate preceding the campaign, i.e. once the conventions are over and each party has selected their official candidate

Senate and House

- There are no upper limits on the total expenditure allowed.

Donations

For individuals

- $2000 limit per election to a federal candidate. Each primary, run-off, and general election counts as a separate election.
- $5000 limit per year to a Political Action Committee or State Party Committee
- $20,000 limit per year to a national party committee
- $25,000 limit total per calendar year of all the above.
- Cash in any amount over $100 is prohibited

For Corporations and Labour Organizations

- Although corporations and labour organizations may not make contributions or expenditures in connection with federal elections, they may establish PACs.

For PACs (Political Action Committees)

- There is no limit on total contributions.
- $5000 to each candidate, $25,000 to each national party, $10,000 to state and local party committees.

Soft money

- Individuals and corporations may make unlimited donations to political parties that can be used. Those political parties may, in turn, make unlimited donations to individual candidates (so called “soft money” and the topic of much debate in the U.S.).
- While soft money cannot be used to explicitly endorse federal candidates, the concern is that it can be spent on television commercials, get-out-the-

vote efforts and other activities that are clearly designed to influence presidential and congressional races.

- In the 1996 federal election cycle, the two national parties raised $262 million in “soft money”.

Transparency

Campaign contributions and expenses are reported on-line by the Federal Elections Commission, including enforcement action and audit reports.

Examples:

- Total campaign expenses for all candidates for the House, Senate, and Presidency in the 1996 federal election, totalled $1 billion.

- Top 10 presidential candidates in 1999-2000 collectively raised over $600 million for the 2000 federal election. President Bush raised $193 million. Al Gore raised $133 million.

- The top fundraising candidate for a seat in the 550+ House of Representatives for the 1999-2000 for the 2000 U.S. federal election raised $39 million. The 10th highest fundraising candidate raised almost $4 million.

- The top fundraising candidate for a seat in the Senate (100 seats available) raised $63 million. The 10th highest raised $9.1 million. Total funds raised by the top 10 senatorial candidates for 1999-2000: $230 million.

- In the second quarter of 2003/04, President Bush raised $35 million in campaign contributions. As reported in the national media, $33 million of this was raised at one single event.

Appendix V
Government of Canada Lobbyists' Code of Conduct

Preamble

The *Lobbyists' Code of Conduct* is founded on four concepts stated in the *Lobbyists Registration Act*:

- Free and open access to government is an important matter of public interest.
- Lobbying public office holders is a legitimate activity;
- It is desirable that public office holders and the public be able to know who is attempting to influence government; and
- A system for the registration of paid lobbyists should not impede free and open access to government.

The *Lobbyists' Code of Conduct* is an important initiative for promoting public trust in the integrity of government decision-making. The trust that Canadians place in public office holders to make decisions in the public interest is vital to a free and democratic society.

To this end, public office holders, when they deal with the public and with lobbyists, are required to honour the standards set out for them in their own codes of conduct. For their part, lobbyists communicating with public office holders must also abide by standards of conduct, which are set out below. Together, these codes play an important role in safeguarding the public interest in the integrity of government decision-making.

Principles

Integrity and Honesty

Lobbyists should conduct with integrity and honesty all relations with public office holders, clients, employers, the public and other lobbyists.

Openness

Lobbyists should, at all times, be open and frank about their lobbying activities, while respecting confidentiality.

Professionalism

Lobbyists should observe the highest professional and ethical standards. In particular, lobbyists should conform fully with not only the letter but the spirit of the *Lobbyists' Code of Conduct* as well as all the relevant laws, including the *Lobbyists Registration Act* and its regulations.

Rules

Transparency

1. **Identity and purpose**

   Lobbyists shall, when making a representation to a public office holder, disclose the identity of the person or organization on whose behalf the representation is made, as well as the reasons for the approach.

2. **Accurate information**

   Lobbyists shall provide information that is accurate and factual to public office holders. Moreover, lobbyists shall not knowingly mislead anyone and shall use proper care to avoid doing so inadvertently.

3. Disclosure of obligations

Lobbyists shall indicate to their client, employer or organization their obligations under the *Lobbyists Registration Act*, and their obligation to adhere to the *Lobbyists' Code of Conduct*.

Confidentiality

4. Confidential information

Lobbyists shall not divulge confidential information unless they have obtained the informed consent of their client, employer or organization, or disclosure is required by law.

5. Insider information

Lobbyists shall not use any confidential or other insider information obtained in the course of their lobbying activities to the disadvantage of their client, employer or organization.

Conflict of interest

6. Competing interests

Lobbyists shall not represent conflicting or competing interests without the informed consent of those whose interests are involved.

7. Disclosure

Consultant lobbyists shall advise public office holders that they have informed their clients of any actual, potential or apparent conflict of interest, and obtained the informed consent of each client concerned before proceeding or continuing with the undertaking.

8. Improper influence

Lobbyists shall not place public office holders in a conflict of interest by proposing or undertaking any action that would constitute an improper influence on a public office holder.