

Must Lobbying Be Regulated?

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Lobbying has been around as long as politics itself. The origins of the word "lobby" do not go back quite as far. It only became fashionable near the middle of the 17th century and it referred to the corridors of the British House of Commons. The definition was later broadened to describe conversations exchanged in the corridors of Parliament.

According to *Safire's Political Dictionary* (1978), the word "lobby" is derived from "lauba", an old German word meaning a refuge of verdure. The lobby was a public room where parliamentarians took refuge to receive complaints or solicitations from lobbyists or special agents.¹

In a book on political groups in the United States, Professor Leon Dion defined lobbying as: an activity, generally in return for pay, of an agent of an association or a group, for the very specific purpose of influencing, directly or indirectly the plans and actions of governments to promote their own interests.²

Corrupt activities of some American pressure groups resulted in lobbying and the profession of lobbyist developing an unsavoury reputation.

In Canada, the slightest action or corruption, favouritism or nepotism is reported as lobbying. There is even a tendency to use the word to describe political representations by the business sector, i.e. lobbying by the Canadian Chamber of Commerce, the *Crédit commercial de France* or the Association of Mines and Metals. Lobbying is also done by groups such as the *Mouvement national des Québécois* the Automobile Protection Association or the *Ligue pour la défense des femmes maitaitées*.

In its broadest sense lobbying may be considered essentially an art of communication, public relations or even management. It is more a team activity than a case of a person working alone. New lobbyist recruits have joined lawyers and former politicians who, at one time, dominated the trade. The recruits include specialists in various disciplines such as political science, marketing, economics and the applied sciences. Some American universities are already thinking of offering a specialized course in lobbying.

Finally, an increasing number of interstate relations, especially pertaining to foreign trade, are made through Congress.

Canada, for example, has hired American lawyers, public relations experts and lobbying specialists to help the staff in its embassy deal with complex bilateral relations.

The Status of Lobbyists in Canada and in Other Countries

Lobbyists both at the federal and provincial levels have no official status in Canada and are not subject to any regulation. However, Members of Parliament are explicitly prohibited from lobbying. Under the *Senate and House of Commons Act*, a senator or a member cannot: "...receive or agree to receive any compensation directly or indirectly, for services rendered, or to be rendered, to any person, either by himself or another, in relation to any bill, proceeding, contract, claim, controversy, charge, accusation, arrest or other matters before the Senate of the House of Commons, or before a committee of either House, or in order to influence or to attempt to influence any member of either House."

The House does recognize the activities of parliamentary agents but they are simply persons who promote *private* bills and the conduct of proceedings upon petitions for such bills. A list of such persons is kept by the Chief Clerk of Private Bills and a copy filed with the Clerk of the House. "No person shall be allowed to be registered as a parliamentary agent during any session unless he has paid a fee...for such session and is actually employed in promoting or opposing some private bill or petition pending in Parliament during that session."

It is the practice in the House of Commons for Members to take charge of *private* bills and to sponsor their progress through the House and its committees, but it is contrary to the law and usage of Parliament that any Member of the House should be permitted to engage, either by himself or any partner, in the management of *private* bills for pecuniary reward. No officer or clerk of the House is allowed to act as parliamentary agent. In fact there are very few *private* bills and most are now introduced in the Senate.

In 1976, the Conservative Party was unsuccessful in having the House of Commons pass Bill C-124 concerning the registration of lobbyists. According to this bill, a lobbyist: "...means any person, who for payment attempts to influence, directly or indirectly (a) the introduction, passage, defeat or amendment of any legislation before either House of Parliament, or (b) a decision to be taken on any matter coming within the administrative jurisdiction of a Minister of the Crown, whether or not that matter has come or is likely to come before either Houses of Parliament for legislative action."

In Quebec, the Liberal Party once considered a resolution taken by the Party Youth Committee at the 19th convention in 1976. This recommendation defined lobbying in particular as representa-

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tions made to a member of the National Assembly, a minister, an officer, a commission or board or any other organization vested with regulatory power for the purpose of influencing directly or indirectly the passage or defeat of legislation, an order-in-council or the settlement of a recommendation.

This broad definition would cover lobbyists' activities in approaching not only parliamentarians but also the executive of administrative bodies. Although the media placed great emphasis on the fact that the young Liberals' proposal was a major and desirable innovation, the idea was not adopted by the Party.

In France, Section 23 of the *Règlement de l'Assemblée nationale* refers to lobbying almost in the same spirit as the *Senate and House of Commons Act*. All members are prohibited from belonging to an association or a group defending specific, local or profession interests, or from signing commitments concerning such parliamentary activity when this membership or commitment involve his parliamentary responsibilities.

Despite this, there is great "familiarity" between representatives of interest groups and elected representatives. Occasionally, a lobbyist will buy a meal for a parliamentarian, hold briefings, draft amendments right in the office of a member or a senator; or provide the government with well-prepared subjects for the question period and even rebuttal for parliamentarians when ministers give unconvincing answers. On some occasions, ministers will even use the influence of interest groups to force parliamentarians to vote on legislation jointly supported by the government and groups. Parliamentary associations put French parliamentarians and interest groups in contact with one another. The make-up of these associations often transcends partisan boundaries. For example, 160 members and 100 senators belonged to one such group with ties to small and medium-sized businesses.³

In the United States each state has its own legislation regarding lobbying. In fact, all organizations, associations or individuals wishing to exert pressure on assemblies are asked to register, report the expenses incurred during their operations, including the salaries of their lobbyist-agents, specify the nature of the interests they intend to promote, and fulfill a variety of other obligations which vary from state to state.

Lobbying in the United States must be seen in the context of the First Amendment of the Constitution, which decrees that: "Congress shall make no law... abridging the freedom of speech or of the press; of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

These are rights of association and petition which ordinary citizens are acknowledged as having when making their grievances known to the government. In 1876, the House of Representatives adopted a resolution ordering the registration of lobbyists with the House Secretariat as a result of various scandals involving pressure groups. This action, however, turned out to be temporary, since the following Congress did not renew it.

At the present time, lobbying is governed by the *Federal Regulation of Lobbying Act of 1946*, some aspects of which were amended by subsequent legislation. The main clauses in this Act deal with the compulsory registration of lobbyists and the requirement to report expenses incurred by lobbying activities, including salaries paid to persons paid to perform the duties of a lobbyist. Section 307 of the *Lobbying Act* provides the following definition of a lobbyist:

Any person (except a political committee as defined in the *Federal Corrupt Practice Act*, and duly organized state or local committees of a political

party), who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes: (a) the passage or defeat of any legislation by the Congress of the United States. (b) to influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

The scope of the *Federal Regulation of Lobbying Act*, which was termed ambiguous by numerous critics as early as 1946, was considerably reduced by the Supreme Court in 1954. In the *U.S. vs Harris* case, the Court declared that this Act applied only to groups and individuals receiving money for the main purpose of influencing legislation through direct contact with members of Congress.

Thus, for many years, the Act did not apply to some groups such as the National Association of Manufacturers because its main goal was not to influence Congress, or the National Rifle Association (which favours the free sale and possession of firearms) that claimed it did not have direct contact with Congress.

Approximately 2,000 agents are officially registered as lobbyists in Washington. However, if company vice-presidents, consulting barristers, independent entrepreneurs, representatives of foreign governments and many others to whom the legal definition does not apply are counted, there are an estimated 5,000 practicing lobbyists, i.e 10 lobbyists for every member of Congress. Approximately 800 of the 1,000 largest companies in the United States have agents in Washington, only 300 of whom are registered in accordance with the provisions of the Act.

Other loopholes regarding financial statements have been reported. Lobbies only report a small percentage of expenses actually incurred. Despite the fact a detailed account is mentioned in the Act, the latter is silent on the various types of contributions and activities which should appear in the expense statements.

Lobbying in Ottawa and Quebec City

There is very little empirical data on the practice of lobbying in Canada. Existing material is, for the most part, theoretical dealing with the interaction of groups and governments; or studies of very specific cases. Professor Robert Presthus of York University, one of the few Canadian researchers to have seriously studied lobbying, reports that several people simply do not believe that lobbying is widespread in Canada.⁴

Journalists have explored the subject in a superficial way, however, it must be remembered that it is not easy to investigate the subject because very few lobbyists agree to be interviewed. Generally, they refuse to admit they are lobbyists because people do not look favourably upon attempts to influence the government. Furthermore, people in political and administrative circles do not like to talk about any influence lobbyists may have on them, because they run a great risk of being accused of having ties with private interests to the detriment of public interest.

According to Presthus most associations require the services of professional lobbyists and, occasionally, experts to approach the government or parliament. The senior managers in large enterprises spend a good part of their time on relations with governments, almost as much as do directors of associations. In

Lobbying

(Table prepared by, and published with permission of, the National Conference of State Legislatures)

Lobbying Laws By State	Filers		Definition includes:							Registration			
	State	Lobbyists	Employers	Legislative Lobbying	Administrative Agency Lobbying	Public Officials as Lobbyists	Public Employees as Lobbyists	Compensation Standard	Time Standard	Expenditure Standard	Registration Fee	Annual Registration	Permanent Registration
Alabama	X	X	X	X	X	X	X				X		X
Alaska	X	X	X	X				X	X			X	X
Arizona		X	X	X								X	X
Arkansas	X		X										
California	X	X	X	X				X	X	X			X
Colorado	X	X	X	X				X				X	
Connecticut	X	X	X	X				X	X	X		X	X
Delaware	X	X	X					X		X	X		X
Florida	X		X		X	X						X	
Georgia	X		X							X		X	
Hawaii	X	X	X	X				X	X	X			X
Idaho	X		X					X		X		X	
Illinois	X	X	X					X				X	
Indiana	X	X	X					X		X		X	X
Iowa	X		X		X	X		X	X	X		X	
Kansas	X		X	X				X	X	X	X	X	
Kentucky	X	X	X					X		X		X	X
Louisiana	X		X							X		X	
Maine	X	X	X		X	X		X	X	X		X	X
Maryland	X	X	X	X				X	X	X		X	X
Massachusetts	X	X	X	X				X	X	X	X	X	X
Michigan	X		X		X	X				X		X	
Minnesota	X		X	X				X	X	X	X		
Mississippi	X	X	X							X	X		X
Missouri	X		X		X	X		X			X		
Montana	X	X	X	X	X	X			X	X	X	X	X
Nebraska	X	X	X							X	X		
Nevada	X		X								X		
New Hampshire	X		X							X			
New Jersey	X	X	X					X	X	X		X	
New Mexico	X		X	X	X	X						X	
New York	X		X	X				X		X		X	
North Carolina	X		X					X		X	X	X	X
North Dakota	X		X							X		X	
Ohio	X	X	X		X	X						X	X
Oklahoma	X		X	X				X	X	X			
Oregon	X	X	X	X	X	X		X	X	X	X		
Pennsylvania	X		X	X				X		X		X	
Rhode Island	X	X	X					X		X		X	X
South Carolina	X		X							X		X	
South Dakota	X	X	X		X	X				X		X	
Tennessee	X	X	X	X	X	X			X	X		X	X
Texas	X		X	X				X	X	X	X		
Utah	X		X	X	X	X		X		X			
Vermont	X	X	X					X		X		X	X
Virginia	X	X	X							X		X	
Washington	X	X	X	X				X	X	X			
West Virginia	X		X								X		
Wisconsin	X	X	X	X	X	X		X	X	X			X
Wyoming	X		X					X			X		

Source: Based on relevant state statutes as well as *Campaign Contributions and Lobbying Laws*, the Martin Italey Companies, Inc., the State Services Group, Washington D.C. and *The Blue Book: 1982-83 Edition*, Council on Government Ethics Laws, Sacramento, California.

Prohibitions				Reporting Required		Disclosures Required						Filings	
Campaign Contributions by Lobbyists	Officials Solicit Gifts or Contrib.	Lobbyists Make Gifts to Officials	Other	Lobbyists	Lobbyist Employers	Categories of Monies Spent	Total Monies Spent	Salaries	Benefits/Gifts to Officials	Bills or Actions Being Lobbied	Other	Available to the Public	Agency Publishes Summary of Disclosures
		X		MO	MO	X			X	X	X	X	
			X	MO Q	Q	X	X	X	X	X	X	X	X
					M A		X		X			X	
				None	N							X	
		\$10/m	X	Q	Q	X	X	X	X	X	X	X	X
			X	M A	M A	X	X	X	X	X		X	X
		\$50/y	X	M Q	M Q		X		X			X	X
	X			Q	N		X		X	X		X	
				BI	N	X	X		X			X	X
				N	N								
			X	BI	BI	X	X		X	X		X	
	X			MO A	O	X	X		X	X		X	X
			X	O	N		X		X		X	X	
			X	BI	BI	X	X		X	X			
	X	\$50		M	N	X	X		X	X	X	X	
	X	\$100		M	N	X			X			X	X
X	X	\$100	X	O	O	X			X			X	X
	X	X		N	N								
			X	MO A	O		X	X	X	X		X	X
			X	BI	BI O	X	X	X	X	X		X	
		\$100		BI	BI	X	X	X	X			X	
				O	N							X	
			X	Q	N	X	X		X		X	X	X
				A	A	X	X	X	X			X	
			X	O	N	X	X	X	X	X		X	
				N	A O	X	X	X	X	X		X	
	X	X		MO O	MO O	X	X	X		X		X	X
	X	\$100	X	MO O	N	X	X					X	
				BI O	N	X						X	
			X	Q A	A	X	X	X	X	X		X	
			X	O	N	X	X		X		X	X	
			X	Q A	A	X	X	X		X		X	X
X			X	A	A O	X			X			X	
			X	A	N	X						X	
			X	BI O	BI O		X			X		X	
			X	BI	N	X					X	X	
X	X	\$100	X	Q	A	X	X			X	X	X	
			X	BI O	N	X	X		X			X	
				O	O	X	X	X	X			X	
				A O	N	X	X		X		X	X	
				A	A	X	X				X	X	
	X			A	N	X	X		X		X	X	
X	X	X	X	MO Q	N	X	X		X	X	X	X	X
			X	N	N								
				A	A		X					X	
				A	A	X	X	X	X	X		X	
				M	A	X	X	X	X	X		X	X
			X	A	N		X	X	X	X		X	
X	X		X	BI	BI O	X	X	X	X	X	X	X	X
				N	N								

* N - No reporting required; MO - Monthly only during sessions; M - Monthly; Q - Quarterly; BI - Biannually; A - Annually; O - Other

the 200 largest enterprises in Canada (enterprises with sales of \$100,000,000 per year, including banks, trust companies, insurance companies or business corporations), senior managers spend, on the average, the equivalent of half a day per week in contact with public officials or organizations... Some 30% of directors of associations spend between one tenth and one third of their time with officials; and 17% spend the same amount of time with Members of Parliament.

The most desirable contacts in the government sought by lobbyists from the business sector are senior public servants (51%). They are followed by members of cabinet (25%), unspecified contacts (13%) and ordinary Members of Parliament (11%).

Further testimony about the relationship between parliamentarians and lobbyists in Ottawa is found in articles published in *Parliamentary Government* in 1980. They confirmed that lobbyists and especially those representing the most important interests will first knock at the doors of ministers and senior public servants. Most Members of Parliament strongly emphasize that lobbying by interest groups is perfectly legitimate. Members are quite willing to listen to the private sector, which is an additional source of information for them. Moreover, they point out that there is a correlation between private sector participation and the effectiveness of Parliament.⁵

Opposition Members of Parliament are major targets of lobbyists when someone wants to bring a problem before the House during question period. Government backbenchers, being in a position where they can be heard by powerful figures in the government, are much sought-after. In caucus, they can embarrass the minister and his own colleagues if they refuse to listen.

It may also prove effective to lobby committees as long as policy has received final cabinet approval. When a committee has legislation before it and if the policy is already decided, the minister generally does not co-operate with lobbyists or groups. Instead, he is on the defensive.

In short, interest groups make it a rule to respect the logic of the system by being knowledgeable about the workings of parliament, making sustained efforts to persuade politicians and senior public servants, being well prepared and moving in the right location, knowing the opponents' arguments, determining the interests of Members of Parliament and having a government affair's adviser in the National Capital.

One of the few serious studies giving some indication of how certain groups approach the Quebec government is *A Study of Business in Quebec Politics* (1975) by Pierre Fournier.

According to Fournier, spokesmen from the business sector especially prefer personal contact when approaching the government. The line of influence extends from the Prime Minister and members of his cabinet down through the deputy ministers and other public servants to members of the National Assembly.

The *Canadian Press* reported not too long ago that there are still very few lobbyists active around the National Assembly.⁶ Mr. Dominique Boivin, one of the few persons willing to be recognized as a professional lobbyist by the National Assembly, notes that other lobbyists are present but do not wish to be identified as such.

According to Mr. Boivin, a lobbyist must be a specialist in government documentation and politics; know how to serve as an intermediary between the client and the authorities; and be a privileged adviser.

Another professional lobbyist, Pierre Morin, maintains watching briefs on pertinent information about issues considered

by the National Assembly. He sees the role of parliamentary lobbyist becoming more and more accepted in Quebec, even if some still associate it with political patronage. In a request to the House Leader in 1982 Mr. Morin asked for freer access to documents and personnel of the National Assembly. However, he felt it was premature to give official recognition to lobbyists and to regulate their activities.

Conclusion

Despite the evolution of political customs and structures in the past twenty years, lobbying will always be part of politics. How many times have we seen the private sector hurry to employ a former political figure to defend its interests before the authorities? How many times have we seen former senior public servants or former ministers become advisers in government relations or establish prosperous consulting firms?

Increasingly, lobbyists are operating through normal channels to avoid as much as possible any justified or unjustified suspicions of favouritism. Relations between interest groups and the government of Quebec are institutionalized in a sense since they consult with each other and seek consensus. For example, according to a recent press report, it was discovered that the 20 largest enterprises in Quebec belonged to a club which includes members of the Treasury Board.⁶

Other testimony has confirmed the existence of aggressive lobbying when powerful interests are at issue. When speaking about the passage of the *Quebec Automobile Insurance Act*, a former minister pointed out that there was unusually strong pressure from the Bar, the Insurance Bureau of Canada, representatives of brokers and even members of cabinet. "Each time, the bill would fall flat in cabinet where the private interests of groups directly affected by the slightest reform were overrepresented. Because there was no direct lobby, another form of arm twisting was observed. No government bill...had ever been the target of as much advertising paid by opposing groups. Ministers, who were also lawyers, were the first ones to act as they had been alerted to the lobby of their colleagues.⁷

The current system of lobbying does not give small groups claiming to represent general interest enough chance to be successful. People-based interest groups face certain problems such as financial dependence, doubtful legitimacy and difficulty in determining very specific priorities. It is difficult for them to resort to professional lobbyists to defend their case before the authorities. It is also impossible for them to be able to meet regularly with the government in choice clubs, as do private businesses, to discuss specific problems in a particular social or political perspective.

These interest groups usually resort to protest action either through mass demonstrations or legal actions. In this regard, it seems that lobbying is a privilege enjoyed by few.

During the past twenty years, much legislation both federal and provincial has been passed related to the establishment and organization of public corporations, the information they are required to divulge, their competition with each other and the limitations on their spending. Other laws have been adopted concerning the protection of the environment, consumer protection, financing of political parties and election campaigns, conflict of interest etc. Some would argue present laws and procedure may be adequate to accommodate the pressure of various groups without a great risk to the democratic system or the public interest. Well organized unions, for example, constitute a strong counterweight to lobbying by business.

It is doubtful if many associations, groups or lobbyists would welcome legislation giving them an official status and requiring them to disclose the persons who engage their services, the persons who provide them with information or even the interests that they are defending.

The *Lobbying Act* in the United States was only passed as a result of public opinion at a time when political institutions were vulnerable to the pressures exerted upon them by aggressive business lobbies. The application of the law, even today, leaves much to be desired not because of its imprecise nature but due to lack of co-operation from lobbyists. "As is the case with all laws aiming to define the limits of legitimate exercise of personal and civil rights, the effectiveness of the law on lobbying resides on the good faith and the honesty of those who are governed by it."⁸

The Canadian and Quebec attitude toward lobbying has been rather pragmatic. With the growing size of government and increasing paperwork lobbying is becoming an indispensable tool for organizations having relations with governments. Without adopting complicated legislation to regulate lobbying perhaps the time has come for at least administrative guidelines by various legislatures to clarify the situation of both lobbyist and those who are being lobbied. Among other things such guidelines should:

- recognize the existence of professional lobbyists in the parliamentary system.
- encourage co-operation between the services of legislatures and the lobbyists.
- outline for the benefit of lobbyists some guidelines in keeping with the fundamental ethics of parliamentary institutions.

(translation)

Notes

¹ William Safire, *A Political Dictionary*, Random House, New York, 1978, p. 383.

² Leon Dion, *Les groupes et le pouvoir politique aux Etats-Unis*, Presses de l'Université Laval, Quebec, 1965, p. 114

³ See "Les groupes d'intérêt sous le V^e République", *Revue française de science politique*, no. 2 vol. 33, pp. 220-254.

⁴ Robert Presthus, *Elite Accommodation in Canadian Politics*, MacMillan, Toronto, 1973.

⁵ See *Parliamentary Government*, vol. 2, (no. 1, 1980).

⁶ *Le Soleil*, December 13, 1982.

⁷ See Lise Payette, *Le Pouvoir? Connais Pas, Québec-Amérique*, Montreal, 1982, pp. 45-47.

⁸ Leon Dion, *op. cit.* p. 129.