Unclassified **GOV/PGC/ETH(2006)6**

Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development **04-Jan-2006**

English - Or. English

PUBLIC GOVERNANCE AND TERRITORIAL DEVELOPMENT DIRECTORATE
PUBLIC GOVERNANCE COMMITTEE

GOV/PGC/ETH(2006)6
Unclassified

LOBBYING: KEY POLICY ISSUES

Expert meeting on Managing Conflict of Interest in the Public Service

26-27 January 2006
Château de la Muette, Paris

This paper supports discussions in Session III by outlining the policy issues that governments need to address in preparing legislation or regulation governing lobbying. It was prepared by Howard Wilson to provide a point of departure for reviewing arrangements in place for ensuring 'good governance' in lobbying.

For further information, please contact János Bertók, Tel: +33 1 45 24 93 57,
e-mail: janos.bertok@oecd.org

JT00196521

Document complet disponible sur OLIS dans son format d'origine
Complete document available on OLIS in its original format

English - Or. English

TABLE OF CONTENTS

EXECUTIVE SUMMARY 3

LOBBYING: KEY POLICY ISSUES 4

Introduction 4
I Why legislation? What is its purpose? 6
II What is lobbying? 7
III What is excluded? 9
IV Who is a lobbyist? 10
V Communication with which public office holders constitute lobbying 11
VI What information must be disclosed and by whom? 12
VII Penalties and enforcement 16
VIII Administering Agency 17
IX Code of Conduct 18
X Contingency payments 23
Conclusion 24

EXECUTIVE SUMMARY

Lobbying, for many years, has been controversial in North America both at the national and state/provincial levels. It has long been recognised as being both a sensitive political issue and, as well, an increasingly important governance question. The North American debates, which continue, are being repeated in a growing number of other OECD countries, most prominently in Europe, particularly around the institutions of the European Union.

Much of the debate, perhaps because of its political nature, has been confusing. While lobbying is often explicitly recognised as legitimate and essential given the complexity of modern government decision making, assertions are then made that it too frequently borders on influence peddling. The conclusion then drawn is that it may not be illegal but it is damaging to the integrity of our political institutions.

This paper attempts to highlight the policy issues that governments needed to address when preparing legislation or regulation governing lobbying. The key conclusions of the paper represent a useful point of departure for reviewing arrangements in place for ensuring 'good governance' in lobbying.

First, it needs to be kept in mind that legislation may not be necessary. There is limited concern currently about lobbying activities in a number of OECD countries and, in others, self-regulation by the lobbying industry seems to have adequately addressed whatever public concerns may have arisen. However, once legislation is determined to be necessary, the central choices lie on a spectrum between disclosure of lobbying objectives (transparency) at one end and regulation to ensure lobbying is conducted properly at the other.

It seems rather obvious that when legislation of some form is being strongly demanded it is because the debate had become intensely political. The most common accusation is that lobbyists have privileged access to decision makers and that discussions and representations too often take place behind closed doors where the public interest may not be well represented. At this point the integrity of public institutions becomes threatened and arrangements for ensuring 'good governance' become particularly essential.

This paper sets out the key policy issues which need to be addressed when governments are contemplating regulation of lobbying. Critical elements identified for improving transparency and accountability draw on existing practices in several jurisdictions.

LOBBYING: KEY POLICY ISSUES

Introduction

Why do several governments within the OECD, at both the national and sub-national levels, have legislative provisions requiring that lobbyists be publicly registered? This paper addresses this question which, in its essence, is a political response to concerns about the quality of governance. The paper describes the basic structure of several of the systems in place; drawing out their common elements, their differences, and the key issues which governments contemplating legislation should carefully consider.

First, what is "lobbying"? The paper will describe later some of the precise definitions different jurisdictions have chosen but the best starting point is a more general discussion of the political debate which surrounds this question.

The modern concept of "lobbying", in much public debate, inevitably is described in a pejorative way. The origins of the word, however, seem to have been relatively benign. The Compact Edition of the Oxford English Dictionary notes that the noun "lobby" has quite old roots going back to the 17th century:

> "In the House of Commons, and other houses of legislature, a large entrance-hall or apartment open to the public, and chiefly serving for interviews between members and persons not belonging to the House; also ... one of the two corridors to which members retire to vote when the House divides."

But, according to the Oxford Dictionary, beginning in the second half of the 19th century, largely in the United States but to a degree in the British House of Commons, the verb "lobby" took on a very specific meaning which was not so benign:

1. "To influence (members of a house of legislature) in the exercise of their legislative functions by frequenting the lobby. Also, to procure the passing of (a measure) through by means of such influence."

2. "To frequent the lobby of a legislative assembly for the purposes of influencing members' votes; to solicit the votes of members.

Some quotes from the period, cited by the Oxford Dictionary, give an interesting flavour of the concept:

> **1862** "How is it to be expected that a needy and ambitious lawyer ... having nothing but his three or four dollars a day ... shall not be open to the influences of those who lobby him?"
>
> **1864** "Lobbying - - this is, ... buying votes with money in the lobbies of the Hall of Congress."
>
> **1888** "What is known as lobbying by no means implies in all cases the use of money to affect legislation."
>
> **1888** "The arrangements of the committee system have produced and sustain the class of professional 'lobbyists', ... who make it their business to 'see' members."

Lobbying, or attempting to influence the direction of legislation or the nature of administrative decisions, is very understandable given the complexity and wide impact of government today in OECD countries. An often bewildering variety of non-governmental organizations (NGOs) are very active in OECD capitals; many larger companies have considered it essential to have a number of employees dedicated to the task of government relations; whereas other companies often hire the expertise of professional lobbyists to further their interests. K Street in Washington, D.C. is famous as the home of thousands of lobbyists and many organizations would consider it irresponsible to their interests not to have someone dealing on their behalf in Brussels with the institutions of the European Union, in particular, the Commission and the European Parliament.

If lobbying is, therefore, a natural response to the complexity and range of government activity, why the considerable expressions of misgivings about the legitimacy of the activity which have long been an element of political concern in North America and increasingly in Europe? Much of this can be attributed to its history and a concern that lobbying, while not illegal, is nevertheless detrimental to the integrity of our democratic institutions. First, a word about bribery. Often public concern about lobbying is linked with accusations that officials have received illegal payments to promote or prevent a legislative change or regulatory decision from occurring. Bribery has long been with us but most developed countries have effective criminal laws and with experienced police and magistrates have ensured that the practice is well contained and punished.

The political concern about lobbying, which governments need to confront, is both more subtle and pervasive. It is, at its heart, a challenge to the legitimacy of political institutions. A governance issue, it is closely related, almost a mirror, to concerns about conflicts of interest by politicians and other senior officials. The absence of transparency with conversations taking place in back-rooms or over quiet dinners, cronyism and financial contributions for political activity and their implicit sense of obligation, all feed a fear that the broader public interest is being ignored in favour of special interests.

Governments have often felt vulnerable to these allegations and have designed lobbying laws to deal with these political concerns. Many of these are not new. In the United States the federal *Lobbying Disclosure Act of 1995* replaced the *Lobbying Regulation Act of 1946*. Legislation in New York State goes as far back as1905 with systems in a number of other states going back at least to the 1970s. In Canada, the *Lobbyists Registration Act* was first enacted in 1989 in response to accusations of political cronyism that who you knew really mattered.

It is true that most lobbying laws are found in either the United States or Canada (the German Bundestag has a registration requirement and the European Parliament has a lobbyist code of conduct) but it would be wrong to assume that political concerns are largely confined to North America. They merely came earlier, generally in response to some particular abuse. Lobbying, as a practice, is a global phenomenon and all democracies have a vulnerability from time to time to accusations that some groups, organizations or companies have been given unwarranted privilege. It is this challenge to the legitimacy of political decision-making that experience shows governments in North America have had to confront. Elsewhere it is probably only a matter of time.

Most actual lobbying legislation is very detailed, concentrating on the information each lobbyist is required to provide and the procedures to be followed for filing. It is fair to say that the essential policy questions which need to be addressed when governments are contemplating legislation or regulation do not leap rapidly into view when reading these legal texts. To bring the policy issues more clearly forward the paper has set out a series of key questions. The analysis will be based on actual examples of the elements incorporated into legislation or regulation by a range of jurisdictions, largely, by necessity, North American. The issues addressed are:

- Why legislation? What is its purpose?
- What is lobbying?
- What is excluded?
- Who is a lobbyist?
- Communication with which public office holders constitute lobbying?
- What information must be disclosed and by whom?
- Penalties and enforcement
- Administering agency
- Codes of conduct
- Contingency payments

I Why legislation? What is its purpose?

Several legislatures have set out in preambular language the broad reasons why legislation was considered necessary, how they view the act of lobbying and whether they put stress on regulation or disclosure. Common elements invariably include a recognition of the legitimacy of lobbying but an insistence on the importance of transparency, i.e. that the public has a right to know what is happening. The purpose is generally tied to maintaining or increasing public confidence in the integrity of government. A number of regimes, however, signal that their concerns go beyond transparency with an additional objective of ensuring lobbying is conducted properly. Some examples:

United States

Lobbying Disclosure Act of 1995

The Congress finds that -

1) responsible representative Government requires public awareness of the efforts of paid lobbyists to influence the public decision-making process in both the legislative and executive branches of the Federal Government;

2) existing lobbying disclosure statutes have been ineffective because of unclear statutory language, weak administrative and enforcement provisions, and an absence of clear guidance as to who is required to register and what they are required to disclose, and

3) the effective public disclosure of the identity and extent of the efforts of paid lobbyists to influence Federal officials in the conduct of Government actions will increase public confidence in the integrity of Government.

Texas

The language used is very similar to the provisions found in several other states.

Chapter 305, Registration of Lobbyists
§ 305.001. Policy

The operation of responsible democratic government requires that the people be afforded the fullest opportunity to petition their government for the redress of grievances and to express freely their opinions on legislation, pending executive actions, and current issues to individual members of the legislature, legislative committees, state agencies, and members of the executive branch. To preserve and maintain the integrity of the legislative and administrative processes, it is necessary to disclose publicly and regularly the identity, expenditures, and activities of certain persons who, by direct communication with government officers, engage in efforts to persuade members of the legislative or executive branch to take specific actions.

California

Gov. Code Section 81002(b)

The activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials.

Canada

Lobbyists Registration Act

Preamble

WHEREAS free and open access to government is an important matter of public interest;
AND WHEREAS lobbying public office holders is a legitimate activity;
AND WHEREAS it is desirable that public office holders and the public be able to know who is engaged in lobbying activities;
AND WHEREAS a system for the registration of paid lobbyists should not impede free and open access to government;
NOW THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enact ...

Québec

Lobbying Transparency and Ethics Act

Purpose

While recognizing that lobbying is a legitimate means of access to parliamentary government and municipal institutions and that it is in the interest of the public that it be able to know who is attempting to influence such institutions, this Act is designed to foster transparency in the lobbying of public office holders and to ensure that lobbying activities are properly conducted.

II What is lobbying?

1. It is the essence of lobbying that it involves communication, oral or written, with a public official about a matter of public policy. All jurisdictions include communications regarding legislation and administrative action such as adopting regulations. There is less common ground respecting government contracts and financial contributions (loans and grants). These are included at the federal level in the United States but

excluded in California. At the federal level in Canada, the pursuit of contracts on behalf of a client by a consultant lobbyist (professional lobbyist) is registrable but not so for in-house lobbyists (those employed by corporations or organizations) when the contract is for the benefit of their employer. The reason is that bidding for public contracts is normal business activity and is already considered subject to very specific rules and considerable transparency.

Legislatures, in formulating lobbying legislation, will often add features to the definition of lobbying not found elsewhere but which are matters of specific importance to the public concerns they are attempting to address. These include at the federal level in the United States communications regarding the nomination or confirmation of a person subject to Senate confirmation; in Texas matters that may be before a constitutional convention; and in Canada, at the federal level, arranging a meeting between a public officer holder and another person. This seems unique but reflects the political controversies at the time the *Lobbyists Registration Act* was first debated in 1988. It was alleged that certain friends and former associates of the then Prime Minister claimed that they could, for a fee, arrange meetings with Ministers and other senior officials on very short notice. These examples underline an important reality. This is that lobbying legislation is generally responsive to a public controversy and governments may not really control the agenda.

Some examples of the definitions used:

United States

The United States Lobbying Disclosure Act of 1995 defines lobbying as a lobbying contact which in turn means any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to -

i. the formulation, modification, or adoption of Federal legislation (including legislative proposals);

ii. the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government;

iii. the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license); or

iv. the nomination or confirmation of a person for a position subject to confirmation by the Senate.

Texas

Chapter 305, Government Code - Registration of Lobbyists defines lobbying as direct communication with one or more members of the legislative or executive branch to influence legislation or administrative action.

"Legislation" means:

A. a bill, resolution, amendment, nomination, or other matter pending in either house of the legislature;

B. any matter that is or may be the subject of action by either house or by a legislative committee, including the introduction, consideration, passage, defeat, approval, or veto of the matter; or

C. any matter pending in a constitutional convention or that may be the subject of action by a constitutional convention.

"Administrative action" means rulemaking, licensing, or any other matter that may be the subject of action by a state agency, including the proposal, consideration, or approval of the matter.

California

Gov. Code Section 82032 - "Influencing legislative or administrative action" means promoting, supporting, influencing, modifying, opposing or delaying any legislative or administrative action by any means, including but not limited to the provision or use of information, statistics, studies or analyses.

This does not include trying to obtain a permit, license, grant or contract at a state agency.

Canada

The *Lobbyists Registration Act* defines lobbying by consultant lobbyists as (a) a communication with a public office holder in respect of the development of any legislative proposal by the Government of Canada or by a member of the Senate or the House of Commons, the introduction of any Bill or resolution in either House of Parliament or the passage, defeat or amendment of any Bill or resolution that is before either House of Parliament, the making or amendment of any regulation, the development or amendment of any policy or program of the Government of Canada, the awarding of any grant, contribution or other financial benefit or the awarding of any contract; or (b) arranging a meeting between a public office holder and any other person.

III What is excluded?

Most jurisdictions would agree that testimony, in public, before a legislative committee does not require registration nor should simple requests for information. Other reasonably common exclusions, either explicitly stated or implicit, are communications by the media for the purpose of gathering news and official communications by public officials. These latter invariably include officials from all domestic levels of government as well as representatives of foreign governments and international organizations. There is no common element to these exclusions beyond a recognition that these communications are not considered to raise important public policy issues. Testimony before a legislative committee is already in the public domain, a request for information (provided it is restricted to that) is benign and communications by either the media or by public officials carrying out their official duties are distinguished from communications made on behalf of other interests. It would, however, be wrong to conclude that this implies a greater degree of legitimacy for the actions of the media or other governments; more simply these communications simply do not raise the same public policy concerns. On the other hand, all jurisdictions would agree that if a media organization or another government were to hire a lobbyist that individual would not be excused from registration.

While there is agreement on the above elements there are variations among jurisdictions on other exclusions or exceptions. An example is the Canadian decision that arranging a meeting between a public official and anyone else must be registered and the exception, in US federal legislation, that arranging a meeting is not registrable. Another example is the exception in the United States of providing written information in response to a request from an official for specific information. Canada had a similar exception in its legislation which was removed during the last legislative review on the grounds that it was a potentially serious loophole.

IV Who is a lobbyist?

The essential requirement across all jurisdictions is that the individual be compensated either through on-going employment with a company or an association or by being hired by a client. Various types of thresholds are employed before an individual engaged is lobbying activities needs to register. For example in the United States, at the federal level, a person need not register if they spend less than 20% of their time engaged in lobbying for their employer or client. The calculation of the 20% must include actual lobbying contacts but also such support efforts as planning and research.

Other jurisdictions use a monetary measure as threshold. For example Texas requires registration if the person spends more than $500 a quarter on lobbying activities or receives more than $1000 in a quarter in compensation. A lower threshold is also established with the result that registration is not required if no more than 5% of their compensated time is spent on lobbying activities.

It was noted in section III that in most jurisdictions communications by public officials are excluded from the lobbying definition when carrying out their official duties. Florida has two lobbying regimes; one covering the legislature, the other the executive branch of government. Perhaps uniquely, the scheme for the legislature requires all persons employed by any executive, judicial or quasi-judicial department of Florida state to register before they engage in lobbying activities.

Federal legislation in Canada makes a clear distinction between consultant lobbyists (those who are hired by clients) and in-house lobbyists (those who are employees). There is no minimum threshold for consultant lobbyists - a single communication triggers the need to register. On the other hand beginning in the mid-1990s legislation required a single filing by the senior officer of each organization (NGOs, chambers of commerce, trade unions, etc) including a listing of each employee, any part of whose duties included lobbying. At the time in-house lobbyists (corporations) had an individual responsibility to register if their lobbying activities constituted a significant part of their duties which was defined as 20%, not including preparation time. The result was that the filings for corporations were not necessarily authoritative about the corporations primary lobbying objectives since the Chief Executive Officer would seldom spend as much as 20% of his or her time lobbying and therefore did not need to file. Recent changes to the legislation provide for a single filing for the corporation by the most senior officer (CEO, President, etc.). This filing must list all the senior officers, any part of whose duties include lobbying, as well as those other employees whose lobbying activities constitute a significant part of their duties, i.e. 20% or more. It is hoped that this more comprehensive filing will be both more authoritative and informative.

Some details:

United States

The U.S. Lobbying Disclosure Act of 1995 states that a lobbyist means any individual who is employed or retained for compensation by a client for services that include more than one lobbying contact, except an individual whose lobbying activities constitute less than 20% of the time engaged in the services provided by the individual to the client over a six month period. The U.S. legislation defines lobbying activities quite broadly as follows: lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others. An important definition for the purposes of registration and subsequent reporting is that of the 'lobbying firm.' This means a person or entity that has one or more employees who are lobbyists on behalf of a client other than itself. These are to be distinguished from those organizations (companies, associations) which employ their own in-house lobbyists.

Florida

Under the scheme for the lobbying of the legislative branch which is separate from lobbying the executive branch, the following state employees are considered lobbyists: All persons employed by any executive, judicial, or quasi-judicial department of the state or community college of the state who seek to lobby must register before they lobby.

Canada

The Lobbyists Registration Act distinguishes three types of lobbyists: consultant lobbyists, in-house lobbyists (corporations) and in-house lobbyists (organizations). A consultant lobbyist or professional lobbyist is hired by a client to lobby on behalf of the client whereas both of the in-house lobbyists are employees.

For corporations, the in-house lobbyists are those senior officers any part of whose duties include lobbying as well as any other employees whose lobbying responsibilities constitute a significant part of their duties (20%). Senior officer means the chief executive officer, chief operating officer, president and all those officers who report directly to them.

For organizations, the in-house lobbyists are all those employees any part of whose duties include lobbying. Organizations include:

- business, trade, industry, professional or voluntary organizations;
- trade unions;
- chambers of commerce; and
- partnerships, trusts, associations, charitable societies, coalitions or interest groups.

V Communication with which public office holders constitute lobbying

The most common approach is to define public official broadly. An example is New York State where the definition is exhaustive. Included are:

- the governor, lieutenant governor, comptroller or attorney general;
- members of the state legislature;
- state officers and employees including heads of state departments and their deputies and assistants, officers and employees of statewide elected officials, officers and employees of state departments, boards, bureaus, divisions, commissions, councils or other state agencies and members or directors of public authorities;
- officers and employees of the legislature; and
- municipal officers and employees.

In Canada, at the federal level, an equally broad definition is employed. Included are

- all members of Parliament and their staff;
- all public servants;
- all employees of the legislature;

- all persons appointed to any office or body by the cabinet or a minister;
- officers, director and employees of federal boards, commissions or tribunals; and
- members of the armed forces and the Royal Canadian Mounted Police.

In the United States at the federal level, however, the net is cast less widely. The U.S. *Lobbying Disclosure Act of 1995* defines 'covered legislative branch official' broadly:

- a Member of Congress;
- an elected officer of either House; and
- any employee of a member of Congress, a committee of either House, the leadership staff of either House, a joint committee of Congress or a working group or caucus organized to provide legislative services or other assistance to Members of Congress.

On the other hand, the definition of 'covered executive branch official' is narrow, excluding most permanent public officials. More specifically it means:

- the President;
- Vice President;
- any officer or employee in the Executive Office of the President;
- any officer or employee serving in levels I - V of the Executive Schedule (essentially Cabinet Secretaries, Deputy Secretaries, Under-Secretaries and Assistant Secretaries and the equivalent positions in agencies);
- a group of non-permanent public employees who serve in a position of a confidential, policy-determining, policy-making, or policy-advocating character for the previous officials; and
- senior military officers (Brigadier General or Rear Admiral and up).

The debate on this issue is important as it cuts to a central issue of where decision-making authority is considered particularly important and thus where lobbyists must direct their primary efforts of persuasion. In the United States, Congress plays an independent role quite unique from the reality in many other jurisdictions where the executive branch might be relatively dominant. In Canada the notion that only the most senior officials in the executive branch should be covered was rejected (the specific debate was whether these more senior officials should be publicly identified). The argument was made that often de facto decision-making occurred at a much earlier stage and, to be effective, lobbyists needed to engage sooner before options they favoured had been rejected at the working level.

VI What information must be disclosed and by whom?

This is the heart of a lobbyist registration system and where the widest range of alternatives are found among different jurisdictions. Where to draw the line can be a matter of considerable difficulty and controversy. Some of the debates in Canada and elsewhere have been driven by the notion that if some disclosed information is good, then more is better. It can, at times, be difficult to keep the debate focussed on why lobbyist registration is being considered in the first place, i.e. what is the 'evil' that is being addressed.

Most jurisdictions would agree that the lobbyist must name his or her client, provide details on the objective or purpose of the lobbying activity and which agencies will be contacted. Greater variation will

revolve around whether lobbying expenses or income should be publicly disclosed and whether public officials should be specifically identified or only their agency/institution.

United States

In the United States at the federal level there is a two-stage process (first, registration and second, semi-annual reporting) with all filings made to both the Clerk of the House of Representatives and the Secretary of the Senate, both of whom are to make these available for public inspection.

Registration is to take place no later than 45 days after a lobbyist first makes a lobbying contact or is employed or retained to make a lobbying contact.

Lobbying firms are required to make a separate registration for each client. They are exempt if the total income from that client for lobbying is not expected to exceed $6,000 during the semiannual period in which the registration would take place.

Organizations employing in-house lobbyists file a single registration. These organizations are exempt if its total expenses for lobbying are not expected to exceed $24,500 during the first semiannual period. The information to be provided includes:

- the registrant's address and a general description of its business or activities;
- the same information for the client (which in the case of an organization with its own in-house lobbyists is itself);
- the name of every individual who is expected to act as a lobbyist for the client, identifying any who served as a covered executive or legislative branch official within two years of first acting as a lobbyist for the client;
- general lobbying issue areas (from a provided list which is very broad, e.g. Agriculture, Homeland Security, Telecommunications, Trade (Domestic & Foreign), etc.);
- precise lobbying issues such as specific bills before Congress or specific executive branch actions;
- the identification of any affiliated organizations, other than the client, that contribute more than $10,000 to the lobbying activities; and
- the identification of any foreign entities that might be connected through equity ownership to the client or may otherwise control or supervise the activities of the client.

Reporting is done semiannually (January 1 - June 30 and July 1 - December 31) by each registrant and must be submitted within 45 days of the end of the semiannual period. There is a provision for updating information that may have changed since registration. Lobbying firms are required to indicate whether income received from the client for lobbying activities during the period was less that $10,000 or $10,000 or more. Income greater than $10,000 is to be reported rounded to the nearest $20,000. Organizations are required to indicate whether expenses related to lobbying activities are less than or equal to or greater than $10,000. Amounts higher than $10,000 are to be rounded to the nearest $20,000. Then for each separate general lobbying issue area in which the registrant engaged in lobbying, a listing of the specific issues which were actually lobbied and the Houses of Congress and Federal agencies which were contacted. This latter identification is very general; e.g. "Senate", "House of Representatives", "Department of Agriculture", etc. Finally a listing of the individual lobbyists who were involved is required.

New York State

The Lobbying Act requires that every lobbyist who expects to receive more that $2,000 of compensation and expenses must file biennially a statement of registration with the New York Temporary State Commission on Lobbying. There is a legislative proposal to increase this amount to $15,000. The statement is to include the name and address of the lobbyist and the client. To be included is a copy of any agreement of retainer or employment or, alternatively, a written authorization from the client; a description of the general subject(s) and identification of any specific bills, rules, regulations on which the lobbyist expects to lobby plus the name of any person, organization or legislative body before which the lobbyist expects to lobby.

These lobbyists are also required to file bi-monthly reports. In addition to more general information the report is to include the name of the person, organization, or legislative body before which the lobbyist has lobbied; the compensation paid or owed to the lobbyist, and any expenses expended, received or incurred by the lobbyist for the purpose of lobbying. The expenses which are required to be reported are to be listed in the aggregate if $75.00 or less and if more than $75.00 such expenses need to be detailed as to amount, to whom paid, and for what purpose; and where the expense is more than $75.00 on behalf of any one person, the name of that person.

There is also a requirement for clients to file semi-annual reports providing much of the same information.

Texas

The requirements in Texas are similar in structure to those in New York but very specific information is sought. A written registration must be filed annually with the Texas Ethics Commission. The information to be provided includes:

- the registrant’s name and address;
- the name and address of each person who either reimburses, retains or employs the registrant to lobby or on whose behalf the registrant lobbied;
- the subject matter of the lobbying activity;
- the name and responsibilities of each person employed or retained to assist in the lobbying activity; and
- the amount of compensation paid to be reported in bands ($0, less than $10K, between $10K and $25K, between $25K and $50K, between $50K and $100K, between $100K and $150K, between $150K and $200K and $200K or more).

If the registrant’s lobbying activities are done on behalf of a group or association, information is to be provided on the number of members, the name of each person who determines policy and a full description of the methods by which the registrant develops and makes decisions about policy positions. If the registrant’s lobbying activities are done on behalf of a private corporation, information is to be provided on the number of shareholders, the name and address of each officer or member of the board of directors and the name of each person owning 10% or more of the shares.

A monthly activities report must also be filed. This can be done annually if the expenditures are not likely to exceed $1000. The activities report must contain the total expenditures made for lobbying under the following categories:

- transportation and lodging;
- food and beverages;
- entertainment;
- gifts, other than awards and mementos;
- awards and mementos; and
- expenditures made for the attendance of members of the legislative or executive branch at political fund-raisers or charity events.

A detailed report is required if the expenditures in a day on transportation or lodging, food and beverages or entertainment for a member of the legislative or executive branch exceed 60% of the respective legislative per diem or the gift is worth more than $50. In such cases the registrant is to provide the name of the member of the legislative or executive branch involved and details on the expenditure. Finally the report must also list the total expenditures made by the registrant for broadcast or print advertisements, direct mailings, and other mass media communications if the communications support or oppose or encourage others to support or oppose pending legislation or administrative action.

Canada

The Canadian approach, at the federal level, has a number of similarities with practice in the United States with some important differences. Lobbyists are not required to disclose income or expenses. This has been debated several times and rejected. Doubts have been expressed about the value of this type of information and the difficulties of ensuring its accuracy. On the other hand recent legislative amendments now require that all lobbyists in their filings list any position they may have held in the past as a public office holder. This goes well beyond a related requirement found in the U.S. Lobbying Disclosure Act which only goes back two years. Finally the Canadian registration system does not distinguish between initial registration and subsequent reporting which is every six months for all lobbyists.

Consultant lobbyists register as individuals no later than 10 days after entering into an undertaking with a client. Their filing is to include:

- their name and address;
- the name and address of their client and the name and business address of any person or organization that, to the knowledge of the lobbyist, controls or directs the activities of the client and has a direct interest in the outcome of the individual's lobbying activities.

Beyond this the registration must identify:

- if the client is a corporation, the name and address of each subsidiary of the corporation that, to the knowledge of the lobbyist, has a direct interest in the outcome of the individual's lobbying activities;
- where the client is a corporation that is a subsidiary of any other corporation, the name and address of that other corporation, and
- where the client is a coalition, the name and business address of each corporation or organization that is a member of the coalition.

Corporations and organizations, which have in-house lobbyists, file a single return no later than two months after the obligation to file first arises. Their filing is to include the name and address of the officer

responsible for filing returns (generally the CEO of the corporation or the senior officer of the organization) and the name and business address of the employer. The filing for a corporation must include information on its subsidiaries that have a direct interest in the outcome of the lobbying effort as well as identifying where it is a subsidiary of another corporation, the name and of that other corporation. The organization filing must include a description of the organization's membership. Both corporations and organizations need to provide a description, in summary form, of the employer's business or activities and a listing of those individuals who engage in lobbying on its behalf.

The subsequent information required is basically similar for both consultant and in-house lobbyists:

- whether the client or employer is funded in whole or in part by a government or government agency and if so, the name of the government or agency and the amount of funding received;
- details on the subject-matter of the lobbying activities;
- particulars to identify any legislative proposal, Bill, resolution, regulation, policy, program, grant, contribution, financial benefit or contract that is relevant to the lobbying undertaking;
- if the individual is a former public officer holder, a description of the offices held;
- the name of any department or other governmental institution which the individual contacts in their lobbying activities; and
- a description of the communication techniques which have been or will be used in support of the lobbying activities including any appeals to members of the public through the mass media or by direct communication that seek to persuade those members of the public to communicate directly with the government in an attempt to place pressure on the government to endorse a particular opinion ("grass-roots lobbying").

VII Penalties and enforcement

All jurisdictions with lobbying legislation have explicit civil and, occasionally, criminal penalties for failure to abide by the registration requirements. Of greater policy importance is whether these jurisdictions envisage denying individuals the right to lobby; a notion which raises both constitutional and legal issues.

The U.S Congress was abundantly clear on this point. The Lobbying Disclosure Act of 1995, in Section 8, Rules of Construction, goes on to set out the following:

a) CONSTITUTIONAL RIGHTS. - Nothing in this Act shall be construed to prohibit or interfere with -

(1) the right to petition the Government for the redress of grievances;

(2) the right to express a personal opinion; or

(3) the right of association,

protected by the first amendment to the Constitution.

(b) PROHIBITION OF ACTIVITIES. - Nothing in this Act shall be construed to prohibit, or to authorize any court to prohibit, lobbying activities or lobbying contacts by any person or entity, regardless of whether such person or entity is in compliance with the requirements of this Act.

In Canada, again at the federal level, there is no provision for denying an individual the right to act as a lobbyist.

In several US states and in the European Parliament, however, legislation or regulation envisage the power to withdraw the right to lobby. A legislative proposal from the New York Temporary State Commission on Lobbying states that frequent violations shall be subject to banning such violators from being a registered lobbyist in the state of New York for a period not to exceed four years. In Texas, a person's registration may be rescinded prohibiting the person from registering as a lobbyist for a period not to exceed two years. In California, a knowing or wilful violation of any provision of the Political Reform Act of 1974 is a misdemeanour and any person convicted may be disqualified for four years from the date of conviction from serving as a lobbyist or running for elective office. Finally, the rules of procedure of the European Parliament provide for the withdrawal of the pass to enter Parliament's premises for lobbying if the lobbyist does not respect the Code of Conduct referred to in Rule 9(2) - Lobbying in Parliament.

The effectiveness of enforcement has, at times, been an important issue. In Canada, at the federal level, the original wording of the legislation raised serious doubts in the minds of prosecutors that a conviction could be obtained in court for failure to register as a lobbyist. Recent amendments have introduced clearer language which, it is believed, will solve this problem. In the United States, a study published in the Spring of 2005 by a public interest group, the Center for Public Integrity, claimed that the Senate and House offices which administer lobbyist legislation lack both the resources and the legal authority for effective enforcement.

VIII Administering Agency

There is a wide variety of different approaches to administering lobbying rules, sometimes combined with other ethical issues such as conflict of interest but often quite separate.

Some examples:

The US Lobbying Disclosure Act of 1995 vests responsibility for administration and the first steps of enforcement jointly with the Secretary of the Senate and the Clerk of the House of Representatives. Their responsibilities include the provision of guidance and assistance on the registration and reporting requirements of the Act along with the development of common standards and rules, the review and verification of the reports received, making the information received available for public inspection, notifying lobbyists or lobbying firms that they may be in noncompliance and, in the absence of an appropriate reply, referral of the matter to the United States Attorney for the District of Columbia.

The New York Temporary State Commission on Lobbying consists of six members appointed by the Governor but with specific provisions to ensure that each political party has three representatives. The Chief Administrative Officer is the Executive Director who is appointed jointly by the Chair and Vice-Chair. The responsibilities of the Commission are to administer and enforce the Lobbying Act, conduct any necessary investigations, audit reports or registration statements and issue advisory opinions.

The Texas Ethics Commission has responsibility for lobbying registration as well for laws governing election financing and political advertising, financial disclosure of state officers and conflict of interest provisions for state officers and employees.

The Californian Fair Political Practices Commission (FPPC) is the agency with primary responsibility for interpretation and administration of the Political Reform Act of 1974. The Political Reform Division of the Secretary of State administers those provisions of the Political Reform Act which require the disclosure of financial activities related to lobbying.

Florida has two separate lobbying schemes; one covering the executive branch and the other the legislative branch. Although separate, the definitions and procedures are parallel. The executive branch

comes under the responsibility of the nine member Florida Commission on Ethics which is also responsible for the code of conduct and financial disclosure applying to members of the executive branch. For those lobbying the legislative branch (House of Representatives and Senate), the administration is by the Lobbyist Registration Office, Office of Legislative Services.

In Canada, at the federal level, the Registrar of the Lobbyists Registration Branch, part of the Department of Industry, is responsible for the administration of the Lobbyists Registration Act and investigation of breaches of the Lobbyists' Code of Conduct. Specific responsibilities include the issuance of interpretation bulletins and advisory opinions.

IX Code of Conduct

The imposition by government of codes of conduct governing lobbyists has been controversial. By code of conduct is meant legislation, regulation or binding rules that set out certain norms of behaviour for all lobbyists. Only a few jurisdictions have felt a need for rules that go beyond the requirement for registration and periodic reporting of lobbying activities. In particular, many jurisdictions have not contemplated rules dealing with the relationship between the lobbyist and the client, considering these to be private matters. On the other hand, much of public debate has been based on a concern about the appropriateness of lobbying and possible ethical failings on the part of lobbyists in their dealings not only with government officials in both the legislative and executive branches of government but equally with their clients.

When similar concerns arose in other professions the favoured solution has most often been self-regulation buttressed by specific legal powers of discipline. Examples abound such as for lawyers, physicians and surgeons, accountants and professional engineers. While lobbying has yet to be widely accepted as a profession, many of the ethical concerns which have arisen in public debate in these other professions are very similar to the concerns expressed about lobbying. The result is that there are a number of lobbying organizations which have established codes of conduct for their members. Examples include in the United States, the American League of Lobbyists (ALL) which has a Code of Ethics; in the United Kingdom, both the Institute of Public Relations (IPR) and its Code of Professional Conduct and the Association of Professional Political Consultants (APPC) and its Code of Conduct; and, in Canada, the Government Relations Institute of Canada (GRIC) and its Code of Professional Conduct.

Lacking the additional legitimacy of formal government approval and sanction, these codes do not prevent government from directly establishing rules of behaviour. It should, however, be recognized that the very existence of these informal codes of conduct might be sufficient to persuade government not to enter into the area. This could be the case in the United States at the federal level and certainly seems to have been a consideration in the United Kingdom in the mid-90s. The political concern in the U.K. was less, however, about the actions of lobbyists but more the fact that some Members of Parliament at the time were also paid lobbyists. In any event, in neither jurisdiction have official codes of conduct been put in place and, in the case of the U.K., there is no lobbyist registration.

California

Ethics Course

California seems unique in requiring that every individual who registers as a lobbyist under the state's lobbying disclosure law must periodically attend a lobbyist ethics orientation course. The 2-hour lobbyist ethics orientation course is conducted by the Assembly Legislative Ethics Committee and the Senate Committee on Legislative Ethics. The course is held at least twice each year. When a new lobbyist registers or a currently registered lobbyist renews registration, the lobbyist must complete a certification

statement stating whether he or she has taken the course during the previous 12 months. If the lobbyist has not taken the course within the previous 12 months, the lobbyist's certification is "conditional" and will become void unless the course is taken within a specified time-frame. Failure to complete the course will result in the lobbyist's certification becoming void, preventing the individual from engaging in lobbying activities until the course is taken.

While perhaps not strictly a code of conduct issue, the California *Political Reform Act* prohibits lobbyists and lobbying firms from making a gift or gifts totalling more than $10 in a calendar month to any state legislative official (including legislative employees) and to any official or employee of a state administrative agency which his or her employer or the lobbying firm lobbies. It is not unusual, in the United States, to have strict limits on the acceptance of gifts and hospitality by government officials. Normally, however, the responsibility for refusal lies with the official and not the lobbyist.

Texas

Texas has a Code of Conduct for lobbyists and the related listing of prohibited conflicts of interest. The concern is with the capacity of the lobbyist to adequately represent the interests of the client. These provisions are set out in *Chapter 305, Government Code - Registration of Lobbyists*:

Code of Conduct

(a) A registrant shall decline proffered employment if the exercise of the registrant’s independent judgment on behalf of a client will be or is likely to be adversely affected by the acceptance of the employment, except as provided by Subsection (c).

(b) A registrant may not continue multiple employment if the exercise of the registrant’s independent judgment on behalf of a client will be or is likely to be adversely affected by his representation of another client, except as provided by Subsection (c).

(c) A registrant may represent multiple clients in situations covered by Subsection (a) or (b) only with the consent of the clients after full disclosure of the possible effects of that representation on the registrant’s professional judgment.

(d) If a registrant is required to decline employment or to withdraw from employment under this section, a partner or other person associated with that registrant may not accept or continue that employment.

(e) The commission may adopt rules for the implementation of this section consistent with this chapter, the Code of Professional Responsibility, and the common law of agency.

Prohibited conflicts of interest

(b) Except as permitted by Subsection (c), a registrant may not represent a client in communicating directly with a member of the legislative or executive branch to influence a legislative subject matter or an administrative action if the representation of that client:

(1) involves a substantially related matter in which that client’s interests are materially and directly adverse to the interests of:

(A) another client of the registrant;

(B) an employer or concern employing the registrant; or

(C) another client of a person associated with the registrant; or

(2) reasonably appears to be adversely limited by:

(A) the registrant's, the employer's or concern's own interests, or the other associated person's responsibilities to another client; or

(B) the registrant's, employer's or concern's own interests, or other associated person's own business interests.

(c) A registrant may represent a client in the circumstances described in Subsection (b) if:

(1) the registrant reasonably believes the representation of each client will not be materially affected;

(2) not later than the second business day after the date the registrant becomes aware of a conflict described by Subsection (b), the registrant provides written notice, in the manner required by the commission, to each affected client; and

(3) not later than the 10th day after the date the registrant becomes aware of a conflict described by Subsection (b), the registrant files with the commission a statement that:

(A) indicates that there is a conflict;

(B) states that the registrant has notified each affected client as required by Subdivision (2); and

(C) states the name and address of each affected client.

(d) If a registrant has accepted representation in conflict with the restrictions of this section, or if multiple representation properly accepted becomes improper under this section, the registrant shall promptly withdraw from one or more representations to the extent necessary for any remaining representation not to be in conflict with this section.

(e) If a registrant would be prohibited by this section from engaging in particular conduct, an employer or concern employing the registrant or a partner or other person associated with the registrant may not engage in that conduct.

(f) In each report filed with the commission, a registrant shall, under oath, affirm that the registrant has, to the best of the registrant’s knowledge, complied with this section.

...

(j) A statement filed under Subsection (c) is not public information.

Canada

When the federal Lobbyists Registration Act was significantly amended in 1995, a section was added empowering the then Ethics Counsellor to develop, through consultation, the Lobbyists’ Code of Conduct. The Code was reviewed by a Parliamentary Committee in the fall of 1996 and came into effect on March 1, 1997. All lobbyists are subject to the Code. The Registrar of the Lobbyist Registration Branch has considerable powers to investigate and report on breaches of the rules.

The purpose of the Lobbyists' Code of Conduct is to assure the Canadian public that lobbying is done ethically and with the highest standards with a view to conserving and enhancing public confidence and trust in the integrity, objectivity and impartiality of government decision-making.

The Code begins with a preamble which states its purposes and places it in a broader context. Next comes a body of overriding principles which are in turn followed by specific rules. The principles set out, in positive terms, the goals and objectives to be attained, without establishing precise standards. The rules then provide more detailed requirements for behaviour in certain situations. The principles therefore provide a framework for the Code as expressed in the rules.

Investigations are only possible if it is alleged that a rule, not a principle, has been breached.

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.

European Parliament

Rules of Procedure of the European Parliament
Title I: Members, Parliamentary Bodies and Political Groups
Chapter 1: Members of the European Parliament

Rule 9: Code of Conduct

2. The Quaestors shall be responsible for issuing nominative passes valid for a maximum of one year to persons who wish to enter Parliament's premises frequently with a view to supplying information to Members within the *framework* of their parliamentary mandate in their own interests or those of third parties.

In return, these persons shall be required to:

- \- respect the code of conduct published as an annex to the Rules of Procedure;
- \- sign a register kept by the Quaestors.
- ...

ANNEX IX
Provisions governing the application of Rule 9(2) - Lobbying in Parliament
Article 3
Code of Conduct

1. In the context of their relations with Parliament, the persons whose names appear in the register provided for in Rule 9(2) shall:

   (a) comply with the provisions of Rule 9 and this Annex;

   (b) state the interest or interests they represent in contacts with Members of Parliament, their staff or officials of Parliament;

   (c) refrain from any action designed to obtain information dishonestly;

   (d) not claim any formal relationship with Parliament in any dealings with third parties;

   (e) not circulate for a profit to third parties copies of documents obtained from Parliament;

   ...

(h) comply, when recruiting former officials of the institutions, with the provisions of the Staff Regulations;

(i) observe any rules laid down by Parliament on the rights and responsibilities of former Members;

(j) in order to avoid possible conflicts of interest, obtain the prior consent of the Member or Members concerned as regards any contractual relationship with or employment of a Member's assistant, and subsequently satisfy themselves that this is declared in the register provided for in Rule 9(2).

2. Any breach of this Code of Conduct may lead to the withdrawal of the pass issued to the persons concerned and, if appropriate, their firms.

X Contingency payments

It is a matter of particular sensitivity, in both the United States and Canada, whether it is in the public interest for lobbyists to be retained on a contingency-fee basis. Contingency fee arrangements require payment only if the action is successful and have been very common in the United States in civil legal actions. In Canada, up until recently, they were prohibited for lawyers in civil actions by the various provincial law societies. They are now, however, permitted in recognition that many individuals may not have the financial means to defend their legal rights if they have to pay legal counsel on normal hourly billing.

Lobbyists are not viewed so benignly in either country. The laws of 39 states prohibit contingency fees for legislative lobbying. The concern is that contingency fees, in this situation, are an invitation to engage in improper behaviour.

United States

The Lobbying Disclosure Act does not prohibit contingency fees but other legal provisions prohibit the payment of contingency fees in connection with the awarding of government contracts. As well the Foreign Agents Registration Act prohibits contingency fees to be paid to foreign agents who are attempting to influence agencies or officials of the U.S. Government to change domestic or foreign policies.

New York State

The New York Lobbying Act has the following provision:

No client shall retain or employ any lobbyist for compensation, the rate or amount of which compensation in whole or part is contingent or dependent upon the passage or defeat of any legislative bill or the approval or veto of any legislation by the governor, or the adoption or rejection of any code, rule or regulation having the force and effect of law or the outcome of any rate making proceeding by a state agency and no person shall accept such a retainer or employment.

Texas

Chapter 305, Government Code - Registration of Lobbyists reads as follows:

S. 305.022. Contingent Fees

(a) A person may not retain or employ another person to influence legislation or administrative

action for compensation that is totally or partially contingent on the passage or defeat of any legislation, the governor’s approval or veto of any legislation, or the outcome of any administrative action.

(b) A person may not accept any employment or render any service to influence legislation or administrative action for compensation contingent on the passage or defeat of any legislation, the governor’s approval or veto of any legislation, or the outcome of any administrative action.

(c) For purposes of this section, a sales commission payable to an employee of a vendor of a product is not considered compensation contingent on the outcome of administrative action.

(d) This section does not prohibit the payment or acceptance of contingent fees:

(1) expressly authorized by other law; or

(2) for legal representation before state administrative agencies in contested hearings or similar adversarial proceedings prescribed by law or administrative rules.

Florida

Chapter 112 of the Florida Statutes with respect to lobbying of the executive branch has the following provision:

(1) “**Contingency fee**” means a fee, bonus, commission, or nonmonetary benefit as compensation which is dependent or in any way contingent on the enactment, defeat, modification, or other outcome of any specific executive branch action.

(2) No person may, in whole or in part, pay, give, or receive, or agree to pay, give, or receive, a contingency fee. However, this subsection does not apply to claims bills.

(3) Any person who violates this section commits a misdemeanour of the first degree ... If such person is a lobbyist, the lobbyist shall forfeit any fee, bonus, commission, or profit received in violation of this section and is subject to the penalties set forth in s. 112.3215. When the fee, bonus, commission, or profit is nonmonetary, the fair market value of the benefit shall be used in determining the amount to be forfeited.

Canada

The federal government does not have constitutional authority over contract law which rests with the individual provinces. Therefore the federal government cannot forbid contingency payments, except for contracts it enters into itself which it has done, but there is a requirement for consultant lobbyists to report whether their payment for lobbying is in whole or in part contingent on their success.

Conclusion

The foregoing analysis has highlighted a number of the key issues which need to be addressed when pressures rise for lobbying legislation. Now some conclusions, but first an important caveat. Is legislation necessary? Not necessarily. There will be circumstances where there is limited or nonexistent public concern about lobbying activities. In other situations public concerns may be effectively addressed by lobbyists instituting their own codes of professional conduct. And, of course, when legislation is chosen, its precise form has to be in the spirit of a country’s legal tradition.

The central choices for legislation lie on a spectrum between disclosure and regulation. Is the emphasis to be placed on transparency or to ensure that lobbying is conducted properly? Much of public concern seems to be based on a lack of knowledge of what is exactly happening and thereby suspecting the worst. This suggests the emphasis should be towards the disclosure end of the spectrum

Once that choice has been made the question is how much information should be disclosed. Once again experience has shown that political debate often seems persuaded by the idea that if some information is good, more is better. There is thus a bias towards adding more and more details, perhaps more for reasons of curiosity than substance. This is an argument for ensuring the scope of legislation is focussed on the specific public concerns that the legislation is attempting to address.

Finally disclosure only works if the information is readily available. Today administering agencies can ensure transparency is easily achieved by placing the information collected on the Internet with an effective internal search capacity. An additional benefit is that on-line registration reduces the administrative burden placed on lobbyists thus improving compliance.

To conclude. Experience has shown that when public concerns are expressed about lobbying and possible abuses the debate can become intensely political within a very short time-frame. The most common accusation is that lobbyists have privileged access to decision makers and that their discussions and representations too often take place behind closed doors where the public interest might not be well represented. This illustrates two fundamental issues: first, that the absence of transparency is generally found troubling but that its presence may be the solution; second, that while the attacks may be directed primarily at lobbyists, the reality is that public office holders are themselves intimately involved which is why the integrity of our political institutions is challenged.

If political pressures for action grow to the point where a legislative response seems increasingly inevitable then there is much to say for taking early action thereby turning necessity into a virtue. By taking the initiative a government will be better able to tailor the response to the exact problem, drawing upon the experience of others, both their successes and their failures. In reviewing the history of various systems now operating, the impression is left that in some of these the exact purpose of why legislation was necessary has been forgotten with the result that information of questionable value must be disclosed.