



**Examining and Assessing the Regulation of Lobbyists in Canada, the USA, the EU institutions, and Germany: A Report for the Department of the Environment, Heritage and Local Government**

**By Dr. Raj Chari and Dr. Gary Murphy**

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## **Executive Summary**

Regulations dealing with lobbying activity are relatively rare in advanced industrial democracies. Canada, USA, Germany and the European Union are the only jurisdictions where lobbyists are subject to regulations in their dealings with legislators. This report provides a systematic overview of the rules and regulations currently existing within these four systems. The two key aspects of lobbying activity in democratic societies are access to decision makers, whether public representatives or civil servants, and the expectation that lobbyists have as a result of that access. In that context this report sets out the parameters within which lobbying activity takes place in Canada, USA, Germany and the EU. We examine and discuss the formal systems of regulation at both the national and local level in Canada, USA, and Germany, and at European parliament level in the EU.

This report provides analysis to three main questions:

- 1 What are the exact regulations on lobbying activity in the four political systems and how can these systems be theoretically classified?
- 2 What is the effectiveness of such regulations within each jurisdiction?
- 3 What are the benefits and costs of such regulations?

Having analysed these issues we then assess their relevance for a political system and culture such as that which exists in Ireland. We offer a number of main findings from our research.

Regulations exist at the federal level and in 49 of the 50 American states, in the Bundestag, but not at the Länder or Bundesrat levels in Germany, and at the federal level, and in five of the ten Canadian provinces. Within the EU, the regulation of lobbying activity is limited to the European Parliament.

In terms of the lobbying legislation that does exist within the four jurisdictions, these regulatory systems can be theoretically classified into three main categories: highly

regulated, medium regulated and lowly regulated. Lowly regulated systems apply where individual registration exists for lobbyists but where few details have to be given (such as in the case of the European Parliament where lobbyists do not have to state which subject matter/bill/institution they are lobbying or in the German Bundestag where there is no requirement to provide any financial information of any kind. While lists of lobbyists are available to the public the details tend to be rudimentary with much lobbying data such as spending reports not included at all. Finally there are little enforcement capabilities against lobbyists who break the rules.

Medium regulated systems apply where rules on individual registration exist and are relatively tighter than with lowly regulated systems. Principally lobbyists must state the subject matter/bill/governmental institution they are lobbying. Regulations also exist wherein lobbyists are prohibited from dispensing gifts and all political contributions must be reported. These are not comprehensive, however, and activities such as free ‘consultancy’ given by lobbyists to political parties would not be covered by the regulations. Furthermore employers of lobbyists are not required to file spending reports. Public access to a lobbying register is available, although spending disclosures are not in the public domain. Enforcement capabilities tend again to be somewhat limited.

Highly regulated systems apply where rules on individual registration exist and are much tighter than the other two systems. The subject matter/institution is required when registering, lobbyists must disclose their employers and tight individual spending disclosures are also necessary. This is in stark contrast to both lowly and medium regulated systems. Such disclosures include spending reports, salary reports, the accounting and itemisation of all spending, the identification of all people on whom money was spent, and the accounting of all campaign spending. Employer spending disclosure is also tight with for instance employers of lobbyists required to file spending reports. All salaries must also be reported. Public access to a lobbying registry is available and crucially includes spending disclosures, which are open for consultation. Finally in terms of enforcement capabilities, state agencies can and do conduct mandatory reviews/audits, and there is a statutory penalty for late and incomplete filing of a lobbying registration form.



Our findings in terms of how effective regulations are in ensuring accountability in government suggest that politicians and lobbyists in higher regulated systems were more likely to believe that such a system ensures accountability than those actors in the less regulated systems. This is for the most part based around the belief that tighter regulatory systems promote accountability precisely because the rules are stronger. Similar findings are reported in terms of having a register of lobbyists to which the public have access. Lobbying actors also believe that individual spending disclosures help promote transparency.

No matter what type of regulatory system is in place, the question of lobbyists finding loopholes in the legislation arises. Our findings show that in Germany and the European Parliament, elected representatives for the most part agree that there are loopholes in the system that allow individual lobbyists to give/receive ‘gifts.’ However, in medium and highly regulated systems such as Canada and the United States the opposite is the case. Lobbyists, on the other hand are neutral on this question. In Germany, lobbyists hold that there are loopholes whereas in the United States they are much less likely to agree with the view that there are loopholes, which can be exploited. While the more lowly regulated the system, the more likely it was perceived that there are loopholes in the system, it is important to note that the belief that loopholes exist across all systems is a prevalent view in all regulatory frameworks. We did find that most lobbying actors were of the view that enforcement mechanisms in place served a useful function. They believed, on the whole, that such enforcement was used for the most part to counteract inadvertent rather than deliberate flouting of the rules in place. It is important to note that our research was undertaken in the midst of the Abramoff (see section 2 on the US below) scandal in the United States, which would tend to suggest the opposite, in that the federal regulations in place were clearly and deliberately broken, resulting in the jailing of Mr. Abramoff. However, it is clear that the lobbying actors we surveyed and interviewed were of the view that no matter what system is in place there will always be some cases of deliberate malfeasance such as in the Abramoff case. No mechanism can be put in place that will completely eliminate illegal behaviour.

There will always be some sort of costs, particularly financial, involved in putting in place a regulatory system for lobbying activity. We find no evidence, however, that

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having a register of lobbyists results in decreasing citizen participation in the political process. The theory that the only successful way to approach public representatives in systems where registers of lobbyists exist is through such a lobbyist, we find to be without merit. While there can be little doubt that lobbyists would in all likelihood try to foster the impression that going through their offices was the only way ordinary citizens could gain access to their representatives, our research suggests that in practice this is not what happens in the United States, Canada and Germany. No matter how highly the system is regulated, to suggest that citizens would feel obligated to hire a lobbyist is to in effect ignore the political process where citizens contact their representatives as a matter of course. Of course such contact is also on the whole welcomed by politicians, particularly if they can point to a result at the end of such representation.

Our research tends to suggest that lobbyists are not averse to states having registers of lobbyists for a number of reasons. Primarily it tends to legitimise lobby groups as actors in the political process, and gives a certain transparency to the overall lobbying process. Equally as important it allows citizens to openly see what lobby groups are doing and who in government they are talking to, with the result that over time citizens become less cynical about the work and nature of lobby organisations, and indeed politicians.

In those states where there is no lobbying legislation our research suggests that lobbying legislation was not pursued because it was generally perceived by politicians, public sector officials and lobbyists that self-regulation was sufficient. This is particularly the case from members of the European Commission and is a consistent finding with the official view as reported in the 2006 Green Report of the Commission.<sup>1</sup> Our data does suggest, however, that many EU officials who responded hold the view that lobbyists should be required to register. Pennsylvania is a clear outlier here in that legislation enacted in 1998 was struck down by the Pennsylvania Supreme Court in 2000. In states without lobbying legislation our research shows that a majority of lobbyists and elected representatives believed that lobbying legislation would increase public policy accountability, transparency and effectiveness in their jurisdictions.

# Introduction

## *Central Research Questions*

Lobbying is a central and legitimate part of the democratic process within all liberal democratic systems. Although the term itself has often been associated with negative connotations, throughout the western world the work of lobbyists is essential: such actors are an accepted element within society that provide the necessary input and feedback into the political system, thereby helping develop policy outputs which drive political and economic aspects of our daily lives. By ‘lobbying,’ we refer to the act of individuals or groups, each with varying and specific interests, attempting to influence decisions taken at the political level. Such groups may include those with economic interests (such as corporations), professional interests (such as trade unions or representatives of a professional society) and civil society interests (such as environmental groups), to name a few. These groups may seek to influence political decisions by way of many means, including direct communications with governmental officials, presentations, and telephone conversations, to name but some mechanisms.

Notwithstanding the importance of lobby/interest groups in our daily world of politics, few Western liberal democratic systems have regulations in place with regard to lobbying activity as demonstrated by a previous study by the Institute for Public Administration that was requested by the Local Government Policy Section, Department of the Environment, Heritage and Local Government, Government of Ireland.<sup>2</sup> By ‘regulations’ we refer simply here to ‘rules’ which interest groups must follow when pursuing lobbying activity including, as discussed further in Section 1 below, registering with the state before contact can be made with any public official. Of all western political systems, there are only *four* wherein regulations exist as found in the IPA study: Canada, the United States, Germany and the EU (most particularly, the European Parliament.)

With the above in mind, the aim of this research is to establish a clear profile of the formal systems for regulating lobbyists in public life in place in Canada, USA, Germany and the EU. This will allow for better understanding of the pros and cons (or

benefits and disadvantages) of the different types of regulatory systems presently extant. As will be developed throughout the work, we will highlight how, based on the experiences of Canada, USA, Germany and the EU, there is a three fold theoretical typology of regulatory systems at play: the highly regulated, medium (or intermediary) regulated and lowly regulated systems. While the objective of the report is *not* to offer prescriptive solutions that Ireland must follow, we *do* seek to outline some of the key elements of the research, which could be taken into account in the design of a system in Ireland, particularly considering which of the different types of systems would be best for the Irish Republic.

Four main questions thus guide this analysis:

- 1 What are the regulations in place in the specific states and the European Union institutions?
- 2 How can the different types of systems be theoretically classified?
- 3 How ‘effective’ have these regulations been? Here we seek to better understand
  - how regulations may/may not foster transparency and accountability in the democratic process;
  - what are the potential loopholes in the system;
  - what burdens do regulations impose on politicians and lobbyists,
  - what are the potential financial costs; and what are the mechanisms of enforceability.
- 4 What are the various pros and cons of regulation and which of the different types of systems could be contemplated as possibilities for Ireland?

### ***Method of Analysis and Approach***

This project seeks to answer the main research questions using a three-fold method of analysis: textual-analysis, surveys, and elite-interviews. We consider each of these methods in turn, linking them to the aforementioned four main questions.

First, this study answers *what are the exact regulations on lobbying activity in the four political systems* by way of detailed textual analysis of the legislation regulating lobbying activity. From this perspective, Section 1 of the report builds on previous mentioned work done by the IPA: while the IPA study did give a broad idea of the overall nature of regulations at play in several political systems in the western world, this present work seeks to give more detailed, comparative analysis of the exact regulations in force in the different levels of governance in Canada, USA, Germany and the EU. In order to gain a more complete view of the existing regulations, two strategies were taken. First, an exhaustive search was performed in order to find the specific relevant legislation for each political system. In the case of the EU, analysis of different means, including CELEX, was used to find insights on any Directives or Memorandums from the EU. In the case of the three federal systems of Canada, USA and Germany, we used various sources, including our established links with researchers in outside institutions of high-standing as well as governmental officials, to collect *all* relevant pieces of legislation. In some cases, as with that of Canada and the USA (where together over 50 pieces of legislation exist across federal, provincial and state levels) this proved to be an almost mammoth task in itself.

Once all relevant legislation was collected, and we had a firm idea of the exact regulations in each of the political systems, we sought to determine how regulations in all four political systems theoretically compared to each other, thereby allowing us to see similarities and differences between the states. The resultant *theoretical classification* discussed in Section 2 of the report was accomplished by applying the method of analysis developed by the Centre for Public Integrity (CPI). In essence, the CPI methodology consists of assigning values to 48 questions measuring certain aspects of the lobbying legislation, resulting in a score between 0 and 100: the closer the score of the legislation is to 100, the more the regulation is considered to be more developed (or, more tight in terms of regulating lobbyist behavior). Questions included those on rules on individual registration, rules on individual spending

disclosure, methods for registration, availability of information to the public, and state enforcement capabilities. This allowed for a more cogent understanding of the nature of the regulation and helped us to classify the potential ‘types’ of regulations in these systems, which we subsequently define as highly regulated, intermediately regulated or lowly regulated systems as drawn out in Section 2 of the report.

With regard to the second main method of analysis, we sought to determine the *effectiveness of such regulations* by developing a questionnaire targeted at two main actors - interest groups (those who lobby) and political and administrative actors (those who are lobbied). Those approached were representative of a large sample of main types of lobby groups (economic, professional, single-interest, *etc.*), regulators and political officials. Three main types of questions were asked and later answered by over 180 respondents across Canada, USA, Germany, and the EU as reported in the latter part of section 2. The first type of question gauged the knowledge of the actor on the regulation, the second sought her views on the effectiveness and transparency of the legislation, and the third questioned how she believes that the regulation could be improved in potential issue-areas such as cost, transparency and accountability.

Thirdly, once the responses to the survey were received, coded, and analyzed, we followed up with open-ended elite-interviews with some of the respondents in each of the political systems with a view to more deeply probe into some of their answers, in order to better understand other issues such as loopholes in the system, the burden it imposed on lobbyists and politicians and the effectiveness of enforceability. Approximately 30 on-site semi-structured elite interviews were conducted with various lobby groups, regulators and politicians from these political systems. We received frank and clarifying views about the issues through our interviews. In this setting we were concerned with asking about two issues: namely the *pros and cons of the regulatory system*, and an assessment of which *aspects of the rules in place might be of value to Ireland* as examined in the concluding section of the Report.

## **Section 1: Overview of Canada, USA, EU and Germany – Regulations in Each Country**

This section is concerned with better understanding which regulations are in place in Canada, the USA, the EU and Germany. After offering a brief examination of the history and context for each of the political systems, we turn to analysis of the lobbying legislation. In this analysis we first focus on the names of the acts and when they came into existence. We then offer a more detailed examination of the details of their regulations; consider what and how much the legislation covers and note any changes over time. This section will be covered in four parts, one for each jurisdiction.

## *Canada*

Founded in 1867, Canada is a federal country consisting of 10 provinces and 3 territories. The federal government has two law making bodies: the House of Commons (the lower house consisting of 301 members) and the Senate (the upper house, consisting of 105 members that are appointed by the Prime Minister). Of the two houses, the most significant in terms of law-making power is the House of Commons: the party with a plurality of seats in the House forms the government, where the Head of the federal government is the Prime Minister who plays a major role in appointing the core-executive (i.e. Cabinet) as well as imposing party discipline on Members of Parliament (MPs) from the governmental party. The leader of the provincial government is called the premier, who is the leader of the party with the most number of seats in the provincial legislative assembly (the only house at the provincial level; members of provincial legislative assemblies are referred to as MLAs). In Canada's history, the two main parties in government at the federal level have been the Liberals and the Conservatives, although Canada itself sees many other parties at the federal and provincial levels such as the National Democratic Party (similar to the Labour party) and the Bloc Quebecois (from Quebec which seeks independence from, or at least some form of sovereignty association with, Canada.)

The power of the core-executive (or Cabinet) at both levels of governance becomes apparent when one considers how a bill becomes a law. In terms of the cabinet and legislative process at the federal level, a Cabinet member usually submits a proposal which is studied and approved by the Cabinet committee. After this time, the draft of the bill is confirmed by Cabinet as whole, signed off by the Prime Minister and then



introduced in the House of Commons. First and second readings take place in the House (at which time no amendments can be made); parliamentary committees examine the bills thereafter (at which time amendments can be made); it is approved by the House on the third reading (where limited amendments can be made); the bill is then sent to the Senate which usually ‘rubber stamps’ the bill, given that this institution is of mostly symbolic value to Canadian government; and then final assent is made by the Governor General who is Canada’s official Head of State that represents the British monarchy, even though the Prime Minister has effectively the most political power. Almost absent in the legislative process are the actions of individual MPs. This is due to the aforementioned idea of the strong imposition of party discipline in the Canadian political system: MPs are usually ‘whipped’ into shape to follow the party line and very few ‘free’ votes have taken place in Canada’s history. Compliance by individual MPs is usually attained by promises that they will be promoted in the future.

With these dynamics in mind, one can see that law making is a strongly centralised process around a few key actors who lobbyists attempt to influence. In its history, Canada has seen situations where political actors may have been perceived to be acting in a manner that is less than transparent, in the interests of some private groups. One example was seen in the late 1800s when the Canadian Pacific Railway was built: Canada’s first Prime Minister, John A. MacDonald, built the Canadian Pacific Railway (CPR) as a means to unite Canada from East to West. However, the process itself was deemed by many to cater to some private interests which would financially gain with the building of the railway. Another example is seen in the case of province of Quebec under Maurice Duplessis in the 1950s and 1960s when government contracts for initiatives such as building highways was seen as a means to attract votes. Even as recent as the federal governments by Brian Mulroney (Conservative) in the 1980s and Jean Chrétien and Paul Martin (Liberals) of the 1990s and 2000s, there were reports of different Ministers favouring some private interests over others with the view of gaining payoffs. As Dyck explains with regard to the Mulroney years in the 1980s,

In the Mulroney era, ministers were allowed to set up large offices full of personal or partisan assistants headed by a chief of staff with

which to provide strong direction to the bureaucracy. As a result, lobbyist efforts were often focussed on ministers' offices and even though most firms took on lobbyists with Liberal connections too, Tory partisan links were particularly important.<sup>3</sup>

In this context, lobbyist legislation was pursued and later amended by both the Conservatives and Liberals at the federal level throughout the 1980s and 1990s in order to improve public policy making transparency, a discussion to which we now turn.

### ***Lobbying Legislation in Canada and the Provinces – Brief Overview of the Acts and Analysis of the Nature of the Regulation***

With these above and other experiences in mind, and turning to the Federal level, in 1989 the government in Canada was the first level of governance in the state to pursue lobbying legislation by way of what was referred to as the Lobbyist Registration Act (Canada)<sup>4</sup>, with the end goal of promoting transparency and openness in policy making. As discussed in more detail below, this Act has as its main objective to make groups lobbying national governmental actors 'register' on a national registry. The 1989 Act would later be amended in 1995 with the Amendment to Lobbyist Registration Act, which attempted to beef up the information that was required to be forwarded by lobbyists when registering. The final major amendment to the federal Lobbying Registration Act came with Bill C-15 in 2003 (which came into force in 2005) that helped clean up loopholes in the previous system with regard to what could be considered 'lobbying.' Appendix A, Example 1 shows the Canadian Federal Act.

Nova Scotia, Quebec, Ontario, British Columbia (BC) and most recently Newfoundland are provinces in Canada that have followed the federal government's suit and similarly enacted lobbying legislation. In other words, not all of the Canadian provinces have legislation with regard to regulation of lobbying activity. In the case of Nova Scotia, their Lobbyist Registration Act (Bill 7) was passed in 2001<sup>5</sup>; Quebec passed its Lobbying Transparency and Ethics Act (Bill 80) in 2002<sup>6</sup>; Ontario, which was the first province to pursue lobbying legislation after the Federal government, established the Lobbyist legislation Act in 1998<sup>7</sup>; British Columbia pursued its Lobbying Registration Act in 2001<sup>8</sup>; and the most recent example is that of

Newfoundland that implemented its lobbying legislation in 2005.<sup>9</sup> Example 2 of Appendix A is an example of the provincial lobbying legislation, in this case from Nova Scotia.

It is important to point out that different parties introduced the different Acts across the ideological spectrum, reflective of the idea that introduction of the legislation was not ideologically based *per se*. For example, the first federal legislation was approved by the Conservative party under Brian Mulroney, with later amendments being made by the Liberals under Jean Chrétien, with increasing tightening of reforms already being mentioned by the new Conservative government under Stephen Harper.

### ***The Nature of the Regulations: A Comparative Analysis of Canada***

Rather than offer a descriptive narrative of the contents of each of the pieces of legislation in Canada referred to above, the following pages will offer a comparative analysis of the contents of all of the above mentioned Canadian legislation by focussing on key elements within all of them. We will therefore consider each of the following sub-themes and questions in turn which helps us better understand what the legislation covers, how much it covers, and what have been some of the changes over time:

- What is the principle focus of Canadian legislation?
- How does Canadian legislation define lobbying, lobbyist, and public office-holder and which actors' actions are not scrutinized in the Acts?
- What information do lobbyists have to give when registering in Canada; are there 'codes of conduct' in Canadian lobbying legislation?
- What rules surround lobbying by former public office holders; by which means do lobbyists register?
- In which subject matters has one seen the most active registrations?
- What are penalties for non-compliance with the legislation?

The following sub-sections consider each of these questions in turn.

### ***The Principle Focus of the Canadian Legislation - Registration***

A key idea behind the Lobbyist Registration legislation in Canada, also reflected in the provincial legislation in Ontario, Quebec, Nova Scotia, Newfoundland and BC, is the act of making lobbyists register with the state. Registration of lobby groups in itself *is* the objective. The objective is *not* to monitor what is going on when lobbying activity itself takes place; *nor* does the legislation require disclosure of all financial information (i.e. spending reports) of the lobby group or the client they represent (although political campaign contributions in Canada must be reported under the *Canada Elections Act* as discussed below<sup>10</sup>); *nor* does the legislation place any responsibilities for politicians to either record contacts<sup>11</sup> or ensure that those who lobby them are registered. In the words of Guy Girono, a leading expert on Canadian lobbying legislation, Canadian legislation on lobbying is ‘principally concerned with the requirement of the process of registration.... (and therefore) shares the same basic structure.’<sup>12</sup>

Based on the belief that lobbying is a legitimate political activity, the principal reason for having a registry, as reflected in the legislation and mentioned in several elite interviews in this study, is that it helps to ensure transparency and openness in the democratic process from which citizens, lobby groups and politicians can benefit. If citizens, lobby groups and public office holders know who is lobbying whom, then this will allow for a better idea of who is trying to influence policy. Citizens will benefit because they can see which private interests are seeking to affect policy and influence state institutions; other lobbyists will benefit because they can see what their competitors are potentially doing; and politicians benefit because they can be seen as being open and helping increasing legitimacy in the political process because there is increased transparency in policy-making as far as citizens are concerned. In short, it is a positive-sum game where everyone wins.

### ***Defining Lobbying, Public Office Holders and Lobbyists***

As discussed in Section 5 of the Lobbyist Registration Act of 1989, which is reflective of other provincial legislations as well, *a lobbyist* can be defined as an individual who ‘for payment, on behalf of any person or organisation undertakes to

- (a) communicate with a public office holder in an attempt to influence

- the development of any legislative proposal by the Government of Canada or by a member of the Senate or House of Commons
- the introduction... passage, defeat or amendment of any Bill
- the making or amendment of any regulation...
- the development or amendment of any policy programme
- the awarding of any grant, contribution, or other financial benefit...
- the awarding of any contract....

(b) arrange a meeting between public office holder and any other person.

It is noteworthy to mention that while the 1989 Act (above) stated that lobbying occurs ‘when a person or organization communicates with a public office holder in an attempt to influence the latter....,’ this concept would be slightly changed over time in order to allow for the federal law to have more force. More concretely, Bill C-15 replaced the idea of communication ‘in an attempt to influence,’ to, instead, communication ‘in respect of’ government decisions.<sup>13</sup> This had the effect of broadly covering all forms of communication, whether or not they actually have the end goal of influencing or not: ‘*lobbying* will consist of “*any oral or written communication made to a public office holder*”’<sup>14</sup> It is also worth mentioning that while the 1989 Act stated that someone invited by government to speak to political officials was exempt from registering, Bill C-15 closed this loophole by stating that such lobbyists also had to register whether or not there was an actual ‘attempt to influence’ given that communication itself was made by the lobbyist and public officials.<sup>15</sup> To date, all provincial governments have maintained the ‘attempt to influence’ clause, save Quebec, which ‘applies both an objective and subjective test to the communication’.<sup>16</sup>

Regardless of whether or not the term ‘an attempt to influence’ or ‘in respect of’ government decisions is used in the legislation, analysis of all legislation in Canada reflects this similar principle of lobbying: any communication by a lobbyist/interest group to sway any governmental decision is considered lobbying and anyone so doing must register. Indeed, one may argue that the definition of ‘governmental decision’ that is covered by all Acts is rather all encompassing: as seen above, ‘governmental decision’ as defined in all the Acts includes any legislative proposal; the introduction

of any bill or resolution, as well as its passage, defeat or amendment; amendment of any government programme or regulation; and the awarding of grants and contracts.

In the words of Dyck, the Acts '(a)cknowledged that lobbying public office holders was a legitimate activity, but required lobbyists to register because it was desirable that officials and the public knew who was attempting to influence government and because paid lobbyists should not impede free and open access to government.'<sup>17</sup>

It is interesting to note that all of the Acts in Canada do define what is meant by the term *public office holder*. As Girono explains:

There are slight differences among (Canadian) jurisdictions, but as a general rule public office holders include: elected members of the jurisdiction's legislature or parliament; members of their staffs; employees of the jurisdiction's government and government agencies; and individuals whom the jurisdiction's government has appointed to government. In Quebec only, public office holders also include elected members of municipal councils and employees of municipal governments.<sup>18</sup>

If Canadian legislation attempts to define public office holder (those that are lobbied), it also defines what is meant by 'lobbyists' (those who lobby) who have to register on two fronts, in terms of function and in terms of structure. First, as above, in terms of function a lobbyist is anyone who seeks to influence, or sway, any public office holder with the view that he/she can affect final government outputs. Secondly, taking all Canadian legislation together, the laws differentiate between the types of organisational structures of lobbyists at play in the political system. In Giorno's words, the laws 'distinguish between those who lobby on behalf of clients (also referred to as *consultant* lobbyists) and those who lobby on behalf of their employers (which may be either corporations or organisations; these are also referred to as *in-house corporate or organisational lobbyists*)'<sup>19</sup>. Giorno explains that

Consultant lobbyists must report on any lobbying activity, no matter how brief the communication. On the other hand, the activity of in house lobbyists must be reported only if they spend at least 20 per cent of their time lobbying on behalf of their employers (the 20 per cent rule applies, with minor variations, in all jurisdictions except Quebec.)<sup>20</sup>

While lobbyists are required to register, certain other officials are not. These include: MPs, Senators, MLAs, governmental employees, elected municipal officials and their employees (except Quebec), Aboriginal (or, 1<sup>st</sup> Nations Canadians) leaders, diplomats, and members of international organisations (such as the UN) working in Canada.<sup>21</sup>

***What Information is Required by Lobbyists when they Register in Canada and Frequency of Reporting?***

Although there is some variation across the federal and provincial level according to whether or not a lobby group is acting as a consultant or in-house lobbyist, the following information - as taken from the federal level rules for a consultant lobbyist who is working on behalf of a client - offers a good indication of the information that must be disclosed by a lobbyist when registering:

- Name, position, title and business address of the lobbyist;
- Name and business address of the lobbying firm/corporation;
- Client name and business address (if consultant lobbyist);
- Name of the principal representative of the client;
- Name and business address of any person or organization that controls or directs the client's activities;
- If the client is a corporation, the name and business address of the parent corporation and those subsidiaries which directly benefit from the lobbying;
- If the client is a coalition, the names and business addresses of the corporate and organizational members;
- If the individual is a former public office holder, a description of the offices held;
- Subject matters including the specific legislative proposal, bill or resolution, regulation, policy, program, grant, contribution, other financial benefit or contract sought;
- Name of each department or other governmental institution lobbied;
- Source and amount of any government funding provided to the client; and
- Whether payment is contingent on the success of the lobbying; and communication techniques used, including grass-roots lobbying.<sup>22</sup>

It is significant to consider what is meant by 'grass-roots lobbying', something which is mentioned in the federal, Ontario, and Nova Scotia legislation, but not in that of either Quebec or BC. Grassroots communication can be

defined as appeals to members of the public through mass media or by direct communication to persuade them to communicate directly with a public office holder to place pressure on him or her to endorse a particular opinion... (although) these Acts do not state

explicitly that grass-roots communication constitutes lobbying or communication with a public office holder.... The conclusion is implicit in their language.<sup>23</sup>

Once registered, a lobbyist will have to re-register, as long as he/she is pursuing political activity. Depending on the jurisdiction (and potentially the type of lobbyist), the frequency with which re-registration will take place varies. For example, at the federal level all lobbyists have to re-register ever six months. Whereas in Ontario consultant lobbyists have to re-register annually, while in-house lobbyists have to re-register every six months.<sup>24</sup>

In terms of other dimensions that lobbyists have to report, as mentioned earlier, under the *Canada Elections Act*, lobbyists must report all financial contributions to political parties. However, the Lobbying Acts themselves do not stipulate that lobbyists cannot contribute. In fact, many of them do, within the limit of \$1000 allowed by the *Canada Elections Act* for corporations, trade unions and associations.<sup>25</sup> Interestingly, a loophole within the system sees many lobby groups also provide ‘consultancy services’ to political parties for free during election times as well, as stated in some interviews held with the authors and discussed again in Section 2 of this report.<sup>26</sup>

### ***Codes of Conduct on Lobbyists?***

In most Canadian lobbying legislation there is no explicit code of conduct imposed on lobbyists. The exception to this are the cases of Quebec and the federal legislation (where it is not a statutory instrument). But even in these cases, one may argue that the main shortcoming relates to vague (if not normative) generalisations on the code: even though such codes, as in the case of Quebec, do suggest how lobby groups ought to operate in terms of general guidelines such as ‘duties and obligations,’ ‘respect for institutions,’ ‘honesty and integrity’ and ‘professionalism’, these broad definitions are open to interpretation. For example, with regard to the latter, both federal and Quebec legislation prevent lobby groups from exerting ‘improper influence’ on government officials. However, this is something that is difficult to measure: what may be ‘improper influence’ to some, may not necessarily constitute it for others. As Giorno questions, ‘... does political fundraising or assistance on a political campaign constitute an improper influence?’<sup>27</sup> With this in mind, there is



little surprise there has not been any case of a lobbyist being investigated for having breached any code.

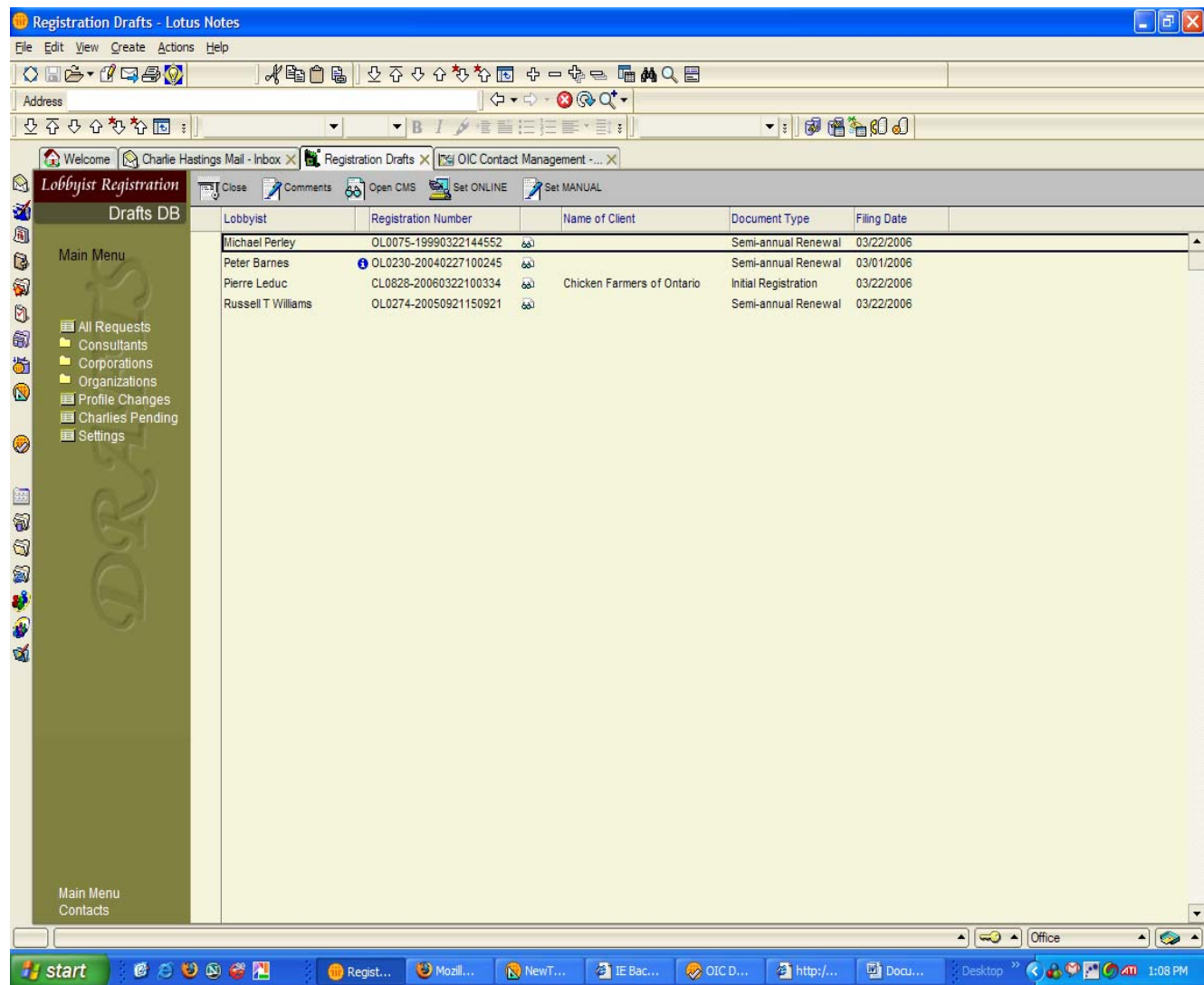
### ***Lobbying by Former Public Office Holder?***

Whether as part of the Lobbying Registration Act, or as part of a separate piece of related legislation, all jurisdictions in Canada have mandatory ‘cooling off’ periods, which refers to a minimum amount of time that former Ministers or high-level senior servants cannot engage in lobbying activity given potential conflict of interests.<sup>28</sup> With regard to Cabinet Ministers, at the federal level, Quebec, and BC such actors cannot act as lobbyists for two years after leaving office; in Ontario and Newfoundland, this time limit is lowered to one year; and in Nova Scotia this limit reaches a nadir of all jurisdictions at 6 months.<sup>29</sup> With regard to high-level civil servants, at the Canadian federal level, Ontario, Newfoundland and Quebec, high civil servants have a cooling off period of one year; BC has a cooling off period in this regard for two years; and in Nova Scotia the time limit is for 6 months.

### ***How Lobbyists Register?***

The primary means by which lobbyist register, and which is recommended by the registrars of all jurisdictions, is by the internet. At the federal government level, Ontario and Quebec, there is no charge for any consultant to register, renew registration or change registration details if done so by the internet. In fact, in the case of the Registrar’s Office in Ontario, state-of-the art sophisticated software developed at a cost of over \$CDN 50,000 has been introduced to ensure a smooth, hassle-free method of registering by way of computer. The one advantage of having such software is that it decreases resources and man-power necessary to keep all the files in order, where, in the case of Ontario, only one person needs to be in charge of all technical aspects of the office. To this end, as an example, the following image reflects what is seen by the Ontario Registrar when managing the system:

**Figure 1.1: Ontario Registrar of Lobbyists View of Online Registry**



*Source: Ontario Lobbyists Registration Office.*

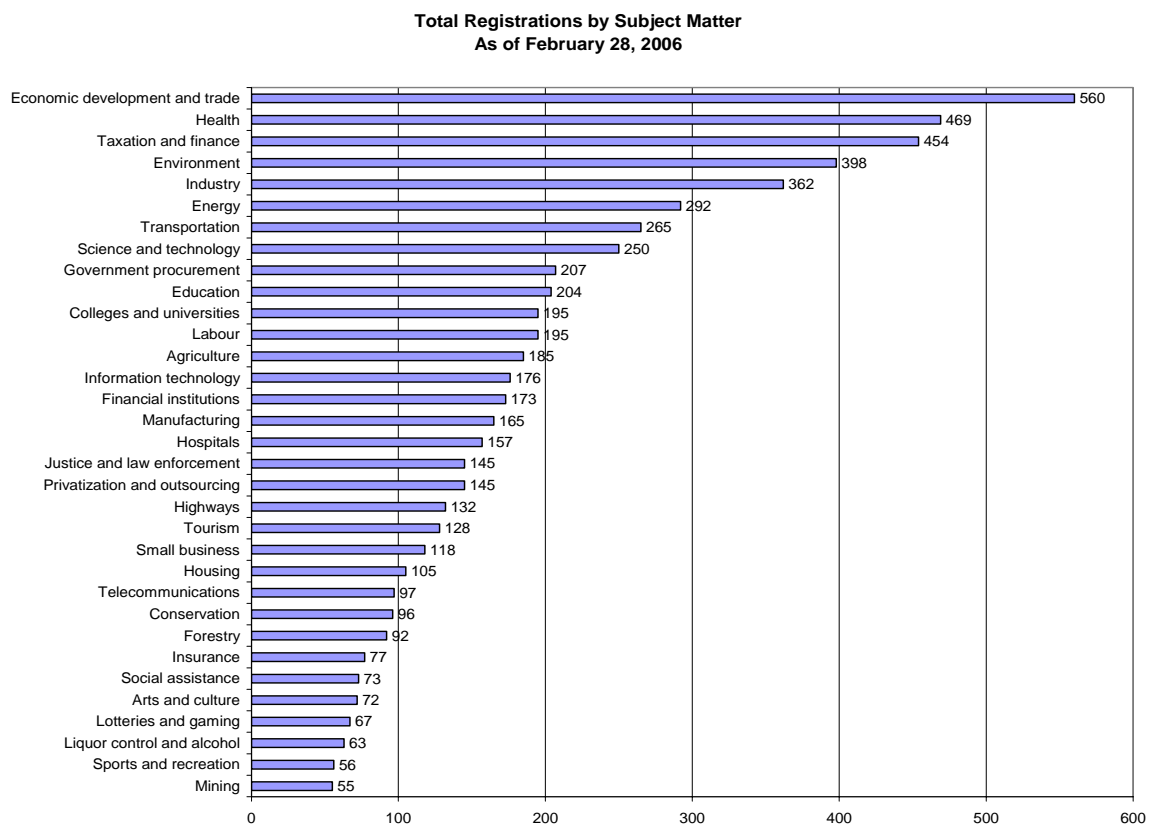
This image shows how when logging into the system the person in charge sees which registrants have formed recent requests (either for initial registration or renewals in this case). It also demonstrates how (on the left of screen) the person in charge of the system can go to the main menu and have easy access to the various registrants on the file, including consultant and in-house lobbyists (corporations and organisations). The Ontario software also reflects its sophistication in its ability to monitor when a lobbyist has missed his/her renewal period, by flagging to the operator on a daily basis those whose registration has lapsed.

The only three jurisdictions where there is a charge for use of internet registration are Nova Scotia, Newfoundland and BC.<sup>30</sup> Paper registration in all districts, however, requires a fee of between \$27 and \$150. Charging relatively higher prices for paper registration is a net result of the extra work that is required for the registrars to get the lobbyists' file into the system. The end effect is that virtually all lobbying registration in Canada is done on-line, and citizens are allowed free access to see the registries of all lobbyists in all jurisdictions.<sup>31</sup>

### *Who's Registered as a Lobbyist?*

Although not all Canadian jurisdictions keep full statistics of all the lobbyists that have registered with them over time, the government of Ontario does keep an exhaustive set of data which can help us better gauge where lobbyist activity takes place. At present, there are over 1500 active registrants on file. Of these, several will lobby in different areas. The below figure helps us better gauge which areas are most actively lobbied.

**Figure 1.2: The Areas Most Actively Lobbied in Ontario**



Source: *Source: Ontario Lobbyists Registration Office.*

The top five areas for registration include economic development and trade (9 per cent), health (7.5 per cent), taxation (7.3 per cent), the environment (6.3 per cent) and industry (5.8 per cent). With absolutely no variation, these are the top five areas since the Ontario registrar began collecting data in November 2000. Although these percentages will vary over jurisdiction, this is a representative sample of lobbying activity that takes place at the federal and other provincial levels as well.<sup>32</sup> Interestingly, in a country which has a universal health care system, one would have thought that the value for 'Health' was particularly high. However, it is reflective of lobbying that occurs in areas related to health such as pharmaceuticals as well as private health services in Canada which are becoming increasingly relevant given the strains starting to show in the healthcare system.

### ***Penalties a Lobbyist May Incur for not Registering?***

Given the overall objective for lobbyists to register when pursuing political activity, the *main penalty under the Acts is not registering* with the level of government where political activity (lobbying) is taking place. A related failure includes having given false or misleading information when registering. This failure to register, or to not renew, correct any misleading/incorrect information, or notify the state when lobbying has ceased<sup>33</sup> can result in one of either two penalties. The first is a fine, where the amount that can be imposed varies according to jurisdiction. Quebec has a minimum fine of \$500 and a maximum of \$25,000; in Nova Scotia, Ontario and Newfoundland the fine is \$25,000 for the first offence with a maximum one of \$100,000 for infringements thereafter; and under the federal laws a fine starts at \$25,000. The second penalty that may be paid by lobbyists who infringe the rules, and which is only seen at the federal level, is possible imprisonment.

In the history of Canada, there has been only one case which has been penalised: in March 2006, a immigration lawyer in Quebec was fined \$3,105 for not having registered as a lobbyist before lobbying immigration officials.<sup>34</sup> The low number of penalties imposed allows some, more positive observers, to conclude that lobbyists are generally complying with the legislation. Yet, other, more critical, observers suggest that more needs to be done to empower the state to hunt down potential infringements. For example, even though state agencies can conduct mandatory reviews, it is infrequent that any lobbyist registrar will prosecute violations of regulations given lack of resources and information.<sup>35</sup> Most registrars in Canada have

only a handful of staff working at any one time, with one of the smallest operations existing in Nova Scotia which has one person working virtually half-time.

## *United States of America*

The United States of America was born in a revolutionary war against colonial Britain between 1775 and 1783. It declared its independence from Britain in 1776 and enacted a republican system of government in its constitution, which was ratified in 1789 and further amended in 1791 with the inclusion of the famous bill of rights. At the heart of the American political tradition ever since has been the tension between the federal government and the individual states making up the union. Originally 13 in number there are now 50 states, each with their own constitutions, governments, and laws. From its inception some individual states viewed membership of the new United States of America as somehow revocable and it was not until the end of the American Civil War in 1865 that this idea would be refuted with victory for the northern states over their southern counterparts who had attempted to secede from the union in 1861. The United States government operates at a simple federal level with a national government and individual state governments, which have significant powers and send representatives to the legislative branch of government, the Congress, made up of a House of Representatives and a Senate. There is also an executive branch headed by the President of the United States and an independent judiciary. At its simplest lobbying in the United States revolves around the first amendment to the constitution, which states: ‘Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances’.<sup>36</sup>

Since the ending of the civil war lobbying has been an issue never far from the political surface in the United States and the regulation of lobbying and lobbyists remains extremely contentious to this day. Beginning with the populist movement in the 1870s, much of the pressure for reform has come from the public or sections of it.<sup>37</sup> Extremely questionable practices by railroad lobbyists in the years following the Civil War led to significant demands to regulate those who sought to influence railway prices in the vast amount of railroad building that took place across the United States at this time.<sup>38</sup> In the post civil war period, the House in 1876 attempted to require lobbyists to register but was unsuccessful. Since 1911 lobby regulation has been considered in almost every session of Congress.<sup>39</sup> Such demands for lobbying

reform were, however, overlooked and it was not until the New Deal presidency of Franklin Delano Roosevelt that those advocates of reform found a potential ally in the White House.

### *Early Regulation Initiatives*

The United States has the longest history of regulation of all modern states with provisions dating back to 1935. Amidst worries about electricity provision, the Public Utilities Holding Company Act of 1935 included within its various provisions a requirement for anyone employed or retained by a registered holding company to file reports with the Securities and Exchange Commission before attempting to influence Congress, the SEC, or the Federal Power Commission. This was the first piece of legislation ever enacted by Congress, which was directly applicable to lobbying government agencies.<sup>40</sup> The following year, reacting to scandals in the shipping industry over the granting of maritime mail hauling contracts and the lobbying practices of the industry in attempting to influence a maritime subsidy bill, Congress included a lobby registration provision in the Merchant Marine Act of 1936. Section 807 of that Act required lobbyists of shipping corporations and shipyards receiving governmental subsidies to report their income, expenses, and interests on a monthly basis. These initial efforts at lobbying regulation were, however, deeply flawed by their limited coverage of only the power and maritime industries and by the enforcement agencies' lack of interest in enforcing their provisions.<sup>41</sup> Two other major pieces of legislation were also passed in this era: the Foreign Agents Registration Act of 1938, whose aim was to attempt to register anyone representing a foreign government or organization and the Legislative Reorganization Act of 1946 which included the first general federal lobby registration laws. Titled the Federal Regulation of Lobbying Act, this latter piece of legislation was really a supplemental addition to the Legislative Reorganization Act, was only four pages long and had a very modest set of objectives. It merely provided for the registration of any person hired by someone else for the principal purpose of lobbying Congress and required that quarterly financial reports of lobbying expenditures be submitted as well.<sup>42</sup> As a piece of legislation it has widely been seen as a failure. It covered only Congress, so in essence the executive branch, regulatory agencies and other governmental organisations were exempt. Financial reporting was left to the lobbyists to decide and there was little if any investigation and enforcement of the Act. Nevertheless the Act

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remained in place for the next 50 years and was only replaced in November 1995 by the Lobbying Disclosure Act.

### ***The Lobbying Disclosure Act, 1995***

The Lobbying Disclosure Act refers to the federal level exclusively. It was the culmination of much effort by advocates of lobbying reform, advanced a definition of lobbyists to include all those ‘who seek to influence Congress, congressional staff, and policymaking officials of the executive branch including the president, top White House officials, Cabinet secretaries and their deputies, and independent agency administrators and their assistants’.<sup>43</sup> Lobbying is said to occur when a lobbyist communicates either orally or in writing with certain public officials on behalf of their client or employer, ‘concerning legislation, rules and regulations, programs, grants, loans and nominations subject to Senate confirmation’.<sup>44</sup> The public officials range from the President to congressional staff. Moreover, all commercial lobbyists who anticipate being paid more than \$5,000 over six months must register with Congress, as must all in-house lobbyists who expect to spend more than \$20,000 over the same period. The registration form includes details about the lobbyist and the client or employer, and also about the policy issues which will be the subject of the lobbying activity. Another report must be filed retrospectively at the end of each six-month period, specifying precisely which policy issues and legislation the lobbyist worked on as well as setting out which congressional chamber and/or executive agencies were lobbied. A lobbyist who knowingly or wilfully fails to make a full disclosure, can be imprisoned for up to five years (under a separate piece of legislation enacted in 1996).<sup>45</sup> The Lobbying Disclosure Act also significantly tightened registration and reporting rules. Nevertheless it exempts grassroots lobbying and lobbying by religious groups from the reporting requirements.<sup>46</sup> The successful enactment of the Act in 1995 had three major strategic components: leave out the controversial provisions of previous bills, make a bipartisan coalition, and allow no amendments to the bills that emerge from the first chamber to pass the bill. Yet among the key amendments defeated in the House were provisions to establish an enforcement agency. In the new law, noncompliance is first determined by the officers of the House and Senate and then referred to the US Attorney for Washington DC, who can prosecute and request civil fines up to \$50,000 for further non-compliance.<sup>47</sup> Nevertheless the fact that a bipartisan law, in an era of extreme partisanship between the Clinton Democratic

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White House and the Republican Congress, was finally passed in the House on a vote of 421 to 0 showed that there was a common view within the American political system that some regulatory system for lobbying had to be put in place.

### ***The Current Context***

Former Republican lobbyist Jack Abramoff was sentenced to five years and ten months in prison on March 29 2006, after pleading guilty to fraud, tax evasion and conspiracy to bribe public officials in a deal that required him to cooperate in an investigation into his dealings with members of Congress. The scandal prompted Republican house leader Tom DeLay of Texas and Robert Ney of Ohio, Chairman of the House Administration Committee, to resign their leadership posts. A former Abramoff associate, David H. Safavian, most recently the top contracting official in the White House Office of Management and Budget, has been indicted for lying about his dealings with Abramoff.<sup>48</sup> In the context of the Abramoff scandal lobbying has returned to centre stage in American politics.

Lobbying as we point out above is protected by the First Amendment. When individuals or groups lobby, they are exercising their basic right ‘to petition the government for redress of grievances’. According to the *Public Affairs Council* based in Washington DC, the leading association for public affairs professionals or lobbyists, as ‘the government has grown in size and complexity, more lobbyists have been needed to explain how business operates, how technology works, how legislation would affect various interests, and how consensus can be achieved in public policy-making’.<sup>49</sup> At the federal level the 1995 Lobbying Disclosure Act remains in place. Within this act, a lobbyist is defined as someone who is employed or retained for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than twenty per cent of the time engaged in the services provided by the individual to the client or employer over a six-month period. ‘Lobbying contacts’ do not include requests for meetings or status reports that do not attempt to influence a legislative or executive official; testimony before a congressional panel; information provided at the request of a government official; or communications made in response to government notices requesting comment from the public. A lobbyist must register with the Secretary of the Senate and the Clerk of the House and must file semi-annual

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disclosure reports. These reports cover lobbying expenditures, payments to contract lobbyists, and the income a contract lobbyist receives for lobbying.

The current political mood within the United States, however, suggests that the Lobbying Disclosure Act needs to be replaced. The US Senate has been debating a lobbying reform bill, the *Legislative Transparency and Accountability Act of 2006* (S. 2349) since early 2006. The bill would curb trips and meals paid for by lobbyists, and require increased disclosure for special funding provisions added late in the legislative process. It would also increase disclosure for lobbyists' campaign contributions; grassroots lobbying; travel paid for by lobbyists; and gifts to members of Congress. During floor consideration of the bill, the Senate rejected an amendment to create an office of public integrity to investigate ethics rules, but adopted an amendment to require Senators to publicly disclose holds they have on bills. The Senate passed its lobbying reform bill on 29 March by a vote of 90 to 8.<sup>50</sup> Parallel to this the House of Representatives has been debating its own bill the *Lobbying Accountability and Transparency Act of 2006* (H.R. 4975). The House passed this bill on 3 May by a narrow margin, 217-213. This bill provides for amending, strengthening, and enhancing the Lobbying Disclosure Act of 1995. The bill requires quarterly filing by lobbyists, up from twice a year. These filings are required to be electronic and will be accessible through a searchable and sortable online, public database. Registered lobbyists must disclose contributions to Federal candidates, leadership Political Action Committees (PAC), and other PACs, political party committees, the amount and date of any gift that counts toward the cumulative limit, and the date, recipient, and amount of funds contributed to (or on behalf of) an entity named for a Member or established, financed, maintained, or controlled by a Member. This legislation raises the civil penalty for failure to report from \$50,000 to \$100,000 and adds a criminal penalty of up to three years for "willingly" and "knowingly" failing to comply with the provisions of the Act.<sup>51</sup> As of June 2006, because the bills that have passed the House and Senate are different, a conference committee must meet to iron out the differences with a compromise bill that must then also pass both chambers of Congress. However, the House has not appointed negotiators for the conference committee, which has halted any progress in the legislation.<sup>52</sup> Considering the closeness of the vote in the House, this legislation is still some significant distance away from being enacted.

One of the key questions relating to lobbying in the United States is why do lobbyists get involved in fundraising. The simple answer is that campaign costs are huge for politicians. In that context the Federal Election Campaign Act (as modified by the Bipartisan Campaign Reform Act of 2002) sets very specific limits for campaign contributions by individuals and political action committees (PACs). In their modern form PACs are a creation of the Federal Election Campaign Act (FECA) of 1971 amended in 1974. The number of PACs grew dramatically in the first decade after FECA was enacted, but levelled out at about 4,000 in the mid 1980s and has now declined to just under 4,000. However, the amount of money generated by PACs has grown dramatically. In the bitter partisanship that has marked American politics since the extremely close and divisive Presidential election of 2000 there has been a significant surge in PAC money raising activity.<sup>53</sup> PACs exist legally as a means for corporations, trade unions and other organisations to make donations to candidates for federal office, something that they cannot do directly. (Corporations and labour unions are not permitted to make contributions, including in-kind contributions, to federal candidates or committees.) Individuals may contribute up to \$2,000 per election to candidates, up to \$5,000 per year to PACs, up to \$10,000 per year to federal accounts of state party committees, and up to \$25,000 per year to national party committees. In aggregate, an individual may contribute up to \$95,000 per two-year election cycle. A qualified corporate or trade association federal PAC may contribute up to \$5,000 per election to a candidate for federal office. Many contract lobbyists, in particular, play a major role in congressional fundraising. Some lobbyists help to organize fundraisers for candidates that they and their clients support. Others attend such fundraisers and make contributions to like-minded candidates.<sup>54</sup>

### ***State Level Regulation***

As Thomas points out: ‘with fifty governments, a variety of political sub-cultures, histories and levels of political development, experience with lobby regulation in the states is quite diverse’.<sup>55</sup> State oversight of lobbying generally takes four forms. States establish registration requirements by defining what lobbying is and who is a lobbyist; they require lobbyists or the interests that hire them to periodically disclose their expenditures and earnings; they regulate the ‘revolving door’ between government

and the private sector by establishing a cooling-off period during which ex-government officials are prohibited from lobbying the government they once served and they define the range of permissible lobbying activities, such as providing free gifts or meals.<sup>56</sup>

In that context we use the methodology of highly regulated, intermediately regulated and lowly regulated, as discussed in detail in Section 2 below, to give us an accurate view of state level legislation. 49 of the 50 American states have some sort of lobbying regulation. Pennsylvania is the sole exception. In the 49 states with lobbying legislation all lobbyists must register no matter how much money they make or spend. Pennsylvania did have legislation, the 1998 Lobbying Disclosure Act, but it was struck down May 2000 by the Pennsylvania Supreme Court as it pertains to attorneys, with the court saying the General Assembly of Pennsylvania's efforts to monitor the activities of lobbyists amounted to illegal regulations on the practice of law.<sup>57</sup> This then invalidated the whole law. In 2002 the Supreme Court reaffirmed its decision. In December 2003 the Supreme Court issued a new rule requiring lawyers acting as lobbyists to comply with requirements that they disclose information related to their clients. The Pennsylvania State Senate in January 2003 and again in January 2005 adopted rules requiring all those who lobby the Senate to register and file quarterly reports with the Secretary of the Senate.<sup>58</sup> In March 2006 Governor Edward G. Rendell took steps to enact legislation at the executive level when he signed an executive order amendment to the Governor's Code of Conduct, establishing new registration and disclosure standards for those who want to lobby the executive branch of state government. Under the Governor's amendment, anyone who lobbies a member of the executive branch – basically, decision makers – must register and file quarterly expense reports relating to their activities. The Governor's Code of Conduct sets the ethical standards for some 78,000 state employees under the Governor's jurisdiction.<sup>59</sup>

Wisconsin and Montana are the only two states, not counting Pennsylvania, that do not by statute require individual lobbyists to file spending activity reports. All reporting responsibility lies with the companies or organizations that directly employ lobbyists, known as lobby principals or lobby employers.

There are 25 of the 49 states who we can rank as highly regulated systems.<sup>60</sup> Washington State is ranked as the most regulated state in the United States. For Washington State:

‘The public’s right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private’.<sup>61</sup>

This quotation from the policy provisions of Washington State’s *Open Government Act*, better known as the *Public Disclosure Law*, aptly summarizes both the impetus for and the purpose of the statute currently in existence in Washington State. Washington State recognises lobbyists as those who lobby both the executive and legislative branch. Appendix A, Example 4 gives a guide to the registration of lobbyists in Washington State. The origin of Washington's disclosure law can be traced to the efforts of concerned citizens who came together in 1970 believing that the public had the right to know about the financing of political activity in the state. Following an unsuccessful attempt in 1971 to generate legislative action and only minimal success in 1972, these concerned citizens-now calling themselves the Coalition for Open Government (COG) - turned to the people. COG gathered nearly 163,000 signatures in order to place Initiative 276 on the November 1972 ballot. Initiative 276 was approved by 72 per cent of the voters and became law on January 1, 1973.

In 1992, reform-minded voters again passed a comprehensive campaign in Washington State. Over 72 per cent of the voters supported reform and this time around approved contribution limits and other campaign restrictions. Yet for all the comprehensive nature of regulation in Washington State, the Centre for Public Integrity recently reported that the spirit of the state's exemplary disclosure law was being undermined by lobbyists who report their clients’ purposes on disclosure forms in vague, non-descriptive terms.<sup>62</sup>

Washington State is the most advanced state in the US when it comes to disclosure. It had public access via the internet to registered lobbyists, and discloses to the public, names of lobbyists, how much they earned, and spent. It further breaks down lobbying activity by sector and includes 41 different categories ranging from ‘Business

General' on which \$1,481,890.25 was spent in 2006, to 'Energy Nuclear' on which \$8,000.00 was spent in 2006.<sup>63</sup> The Public Disclosure Commission of Washington State website enables registered lobbyists to file all disclosure information online. This is voluntary rather than mandatory, although the commission hopes to make all filing electronic in the near future.<sup>64</sup>

Wisconsin can also be categorised as a highly regulated state. The state legislature is of the view that the operation of an open and responsible government requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to any officials of the executive or legislative branch their opinions on legislation, on pending administrative rules and other policy decisions by administrative agencies, and on current issues. In a 2005 bill concerning the application of the lobbying regulation law the state legislature declared that

essential to the continued functioning of an open government is the preservation of the integrity of the governmental decision-making process. In order to preserve and maintain the integrity of the process, the legislature determines that it is necessary to regulate and publicly disclose the identity, expenditures and activities of persons who hire others or are hired to engage in efforts to influence actions of the legislative and executive branches.<sup>65</sup>

Its aim simply is to give meaningful public access to information about the financing of political campaigns, lobbyist expenditures, and the financial affairs of public officials and candidates, and to ensure compliance with disclosure provisions, contribution limits, campaign practices and other campaign finance laws. All lobbyists in Wisconsin must register no matter how much money they make or spend.

Wisconsin has had lobbying laws dating back to 1858 and lobbying is regulated by the Wisconsin Ethics Board. For Wisconsin like many other highly regulated states regulating lobbying activity is in place to 'make sure that no inappropriate lines are crossed when it comes to peddling influence. The laws attempt to ensure a level playing field for individuals who do not have many resources to lobby local or state officials. After all, lobbying is based on the idea that everyone has the right to address his or her government'.<sup>66</sup> Yet while Wisconsin is seen as a highly regulated state, there is no "cooling off" period, before legislators can become lobbyists and

Wisconsin does not recognize as lobbyists, those who lobby the executive branch of state government.

Again for intermediately regulated states, which include all other states in the United States and the federal government, there are regulatory frameworks in place. While Montana, for instance, does not by statute require individual lobbyists to file spending activity reports, all lobbyists must register no matter how much money they make or spend. Lobbyists are recognised as those who lobby both the state and executive branches of government. Montana has a commissioner of political practices, which monitors the regulation of lobbyists in that state. However, it is an office of only four people with no availability for online access to lobbying disclosures of expenditure. In January 2005, Montana Governor Brian Schweitzer called for a two-year cooling-off period covering executive and legislative branch officials. The 2005 legislative session closed with the proposed legislation at a virtual standstill in both legislative chambers.<sup>67</sup>

Florida, another intermediately regulated state, has laws on lobbying both the state legislature and executive. Florida's Commission on Ethics asserts that it has been a leader among the states in establishing ethics standards for public officials.<sup>68</sup> In April and May, 2005 the Florida Senate approved, revised and re-approved ethics measures that would, among other changes, require lobbyists to report their earnings and expenditures. Registration is required before lobbying any state agency and is renewable annually. In addition, lobbyist firms must file quarterly compensation reports. Lobbyists must register no matter how much money they make or spend. There is a two year "cooling off" period, one of the longest in the United States required before legislators can register as lobbyists, but this only refers to former office holders who lobby the particular government body or agency that employed them. There is no online system of filing in Florida. Lobbyists can print out material from the Commission on Ethics website but they must fill them in and return them manually. The Centre for Public Integrity reported that expenditure on lobbying in Florida declined by 59 per cent in 2004, and was at its lowest in a decade.<sup>69</sup> Florida along with Illinois and Ohio do not require lobbyists to disclose campaign contributions so we can presumably assume that one of the main reasons for the large decline was 2004 election, when lobbyists and their employers probably channelled a

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significant proportion of their resources toward campaign activities. In Florida lobbyists outnumber legislators by a ratio of almost 13 to 1.

Wyoming, which is the lowest ranked state in the US recognizes only legislative branch lobbyists and all lobbyists must register no matter how much money they make or spend.<sup>70</sup> Up until 1998 Wyoming was the only State in the US that did not require lobbyists to report any of their spending when it enacted a lobbyist reporting bill. The 1998 law did not require lobbyists to report all the expenditures they (and their employers) made in their efforts to influence Wyoming legislators. The Wyoming law requires reporting of only: the lobbyist's "sources of funding; loans, gifts, gratuities, special discounts or hospitality" exceeding \$50 in value; the cost of special events held for legislators; and the cost of advertising to influence legislation (without any definition of what that might be). This places Wyoming at the bottom in terms of what states require lobbyists to disclose. For example, in other western states bordering Wyoming there are more rigorous regulations. Nebraska, Colorado and Montana require complete reporting of all expenditures related to lobbying activity, including lobbyist compensation. Idaho requires reporting of all expenses for entertainment (including food and beverages), advertising, travel and lodging for public officials office expenses. South Dakota simply requires reporting of all costs incurred for lobbying except the lobbyist's personal expenses and compensation.<sup>71</sup>

As we can see, there are substantial differences across the varying American States when it comes to regulating lobbyists and lobbying behaviour. While all but Pennsylvania have some form of regulation, what is clear is that lobbying regulation continues to be a highly contentious political issue. While the Abramoff scandal has turned the focus in America back on federal level legislation, it is important to note that state level regulation ranks higher than the federal level in the CPI score except for Wyoming and New Hampshire (See Table 2.1). Moreover because of the importance of State government in the United States, regulations at the state level are in many ways equally if not more important than the federal regulations.



# *The European Union*

## *Brief History and Context*

The European integration project started in the 1950s as an answer to the horrors of World War II. Integration measures were regarded by the founding fathers as guaranteeing peace across Europe. The first steps towards integration related to economic issues: in 1951 the Treaty of Paris was signed by Belgium, the Netherlands, Luxembourg (collectively referred to as Benelux), France, West Germany, and Italy, to form the European Coal and Steel Community (ECSC). In 1957, the Treaties establishing the European Economic Community (EEC Treaty) and the European Atomic Energy Community (Euratom) were signed by the same six countries, leading to the creation of the European Community. In terms of major initiatives, the 1980s saw the developing and consolidating the single European market, as seen in the Single European Act (SEA) of 1986. Thereafter, when the Maastricht Treaty was signed in 1992, a single currency (Economic and Monetary Union, or EMU) was seen as a means to promote low inflationary economic growth within the single market while copper-fastening a prominent status for Europe in the global economy. Most recently, in 2005 there has been an attempt to develop a European Constitution, something which remains to be achieved given recent referendum results in France and the Netherlands which rejected the idea. Following diverse rounds of enlargement in 1973, 1981, 1986, 1995 and 2004, there are presently 25 member states in the EU. Both the SEA and EMU reflect the increasing importance of the supranational level government in terms of setting the economic and monetary goals of European states. In short, throughout the last 25 years member states are increasingly transferring power from the domestic to the supranational level of governance in economic and monetary issues. A consequence of this transfer of power has been an increasing drive of different lobby groups to attempt to influence Brussels policy-making given the importance of this new centre of governance in European political space.<sup>72</sup>

In this regard, and in order to better understand the significance of the lobbying regulations in place at the EU level, it is first important to note the major institutions of the EU wherein supranational policy is made: the European Commission, the Council of Ministers, and the European Parliament. The first two of these institutions

– the Commission and the Council – have been likened by some to represent the EU’s ‘dual executive’<sup>73</sup>: executive power is not held by one institution *per se* as seen in domestic level politics, but, rather, it is held in tandem by two main ones. On the one hand, the Commission has a leading role in initiating regulations in key policy-areas while ensuring that policies are implemented. On the other, the Council can amend or reject Commission proposals, while defining the long-term goals of the EU. The main strength of this dual character is that it “facilitates extensive deliberation and compromise in the adoption and implementation of policies”, while its main weaknesses is that it “lacks overall leadership”<sup>74</sup>. This last point particularly emphasizes that even if we agree with the idea that there is some sort of ‘executive’ power, policy-making in the EU is not necessarily centred exclusively in only one of these main institutions.

In more detail, with regard to the European Commission, there are 25 members of the Commission, where each member state makes one appointment. Commissioners are charged with representing the interests of the EU, not the member state from which they emanate. Each Commissioner heads a Directorate General (DG) which, in many respects, can be considered a Brussels-level equivalent to a Ministry found in domestic-level politics. Examples of DGs include Internal Market, Competition, Economic and Financial Affairs, Agriculture, Employment, Environment, Justice, Freedom and Security, and External Relations. In terms of policy-making power, the Commission has the sole right amongst all EU institutions to *initiate legislation* in most policy-areas as mentioned above. However, as discussed below, this does not mean that the Commission can act unilaterally: in fact, the Council oftentimes rejects Commission proposals. A *second power*, which relates to its role in the implementation phase and closely mirrors a bureaucratic function, is ensuring the member state *compliance with EU legislation*. Yet, this is an increasingly difficult task for a staff of slightly over 28,000 civil servants. Several cases over the last 15 years, especially in areas such as competition policy and state aids, have seen member states not complying with Commission decisions.<sup>75</sup>

Turning to the Council of Ministers, or the Council of the European Union, this institution represents the interests of each of the member states. Before May 2004, there were 15 member states, but the recent enlargement consisting of the inclusion of

ten Central and Eastern European states saw this number increase to 25. There is no ‘one Council’ *per se* that exists, but, rather, there are many: each Council consists of the national ministers in each of the corresponding policy areas. As a result, there are several councils, with some of the most significant being General Affairs (represented by Foreign Ministers) and ECOFIN (Finance Ministers). Council presidency rotates on a six months basis, and of these meetings the ‘European Council’ ones held every six months (consisting of the Heads of State of each member state) attract the most media attention. Nevertheless, the meetings of most importance in terms of policy development in each issue area are those Council meetings that take place at various times throughout the whole year. In terms of this institution’s policy-making powers, the *first* is to *reject or amend proposals* that emanate from the Commission. *Prima facie*, this may seem insignificant vis-à-vis the power of the Commission. However, the fact that the Council must approve any Commission proposal has left some commentators such as Moravcsik to suggest that it effectively exercises power over the Commission.<sup>76</sup> Moreover, there is an element of ‘informal governance’ that allows the Council theoretically much room to manoeuvre, perhaps even set the agenda for, the Commission: informally, there is nothing stopping the Council from attempting to sway the Commission to initiate a piece of legislation in a specific policy area that is in the former’s interest.<sup>77</sup> This idea is related to a *second main power*: the Council is empowered to *define the long-term goals of the EU*. To this end, the idea of ‘delegation’ is key: the Council is effectively empowered to ‘delegate’ its power to the Commission. Nevertheless, given the nature of the ‘dual executive’ of the EU, even though the Council must support major initiatives, it does not necessarily follow that it has the most impact when defining the nature of specific policies when they are formulated.

The third main policy-making institution in the EU is the European Parliament (EP), an institution whose power is not as great as the ‘dual executive’, but one which has increasingly gained prominence over time. The EP is the representative assembly consisting of the 732 Members of European Parliament (MEPs) that are elected by EU citizens. From this perspective alone, this institution lies in stark contrast to the Commission (which is appointed) and the Council of Ministers (who, although being elected representatives in the member states, are not directly elected to the Council). Once MEPs are elected they sit in the EP not along national lines, but, rather, as

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members of party groups. Although the literature generally agrees that the axis of executive power lies between the Council and the Commission, the exact role of the EP in the formal policy-making process has been of some debate. On the one hand, the more pessimistic observers argue that the EP is simply a symbolic institution (or, ‘talking shop’) that has virtually no substantive power other than offering the façade of a representative assembly. On the other, optimists contend that formal EP power is increasing, particularly since the early 1990s and with the 1997 Treaty of Amsterdam.<sup>78</sup> To this end, the optimists point to four main powers. First, major areas of EU developments cannot be decided on without the EP’s approval, including: the admission of new member states; major international agreements between the EU and other countries (but not including foreign policy initiatives); the method of election to be used in EP elections; and the role of the European Central Bank (ECB). A second main power, since 1993, includes the EP’s active role in the appointment of new Commissioners: even after the member states have nominated Commissioners each must be approved by the EP.<sup>79</sup> The third main power is in the approval of the EU budget. Although the Commission and Council clearly have strength in determining the details of the budget, the EP has the possibility theoretically to amend and eventually reject the Budget on the final reading, although this has not occurred since the 1990s. And the fourth main power, clearly seen in the legislative process, is the EP’s gain in power via the use of the ‘co-decision’ procedure. Here, the EP has the power to reject and/or amend legislation in specific policy areas including internal market, public health, consumer protection, and culture and education. Critical observers suggest, however, that even though co-decision has notably increased the powers of the EP, it falls short because several important policy areas either have no EP involvement (such as Competition Policy, EMU, Common Agricultural Policy and Common Foreign and Security Policy) or a limited one (such as structural funds and environmental policy).

### ***The Nature of the Regulations in the EU: An Initial Assessment***

This overview of the main institutions of the EU and their policy making power helps us better understand the significance of the lobbying legislation initiatives that have been pursued at the EU level: to date the only EU institution to have pursued a lobbying registry has been the European Parliament by way of Rules of Procedure 9 (1 and 2) in 1996, an extract of which is found in Appendix A, Example 5. There is no

lobbying legislation with regard to the Council and Commission (although there has been recent discussion about adopting such initiatives at the Commission level, albeit on a voluntary basis as discussed later in the section). With this in mind, from the outset one can see that the main policy-making powers in the EU have not pursued lobbying regulations. Moreover, it is also important to note, and as will be further demonstrated later in the report when we offer comparative analysis of the political systems studied in this report using the CPI method of analysis, that when compared to the Canadian and American systems the legislation in place for the EP is relatively weakly developed.

In order to better understand this, the following pages first examine the stages of development of the EP lobbying initiative and analyze what is covered (and what is not covered) in the legislation. Thereafter, we close with a brief discussion of developments at the Commission level, including ideas raised in its latest ‘Green Paper’ of 2006.

### *History of EP Legislation*

The rationale behind the idea of having a registry of lobbyists was based on perceptions of less than transparent practises having occurred in the EP throughout the 1980s and 1990s. As the EP itself stated, there were ‘charges that some MEPs assistants could have been paid by interest groups and that some MEPs even could have acted as interest representatives themselves...’<sup>80</sup> As a consequence, in the early 1990s calls were made towards establishing ‘minimalist standards’ in order to clean up the situation, something which was spearheaded by Marc Galle, who was the Chairman of the Committee for Rules and Procedure.<sup>81</sup> However, little progress was made at the time given the upcoming EP election in 1994 and given the EP’s inability to clearly agree to key terms such as what was meant by ‘lobbying and lobbyist’.

Nevertheless, there was a renewed impetus following the elections: led by Glyn Ford, there was a proposal that ‘the College of Quaestors should issue permanent passes to persons who wished to enter Parliament frequently with a view to supplying information to members within the framework of their parliamentary mandate’.<sup>82</sup> As Bouwen explains, with regard to this College which the EP elects: ‘the five quaestors of the college have an important internal function within the Parliament as they are

responsible for administrative and financial matters directly concerning the members'.<sup>83</sup> And with the final acceptance of Ford's recommendations in 1996, the College was doubly

politically responsible for the implementation of the rules of 'lobbying in parliament' and 'transparency and Member's Financial Interests' (Rules of Procedure Annex I and IX)... (t)hese rules are the cornerstone of the Parliament's policy to regulate the interaction of members of Parliament and private interests.<sup>84</sup>

We thus turn to a more detailed discussion of what this policy does (and does not) entail.

### ***EP Legislation in Place: What it Covers (and what it does not cover)***

#### *How are Lobbyist Defined?*

The EP offers the following definition for lobbyists: 'Lobbyists can be private, public or non-governmental bodies. They can provide parliament with knowledge and specific expertise in numerous economic, social, environmental and scientific areas.'<sup>85</sup>

When comparing the last part of the definition with the Canadian definitions above, for example, one may argue that the EP definition portrays lobbying activity as an utterly 'altruistic,' if not 'good-hearted,' act: the importance of lobbyists lies in what they can give to the institution, in terms of knowledge and expertise. In other words, there is no explicit mention in this EP definition of interest groups 'attempting to influence' institutions in order to attain outcomes that are in their interest. Considering that, to date, there are approximately 4265 institutions accredited to lobby in the EP, one would have thought that an 'attempt to influence' was clearly part of their mandate.<sup>86</sup> Nor is there an exhaustive attempt to define 'public office holder' as seen in the Canadian legislation, for example. The above definition seems broad, if not vague, as it does not clearly define *who* can be the object of a lobbying strategy (i.e. it may involve not only MEPs, but also their staff as well as civil servants)

*What are the Responsibilities of the Quaestors and the Lobbyist?*

It is worth quoting in length the Rules of Procedures, 9(2) in order to better understand the responsibilities of the Quaestors and lobbyists in the registration process:

The Quaestors shall be responsible for issuing nominative (i.e. individual named) passes valid for a maximum of one year to persons who wish to enter Parliament's premises frequently (defined as five or more days per annum) with a view to supplying information to Members (i.e. MEPs) 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.

This register shall be made available to the public on request in all of Parliament's places of work and, in the form laid down by the Quaestors, in its information offices in the Member States.<sup>87</sup>

With this in mind, there are three main points brought out in Rules of Procedures 9(2). First, passes for a maximum of one year are granted by to those who lobby the EP, where lobbying is defined as 'supplying information to MEPs' (not, as above, an explicit attempt to influence) with a frequency of more than 5 days per year. These passes allow for access to the Parliament, and state the lobbyist's name and the organisation for which they work. Secondly, a subsequent register of all who lobby will be available to the public on the EP website. It is significant to note, however, that while names of lobbyists are available to the public, other information stated on the registration form, such as the 'nature of the lobbyists work,' the interests for which the lobbyist is acting, and which MEPs may have served as references for the lobbyists, is not available to the public.<sup>88</sup> Third, in order to get a pass, a lobbyist must respect the code for conduct and sign the register. With regard to the code of conduct, these are mostly either minimalist codes (such as stating the interests they represent, Article 3.1.b), or broad definitional concepts in which it would be difficult to penalise

anyone (such as refraining from action designed to obtain information ‘dishonestly’, Article 3.1.c), or actions that would be virtually impossible to trace (such as not to circulate for a profit to third parties copies of documents obtained from Parliament, Article 3.1.e).<sup>89</sup>

*What Information does the Lobbyist have to give when Registering with the EP?*

According to Rules of Procedure 9(1), the lobbyist must provide in writing general information surrounding the lobbyist’s activities, including the name of the lobbying organisation, the general interests (in terms of policies) of the organisation, the name of the lobbyist and his/her position, home address of lobbyist (plus a copy of his/her passport) and how long they seek to lobby the EP. Comparing the information needed to lobby the EP to that required to lobby the different jurisdictions in Canada and the United States, one can see that *less* information is required. For example, the lobbyist does not have to state: the name of each committee, department or other institution lobbied; the subject matters including the specific legislative proposal, bill or resolution, regulation, or program; whether or not there are contingency fees involved; and communication techniques used when lobbying. Nor does the lobbyist have to state whether or not he/she is a former public office holder, and nor are there any specific regulations surrounding ‘cooling off periods’ for former EP officials that may seek lobbying activity. Nor are there rules on complete individual spending disclosure (i.e. a lobbyist is not required to file a spending report) or on employer spending disclosure (i.e. an employer of a lobbyist is not required to file a spending report.) Taken together, one may argue that while rules stating an individual must register do exist, relatively fewer details have to be given when compared to the USA and Canada.

*What are the Potential Penalties that EP Lobbyists Face – The Lack of an Effective Gatekeeper.*

As stated in the Rules of Procedure 9(1), Annex 1, Article 2,

If after the appropriate request a Member does not fulfil his obligation to submit a declaration pursuant to (a) and (b), the President shall remind him once again to submit the declaration within two months. If the declaration has not been submitted within the time limit, the name of the Member together with an indication



of the infringement shall be published in the minutes of the first day of each part-session after expiry of the time limit. If the Member continues to refuse to submit the declaration after the infringement has been published the President shall take action in accordance with Rule 124 to suspend the Member concerned.<sup>90</sup>

Despite this, authors such as Bouwen have concluded that ‘it would be wrong, however, to conclude on the basis of the Rules of Procedure that the quaestors act as effective gatekeepers of the EP.’<sup>91</sup> Highlighting the importance of ‘informal governance’ in the lobbying registration process in the EP, and reflecting comments which were made by different officials we interviewed, Bouwen explains how enforcement of lobbying legislation is limited and how sanctions are insignificant:

In practise, hardly any requests for passes based on the Rule of Procedure (2) are refused. The responsible quaestor explained to me that he grants access to the different interests on the basis of two informal rules: 1. A maximum of 6 passes can be granted to the same organization, 2. Interests that constitute a security risk are not granted a pass. It is important to emphasize that neither the public or private character of interests nor their organizational form matters when the nominative passes are issued. The only sanction for interests that breach the code of conduct is the withdrawal of the pass issued to the persons concerned.... According to an administrator of the secretariat of the college of quaestors, the application of the rules over the last years has shown that passes are almost never withdrawn. In addition, the implementation of Rule of Procedure 9 (1) does not really shape the interaction between the private interests and the MEPs. The same administrator added that members do not take the declarations for the register very seriously and often do not update the required information. *Due to the quaestors' lenient implementation of the Rules of Procedure, it is impossible to conceive of the college of quaestors as the gatekeeper of the European Parliament* (emphasis added).<sup>92</sup>

### ***The European Commission: Towards Mandatory Lobbying Registration?***

With over 15,000 interest groups lobbying Brussels, of which over 2,500 have offices in the European capital, the Commission is a hot bed of lobbying activity. Yet, in the words of the Commission, at present ‘the European Commission runs neither an accreditation system nor a compulsory register of organisations that have dealings with the Commission’.<sup>93</sup> This lies in contrast to the EP that, as above, has an accreditation system whereby passes are needed in order to lobby the EP. This does

not mean, however, that little debate has taken place with regard to whether or not a registry should be adopted at the Commission level.

In fact, in 1992 the Commission stressed the need for an ‘open and structured dialogue with special interest groups’<sup>94</sup> and some 10 years later under the Prodi Commission the Commission’s ‘White Paper’<sup>95</sup> stressed the need for open and transparency in government. As Michalowitz argues:

With the White Paper, the European Commission has taken steps towards rendering its decision-making structures more open and predictable than before. As regards measures for increasing civil society involvement in decision making, the Commission envisaged in this document to grant a larger role to actors to whom it accepted as representatives of important civil society actors – churches, unions, (and) employers’ organisations... The idea was to define more clearly who should be consulted and who should not, and to make consulted actors accountable themselves.<sup>96</sup>

In response to the White Paper, CONECCS (Consultation, the European Commission and Civil Society) was subsequently developed. CONECCS is a ‘voluntary database’ where civil society organisation (including, for example, trade unions, business associations and NGOs) can sign up in order to provide ‘better information about (the Commission’s) consultative process.’<sup>97</sup> Nevertheless, and even in the Commission’s own words, CONECCS remains somewhat toothless:

CONECCS is used as an information source for Commission departments and the general public. However, there is no requirement or incentive for a civil society organisation to register. Equally, there is no disincentive against failing to register.<sup>98</sup>

To date, approximately less than 7 per cent of all lobbyists (i.e. less than 1,000 lobbyists of the over 15,000 that are estimated to lobby the Commission) have signed up to the voluntary registration system.<sup>99</sup>

The debate on whether or not to have a registry recently opened up again under the leadership of Anti-Fraud Commissioner Siim Kallas who has sought to start a consultation process on the theme by pursuing two related initiatives. First, spearheaded by Kallas, the Commission approved in November 2005 the so-called

‘Transparency Initiative’, which has a broad goal to foster the idea that ‘European leaders, businesses, civil society and citizens... are making policies in an open and inclusive way...’.<sup>100</sup> Secondly, ‘a Green Paper was published in May 2006 to launch a debate with all the stakeholders on how to improve transparency on the Community Funds, consultation with civil society and the role of the lobbies and NGOs in the European institutions’ decision-making process.’<sup>101</sup>

In the Green Paper, the Commission considered that a credible system for greater transparency in the EU would consist of a voluntary registration system and tighter self-regulation by lobbyists themselves in terms of their conduct. Voluntary registration was considered better than a mandatory one because it was felt that the latter ‘would take a long time to come into force and which could include many loopholes (although he did not fully specify exactly what the loopholes were.)’<sup>102</sup> More critical observers of the Commission’s Green Paper, such as Erik Wesselius of Corporate Europe Observatory, nevertheless have stated that ‘you need some good incentives to encourage lobbyists to sign up for a voluntary system, but the Commission’s proposals are very weak and unconvincing on this.’<sup>103</sup> Other critics have noted that not only has Kallas ignored the pros of mandatory registration as seen in cases such as Canada and the USA (as discussed in the final Section of this report), but also that he has seemingly back-tracked on his own proposals of summer 2005 when it was reported that ‘Kallas said he would “certainly” go ahead with plans for a central register of Brussels lobbyists.’<sup>104</sup>

## *Germany*

Germany operates a bicameral parliamentary structure, which is federal in nature. The Bundestag (lower house) consists of 662 members (328 directly elected from individual constituencies; 334 elected through party lists in each state so as to obtain proportional representation). Parties must win at least 5 per cent of the national vote, or three constituency seats, to gain representation. The Bundesrat (upper house) consists of members nominated by the 16 state governments (Länder, individually known as *Bundesland*).<sup>105</sup> All state governments have elected legislatures, which have considerable responsibilities including education and policing. The Bundesrat exemplifies Germany's federalist system of government. Members of the Bundesrat are not popularly elected but are appointed by their respective *Bundesland* governments. Members tend to be *Bundesland* government ministers. The Bundesrat has sixty-nine members. The *Länder* with more than 7 million inhabitants have six seats (Baden-Wuerttemberg, Bavaria, Lower Saxony, and North Rhine-Westphalia). The *Länder* with populations of between 2 million and 7 million have four seats (Berlin, Brandenburg, Hesse, Mecklenburg-Western Pomerania, Rhineland-Palatinate, Saxony, Saxony-Anhalt, Schleswig-Holstein, and Thuringia). The least populous *Länder*, with fewer than 2 million inhabitants, receive three seats each (Bremen, Hamburg, and the Saarland). This system of representation, although designed to reflect *Bundesland* populations accurately, in fact affords greater representation per inhabitant to the smaller *Länder*. The presidency of the Bundesrat rotates annually among the *Länder*. By law, each *Bundesland* delegation is required to vote as a bloc in accordance with the instructions of the *Bundesland* government.

### ***Bundestag Legislation***

Within the European Union the German Bundestag is currently the only parliament that has adopted specific formal rules on registration of lobbyists. Yet as Ronit and Schneider point out, in German politics, 'lobbying has always been and still is considered a foreign word with strong connotations of secretive policy processes where illegitimate influence is sought'.<sup>106</sup> Relations between government and different kinds of private actors (business, churches, trade unions) are never really referred to as lobbying. Each year a public list is drawn up of all groups wishing to

express or defend their views to parliament. Interest groups are required to provide the following information in order to register: their name and seat, composition of the board of management and directors, sphere of interest, number of members, names of their representatives and the address of their office. There is no requirement to provide any financial information. The register is publicly available on the internet.<sup>107</sup> Those wishing to lobby at either the Bundestag or the Federal Government (or both) must register on this public list. The procedure is overseen by the President of the Bundestag. The register is published annually and a registered association has access to buildings and may participate in the preparation of federal legislation. In addition, various types of less formal procedures exist to involve interest groups in the preparation of federal or regional legislation.

In principle, lobbyists cannot be heard by parliamentary committees or be issued with a pass admitting them to parliamentary buildings unless they are on the register. However, the Bundestag can also invite organisations that are not on the register to present information on an ad hoc basis. This in essence means that not being on the register is no real barrier to being in contact with parliamentary committees or members of the Bundestag. The Bundestag makes quite clear that consulting with interest groups and professional associations is very important when it comes to drafting legislation. Article 77, paragraph (1) of the Basic Law of the Federal Republic of Germany provides for legislative bills to be adopted by the Bundestag.<sup>108</sup> The Bundestag is of the view that many people should participate in the substantive elaboration of bills, but responsibility for enacting the bills must be assumed by those elected for this purpose. Once a bill is drafted by the civil service, the head of the division of the civil service with which the bill relates to will invite organizations and groups which will be affected by the draft law to attend discussions for an exchange of views and information material. In essence this means that representatives of interest groups will often learn that a bill is being prepared sooner than the Members themselves. In that context this also means that interest groups can influence the bill even at a very early stage. Ultimately such groups are involved before they meet members of the Bundestag, for instance at committee hearings, where they express their views and place their expertise at the Bundestag's disposal.<sup>109</sup> Ministers can receive delegations according to article 10 of the General Rules of Procedure of the Federal Government. According to Ronit and Schneider it is at this stage, 'when

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agendas are set, investigations are undertaken and laws drafted, that intense lobbying exists'.<sup>110</sup>

Article 23 of the Basic Law emphasises that the ministries should only cooperate with national federations, i.e. organisations that represent interests across the Länder and are thus compatible with the federal ministries. Reference is also made to the hierarchical level of organisations: consultation should be with peak associations primarily. The trade unions and business organisations are the prime example of this. As it currently stands these interests are organised in the following way. In Germany there are only 16 major trade unions, all belonging to the German Federation of Trade Unions. Their combined membership is around 12 million, constituting a good third of the total German employed labour force and about 80 per cent of all unionised employees. This peak organisation can be compared to ICTU in the Irish context. Moreover while there are hundreds of employers' organisations, these again are part of a larger umbrella body, the Confederation of German Employers' Associations, which deals with social policy, including collective bargaining. There are two other peak organisations in Germany: the Association of German Chambers of Industry and Commerce, and the Federation of German Industries.<sup>111</sup> The key point, though, is that all three organisations co-ordinate their activities and often function as a single entity, similar to IBEC in Ireland. Such association patterns may be one of the reasons why a large part of the interest group landscape in Germany has been organised around peak associations. Such peak organisation influence in the policy process dates back to 1967 when in response to the recession of 1966-67, the Economy Minister, Karl Schiller, moved towards a type of macroeconomic consensual planning by bringing together employers, trade unions, the Länder and the municipalities to manage the economy with the government in a form of concerted action.<sup>112</sup> While this particular form of planning only lasted into the early 1970s, the principle of trade unions and employers being central players in the economic policy process remains.

For the Bundestag involving interest groups in the decision making process is important as it brings specific expertise to the process, balances interests and wins the support of those affected by a legislative proposal without Parliament simply endorsing the opinion of one group or another. Yet the Rules of Procedure of the German Bundestag and Rules of Procedure of the Mediation Committee, Annex 2, The Regulation of Lobbyists in Canada, the USA, the EU institutions, and Germany

state quite clearly that entry on the list shall not entitle an association to obtain a hearing or a pass.<sup>113</sup> Appendix A, Example 6 shows what is covered by these rules. In light of this process whereby groups who represent certain sections of society more often than not get to examine potential legislation before members of the Bundestag, the registration of lobbyists is seen as making sure that the system is open and transparent. However, the rules are somewhat contradictory. On the one hand groups who register have no entitlement to be heard, while on the other, groups who have not registered simply have to be invited by the Bundestag in order to get a hearing. Moreover the Register only shows trade and professional organisations so various individual corporations who might lobby for instance do not have to register.

### *The Historical Context*

There is a long tradition of interest group involvement in the policy process in Germany. This involvement tends to be based around representation on a collective basis whereby lobbying has largely been pursued by interest associations whose contacts developed primarily with government.

Interest group organisation has developed systematically in Germany since the mid nineteenth century. Prior to 1871, a fragmented pattern of organised interests appeared. In the aftermath of the Franco-Prussian war and the unification of Germany this pattern was reshaped over the following decades through the emergence of new social interests in society and the creation of new state institutions. The early development of interest group representation in Germany points to the fact that a sincere effort to organise interests voluntarily along collective action lines was made.<sup>114</sup> Nevertheless at the same time the autocratic governments of the late nineteenth century from 1871 to the outbreak of war in 1914 strongly influenced the development of collective action through defining and indeed limiting the channels open to interest groups in the decision-making process. Yet these governments did introduce generous social reform and welfare legislation having had input from various associations. The period in German history from 1914 to 1945 is a dark one. The optimism of the Weimar Republic, after the bitterness left by Germany's defeat in World War One and her humiliation at Versailles, was displaced by the rise of Nazism and the horrors of World War Two. Nevertheless the rise of post war Germany and her place at the heart of Europe, both in terms of the European project

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and as an independent nation state is one of the great success stories of the modern world. From the formation of the Federal Republic of Germany in 1949, German democracy has proved remarkable durable and successful. A new constitution, the Basic Law was adopted in 1949. There are very few references with regard to the role of associations in the basic law with the most explicit references relating to the freedom of association, information, assembly and speech. Nevertheless a regulatory system for relations between private actors and associations and political institutions was formulated through the next decades. At times this has proved contentious. In the mid-1970s, there was a debate about whether a special law on associations should be adopted to regulate interest group behaviour. This arose when the Christian Democrats and the Free Democrats expressed concern that associations had gained too much power in society, partly through their access to parliament and government. Their explicit party political goal was to curb associational power in the policy process and reduce the influence of unions on the economy. Indeed, their main political opponents the Social Democrats saw the proposal as concerned less with associations in general than with trade unions. Instead of a regulation of associations, they proposed an economic and social council, to integrate key economic interest organisations into a corporatist body. This idea was rejected by the Christian Democrats and Free Democrats, as well as by a federal commission, which was then considering a constitutional reform.<sup>115</sup> The issue of what role organised interests should play in politics, was addressed without any new legislation being adopted and the federal-level register of associations, administered by the president of the Bundestag was thus established. It is necessary to emphasize that lobbying in Germany has been seen mainly as association lobbying throughout the decades, and German parties have, until recently, not been very shy to support candidates who have also some function with associations, so there are still many “built-in lobbyists” in parliaments.<sup>116</sup>

In essence the interplay between interest groups and parliamentarians in Germany is legislated by the provision of a wide corpus of legislation, which regulates the behaviour of members of parliament and the civil service. The German philosophy in terms of regulation is based around setting codes of conduct for members of the cabinet, members of parliament and civil servants. The rules for civil servants and elected representatives are relatively strict in terms of corruption avoidance. For

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members of Bundestag, this includes a number of rules making publication of membership of external bodies such as corporate boards for example, mandatory, and informing the president of the chamber of additional income (a very limited and non-publication-rule). Both the Bundestag and the 16 Landtage (state legislatures) have such codes, which require reporting of various gifts, travel expenses, and campaign and party fundraising.<sup>117</sup> On the other side of the equation two associations who organize lobbyists and public affairs professionals have implemented national-level voluntary codes of conduct for lobbyists. Both the Deutsche Gesellschaft für Politikberatung (German Association of Political Consultants) and the Deutsche Public Relations Gesellschaft (German Public Relations Society) assert that lobbying is an important part of the interaction between citizens and their government and in that context they maintain that lobbying needs to be open and transparent. Thus they advocate that all their members sign up to such codes of conduct.<sup>118</sup>

### *Länder Legislation*

There is no legislation regulating lobbying in Germany either at Länder level or Bundesrat level which is made up of members from the various Länder. Länder have their own constitutions, their own government and their own parliament but there is no legislation regulating lobbying at the Länder level. Each Bundesland has articulated its own rules of procedure governing members but that is the extent of any regulation.<sup>119</sup> Similar to the federal level, the right to give access to parliamentary buildings is a parliamentary privilege and can of course be seen as a form of lobbyist regulation. This so-called pass policy is administered in much the same way at Länder level as at federal level. We will examine a number of Länder to give us an idea of the way the system works.

In Hamburg, for instance, one of the Länder with the smallest populations alluded to in the introductory section, the “Geschäftsordnung der Hamburgischen Bürgerschaft” (Rules of Procedure of Hamburg Parliament), § 58, (2) regulates the presence of lobbyist groups or their representatives in public committee sittings and in essence states that the committees may give experts, lobbyist representatives and other persons entitled to public comment the opportunity for oral or written statement before the committee.<sup>120</sup>

Mecklenburg-Western Pomerania, one of the middle populated Länder operates on the same principle. Article six of the state constitution basically asserts that the state parliament is to listen to federations formed from municipalities in the consultation of appropriate bills which affects the interests of the municipalities directly.<sup>121</sup>

In Brandenburg, another middle populous Länder, Article 97 of the Constitution of Land Brandenburg regarding the Municipal Self Government states that the municipalities and associations of municipalities in the form of their local authority associations shall be heard in good time, before general questions are regulated by law or statutory instrument that affects them directly. According to Igor Borkowski of the Brandenburg parliamentary office, most of the lobbying organisations are working countrywide and the competences of the state parliaments are not wide enough to influence the interest of the lobbyists in that state parliaments mainly transfer legislations set by the EU-Parliament or the German Bundestag into state law.<sup>122</sup>

In North Rhine Westphalia, one of the large population Länder, there is no formal mechanism within the constitution for discussion between legislators and lobbyist. The committees of its parliament thus compiles different lists of organisations and invites experts of these organisations to hearings to get their views on different political issues and potential bills which are likely to affect their interests.<sup>123</sup>

Because of the peak associational framework of organised interests, regional effecting subjects are not subject to the same lobbying interests as the Bundestag. This seems to be a common interpretation of lobbying in the Länder and is the most likely explanation of the lack of legislation in the separate German Länder.

**Section 2: Analysis of CPI,  
Typology of Regulation Systems,  
Analysis of Responses to Survey Data and  
Interviews**

This section has three main objectives. The first is to attempt to classify the different regulatory systems outlined above in to different types, or typologies, by using a method of analysis that was developed by the Centre for Public Integrity (CPI) in the United States. In so doing, we can gain an understanding of how the different countries compare to each other from a theoretical perspective. It will be argued that, based on the analysis, there are three different regulatory types of systems at play: lowly regulated systems (which correspond to the EP and Germany), medium regulated systems (which includes all of Canada, as well as some jurisdictions in the USA) and highly regulated systems (which correspond to several states in the USA). Each of these systems are representative of ideal types from a theoretical perspective from the vantage point of how they compare to each other.

The second main objective is to attempt to gauge how ‘effective’ the regulations have been, based on survey responses from politicians, lobbyists and regulators as well as elite interviews conducted throughout the study. Here we seek to answer, how effective have regulations been in terms of ensuring accountability and transparency; what are different loopholes in the systems and how enforceable has the legislation been; and what costs and burdens does regulation impose on lobbyists and politicians.

The third objective is to offer a brief analysis on jurisdictions within Canada and the USA where there are no regulations at present. In particular, we seek to better understand why there has been no regulation implemented, whether or not respondents to the survey believed that such regulations should be adopted, and other questions asked in our survey.

## *Objective 1 – CPI and Typologies*

### *CPI Scores*

The Centre for Public Integrity in the United States is an organisation that, in its own words, produces ‘original, responsible investigative journalism to make institutional power more transparent and accountable.’<sup>124</sup> One of its projects includes analysing lobbying laws in the 50 jurisdictions in the United States that have lobbying legislation (the federal level and 49 states have legislation, with Pennsylvania being the only state not having any such regulations). The objective of their analysis is to measure the effectiveness of lobbying legislation in terms of its accountability and transparency. The detailed and rigorous process of analysis, that guides the CPI towards this objective, is referred to as the ‘Hired Guns’ method, which results in what we refer to as ‘CPI Scores.’ The CPI writes that

‘Hired Guns’ is an analysis of lobby disclosure laws in all 50 states. The Center for Public Integrity created a ranking system that assigns a score to each state (with lobbying legislation) based on a survey containing a series of questions regarding state lobby disclosure. The questions addressed eight key areas of disclosure for state lobbyists and the organizations that put them to work:

- Definition of Lobbyist
- Individual Registration
- Individual Spending Disclosure
- Employer Spending Disclosure
- Electronic Filing
- Public Access (to a registry of lobbyists)
- Enforcement and
- Revolving Door Provisions (with a particular focus on ‘cooling off periods’)<sup>125</sup>

As can be seen in Example 1 of Appendix B of this report – which offers an example undertaken by the CPI for the state of Washington – there are a total of 48 questions for all of the 8 sections. Based on analysis of the legislation in place, each question is assigned a numerical (i.e. point) value according to the answer that is given.<sup>126</sup> In short, the more points that are given, the ‘better’ is the legislation in terms of promoting concepts such as full disclosure, public access, and transparency. The maximum score a jurisdiction could attain is 100 points and the minimum score is 1

point (a score of zero would obviously be given to a state where there is no lobbying legislation in place). According to the CPI, if a jurisdiction attains a score of 60 points or more it is deemed to ‘pass’, based on the American grading system used in many public schools. Regardless of the somewhat arbitrary rule of what constitutes a ‘passing grade’ or not, as a general rule one can argue that the lower the CPI score, the less robust is the lobbying regulation system in place.

#### *Applying the CPI Scoring System to Canada, Germany and the EP*

It should be noted from the outset that it is common in political science analysis to apply a method of analysis used in one political system to other political systems, with the primary aim of gaining comparative insights. As a main objective of this study is to offer a comparative analysis of the lobbying legislation in place in different political systems in the world, it was felt that, given its robustness and detailed method of analysis, application of the CPI methodology would allow for greater insights with regard to how the different countries studied compared and contrasted to each other and how this could be theoretically classified.

As such, using the same CPI method of analysis, the project evaluates the CPI scores for Canadian, German and EU jurisdictions where there is lobbying legislation in place. The use of the CPI method of analysis is justified not only because it offers a framework for comparative analysis, but also because it offers a rigorous examination based on 48 questions across 8 different sections which are paramount in order to understand the nature of the lobbying regulations in place.

Appendix B, Example 2 offers an example of how the CPI score for Canadian federal lobbying legislation was calculated by this project’s research team. Again, as in the previous example of Washington State seen in Example 1 of Appendix B, point values are assigned to each of the 48 questions. Example 3 of Appendix B also offers an example of how the CPI was calculated for Germany, again by the research team.





*Summary of CPI Scores for all Jurisdictions*

With the above in mind, we similarly applied the CPI method of analysis to all other jurisdictions where lobbying legislation exists. To this end, Table 2.1 summarises our findings.<sup>127</sup> The table illustrates the CPI scores for each of the jurisdictions in descending order. It is important to note that because Länder level legislation is similar in all Länder to the German federal legislation, only the German Federal level is reported.

**Table 2.1: CPI Scores for USA, Canada, Germany and the EP**

STATE	CPI SCORE	STATE	CPI SCORE
Washington	87	Montana	56
Kentucky	79	Delaware	56
Connecticut	75	Arkansas	56
South Carolina	75	Louisiana	55
New York	74	Florida	55
Massachusetts	73	Oregon	55
Wisconsin	73	Vermont	54
California	71	Hawaii	54
Utah	70	Idaho	53
Maryland	68	Nevada	53
Ohio	67	Alabama	52
Indiana	66	West Virginia	52
Texas	66	Newfoundland	48
New Jersey	65	Iowa	47
Mississippi	65	Oklahoma	47
Alaska	64	North Dakota	46
Virginia	64	Canada Federal	45
Kansas	63	Illinois	45
Georgia	63	Tennessee	45
Minnesota	62	South Dakota	42
Missouri	61	British Columbia	44
Michigan	61	Ontario	43
Nebraska	61	Quebec	40
Arizona	61	New Hampshire	36
Colorado	60	America Federal	36
Maine	59	Nova Scotia	36
North Carolina	58	Wyoming	34
New Mexico	58	Germany	17
Rhode Island	58	EU Parliament	15

**Key**

-  America (Those in red represent jurisdictions where surveys were sent as discussed later; other states whose CPI scores are only reported are in black)
-  Canada
-  European Parliament
-  Germany

Based on analysis of the table, at least three observations can be made. First 50 per cent of the USA observations (which include 49 states with legislation plus the federal level) have scores of 60 points or more, where the American federal legislation has a score below most states. Second, all Canadian observations have scores that hover between 35 and 50 points. Finally, the two lowest jurisdictions are Germany and the European Parliament.

*Typology of the Different Types of Regulations Schemes.*

Given the above observation based on Table 2.1, and given that it is useful to gain a theoretical understanding of the different sorts of regulatory systems, we now consider developing a theoretical classification. It is useful to note from the outset that theoretically classifying different types of systems is common in natural and social sciences in order to gain a comparative view of dynamics at play. For example, natural scientists studying chemistry rely on a periodic table in order to better understand common traits in certain elements. And social scientists such as Esping-Anderson have used classification schemes in order to better understand, for example, different types of welfare systems in the western world.<sup>128</sup> Clearly, any classification scheme will inevitably be debated and challenged. But, using classification schemes and developing what Max Weber referred to as ‘ideal types’<sup>129</sup> does form the basis for helping us understand common trends as well as differences, even if the resultant conceptual apparatus does open up some debate.

Based on both the qualitative work done in the first section that analysed developments in the four political systems and the quantitative work done in the second section that examined the CPI data, we argue that there are three ‘ideal types’ of regulatory systems relative to each other:

- Lowly regulated systems,
- Medium regulated systems,
- Highly regulated systems.

The first, *Relatively Lowly Regulated Systems*, correspond to states that attained CPI scores between 1 and 19, and it particularly refers to Germany and the European Parliament. Such systems have the following characteristics:



- Rules on Individual Registration exist (i.e. lobbyist must register), but little details have to be given (such as in the case of the EP where lobbyists do not have to state which subject matter/bill/institution they are lobbying)
- There are no rules on individual spending disclosure (i.e. a lobbyist is not required to file a spending report) or on employer spending disclosure (i.e. an employer of a lobbyist is not required to file a spending report)
- There is a weak system for on-line registration and registration includes having to do some form of ‘paperwork.’
- Lobbyists lists are available to public, but not all details are necessarily collected/given (such as spending reports by lobbyists)
- There is little enforcement capabilities.
- No Cooling-Off period mentioned in legislation.

The second type includes *Relatively Medium Regulated Systems*. These correspond to those jurisdictions that attained a CPI score between 20 and 59 and include all the Canadian jurisdictions plus several American ones, including the American federal level. The characteristics of such systems include:

- Rules on Individual Registration exists and are relatively more tight than with ‘*Lowly Regulated Systems*’ systems (i.e. must state the subject matter/bill/governmental institution to be lobbied)
- Some, although not complete, regulations exist surrounding individual spending disclosures (such as gifts are prohibited and all political contributions must be reported; but, there are clearly loopholes in this regard such as free ‘consultancy’ given by lobbyists to political parties)
- There are no regulations for employer spending reports (i.e. an employer of a lobbyist is not required to file a spending report)
- There is a system for on-line registration (and in some cases, such as Ontario, is very efficient and effective, requiring low resources to use/update)
- Public access to a lobbying register is available and updated at very frequent intervals, although spending disclosures are not in public domain.

- In theory, a state agency can conduct mandatory reviews/audits, although it is infrequent that the agency will prosecute violations of regulations given lack of resources and information (for instance there is only one case on file in Canada, in Quebec in March 2006).
- There is a cooling off period before legislators, having left office, can register as lobbyists.

The third type of system is the *Relatively Highly Regulated Systems*. These jurisdictions attained a CPI score of over 60 (which the CPI deemed to be a passing grade as discussed above) and under 100. Neither Canada, nor Germany nor the EP is found in this category. Rather, it corresponds exclusively to 50 per cent of the American observations, all of which are US States, where the highest was Washington State. Characteristics of this type of system include:

- Rules on Individual Registration exist and are the tightest of all the systems (for example, not only is subject matter/institution required when registering, but also the lobbyists must state the name of all employees, notify almost immediately any changes in the registration, and must provide a picture.)
- Tight individual spending disclosures are required, in stark contrast to both lowly and medium regulated systems. These include:
  - a lobbyist must file a spending report,
  - his/her salary must be reported,
  - all spending must be accounted for and itemised,
  - all people on whom money was spent must be identified,
  - spending on household members of public officials must be reported, and
  - all campaign spending must be accounted for.
- Employer spending disclosure is also tight - unlike other 'lowly regulated' or 'medium regulated' systems, an employer of a lobbyist is required to file a spending report and all salaries must be reported.
- System for on-line registration exists.

- Public access to lobbying registry is available and updated at very frequent intervals, including spending disclosures, which are public (the latter of which is not found in the other two systems).
- State agencies can and do conduct mandatory reviews/audits, and there is a statutory penalty for late and incomplete filing of a lobbying registration form.
- There is a cooling off period before legislators, having left office, can register as lobbyists.

**Table 2.2: The Different Types of Regulations Schemes**

	<b>Lowly Regulated Systems</b>	<b>Medium Regulated Systems</b>	<b>Highly Regulated Systems</b>
<b>Registration regulations</b>	Rules on individual registration, but few details required	Rules on individual registration, more details required	Rules on individual registration are extremely rigorous
<b>Spending disclosure</b>	No rules on individual spending disclosure, or employer spending disclosure	Some regulations on individual spending disclosure; none on employer spending disclosure	Tight regulations on individual spending disclosure, and employer spending disclosure
<b>Electronic filing</b>	Weak on-line registration and paperwork required	Robust system for on-line registration, no paperwork necessary	Robust system for on-line registration, no paperwork necessary
<b>Public access</b>	List of lobbyists available, but not detailed, or updated frequently	List of lobbyists available, detailed, and updated frequently	List of lobbyists and their spending disclosures available, detailed, and updated frequently
<b>Enforcement</b>	Little enforcement capabilities invested in state agency	In theory state agency possesses enforcement capabilities, though infrequently used	State agency can, and does, conduct mandatory reviews /audits
<b>Revolving door provision</b>	No cooling off period before former legislators can register as lobbyists	There is a cooling off period before former legislators can register as lobbyists	There is a cooling off period before former legislators can register as lobbyists

***Objective 2 - Summary of Findings from Surveys and Elite Interviews***

In order to better understand how effective the legislation has been in the different countries having lobbying legislation and different systems discussed above, elite surveys were sent in the Fall of 2005 to lobby groups, politicians, and public sector

administrators in Canada, the USA, Germany and the EP. Surveys were particularly sent to: the federal and provincial jurisdictions that have lobbying legislation in Canada, including Nova Scotia, Quebec, Ontario, and British Columbia<sup>130</sup>; the federal level and a representative sample of states in the USA, which included Washington, New York, California, Texas, Georgia, Colorado, Florida, Illinois<sup>131</sup>; and actors working at both the federal German level and the EP. For illustrative purposes, Appendix C shows a copy of the survey and the questionnaire sent out to Canada.

The total number of surveys sent by post between October and December 2005 to politicians, lobbyists and public sector administrators (which were generally lobbyist registrars or regulators) in jurisdictions where there is lobbying legislation was 1808, of which 1225 were sent to lobbyists, 91 to public sector administrators, and 492 were politicians, all of whose names were searched during the Summer/early Fall of 2005 using the internet. Given that surveys sent out by email generally yield a lower response rate, hardcopies of the surveys sent by post was the preferred option taken in this study.

Taking all four political systems together, a total of 140 surveys were completed: 6.5 per cent of all lobbyists, 19.8 per cent of all public sector administrators, and 8.7 per cent of all politicians responded. 5.5 per cent of all lobbyists approached in the USA responded, while this number was 11.4 per cent in Canada, 2.2 per cent in the EU and 5.5 per cent in Germany. 8.5 per cent of all politicians in the USA responded, while this figure was 6.8 per cent in Canada, 3.7 per cent in the EP, and 7.6 per cent in Germany. Between 10 and 15 per cent of all public sectors (regulators) responded for all political systems. Several respondents did write back stating that although they expressed interest in the study, they were unable to/did not want to fill in the questionnaire: this in part can explain why the response rates to the survey was not higher, especially for politicians. This is reflective of the idea that some may have felt, as expressed to us later in elite interviews, that the subject matter was of some sensitivity and they did not want to state their positions (even though anonymity was guaranteed throughout the process). Another source of error which could explain why the response rate could have been higher is because several respondents had either moved, changed address, or (in the case of politicians) changed portfolios or retired from office.

When filling out the survey, respondents were also asked if they would be willing to partake in a follow up interview with the authors. As such, the authors held over 25 on-site interviews in Canada and the USA and held several telephone interviews with officials in Brussels and Germany in March and April 2006.

Taking both the surveys and the elite interviews, we consider the respondents' answers to the various survey questions, while attempting to see if there are correlations between the overall responses to questions and the 'type' of system the respondents come from. We recognise from the outset that, when compared to other large N social science studies done, the numbers of respondents is relatively small. It was always our intention to gain from the data an indication of certain trends and relations, not to purport to do a 'large N' study per se which is based on robust quantitative methods of analysis. From this perspective, this section simply seeks to better understand some trends and relations in the data in order to gain some insights into the effectiveness of lobbying legislation across the different types of systems.

*Knowledge of Respondents:*

The first main question (Question 6 of the survey) asked the respondents if they considered themselves to be knowledgeable on the relevant legislation pertaining to regulation of lobbyists? In terms of responses:

- Over 86 per cent of elected representative regarded themselves knowledgeable
- Over 83 per cent of public sector administrators considered themselves knowledgeable
- Of lobby groups, 77 per cent saw themselves as knowledgeable, with the only outlier being Germany where almost half were neutral on the issue, and slightly more than 50 per cent did not consider themselves knowledgeable.

We also sought to see if there are correlations between answers to this question (and other questions, discussed below) and our classification of 'ideal types' of systems discussed above, namely lowly, medium and highly regulated systems. In order to do this, and in terms of method of analysis, we first compressed all the responses from

the question into the three categories, defined (as above) by CPI ranges of 0-19, 20-59, and 60-100. Then we carried out cross-tabulations (Pearson chi-square). Pearson chi-square tests the hypothesis that the CPI ranges and the answers to the questions are independent. The lower the significance value for a correlation the less likely it is that the two variables are independent. In other words, the lower the score the more likely it is that they are related. With this kind of test typically a significance value of less than 0.05 is considered significant.

When the cross-tabs were done for this question, a correlation was found: actors in higher regulated systems are more likely to strongly agree with the idea that they are more knowledgeable about the legislation. This makes some intuitive sense because if an actor is in an environment where there are more robust 'rules,' the more likely they will feel they have the responsibility to learn what they are. The opposite is also true as reflected in the responses from lobbyists in Germany: the less robust are the regulations, then the less likely that respondents would feel responsibility to learn about the rules as their impact is minimal in any case.

#### *Lobbying Legislation and Accountability*

Question 7 of the survey sought to measure whether or not the respondent felt that the overall regulations help ensure accountability in government. The following responses were made by all respondents in all four political systems:

- Over 76 per cent of elected representative felt that lobbying legislation helped ensure accountability.
- However, only 50 per cent of public sector administrators felt that lobbying regulations ensured accountability. Regulators at the federal level in Canada represented an outlier here, with none considering lobbying regulations as helping to ensure accountability.
- Above 71 per cent of lobby groups regarded lobbying legislation as helping to ensure accountability.

When performing the cross-tabulations to see if there is a correlation between CPI scores and the responses to this question again we saw a correlation: actors in higher

regulated systems were more likely to argue that the system ensures accountability. Again, this does make intuitive sense given that tighter regulatory systems promote accountability precisely because the rules are stronger. On the other hand, the weaker that the regulations are, then the more likely that it will have less effect in terms of promoting accountability.

In a similar vein, question 12(a) sought to measure whether or not the respondents felt that having public access to an official list of lobbyists ensures accountability. The following answers were given across all four countries:

- Almost 70 per cent of elected representative considered public access to an official list of lobbyists as ensuring accountability.
- Of public sector administrators 80 per cent felt that public access to an official list of lobbyists ensures accountability.
- However, only 60 per cent of lobbyists were inclined to regard public access to an official list of lobbyists as ensuring accountability.

Turning to the cross-tabs for this question, again a correlation was seen: respondents in higher regulated systems were more likely to strongly agree that having an official list of lobbyists ensures accountability than those in lower regulated systems.

When cross tabs were also run on whether or not there was correlation between CPI scores and whether or not public access to an official list of lobbyists was in fact freely available (question 11), a correlation was also found: higher regulated systems guarantee public access and knowledge of who is lobbying the government. This indicates that higher regulated systems foster transparency. Taking both observations together, one interpretation that can be made is that higher regulated systems are more likely to have safeguards that ensure at all times that a list of lobbyists is in place and is readily accessible by internet to members of the public. Having this list readily available ensures transparency and fosters accountability.

Finally, when asked in question 13 (a) if reviews or audits by agencies of lobbyists are effective in ensuring accountability, the responses were as follows for all political systems where there is lobbying legislation:

- Almost 38 per cent of elected representative held neutral views on this question, while only 43 per cent regarded reviews or audits of lobbyists by agencies as effective in ensuring accountability.
- Over 58 per cent of public sector administrators expressed themselves neutral on this question.
- Only about 40 per cent of lobby groups agreed that reviews or audits of lobbyists by agencies are effective in ensuring accountability. Lobbyists were more inclined than the other two groups to express neutral sentiments and, in some cases, even disagree.

Unlike the previous two questions on accountability, there was no correlation when cross-tabs were run: this means that there is no relationship between the type of regulation system in place and whether or not reviews/audits ensure accountability.

#### *Lobbying Legislation and Transparency*

Beyond Question 11 discussed above that showed that higher regulatory systems promote transparency in the political process through ensuring that public lists of lobbying groups are freely available, Question 8 sought to measure whether or not specific rules surrounding individual spending disclosures help ensure transparency.

The response included:

- Over 93 per cent of elected representative agreed, or strongly agreed, that specific rules surrounding individual spending disclosures help ensure transparency.
- Almost 65 per cent of public sector administrators agreed or strongly agreed.
- Over 75 per cent of lobby groups agreed or strongly agreed, but there is a slightly greater tendency towards neutrality here (even though it is statistically insignificant).



No correlation was found between CPI scores and transparency with regard to individual disclosures: mostly all respondents believed that individual spending disclosures help promote transparency. However, it is significant to note that of all systems, only the highly regulated ones have the strongest rules surrounding individual and employer spending disclosures, such as whether or not a lobbyist is required to file a spending report, if salaries are to be reported by lobbyists on spending reports, and whether or not the recipient of the expenditure is required to be identified (see for, example, Appendix B, Example 1 for Washington State). While this finding suggests that respondents from highly regulated systems are satisfied with regulations surrounding individual spending disclosures, the survey finding may suggest one of two things for those respondents from lowly and medium regulated systems. Either they would not unreasonably want to see more rules surrounding individual spending disclosures forming part of their legislation, or they like the idea ‘in theory,’ but do not want to see it form a full part of their legislation.

#### *Loopholes in the Legislation and Problems with Enforcement*

In our view, one of the most interesting findings in the research we carried out relates to loopholes. In Question 9 (b) we asked the respondents whether or not they thought that there are loopholes in the system that would allow individual lobbyists to give/receive ‘gifts’ regardless of the legislation in force?

- In Germany and the EP, 35 per cent of elected representatives agreed that there are loopholes in the system that allow individual lobbyists to give/receive ‘gifts.’ However, in the American jurisdictions such as New York and California, the opposite is the case.
- Public sector administrators tended to be more neutral or disagreed with this question (78 per cent). Only at the federal level in Canada do administrators hold that there are loopholes.
- In jurisdictions such as Germany, 58 per cent of lobbyists held that there are loopholes in the system, while the remainder were neutral on the issue. In states such as New York and California, lobbyists are much less likely to agree with the view that there are loopholes .

Clearly, there was also a correlation in the data that found: the more lowly regulated the system, the more likely it was perceived that there are loopholes in the system. This again makes some intuitive sense: if there are tighter rules, it is less likely that you can find a 'loophole' in them. However, it is important to note that several of the interviewees did mention the idea that, 'regardless of the legislation in force, there are *always* ways of getting around it,' even in highly regulated systems; or, 'where there's a will, there's a way!'<sup>132</sup> For instance even in Washington State, the highest regulated state in the entire study a CPI report in August 2005 found that the spirit of the state's exemplary disclosure law was being undermined by lobbyists who report their clients' purposes on disclosure forms in vague, non-descriptive terms.<sup>133</sup> This view was reiterated by both lobbyists and regulators in interviews held in Olympia, Washington State in March 2006. A senior official of the Public Disclosure Commission (PDC), in Washington State stated that while the vast majority of lobbyists and those they lobby on behalf of were happy to obey the rules, they were always a few who would try to flaunt the rules.<sup>134</sup> If we take the case of Canada, as a further example, legislation exists that states that only \$1,000 can be given to any political party during a campaign. But, ways of 'getting around this' include: free consultancy work done by a lobbyists for a political party during an election with the view of attaining pay-offs if the party gets elected; or helping 'fund-raise' for a political party by holding special private events (such as a fund-raising supper).

The problems of loopholes relates to the other problem of enforcement. Although there is little enforcement capabilities in lowly regulated systems, most legislation in highly and medium regulated systems encompasses a system of financial fines if, for example, a lobbyist has not registered. But how effective are registrars in enforcing that lobbyists register in medium and highly regulated systems? In interviews with Canadian regulators, when asked if they thought that there are lobby groups at present who are working that have not registered the answer was 'probably.' But, the response of one that follows illustrates the effectiveness of enforcement:

Some lobby groups are not registered because they are ignorant of the rules. Others, such as some lawyers, don't realise that they are lobbyists. If I receive a complaint from a third party, I investigate it... but I have usually found that 'human error' is the reason for not having registering.... (there is no maliciousness). Registering helps

increase the credibility and trust that citizens have in lobby groups and politicians alike.<sup>135</sup>

A similar point was made in Washington State, where the PDC stated that much of the problems in relation to non registration was due to human error and was in no way malicious, those that were malicious were quickly found out and punished, as the registration system has gained widespread credibility and those who hire lobbyists demand that their lobbyists be registered.<sup>136</sup> Interestingly, many lobby groups do register not only because it is their duty to do so in jurisdictions where registration is compulsory, but also because it is good ‘public relations’ for them. It is also in their own ‘self-interest’ to register. As several lobbyists from NGOs in medium and highly regulated systems mentioned, with the registration system they could illustrate to their members what they were doing and what their own lobbying activities were at the local government level. Other lobbyists said they happily registered in order to show other lobbyists and consultants what ‘they were doing,’ or ‘showing how successful they are in terms of the work that is being done.’ From this perspective, enforcement is not so much of a problem because lobby groups strategically use the registry as a means to legitimate what they are doing and to get the ‘message across’ to citizens and competitors alike.

*What are Potential ‘Participatory’ and ‘Financial’ Costs.*

There are two types of potential costs. The first relates to ‘participatory costs,’ or, the consequences of having a registry in terms of potentially decreasing citizen participation. The second relates to ‘financial costs,’ or, costs that are related to setting up and maintaining a registration system.

Turning to ‘participatory costs,’ one idea is that having a registry of lobbyists makes ordinary citizens feel inhibited from approaching their local representatives alone. This is most associated with the British Committee on Standards in Public Life, more commonly known as the Nolan Committee which reported in May 1995 and did not propose a mandatory register of lobbyists on the grounds that such a register would confer formal status on lobbyists and give the impression that the only successful way to approach MPs or Ministers in the British case was through a registered lobbyist:

To establish a public register of lobbyists would create the danger of giving the impression, which would no doubt be fostered by lobbyists themselves, that the only way to approach successfully Members or Ministers was by making use of a registered lobbyist. This would set up an undesirable hurdle, real or imagined, in the way of access. We commend the efforts of lobbyists to develop their own codes of practice, but we reject the concept of giving them formal status through a statutory register.<sup>137</sup>

When we asked in Question 10 whether or not the respondent agreed or disagreed with the statement, and something that was confirmed by all interviewees conducted later, virtually all of the 140 respondents disagreed with this. The American respondents were particularly disdainful of this view. In one interview with a senior legislative aide in Pennsylvania, the interviewee greeted the question with the words: ‘you’re joking right?’ When informed that this was indeed what the Nolan committee recommended in Britain he smiled and stated that in the American system if a constituent banged on a legislator’s door and the said legislator was with a lobbyist, the lobbyist would be ‘put out on his ear’ and told to wait. While there might be an element of wishful thinking in this, it does reflect the importance of the constituent, and the every vote counts principle in American politics. While the culture of lobbying is enormously strong as outlined in the section on the system in the United States, the culture of constituents approaching their representatives is equally strong and there is no evidence to suggest that any lobbying legislation has inhibited ordinary citizens from going to see their representatives about ordinary issues.<sup>138</sup>

Turning to ‘financial costs’, there is no doubt that having any regulatory system in place is going to impose financial responsibility for the state. For example, in the case of the Ontario government, the development of software required to keep and monitor the registry had an estimated one-off cost of \$50,000. However, if the technological system in place is strong, as is the case of Ontario, very few administrators are required to monitor it. But this does not mean that having a system in place can be done without any administrators: if it is to be effective, public sector administrators have to be devoted to the task. According to the system, there may be from at least one person working half-time at the registry (as seen in Nova Scotia), to over 22 people working the Public Disclosure Commission in Washington State. Regardless of these financial costs when running a lobbying registry, however, and as will be

discussed in more detail in the final section the obvious benefit is increased accountability in the political system. This can be seen by the position of Washington State in the CPI rankings.

*Does Having Regulations Impose Burdens on Lobbyists and Politicians?*

The elite interviews reveal that lobbyists do, indeed, have to dedicate some time to registering, thus representing somewhat of a ‘burden’ if one agrees with the idea that ‘time is money.’ In short, a lobbyist must ensure and spend the time necessary to fill out the forms required by the jurisdiction wherein he/she is lobbying. They also must ensure that they have not given incorrect information. And in some cases, such as highly regulated systems, the lobbyist has to give significant information which may require extra manpower and resources of his/her company. At least one lobbyist interviewed has even said that his group does not have the time and manpower necessary to register in all jurisdictions. This means that some (albeit, very few) organisations in medium and highly regulated systems feel that registration has not always been possible, even if it also means that they have had to break the law by not registering.

Nevertheless, virtually all of those interviewed, especially in medium and highly regulated systems, have stated that registering is worth it, regardless of the ‘burden’ it may have imposed. This is for at least three reasons.

- Having a registry legitimises lobby groups as actors in the political process. Further, citizens can openly see what lobby groups are doing and who in government they are talking with, meaning that over time citizens become less cynical about the work of and nature of lobby organisations. All of this helps ‘professionalize’ lobby group activity.
- From a lobbyist’s point of view, a registry prevents undue influence from other competing lobbyists – having a public registry helps ensure transparency in terms of ‘who is talking to who’ and all lobbyists benefit the more transparent the overall process is.

- As seen in cases of NGOs for example, a registry allows members of interest groups and civil society organisations to see what their organisations are doing.

When turning to politicians, having lobbying legislation as seen in the different types of systems imposes virtually no burdens whatsoever. Politicians are *not* responsible for making sure lobbyists are registered. Nor do they have to keep record of whom they talked to. Nor can they be fined if a penalty is incurred by a lobbyist who, for example, has not registered. Certainly, there are some politicians in the various jurisdictions who would like to identify beforehand whether or not a lobbyist they are going to meet is registered. But, it is not the politicians' responsibility whether or not she talks with a lobbyist who is not registered.

### ***Objective 3 - Summary of Findings for States Without Legislation.***

As seen in Section 1, some of the political systems studied in this report have jurisdictions (in the case of Canada and the USA) or institutions (in the case of the EU) that have no lobbying legislation in place. This includes, in the case of Canada, provinces such as Prince Edward Island, New Brunswick, Manitoba, Saskatchewan, and Alberta; in the case of the United States, the state of Pennsylvania; and in the case of the EU, the European Commission and the Council. Analysing how respondents working in these jurisdictions/institutions feel about this issue is of some value in order to better gauge why lobbying legislation was not pursued and whether or not it is worth pursuing.

As such, as seen in Appendix D, in Fall 2005 a second survey was sent out to lobbyists, public sector workers/civil servants (i.e. in the case of the EU these are those who work in various DGs in the European Commission and, with regard to the Council, Deputies in the Permanent Representatives of each of the member states in the EU), and elected officials (from the Canadian and American jurisdictions only; there are no 'elected officials' *per se* that form part of the Commission or the Council). A total of 461 surveys were sent out (209 to lobbyists, 120 to civil servants and 132 to politicians) and 44 were returned. Thus, the overall response rate was

approximately 9.5 per cent, with lobbyists responding at a rate of approximately 5.3 per cent, civil servants at 18.3 per cent, and politicians (from Canada and USA) at 8.3 per cent. As in the case of the aggregate data seen in surveys sent to states with lobbying legislation, public service workers/civil servants represented those with the highest response rate of close to 20 per cent. There was some variation in response rate depending on the jurisdiction. For example, Pennsylvania represented one of the lowest overall response rates with a rate of 4.05 per cent, while Prince Edward Island represented the highest Canadian jurisdiction with an overall response rate of 50 per cent. The Commission had a response rate of slightly over 16 per cent (10.9 per cent of all lobbyists surveyed and 20 per cent for officials working in various DGs) and Council representatives had a rate of over 9.1 per cent. We consider briefly the various responses to the questionnaires.

#### *Why is there no Legislation?*<sup>139</sup>

Question 6 of this survey sought to discover the main reasons why these jurisdictions had not introduced lobbying legislation. The main answers respondents could have given include:

- Political actors are opposed to it
- Lobby groups are opposed to it
- ‘Self Regulation’ is considered sufficient
- No need for legislation because lobbying activity is minimal.

In terms of responses:

- Elected representative were widely divided on this issue, but the majority (36.4 per cent) argued that there was no need to have this legislation as lobbying activity was minimal in their jurisdictions. This is mostly due to the high number of responses from small jurisdictions in Canada such as PEI and New Brunswick where several claimed that lobbying activity was weak. It is also important to note again in this regard that no ‘politician’ was given this survey in the EU (as mentioned above), so this is not necessarily reflective of EU politicians’ responses.

- Over 57 per cent of public sector administrators said that lobbying legislation was not pursued because it was generally perceived that self-regulation was sufficient. This is particularly the case from members of the EU and is a consistent finding with the official view as reported in the 2006 Green Report of the Commission.
- Almost 46 per cent of lobby groups felt that self-regulation was sufficient.

*Should there be Lobbying Legislation?*

We then turned to a more normative question, asking respondents whether or not lobbyists should be required to register when lobbying public officials (Question 7).

The responses were as follows:

- Elected representative in Canada and the USA broke down almost evenly between strongly agreeing, agreeing, and being neutral on this issue.
- Almost 75 per cent of public sector administrators agreed, or strongly agreed, that there should be lobbying legislation. However, about 10 per cent disagreed. This is an interesting finding when compared to answers to Question 6: although the main reasons for a lack of regulation in the EU Commission is based on the view that self-regulation was sufficient, the data suggests that many EU officials who responded held the normative view that lobbyists should be required to register.
- Lobby groups did not so much strongly agree as agree with this issue, and about 45 per cent were either neutral, disagreed or strongly disagreed (where the majority of such dissenters were neutral.)

Less than 10 per cent of all respondents agreed with the statement that a register of lobbyists makes ordinary citizens feel inhibited from approaching their local representatives alone (Question 11). This finding is consistent with previously mentioned findings above for the same question on the first survey when respondents from states with lobbying legislation were asked the same question.



### *Other Questions on the Second Survey*

In terms of other questions on the survey, and again with regard to a more normative question of whether or not a list of all lobbyists (and the amount they have spent on their lobbying activity) should be freely available to the public (Question 10), the responses were as follows:

- Almost 64 per cent of elected representatives (from the USA and Canada) stated that such a list should be required ‘by law, at all times.’
- Public sector administrators were evenly mostly split between, ‘by law at all times,’ ‘by law upon request to the state or lobby group,’ and on ‘a voluntary basis at the state or lobby group sees appropriate’.
- Similar to civil servants, most lobbyists were mostly split between, ‘by law at all times,’ by ‘law upon request to the state or lobby group’, and ‘on a voluntary basis’ at the state or lobby group sees appropriate. Very few argued for never.

When asked (in Question 12) whether or not an independent agency should have the power to pursue mandatory reviews or audits of lobbyists, responses were as follows:

- 27 per cent of elected representative in the USA and Canada stated always and 54 per cent stated that a mandatory review should occur only when deemed necessary. Close to 20 per cent stated ‘never.’
- Public sector administrators held similar opinions on this to the elected representatives.
- While only 10 per cent of lobbyists agreed that an independent agency should always have the power to pursue mandatory reviews or audits of lobbyists, 45 per cent felt they should have this power only when deemed necessary. However, over 45 per cent felt they should *never* have this power. This represented a significantly different (mixed) view to that of the other two groups. This is perhaps reflective of lobby groups desire to maintain the independence from reviews/audits that they presently enjoy in their unregulated jurisdictions.

When asked whether or not penalizing unprofessional lobbying behavior (such as incomplete filing of reports) acts as a deterrent against such behavior (Question 13):

- Over 60 per cent of elected representatives agreed with this, almost 20 per cent were neutral and 20 per cent disagreed.
- Public sector administrators were similar in their opinions on this to elected representatives.
- Over 66 per cent of lobbyists either strongly agreed or agreed with this, while 33 per cent were neutral, and none offered a negative response.

And finally, when asked if legislation regulating lobbying activity were implemented, then transparency, accountability and effectiveness in public policy-making would be improved (Question 14).

- Over 72 per cent of elected representatives either strongly agreed or agreed with this, while 9 per cent were neutral and 18 per cent disagreed.
- Over 46 per cent of public sector administrators agreed or strongly agreed, 33 per cent were neutral, and the rest disagreed.
- Lobbyists mostly agreed, but none strongly agreed; almost 33 per cent were neutral and 10 per cent disagreed.

Taken together, a majority of all respondents that were lobbyists and elected representatives in states without lobbying legislation believed that lobbying legislation would increase public policy accountability, transparency and effectiveness. This finding is consistent with previously mentioned results for states with lobbying legislation where both types of actors had similar views (i.e. see results for Question 7 for the first survey given to states with lobbying legislation). Likewise, public sector administrators, both in states where there is lobbying legislation and those where there is not, remain somewhat split, with some agreeing and either being neutral or disagreeing with the idea that lobbying legislation ensures accountability. Pennsylvania is somewhat of an outlier here in that all interviewees who included legislative aides, officials in the state government, lobbyists and academics stated that

the view across Pennsylvania from lobbyists and those that are lobbied was that as a state Pennsylvania needed to enact some sort of lobbying disclosure as soon as possible. There were two reasons for this; one was that by not having legislation Pennsylvania was seen as being somewhat of a 'laughing stock' across the nation; and two was because 'while no one is really opposed to it, there is a view that it obviously suits some people and groups and in that context the sooner Pennsylvania gets constitutional legislation the better to level the playing pitch'.<sup>140</sup>

# Conclusions

Assessing the regulation of lobbying activity in Canada, the USA, the EU, and Germany can best be understood through a framework of analysis that categorises lobbying systems as lowly regulated, intermediately regulated and highly regulated. One of the main findings of this report is that none of the four lobbying jurisdictions can be fully classified as highly regulated. The systems in place at the American and Canadian federal levels can be classified as intermediately regulated, while Germany and the European Parliament can be deemed to have lowly regulated lobbying systems. Only in the USA at state level can we see examples of highly regulated systems with 25 of the 49 states that have lobbying legislation coming into this category; the other 24 states we deem to be intermediately regulated. In Canada, we assess the five provinces that have lobbying legislation to be intermediately regulated.

### **Lowly Regulated Systems**

The main conclusion to be drawn from lowly regulated systems is that rules on individual registration exist but little details beyond registering as a lobbyist are in place. Moreover while lobbying lists are available for public scrutiny, details such as spending reports are not.

The main advantage of lowly regulated systems is that they provide for registration of lobbyists where none previously existed. Such disclosure, where lobbyists are in effect self-policing, although part of a central register, results in a system where one does not have constant ethical watching and regulations that would make it extremely difficult to lobby in the normal manner. We conclude that lobbyists themselves in the jurisdictions under study in this report are not necessarily against a register of lobbyists. The bureaucratic red tape involved is relatively minor and the maintenance of such a register and issuing of passes for lobbyists is not overtly burdensome for the state.

If lobbying is about gaining access to decision makers, one of the disadvantages of lowly regulated systems is they tell the public very little about what type of influence lobbyists have on political systems. So while having a register of lobbyists tells the public who the lobbyists are, by not making such lobbyists reveal whom they are in effect lobbying, or what they are lobbying on, the public is none the wiser as to the pressures being brought on decision makers by paid lobbyists. Accordingly,

The Regulation of Lobbyists in Canada, the USA, the EU institutions, and Germany 85

accountability is less likely to be ensured in a lowly regulated system compared to the other ones.

### **Intermediately Regulated Systems**

The main conclusion to be drawn from intermediately regulated systems is that lobbyists must register not only themselves, but also must state the institutional actors they are lobbying, and the subject matter that they are engaged in. Some regulations exist surrounding individual spending disclosures. Gifts are prohibited and all political contributions must be reported but there are no regulations for employers spending reports, and lobbyist spending disclosures are not available for public scrutiny.

The main advantage of intermediately regulated systems is that they provide the public with access to a register of lobbyists, and those who are lobbied, by requiring the lobbyists to provide information on whom they are lobbying within government, whether elected representative or officials. While there is more information to be provided to the central registry, resulting in obviously more work, nonetheless in our elite interviews with actors in such systems, the overriding view was once such a system was set up, both lobbyists and administrators found it easy to deal with and quickly became accustomed to such a system. Online registration, such as that which exists in Ontario, which is clearly efficient and effective, and requires little resources to use and update would seem to be the way forward in this regard.

The main disadvantage of intermediately regulated systems is that from a transparency perspective lobbyists do not have to declare who their employers are. In that context the public, while it can find who is the lobbyist and who is the lobbied, cannot find out who is employing the lobbyist. Moreover spending disclosures are not in the public domain. This can clearly lead to loopholes, which can be exploited within such systems whereby for instance lobbyists can provide so called 'free consultancy' to political parties.

## **Highly Regulated Systems**

The main conclusion to be drawn from highly regulated systems is that lobbyists must disclose their employers as well as the institutional actors they are lobbying and the subject matter they are engaged in. Tight individual spending disclosures are required of lobbyists, and crucially employers of lobbyists. Scrutiny of spending disclosures is open to the public and there are much more significant enforcements of breaches of legislation, and penalties for such breaches than at the low or intermediate level.

The main advantage of highly regulated systems is that from a public probity perspective they offer the most comprehensive solution to ensuring that lobbyists cannot unduly influence elected representative or public officials. By disclosing, the lobbyist, the actor who is lobbied, and those employing the lobbyist, there is very little scope for malfeasance in public policy making through the lobbying process. Moreover having mandatory spending disclosures and significant reviews or audits of lobbyists further limits the potential for lobbyists to engage in illegal acts, simply because it is very difficult to do so. While, as the Abramoff scandal shows us, it is practically impossible to outlaw illegal acts if certain individuals are committed to engaging in them, nevertheless having a comprehensive system of lobbying regulation and spending disclosure should reassure the public that lobbyists are not able to have improper influence on the political system. The obvious benefit therefore is increased accountability in the political system.

The main disadvantage of highly regulated systems is that by imposing such a comprehensive nature of regulation, it can cast doubt on what is entirely legal behaviour. Lobbying, as we point out in our introduction is a central element, of political life in liberal democracies. By imposing such rules and regulations on lobbyists, governments could potentially be accused of acting with undue zeal. Another potential disadvantage is that putting in place such a system comes with a financial cost. Washington State, for instance, with a population of just under 6 million people employs 25 people in its Public Disclosure Commission, which results in high costs. Lobbyists within such systems do not complain overtly about bureaucracy and red tape but there can be little doubt that such a system places burdens on those who have to file regularly and also on the state, which is charged with maintaining such a system.

## **Designing a System of Regulation**

One of the key findings of the Nolan report into standards in British public life was that if a register of lobbyists was set up, citizens would feel that the best way to access an elected representative would be through a lobbyist. While the findings of this report reject such a premise, there can be little doubt that in designing a system of regulation of lobbyists it is crucial to write into the legislation why the establishment of a register of lobbyists is taking place and what it covers. It should also explicitly point out what it does not cover. Citizens need to be able to contact their representatives. Putting in place a register of lobbyist need not affect that. To suggest that citizens would feel that they needed to go through a lobbyist to lobby their elected representative on an issue which affects them would be in many ways to try to dismiss nigh on a century of Irish political culture. While lobbyists themselves might try to advocate such a scenario to avoid having to register or having regulations put in place the reality is that any regulatory system of lobbyist needs only to regulate for professional lobbyists. This should be explicitly written into any legislation. The key point is that lobbyists are different to ordinary citizens as they are interacting with government officials and elected representatives and getting paid for doing so. Ordinary citizens do not. A senior legislative aide in Pennsylvania intimately involved in ongoing attempts to write register of lobbyists legislation in that state commented to the authors that ‘good regulation says what it is and what it’s not’, a comment reiterated by several elite interviews in the US and Canada.<sup>141</sup> In that context legislation should differentiate between paid lobbyists, ordinary citizens, and representative of sectoral interest groups such as farmers, trade unions and employers organisations.

A comprehensive system of regulation should try to capture the information of who is accessing whom, what for, and what monies, if any, change hands. In principle lobbyists should not be against having such a register and governments should want it, as it should keep transparent what is a legal entity. In that context what is being regulated is behaviour by interests who have potentially the money to have their expectations met by the access they have. Registering lobbyists is not about regulating speech, but about preventing undue influence, including abuse of dominant financial position of some interest groups. The key is to ensure that what is written into the regulation does not hinder the average citizen from doing what they have always done



which is lobby their respective representative. The key point is to have a system as transparent as possible. This benefits the lobbyist, the legislator and the citizens. Regulation should be something that gives all stakeholders confidence in the system and in that context it must be kept simple initially and not overburden lobbyists in the first place with legislation. The biggest complaint from lobbyists in terms of registers is the fact that in many jurisdictions they cannot do it online. Any system being designed in Ireland should have an online registering facility. Finally enforcement of legislation is the key. Any such register should be controlled and monitored by an agency such as the Standards in Public Office Commission. This should ensure public confidence in the process.

In conclusion, when contemplating designing a system of regulation, it is necessary to take into account the following. Lowly regulated systems in essence detail who is engaged in lobbying government officials and elected representatives and getting paid for it. Intermediately regulated systems go further and report on what activity lobbying takes place in and has significant spending disclosures. Highly regulated systems go further again and state who employ lobbyists while having spending disclosure, which are open to the public. In an age where disenchantment with certain aspects of life has been a feature of Irish politics and where tribunals of inquiry have opened up all sorts of questions about the influence of lobbyists in Irish public life, our report suggests that being proactive in establishing some sort of register of lobbyists would be a good initial first step in ensuring that the perception of undue influence is something that is not an issue in Ireland. One would have thought that such a first step would be warmly welcomed by politicians, officials, lobbyists and citizens alike in order to ensure transparency, accountability and good governance in the Irish political system.

# APPENDIX A

## *Examples of Lobbying Legislation*

### *Example 1 of Lobbying Legislation - Canada (Federal)*

**Lobbyists Registration Act**  
R.S., 1985, c. 44 (4th Supp.)

[1988, c. 53, assented to 13th September, 1988]

**Preamble**

An Act respecting the registration of lobbyists

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, enacts as follows:

R.S., 1985, c. 44 (4th Supp.), preamble; 2003,  
c. 10, s. 1.

**SHORT TITLE**

**Short title**

1. This Act may be cited as the *Lobbyists Registration Act*.

**INTERPRETATION**

**Definitions**

2. (1) In this Act,

“Ethics Counsellor”[2004, c. 7, s. 19]

**“organization”**

« *organisation* »

“organization” includes

(a) a business, trade, industry, professional or voluntary organization,

(b) a trade union or labour organization,

(c) a chamber of commerce or board of trade,

(d) a partnership, trust, association, charitable society, coalition or interest group,

(e) a government, other than the Government of Canada, and

(f) a corporation without share capital incorporated to pursue, without financial gain to its members, objects of a national, provincial, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional or sporting character or other similar objects;

**“payment”**

« *paiement* »

“payment” means money or anything of value and includes a contract, promise or agreement to pay money or anything of value;

**“prescribed”**

*Version  
anglaise  
seulement*

“prescribed” means prescribed by regulation;

**“public office holder”**

« *titulaire d’une  
charge  
publique* »

“public office holder” means any officer or employee of Her Majesty in right of Canada and includes

(a) a member of the Senate or the House of Commons and any person on the staff of such a member,

(b) a person who is appointed to any office or body by or with the approval of the Governor in Council or a minister of the Crown, other than a judge receiving a salary under the *Judges Act* or the lieutenant governor of a province,

(c) an officer, director or employee of any federal board, commission or other tribunal as defined in the *Federal Courts Act*,

(d) a member of the Canadian Armed Forces, and

(e) a member of the Royal Canadian Mounted Police;

**“registrar”**

« *directeur* »

“registrar” means the registrar designated pursuant to section 8.

**Subsidiary corporation**

(2) For the purposes of this Act, a corporation is a subsidiary of another corporation if

(a) securities of the first-mentioned corporation to which are attached more than fifty per cent of the votes that may be cast to elect directors of the first-mentioned corporation are held, otherwise than by way of security only, directly or indirectly, whether through one or more subsidiaries or otherwise, by or for the benefit of the other corporation; and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the first-

mentioned corporation.

R.S., 1985, c. 44 (4th Supp.), s. 2; 1995, c. 12, s. 1; 2002, c. 8, s. 182; 2003, c. 10, s. 2; 2004, c. 7, s. 19.

## APPLICATION

### **Binding on Her Majesty**

3. This Act is binding on Her Majesty in right of Canada or a province.

### **Restriction on application**

4. (1) This Act does not apply to any of the following persons when acting in their official capacity, namely,

(a) members of the legislature of a province or persons on the staff of such members;

(b) employees of the government of a province;

(c) members of a council or other statutory body charged with the administration of the civil or municipal affairs of a city, town, municipality or district, persons on the staff of such members or officers or employees of a city, town, municipality or district;

(d) members of the council of a band as defined in subsection 2(1) of the *Indian Act* or of the council of an Indian band established by an Act of Parliament, persons on their staff or employees of such a council;

(d.1) members of an aboriginal government or institution that exercises jurisdiction or authority under a self-government agreement, or under self-government provisions contained in a land claims agreement, given effect by or under an Act of Parliament, persons on the staff of those members or employees of that government or institution;

(d.2) [Repealed, 2003, c. 10, s. 3]

(d.3) members of the council, as defined in the Westbank First Nation Self-Government Agreement given effect by the *Westbank First Nation Self-Government Act*, or persons on the staff of the council or of a member of the council;

(d.4) members or employees of the Tlicho Government, as defined in section 2 of the *Tlicho Land Claims and Self-Government Act*, or persons on the staff of those members;

(e) diplomatic agents, consular officers or official representatives in Canada of a foreign government; or

(f) officials of a specialized agency of the United Nations in Canada or officials of any other international organization to whom there are granted, by or under any Act of Parliament,

privileges and immunities.

**Idem**

(2) This Act does not apply in respect of

(a) any oral or written submission made to a committee of the Senate or House of Commons or of both Houses of Parliament or to any body or person having jurisdiction or powers conferred by or under an Act of Parliament, in proceedings that are a matter of public record;

(b) any oral or written communication made to a public office holder by an individual on behalf of any person or organization with respect to the enforcement, interpretation or application of any Act of Parliament or regulation by that public office holder with respect to that person or organization; or

(c) any oral or written communication made to a public office holder by an individual on behalf of any person or organization if the communication is restricted to a request for information.

**Idem**

(3) Nothing in this Act shall be construed as requiring the disclosure of the name or identity of any individual where that disclosure could reasonably be expected to threaten the safety of that individual.

R.S., 1985, c. 44 (4th Supp.), s. 4; 1994, c. 35, s. 36; 1995, c. 12, s. 2; 2000, c. 7, s. 24; 2003, c. 10, s. 3; 2004, c. 17, ss. 17, 20; 2005, c. 1, ss. 100, 108.

## **REGISTRATION OF LOBBYISTS**

### **CONSULTANT LOBBYISTS**

**Requirement to file return**

5. (1) An individual shall file with the registrar, in the prescribed form and manner, a return setting out the information referred to in subsection (2), if the individual, for payment, on behalf of any person or organization (in this section referred to as the “client”), undertakes to

(a) communicate with a public office holder in respect of

(i) the development of any legislative proposal by the Government of Canada or by a member of the Senate or the House of Commons,

(ii) 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,

(iii) the making or amendment of any regulation as defined in subsection 2(1) of the *Statutory Instruments Act*,

(iv) the development or amendment of any policy or

program of the Government of Canada,

(v) the awarding of any grant, contribution or other financial benefit by or on behalf of Her Majesty in right of Canada, or

(vi) the awarding of any contract by or on behalf of Her Majesty in right of Canada; or

(b) arrange a meeting between a public office holder and any other person.

**Time limits for filing returns**

(1.1) An individual shall file a return

(a) not later than ten days after entering into an undertaking referred to in subsection (1); and

(b) subject to subsections (1.2) and (1.3), not later than thirty days after the expiry of every six-month period after the day on which a return is filed under paragraph ( a).

**Exception if change provided**

(1.2) Where an individual provides a change to information or newly acquired information under subsection (3), a return under paragraph (1.1)( b) shall be filed not later than thirty days after the expiry of every six-month period after the last day on which a change or newly acquired information is provided under that subsection.

**Completion or termination of undertaking**

(1.3) An individual is not required to file a return under paragraph (1.1)( b) with respect to an undertaking if the individual completes or terminates the undertaking and advises the registrar of that fact in the prescribed form and manner before the expiry of the period within which the return must be filed under that paragraph.

**Contents of return**

(2) The return shall set out the following information with respect to the undertaking:

(a) the name and business address of the individual and, if applicable, the name and business address of the firm where the individual is engaged in business;

(b) the name and business address of the client and the name and business address of any person or organization that, to the knowledge of the individual, controls or directs the activities of the client and has a direct interest in the outcome of the individual's activities on behalf of the client;

(c) where the client is a corporation, the name and business address of each subsidiary of the corporation that, to the knowledge of the individual, has a direct interest in the outcome of the individual's activities on behalf of the client;

(d) where the client is a corporation that is a subsidiary of any other corporation, the name and business address of that other

corporation;

(*e*) where the client is a coalition, the name and business address of each corporation or organization that is a member of the coalition;

(*e.1*) the client is funded in whole or in part by a government or government agency, the name of the government or agency, as the case may be, and the amount of funding received;

(*f*) particulars to identify the subject-matter in respect of which the individual undertakes to communicate with a public office holder or to arrange a meeting, and any other information respecting the subject-matter that is prescribed;

(*g*) where applicable, whether the payment to the individual is in whole or in part contingent on the individual's degree of success in influencing any matter described in subparagraphs (1)(*a*)(i) to (vi);

(*h*) particulars to identify any relevant legislative proposal, Bill, resolution, regulation, policy, program, grant, contribution, financial benefit or contract;

(*h.1*) if the individual is a former public officer holder, a description of the offices held;

(*i*) the name of any department or other governmental institution in which any public office holder with whom the individual communicates or expects to communicate in respect of any matter described in subparagraphs (1)(*a*)(i) to (vi) or with whom a meeting is, or is to be, arranged, is employed or serves;

(*j*) if the individual undertakes to communicate with a public office holder in respect of any matter described in subparagraphs (1)(*a*)(i) to (vi), particulars to identify any communication technique that the individual uses or expects to use in connection with the communication with the public office holder, 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 a public office holder in an attempt to place pressure on the public office holder to endorse a particular opinion (in this Act referred to as "grass-roots communication"); and

(*k*) such other information relating to the identity of the individual, the client, any person or organization referred to in paragraph (*b*), any subsidiary referred to in paragraph (*c*), the other corporation referred to in paragraph (*d*), any member of a coalition referred to in paragraph (*e*) or any department or institution referred to in paragraph (*i*) as is prescribed.

(3) An individual who files a return shall provide the registrar,

## Changes to



**information and new information**

in the prescribed form and manner, with any change to the information provided by the individual in the return, and any information required to be provided under subsection (2) the knowledge of which the individual acquired only after the return was filed, not later than thirty days after the change occurs or the knowledge is acquired.

(4) [Repealed, 2003, c. 10, s. 4]

**Information requested by registrar**

(5) An individual who files a return shall provide the registrar, in the prescribed form and manner, with such information as the registrar may request to clarify any information that the individual has provided to the registrar pursuant to this section, and shall do so not later than thirty days after the request is made.

**Restriction on application**

(6) This section does not apply in respect of anything that an employee undertakes to do on the sole behalf of their employer or, where their employer is a corporation, in respect of anything that the employee, at the direction of the employer, undertakes to do on behalf of any subsidiary of the employer or any corporation of which the employer is a subsidiary.

**For greater certainty**

(7) For greater certainty, an individual who undertakes to communicate with a public office holder as described in paragraph (1)(a) is not required to file more than one return with respect to the undertaking, even though the individual, in connection with that undertaking, communicates with more than one public office holder or communicates with one or more public office holders on more than one occasion.

R.S., 1985, c. 44 (4th Supp.), s. 5; 1995, c. 12, s. 3; 1999, c. 31, s. 163(F); 2003, c. 10, s. 4.

6. [Repealed, 2003, c. 10, s. 5]

**IN-HOUSE LOBBYISTS (CORPORATIONS AND ORGANIZATIONS)**

**Requirement to file return**

7. (1) The officer responsible for filing returns for a corporation or organization shall file with the registrar, in the prescribed form and manner, a return setting out the information referred to in subsection (3) if

(a) the corporation or organization employs one or more individuals any part of whose duties is to communicate with public office holders on behalf of the employer or, if the employer is a corporation, on behalf of any subsidiary of the employer or any corporation of which the employer is a subsidiary, in respect of

(i) the development of any legislative proposal by the Government of Canada or by a member of the Senate or the House of Commons,

(ii) 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,  
(iii) the making or amendment of any regulation as defined in subsection 2(1) of the *Statutory Instruments Act*,  
(iv) the development or amendment of any policy or program of the Government of Canada, or  
(v) the awarding of any grant, contribution or other financial benefit by or on behalf of Her Majesty in right of Canada;  
and

(b) those duties constitute a significant part of the duties of one employee or would constitute a significant part of the duties of one employee if they were performed by only one employee.

**Time limits for filing returns**

(2) The officer responsible for filing returns shall file a return  
(a) not later than two months after the day on which the requirement to file a return first arises under subsection (1); and  
(b) subject to subsection (2.1), not later than thirty days after the expiry of every six-month period after the day on which a return is filed under paragraph (a).

**Termination of activities**

(2.1) The officer responsible for filing returns is not required to file a return under paragraph (2)(b) if  
(a) the employer no longer employs any employees whose duties are as described in paragraphs (1)(a) and (b); and  
(b) the officer responsible for filing returns advises the registrar of the circumstances described in paragraph (a) in the prescribed form and manner before the expiry of the period within which the return must be filed under paragraph (2)(b).

**Contents of return**

(3) The return shall set out the following information:  
(a) the name and business address of the officer responsible for filing returns;  
(b) the name and business address of the employer;  
(b.1) if the employer is a corporation, the name and business address of every subsidiary of the corporation that, to the knowledge of the officer responsible for filing returns, has a direct interest in the outcome of an employee's activities on behalf of the employer in respect of any matter described in subparagraphs (1)(a)(i) to (v);  
(b.2) if the employer is a corporation that is a subsidiary of any other corporation, the name and business address of that other corporation;  
(c) a description in summary form of the employer's business

or activities and any other information to identify its business or activities that is prescribed;

(d) if the employer is an organization, a description of the organization's membership and any other information to identify its membership that is prescribed;

(e) if the employer is funded in whole or in part by a government or government agency, the name of the government or agency, as the case may be, and the amount of funding received;

(f) if the employer is an organization, the name of each employee any part of whose duties is as described in paragraph (1)(a);

(f.1) if the employer is a corporation, the name of

(i) each senior officer any part of whose duties is as described in paragraph (1)(a), and

(ii) any other employee any part of whose duties is as described in paragraph (1)(a), if that part constitutes a significant part of the duties of that employee;

(g) if the return is filed under paragraph (2)(a), particulars to identify the subject-matter of any communication between any employee named in the return and a public office holder in respect of any matter described in subparagraphs (1)(a)(i) to (v) during the period between the date on which the requirement to file a return first arises under subsection (1) and the date of filing, and any other information respecting that subject-matter that is prescribed;

(h) if the return is filed under paragraph (2)(b), particulars to identify the subject-matter of any communication between any employee named in the return and a public office holder in respect of any matter described in subparagraphs (1)(a)(i) to (v) during a six-month period referred to in paragraph (2)(b) and any other information respecting that subject-matter that is prescribed;

(h.1) if any employee named in the return communicates with a public office holder in respect of any matter described in subparagraphs (1)(a)(i) to (v) during the period between the expiry of a six-month period referred to in paragraph (2)(b) and the date on which the return is filed under that paragraph, particulars to identify the subject-matter of the communication and any other information respecting that subject-matter that is prescribed;

(h.2) if any employee named in the return is expected to communicate with a public office holder in respect of any matter described in subparagraphs (1)(a)(i) to (v) during the six-month period after the date of filing under paragraph

(2)(a), or during the six-month period after the expiry of a six-month period referred to in paragraph (2)(b), particulars to identify the subject-matter of the communication and any other information respecting that subject-matter that is prescribed;

(h.3) if any employee named in the return is a former public office holder, a description of the offices held;

(i) particulars to identify any relevant legislative proposal, Bill, resolution, regulation, policy, program, grant, contribution or financial benefit;

(j) the name of any department or other governmental institution in which a public office holder is employed or serves, if any employee named in the return,

(i) communicates with the public office holder in respect of any matter described in subparagraphs (1)(a)(i) to (v) during the period referred to in paragraph (g), (h) or (h.1), or

(ii) is expected to communicate with the public office holder in respect of any matter described in subparagraphs (1)(a)(i) to (v) during either of the periods referred to in paragraph (h.2);

(k) particulars to identify any communication technique, including grass-roots communication within the meaning of paragraph 5(2)(j), that any employee named in the return

(i) uses in connection with any communication in respect of any matter described in subparagraphs (1)(a)(i) to (v) during the period referred to in paragraph (g), (h) or (h.1), or

(ii) is expected to use in connection with any communication in respect of any matter described in subparagraphs (1)(a)(i) to (v) during either of the periods referred to in paragraph (h.2); and

(l) any other information that is prescribed that relates to the identity of the officer responsible for filing returns, the employer, any subsidiary referred to in paragraph (b.1), any corporation referred to in paragraph (b.2) of which the employer is a subsidiary, any employee referred to in paragraph (f) or (f.1) or any department or institution referred to in paragraph (j).

## **Changes to information**

(4) If an employee who has been named in a return no longer performs any of the duties described in paragraph (1)(a) or is no longer employed by the employer, the officer responsible for filing returns shall, in the prescribed form and manner, not later than thirty days after the change occurs, advise the registrar of the change.

## **Information**

(5) If the registrar requests information to clarify any

**requested by registrar** information that has been provided to the registrar under this section, the officer responsible for filing returns shall, in the prescribed form and manner, not later than thirty days after the request is made, provide the registrar with the information.

#### **Definitions**

(6) In this section,

**“employee”**  
« *employé* » “employee” includes an officer who is compensated for the performance of their duties;

**“senior officer”**  
« *cadre dirigeant* » “senior officer”, in respect of a corporation, means  
(a) a chief executive officer, chief operating officer or president of the corporation, or  
(b) any other officer who reports directly to the chief executive officer, chief operating officer or president of the corporation.

**“officer responsible for filing returns”**  
« *déclarant* » “officer responsible for filing returns” means the employee who holds the most senior office in a corporation or organization and is compensated for the performance of their duties;

R.S., 1985, c. 44 (4th Supp.), s. 7; 1995, c. 12, s. 3; 2003, c. 10, s. 7.

#### **CERTIFICATION**

##### **Certification**

7.1 Every individual who submits a return or other document to the registrar pursuant to this Act shall certify on the return or other document or, where it is submitted in electronic or other form in accordance with subsection 7.2(1), in such manner as is specified by the registrar, that the information contained in it is true to the best of their knowledge and belief.

1995, c. 12, s. 3.

#### **DOCUMENTS IN ELECTRONIC OR OTHER FORM**

##### **Submission of documents**

7.2 (1) Subject to the regulations, any return or other document that is required to be submitted to the registrar under this Act may be submitted in electronic or other form by such means and in such manner as is specified by the registrar.

##### **Time of receipt**

(2) For the purposes of this Act, any return or other document that is submitted in accordance with subsection (1) is deemed to be received by the registrar at the time provided for in the regulations.

1995, c. 12, s. 3.

##### **Storage**

7.3 (1) Subject to the regulations, any return or other document that is received by the registrar may be entered or recorded by any information storage device, including any system of mechanical or electronic data processing, that is capable of reproducing the stored return or other document in intelligible form within a reasonable time.

## **Evidence**

(2) In any prosecution for an offence under this Act, a copy of a return or other document that is reproduced as permitted by subsection (1) and certified under the registrar's signature as a true copy is admissible in evidence without proof of the signature or official character of the person appearing to have signed the copy and, in the absence of evidence to the contrary, has the same probative force as the original would have if it were proved in the ordinary way.

1995, c. 12, s. 3.

## **REGISTRY**

### **Registrar**

8. The Registrar General of Canada may designate any person employed in the office of the Registrar General of Canada as the registrar for the purposes of this Act.

### **Registry**

9. (1) The registrar shall establish and maintain a registry in which shall be kept a record of all returns and other documents submitted to the registrar under this Act.

### **Form of registry**

(2) The registry shall be organized in such manner and kept in such form as the registrar may determine.

### **Audit**

(3) The registrar may verify the information contained in any return or other document submitted to the registrar under this Act.

### **Access to registry**

(4) The registry shall be open to public inspection at such place and at such reasonable hours as the registrar may determine.

R.S., 1985, c. 44 (4th Supp.), s. 9; 1995, c. 12, s. 5.

### **Interpretation bulletins**

10. (1) The registrar may issue advisory opinions and interpretation bulletins with respect to the enforcement, interpretation or application of this Act other than under sections 10.2 to 10.6.

### **Interpretation bulletins not statutory instruments**

(2) The advisory opinions and interpretation bulletins are not statutory instruments for the purposes of the *Statutory Instruments Act* and are not binding.

R.S., 1985, c. 44 (4th Supp.), s. 10; 1995, c. 12, s. 5; 2004, c. 7, s. 20.

## **LOBBYISTS' CODE OF CONDUCT**

10.1 [Repealed, 2004, c. 7, s. 21]

### **Lobbyists' Code of Conduct**

10.2 (1) The registrar shall develop a Lobbyists' Code of Conduct respecting the activities described in subsections 5(1) and 7(1).

<b>Consultation</b>	(2) In developing the Code, the registrar shall consult persons and organizations that the registrar considers are interested in the Code.
<b>Referral</b>	(3) The Code shall be referred to a committee of the House of Commons before being published under subsection (4).
<b>Code not a statutory instrument</b>	(4) The Code is not a statutory instrument for the purposes of the <i>Statutory Instruments Act</i> , but the Code shall be published in the <i>Canada Gazette</i> .
	1995, c. 12, s. 5; 2003, c. 10, s. 8; 2004, c. 7, ss. 22, 39.
<b>Compliance with Code</b>	10.3 (1) The following individuals shall comply with the Code: <ul style="list-style-type: none"> <li>(a) an individual who is required to file a return under subsection 5(1); and</li> <li>(b) an employee who, in accordance with paragraph 7(3)(f) or (f.1), is named in a return filed under subsection 7(1).</li> </ul>
<b>Non-application of section 126 of the <i>Criminal Code</i></b>	(2) Section 126 of the <i>Criminal Code</i> does not apply in respect of a contravention of subsection (1). <p style="text-align: center;">1995, c. 12, s. 5; 2003, c. 10, s. 9.</p>
<b>Investigation of breaches</b>	10.4 (1) Where the registrar believes on reasonable grounds that a person has breached the Code, the registrar shall investigate to determine whether a breach has occurred.
<b>Powers of investigation</b>	(2) For the purpose of conducting the investigation, the registrar may <ul style="list-style-type: none"> <li>(a) in the same manner and to the same extent as a superior court of record, <ul style="list-style-type: none"> <li>(i) summon and enforce the attendance of persons before the registrar and compel them to give oral or written evidence on oath, and</li> <li>(ii) compel persons to produce any documents or other things that the registrar considers necessary for the investigation, including any record of a payment received, disbursement made or expense incurred by an individual who is required to file a return under subsection 5(1) or by an employee who, in accordance with paragraph 7(3)(f) or (f.1), is named in a return filed under subsection 7(1), in respect of any matter referred to in any of subparagraphs 5(1)(a)(i) to (vi) or 7(1)(a)(i) to (v), as the case may be; and</li> </ul> </li> <li>(b) administer oaths and receive and accept information, whether or not it would be admissible as evidence in a court of law.</li> </ul>

- Investigation in private** (3) The investigation shall be conducted in private.
- Evidence in other proceedings** (4) Evidence given by a person in the investigation and evidence of the existence of the investigation are inadmissible against the person in a court or in any other proceeding, other than in a prosecution of a person for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made to the registrar.
- Opportunity to present views** (5) Before finding that a person has breached the Code, the registrar shall give the person a reasonable opportunity to present their views to the registrar.
- Confidentiality** (6) The registrar, and every person acting on behalf of or under the direction of the registrar, may not disclose any information that comes to their knowledge in the performance of their duties and functions under this section, unless
- (a) the disclosure is, in the opinion of the registrar, necessary for the purpose of conducting an investigation under this section or establishing the grounds for any findings or conclusions contained in a report under section 10.5;
  - (b) the information is disclosed in a report under section 10.5 or in the course of a prosecution for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made to the registrar; or
  - (c) the registrar believes on reasonable grounds that the disclosure is necessary for the purpose of advising a peace officer having jurisdiction to investigate an alleged offence under this or any other Act of Parliament or of the legislature of a province.
- Advice to peace officers** (7) If, during the course of performing duties and functions under this section, the registrar believes on reasonable grounds that a person has committed an offence under this or any other Act of Parliament or of the legislature of a province, the registrar shall advise a peace officer having jurisdiction to investigate the alleged offence.
- Suspension of investigation** (8) The registrar must immediately suspend an investigation under this section of an alleged breach of the Code by any person if
- (a) the registrar believes on reasonable grounds that the person has committed an offence under this or any other Act of Parliament or of the legislature of a province in respect of the same subject-matter; or
  - (b) it is discovered that the subject-matter of the investigation under this section is also the subject-matter of an investigation



to determine whether an offence referred to in paragraph (a) has been committed or that a charge has been laid with respect to that subject-matter.

**Investigation continued**

(9) The registrar may not continue an investigation under this section until any investigation or charge regarding the same subject-matter has been finally disposed of.

**Advice to peace officers**

(7) If, during the course of performing duties and functions under this section, the Ethics Counsellor believes on reasonable grounds that a person has committed an offence under this or any other Act of Parliament or of the legislature of a province, the Ethics Counsellor shall advise a peace officer having jurisdiction to investigate the alleged offence.

**Suspension of investigation**

(8) The Ethics Counsellor must immediately suspend an investigation under this section of an alleged breach of the Code by any person if

*a)* the Ethics Counsellor believes on reasonable grounds that the person has committed an offence under this or any other Act of Parliament or of the legislature of a province in respect of the same subjectmatter; or

*b)* it is discovered that the subject-matter of the investigation under this section is also the subject-matter of an investigation to determine whether an offence referred to in paragraph (a) has been committed or that a charge has been laid with respect to that subject-matter.

**Investigation continued**

(9) The Ethics Counsellor may not continue an investigation under this section until any investigation or charge regarding the same subject-matter has been finally disposed of.

1995, c. 12, s. 5; 2003, c. 10, s. 10; 2004, c. 7, ss. 23, 39.

**Report**

10.5 (1) After conducting an investigation, the registrar shall prepare a report of the investigation, including the findings, conclusions and reasons for the registrar's conclusions, and submit it to the Registrar General of Canada who shall cause a copy of it to be laid before each House of Parliament on any of the first fifteen sitting days on which that House is sitting after it is received.

**Contents of report**

(2) The report may contain details of any payment received, disbursement made or expense incurred by an individual who is required to file a return under subsection 5(1) or by an employee who, in accordance with paragraph 7(3)(f) or (f.1), is named in a return filed under subsection 7(1), in respect of any matter referred to in any of subparagraphs 5(1)(a)(i) to (vi) or 7(1)(a)(i) to (v), as the case may be, if the registrar considers publication of the details to be in the public interest.

1995, c. 12, s. 5; 2003, c. 10, s. 11; 2004, c. 7, ss. 23, 39.

### **Annual report**

10.6 The registrar shall, within three months after the end of each fiscal year, prepare a report with regard to the exercise of the powers, duties and functions conferred on the registrar under this Act during the fiscal year and submit the report to the Registrar General of Canada who shall cause a copy of it to be laid before each House of Parliament on any of the first fifteen sitting days on which that House is sitting after it is received.

1995, c. 12, s. 5; 2004, c. 7, s. 23.

## **ANNUAL REPORT**

### **Annual report**

11. (1) The registrar shall, within three months after the end of each fiscal year, prepare a report with regard to the administration of this Act, other than sections 10.2 to 10.6, during that fiscal year and submit the report to the Registrar General of Canada.

### **Tabling**

(2) The Registrar General of Canada shall cause a copy of the report prepared pursuant to subsection (1) to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after it is received.

R.S., 1985, c. 44 (4th Supp.), s. 11; 1995, c. 12, s. 6; 2004, c. 7, s. 24.

## **REGULATIONS**

### **Regulations**

12. The Governor in Council may make regulations

(a) requiring a fee to be paid on the filing of a return or a return of a class of returns under section 5 or 7, or for any service performed or the use of any facility provided by the registrar, and prescribing the fee or the manner of determining it;

(b) respecting the submission of returns or other documents to the registrar under this Act, including those that may be submitted in an electronic or other form under section 7.2, the persons or classes of persons by whom they may be submitted in that form and the time at which they are deemed to be received by the registrar;

(c) respecting the entering or recording of any return or other document under section 7.3;

(d) prescribing any matter or thing that by this Act is to be or may be prescribed; and

(e) generally for carrying out the purposes and provisions of this Act.

R.S., 1985, c. 44 (4th Supp.), s. 12; 1995, c. 12,

s. 7; 2003, c. 10, s. 12.

## **RECOVERY OF FEES**

### **Recovery of fees**

13. Any fee required by the regulations to be paid constitutes a debt due to Her Majesty in right of Canada and may be recovered in any court of competent jurisdiction.

R.S., 1985, c. 44 (4th Supp.), s. 13; 1995, c. 12, s. 7.

## **OFFENCES AND PUNISHMENT**

### **Contravention of Act or regulations**

14. (1) Every individual who contravenes any provision of this Act, other than subsection 10.3(1), or the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding twenty-five thousand dollars.

### **False or misleading statements**

(2) Every individual who knowingly makes any false or misleading statement in any return or other document submitted to the registrar under this Act, whether in electronic or other form, is guilty of an offence and liable

(a) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months, or to both; and

(b) on proceedings by way of indictment, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years, or to both.

### **Limitation of proceedings**

(3) Proceedings by way of summary conviction in respect of an offence under this section may be instituted at any time within but not later than two years after the time when the subject-matter of the proceedings arose.

R.S., 1985, c. 44 (4th Supp.), s. 14; 1995, c. 12, s. 7.

## **REVIEW BY PARLIAMENT**

### **Review of Act by parliamentary committee**

14.1 (1) A comprehensive review of the provisions and operation of this Act must be undertaken, every five years after this section comes into force, by the committee of the Senate, of the House of Commons, or of both Houses of Parliament, that may be designated or established for that purpose.

### **Review and report**

(2) The committee referred to in subsection (1) must, within a year after the review is undertaken or within any further period that the Senate, the House of Commons, or both Houses of Parliament, as the case may be, may authorize, submit a report on the review to Parliament that includes a statement of any changes to this Act or its operation that the committee recommends.

2003, c. 10, s. 13.

**Coming into  
force**

**COMING INTO FORCE**

\*15. This Act or any provision thereof shall come into force on a day or days to be fixed by proclamation.

\* [Note: Act in force September 30, 1989, *see* SI/89-193.]

**BILL NO. 7**  
**(as passed, with amendments)**



*2nd Session, 58th General Assembly*  
*Nova Scotia*  
*50 Elizabeth II, 2001*

Government Bill

**Lobbyists' Registration Act**  
CHAPTER 34 OF THE ACTS OF 2001

The Honourable Michael G. Baker, Q.C.  
Minister of Justice

First Reading: March 26, 2001 (LINK TO BILL AS INTRODUCED)

Second Reading: March 29, 2001

Third Reading: November 8, 2001 (WITH COMMITTEE AMENDMENTS)

Royal Assent: November 22, 2001

**An Act to Provide for**  
**the Registration of Lobbyists**

Be it enacted by the Governor and Assembly as follows:

1 This Act may be cited as the Lobbyists' Registration Act.

2 (1) In this Act,

(a) "**Crown**" means Her Majesty in right of the Province;

(b) "**grass-roots communication**" means appeals to members of the public through the mass media or by direct communication that seek to persuade members of the public to communicate directly with a public-office holder in an attempt to place pressure on the public-office holder to endorse a particular opinion, but does not include communication between an organization and its members, officers or employees or between a person or partnership and its shareholders, officers or employees;

(c) "**lobby**" means to communicate with a public-office holder in an attempt to influence

(i) the development of any legislative proposal by the Government of the Province or by a member of the House of Assembly,

(ii) the introduction of any bill or resolution in the House of Assembly or the passage, defeat or amendment of any bill or resolution that is before the House of Assembly,

- (iii) the making or amendment of any regulation as defined in the Regulations Act,
  - (iv) the development or amendment of any policy or program of the Government of the Province or the termination of any program of the Government of the Province,
  - (v) a decision by the Executive Council to transfer from the Crown for consideration all or part of, or any interest in or asset of, any business, enterprise or institution that provides goods or services to the Crown or to the public,
  - (vi) a decision by the Executive Council, a committee of the Executive Council or a minister of the Crown to have the private sector instead of the Crown provide goods or services to the Crown, or
  - (vii) the awarding of any grant, contribution or other financial benefit by or on behalf of the Crown,
  - and, in relation to a consultant lobbyist referred to in Section 5,
  - (viii) to communicate with a public-office holder in an attempt to influence the awarding of any contract by or on behalf of the Crown, or
  - (ix) to arrange a meeting between a public-office holder and any other person;
- (d) "organization"** means
- (i) a business, trade, industry, professional or voluntary organization,
  - (ii) a trade union or labour organization,
  - (iii) a chamber of commerce or board of trade,
  - (iv) an association, a charitable organization, a coalition or an interest group,
  - (v) a government, other than the Government of the Province, or
  - (vi) a corporation without share capital incorporated to pursue, without financial gain to its members, objects of a national, provincial, territorial, patriotic, religious, philanthropic, charitable, educational, agricultural, scientific, artistic, social, professional, fraternal, sporting or athletic character or other similar objects;
- (e) "prescribed"** means prescribed by the regulations;
- (f) "public-office holder"** means
- (i) a member, officer or servant of the House of Assembly or any person on the staff of a member,
  - (ii) a person who is appointed to any office or body by or with the approval of the Governor in Council or a minister of the Crown, other than
    - (A) a judge or a justice of the peace,
    - (B) an adjudicator of the Small Claims Court,
    - (C) a member of an administrative tribunal exercising a judicial function,
    - (D) the Ombudsman, or
    - (E) a review officer appointed pursuant to the Freedom of Information and Protection of Privacy Act,
  - (iii) an officer, director or employee of an agency of government within the meaning of the Auditor General Act,
  - (iv) a member of a police force in the Province, or
  - (v) any officer or employee of the Crown, or any employee of an officer or minister, not otherwise referred to in paragraphs (ii) to (iv),
- (g) "Registrar"** means the Registrar referred to in Section 4;
- (h) "regulations"** means the regulations made pursuant to this Act unless otherwise specified.

(2) For the purpose of this Act, a corporation is a subsidiary of another corporation if (a) securities of the corporation, to which are attached more than fifty per cent of the votes that may be cast to elect directors of the corporation, are held, otherwise than by way of security only, directly or indirectly, whether through one or more subsidiaries or otherwise, by or for the benefit of the other corporation; and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation.

(3) Nothing in this Act shall be construed as requiring the disclosure of the name or identity of any individual if that disclosure could reasonably be expected to threaten the safety of that individual.

(4) For greater certainty, "contributed" in clauses 6(4)(h) and 7(4)(f) includes a contribution in kind and does not include a membership fee payment.

3 (1) This Act does not apply to any of the following persons when acting in their official capacity:

(a) members, officers and servants of the House of Assembly or persons on the staff of those members;

(b) members, officers or servants of the Senate or House of Commons of Canada, the legislative assembly of another province of Canada or persons on the staff of those members;

(c) employees in the public service of the Province;

(d) employees of the Government of Canada or of the government of another province of Canada;

(e) members of a council or other statutory body charged with the administration of the civil or municipal affairs of a regional municipality, town or municipality of a county or district, including a school board, and persons employed by such members or officers or employees of a regional municipality, town or municipality of a county or district, including a school board;

(f) an officer, director or employee of the Union of Nova Scotia Municipalities;

(g) an officer, director or employee of the Nova Scotia School Boards Association;

(h) members of the council of a band as defined in subsection 2(1) of the Indian Act (Canada) or of the council of an Indian band established by an Act of the Parliament of Canada, persons on the staff of those members or employees of the council;

(i) diplomatic agents, consular officers or official representatives in Canada of a foreign government;

(j) officials of a specialized agency of the United Nations in Canada or officials of any other international organization to whom there are granted, by or under any Act of the Parliament of Canada, privileges and immunities; and

(k) such other classes of employees of agencies of government, within the meaning of the Auditor General Act, as may be prescribed.

(2) This Act does not apply in respect of

(a) any oral or written submission made in proceedings that are a matter of public record to a committee of the House of Assembly or to any body or person having jurisdiction or powers conferred by or under an Act;

(b) any oral or written submission made to a public-office holder by an individual on behalf of a person, partnership or organization with respect to

(i) the enforcement, interpretation or application of any Act or regulation made under any Act by that public-office holder with respect to that person, partnership or organization, or

- (ii) the implementation or administration of any policy, program, directive or guideline by that public-office holder with respect to that person, partnership or organization;
  - (c) any oral or written submission made to a public-office holder by an individual on behalf of a person, partnership or organization, in direct response to an oral or written request from a public-office holder for advice or comment in respect of any matter referred to in subclauses 2(1)(c)(i) to (viii);
  - (d) any oral or written submission made to a member of the House of Assembly by an individual on behalf of a constituent of the member with respect to any personal matter of that constituent unless the submission is made in respect of a matter referred to in paragraphs 2(1)(c)(viii) or (ix) concerning a private bill for the special benefit of that constituent; or
  - (e) any communication made to a public-office holder by a trade union with respect to the administration or negotiation of a collective agreement or matters related to the representation of a member or former member of a bargaining unit who is or was employed in the public service as defined in the Public Service Act.
- (3) This Act does not apply to a barrister of the Supreme Court of Nova Scotia in respect of the drafting of any legislative proposal for introduction in the House of Assembly or any consequential consultation.
- 4 The Governor in Council shall appoint or designate a person as the Registrar for the purpose of this Act.
- 5 (1) In this Section,
- (a) "**client**" means a person, partnership or organization on whose behalf a consultant lobbyist undertakes to lobby;
  - (b) "**consultant lobbyist**" means an individual who, for payment, undertakes to lobby on behalf of a client;
  - (c) "**payment**" means money or anything of value and includes a contract, promise or agreement to pay money or anything of value;
  - (d) "**undertaking**" means an undertaking by a consultant lobbyist to lobby on behalf of a client.
- (2) A consultant lobbyist shall file a return with the Registrar
- (a) within ten days after commencing performance of an undertaking; and
  - (b) within thirty days after the expiration of each six-month period after the date of filing the previous return.
- (3) Where, on the coming into force of this Section, a consultant lobbyist is performing an undertaking, the consultant lobbyist shall file a return with the Registrar not later than ten days after this Section comes into force.
- (4) A consultant lobbyist shall set out in the return the following information with respect to the undertaking:
- (a) the name and business address of the consultant lobbyist and, where applicable, the name and business address of the firm where the consultant lobbyist is engaged in business;
  - (b) the name and business address of the client and the name and business address of any person, partnership or organization that, to the knowledge of the consultant lobbyist, controls or directs the activities of the client and has a direct interest in the outcome of the consultant lobbyist's activities on behalf of the client;
  - (c) where the client is a corporation, the name and business address of each subsidiary of the corporation that, to the knowledge of the consultant lobbyist, has a direct interest in the outcome of the consultant lobbyist's activities on behalf of the client;



- (d) where the client is a corporation that is a subsidiary of any other corporation, the name and business address of that other corporation;
  - (e) where the client is a coalition, the name and business address of each partnership, corporation or organization that is a member of the coalition;
  - (f) where the client is funded, in whole or in part, by a government or a government agency, the name of the government or government agency, as the case may be, and the amount of funding received by the client from that government or government agency;
  - (g) the name and business address of any entity or organization, other than a government or a government agency, that, to the knowledge of the consultant lobbyist, contributed, during the entity's or organization's fiscal year that precedes the filing of the return, seven hundred and fifty dollars or more toward the consultant lobbyist's activities on behalf of the client;
  - (h) the name and business address of any individual who, to the knowledge of the consultant lobbyist, made a contribution described in clause (g) on behalf of an entity or organization described in that clause;
  - (i) the subject-matter in respect of which the consultant lobbyist has undertaken to lobby and any other prescribed information respecting the subject-matter;
  - (j) where applicable, whether the payment to the consultant lobbyist is, in whole or in part, contingent on the consultant lobbyist's degree of success in lobbying as described in subclauses 2(1)(c)(i) to (viii);
  - (k) particulars to identify any relevant legislative proposal, bill, resolution, regulation, policy, program, decision, grant, contribution, financial benefit or contract;
  - (l) the name of any department of the Government of the Province or an agency of government, within the meaning of the Auditor General Act, in which any public-office holder is employed or serves whom the consultant lobbyist has lobbied or expects to lobby;
  - (m) whether the consultant lobbyist has lobbied or expects to lobby a member of the House of Assembly in the member's capacity as a member or a person on the staff of a member of the House of Assembly;
  - (n) where the consultant lobbyist has undertaken to lobby as described in subclauses 2(1)(c)(i) to (viii), the techniques of communication, including grass-roots communication, that the consultant lobbyist has used or expects to use to lobby; and
  - (o) such additional information as may be prescribed with respect to the identity of a person or entity described in this Section.
- (5) A consultant lobbyist shall provide the Registrar with any change to the information in the return of the consultant lobbyist and any information required to be provided under subsection (4), the knowledge of which the consultant lobbyist acquired only after the return was filed, not later than thirty days after the change occurs or the knowledge is acquired.
- (6) A consultant lobbyist shall provide the Registrar with confirmation of the information contained in the return of the consultant lobbyist within two months after the expiration of the first and each subsequent year from the date of filing the return.
- (7) A consultant lobbyist shall advise the Registrar that the consultant lobbyist has completed an undertaking in respect of which the consultant lobbyist has filed a return or that the undertaking has been terminated not later than thirty days after the completion or termination of the undertaking.
- (8) A consultant lobbyist shall provide the Registrar with any information that the Registrar may request to clarify any information that the consultant lobbyist has

provided to the Registrar under this Section not later than thirty days after the Registrar makes the request.

(9) This Section does not apply in respect of anything that an employee undertakes to do on the sole behalf of the employee's employer or, where the employer is a corporation, in respect of anything that the employee, at the direction of the employer, undertakes to do on behalf of any subsidiary of the employer or any corporation of which the employer is a subsidiary.

6 (1) In this Section,

(a) "**employee**" includes an officer who is compensated for the performance of the officer's duties;

(b) "**in-house lobbyist**" means an individual who is employed by a person or partnership other than an organization

(i) a significant part of whose duties as an employee, as determined in accordance with the regulations, is to lobby on behalf of the person or partnership or, where the person is a corporation, on behalf of any subsidiary of the corporation or any corporation of which the corporation is a subsidiary, or

(ii) a part of whose duties as an employee is to lobby on behalf of the person or partnership or, where the person is a corporation, on behalf of any subsidiary of the corporation or any corporation of which the corporation is a subsidiary, if the employee's duties to lobby together with the duties of other employees to lobby would constitute a significant part of the duties of one employee, as determined in accordance with the regulations, were those duties to lobby to be performed by only one employee.

(2) An in-house lobbyist shall file a return with the Registrar

(a) within two months after the day on which the individual becomes an in-house lobbyist; and

(b) within thirty days after the expiration of each six-month period after the date of filing the previous return.

(3) An individual who is an in-house lobbyist on the coming into force of this Section shall file a return with the Registrar within two months after the day on which this Section comes into force and after that in accordance with clause (2)(b).

(4) An in-house lobbyist shall set out in the return the following information:

(a) the name and business address of the in-house lobbyist;

(b) the name and business address of the employer;

(c) where the employer is a corporation, the name and business address of each subsidiary of the corporation that, to the knowledge of the in-house lobbyist, has a direct interest in the outcome of the in-house lobbyist's activities on behalf of the employer;

(d) where the employer is a corporation that is a subsidiary of any other corporation, the name and business address of that other corporation;

(e) where applicable, the fiscal year of the employer;

(f) a general description of the employer's business or activities;

(g) where the employer is funded, in whole or in part, by a government or government agency, the name of the government or government agency, as the case may be, and the amount of funding received by the employer from that government or government agency;

(h) the name and business address of any entity or organization, other than a government or government agency, that, to the knowledge of the in-house lobbyist, contributed, during the entity's or organization's fiscal year that precedes the filing of

the return, seven hundred and fifty dollars or more toward the in-house lobbyist's activities on behalf of the employer;

(i) the name and business address of any individual who, to the knowledge of the in-house lobbyist, made a contribution described in clause (h) on behalf of an entity or organization described in that clause;

(j) where the in-house lobbyist is lobbying at the time the return is filed, the subject-matter in respect of which the in-house lobbyist is lobbying and any other prescribed information respecting the subject-matter;

(k) the subject-matters in respect of which the in-house lobbyist has lobbied or expects to lobby during the fiscal year of the employer in which the return is filed or, where the employer does not have a fiscal year, during the calendar year in which the return is filed, and any other prescribed information respecting those subject-matters;

(l) particulars to identify any relevant legislative proposal, bill, resolution, regulation, policy, program, decision, grant, contribution or financial benefit;

(m) the name of any department of the Government of the Province or an agency of government, within the meaning of the Auditor General Act, in which any public office holder is employed or serves whom the in-house lobbyist has lobbied or expects to lobby during the fiscal year of the employer in which the return is filed or, where the employer does not have a fiscal year, during the calendar year in which the return is filed;

(n) whether the in-house lobbyist has lobbied or expects to lobby a member of the House of Assembly in the member's capacity as a member or a person on the staff of a member of the House of Assembly during the fiscal year of the employer in which the return is filed or, where the employer does not have a fiscal year, during the calendar year in which the return is filed;

(o) the techniques of communication, including grass-roots communication, that the in-house lobbyist has used or expects to use to lobby during the fiscal year of the employer in which the return is filed or, where the employer does not have a fiscal year, during the calendar year in which the return is filed; and

(p) such additional information as may be prescribed with respect to the identity of a person or entity described in this Section.

(5) An in-house lobbyist shall provide the Registrar with any change to the information in the return of the in-house lobbyist and any information required to be provided under subsection (4), the knowledge of which the in-house lobbyist acquired only after the return was filed, not later than thirty days after the change occurs or the knowledge is acquired.

(6) An in-house lobbyist who ceases to be an in-house lobbyist or to be employed by the employer of the in-house lobbyist shall advise the Registrar of that not later than thirty days after the in-house lobbyist ceases to be an in-house lobbyist or ceases to be employed by the employer.

(7) An in-house lobbyist shall provide the Registrar with any information that the Registrar may request to clarify any information that the in-house lobbyist has provided to the Registrar under this Section not later than thirty days after the Registrar makes the request.

7 (1) In this Section,

(a) "**employee**" includes an officer who is compensated for the performance of the officer's duties;

(b) "**in-house lobbyist**" means an individual who is employed by an organization

(i) a significant part of whose duties as an employee, as determined in accordance with the regulations, is to lobby on behalf of the organization, or

- (ii) a part of whose duties as an employee is to lobby on behalf of the organization if the employee's duties to lobby together with the duties of other employees to lobby would constitute a significant part of the duties of one employee, as determined in accordance with the regulations, were those duties to lobby to be performed by only one employee;
- (c) "**senior officer**" means the most senior officer of an organization who is compensated for the performance of the senior officer's duties.
- (2) The senior officer of an organization that employs an in-house lobbyist shall file a return with the Registrar
  - (a) within two months after the day on which that person becomes an in-house lobbyist; and
  - (b) within thirty days after the expiration of each six-month period after the date of filing the previous return.
- (3) Where, on the coming into force of this Section, the organization employs an in-house lobbyist, the senior officer of the organization shall file a return with the Registrar within two months after the day on which this Section comes into force and after that in accordance with clause (2)(b).
- (4) The senior officer of an organization shall set out in the return the following information:
  - (a) the name and business address of the senior officer;
  - (b) the name and business address of the organization;
  - (c) a description in summary form of the organization's business or activities and any other prescribed information to identify its business or activities;
  - (d) a general description of the membership of the organization, including the names of the directors and officers of the organization;
  - (e) where the organization is funded, in whole or in part, by a government or government agency, the name of the government or government agency, as the case may be, and the amount of funding received by the organization from that government or government agency;
  - (f) the name and business address of any entity or other organization, other than a government or government agency, that, to the knowledge of the senior officer, contributed, during the entity's or organization's fiscal year that precedes the filing of the return, seven hundred and fifty dollars or more toward the lobbying activities of the organization's in-house lobbyists;
  - (g) the name and business address of any individual who, to the knowledge of the senior officer, made a contribution described in clause (f) on behalf of an entity or organization described in that clause;
  - (h) the name of each in-house lobbyist employed by the organization;
  - (i) where any in-house lobbyist is lobbying at the time the return is filed, the subject-matter in respect of which the in-house lobbyist is lobbying and any other prescribed information respecting the subject-matter;
  - (j) the subject-matters and any other prescribed information respecting those subject-matters in respect of which any in-house lobbyist
    - (i) has lobbied during the period for which the return is filed, and
    - (ii) expects to lobby during the next following six-month period;
  - (k) particulars to identify any relevant legislative proposal, bill, resolution, regulation, policy, program, decision, grant, contribution or financial benefit;
  - (l) the name of any department of the Government of the Province or an agency of government, within the meaning of the Auditor General Act, in which any public office holder is employed or services whom any in-house lobbyist

- (i) has lobbied during the period for which the return is filed, and
  - (ii) expects to lobby during the next following six-month period;
  - (m) whether any in-house lobbyist
    - (i) has lobbied a member of the House of Assembly in the member's capacity as a member or a person on the staff of a member of the House of Assembly during the period for which the return is filed, and
    - (ii) expects to lobby a member of the House of Assembly in the member's capacity as a member or a person on the staff of a member of the House of Assembly during the next following six-month period;
  - (n) the techniques of communication, including grass-roots communication, that any in-house lobbyist
    - (i) has used to lobby during the period for which the return is filed, and
    - (ii) expects to use to lobby during the next following six-month period;
  - (o) any other prescribed information relating to the identity of the senior officer, the organization, any in-house lobbyist or any department, agency, board or commission referred to in clause (l); and
  - (p) the name of any in-house lobbyist who has been identified in the last return filed and has ceased to be an in-house lobbyist or to be employed by the organization.
- (5) The senior officer shall provide the Registrar with any information that the Registrar may request to clarify any information that the senior officer has provided in the return of the senior officer not later than thirty days after the Registrar makes the request.

8 Every individual who submits a return or other document to the Registrar under this Act shall certify that the information contained in it is true to the best of the individual's knowledge and belief on the return or other document or, where it is submitted in electronic or other form in accordance with subsection 9(1), in the manner that is specified by the Registrar.

9 (1) Returns to be filed with the Registrar and information and other documents to be given to the Registrar under this Act shall be in a form approved by the Registrar.

(2) Returns, information and other documents shall be submitted to the Registrar in a manner permitted by the Registrar.

(3) Subject to subsection (5), the date on which the Registrar receives a return is the date on which the return is considered to have been filed for the purpose of this Act.

(4) Subject to subsection (5), the date on which the Registrar received information or a document other than a return is the date on which the information or document is considered to have been provided to the Registrar for the purpose of this Act.

(5) In the prescribed circumstances, a return, information or another document is deemed to have been received by the Registrar on the date determined in accordance with the regulations.

10 (1) Subject to the regulations, any return or other document that is received by the Registrar may be entered or recorded by any information storage device, including any system of mechanical or electronic data processing, that is capable of reproducing the stored return or other document in intelligible form within a reasonable time.

(2) In any prosecution for an offence under this Act, a copy of a return or other document that is reproduced from an information storage device referred to in subsection (1) and certified under the Registrar's signature as a true copy is admissible in evidence without proof of the signature or official character of the person appearing to have signed the copy.

11 (1) The Registrar shall establish and maintain a Registry in which shall be kept all returns filed under this Act as revised by other documents submitted to the Registrar under this Act.

(2) The Registry shall be organized in the manner and kept in the form that the Registrar determines.

(3) The Registry shall be available for public inspection in the manner and during the time that the Registrar determines.

(4) For greater certainty, the Registrar may make the Registry available electronically on-line, including through the Internet.

12 The Registrar may verify the information contained in any return or other document submitted to the Registrar under this Act.

13 (1) The Registrar may refuse to accept any return or other document submitted to the Registrar under this Act that does not comply with this Act or the regulations or that contains information or statements not requested in the return or other documents.

(2) Where the Registrar refuses to accept a return or other documents under subsection (1), the Registrar shall inform the individual who submitted it of the refusal and the reason for the refusal in the manner that the Registrar determines.

(3) Notwithstanding the provisions of this Act respecting times for filing a return or submitting another document, where a return or other document is refused by the Registrar under subsection (1) and the individual cannot reasonably submit another by the time set out in this Act for filing or submitting it, the Registrar shall provide the individual with a reasonable extension of time to file another return or submit another document.

(4) Where the Registrar accepts another return or document within the extension of time referred to in subsection (3), the return is deemed to have been filed or the other document is deemed to have been submitted on the day on which the return or the other document that was refused was received by the Registrar.

14 (1) The Registrar may remove a return from the Registry if the individual who filed the return

(a) fails to confirm the information contained in it within the period required by subsection 5(6);

(b) fails to advise the Registrar of the matters required by subsection 5(7) or 6(6) within the period required by the subsection; or

(c) fails to give the Registrar any requested information relating to the return within the period specified by this Act.

(2) The Registrar may remove a return without giving notice to the individual who filed the return and without holding a hearing.

(3) When a return is removed from the Registry, the individual who filed it is deemed, for the purposes of the individual's existing and future obligations under this Act, not to have filed the return.

15 (1) The Registrar may issue advisory opinions and interpretation bulletins with respect to the enforcement, interpretation or application of this Act or the regulations.

(2) Advisory opinions and interpretation bulletins issued pursuant to subsection (1) are not binding.

16 (1) The Registrar may delegate, in writing, any of the Registrar's powers or duties under this Act to a person employed in the Registrar's office and may authorize that person to delegate any of those powers or duties to another person employed in that office.

(2) A delegation may be made subject to such conditions and restrictions as the person making the delegation considers appropriate.

17 Any fee required by the regulations to be paid may be recovered in any court of competent jurisdiction as a debt due to the Crown.

18 (1) Every individual who fails to comply with subsection 5(2), (3), (4), (5) or (8), subsection 6(2), (3), (4), (5) or (7) or subsection 7(2), (3), (4) or (5) is guilty of an offence.

(2) Every individual who knowingly makes a false or misleading statement in a return or other document submitted to the Registrar under this Act is guilty of an offence.

(3) Every

(a) consultant lobbyist within the meaning of subsection 5(1); or

(b) in-house lobbyist within the meaning of subsection 6(1) or 7(1),

is guilty of an offence if, in the course of lobbying a public-office holder, the consultant lobbyist or in-house lobbyist knowingly places the public-office holder in a position of real or potential conflict of interest as described in subsection (4).

(4) A public-office holder is in a position of conflict of interest if the public-office holder engages in an activity that is prohibited by Section 7 or 22 of the Members and Public Employees Disclosure Act or that would be so prohibited if the public-office holder were a member of the House of Assembly or a public employee as defined by that Act.

(5) An individual who is guilty of an offence under this Section is liable on summary conviction, for a first offence, to a fine of not more than twenty-five thousand dollars and, for a second or subsequent offence, to a fine of not more than one hundred thousand dollars.

(6) No proceeding in respect of an offence under this Section shall be commenced more than two years after the time when the subject-matter of the proceeding arose.

19 (1) The Governor in Council may make regulations

(a) respecting the determination of when the duties of an employee to lobby on behalf of an employer constitute a significant part of the employee's duties as an employee for the purpose of the definition of "in-house lobbyist" in subsections 6(1) and 7(1);

(b) requiring a fee to be paid on the filing of a return or a class of returns under Section 5, 6 or 7, or for any service performed or the use of any facility provided by the Registrar;

(c) prescribing the fee referred to in clause (b) or the manner of determining it, and providing for a difference in or the waiver of the fee for filing a return based on the manner in which the return is submitted to the Registrar or inability to pay the fee;

(d) respecting the entering or recording of any return or other document pursuant to subsection 10(1);

(e) prescribing additional information with respect to the identities of persons or entities referred to in clauses 5(4)(o) and 6(5)(p), so long as the regulations do not require the setting out in the return of the names of individuals or other information that might identify individuals, if their names or the other information are not otherwise required pursuant to Section 5 or 6;

(f) prescribing any matter or thing that by this Act is to be or may be prescribed;

(g) defining any word or expression used but not defined in this Act;

(h) deemed necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the Regulations Act.

20 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.

*Example 3 of Lobbying Legislation - USA (Federal)*

<http://www.senate.gov/reference/resources/pdf/contacting10465.pdf>  
109 STAT. 691 PUBLIC LAW 104–65—DEC. 19, 1995

Public Law 104–65  
104th Congress  
An Act

To provide for the disclosure of lobbying activities to influence the Federal Government, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ‘‘Lobbying Disclosure Act of 1995’’.

**SEC. 2. FINDINGS**

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;

(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.

**SEC. 3. DEFINITIONS.**

As used in this Act:

(1) AGENCY.—The term ‘‘agency’’ has the meaning given that term in section 551(1) of title 5, United States Code.

(2) CLIENT.—The term ‘‘client’’ means any person or entity that employs or retains another person for financial or other compensation to conduct lobbying activities on behalf of that person or entity. A person or entity whose employees act as lobbyists on its own behalf is both a client and an employer of such employees. In the case of a coalition or association that employs or retains other persons to conduct lobbying activities, the client is the coalition or association and not its individual members.

(3) COVERED EXECUTIVE BRANCH OFFICIAL.—



The term “covered executive branch official” means—

- (A) the President;
- (B) the Vice President;
- (C) any officer or employee, or any other individual functioning in the capacity of such an officer or employee, in the Executive Office of the President;
- (D) any officer or employee serving in a position in level I, II, III, IV, or V of the Executive Schedule, as designated by statute or Executive order;
- (E) any member of the uniformed services whose pay grade is at or above O-7 under section 201 of title 37, United States Code; and
- (F) any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy advocating character described in section 7511(b)(2) of title 5, United States Code.

**(4) COVERED LEGISLATIVE BRANCH OFFICIAL.—**

The term

“covered legislative branch official” means—

- (A) a Member of Congress;
- (B) an elected officer of either House of Congress;
- (C) any employee of, or any other individual functioning in the capacity of an employee of—
  - (i) a Member of Congress;
  - (ii) a committee of either House of Congress;
  - (iii) the leadership staff of the House of Representatives or the leadership staff of the Senate;
  - (iv) a joint committee of Congress; and
  - (v) a working group or caucus organized to provide legislative services or other assistance to Members of Congress; and
- (D) any other legislative branch employee serving in a position described under section 109(13) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

**(5) EMPLOYEE.—**The term “employee” means any individual who is an officer, employee, partner, director, or proprietor of a person or entity, but does not include—

- (A) independent contractors; or
- (B) volunteers who receive no financial or other compensation from the person or entity for their services.

**(6) FOREIGN ENTITY.—**The term “foreign entity” means a foreign principal (as defined in section 1(b) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(b)).

**(7) LOBBYING ACTIVITIES.—**The term “lobbying activities” means 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.

**(8) LOBBYING CONTACT.—**

**(A) DEFINITION.—**The term “lobbying contact” 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; 109 STAT. 693 PUBLIC LAW 104–65—DEC. 19, 1995
- (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.

(B) EXCEPTIONS.—The term “lobbying contact” does not include a communication that is—

- (i) made by a public official acting in the public official’s official capacity;
- (ii) made by a representative of a media organization if the purpose of the communication is gathering and disseminating news and information to the public;
- (iii) made in a speech, article, publication or other material that is distributed and made available to the public, or through radio, television, cable television, or other medium of mass communication;
- (iv) made on behalf of a government of a foreign country or a foreign political party and disclosed under the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.);
- (v) a request for a meeting, a request for the status of an action, or any other similar administrative request, if the request does not include an attempt to influence a covered executive branch official or a covered legislative branch official;
- (vi) made in the course of participation in an advisory committee subject to the Federal Advisory Committee Act;
- (vii) testimony given before a committee, subcommittee, or task force of the Congress, or submitted for inclusion in the public record of a hearing conducted by such committee, subcommittee, or task force;
- (viii) information provided in writing in response to an oral or written request by a covered executive branch official or a covered legislative branch official for specific information;
- (ix) required by subpoena, civil investigative demand, or otherwise compelled by statute, regulation, or other action of the Congress or an agency;
- (x) made in response to a notice in the Federal Register, Commerce Business Daily, or other similar publication soliciting communications from the public and directed to the agency official specifically designated in the notice to receive such communications;
- (xi) not possible to report without disclosing information, the unauthorized disclosure of which is prohibited by law;
- (xii) made to an official in an agency with regard to—
  - (I) a judicial proceeding or a criminal or civil law enforcement inquiry, investigation, or proceeding;
  - or
  - (II) a filing or proceeding that the Government is specifically required by statute or regulation to maintain or conduct on a confidential basis, 109 STAT. 694 PUBLIC LAW 104–65—DEC. 19, 1995 if that agency is charged with responsibility for such proceeding, inquiry, investigation, or filing;

(xiii) made in compliance with written agency procedures regarding an adjudication conducted by the agency under section 554 of title 5, United States Code, or substantially similar provisions;

(xiv) a written comment filed in the course of a public proceeding or any other communication that is made on the record in a public proceeding;

(xv) a petition for agency action made in writing and required to be a matter of public record pursuant to established agency procedures;

(xvi) made on behalf of an individual with regard to that individual's benefits, employment, or other personal matters involving only that individual, except that this clause does not apply to any communication with—

(I) a covered executive branch official, or

(II) a covered legislative branch official (other than the individual's elected Members of Congress or employees who work under such Members' direct supervision), with respect to the formulation, modification, or adoption of private legislation for the relief of that individual;

(xvii) a disclosure by an individual that is protected under the amendments made by the Whistleblower Protection Act of 1989, under the Inspector General Act of 1978, or under another provision of law;

(xviii) made by—

(I) a church, its integrated auxiliary, or a convention or association of churches that is exempt from filing a Federal income tax return under paragraph 2(A)(i) of section 6033(a) of the Internal Revenue Code of 1986, or (II) a religious order that is exempt from filing a Federal income tax return under paragraph (2)(A)(iii) of such section 6033(a); and

(xix) between—

(I) officials of a self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act) that is registered with or established by the Securities and Exchange Commission as required by that Act or a similar organization that is designated by or registered with the Commodities Future Trading Commission as provided under the Commodity Exchange Act; and

(II) the Securities and Exchange Commission or the Commodities Future Trading Commission, respectively; relating to the regulatory responsibilities of such organization under that Act.

(9) LOBBYING FIRM.—The term “lobbying firm” means a person or entity that has 1 or more employees who are lobbyists on behalf of a client other than that person or entity. The term also includes a self-employed individual who is a lobbyist. 109 STAT. 695 PUBLIC LAW 104–65—DEC. 19, 1995

(10) LOBBYIST.—The term “lobbyist” means any individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute

less than 20 percent of the time engaged in the services provided by such individual to that client over a six month period.

(11) MEDIA ORGANIZATION.—The term “media organization” means a person or entity engaged in disseminating information to the general public through a newspaper, magazine, other publication, radio, television, cable television, or other medium of mass communication.

(12) **MEMBER OF CONGRESS.**—The term “Member of Congress” means a Senator or a Representative in, or Delegate or Resident Commissioner to, the Congress.

(13) **ORGANIZATION.**—The term “organization” means a person or entity other than an individual.

(14) **PERSON OR ENTITY.**—The term “person or entity” means any individual, corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or State or local government.

(15) **PUBLIC OFFICIAL.**—The term “public official” means any elected official, appointed official, or employee of—

(A) a Federal, State, or local unit of government in the United States other than—

(i) a college or university;

(ii) a government-sponsored enterprise (as defined in section 3(8) of the Congressional Budget and Impoundment Control Act of 1974);

(iii) a public utility that provides gas, electricity, water, or communications;

(iv) a guaranty agency (as defined in section 435(j) of the Higher Education Act of 1965 (20 U.S.C. 1085(j))), including any affiliate of such an agency;

or

(v) an agency of any State functioning as a student loan secondary market pursuant to section 435(d)(1)(F) of the Higher Education Act of 1965 (20 U.S.C. 1085(d)(1)(F));

(B) a Government corporation (as defined in section 9101 of title 31, United States Code);

(C) an organization of State or local elected or appointed officials other than officials of an entity described in clause (i), (ii), (iii), (iv), or (v) of subparagraph (A);

(D) an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e));

(E) a national or State political party or any organizational unit thereof; or

(F) a national, regional, or local unit of any foreign government.

(16) **STATE.**—The term “State” means each of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States. 109 STAT. 696 PUBLIC LAW 104–65—DEC. 19, 1995

#### **SEC. 4. REGISTRATION OF LOBBYISTS.**

(a) **REGISTRATION.**—

(1) **GENERAL RULE.**—No later than 45 days after a lobbyist first makes a lobbying contact or is employed or retained to make a lobbying contact, whichever is earlier, such lobbyist (or, as provided under paragraph (2), the organization employing such lobbyist), shall register with the Secretary of the Senate and the Clerk of the House of Representatives.

(2) **EMPLOYER FILING.**—Any organization that has 1 or more employees who are lobbyists shall file a single registration under this section on behalf of such employees for each client on whose behalf the employees act as lobbyists.

(3) **EXEMPTION.**—

(A) GENERAL RULE.—Notwithstanding paragraphs (1) and (2), a person or entity whose—

(i) total income for matters related to lobbying activities on behalf of a particular client (in the case of a lobbying firm) does not exceed and is not expected to exceed \$5,000; or (ii) total expenses in connection with lobbying activities (in the case of an organization whose employees engage in lobbying activities on its own behalf) do not exceed or are not expected to exceed \$20,000, (as estimated under section 5) in the semiannual period described in section 5(a) during which the registration would be made is not required to register under subsection

(a) with respect to such client.

(B) ADJUSTMENT.—The dollar amounts in subparagraph

(A) shall be adjusted—

(i) on January 1, 1997, to reflect changes in the Consumer Price Index (as determined by the Secretary of Labor) since the date of enactment of this Act; and

(ii) on January 1 of each fourth year occurring after January 1, 1997, to reflect changes in the Consumer Price Index (as determined by the Secretary of Labor) during the preceding 4-year period, rounded to the nearest \$500.

(C) CONTENTS OF REGISTRATION.—Each registration under this section shall contain—

(1) the name, address, business telephone number, and principal place of business of the registrant, and a general description of its business or activities;

(2) the name, address, and principal place of business of the registrant's client, and a general description of its business or activities (if different from paragraph (1));

(3) the name, address, and principal place of business of any organization, other than the client, that—

(A) contributes more than \$10,000 toward the lobbying activities of the registrant in a semiannual period described in section 5(a); and

(B) in whole or in major part plans, supervises, or controls such lobbying activities.

(4) the name, address, principal place of business, amount of any contribution of more than \$10,000 to the lobbying activities of the registrant, and approximate percentage of equitable ownership in the client (if any) of any foreign entity that—

2 USC 1603. 109 STAT. 697 PUBLIC LAW 104-65—DEC. 19, 1995

(A) holds at least 20 percent equitable ownership in the client or any organization identified under paragraph (3); (B) directly or indirectly, in whole or in major part, plans, supervises, controls, directs, finances, or subsidizes the activities of the client or any organization identified under paragraph (3); or

(C) is an affiliate of the client or any organization identified under paragraph (3) and has a direct interest in the outcome of the lobbying activity;

(5) a statement of—

(A) the general issue areas in which the registrant expects to engage in lobbying activities on behalf of the client; and

(B) to the extent practicable, specific issues that have (as of the date of the registration) already been addressed or are likely to be addressed in lobbying activities; and (6) the name of each employee of the registrant who has acted or whom the registrant expects to act as a lobbyist on behalf of the client and, if any such employee has served as a covered executive branch official or a covered legislative branch official in the 2 years before the date on which such employee first acted (after

the date of enactment of this Act) as a lobbyist on behalf of the client, the position in which such employee served.

(c) **GUIDELINES FOR REGISTRATION.**—

(1) **MULTIPLE CLIENTS.**—In the case of a registrant making lobbying contacts on behalf of more than 1 client, a separate registration under this section shall be filed for each such client.

(2) **MULTIPLE CONTACTS.**—A registrant who makes more than 1 lobbying contact for the same client shall file a single registration covering all such lobbying contacts.

(d) **TERMINATION OF REGISTRATION.**—A registrant who after registration—

(1) is no longer employed or retained by a client to conduct lobbying activities, and

(2) does not anticipate any additional lobbying activities for such client, may so notify the Secretary of the Senate and the Clerk of the House of Representatives and terminate its registration.

## **SEC. 5. REPORTS BY REGISTERED LOBBYISTS.**

(a) **SEMIANNUAL REPORT.**—No later than 45 days after the end of the semiannual period beginning on the first day of each January and the first day of July of each year in which a registrant is registered under section 4, each registrant shall file a report with the Secretary of the Senate and the Clerk of the House of Representatives on its lobbying activities during such semiannual period. A separate report shall be filed for each client of the registrant.

(b) **CONTENTS OF REPORT.**—Each semiannual report filed under subsection (a) shall contain—

(1) the name of the registrant, the name of the client, and any changes or updates to the information provided in the initial registration; 2 USC 1604. 109 STAT. 698 PUBLIC LAW 104–65—DEC. 19, 1995

(2) for each general issue area in which the registrant engaged in lobbying activities on behalf of the client during the semiannual filing period—

(A) a list of the specific issues upon which a lobbyist employed by the registrant engaged in lobbying activities, including, to the maximum extent practicable, a list of bill numbers and references to specific executive branch actions;

(B) a statement of the Houses of Congress and the Federal agencies contacted by lobbyists employed by the registrant on behalf of the client;

(C) a list of the employees of the registrant who acted as lobbyists on behalf of the client; and

(D) a description of the interest, if any, of any foreign entity identified under section 4(b)(4) in the specific issues listed under subparagraph (A);

(3) in the case of a lobbying firm, a good faith estimate of the total amount of all income from the client (including any payments to the registrant by any other person for lobbying

activities on behalf of the client) during the semiannual period, other than income for matters that are unrelated to lobbying activities; and (4) in the case of a registrant engaged in lobbying activities on its own behalf, a good faith estimate of the total expenses that the registrant and its employees incurred in connection with lobbying activities during the semiannual filing period.

(c) **ESTIMATES OF INCOME OR EXPENSES.**—For purposes of this section, estimates of income or expenses shall be made as follows:

- (1) Estimates of amounts in excess of \$10,000 shall be rounded to the nearest \$20,000.
- (2) In the event income or expenses do not exceed \$10,000, the registrant shall include a statement that income or expenses totaled less than \$10,000 for the reporting period.
- (3) A registrant that reports lobbying expenditures pursuant to section 6033(b)(8) of the Internal Revenue Code of 1986 may satisfy the requirement to report income or expenses by filing with the Secretary of the Senate and the Clerk of the House of Representatives a copy of the form filed in accordance with section 6033(b)(8).

## **SEC. 6. DISCLOSURE AND ENFORCEMENT.**

The Secretary of the Senate and the Clerk of the House of Representatives shall—

- (1) provide guidance and assistance on the registration and reporting requirements of this Act and develop common standards, rules, and procedures for compliance with this Act;
  - (2) review, and, where necessary, verify and inquire to ensure the accuracy, completeness, and timeliness of registration and reports;
  - (3) develop filing, coding, and cross-indexing systems to carry out the purpose of this Act, including—
    - (A) a publicly available list of all registered lobbyists, lobbying firms, and their clients; and
    - (B) computerized systems designed to minimize the burden of filing and maximize public access to materials filed under this Act;
- 2 USC 1605. 109 STAT. 699 PUBLIC LAW 104-65—DEC. 19, 1995
- (4) make available for public inspection and copying at reasonable times the registrations and reports filed under this Act;
  - (5) retain registrations for a period of at least 6 years after they are terminated and reports for a period of at least 6 years after they are filed;
  - (6) compile and summarize, with respect to each semiannual period, the information contained in registrations and reports filed with respect to such period in a clear and complete manner;
  - (7) notify any lobbyist or lobbying firm in writing that may be in noncompliance with this Act; and
  - (8) notify the United States Attorney for the District of Columbia that a lobbyist or lobbying firm may be in non-compliance with this Act, if the registrant has been notified in writing and has failed to provide an appropriate response within 60 days after notice was given under paragraph (7).

## **SEC. 7. PENALTIES.**

Whoever knowingly fails to—

- (1) remedy a defective filing within 60 days after notice of such a defect by the Secretary of the Senate or the Clerk of the House of Representatives; or
- (2) comply with any other provision of this Act; shall, upon proof of such knowing violation by a preponderance of the evidence, be subject to a civil fine of not more than \$50,000, depending on the extent and gravity of the violation.

## **SEC. 8. RULES OF CONSTRUCTION.**

(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.

(c) AUDIT AND INVESTIGATIONS.—Nothing in this Act shall be construed to grant general audit or investigative authority to the Secretary of the Senate or the Clerk of the House of Representatives.

## **SEC. 9. AMENDMENTS TO THE FOREIGN AGENTS REGISTRATION ACT.**

The Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.) is amended—

(1) in section 1—

(A) by striking subsection (j);

(B) in subsection (o) by striking “the dissemination of political propaganda and any other activity which the person engaging therein believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, persuade, or in any other way influence” and inserting “any activity that the person engaging in believes will, or that the person intends to, in any way influence”; 22 USC 611. 2 USC 1607. 2 USC 1606. Records.

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(C) in subsection (p) by striking the semicolon and inserting a period; and

(D) by striking subsection (q);

(2) in section 3(g) (22 U.S.C. 613(g)), by striking “established agency proceedings, whether formal or informal.” And inserting “judicial proceedings, criminal or civil law enforcement inquiries, investigations, or proceedings, or agency proceedings required by statute or regulation to be conducted on the record.”;

(3) in section 3 (22 U.S.C. 613) by adding at the end the following:

“(h) Any agent of a person described in section 1(b)(2) or an entity described in section 1(b)(3) if the agent is required to register and does register under the Lobbying Disclosure Act of 1995 in connection with the agent’s representation of such person or entity.”; (4) in section 4(a) (22 U.S.C. 614(a))—

(A) by striking “political propaganda” and inserting “informational materials”; and

(B) by striking “and a statement, duly signed by or on behalf of such an agent, setting forth full information as to the places, times, and extent of such transmittal”; (5) in section 4(b) (22 U.S.C. 614(b))—

(A) in the matter preceding clause (i), by striking “political propaganda” and inserting “informational materials”; and

(B) by striking “(i) in the form of prints, or” and all that follows through the end of the subsection and inserting “without placing in such informational materials a conspicuous statement that the materials are distributed by the agent on behalf of the foreign principal, and that additional information is on file with the Department of Justice, Washington, District of Columbia. The Attorney General may by rule define what constitutes a conspicuous statement for the purposes of this subsection.”;



- (6) in section 4(c) (22 U.S.C. 614(c)), by striking “political propaganda” and inserting “informational materials”;
- (7) in section 6 (22 U.S.C. 616)—
  - (A) in subsection (a) by striking “and all statements concerning the distribution of political propaganda”;
  - (B) in subsection (b) by striking “, and one copy of every item of political propaganda”; and
  - (C) in subsection (c) by striking “copies of political propaganda,”; and
- (8) in section 8 (22 U.S.C. 618)—
  - (A) in subsection (a)(2) by striking “or in any statement under section 4(a) hereof concerning the distribution of political propaganda”; and
  - (B) by striking subsection (d).

## **SEC. 10. AMENDMENTS TO THE BYRD AMENDMENT.**

- (a) REVISED CERTIFICATION REQUIREMENTS.—Section 1352(b) of title 31, United States Code, is amended—
  - (1) in paragraph (2) by striking subparagraphs (A), (B), and (C) and inserting the following:
    - “(A) the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts 109 STAT. 701 PUBLIC LAW 104–65—DEC. 19, 1995 on behalf of the person with respect to that Federal contract, grant, loan, or cooperative agreement; and
    - “(B) a certification that the person making the declaration has not made, and will not make, any payment prohibited by subsection (a).”;
  - (2) in paragraph (3) by striking all that follows “loan shall contain” and inserting “the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of the person in connection with that loan insurance or guarantee.”; and
  - (3) by striking paragraph (6) and redesignating paragraph (7) as paragraph (6).
- (b) REMOVAL OF OBSOLETE REPORTING REQUIREMENT.—Section 1352 of title 31, United States Code, is further amended—
  - (1) by striking subsection (d); and (2) by redesignating subsections (e), (f), (g), and (h) as subsections (d), (e), (f), and (g), respectively.

## **SEC. 11. REPEAL OF CERTAIN LOBBYING PROVISIONS.**

- (a) REPEAL OF THE FEDERAL REGULATION OF LOBBYING ACT.—The Federal Regulation of Lobbying Act (2 U.S.C. 261 et seq.) is repealed.
- (b) REPEAL OF PROVISIONS RELATING TO HOUSING LOBBYIST ACTIVITIES.—
  - (1) Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) is repealed.
  - (2) Section 536(d) of the Housing Act of 1949 (42 U.S.C. 1490p(d)) is repealed.

## **SEC. 12. CONFORMING AMENDMENTS TO OTHER STATUTES.**

- (a) AMENDMENT TO COMPETITIVENESS POLICY COUNCIL ACT.—Section 5206(e) of the Competitiveness Policy Council Act (15 U.S.C.

4804(e)) is amended by inserting “or a lobbyist for a foreign entity (as the terms ‘lobbyist’ and ‘foreign entity’ are defined under section 3 of the Lobbying Disclosure Act of 1995)” after “an agent for a foreign principal”.

(b) AMENDMENTS TO TITLE 18, UNITED STATES CODE.—Section 219(a) of title 18, United States Code, is amended—

(1) by inserting “or a lobbyist required to register under the Lobbying Disclosure Act of 1995 in connection with the representation of a foreign entity, as defined in section 3(6)

of that Act” after “an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938”; and

(2) by striking out “, as amended,”.

(c) AMENDMENT TO FOREIGN SERVICE ACT OF 1980.—Section 602(c) of the Foreign Service Act of 1980 (22 U.S.C. 4002(c)) is amended by inserting “or a lobbyist for a foreign entity (as defined in section 3(6) of the Lobbying Disclosure Act of 1995)” after “an agent of a foreign principal (as defined by section 1(b) of the Foreign Agents Registration Act of 1938)”.

### **SEC. 13. SEVERABILITY.**

If any provision of this Act, or the application thereof, is held invalid, the validity of the remainder of this Act and the application of such provision to other persons and circumstances shall not be affected thereby.

2 USC 1608. 109 STAT. 702 PUBLIC LAW 104–65—DEC. 19, 1995

### **SEC. 14. IDENTIFICATION OF CLIENTS AND COVERED OFFICIALS.**

(a) ORAL LOBBYING CONTACTS.—Any person or entity that makes an oral lobbying contact with a covered legislative branch official or a covered executive branch official shall, on the request of the official at the time of the lobbying contact—

(1) state whether the person or entity is registered under this Act and identify the client on whose behalf the lobbying contact is made; and

(2) state whether such client is a foreign entity and identify any foreign entity required to be disclosed under section 4(b)(4) that has a direct interest in the outcome of the lobbying activity.

(b) WRITTEN LOBBYING CONTACTS.—Any person or entity registered under this Act that makes a written lobbying contact (including an electronic communication) with a covered legislative branch official or a covered executive branch official shall—

(1) if the client on whose behalf the lobbying contact was made is a foreign entity, identify such client, state that the client is considered a foreign entity under this Act, and state whether the person making the lobbying contact is registered on behalf of that client under section 4; and

(2) identify any other foreign entity identified pursuant to section 4(b)(4) that has a direct interest in the outcome of the lobbying activity.

(c) IDENTIFICATION AS COVERED OFFICIAL.—Upon request by a person or entity making a lobbying contact, the individual who is contacted or the office

employing that individual shall indicate whether or not the individual is a covered legislative branch official or a covered executive branch official.

## **SEC. 15. ESTIMATES BASED ON TAX REPORTING SYSTEM.**

(a) ENTITIES COVERED BY SECTION 6033(b) OF THE INTERNAL REVENUE CODE OF 1986.—A registrant that is required to report and does report lobbying expenditures pursuant to section 6033(b)(8) of the Internal Revenue Code of 1986 may—

(1) make a good faith estimate (by category of dollar value) of applicable amounts that would be required to be disclosed under such section for the appropriate semiannual period to meet the requirements of sections 4(a)(3) and 5(b)(4); and

(2) in lieu of using the definition of “lobbying activities” in section 3(7) of this Act, consider as lobbying activities only those activities that are influencing legislation as defined in section 4911(d) of the Internal Revenue Code of 1986.

(b) ENTITIES COVERED BY SECTION 162(e) OF THE INTERNAL REVENUE CODE OF 1986.—A registrant that is subject to section 162(e) of the Internal Revenue Code of 1986 may—

(1) make a good faith estimate (by category of dollar value) of applicable amounts that would not be deductible pursuant to such section for the appropriate semiannual period to meet the requirements of sections 4(a)(3) and 5(b)(4); and

(2) in lieu of using the definition of “lobbying activities” in section 3(7) of this Act, consider as lobbying activities only those activities, the costs of which are not deductible pursuant to section 162(e) of the Internal Revenue Code of 1986.

(c) DISCLOSURE OF ESTIMATE.—Any registrant that elects to make estimates required by this Act under the procedures authorized by subsection (a) or (b) for reporting or threshold purposes shall—

2 USC 1610.

2 USC 1609.

109 STAT. 703 PUBLIC LAW 104–65—DEC. 19, 1995

(1) inform the Secretary of the Senate and the Clerk of the House of Representatives that the registrant has elected to make its estimates under such procedures; and

(2) make all such estimates, in a given calendar year, under such procedures.

(d) STUDY.—Not later than March 31, 1997, the Comptroller General of the United States shall review reporting by registrants under subsections (a) and (b) and report to the Congress—

(1) the differences between the definition of “lobbying activities” in section 3(7) and the definitions of “lobbying expenditures”, “influencing legislation”, and related terms in sections 162(e) and 4911 of the Internal Revenue Code of 1986, as each are implemented by regulations;

(2) the impact that any such differences may have on filing and reporting under this Act pursuant to this subsection; and

(3) any changes to this Act or to the appropriate sections of the Internal Revenue Code of 1986 that the Comptroller General may recommend to harmonize the definitions.

## **SEC. 16. REPEAL OF THE RAMSPECK ACT.**

(a) REPEAL.—Subsection (c) of section 3304 of title 5, United States Code, is repealed.

(b) REDESIGNATION.—Subsection (d) of section 3304 of title 5, United States Code, is redesignated as subsection (c).

(c) EFFECTIVE DATE.—The repeal and amendment made by this section shall take effect 2 years after the date of the enactment of this Act.

## **SEC. 17. EXCEPTED SERVICE AND OTHER EXPERIENCE CONSIDERATIONS**

### **FOR COMPETITIVE SERVICE APPOINTMENTS.**

(a) IN GENERAL.—Section 3304 of title 5, United States Code (as amended by section 2 of this Act) is further amended by adding at the end thereof the following new subsection:

“(d) The Office of Personnel Management shall promulgate regulations on the manner and extent that experience of an individual in a position other than the competitive service, such as the excepted service (as defined under section 2103) in the legislative or judicial branch, or in any private or nonprofit enterprise, may be considered in making appointments to a position in the competitive service (as defined under section 2102). In promulgating such regulations OPM shall not grant any preference based on the fact of service in the legislative or judicial branch. The regulations shall be consistent with the principles of equitable competition and merit based appointments.”

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect 2 years after the date of the enactment of this Act, except the Office of Personnel Management shall—

(1) conduct a study on excepted service considerations for competitive service appointments relating to such amendment;

and

(2) take all necessary actions for the regulations described under such amendment to take effect as final regulations on the effective date of this section.

## **SEC. 18. EXEMPT ORGANIZATIONS.**

An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall 2 USC 1611.

5 USC 3304 note.

Regulations.

5 USC 3304 note.

109 STAT. 704 PUBLIC LAW 104–65—DEC. 19, 1995 not be eligible for the receipt of Federal funds constituting an award, grant, contract, loan, or any other form.

## **SEC. 19. AMENDMENT TO THE FOREIGN AGENTS REGISTRATION ACT**

(P.L. 75–583).

Strike section 11 of the Foreign Agents Registration Act of 1938, as amended, and insert in lieu thereof the following:

“SECTION 11. REPORTS TO THE CONGRESS.—The Attorney General shall every six months report to the Congress concerning administration of this Act, including registrations filed pursuant to the Act, and the nature, sources and content of political propaganda disseminated and distributed.”

## **SEC. 20. DISCLOSURE OF THE VALUE OF ASSETS UNDER THE ETHICS IN GOVERNMENT ACT OF 1978.**

(a) **INCOME.**—Section 102(a)(1)(B) of the Ethics in Government Act of 1978 is amended—

(1) in clause (vii) by striking “or”; and (2) by striking clause (viii) and inserting the following:

“(viii) greater than \$1,000,000 but not more than \$5,000,000, or

“(ix) greater than \$5,000,000.”.

(b) **ASSETS AND LIABILITIES.**—Section 102(d)(1) of the Ethics in Government Act of 1978 is amended—

(1) in subparagraph (F) by striking “and”; and

(2) by striking subparagraph (G) and inserting the following:

“(G) greater than \$1,000,000 but not more than \$5,000,000;

“(H) greater than \$5,000,000 but not more than \$25,000,000;

“(I) greater than \$25,000,000 but not more than \$50,000,000; and

“(J) greater than \$50,000,000.”.

(c) **EXCEPTION.**—Section 102(e)(1) of the Ethics in Government Act of 1978 is amended by adding after subparagraph (E) the following:

“(F) For purposes of this section, categories with amounts or values greater than \$1,000,000 set forth in sections 102(a)(1)(B) and 102(d)(1) shall apply to the income, assets, or liabilities of spouses and dependent children only if the income, assets, or liabilities are held jointly with the reporting individual. All other income, assets, or liabilities of the spouse or dependent children required to be reported under this section in an amount or value greater than \$1,000,000 shall be categorized only as an amount or value greater than \$1,000,000.”.

## **SEC. 21. BAN ON TRADE REPRESENTATIVE REPRESENTING OR ADVISING FOREIGN ENTITIES.**

(a) **REPRESENTING AFTER SERVICE.**—Section 207(f)(2) of title 18, United States Code, is amended by—

(1) inserting “or Deputy United States Trade Representative” after “is the United States Trade Representative”; and

(2) striking “within 3 years” and inserting “at any time”.

(b) **LIMITATION ON APPOINTMENT AS UNITED STATES TRADE REPRESENTATIVE AND DEPUTY UNITED STATES TRADE REPRESENTATIVE.**—5 USC app. 102.

22 USC 621.

109 STAT. 705 PUBLIC LAW 104–65—DEC. 19, 1995

**TIVE.**—Section 141(b) of the Trade Act of 1974 (19 U.S.C. 2171(b)) is amended by adding at the end the following new paragraph:

“(3) **LIMITATION ON APPOINTMENTS.**—A person who has directly represented, aided, or advised a foreign entity (as defined by section 207(f)(3) of title 18, United States Code) in any trade negotiation, or trade dispute, with the United States may not be appointed as United States Trade Representative or as a Deputy United States Trade Representative.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to an individual appointed as United States Trade Representative or as a

Deputy United States Trade Representative on or after the date of enactment of this Act.

## **SEC. 22. FINANCIAL DISCLOSURE OF INTEREST IN QUALIFIED BLIND TRUST.**

(a) **IN GENERAL.**—Section 102(a) of the Ethics in Government Act of 1978 is amended by adding at the end thereof the following:

“(8) The category of the total cash value of any interest of the reporting individual in a qualified blind trust, unless the trust instrument was executed prior to July 24, 1995 and precludes the beneficiary from receiving information on the total cash value of any interest in the qualified blind trust.”

(b) **CONFORMING AMENDMENT.**—Section 102(d)(1) of the Ethics in Government Act of 1978 is amended by striking “and (5) and inserting “(5), and (8)”

(c) **EFFECTIVE DATE.**—The amendment made by this section shall apply with respect to reports filed under title I of the Ethics in Government Act of 1978 for calendar year 1996 and thereafter.

## **SEC. 23. SENSE OF THE SENATE THAT LOBBYING EXPENSES SHOULD REMAIN NONDEDUCTIBLE**

(a) **FINDINGS.**—The Senate finds that ordinary Americans generally are not allowed to deduct the costs of communicating with their elected representatives.

(b) **SENSE OF THE SENATE.**—It is the sense of the Senate that lobbying expenses should not be tax deductible.

## **SEC. 24. EFFECTIVE DATES**

(a) Except as otherwise provided in this section, this Act and the amendments made by this Act shall take effect on January 1, 1996.

(b) The repeals and amendments made under sections 9, 10, 11, and 12 shall take effect as provided under subsection (a), except that such repeals and amendments—

(1) shall not affect any proceeding or suit commenced before the effective date under subsection (a), and in all such proceedings or suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this Act had not been enacted; and 2 USC 1601 note. 2 USC 1612. 5 USC app. 102 note. 5 USC app. 102. 18 USC 207 note.

109 STAT. 706 PUBLIC LAW 104–65—DEC. 19, 1995

LEGISLATIVE HISTORY—S. 1060 (H.R. 2564) (S. 101):

HOUSE REPORTS: No. 104–339, Pt. 1, accompanying H.R. 2564 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 141 (1995):

July 24, 25, considered and passed Senate.

Nov. 16, 28, 29, H.R. 2564 considered and passed House; S. 1060 passed in lieu.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 31 (1995):

Nov. 19, Presidential statement. ®

(2) shall not affect the requirements of Federal agencies to compile, publish, and retain information filed or received before the effective date of such repeals and amendments. Approved December 19, 1995.

*Example 4 of Lobbying Legislation - USA (State Level)*

Registration of Lobbyists in Washington State

available at <http://apps.leg.wa.gov/RCW/default.aspx?cite=42.17.150>

**RCW 42.17.150**

Registration of lobbyists.

(1) Before doing any lobbying, or within thirty days after being employed as a lobbyist, whichever occurs first, a lobbyist shall register by filing with the commission a lobbyist registration statement, in such detail as the commission shall prescribe, showing

(a) His name, permanent business address, and any temporary residential and business addresses in Thurston county during the legislative session;

(b) The name, address and occupation or business of the lobbyist's employer;

(c) The duration of his employment;

(d) His compensation for lobbying; how much he is to be paid for expenses, and what expenses are to be reimbursed;

(e) Whether the person from whom he receives said compensation employs him solely as a lobbyist or whether he is a regular employee performing services for his employer which include but are not limited to the influencing of legislation;

(f) The general subject or subjects of his legislative interest;

(g) A written authorization from each of the lobbyist's employers confirming such employment;

(h) The name and address of the person who will have custody of the accounts, bills, receipts, books, papers, and documents required to be kept under this chapter;

(i) If the lobbyist's employer is an entity (including, but not limited to, business and trade associations) whose members include, or which as a representative entity undertakes lobbying activities for, businesses, groups, associations, or organizations, the name and address of each member of such entity or person represented by such entity whose fees, dues, payments, or other consideration paid to such entity during either of the prior two years have exceeded five hundred dollars or who is obligated to or has agreed to pay fees, dues, payments, or other consideration exceeding five hundred dollars to such entity during the current year.

(2) Any lobbyist who receives or is to receive compensation from more than one person for his services as a lobbyist shall file a separate notice of representation with respect to each such person; except that where a lobbyist whose fee for acting as such in respect to the same legislation or type of legislation is, or is to be, paid or contributed to by more than one person then such lobbyist may file a single statement, in which he shall detail the name, business address and occupation of each person so



paying or contributing, and the amount of the respective payments or contributions made by each such person.

(3) Whenever a change, modification, or termination of the lobbyist's employment occurs, the lobbyist shall, within one week of such change, modification or termination, furnish full information regarding the same by filing with the commission an amended registration statement.

(4) Each lobbyist who has registered shall file a new registration statement, revised as appropriate, on the second Monday in January of each odd-numbered year, and failure to do so shall terminate his registration.

[1987 c 201 § 1; 1982 c 147 § 10; 1973 c 1 § 15 (Initiative Measure No. 276, approved November 7, 1972).]

### *Example 5 of Lobbying Legislation – European Parliament*

Extract from the Rules of Procedure - Rule 9(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 on their own interests or on behalf 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.

This register shall be made available to the public on request in all of Parliament's places of work and, in the form laid down by the Quaestors, in its information offices in the Member States.

The provisions governing the application of this paragraph shall be laid down in an annex to the Rules of Procedure.

## **ANNEX IX Provisions governing the application of Rule 9(2) - Lobbying in Parliament**

### **Article 1 Passes**

1. The pass shall consist of a plastic card, bearing a photograph of the holder, indicating the holder's surname and forenames and the name of the firm, organization or person for whom the holder works.

Pass-holders shall at all times wear their pass visibly on all Parliament premises. Failure to do so may lead to its withdrawal.

Passes shall be distinguished by their shape and colour from the passes issued to occasional visitors.

2. Passes shall only be renewed if the holders have fulfilled the obligations referred to in Rule 9(2).

Any dispute by a Member as to the activity of a representative or lobby shall be referred to the Quaestors, who shall look into the matter and may decide whether to maintain or withdraw the pass concerned.

3. Passes shall not, under any circumstances, entitle holders to attend meetings of Parliament or its bodies other than those declared open to the public and shall not, in this case, entitle the holder to derogations from access rules applicable to all other Union citizens.

## **Article 2 Assistants**

1. At the beginning of each parliamentary term the Quaestors shall determine the maximum number of assistants who may be registered by each Member.

Upon taking up their duties, registered assistants shall make a written declaration of their professional activities and any other remunerated functions or activities.

2. They shall have access to Parliament under the same conditions as staff of the Secretariat or the political groups.

3. All other persons, including those working directly with Members, shall only have access to Parliament under the conditions laid down in Rule 9(2).

## **Article 3 Code of Conduct**

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;
- f) comply strictly with the provisions of Annex I, Article 2, second paragraph\*;
- g) satisfy themselves that any assistance provided in accordance with the provisions of Annex I, Article 2\* is declared in the appropriate register;
- 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).

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.

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\* Rules on the declaration of Members' financial interests

*Example 6 of Lobbying Legislation - Germany*

Rules of Procedure of the German Bundestag and Rules of Procedure of the Mediation Committee, Annex 2, page 50 available at [http://www.bundestag.de/htdocs\\_e/info/rules.pdf](http://www.bundestag.de/htdocs_e/info/rules.pdf)

**Registration of associations and their representatives**

(1) The President of the Bundestag shall keep a public list in which all associations of trade and industry representing interests vis-à-vis the Bundestag or the Federal Government shall be entered.

(2) Their representatives shall be heard only if they have entered themselves in this list, furnishing the following information:

name and seat of the association;

composition of the board of management and the board of directors;

sphere of interest of the association;

number of members;

names of the associations' representatives; and

address of its office at the seat of the Bundestag and of the Federal Government.

(3) Passes admitting representatives of such associations to the Bundestag buildings shall be issued only if the information to be furnished under paragraph (2) above has been provided.

(4) Entry in the list shall not entitle an association to obtain a hearing or a pass.

(5) The President shall arrange for the list to be published each year in the Federal Gazette

(*Bundesanzeiger*).

## **APPENDIX B**

### ***Examples of CPI Scoring***

*Example 1: CPI Score for the State of Washington (calculated by the CPI)*

Question	Answer	Point Value of Answer
<b>Definition of Lobbyist</b>		
1 In addition to legislative lobbyists, does the definition recognize executive branch lobbyists?	Yes	3
2 How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition?	Lobbyists qualify and must register no matter how much money made/spent	4
<b>Individual Registration</b>		
3 Is a lobbyist required to file a registration form?	Yes	3
4 How many days can lobbying take place before registration is required?	0 days	4
5 Is subject matter or bill number to be addressed by a lobbyist required on registration forms?	Subject matter only required	1
6 How often is registration by a lobbyist required?	Every other year	1
7 Within how many days must a lobbyist notify the oversight agency of changes in registration?	6 to 10 days	2
8 Is a lobbyist required to submit a photograph with registration?	Yes	1
9 Is a lobbyist required to identify by name each of employer on the registration form?	Yes	1
10 Is a lobbyist required to clearly identify on the registration form any additional information about the type of their lobbying work (ie, compensated or non-compensated/contract or salaried)?	Yes	1
<b>Individual Spending Disclosure</b>		
11 Is a lobbyist required to file a spending report?	Yes	3
12 How often during each two-year cycle is a lobbyist required to report spending?	10 or more filings within two years	3
13 Is compensation/salary required to be reported by a lobbyist on spending reports?	Yes	2
14 Are summaries (totals) of spending classified by category types (ie, gifts, entertainment, postage, etc.)?	Yes	2
15 What spending must be itemized?	All spending required to be	4
The Regulation of Lobbyists in Canada, the USA, the EU institutions, and Germany		142

	itemized	
16	Is the lobbyist employer/principal on whose behalf the itemized expenditure was made required to be identified?	Yes 1
17	Is the recipient of the itemized expenditure required to be identified?	Yes 1
18	Is the date of the itemized expenditure required to be reported?	Yes 1
19	Is a description of the itemized expenditure required to be reported?	Yes 1
20	Is subject matter or bill number to be addressed by a lobbyist required on spending reports?	Subject matter only required 1
21	Is spending on household members of public officials by a lobbyist required to be reported?	Yes 1
22	Is a lobbyist required to disclose direct business associations with public officials, candidates or members of their households?	No 0
23	What is the statutory provision for a lobbyist giving/reporting gifts?	Gifts are limited and reported 2
24	What is the statutory provision for a lobbyist giving/reporting campaign contributions?	Campaign contributions allowed and required to be disclosed on spending report/prohibited during session 1
25	Is a lobbyist who has done no spending during a filing period required to make a report of no activity?	Yes 1
Employer Spending Disclosure		
26	Is an employer/principal of a lobbyist required to file a spending report?	Yes 3
27	Is compensation/salary required to be reported on employer/principal spending reports?	Yes 2
Electronic Filing		
28	Does the oversight agency provide lobbyists/employers with electronic/online registration?	Yes 1
29	Does the oversight agency provide lobbyists/employers with electronic/online spending reporting?	Yes 1
30	Does the oversight agency provide training about how to file registrations/spending reports electronically?	Yes 1

#### Public Access

31	Location/format of registration or active lobbyist directory:	Searchable database on the Web	3
32	Location/format of spending reports:	Searchable database on the Web	3
33	Cost of copies:	Less than 25 cents per page	1
34	Are sample registration forms/spending reports available the Web?	Yes	1
35	Does the state agency provide an overall lobbying spending total by year?	Yes	2
36	Does the state agency provide an overall lobbying spending total by spending report deadlines?	Yes	2
37	Does the state agency provide an overall lobbying spending total by industries lobbyists represent?	Yes	2
38	How often are lobby lists updated?	Daily	4
Enforcement			
39	Does the state have statutory auditing authority?	Yes	2
40	Does the state agency conduct mandatory reviews or audits?	Yes	2
41	Is there a statutory penalty for late filing of lobby registration form?	Yes	1
42	Is there a statutory penalty for late filing of lobby spending report?	Yes	1
43	When was a penalty for late filing of a lobby spending report last levied?	Within 0 to 1 year	3
44	Is there a statutory penalty for incomplete filing of a lobby registration form?	Yes	1
45	Is there a statutory penalty for incomplete filing of a lobby spending report?	Yes	1
46	When was a penalty for incomplete filing of a lobby spending report last levied?	Within 0 to 1 year/don't accept incomplete filings	3
47	Does the state publish a list of delinquent filers either on the Web or in a printed document?	No	0
Revolving Door Provision			
48	Is there a "cooling off" period required before legislators can register as lobbyists?	Yes	2

**Total Number of Points: 87**

Source:

<http://www.publicintegrity.org/hiredguns/nationwide.aspx?st=WA&Display=DrStateNumbers>



*Example 2: CPI Score for the Canadian Federal Lobbying Legislation (as standing in 2005) using the Centre for Public Integrity's Hired Guns Methodology*

Question	Answer	Point Value of Answer
<b>Definition of Lobbyist</b>		
1 In addition to legislative lobbyists, does the definition recognize executive branch lobbyists?	Yes	3
2 How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition?	All lobbyists qualify and must register no matter how much money made/spent	4
<b>Individual Registration</b>		
3 Is a lobbyist required to file a registration form?	Yes	3
4 How many days can lobbying take place before registration is required?	1 to 10 days	2
5 Is subject matter or bill number to be addressed by a lobbyist required on registration forms?	Bill number/subject matter required	3
6 How often is registration by a lobbyist required?	Every six months	2
7 Within how many days must a lobbyist notify the oversight agency of changes in registration?	16 or more days	0
8 Is a lobbyist required to submit a photograph with registration?	No	0
9 Is a lobbyist required to identify by name each of employer on the registration form?	Yes	1
10 Is a lobbyist required to clearly identify on the registration form any additional information about the type of their lobbying work (ie, compensated or non-compensated/contract or salaried)?	Yes	1
<b>Individual Spending Disclosure</b>		
11 Is a lobbyist required to file a spending report?	No	0
12 How often during each two-year cycle is a lobbyist required to report spending?	No	0
13 Is compensation/salary required to be reported by a lobbyist on spending reports?	No	0
14 Are summaries (totals) of spending classified by category types (ie, gifts, entertainment, postage, etc.)?	No	0
15 What spending must be itemized?	No	0

16	Is the lobbyist employer/principal on whose behalf the itemized expenditure was made required to be identified?	No	0
17	Is the recipient of the itemized expenditure required to be identified?	No	0
18	Is the date of the itemized expenditure required to be reported?	No	0
19	Is a description of the itemized expenditure required to be reported?	No	0
20	Is subject matter or bill number to be addressed by a lobbyist required on spending reports?	Bill number required	3
21	Is spending on household members of public officials by a lobbyist required to be reported?	No	0
22	Is a lobbyist required to disclose direct business associations with public officials, candidates or members of their households?	No	0
23	What is the statutory provision for a lobbyist giving/reporting gifts?	Gifts prohibited	3
24	What is the statutory provision for a lobbyist giving/reporting campaign contributions?	(all political contributions are reported by the recipient: <i>Canada Elections Act</i> )	1
25	Is a lobbyist who has done no spending during a filing period required to make a report of no activity?	No	0
Employer Spending Disclosure			
26	Is an employer/principal of a lobbyist required to file a spending report?	No	0
27	Is compensation/salary required to be reported on employer/principal spending reports?	No	0
Electronic Filing			
28	Does the oversight agency provide lobbyists/employers with electronic/online registration?	Yes	1
29	Does the oversight agency provide lobbyists/employers with electronic/online spending reporting?	Yes	1
30	Does the oversight agency provide training about how to file registrations/spending reports electronically?	Yes	1
Public Access			
31	Location/format of registration or active lobbyist directory:	Searchable database on the Web	4

32 Location/format of spending reports:	No	0
33 Cost of copies:	\$1 per page	0
34 Are sample registration forms/spending reports available the Web?	No	0
35 Does the state agency provide an overall lobbying spending total by year?	No	0
36 Does the state agency provide an overall lobbying spending total by spending report deadlines?	No	0
37 Does the state agency provide an overall lobbying spending total by industries lobbyists represent?	No	0
38 How often are lobby lists updated?	Daily	4
Enforcement		
39 Does the state have statutory auditing authority?	Yes	2
40 Does the state agency conduct mandatory reviews or audits?	Yes	2
41 Is there a statutory penalty for late filing of lobby registration form?	Yes	1
42 Is there a statutory penalty for late filing of lobby spending report?	No	0
43 When was a penalty for late filing of a lobby spending report last levied?	N/A	0
44 Is there a statutory penalty for incomplete filing of a lobby registration form?	Yes	1
45 Is there a statutory penalty for incomplete filing of a lobby spending report?	N/A	0
46 When was a penalty for incomplete filing of a lobby spending report last levied?	N/A	0
47 Does the state publish a list of delinquent filers either on the Web or in a printed document?	No	0
Revolving Door Provision		
48 Is there a “cooling off” period required before legislators can register as lobbyists?	Yes	2

***Total Number of Points 45***

*Source: Authors analysis of Canadian Federal legislation*

*Example 3: CPI Score for the German Federal Lobbying Legislation*

Question	Answer	Point Value of Answer
<b>Definition of Lobbyist</b>		
1 In addition to legislative lobbyists, does the definition recognize executive branch lobbyists?	No	0
2 How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition?	Lobbyists qualify and must register no matter how much money made/spent	4
<b>Individual Registration</b>		
3 Is a lobbyist required to file a registration form?	Yes	3
4 How many days can lobbying take place before registration is required?	16 or more days	0
5 Is subject matter or bill number to be addressed by a lobbyist required on registration forms?	Subject Matter	1
6 How often is registration by a lobbyist required?	Every year	2
7 Within how many days must a lobbyist notify the oversight agency of changes in registration?	16 or more days	0
8 Is a lobbyist required to submit a photograph with registration?	No	0
9 Is a lobbyist required to identify by name each of employer on the registration form?	Yes	1
10 Is a lobbyist required to clearly identify on the registration form any additional information about the type of their lobbying work (ie, compensated or non-compensated/contract or salaried)?	Yes	1
<b>Individual Spending Disclosure</b>		
11 Is a lobbyist required to file a spending report?	No	0
12 How often during each two-year cycle is a lobbyist required to report spending?	N/A	0
13 Is compensation/salary required to be reported by a lobbyist on spending reports?	No	0
14 Are summaries (totals) of spending classified by category types (ie, gifts, entertainment, postage, etc.)?	No	0
15 What spending must be itemized?	N/A	0

16	Is the lobbyist employer/principal on whose behalf the itemized expenditure was made required to be identified?	N/A	0
17	Is the recipient of the itemized expenditure required to be identified?	No	0
18	Is the date of the itemized expenditure required to be reported?	No	0
19	Is a description of the itemized expenditure required to be reported?	No	0
20	Is subject matter or bill number to be addressed by a lobbyist required on spending reports?	No	0
21	Is spending on household members of public officials by a lobbyist required to be reported?	No	0
22	Is a lobbyist required to disclose direct business associations with public officials, candidates or members of their households?	No	0
23	What is the statutory provision for a lobbyist giving/reporting gifts?	None	0
24	What is the statutory provision for a lobbyist giving/reporting campaign contributions?	None	0
25	Is a lobbyist who has done no spending during a filing period required to make a report of no activity?	No	0
Employer Spending Disclosure			
26	Is an employer/principal of a lobbyist required to file a spending report?	No	0
27	Is compensation/salary required to be reported on employer/principal spending reports?	No	0
Electronic Filing			
28	Does the oversight agency provide lobbyists/employers with electronic/online registration?		0
29	Does the oversight agency provide lobbyists/employers with electronic/online spending reporting?	No	0
30	Does the oversight agency provide training about how to file registrations/spending reports electronically?	0	0
Public Access			
31	Location/format of registration or active lobbyist directory:	Yes	3
32	Location/format of spending reports:	No	0

33	Cost of copies:	0	1
34	Are sample registration forms/spending reports available the Web?	No	0
35	Does the state agency provide an overall lobbying spending total by year?	No	0
36	Does the state agency provide an overall lobbying spending total by spending report deadlines?	No	0
37	Does the state agency provide an overall lobbying spending total by industries lobbyists represent?	No	0
38	How often are lobby lists updated?	Annually	1
Enforcement			
39	Does the state have statutory auditing authority?	No	0
40	Does the state agency conduct mandatory reviews or audits?	No	0
41	Is there a statutory penalty for late filing of lobby registration form?	No	0
42	Is there a statutory penalty for late filing of lobby spending report?	No	0
43	When was a penalty for late filing of a lobby spending report last levied?	N/A	0
44	Is there a statutory penalty for incomplete filing of a lobby registration form?	N/A	0
45	Is there a statutory penalty for incomplete filing of a lobby spending report?	No	0
46	When was a penalty for incomplete filing of a lobby spending report last levied?	N/A	0
47	Does the state publish a list of delinquent filers either on the Web or in a printed document?	No	0
Revolving Door Provision			
48	Is there a “cooling off” period required before legislators can register as lobbyists?	N/A	0

**Total Number of Points: 17**

*Source: Authors analysis of German legislation*

## **Appendix C**

### ***Examples of Covering Letters and Surveys***

*Cover Letter and Survey Sent to States with Lobbying Legislation (example shown is for Canadian Federal)*



UNIVERSITY OF DUBLIN  
DEPARTMENT OF POLITICAL SCIENCE  
TRINITY COLLEGE  
DUBLIN 2, IRELAND

October

17, 2005

Dear ...

We are researchers based out of Trinity College Dublin (Raj Chari) and Dublin City University (Gary Murphy) writing to you to ask for your assistance in the completion of a major survey examining the regulation of lobbying activity at central and regional government level in Canada, the United States of America, Germany, and the European Union. We took the liberty of including you as a recipient of our survey in view of your professional experience and expertise in this area. All replies will be treated in the strictest confidence, and will be unidentifiable from the summary of survey results when completed. At a later date we intend to conduct follow up interviews with some respondents. If you would like to be an interviewee could you please tick the appropriate box at the end of the survey and include your name and address with your reply.

Your answers to the questions set out below are essential for our study. As such, we would please ask you to complete this brief questionnaire and either fax it to our researcher John Hogan, Ph.D at 011-353-1-677-0564 or mail it to:

John Hogan  
Department of Political Science  
Trinity College Dublin  
Dublin 2 – Ireland

We thank you in advance for your time and input without which this research would not be possible. If you have any question regarding the nature of this research please feel free to contact John by email at: [hoganjw@tcd.ie](mailto:hoganjw@tcd.ie).

Should you wish to receive a copy of the data collected, please tick the appropriate box at the end of the survey and include your name and address at the bottom of the questionnaire. We would be delighted to send you the data in late 2006.

Yours truly

Raj S. Chari (Ph.D., Queen's University, Canada)  
Gary Murphy (Ph.D., Dublin City University)



**If you are an elected representative, please answer questions 1 and 2 and then go to question 6.**

1. Which constituency do you represent?

2. In which Ministry do you work?

**If you are a public sector administrator, please answer question 3 and then go to question 6.**

3. In which area do you work?

**If you are a representative of a lobby group/ interest organization, please answer questions 4 and 5 and then go to question 6.**

4. At which level of government does your organization predominately operate: federal or provincial?

5. What type of lobby group would best describe your activity?

a. Business

b. Labor

c. Professional

d. Single Interest (please specify)

**Questions:**

6. You consider yourself to be knowledgeable about the relevant legislation pertaining to regulation of lobbyists at the federal level?

Strongly agree    Agree    Neutral    Disagree    Strongly Disagree

7. In your view, the overall regulations help ensure accountability in your political system.

Strongly agree    Agree    Neutral    Disagree    Strongly Disagree

8. Specific rules surrounding individual spending disclosures help ensure transparency?

Strongly agree      Agree      Neutral      Disagree      Strongly Disagree

9. a) Details of all political party campaign contributions by a lobbyist should be available to the public.

Strongly agree      Agree      Neutral      Disagree      Strongly Disagree

b) There are loopholes in the system that allow individual lobbyists to give/receive 'gifts' regardless of the legislation in force?

Strongly agree      Agree      Neutral      Disagree      Strongly Disagree

c) If you have answered 'Strongly Agree or Agree,' in b) above, please elaborate on what the loopholes are and what the 'gifts' may consist of?

10. In your view, a register of lobbyists makes ordinary citizens feel inhibited from approaching their local representatives alone.

Strongly agree      Agree      Neutral      Disagree      Strongly Disagree

11. Public access to an official list of lobbyists is freely available.

Yes    or    No

12. a) Public access to an official list of lobbyists ensures accountability.

Strongly agree      Agree      Neutral      Disagree      Strongly Disagree

b) If you have answered 'disagree or strongly disagree', please elaborate why you feel that accountability has not been achieved?

13. a) Are reviews or audits by state agencies of lobbyists effective in ensuring accountability?

Strongly agree      Agree      Neutral      Disagree      Strongly Disagree

b) If you have answered 'Disagree or Strongly Disagree', please explain why you feel that this is the case?

14. In your view, how could the regulation be improved in order to ensure better transparency, accountability and effectiveness (please elaborate in the space below)?

15. Are there any other comments you wish to make?

Thank you for completing the questionnaire.

**This section relates to follow up interviews and the results of the survey**

Please tick as appropriate

I would like to receive a copy of the data collected.

I would like to receive a copy of the data collected and am available to be interviewed

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Email: \_\_\_\_\_

**Thank you again for your time.**

*Cover Letter and Survey Sent to Jurisdictions Without Lobbying Legislation  
(Example of letter for Canadian Provinces)*



UNIVERSITY OF DUBLIN  
DEPARTMENT OF POLITICAL SCIENCE  
TRINITY COLLEGE  
DUBLIN 2, IRELAND

October

25, 2005

Dear

We are researchers based out of Trinity College Dublin (Raj Chari) and Dublin City University (Gary Murphy) writing to you to ask for your assistance in the completion of a major survey examining the regulation of lobbying activity at central and regional government level in Canada, the United States of America, Germany, and the European Union. We took the liberty of including you as a recipient of our survey in view of your professional experience and expertise in this area. All replies will be treated in the strictest confidence, and will be unidentifiable from the summary of survey results when completed. At a later date we intend to conduct follow up interviews with some respondents. If you would like to be an interviewee could you please tick the appropriate box at the end of the survey and include your name and address with your reply.

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John Hogan  
Department of Political Science  
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Dublin 2 – Ireland

We thank you in advance for your time and input without which this research would not be possible. If you have any question regarding the nature of this research please feel free to contact John by email at: [hoganjw@tcd.ie](mailto:hoganjw@tcd.ie).

Should you wish to receive a copy of the data collected, please tick the appropriate box at the end of the survey and include your name and address at the bottom of the questionnaire. We would be delighted to send you the data in late 2006.

Yours truly,

Raj S. Chari (Ph.D., Queen's University, Canada)  
Gary Murphy (Ph.D., Dublin City University)

**If you are an Elected Representative, please answer questions 1 and 2 and then go to question 6.**

1. Which provincial constituency do you represent?

2. In which Ministry do you work?

**If you are a Public Sector Administrator, please answer question 3 and then go to question 6.**

3. In which Province do you work?

**If you are a representative of a Lobby Group/Interest Organization, please answer questions 4 and 5 then go to question 6.**

4. In which Province does your organization predominately operate?

5. What type of lobby group would best describe your activity?

i. Business

ii. Labor

iii Professional

iv. Single Interest (please specify)

**Questions:**

6. As you know, in your province there is no legislation regulating lobbying activity. In your view, what is the main reason for this lack of legislation (please tick):

i Political actors are opposed to it.

ii Lobby groups are opposed to it.

iii 'Self-regulation' is considered sufficient.

iv There is no need to have legislation because lobbying activity is minimal

v Other (please specify)

7. Lobbyists should be required to register when lobbying public officials.

Strongly agree      Agree      Neutral      Disagree      Strongly Disagree  
                                                                               

8. A lobbyist should be required to file spending reports at the following intervals in order to ensure transparency:

- i.) Weekly
- ii.) Monthly
- iii.) Quarterly
- iv.) Bi-annually
- v.) Annually
- vi.) Never

9. Details of all political party campaign contributions by a lobbyist should be available to the public.

Strongly agree      Agree      Neutral      Disagree      Strongly Disagree  
                                                                               

10. A list of all lobbyists (and the amount they have spent on their lobbying activity) should be freely available to the public:

- i.) By law, at all times, for example on a centralized web-site
- ii.) By law, upon request to the state or a lobby group
- iii.) On a voluntary basis as the state or lobby group sees appropriate
- iv.) Never

11. In your view, a register of lobbyists makes ordinary citizens feel inhibited from approaching their local representatives alone

Strongly agree      Agree      Neutral      Disagree      Strongly Disagree

12. Should an independent agency have the power to pursue mandatory reviews or audits of lobbyists?

i.) Always

ii.) Only when it is deemed necessary by the independent agency.

iii.) Never

13. Penalizing unprofessional lobbying behavior (such as excessive campaign contributions or incomplete filing of reports) acts as a deterrent against such behavior.

Strongly agree      Agree      Neutral      Disagree      Strongly Disagree

14. If legislation regulating lobbying activity were implemented, then transparency, accountability and effectiveness in public policy-making would be improved.

Strongly agree      Agree      Neutral      Disagree      Strongly Disagree

Please feel free to elaborate your answer:

15. Are there any other comments you wish to make?

**This section relates to follow up interviews and the results of the survey**

Please tick as appropriate

I only wish to receive a copy of the data collected.

I wish to receive a copy of the data collected and am available to be interviewed

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Email: \_\_\_\_\_

**Thank you again for your time.**

## **Endnotes**



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<sup>1</sup> European Commission, Green Paper European Transparency Initiative, 2006. This can be downloaded at [http://ec.europa.eu/commission\\_barroso/kallas/transparency\\_en.htm#1](http://ec.europa.eu/commission_barroso/kallas/transparency_en.htm#1)

<sup>2</sup> Institute of Public Administration, Regulation of Lobbyists in Developed Countries: Current Rules and Practises (2004), available at [www.enviro.ni.govt.nz/files/2004/02/Regulation\\_of\\_Lobbyists\\_in\\_Developed\\_Countries.pdf](http://www.enviro.ni.govt.nz/files/2004/02/Regulation_of_Lobbyists_in_Developed_Countries.pdf). The report was drafted by Dr. Margaret Mary Malone.

<sup>3</sup> Rand Dyck, *Canadian Politics: Critical Approaches*, 4th edition (Scarborough, ON, 2004), p. 369

<sup>4</sup> R.S.C 1985, c.44 (4<sup>th</sup> supp) as amended by S.C 1993, c.12, S.C. 1995, c.12, S.C., 2003, c.10, and S.C. 2004, c.7.

<sup>5</sup> S.N.S. 2001, c.34

<sup>6</sup> R.S.Q., c. T-11.011

<sup>7</sup> S.O., 1998, C.27

<sup>8</sup> S.B.C. 2001, c.42

<sup>9</sup> S.N.L 2004, c L-24, 1.

<sup>10</sup> The reporting of campaign contributions is governed by the *Canada Elections Act*, not Lobbying legislation.

<sup>11</sup> As part of the election platform in the latest 2006 elections, Stephen Harper's Conservative Party pledged to introduce legislation that ensures that government officials have to report their contacts with lobbyists. However, to date, this has not been introduced. Please see The Conservative Party of Canada, *The Federal Accountability Act: Stephen Harper's Commitment to Canadians to Clean Up Government* (November 2005).

<sup>12</sup> Guy Giorno, *Canadian Lobbyist Registration Law: Overview and Comparison*, (Toronto: unpublished, 2006); copy of article given to RSC in March 2006), p. 3

<sup>13</sup> *Ibid*, p.11

<sup>14</sup> See the Government of Canada's Office of the Registrar of Lobbyists at <http://strategis.ic.gc.ca/epic/internet/inlobbyist-lobbyiste.nsf/en/nx00104e.html>

<sup>15</sup> The idea here was many lobbyists at the federal level were stating that they did not need to register given that the 1989 and 1995 Acts stated that only lobbyists who 'sought to influence' need to register. An obvious loophole in this regard is to say as a lobbyist that you were 'asked' by government to give information when a decision was being made; hence, the lobbyist could claim that he/she did not seek to influence *per se*. As a result, C-15 closed this loophole by stating that all forms of communication, whether solicited or not by government, require registration by all lobbyists.

<sup>16</sup> As discussed by Giorno, p.11. He further argues in the case of Quebec that 'it covers both communication 'in an attempt to influence' and communication 'that may reasonably be considered by the initiator of the communication as capable of influencing the decision...' The former standard is subjective, and depends on the state of mind of the individual making the communication; the latter is objective, and involves an assessment of how a reasonable person would view the communication.' Giorno, pp.11-12. It is also significant to note in interviews with high level public servants, Ontario may be considering changing the 'attempt to influence' clause to that found at the federal level.

<sup>17</sup> Dyck, p.368.

<sup>18</sup> Giorno, p.4.

<sup>19</sup> Please see Giorno, pp.3; 17-20. Consistent with ideas raised in this paragraph, it is useful to note that the Government of Canada's Office of the Registrar website states (*Please see:* <http://strategis.ic.gc.ca/epic/internet/inlobbyist-lobbyiste.nsf/en/nx00104e.html>, from which this is taken verbatim):

**'Consultant lobbyists.** These are individuals who, for pay, lobby for clients. They must complete and file a consultant lobbyists registration when they begin lobbying for a client and when information previously submitted changes. Consultant lobbyists must file semi-annually unless they have advised the Registrar of the completion or termination of their undertaking prior to the expiry of the period within which the semi-annual filing is due.'

The Government of Canada also states that in-house lobbyists can be defined as either:

**'In-house corporate lobbyists.** These are corporations (entities who carry out commercial activities for financial gain) in which one or more employees lobby, and the collective time devoted to lobbying amounts to 20 per cent or more of one equivalent employee's time. The most senior officer of the corporation must complete and file an in-house corporate lobbyists registration when the corporation begins to lobby and semi-annually thereafter.

**or**

**'In-house organization lobbyists.** These are not-for-profit organizations in which one or more employees lobby, and the collective time devoted to lobbying amounts to 20 per cent or more of one

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equivalent employee's time. The most senior officer of the organization must complete and file an in-house organization lobbyists registration when the organization begins to lobby and semi-annually thereafter.'

<sup>20</sup> Giorno, p.4.

<sup>21</sup> Giorno, pp.14-15

<sup>22</sup> Taken from a Guide to registration (Ottawa) found at

<http://strategis.ic.gc.ca/epic/internet/inlobbyist-lobbyiste.nsf/en/nx00104e.html>

Please note that only in the case of Quebec are contingency fees (or success fees) forbidden.

<sup>23</sup> Giorno, p. 9

<sup>24</sup> Giorno, pp. 25-26

<sup>25</sup> Please see [http://66.102.9.104/search?q=cache:8p2iLHaUQ-AJ:www.parl.gc.ca/common/Bills\\_ls.asp+per+cent3FParl+per+cent3D37+per+cent26Ses+per+cent3D2+per+cent26ls+per+cent3Dc24+maximum+financial+contributions+Canada+elections+Act&hl=en&gl=ca&ct=clnk&cd=4](http://66.102.9.104/search?q=cache:8p2iLHaUQ-AJ:www.parl.gc.ca/common/Bills_ls.asp+per+cent3FParl+per+cent3D37+per+cent26Ses+per+cent3D2+per+cent26ls+per+cent3Dc24+maximum+financial+contributions+Canada+elections+Act&hl=en&gl=ca&ct=clnk&cd=4)

<sup>26</sup> This is based on ideas raised by Interviewees in Halifax and Toronto in March 2006.

<sup>27</sup> Guy Girono, 'Staying on the Right Side of the Law' paper presented at 3<sup>rd</sup> annual Government Relations Summit, Ottawa, Ontario, February 2006.

<sup>28</sup> In the case of Quebec, regulations surrounding cooling off periods are found in the Lobbying Registration Act; at the federal level, such regulations are found in the *Conflict of Interest and Post-Employment Code for Public Office Holders*; In BC and NS, the *Members' Conflict of Interest Acts*; and in Ontario, the *Conflict of Interest and Post-Service Directive*.

<sup>29</sup> In The Conservative Party of Canada, *The Federal Accountability Act: Stephen Harper's Commitment to Canadians to Clean Up Government* (November 2005), the Conservatives have proposed that the cooling off period be for 5 years. As of the time of writing, this has not been introduced.

<sup>30</sup> In the case of NS, only consultant lobbyists and in-house (corporate) lobbyists must pay a fee if registering by the internet (i.e. in house (organisational) lobbyists do not). In the case of Newfoundland, only consultant lobbyists must pay a fee if registering via the internet.

<sup>31</sup> In the authors' opinion, and after having confirmed this idea in several elite interviews in Canada, by far the best internet system in Canada is that set up in Ontario. Please see <http://lobbyist.oico.on.ca/> and click on 'getting started' to see how to register as a lobbyist.

<sup>32</sup> This idea was stated in elite interviews. The specific breakdown of data was unavailable from the federal government during the research.

<sup>33</sup> The only jurisdictions wherein a penalty cannot be given to a lobbyist who has not ceased to register are Nova Scotia and Ontario.

<sup>34</sup> Please see <http://communiqués.gouv.qc.ca/gouvqc/communiqués/GPQF/Mars2006/16/c3033.html>

<sup>35</sup> This idea is based on ideas raised in elite interviews.

<sup>36</sup> The constitution of the United States is available at <http://www.usconstitution.net/>

<sup>37</sup> Clive S. Thomas, 'Interest Group Regulation Across the United States: Rationale, Development and Consequences', *Parliamentary Affairs*, vol.51, no.4, 1998, p. 502.

<sup>38</sup> For two differing accounts of railroad regulation in this period see, Gabriel Kolko, *The Triumph of Conservatism: A Reinterpretation of American History, 1900-1916* (Princeton, 1965), which argues that there was too little enforcement of inadequate regulation, and Albro Martin, *Enterprise Denied: Origins of the decline of American Railroads, 1897-1917* (New York, 1971), which argues that there was too much regulation and too much enforcement.

<sup>39</sup> Thomas, p.504.

<sup>40</sup> Ronald J. Hrebenar, *Interest Group Politics in America*, 3<sup>rd</sup> ed, (New York, 1997), p.271.

<sup>41</sup> Ibid, p.272.

<sup>42</sup> Thomas, p.507

<sup>43</sup> Hrebenar, p.280.

<sup>44</sup> Conor McGrath, *Lobbying in Washington, London, and Brussels: The Persuasive Communication of Political Issues* (New York, 2005), pp.168-9.

<sup>45</sup> Ibid, p.169.

<sup>46</sup> Thomas, p.509.

<sup>47</sup> Hrebenar, p.280.

<sup>48</sup> *The Washington Post*, 29 March 2006.

<sup>49</sup> Interview with senior official, Public Affairs Council, 3 April 2006, Washington, DC.

<sup>50</sup> See <http://www.independentsector.org/programs/gr/S2349.html>.

<sup>51</sup> See, <http://www.gop.gov/Committeecentral/bills/hr4975.asp>.

<sup>52</sup> See, [http://www.sourcewatch.org/index.php?title=Federal\\_ethics\\_legislation](http://www.sourcewatch.org/index.php?title=Federal_ethics_legislation).

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- <sup>53</sup> Samuel Kernell and Gary C. Jacobson, *The Logic of American Politics*, 2<sup>nd</sup> ed, (Washington DC, 2003), pp.494-5.
- <sup>54</sup> Information from [www.pac.org](http://www.pac.org).
- <sup>55</sup> Thomas, p.509.
- <sup>56</sup> See <http://www.publicintegrity.org/hiredguns/report.aspx?aid=728>.
- <sup>57</sup> Interview with senior public official in the Pennsylvania Senate, 30 March 2006, Harrisburg, Pennsylvania.
- <sup>58</sup> Senator Robert D. Robbins, Pennsylvania to the authors, 28 November 2005.
- <sup>59</sup> See <http://www.state.pa.us/papower/cwp/view.asp?A=11&Q=450761> for the Governor's press release announcing this decision. In a number of interviews conducted with legislators and legislative aides in Harrisburg, Pennsylvania, it was stressed to the authors that Pennsylvania felt itself to be somewhat of 'an ugly duckling in legislative terms' by being the only State in the US not to have lobbying legislation. One senior aide stated the following: 'while I don't think the average citizen is too bothered by the lack of legislation, it sure as hell bothers the politicians. They think everyone else is looking down on them and that as much as anything else is what is driving lobbying reform in this state'.
- <sup>60</sup> These states in order of ranking are Washington State, Kentucky, Connecticut, South Carolina, New York, Massachusetts, Wisconsin, California, Utah, Maryland, Ohio, Indiana, Texas, New Jersey, Mississippi, Alaska, Virginia, Kansas, Georgia, Minnesota, Missouri, Michigan, Nebraska, Arizona, Colorado. The other 24 states are ranked as intermediately regulated.
- <sup>61</sup> Information from [www.pdc.wa.gov](http://www.pdc.wa.gov), the website of the Public Disclosure Commission in Washington State. See particularly <http://www.pdc.wa.gov/aboutpdc/pdcinwa.asp>. Also interview with senior official, Public Disclosure Commission, Washington State, 28 March 2006, Olympia, Washington State.
- <sup>62</sup> <http://www.publicintegrity.org/hiredguns/report.aspx?aid=728>
- <sup>63</sup> See <http://www.pdc.wa.gov/scr/summaryreports/lobbyist/LobExpbyCategory.rpt?user0=scr&password0=scr>, for the full list of sectors and money spent on same.
- <sup>64</sup> Interview with senior official, Public Disclosure Commission, Washington State, 28 March, 2006.
- <sup>65</sup> The acts to amend the statutes relating to the application of the lobbying regulation law to attempts to influence state procurement decisions is available at [http://www.wispolitics.com/1006/large/contract\\_sunshine\\_act\\_lrb\\_1\\_1\\_.pdf](http://www.wispolitics.com/1006/large/contract_sunshine_act_lrb_1_1_.pdf)
- <sup>66</sup> See [http://www.legis.state.wi.us/lrb/gw/gw\\_8.pdf](http://www.legis.state.wi.us/lrb/gw/gw_8.pdf) for background to lobbying regulation in Wisconsin.
- <sup>67</sup> Information on lobbyist disclosure practices in Montana can be accessed at the [Montana Commissioner of Political Practices](http://politicalpractices.mt.gov/4lobbying/) website at <http://politicalpractices.mt.gov/4lobbying/>
- <sup>68</sup> See the Florida Commission on Ethics website at <http://www.ethics.state.fl.us/>
- <sup>69</sup> See <http://www.publicintegrity.org/hiredguns/report.aspx?aid=728>
- <sup>70</sup> Information on lobbyist disclosure in Wyoming can be accessed at the [Wyoming Secretary of State, Elections Administration](http://sos.wy.state.wy.us/election/election.htm) website at <http://sos.wy.state.wy.us/election/election.htm>
- <sup>71</sup> Equality State Policy Center, 'Why Wyoming needs complete Lobbyist Reporting', available at [http://www.equalitystate.org/ESPC/percent20Website/percent20Generic/percent20Pages/reports/perspectives/lobbyist\\_03.pdf](http://www.equalitystate.org/ESPC/percent20Website/percent20Generic/percent20Pages/reports/perspectives/lobbyist_03.pdf).
- <sup>72</sup> Raj Chari, and Francesco Cavatorta, "Economic Actors' Political Activity on 'Overlap Issues': Privatisation and EU State Aid Control," *West European Politics* Vol. 25, No.4 (October 2002); David Coen, 1997, "The Evolution of the Large Firm as a Political Actor in the European Union", *Journal European Public Policy*, Vol. 4 No. 1 (March 1997).
- <sup>73</sup> Simon Hix. *The Political System of the European Union*, 2<sup>nd</sup> edn, (London, 2005).
- <sup>74</sup> According to Hix, *ibid.* pp. 70-71
- <sup>75</sup> Raj Chari, R. "Spanish Socialists, Privatising the Right Way?", *West European Politics* Vol 21, No.4 (October 1998); Chari and Cavatorta, 2002.
- <sup>76</sup> Andrew Moravcsik, "Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach" *Journal of Common Market Studies*, Vol. 31, No. 4 (December 1993).
- <sup>77</sup> Thomas Christiansen and Simona Piattoni (eds.), *Informal Governance in the EU*, (London, 2004).
- <sup>78</sup> Hix argues that the EP's increasing powers in Amsterdam can be explained based on the idea that the EP was a 'constitutional agenda setter' that allowed it to increase its power with regard to legislative reform (of 'co-decision' procedure reform) and executive appointments as discussed below. See Simon Hix, "Constitutional agenda setting through discretion in rule interpretations: why the European Parliament won at Amsterdam", *British Journal of Political Science*, Vol. 32, No. 2 (April 2002).

- <sup>79</sup> Georg Wiessala, "European Union in a Changing World - Trompe l'oeil or revolution? Reform of the European Commission on the eve of 2000", *World Affairs*, Vol. 3, No. 4 (October-December 1999).
- <sup>80</sup> European Parliament, DG for Research, *Lobbying in the European Union: Current Rules and Practices* (Luxembourg, 2003), p. 36.
- <sup>81</sup> *Ibid*, p. 36
- <sup>82</sup> *Ibid*, p. 37.
- <sup>83</sup> Pieter Bouwen, *A Theoretical and Empirical Study of Corporate Lobbying in the European Parliament*, European Integration online papers (EIoP) Vol 7 (2003), no. 11, 8; found at <http://eiop.or.at/eiop/texte/2003-011.htm>
- <sup>84</sup> *Ibid*, p. 8
- <sup>85</sup> Taken from: <http://www.europarl.europa.eu/parliament/expert/staticDisplay.do?id=65&language=en&redirection>
- <sup>86</sup> Data taken from <http://www.eulobby.net/eng/desktopdefault.aspx>
- <sup>87</sup> Taken from <http://www.europarl.europa.eu/omk/sipade3?L=EN&OBJID=3091&HNAV=Y&MODE=SIP&NAV=X&LSTDOC=N>
- <sup>88</sup> European Commission, *Green Paper European Transparency Initiative*, 2006, page 7, which can be downloaded on [http://ec.europa.eu/commission\\_barroso/kallas/transparency\\_en.htm#1](http://ec.europa.eu/commission_barroso/kallas/transparency_en.htm#1)
- <sup>89</sup> Please see the following for a full list of the codes of conduct: <http://www.europarl.europa.eu/omk/sipade3?L=EN&OBJID=3091&HNAV=Y&MODE=SIP&NAV=X&LSTDOC=N>
- <sup>90</sup> Taken from <http://www.europarl.europa.eu/omk/sipade3?PUBREF=-//EP//TEXT+RULES-EP+20040501+ANN-01+DOC+XML+V0//EN&HNAV=Y>
- <sup>91</sup> Bouwen, p.8
- <sup>92</sup> Bouwen, pp. 8-9.
- <sup>93</sup> European Commission, Green Paper, European Transparency Initiative 2006, p. 7.
- <sup>94</sup> European Commission, *Communication from the Commission: An Open and Structured Dialogue with special interest groups* (December 1992).
- <sup>95</sup> European Commission, *European Governance: A White Paper*, COM (2001), 428 Final, Brussels.
- <sup>96</sup> Irina Michalowitz, 'The European Platform of Women Scientists and Potential, Obstacles and Dangers of Civil Society Participation in Multi-Level Governance Systems,' Presented at the Institute for International Integration Studies, TCD, May 2006, page 14.
- <sup>97</sup> Please see [http://ec.europa.eu/comm/civil\\_society/coneccs/index\\_en.htm](http://ec.europa.eu/comm/civil_society/coneccs/index_en.htm)
- <sup>98</sup> European Commission, Green Paper, European Transparency Initiative, 2006, p. 7.
- <sup>99</sup> Jamie Smyth, 'EU Proposes Voluntary registration for Lobbyists,' *The Irish Times*, May 4 2006
- <sup>100</sup> As taken from [http://ec.europa.eu/commission\\_barroso/kallas/transparency\\_en.htm#3](http://ec.europa.eu/commission_barroso/kallas/transparency_en.htm#3)
- <sup>101</sup> As taken from [http://ec.europa.eu/commission\\_barroso/kallas/transparency\\_en.htm#3](http://ec.europa.eu/commission_barroso/kallas/transparency_en.htm#3). We are grateful to Eoin Corrigan of the Department of the Environment for providing us with a copy of the Green Paper shortly after it was released.
- <sup>102</sup> Jamie Smyth, 'EU Proposes Voluntary registration for Lobbyists'.
- <sup>103</sup> *Ibid*.
- <sup>104</sup> Please see the Euroactive article where quotes from Mr. Kallas on July 19 are made: <http://www.euractiv.com/en/pa/kallas-press-registry-brussels-lobbyists/article-142799>. To be fair to the Commissioner, the article does go on to state that 'Kallas remained careful about his intentions, saying he would prefer to see self-regulation by the profession rather than forcing a compulsory system of registration defended by NGOs....' And that he was also 'keeping all the possibilities open.'
- <sup>105</sup> The Länder are as follows: Baden-Württemberg, Bavaria, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Mecklenburg-Western Pomerania, Lower-Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein, Thuringia
- <sup>106</sup> Karsten Ronit and Volker Schneider, *The Strange Case of Regulating Lobbying in Germany* Parliamentary Affairs, vol.51, no.4, 1998, p.559.
- <sup>107</sup> European Commission, Green Paper *European Transparency Initiative*, 2006, pp.7-8, available at [http://ec.europa.eu/commission\\_barroso/kallas/doc/com2006\\_0194\\_4\\_en.pdf](http://ec.europa.eu/commission_barroso/kallas/doc/com2006_0194_4_en.pdf)
- <sup>108</sup> The Basic Law of the Federal Republic of Germany is in essence the constitution governing the country. It was amended by the Unification Treaty of 31 August 1990 and Federal Statute of 23 September 1990. It can be accessed in its English versions at <http://www.constitution.org/cons/germany.txt> and at <http://www.iuscomp.org/gla/statutes/GG.htm>.

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- <sup>109</sup> See the homepage of the German Bundestag at [http://www.bundestag.de/htdocs\\_e/legislat/04intgroup.html](http://www.bundestag.de/htdocs_e/legislat/04intgroup.html) for information on the input of interest groups in the framing of legislation.
- <sup>110</sup> Ronit and Schneider, p.562.
- <sup>111</sup> Michael Gallagher, Michael Laver and Peter Mair, *Representative Government in Modern Europe: Institutions, Parties and Governments*, New York, 2001, 3rd ed, pp. 405–6.
- <sup>112</sup> Peter Pulzer, *German Politics, 1945-1995*, Oxford, 1995, p.132.
- <sup>113</sup> Rules of Procedure of the German Bundestag and Rules of Procedure of the Mediation Committee, Annex 2, p.50 available at [http://www.bundestag.de/htdocs\\_e/info/rules.pdf](http://www.bundestag.de/htdocs_e/info/rules.pdf)
- <sup>114</sup> Ronit and Schneider, pp.559-560.
- <sup>115</sup> Ibid, p. 561.
- <sup>116</sup> Dr. Marco Althaus, Director of the Deutsches Institut fur Public Affairs, Berlin to the authors, 26 July 2005.
- <sup>117</sup> Ibid.
- <sup>118</sup> See <http://www.degepol.de/eng/> for information on the German Association of Political Consultants and <http://www.dprg.de/statische/itemshowone.php4?id=140> for information on the German Public Relations Association.
- <sup>119</sup> Christian D. de Fouloy, President of the Association of Accredited Lobbyists to the European Parliament to the authors, 25 July 2005.
- <sup>120</sup> Tanja Blätter, Hamburg to the authors 15 July 2005.
- <sup>121</sup> Correspondence from the parliament of Meckelnberg-Western Pomerania, 15 August 2005.
- <sup>122</sup> Ingo Borkowski, Landtag Brandenburg to the authors 17 August 2005.
- <sup>123</sup> Hans Zinnkann, Nordrhein-Westfalen to the authors, 12 July 2005.
- <sup>124</sup> <http://www.publicintegrity.org/about/about.aspx?act=mission>
- <sup>125</sup> <http://www.publicintegrity.org/hiredguns/default.aspx?act=methodology>
- <sup>126</sup> For discussion of the range of point values that can be assigned for each question please see <http://www.publicintegrity.org/hiredguns/default.aspx?act=methodology>
- <sup>127</sup> CPI scores for the USA are taken from the CPI website, whereas all other CPI scores are calculated by the research team. We are particularly grateful to the post-Doctoral researcher on the Project, Dr. John Hogan, for all the painstaking and detailed work he has done in this regard.
- <sup>128</sup> Gosta Esping-Anderson, *Three Worlds of Welfare Capitalism* (Princeton, 1990)
- <sup>129</sup> German Sociologist Max Weber of the late 1800s/early 1990s is 'well-known for his study of the bureaucratisation of society, the rational ways in which formal social organisations apply the ideal type characteristics of a bureaucracy.... This (ideal type) thesis states that social, economic and historical research can never be fully inductive or descriptive, as one must always approach it with a conceptual apparatus. This apparatus Weber identified as the 'ideal type'. The idea can be summarised as follows: an ideal type is formed from characteristics and elements of the given phenomenon but it is not meant to correspond to all of the characteristics of any one particular case....Weber conceded that employing "Ideal Types" was an abstraction but claimed that it was nonetheless essential if one were to understand any particular social phenomena because, unlike physical phenomena, they involve human behaviour which must be interpreted by ideal types.' Taken from: [http://en.wikipedia.org/wiki/Max\\_Weber](http://en.wikipedia.org/wiki/Max_Weber).
- <sup>130</sup> Given that Newfoundland only implemented legislation in late 2005, no surveys were sent to this jurisdiction.
- <sup>131</sup> If one examines Table 1 above, she will see that these states are a representative sample of different states along the range of CPI scores for America.
- <sup>132</sup> Comments made by an interviewee in Canada, March 2006.
- <sup>133</sup> See <http://www.publicintegrity.org/hiredguns/report.aspx?aid=728>
- <sup>134</sup> Interview with senior official in the Public Disclosure Commission, in Olympia, Washington State, March 28, 2006.
- <sup>135</sup> Comments made by an interviewee in Canada, March 2006.
- <sup>136</sup> Interview with senior official in the Public Disclosure Commission, in Olympia, Washington State, March 28, 2006.
- <sup>137</sup> Committee on Standards in Public Life, *Volume 1: Report* (Cm 2850-I), p.36, para 73. It is available at <http://www.archive.official-documents.co.uk/document/cm28/2850/285004.pdf>
- <sup>138</sup> Interviewees in Washington State, Pennsylvania and Washington DC all affirmed this view.
- <sup>139</sup> As outlined in the section on the USA, Pennsylvania did have legislation, the 1998 Lobbying Disclosure Act, but it was struck down May 2000 by the Pennsylvania Supreme Court as it pertains to attorneys, with the court saying the General Assembly of Pennsylvania's efforts to monitor the activities of lobbyists amounted to illegal regulations on the practice of law

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<sup>140</sup> Interviews in Pennsylvania were carried out on March 30 and 31 2006.

<sup>141</sup> Interview with senior legislative aide in Pennsylvania, 31 March 2006.

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