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The act of lobbying is an integral part of a diversified democracy. It is a form of advocacy that attempts to change laws that affect the lives of individuals and communities. By banding together in organizations with particular social, economic and political agendas, citizens form interest groups that can directly impact a government's policymaking process.

Lobbyists can play an important role in preparing briefs on matters of public interest and – especially where there are lobbyists acting on both sides of any given issue – by ensuring that legislators are much better informed than they might be otherwise. Encouraging lobbying satisfies the participatory demand of the public and potentially provides an important channel for minority voices. Groups as diverse as oil companies and migrant farm workers all have lobbyists in capitals across the world both to protect and to advocate their interests.

Yet lobbying is not all to the public good. The negative aspect of this activity is that, in an age of professional lobbyists, such practices can give rise to unhealthy and corrupt relationships between the lobbyists and those being lobbied. This is a situation facilitated by money and privileges proffered by lobbyists. In the United States, one of the more worrying features of the Enron scandal was the discovery that the corporation had developed software specifically to track the “performance” of certain US congressmen Enron had targeted to make sure that the energy company was getting value for its money.

The influence of lobby groups across the world depends largely on countries' socio-political cultures; both in terms of governance and in terms of the strength of civil society. A famous study of lobbying practices in the United States in the 1960's concluded that lobbying did not constitute a significant influence on public policy in Congress. However, since then, lobbying practices everywhere have become far more sophisticated. Despite a wide range of safeguards, the United States is now often seen as demonstrating some of the worst distortions of an open society that can be induced by lobbying power.

As a consequence, many now consider that lobbying has gone too far and that governments are held vir-

tually hostage by entrenched lobbying organizations to the detriment of policymaking and the greater common good. It is feared that the relative power of the lobby from particular industries over the general political process has rendered politicians captive to the interests that fund and flatter them.¹

LOBBYING AND THE POTENTIAL FOR CORRUPTION

Disillusioned by a perceived lack of channels for the average citizen to affect policy-making in a meaningful way, electorates in many parts of the world seem to be losing heart and voter participation is dwindling. Voters may feel that the most important policy decisions are made through bargains between politicians and organized interests groups led by professional lobbyists, rather than as a consequence of the ways in which citizens have expressed their views.

Increasingly, lobbyists seem to be too close to legislators and legislators too vulnerable to free hospitality and other forms of gifts. In the bargaining process, there is a significant risk that situations of severe conflicts of interest will arise. The United Kingdom is just one of the countries where scandals have forced the establishment of systems designed to track the hospitality and the gifts received by legislators.

Concerned citizens in democratic societies are increasingly demanding to know who is doing what and for which politician or government official.²

INFORMATION DISCLOSURES

Specific rules establishing a lobbyist registration system can be introduced to formalize an otherwise highly informal process. This gives ordinary citizens, journalists, as well as other lobbyists the opportunity to see who is lobbying and for what purpose.

In terms of best practice, the lobby register should be published on the Internet so that a quick and efficient scrutiny of the data can be had. The Center for Responsive Politics, an American non-governmental organization, provides extensive

information on American lobbyists and interests (<http://www.opensecrets.org/lobbyists/>).

EDUCATION

Any system of registration and information disclosures, however, should not impede open access to government, public servants and parliament. It should not muzzle the voice of the ordinary citizen or impair his and her ability to impact upon the government's agenda. On the other hand, it is generally considered that lobbying is an integral part of the political process, and it has certainly led to many grassroots issues being put on the national agenda. Most legislation recognizes that lobbying – as long as it is open – is a legitimate activity that lies at the very heart of the political process.

The public – through organizations and interest groups – should be able to access the proper procedures for lobbying core issues should they choose to do so. Since lobbying is often considered to be the exclusive domain of well-connected lobby organizations able to use clandestine channels and connections to influence relevant political institutions, it is important to demonstrate how other interest groups can succeed.

LEGISLATION

In Poland, a bill drafted by the Ministry of Internal Affairs and Administration, seeks to control lobbying. It defines this as any activity carried out using lawful means and intended to influence public authorities to consider arguments in favor of the interests of specific social or professional groups.

Under the proposed legislation, lobbyists would be required to register and then to abide by prescribed standards of conduct. Lobbying would be open, with all contacts recorded between lobbyists and the officials in charge of matters of interest to them. These contacts would then be published in a public information bulletin. Officials who were lobbied would also be required to inform their supervisors.

The United States and its neighbor, Canada, have the most advanced forms of legislative procedures

for the registration of lobbyists. In Canada, a revised version of the Lobbyist's Registration Act³ was enacted in 1995 for the purpose of responding to a number of conflict of interest scandals that had tarnished the reputation of successive governments. The intent was not to impede and over-regulate the lobbying process, but, rather, to make the system more transparent.

The Canadian Lobbyist's Registration Act is based on four key principles:

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

The Act identifies three types of lobbyist:

- *Consultant lobbyists – individuals, such as lawyers, accountants and government relations consultants, who are paid to lobby for clients.*
- *In-house lobbyists for corporations – employees who, as a significant part of their duties, lobby for an employer who carries out commercial activities for financial gain.*
- *In-house lobbyists for organizations – not-for-profit organizations in which one or more employees lobby, and the collective time devoted to lobbying amounts to a significant part of one employee's duties.*

This implies a relatively narrowly classified registration of lobbies, since it stipulates that only lobbyists who are paid for lobbying must register. It has the advantage of exempting automatically virtually all grassroots advocacy efforts undertaken by citizens.

The Canadian Act requires all lobbyists to disclose their political activities; thus, by examining the registry, anyone can ascertain who is lobbying what department and what they are discussing. Importantly, they must also disclose their past work with the government. Canadian lobbyists' registration and updating process can be easily accessed through the Internet.⁴

Another of the tasks of the Canadian Federal Ethics Counsellor has been to develop a Lobbyists' Code of Conduct⁵ and to respond to any questions of ethics and business practice that arise in government relations. The Ethics Counsellor, appointed by the prime minister, offers guidance to both lobbyists and their clients to help determine whether their proposed activities are acceptable. Draft legislation is under consideration that would have the Counsellor reporting in future to the legislature, rather than to the prime minister.

The Lobbyists' Code of Conduct supports the Act, setting standards of conduct that lobbyists are to meet in their dealings with federal public office holders. Its preamble states that lobbying is a legitimate activity, provided that it is open and does not impede free and open access to government. It also allows individuals to register complaints with the Ethics Counsellor, and provides for the availability of reports on those complaints from the Counsellor's Office.

The position of Ethics Counsellor is designed to take control of enforcement issues. If it is thought that lobbyists are giving undue gifts or fundraising on the behalf of the officials they are lobbying, it is to the Counsellor that a complainant should turn.

In the United States, the two main federal lobbying regulations are the Byrd Amendment (31 US Code, §1352⁶ and the Lobbying Disclosure Act (2 US Code, §1605). The Byrd Amendment prohibits the use of federal funds, either through grants, contracts, or co-operative agreements, in lobbying activities. The Amendment also provides for the monitoring of any lobbying expenditures made by recipients of federal funds. NGOs and charities, which tend to enjoy tax exemptions, are generally permitted to lobby as long as their lobbying does not form a core part of their organizations' expenditures.

The second US act, the Lobbying Disclosure Act, specifies procedures surrounding the registration and the bi-annual reporting of national lobbying activities.

A third act, the Anti-Lobbying Act (18 U.S. Code §1913⁷), a criminal statute, prohibits the use of appropriated (i.e. government) funds, whether directly or indirectly. It states that:

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favour or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

Violators are subject to fines, imprisonment and removal from office.

"REVOLVING DOOR" LAWS

In the United States, lobbyist regulations vary at the state level. For example, over twenty states stipulate a period of time that must elapse before a former legislator can represent clients to the legislature.

Known as "revolving door" laws or "cooling off periods," these provisions are designed to break the connection between the legislator's professional duties and the interests of lobbyists. They seek to create a system in which former public officials are unable to take advantage of their inside knowledge by becoming paid lobbyists. The periods range from one to two years.

Some states, such as California, extend the ban to all former government officials and ban them from contacting specified government agencies for a period of one year. New Mexico is one state where there is a permanent ban on officials (including legislators) representing a person in dealings with the government on any matter in which the former public official participated personally and substantially while still a public official.⁸

ENDNOTES

- 1** (Canadian) Lobbyists' Registration Act, R.S. 1985, c. 44 (4th supp.), An Act Respecting the Registration Of Lobbyists: <http://laws.justice.gc.ca/en/L-12.4/text.html>; (Canadian)Lobbyists' Code of Conduct: <http://strategis.gc.ca/SSG/lr01044e.html>; Annual Reports Under the (Canadian) Lobbyists Registration Act: <http://strategis.gc.ca/SSG/lr01066e.html>; {US} Federal lobbying Regulations: http://www.research.uh.edu/downloads/PDF_format/lobby99.pdf; (US) state restrictions http://www.ncsl.org/programs/ethics/e_revolving.htm; (US) Prohibitions against legislators lobbying state government after they leave office: http://www.ncsl.org/programs/ethics/c_revolving.htm. The assistance of Gustav Ando with this chapter is acknowledged with thanks.
- 2** Weblobbying.com lets participants create their own online lobbying campaign or speak out on the issues that concern them most. Go to: <http://www.weblobbying.com>.
- 3** Lobbyists Registration System: <http://strategis.gc.ca/lobbyist>.
- 4** Lobbyists Registration System, Act and Other Documents: http://strategis.ic.gc.ca/epic/internet/inlr-el.nsf/en/h_lr20007e.html.
- 5** Lobbyists' Code of Conduct: http://strategis.ic.gc.ca/epic/internet/inoec-bce.nsf/vwGeneratedInterE/h_oe01438e.html
- 6** 31 U.S. Code, §1352: <http://tinyurl.com/23t5b>
- 7** Anti-Lobbying Act (18 U.S. Code §1913) Lobbying with appropriated moneys:
- 8** Revolving Door Bans: http://www.ncsl.org/programs/ethics/e_revolving.htm.