Reviewing Lobbyist Registration Legislation

by Patrick Boyer, MP

When legislation providing for the Registration of Lobbyists was adopted by Parliament in 1989, the act provided for a an automatic review of the legislation. That review is now under way by the Standing Committee on Consumer and Corporate Affairs and Government Operations. One of the first witnesses to appear before the committee was Patrick Boyer who calls for a more comprehensive approach to this issue for a greater role for Parliament in the administration of the legislation.

Observations about life in our small capital from different perspectives over the years has led me to the view that the *Lobbyist Registration Act*, is an important start, but really is an inadequate response to the lobbying phenomenon. In fact, it is not even adequate, in terms of the criteria and standards set down by Prime Minister Mulroney on September 9, 1985.

The principles that ought to underscore this are first, to ensure openness around the decision-making process, and second, to ensure that access to government is unimpeded. On this second principle, we are seeing some impediments or some barriers being developed on both sides. Legislation that was recently passed in Parliament, now charging fees with respect to registration, goes against the principles enunciated when the bill was first brought in, and that can be seen to constitute a barrier. Similarly lobbyists who insert themselves as middlemen in the process between public and government can equally be seen as a type of barrier to the citizens and organizations in the country, who feel that unless they retain the services of a lobbyist they may not have equal access to government.

With those two principles about openness and access, I would like to make three general points. It is time, both historically and in terms of the three-year review process, to consider what I call a comprehensive approach in three areas: first, the legal and statutory framework; second a comprehensive approach with respect to the lobbying relationship; and third, the need for a comprehensive definition of lobbying itself.

Let me begin with the need for a comprehensive legal and statutory framework. I think it is helpful to pause and realize that currently Parliament is dealing with three different statutes by three different committees, which all relate to the same subject matter. We have Bill C-43, dealing with conflict of interest, which is before the House of Commons and which was the subject of a further committee study that reported last June. We have a Special Committee, currently chaired by Jim Hawkes, that is looking at the whole question of election financing. Third, we have the Consumer and Corporate Affairs Committee dealing with the *Lobbyists Registration Act*.

> ***My purpose is to urge a more comprehensive approach to the phenomenon of lobbying as it is now being practised.***

There are three different statutes, three different sets of definitions three sets of government officials involved. Yet all are dealing ultimately with the interaction of money, power, influence, access, decision-making, and public policy.

There are also two other statutes, *the Criminal Code* and the *Income Tax Act*, which also can be said to bear on the same subject if we are to take a comprehensive view of the legal and statutory framework that can capture the lobbying phenomenon. Another way of looking at the need for a comprehensive approach to the legal framework is to reflect for a moment on what anyone can see in the literature or what anyone can see who visits our capital. When a person arrives at the Ottawa airport

Patrick Boyer is the Member of Parliament for Etobicoke-Lakeshore.

and comes through the Department of Transport facilities, he or she is met by a sign advertising the services of one of the many professional lobbying firms in the city. The past couple of decades have witnessed a very major increase in the growth, nature, activity, and reach of lobbying organizations.

I am emphasizing this in its historic perspective. To underscore why I am stressing a comprehensive approach, let us go back and look at what happened two decades ago. In 1974 Parliament passed the Elections Finances Reform Act. Up to that time there had been a lot of concern in Canada about how political parties raised their funds. Everyone conceded that it was rather a swamp of misunderstanding and there was certainly need to bring it out into the open.

So 1974 brought in a new regime, with public disclosure of the sources and the amounts of the funding. It was all based on the notion that is intrinsic to all of these areas – openness is essential, sunshine is the best antiseptic. What can be done in public view is likely going to be a lot better than what might be done in dark and shady corners, behind the scenes and without disclosure.

Well, not too much time passed after 1974 before the role of paid professional lobbyists in this capital began to grow. My point is a simple one. There were before 1974, and remain after that date, some organizations in this country and some individuals who have wanted to extract decisions from government. Like water running down a hill that hits a boulder and is stopped temporarily but soon finds a way to get around it, they have now found access to government, not through contributions to political parties as in the former fashion, but through retaining the services of paid professional lobbyists.

My second point is the need for a comprehensive view of the lobbying relationship. What I am suggesting is that the focus ought not be exclusively on the lobbyists, who after all are intermediaries who have inserted themselves for a fee, between their clients and government. We ought to indeed take a comprehensive look at the entire relationship. This means those with whom lobbyists interact, both their clients and government officials.

I think it is always important to remember that ultimately it is the decision-makers who do control the system. A decision-maker decides who he will or will not see, and what he will or will not decide. Therefore, it is going to be important to see, from the government officials' side, their response to the current operation of the lobbyist system as it is developed. The committee has already heard from some people speaking to that point, in a somewhat muted way. I think it could be brought out more clearly if the committee were to focus on the recipient side of the lobbying activity as well as the client side, those who are giving instructions to lobbyists, retaining their services. Indeed, it may be worth asking if, once someone retains the services of a lobbyist, they are able to get off that cycle.

The committee heard from a witness who described the phenomenon of a multiple-year retainer fee for the consideration for acting for them. It seems there is something happening here that is going towards the institutionalization of lobbying as a relationship for a number of the clients with lobbyists, in their relationship with government. That is why to come to grips with what is going on it is important to deal with the full relationship and not focus only on the lobbyists themselves.

> ***Sooner or later we will look at these phenomena as all threads of the same fabric. We do not want to have three different statutes, three different sets of officials, three different sets of definitions, three different approaches, and the ability therefore for a lot to be lost between the three.***

The third point I wanted to make, in terms of a comprehensive approach, relates to the definition of lobbying. This is one that takes a lot of effort and review of the legislative regimes in many other countries and the committee's own experience. I was on the committee chaired by Albert Cooper, although I did not engage in the final drafting of the report, I remember we were very much struggling with how to define the activity of lobbying.

Clearly, a couple of things have come to light that really have to be taken into account when we look for a more comprehensive definition to embrace the whole transaction that is going on here. For example, the phenomenon of the so-called grassroots movements springs up. Last week the committee heard in detail how that can and is done, when what appears to be a populist outcry over a certain issue or concern is indeed something that is being orchestrated to influence the public system.

In this area of definition, the role of the *Income Tax Act* is also relevant. We have a lot of non-governmental organizations, in the country that have registered themselves as charitable and educational organizations in order to give tax receipts. In so doing, they buy into and conform with rules set down by Revenue Canada that prohibit political activity. There are other NGOs that know it is their mandate and purpose to expressly

engage in political activity. They make the decision not to apply for charitable registration. I am thinking of organizations such as Greenpeace, the National Citizens' Coalition and others. Those may be fairly clear examples. If we are being realistic today there are, a number of organizations in Canada, public-purpose organizations, that do have an interest in contributing to public decision-making, providing information, ensuring their point of view is brought forward. Where do they fit in terms of lobbying, as currently defined? Does the standard set down under the *Income Tax Act* actually force and constrain some of these organizations into patterns of activity that are not, shall we say, natural for them? Do they end up having to retain paid professional lobbyist to do things they would otherwise find their charitable registration in jeopardy over? Do they otherwise simply register as tier-one lobbyists?

> ***We are seeing a time of great challenge to the political parties in our country as credible and respected institutions for carrying out political missions. A lot is going on around that subject.***

The solution may be one that is contemplated by Professor Paul Pross, now at Dalhousie University, who has made himself very well informed on the subject of lobbying in Canada. He has advocated or at least proposed consideration of another system under the *Income Tax Act*, where there could be public-interest groups, NGOs, that could qualify for some form of tax credit, but at a lower or different rate, where it was known that they would engage in some form of lobbying, public interest, political activity.

This keeps leading to the question of whether we want to see in Canada the creation of PACs, the Political Action Committees, that operate outside of the political parties in order to control and influence members of Parliament and the people who work in our parties. The reason I am raising this is that all of this is tied in as part of the same fabric, part of the same phenomenon of what is going on in Canada.

I think a comprehensive definition is going to have to embrace more of this wider area of activity than is contemplated by some of the traditional definitions of lobbying that we find not only in this country but also in statutes and regimes in other countries.

I would suggest one other idea as well concerning responsibility for whatever system is developed. Currently, a separate, small office has been set up in one of the government departments. But we do have other models to follow that we are familiar with – for example, where they relate to broad public policy, political activity, the interaction of money and influence and so on, the political parties.

The Chief Electoral Officer of Canada reports directly to Parliament, as does the Commissioner of Canada Elections under the CEO. We also have, with respect to the Auditor General, someone who is regularly reviewing public transactions, to see that taxpayers are getting value for dollars spent and that public purposes are being followed in government spending. He is reporting directly to Parliament.

It strikes me that a lot of the issues that are before this committee, qualitatively, go to the same types of concerns and issues that are dealt with by Elections Canada, by the Auditor General. Therefore, should we go beyond the step that was taken at the beginning, with the *Lobbyists Registration Act*, to have this function located within one government department, with the problem that entails in terms of independence and in terms of the public perception of a function that is independent and neutral?

I think the justification for locating this function within a government department was to maintain low overhead, to keep the costs down. This was unanimously part of the committee's report three or four years ago, which I support very strongly. We did not want to see a large bureaucracy being created.

On the other hand, we have a larger issue before us – the role of elected representatives in our system of government and the need to reinstate Parliament with power and authority in this very important area. Everything we do as parliamentarians is open. We are publicly accountable.

What we are looking at with lobbyist are people who are likewise involved as intermediaries, in the political system, in the decision-making process. They are largely operating outside of any public view and certainly in a system that is unaccountable. My view is that Parliament itself is the best watchdog. We do not need to create a large bureaucracy of public-service snoopers as much as we need to have an accounting and reporting chain or stream that involves parliamentarians far more directly. I think that would serve several purposes at once.▲