

The Registration of Lobbyists

Hon. Mitchell Sharp

There has been much discussion recently about lobbying and the registration of lobbyists. What is the purpose of registering lobbyists? Is it to prevent bribery of government officials or MPs? This is already a crime under the Criminal Code. Is it to prevent preferential treatment of paid lobbyists by MPs or government officials? This is already forbidden by Conflict of Interest Guidelines applying to ministers and government officials. Is it to identify the clients of paid lobbyists? Why should lobbyists want to hide the identity of their clients when making representations on their behalf? If there are concerns on that account, it should be sufficient to add to the Conflict of Interest Guidelines a requirement that when representations are made by a lobbyist, ministers and government officials demand the disclosure of the clients on whose behalf the lobbyist is appearing.

What seems to be in the minds of those who advocate registration of paid lobbyists is that it will meet public concern that paid lobbyists and particularly friends of the government are secretly receiving preferential treatment for their clients with respect to government policy, administration or legislation.

The argument apparently is that by requiring paid lobbyists to register and to reveal the names of their clients it will be publicly known who is representing business interests in Ottawa (apart from the individual companies themselves and business associations like the Chamber of Commerce, the Canadian Federation of Independent Business and the Canadian Manufacturers Association). It will be easier to identify those who are seeking preferential treatment.

Two private members' bills, C-248 and C-256, in the names of James McGrath and John Rodriguez respectively incorporate essentially two tests as to who is a paid lobbyist. First, that the lobbyist be paid for his services. Second, that for payment they attempt to influence directly or indirectly legislation before Parliament or administrative decisions by the Government.

This definition rules out individual companies and associations that make representations on their own behalf. They may be lobbyists but they do not attempt to conceal their activities by hiding behind a front man or woman. After listening to Mr. Rodriguez explain his bill I was confused, because he seemed to say that an employee or even officer of a company like INCO, for

example, making representations on behalf of his company would be considered a paid lobbyist and would be required to register.

Another ambiguity of this definition lies in the phrase "influence, directly or indirectly". The intention seems to be to require the registration of paid lobbyists who make representations to MPs or government officials on behalf of their clients. It does not appear to include consultants who advise their clients as to how to make effective representations. What about consultants who advise their clients and then make appointments for them with ministers, MPs or government officials, but do not attend the interviews? Does this constitute lobbying? At first sight the answer would seem to be in the negative, and yet it could well be that because of his friendship with the government the consultant exercised influence by obtaining the appointment, thereby indicating his appreciation of favourable treatment of his client. The consultant might indeed make this clear to the official when arranging the interview.

The use of the word "influence" by the two MPs in drafting their bills indicates that alternative wording such as "making representations" would not be broad enough for the purpose they had in mind. On the other hand, "influence" is so broad a word that it would be extremely difficult for the business community, the administrators and the Courts to interpret it in particular cases.

This is a very important point because there are some consultants who advise their clients but do not make substantive representations on their behalf, i.e. they do not engage in what is generally thought to be lobbying. Should they be required to register simply in order to arrange appointments with ministers, or MPs or government officials? Surely it is not in the public interest to put obstacles in the path of people who know their way about in the bureaucracy and can save the time of both the business enterprise and the officials.

Is there any other form of words that would accomplish what seems to be the purpose of registration and would be more precise in its definition of lobbying? I doubt it. Influence peddling is presumably the essence of the concern.

Lobbying may be a perfectly acceptable activity in modern democracy; indeed, given the complexity of government, lobbying may be essential to the assembly of facts on which Parliament and governments have to base decisions. The very fact, however, that legislation is being contemplated shows that there is public and parliamentary concern about lobbying activities by those who seek preferential treatment, i.e. who peddle, not their knowledge, expertise and analysis, but their influence. Hence

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resistance could be expected from those who do not want to find themselves on the same list as persons who do peddle influence.

Registration might have one effect and that would be to increase competition for clients amongst the paid lobbyists and it might lead to assessments in the press and elsewhere of their relative success in achieving results. Whether publicity would lead to a modification of influence peddling by those who are in a position to engage in this activity is doubtful, although one could expect some virulent attacks in Parliament upon the activities of supposed friends of the government who register as paid lobbyists.

My feeling is that those paid lobbyists whose main attraction to clients is their inside track with the government would have no objection to registration. For them, registration would be evidence of respectability, putting them in the same category as all other paid lobbyists who peddle their expertise rather than their influence. It would be their answer to attacks upon them for influence peddling.

Another question is what penalties should there be for non-compliance with the requirement to register? The McGrath and Rodriguez bills provide for fines for non-compliance, accompanied by prohibition from acting as a lobbyist for a period of three years. The Rodriguez bill contains a curious section denying access to Parliament Hill to convicted lobbyists.

I have been trying to imagine the circumstances under which a complaint would be laid against a lobbyist for failing to register. I suppose an ordinary MP who was suspicious of the activities of lobbyists might do so if he were approached with respect to some legislation before Parliament and discovered that the person who approached him had not registered as a paid lobbyist. This is highly unlikely, since the so-called lobbyist might simply reply that he was expressing his own views to an MP, which he was entitled to do as a citizen. For much the same reasons, it is even less likely that a Minister of the Crown would lay a complaint.

Whatever complaints that were laid would therefore originate with civil servants. Here again, I try to imagine the circumstances. Someone representing a business concern meets with a civil servant and wants to lay before him information relating to a decision the civil servant has to make or to recommend to his superior. The civil servant asks him if he is being paid to represent the business concern and if so whether he has registered as a paid lobbyist. The representative replies that he is being paid but that he is not attempting to influence the decision. He is simply providing information that the civil servant should have before reaching a decision. Will the civil servant lay a complaint? Presumably he would have to have the approval of his superior and perhaps of his minister before doing so. The most probable outcome would be to do nothing.

Another possible approach to penalties for non-registration would be to issue a licence to registered lobbyists and to

modify the Conflict of Interest rules to require civil servants to refuse to meet paid representatives who did not produce their licence. I do not think MPs including ministers, could be forbidden from seeing citizens who wished to make representations on their own behalf or on behalf of clients. Indeed, I would hope that if any rules which had this effect were to be proposed, either by legislation or by regulation, MPs would rise in their wrath to protest.

The requirement to produce a licence when meeting with a civil servant to discuss the business of a client would be a more effective way of achieving compliance than a fine or other penalty for non-compliance. But since those who are peddling influence are not likely to object to registration and licensing, a more effective system does not mean that there will be less influence peddling or better control over this kind of activity.

I have heard suggestions that even if lobbyists paid by domestic clients should not be required to register, lobbyists paid by foreigners should be required to do so and to list their foreign clients as in the United States. Indeed, in the United States, foreign agents not only are required to list their clients, they also have to reveal their activities and their fees "to ensure that the Government and the people of the United States would be informed of the identity of the persons engaging in political activities for or on behalf of foreign governments, foreign political parties and other foreign principals". In reports under the *Foreign Agents Registration Act* can be found, for example, the fees paid by the Government of Canada to various law firms, other United States citizens and organizations for advancing Canada's interests with the Administration, the Congress and the people of the United States.

The registration of Canadians paid to promote the interests of foreigners raises questions of a different kind from the registration of Canadians paid to represent other Canadians. It is assumed that even those paid lobbyists peddling their influence on behalf of other Canadians are patriotic or at least the results of their activities only affect the distribution of wealth within Canada. The same assumption cannot be made about Canadians who promote the interests of foreigners, particularly their political interests. Moreover, their activity may be of a different kind from what is generally thought of as lobbying. They may never, for example, give advice to their clients as to how to deal with the Government of Canada or may never represent them in dealings either with the Government or with Parliament. They may simply give them legal or financial advice concerning Canadian laws or regulations or they may distribute literature or films. They are not so much paid lobbyists as agents or representatives.

The principal difficulty that I see in formulating an approach to the identification of foreign agents is to define the nature of the activities that require an agent to register. I think one is driven to something like the definitions contained in the United States *Foreign Agents Registration Act*. ■