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John Hogan

Technological University Dublin, john.hogan@dit.ie

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Hogan, J.: "Next door they have regulation, but not here ...": Assessing the opinions of actors in the opaque world of unregulated lobbying. *Canadian Political Science Review*. Vol 2, No 3 (2008)
<http://ojs.unbc.ca/index.php/cpsr/article/viewArticle/43>

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“Next door they have regulation, but not here ...”: Assessing the opinions of actors in the opaque world of unregulated lobbying¹

John Hogan,
Dublin Institute of Technology,
Aungier Street,
Dublin 2,
Ireland
Email: john.hogan@dit.ie

Tel: 00353 1 4027137

Gary Murphy,
School of Law and Government,
Dublin City University,
Glasnevin,
Dublin 9,
Ireland

Email: gary.murphy@dcu.ie

Tel: 00353 1 7005664

Raj Chari,
Department of Political Science,
Trinity College Dublin,
1 College Green,
Dublin 2,
Ireland

Email: raj.chari@tcd.ie

Tel: 00353 18963480

Abstract

The lobbying of government by various interests is regarded as central to the democratic process. Deliberative democratic theorists tell us that the regulation of lobbying has a positive effect on political systems, and the behaviour of those within them. Yet, only a small number of democracies have implemented legislation regulating lobbyists' activities. Even within these countries, certain jurisdictions still have not enacted lobbying regulations. Here we examine the attitudes of actors in these unregulated provinces, states and institutions towards the idea of lobbying legislation. This ensures that in the broader context the actors we deal with have knowledge of lobbying regulations, and what these regulations entail, as well as the consequences of the absence of such regulations for their jurisdictions. Our objective is to discover if these actors see benefits in the introduction of lobbying legislation, as is suggested by deliberative democratic theory, or, are they perfectly happy without regulations?

Keywords: Lobbying, regulation, deliberative democracy, transparency, accountability

Acknowledgements: We would like to acknowledge the support of the Irish Department of the Environment, Heritage and Local Government for providing the funding to enable us to undertake this research. In particular, we would like to thank Mary Tully and Eoin Corrigan. We are indebted to all who answered our surveys and were kind enough to be interviewed. Also, we are grateful to the two anonymous referees for their constructive comments as well as the participants of the APSA meeting in Boston, 2008, where a version of this paper was presented.

1. Introduction

In all democracies lobbying is considered an integral part of the process of policy formulation. Deliberative democratic theory affirms the need to justify the decisions made by citizens and their representatives (Gutmann and Thompson, 2004: 3). It is invested with the expectation that all policies chosen, and laws implemented, will be justified. This theory is based upon the idea that political acts are public acts (Elster, 1998). As such, deliberative democratic theory is a subgroup of participatory democratic theory, where participation yields popular control of the body politic, as it involves members sharing in its burdens and benefits (Wolfe, 1985: 370).

‘Advocates of deliberative democracy emphasize that deliberations that occur in public increase the quality and the legitimacy of decisions taken’ (Stasavage, 2004: 668). Deliberative democratic theory suggests ways to enhance representative democracy through discussion and accountability, resulting in a political order that can be justified to all living under its laws (Chambers, 2003: 308). The central principles of the current thinking on deliberative democratic theory are that the reasons for political decisions, along with the information necessary to assess those reasons, should be in the public domain; and that the officials who made these decisions should be accountable to the public (Gutmann and Thompson, 2004: 135; O’Flynn, 2006: 101).

According to Young (2002: 17-32) deliberative democracy is all about the ideals of inclusion, political equality, and reasonableness. For deliberative democratic theory, ‘transparency is believed to strengthen public confidence in political institutions and increase the possibilities of citizens holding decision makers accountable’ (Naurin, 2007: 209). ‘The more that citizens know about the actions of government officials, the easier they will find it to judge whether officials are acting in the public interest’ (Stasavage, 2004: 668). Thus, deliberative democracy tries to offer a means of confronting exclusion.

‘When public concern is about the integrity of government decision making, measures to ensure transparency and accountability become essential’ (Bertók, 2008: 18). Some democracies attempt to do this by means of freedom of information (FOI) legislation, or regulating the decision making process. In both cases, with their focus on transparency and accountability, a crossover exists with deliberative democratic theory. If, for deliberative democratic theory, transparency and accountability are good things, it stands to reason that FOI legislation and lobbying regulations must be beneficial.

Although deliberative democratic theory argues against regulation in general, lobbying regulation would constitute an exception, a necessary evil, until something better comes along. While Anechiarico and Jacobs (1996: 193) argue that anticorruption efforts can be ineffective, adding layers of control that hamper efficiency, they also recognize that anti corruption efforts are necessary – ‘corruption can hardly be legalized or ignored; it must be condemned, investigated, and punished.’ Democratic legitimacy and trust in authority, is generated by an ongoing context of critical scrutiny and opportunities for discursive challenge (Warren, 1996: 55).

2. Transparency and Accountability

‘The most direct way to eliminate problems of moral hazard is to make an agent’s behaviour more observable’ (Staavage, 2003: 389). McCubbins et al., (1987) argue that this can be achieved through administrative procedures requiring the release of information. In addition to FOI legislation, through increasing transparency and accountability, lobbying regulations shed light into an aspect of the black box of policy-making, and improve the overall nature of the decisions reached (Dryzek, 2000; Elster, 1998; Keohane and Nye, 2003). Thus, while not a

panacea in itself, lobbying regulations, employed in conjunction with effective access to FOI legislation, can enhance the openness of the policy making process.

In the context of deliberative democracy and lobbying regulations, by transparency we mean the ease with which the public can monitor the government with respect to its commitments (Broz, 2002: 861). This encompasses openness as to policy objectives and institutional arrangements that clarify the motives of policy makers (Geraats, 2002: 540). It means the absence of information asymmetries between policy makers and the citizenry. Although greater transparency need not be welfare enhancing, empirical work suggests transparency tends to be beneficial (Geraats, 2002: 562).

By accountability we mean responsibility and accounting for actions (Moncrieffe, 1998: 389; Scott, 2000: 40). This encompasses public responsibility with regard to the use of governmental power by politicians and civil servants (Subramaniam, 1983). According to Gutmann and Thompson (1996: 95) the public exposition of political decision making has the effect of purifying politics. This is what Bentham was advocating in the early nineteenth century (Bentham et al., 1999). As Risse (2000: 32) points out, in the cold light of public scrutiny, even multinational companies must justify their behaviour by the criteria of the common good. In addition to citizens feeling they have a fair chance to influence decision-making, they also have the right to scrutinize the results of that decision-making (Curtin, 2006: 137).

3. Ideas Underlying Lobbying Regulation

A common concern expressed in relation to the volume of lobbying is a lack of transparency. Schemes to regulate lobbying generally derive from concerns over the democratic deficit, openness and transparency of government, equality of access to public affairs, and in particular,

the perceived need to manage information flows to and from governments (Greenwood and Thomas, 1998: 493). In this regard, most jurisdictions with lobbying regulations also have FOI laws. Lord (2004) argues that increased transparency is a necessity – to enhance the democratic status and legitimacy of institutions. Transparency is regarded as a means of preventing political misconduct, and of making decision makers more responsive to the demands of the public (Scharpf, 1999; Heritier, 1999). The legitimacy of political institutions are strengthened if transparency can ‘civilise elite behaviour’ (Naurin, 2007: 209). Thus, ‘a primary assumption that underlies this discussion is that transparent policies are better than those that are opaque’ (Finkelstein, 2000: 1).

Holding with deliberative democratic theory, proponents of lobbying regulations justify them as necessary to render lobbying transparent, and politicians more accountable (Thomas and Hrebener, 1996: 12-16). For Larserlof and Frisell (2004: 16) ‘the fact that lobbyists must register constitutes a requirement that should at least work in the direction of greater transparency.’ Further, ‘by imposing an obligation on lobbyists to disclose the identity of those on whose behalf action is being taken, a government is making laws that take account of the public interest’ (Garziano, 2001: 99). Regulations ‘constrain the actions of lobbyists and public officials alike, even if they do not ultimately affect which groups are powerful and which ones are not’ (Thomas, 2004: 287). Proponents of regulations argue that they bring representation under closer public scrutiny, for which there is some evidence (Gray and Lowry, 1998: 90). In the absence of such publicity, ‘it may be difficult for electors to judge whether a representative has taken their interest in consideration when bargaining over policy, or alternatively, whether unseen actions by lobby groups are dominating outcomes’ (Stasavage, 2004: 672). Thus,

without regulations the danger of moral hazard arises – the risk that representatives will pursue private goals over those of their electors.

A number of studies (Opheim 1991; Brinig *et al.* 1993) have sought to measure the rigour with which American states regulate lobbying. The results have provided a sliding scale of legislative rigour. Chari *et al.*, (2007, 424-28) took the process a step further by applying the Center for Public Integrity's (CPI's) index for analyzing lobbying legislation in America, to all jurisdictions with lobbying legislation². The results present a comparative analysis of lobbying regulations in a national/international context. A sliding scale of international legislative rigour was provided, and a classification scheme for regulatory regimes developed. This scheme consists of three ideal types of regulatory environment - low, medium, and high. Each of these ideal types constituted a broad church, capturing the essence of a range of cases, without encapsulating all the characteristics of any particular case. This framework simplifies the task of categorising any lobbying legislation encountered, and any future lobbying legislation tabled, in any jurisdiction, across the globe.

Ainsworth (1997) argues that legislators' position in relation to the formulation of lobbying rules allows them structure their relationship with lobbyists. In a similar vein, Opheim (1991: 405) states that the rigour of the formal regulations in place to control lobbyists in the US is an indication of a state's legislative independence and accountability. This is similar to the argument put forward by the Citizens Conference on State Legislatures as early as 1971 (CCSL, 1971). Chari *et al.*, (2007: 432) found that actors in what they classified as highly regulated jurisdictions were more likely to agree that regulations helped ensure accountability in government, than actors in either the medium, or lowly regulated environments. Thus, the logic is that the stronger the rules governing lobbyists the more accountable the political system.

4. Ideas Underlying the Absence of Lobbying Regulations

While the above studies examined lobbying legislation, and the attitudes of actors within regulated environments, few studies have sought to uncover the attitudes towards regulations in unregulated jurisdictions/institutions. Some countries, such as France, Ireland, Italy, Latvia and the United Kingdom, have considered implementing lobbying regulations, but, for a variety of reasons, have not done so. Australia introduced regulations in 1983, only to repeal them in 1996. However, as of 1 July 2008 a Lobbying Code of Conduct came into operation in Canberra. This requires lobbyists to register if they wish to make representations to government. Vacillation on this topic in Australia was due to uncertainty over who to regulate, as opposed to controversy over the issue of regulation per se. When the initial regulations were repealed in 1996 public attention was not focused on the activities of lobbyists, but on those of the political elite and the owners of major corporations (Warhurst, 1998: 549).

Deciding if they wish to regulate lobbying, and who exactly to regulate, is a problem that has confronted many countries. As Bertók (2008: 11) points out, ‘it takes two to lobby,’ and as a result focusing only on lobbyists addresses only half the equation. Even deciding what kind of lobbyist to regulate has proven fraught with difficulties, as the EU Parliament’s efforts in the mid 1990s attest. Some countries have expressed a reluctance to introduce any regulations, for fear they may have unforeseen consequences, leading to a regulatory avalanche. Others place their faith in FOI legislation to bring transparency and accountability into the political arena. While others sit on the sidelines, adopting a wait and see approach. Nevertheless, lobbyists in many of these jurisdictions have introduced their own voluntary codes of conduct which is the best that can be hoped for in lieu of governmental action.

On a theoretical level, a reason for the absence of lobbying regulations may relate to them being viewed as barriers to entry (Brinig *et al.*, 1993; Ainsworth, 1993). This was a conclusion of the Nolan Committee in the United Kingdom in the mid 1990s (Nolan Committee, 1995). According to Nolan ‘regulation could create the perception that the only legitimate route through which outside interests might engage with parliament would be via the offices of registered commercial lobbyists’ (Dinan, 2006: 56). Consequently, the Nolan Committee report proposed no alterations to the status quo in Westminster, where relations between MPs and lobbyists were to be based upon a continuance of “good conduct.” In fact, in the UK, ‘successive parliamentary inquiries have examined this issue, but their recommendations (if any) have had limited impact’ (Jordan, 1998: 524). Reluctance to institute lobbying regulations can relate to the fear that these ‘regulation may have a direct bearing on levels of lobbying activity if the stringency of regulations and their enforcement influence the numbers of registrations’ (Gray and Lowery, 1998: 78).

Naurin (2007) suggests some actors would not applaud lobbying regulations due to the increased publicity, resulting from greater transparency, such regulations would bring. Advocates of negotiation theory argue that, in order for the parties to negotiations to reach a “good” deal, confidential communications are necessary (Fisher *et al.*, 1999: 36). They regard the transparency that comes with lobbying regulations as an impediment to effective problem-solving (Putnam, 1988; Groseclose and McCarthy, 2001). Groseclose and McCarthy (2001: 1) state that “sunshine laws” can in fact harm the efficiency of the negotiation process. As everything becomes public with greater transparency, the posturing of those engaged in negotiations, or lobbying, also becomes public, and can have negative consequences for all concerned (Stasavage, 2004: 673). For instance, in Japan, ‘almost all important lobbying aimed

at influencing takes place behind closed doors’ (Hrebenar *et al.*, 1998: 554). There ‘the invisible political process is much more important for actual decision-making’ (Johnson, 1982: 91-92).

5. Central Hypothesis

Only a small number of political systems have some form of lobbying rules. These are, the United States of America (federal and state levels, except for Pennsylvania), Australia, Canada (federal level and in several provinces), Hungary, Georgia, Germany (federal and state levels), Lithuania, Poland, and the European Parliament.³ However, various scandals, questions as to accountability and transparency in government, and ease of access to legislators, has led to this lack of regulations being questioned in a number of countries. According to deliberative democratic theory, the introduction of lobbying regulations should benefit any democracy. Consequently, we hypothesise: in jurisdictions without lobbying regulations, significant support exists for the transparency, and accountability, regulations offer.

In seeking to test this hypothesis we uncovered a three-fold void in the literature. No study has sought to: gauge attitudes towards lobbying regulations in unregulated jurisdictions; offer a comparative analysis of overall attitudes towards lobbying legislation in these jurisdictions; analyze and compare the views of key agents – politicians, administrators and lobbyists – towards regulations in unregulated jurisdictions.

6. Methodology

To test the above hypothesis, the paper will examine the attitudes of politicians, administrators, and lobbyists in all states/provinces/institutions that do not have lobbying legislation, but which exist in political systems where such legislation is in force. In this regard, we will focus upon

Pennsylvania, Prince Edward Island (PEI), New Brunswick, Manitoba, Saskatchewan, Alberta⁴ the European Council⁵, and the Commission. At the time the research was being conducted (late 2005/early 2006) both Alberta and EU Commission were unregulated jurisdictions.

This selection fulfils a basic research requirement of having a range of “most similar” and simultaneously “most different” cases to examine. By most similar we mean that all cases are selected from longstanding western democracies. By most different we mean that while some of the cases are focused upon state legislatures, others are provincial legislatures, while others still are from supranational institutions, such as the Commission and the Council. The most similar criteria ensures like is compared with like, and that ‘the context of analysis are analytically equivalent, at least to a significant degree’ (Collier, 1997: 40). At the same time, the most different criteria ‘places parallel processes of change in sharp relief as they are operating in settings that are very different in many respects’ (Collier, 1997: 40). In other words, the diverse circumstances should enable researchers to more easily identify the appropriate explanatory factors.

To investigate actors’ attitudes a combination of semi-structured in-depth interviews and non-probability sampling was employed. Due to the impracticality and expense of attempting to survey a representative sample of politicians, administrators and lobbyists in the jurisdictions under examination a selected sample was used. In this case we employed a subcategory of purposive sampling – expert sampling. The sample was preselected due to their in-depth knowledge in the area examined. In this instance the expert sample size selected was 460. However, we recognise that by employing a non-probability sampling technique we cannot infer from our findings to the larger population. All finding gleaned from the survey (sample

questionnaires Appendix A) will be mediated through our finding from interviews, the broader literature, and our own understanding of the topic.

Respondents/interviewees from these jurisdictions/institutions should provide informed insights into the world of unregulated lobbying. They work in unregulated environments, but are also aware of the existence of lobbying regulations in neighbouring jurisdictions/institutions. The fact that these actors have knowledge of legislation enacted elsewhere means we avoid the problems of having to define “lobbying” and “regulation” for them, something that Greenwood and Thomas (1998: 489) point out is critical.

Nevertheless, providing a working definition of lobbying would be helpful here. However, developing such a definition is a problem that has beset many attempts to ‘regulate interest representation in the past’ (Greenwood, 1998: 589). ‘The word lobbying has seldom been used the same way twice by those studying the topic’ (Baumgartner and Leech, 1998: 33). In the US, the National Conference of State Legislatures specifies that – ‘all states share a basic definition of lobbying as an attempt to influence government action.’⁶ Baumgartner and Leech (1998: 34) define lobbying as ‘an effort to influence the policy process.’ For Nownes (2006: 5) ‘lobbying is an effort designed to affect what the government does.’ Hunter et al. (1991: 490) argue that ‘while a common definition of a lobbyist is ‘someone who attempts to affect legislative action,’ the specifics of who has to register vary greatly,’ both within, and between, the above countries. As a result, in many jurisdictions the rules on lobbying are riddled with a variety of exceptions (Harvard Law Review, 2002: 1507). As for regulation, a standard definition we employ in this article is more straightforward: ‘state constraints on private activity in order to promote the public interest’ (Francis, 1993: 12).

7. Overview of Case Selection

By studying a number of cases, we can discover trends, and achieve an understanding of the broader characteristics within a political environment (Blondel, 1995: 3). The value of selecting numerous cases for examination is the perspective offered, and its goal of building a body of increasingly complete explanatory theory (Mayer *et al.*, 1993; Mahler, 1995).

While many democracies have FOI legislation, few have implemented lobbying regulations. This disparity may be due to states regarding strong FOI legislation as sufficient for transparency and accountability. However, Bertók (2008: 18) argues that lobbying regulations are vital in enabling the public exercise, in conjunction with FOI legislation, their rights to know who is attempting to influence political decisions. Nevertheless, the number of countries with lobbying legislation is gradually increasing. Both Poland and Hungary introduced lobbying regulations in 2005 and 2006 respectively, while Australia introduced a lobbyists' code of conduct, and register, in 2008.

However, of the jurisdictions with lobbying legislation in place, Canada, the USA and the EU all have provinces/states/institutions without such regulations.⁷ As such, these unregulated jurisdictions provide an ideal environment in which to examine actors' attitudes towards regulations. Here, we will briefly discuss these political systems, their provinces/states/institutions without lobbying regulations, and justify our case selection.

7.1 United States of America

Since the end of the American Civil War the regulation of lobbying has been a perennial issue that politicians at both federal and state levels have grappled with (Thomas, 2004: 287). Questionable practices by railroad lobbyists after 1865 initially led to demands for regulation.⁸

States led the way, implementing lobbying regulations long before the federal government (Thomas, 1998: 500). When the federal government introduced lobbying legislation - the 1946 Federal Regulation of Lobbying Act - it was riddled with loopholes (Thomas, 1998: 504). A 1991 General Accounting Office report 'found that fewer than 4,000 of the 13,500 individuals listed in a directory of Washington lobbyists were registered' (Wolpe and Levine, 1996: 193). The 1946 act was eventually replaced in 1995 by the more inclusive registration procedures of the Lobbying Disclosures Act (Baumgartner and Leech, 2001: 1193). However, even this legislation was considered ineffective (Thomas, 1998: 504), and was amended in 2007 by the Honest Leadership and Open Government Act. This Act makes the regulations for lobbyists far more rigorous. As of today, 49 states have legislation regulating lobbyists. The sole outlier is Pennsylvania. Pennsylvania introduced legislation regulating lobbyists in 1998. However, in 2000, the Pennsylvania Supreme Court struck this legislation down, stating that the General Assembly of Pennsylvania's efforts to monitor the activities of lobbyists amounted to illegal regulations on the practice of law. Two years later the court reaffirmed its ruling.

7.2 Canada

Unlike its southern neighbour, the initiative to implement lobbying legislation in Canada came later, and from the federal government. From the late nineteenth century onwards, right up to the Mulroney and Chrétien regimes, there were questions as to the transparency of political decisions (Dyck, 2004: 369). With the emergence of professional lobbyists, a consensus developed among politicians in Ottawa that legislation, registration, and regulation were necessary (Dyck, 2004: 367). In this context, lobbying legislation was pursued at the federal level, starting in 1989, with some further amendments in the 1990s and 2000s. The latest

amendment, The Lobbying Act, came into force on 2 July 2008. A Lobbyists' Code of Conduct was also introduced in the late 1990s, and is designed to assure the public that lobbying is conducted ethically and to the highest standards.⁹ At the provincial level Ontario (1998)¹⁰, Nova Scotia (2001)¹¹, Quebec (2002)¹², British Columbia (2001)¹³ Newfoundland (2005)¹⁴ and most recently Alberta (2008)¹⁵ have followed the federal government's lead, and enacted similar regulations. The remaining provinces of PEI, New Brunswick, Manitoba, Saskatchewan have not implemented lobbying legislation. The decisions to introduce lobbying legislation, at both the federal and provincial levels, were not exclusive to any Canadian political party.

7.3 European Union

The interest group population in Brussels is very large, estimated at some 15,000 lobbyists (Liebert, 1995: 433; Bennedsen and Feldmann, 2002: 921). Its rapid growth has given rise to concerns over equality of access to (Maloney, 1996: 12), and the ethical standards of, European decision-making (Greenwood, 1998: 587). The only EU institution to have pursued a lobbying registry is the European Parliament, by way of Rules of Procedure 9 (1 and 2) in 1996 (Bursens, 1996; Dabertrand, 1999; Hill, 1997). Despite traditionally being the primary target of lobbyists, the Commission had long favoured self-regulation (Mazey and Richardson, 1993: 111). Although there is still no mandatory registration in place in the Commission, in July 2008 a voluntary Register of Interest Representatives was set up. The Council does not have any form of lobbying regulations.

In the next section we examine our findings in relation to politicians, administrators, and lobbyists from Pennsylvania, and the five Canadian provinces without lobbying legislation: PEI,

New Brunswick, Manitoba, Saskatchewan, and Alberta. Because the European Council and European Commission are unelected bodies, only EU lobbyists and EU administrators (including those working within the various Directorates Generals in the Commission, as well as those in Permanent Representations of the Members States in the EU) were questioned. As certain jurisdictions/institutions with which the above share sovereignty have lobbying regulations, the actors questioned/interviewed all possessed some knowledge of lobbying regulations, and what these entail. Thus, issues in relation to defining lobbying and regulation are avoided. It must be noted that the material presented can only be considered a snapshot of attitudes towards lobbying regulation at a point in time, as two of the jurisdictions examined now have lobbying regulations, albeit only voluntarily at the EU Commission level and yet to be fully implemented in Alberta at the time of writing.

8. Analysis of Attitudes Towards Regulations in Unregulated Jurisdictions

As email questionnaires tend to yield a low response rate, 460 hardcopies, dispatched by post, was the approach adopted. These expert surveys were sent between September 2005 and January 2006. The overall response rate was approximately 10 per cent, with politicians responding at approximately 8.3 per cent, administrators 18.3 per cent, and lobbyists 5.3 per cent. There was some variation in response rate depending upon jurisdiction. A number of respondents replied that although they were interested in the study, they were unwilling to complete the questionnaire – despite assurances of anonymity. Other researchers working the area of lobbying regulation have also encountered the problem of low survey response rates. For example, Holman (2008: 5) found this when surveying lobbyists in Brussels and Washington DC

in the summer of 2008 – pointing to the reluctance of lobbyists to involve themselves in research into their own industry.

We recognise that when compared to a large N survey, with a high response rate, the number of questionnaires dispatched, and returned, in this study was relatively small. Our objective was to gain an indication of trends and relations, not to conduct a “large N” study for its own sake. In this context, it is important to note that our survey data is used for illustrative purposes, and is not to be taken as representative in the statistical sense. To supplement this survey data, eighteen in-depth, semi-structured, interviews were held between March and July 2006 with elected representatives, administrators, lobbyists and academics in the unregulated jurisdictions studied. Thus, the survey findings are examined in conjunction with the material obtained from the in-depth interviews.

8.1 The Main Reasons Put Forward for the Absence of Lobbying Regulations

While elected representatives put forward a host of reasons for the absence of lobbying legislation, most felt regulations were unnecessary, as the level of lobbying in their jurisdictions was minimal (Question 6, Appendix A). One representative from PEI remarked that their province was so small everyone knew whom politicians were meeting with at any given time. This fits with Naurin’s (2007) argument that some actors do not see a need for the increased publicity lobbying regulations bring. This is akin to what Rechtman (1998: 584) found in Denmark, where a small survey of MPs ‘concluded that most were aware of who was lobbying them and why.’

Two senior Canadian politicians observed that regulating lobbyists had never been an issue in their jurisdictions, and, therefore, there was no legislation. This leaves open the question

– at what stage regulating lobbyists would become an issue, and what type of regulations would be required? As Chari *et al.*, (2007: 424) point out, there are a range of ‘ideal types’ of regulatory environments, some of which employ higher levels of regulation than others. The other main reason put forward by politicians for the absence of legislation was simply that they opposed it. This opposition ranged from regarding regulations as unnecessary bureaucracy, to an absence of public demand for such regulations.

The main reason put forward by administrators and lobbyists, for the absence of legislation, was that they considered self-regulation sufficient, something very few politicians agreed with. This should not come as too much of a surprise in relation to our responses from the EU, as the Commission had, until mid 2008, sought to encourage self-regulation amongst lobbyists (Greenwood, 1998: 588). Self-regulatory systems are ‘relatively popular instruments to apply to the activities of lobbyists ... amongst those who are the targets of regulation’ (Greenwood and Thomas, 1998: 493-494). Some lobbyists also opposed legislation due to the increased level of red tape it would bring.

Interestingly, only a minority of respondents put the absence of legislation down to outright opposition from either politicians or lobbyists. European administrators and lobbyists were more inclined, than their North American counterparts, to blame the absence of legislation on the opposition of politicians, and lobbyists. Nevertheless, most of our respondents from Brussels argued that the absence of legislation was because they did not see the need for it – self-regulation was sufficient. Some even argued that there was enough bureaucracy in the European Union’s institutions already, without lobbyists having to register with an official body. The fact that over 15,000 lobbyists are active in Brussels brings us back to above question – at what stage does regulation become an issue?

Table 1: Main reasons perceived for absence of lobbying legislation

Factors	Politicians (%)	Administrators (%)	Lobbyists (%)
Politicians Opposed	18.2	0	9.1
Lobbyists Opposed	9.1	14.3	0
Self Regulation Sufficient	9.1	57.1	45.5
Lobbying Minimal	36.4	4.8	9.1
Politicians and Lobbyist Opposed	0	0	9.1
Other	27.3	23.8	27.3

Source: Responses to Question 6 (Appendix A)

8.2 Registration and the Filing of Spending Reports

In interviews, and questionnaires (Question 7, Appendix A), most elected representatives and administrators agreed that lobbyists should be required to register when lobbying public officials. Almost every EU respondent supported the idea of lobbyists registering. This was despite the fact that the main reason stated by these same respondents for the absence of regulations in the EU was that self-regulation is sufficient. A number of administrators also stated that the absence of a register of lobbyists created loopholes in political systems. More than half of the lobbyists agreed that a register should be put in place. However, the remaining lobbyists were either “neutral”, or openly opposed, to the idea. In this case, there were similar levels of support for a register amongst lobbyists in North America and Europe. For Jordan (1991) it is common sense that if governments demand driving instructors, and various other professions, to be registered, why should the public not be protected from unscrupulous lobbyists? A former speaker of the Danish parliament, Erling Olsen, advocates ‘strict rules on lobby activities and registration in order to secure transparency’ (Rechtman, 1998: 583).

Table 2: Lobbyists should be required to register when lobbying public officials

	Politicians (%)	Administrators (%)	Lobbyists (%)
Strongly Agree	27.3	36.4	9.1
Agree	36.4	36.4	45.5
Neutral	36.4	9.1	27.3
Disagree	0	9.1	9.1
Strongly Disagree	0	9.1	9.1

Source: Responses to Question 7 (Appendix A)

Jordan (1998: 534) argues that registration should not be about recording and identifying who is active, but should reveal qualifications and enforce a code of good practice. Significantly, all politicians felt lobbyists should be required to file spending reports. The only differences they had concerned the regularity with which these reports should be filed. Some politicians favoured lobbyists filing annually, while other preferred either six monthly, or quarterly, filings. The majority of administrators felt the same as politicians. This largely positive trend continued amongst lobbyists, with most supporting the idea of filing spending reports. What opposition there was amongst lobbyists ranged from regarding filing as needless, to the bureaucratic hassle it would involve. But, if lobbyists are billing clients by the hour, similar to lawyers and consultants, and keeping detailed accounts, it is hard to understand how an annual/semi-annual/quarterly summation of their expenditures should be difficult for them to produce. Thus, all three groups largely felt lobbyists should have to file spending reports at least annually, and were agreed that political campaign contributions by lobbyists should be available for public scrutiny.

Regarding the issue of lobbyists’ political campaign contributions (Question 9, Appendix A), elected representatives overwhelmingly agreed that these should be available for public scrutiny. Most administrators agreed with lobbyists having to reveal their political campaign contribution. In fact, what dissent there was amongst administrators came from respondents in the EU who expressed neutrality, or disagreement. Interestingly, nearly all lobbyists agreed that their political contributions should be available for public inspection.

All politicians, and most administrators, felt a list of lobbyists, and their lobbying expenditures, should exist (Question 10, Appendix A). Most representatives said that this list should be required by law, available at all times, and be located online for anyone to access. However, unlike politicians, administrators were less supportive of the idea that lobbyists should be compelled by legislation into revealing information about both themselves and their business activities. Most EU administrators favoured a list created on a voluntary basis, whereas their North America counterparts favoured the list being required by law. Slightly more than one in three lobbyists advocated legislation requiring a list of lobbyists, and their expenses, to be available to the public. The remainder were divided between a list of lobbyists required by law, but only available upon request, and a list being provided entirely on a voluntary basis. However, few lobbyists voiced their outright opposition to the idea of a list. The actors here were largely found to be proponents of regulation, expressing views similar to those discovered by Gray and Lowry (1998).

Table 3: A list of all lobbyists (and their expenditures) should be freely available

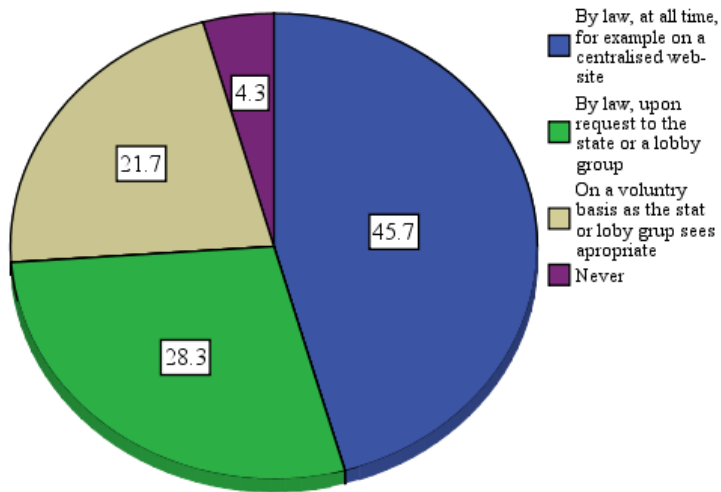
	Politicians (%)	Administrators (%)	Lobbyists (%)
By law, at all times, eg. Online	63.6	40.9	36.4

By law, upon request to state/lobby group	27.3	27.3	27.3
On a voluntary basis	9.1	27.3	27.3
Never	0	4.5	9.1

Source: Responses to Question 10 (Appendix A)

Clearly, while lobbyists supported a register, the filing of spending reports, and the provision of details on political contributions, many were not in favour of legislation compelling the provision of this information to the public at large, via online databases. They were more in favour of non-compulsory regulations akin to those found in what Chari *et al.*, (2007: 424) refer to as medium, or lowly, regulated environments. Lobbyists preferred the idea of providing information when asked to do so, or when they felt like it, as opposed to being compelled to do so. This is not that surprising, in that all of the actors (apart from those from Pennsylvania) come from jurisdictions/institutions bordering upon, or sharing sovereignty with, medium/lowly regulated lobbying environments. However, as a warning, Warhurst (1998: 547) states that one of the reasons for the failure of lobbying regulations in Australia (1983-1996) was that the register was not available for public scrutiny.

Figure 1: Availability of List of Lobbyists and Amounts Spent



Overall, nearly half of respondents felt the public should have open access to a list of lobbyists, and their expenditures, and that this should be required by law. Nearly 30 per cent felt that these lists should be available upon request, and be guaranteed by legislation. One fifth of respondents thought the list should only be provided on a voluntary basis, while 4.3 per cent opposed the idea. These findings fit with Largerlof and Frisell's (2004) argument that a requirement for lobbyists to register should contribute towards greater transparency.

8.3 The Impact of a Register Upon Citizens

Following from the above, very few politicians were of the opinion that a register would make citizens feel inhibited from approaching them alone. Administrators' opinions were almost identical to those of politicians. The administrators who felt a register would be detrimental to relations between citizens and politicians were mostly from the EU. However, lobbyists' attitudes were at variance with those of the other two groups. Significantly, more lobbyists felt that a register would inhibit citizens from approaching their politicians alone. Despite this, a

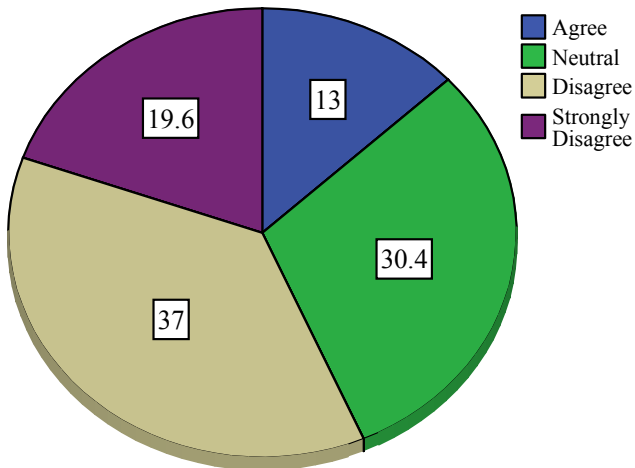
slight majority of lobbyists (mostly down to responses from North America) felt a register would not affect the citizen/representative relationship.

Table 4: A lobbyist register inhibits citizens from approaching their representatives alone

	Politicians (%)	Administrators (%)	Lobbyists (%)
Strongly Agree	0	0	0
Agree	9.1	9.1	23.1
Neutral	36.4	31.8	23.1
Disagree	27.3	40.9	38.5
Strongly Disagree	27.3	18.2	15.4

Source: Responses to Question 11 (Appendix A)

Figure 2: A register of lobbyists makes citizens feel inhibited from approaching their representatives alone



Overall, as Figure 2 shows, a majority of respondents felt a register would not affect how citizens related to their representatives. This contradicts the arguments put forward by the Nolan

Committee (1995) in the UK. The Nolan report found that a register of lobbyists could well be used by those lobbyists to confer a special status upon themselves, creating the impression that the only successful way to lobby parliament would be through accredited lobbyists. In that context Nolan argued that registering lobbyists could have a detrimental impact upon citizens' access to parliament. This finding also contradicts Brinig *et al.*, (1993) in their contention that a register of lobbyists could be considered a barrier to entry.

8.4 The Auditing and Penalisation of Lobbyists

Based on extensive research Campos and Giovannoni (2006: 22) argue that the monitoring of lobbying is crucial in preventing corruption. A minority of politicians and administrators felt an independent agency should have unrestricted powers to conduct audits of lobbyists. Many more argued in favour of audits, but only when "deemed necessary", while for a smaller number of politicians and administrators an independent agency should never be allowed to audit lobbyists. Interestingly, whereas some EU administrators argued in favour of an independent agency having unrestricted powers to audit lobbyists, no Canadian administrator did. Canadian administrators favoured the idea of audits being conducted only when deemed necessary by an independent agency. In this case, audits would occur when this independent agency (the lobbying registrar) considered there to be some genuine grounds for conducting an audit of the lobbyist in question. Thus, the state agency would be expected to provide something akin to the American legal concept of "probable cause" prior to conducting the audit. Very few lobbyists felt an independent agency should have the power to pursue mandatory audits. Almost half felt the agency should have this power only when deemed necessary; while the other half argued that an independent agency should never be granted auditing authority. Most of the lobbyists

opposed to audits were from the EU. Clearly, lobbyists’ opinions were at variance with the other two groups of actors, with nearly twice as many lobbyists expressing outright opposition to an independent agency as either politicians, or administrators. This is perhaps reflective of lobbyists’ desire to maintain their independence from audits that they presently enjoy in unregulated jurisdictions.

Table 5: Should an independent agency be allowed pursue mandatory audits of lobbyists

	Politicians (%)	Administrators (%)	Lobbyists (%)
Always	27.3	20	9.1
Only when deemed necessary	54.5	55	45.5
Never	18.2	25	45.5

Source: Responses to Question 12 (Appendix A)

In the political sphere, principals must be able to compel agents to give reasons for their actions (Gutmann and Thompson, 2004; Schelder, 1999). Naurin (2006: 91) argues that “in order to affect agency behaviour the principal must also have some kind of sanctioning mechanism in its hands – i.e. a possibility of accountability.” Transparency, the making public of lobbyists’ activities, is just not enough to deter corruption (Lindstedt and Naurin 2006). Therefore, would penalizing unprofessional lobbying behaviour (giving excessive campaign contributions, prohibited gifts, incomplete filing of reports to a registrar; deliberately not registering) deter such actions? By penalisation we mean the standard form of penalties found in Canada, the US, Hungary or Poland, which can involve fines in the tens of thousands of dollars, and, in extreme cases, up to five years imprisonment.¹⁶

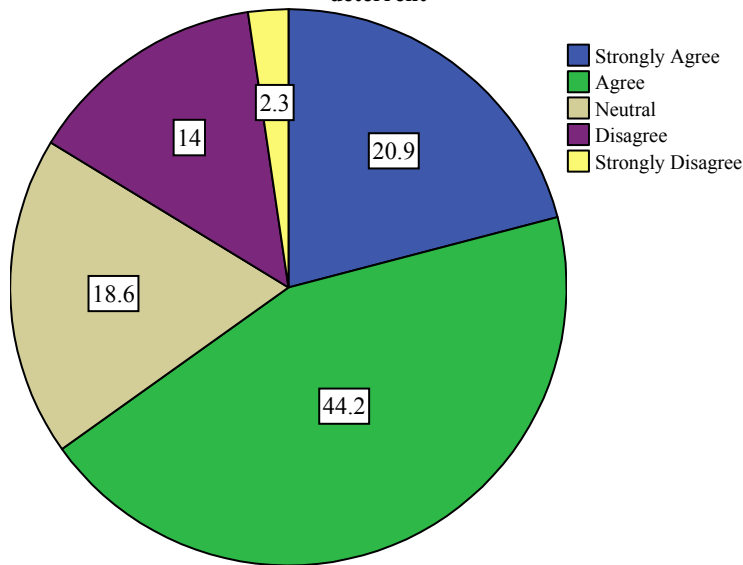
Table 6: Penalizing unprofessional lobbying behaviour acts as a deterrent against this behaviour

	Politicians (%)	Administrators (%)	Lobbyists (%)
Strongly Agree	27.3	13.5	22.2
Agree	36.4	50	44.4
Neutral	18.2	13.6	33.3
Disagree	18.2	18.2	0
Strongly Disagree	0	4.5	0

Source: Responses to Question 13 (Appendix A)

A majority of politicians felt penalizing unprofessional behaviour by lobbyists would act as a deterrent. Imposing penalties, and the naming and shaming that would inevitably result as a consequence, would mean that clients of lobbyists might take their business elsewhere. All the Pennsylvanian actors we interviewed, without exception, stressed how embarrassed they felt that their state was the only one in the Union without lobbying regulations and, hence, the inability to impose penalties on lobbyists who are potentially rule breakers. Most administrators expressed similar opinions to politicians. However, more than a fifth of the administrators did not feel penalizing unprofessional lobbying behaviour would serve as a deterrent. While all North American administrators approved penalties for lobbyists, only two thirds of their EU counterparts did. Somewhat surprisingly, in light of their reticence on the issue of an independent agency conducting audits, lobbyists were the ones who most strongly agreed that penalties would deter unprofessional behaviour.

Figure 3: Penalizing unprofessional lobbying behavior acts as a deterrent



As Figure 3 shows, almost two thirds of all actors agreed that penalizing unprofessional lobbying would deter it. This fits with Lindstedt and Naurin’s (2006) argument in relation to the need for sanctions in addition to transparency. Overall, only 16 per cent felt that penalties would not work, while almost a fifth of actors were neutral. However, for penalties to work they must be enforced, otherwise both the penalties, and the regulations they are derived from, will come to be disregarded (Rush 1998: 522). Thus, in addition to the existence of penalties, there must be an independent agency capable of conducting audits, and imposing penalties (Holman, 2008: 39).

8.5 Transparency, Accountability and Effectiveness

The final issue we sought to investigate was whether actors felt that transparency, accountability, and effectiveness in policy-making would be improved if legislation regulating lobbying was implemented. This issue seeks to tie together the deliberative democratic principles with the reality of lobbying regulation on the ground.

Table 7: If legislation regulating lobbying were implemented, transparency, accountability and effectiveness in policy-making would be improved

	Politicians (%)	Administrators (%)	Lobbyists (%)
Strongly Agree	18.2	15.8	8.3
Agree	54.5	31.6	58.3
Neutral	9.1	31.6	27.3
Disagree	18.2	15.8	9.1
Strongly Disagree	0	5.3	0

Source: Responses to Question 14 (Appendix A)

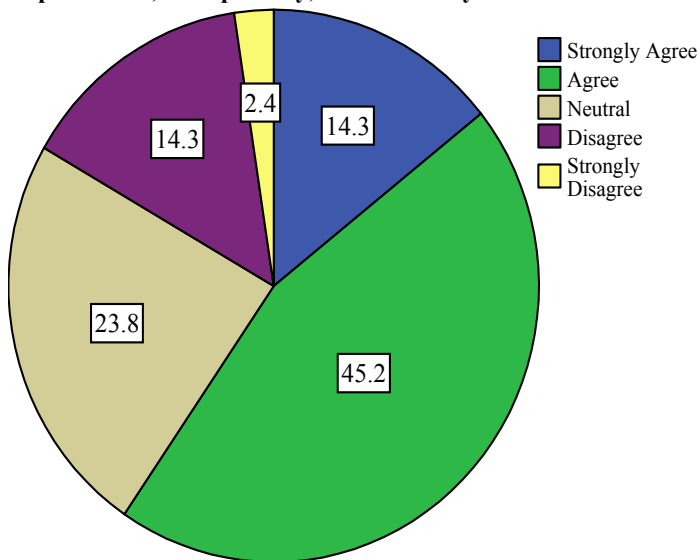
The majority of elected representatives agreed that if legislation regulating lobbying was implemented, transparency, accountability and effectiveness in policy-making would be improved. Some politicians said in interviews that, while decision-making was very open in their jurisdictions, transparency was an issue that needed to be addressed through legislation regulating lobbying.

Almost half the administrators agreed that transparency and accountability would be improved by implementing lobbying legislation. Interestingly, in interviews we found a number of administrators who regarded legislation ensuring transparency and accountability as unnecessary, as they felt lobbyists did not possess the influence over policy that they liked to “pretend they had.” One administrator observed that the “primary responsibility for transparency has to remain with the lobbied,” as opposed to those who lobby. Thus, it was the behaviour of politicians, and not lobbyists, which needed to be regulated.

Almost two thirds of lobbyists felt transparency and accountability in government would be improved by regulatory legislation. However, the fact that half as many lobbyists, as politicians or administrators, “strongly agreed” with the proposition suggests less conviction on this issue. The level of dissent was twice as high amongst EU lobbyists as their North American counterparts. One Canadian lobbyist suggested that if legislation was introduced in their province, in addition to dealing with transparency and accountability, it should also impose a cap on lobbyists’ expenditures.

Pennsylvania is an outlier here. All interviewees, including politicians, legislative aides, government officials, lobbyists, and academics, insisted that the state needed lobbying disclosure legislation. There were two reasons given: first, by not having legislation Pennsylvania was regarded as a ‘laughing stock’ in the US; second, “while no one is openly opposed to it [regulations], 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.”¹⁷

Figure 4: If legislation regulating lobbying activity were implemented, transparency, accountability and effectiveness in .



From Figure 4 almost 60 per cent of all respondents believed the introduction of legislation regulating lobbyists would increase transparency, accountability, and effectiveness in policy-making. This fits with Thomas and Hrebenar's (1996) argument in relation to the views expressed by proponents of lobbying regulation. Just over a fifth were "neutral", while the remaining 16 per cent felt that lobbying legislation would not improve the policy-making environment. This confirms the central hypothesis we are testing – in unregulated jurisdictions significant support exists for the transparency and accountability lobbying regulations offer. Thus, even those who will have to bear the burden of such regulations recognise the benefits they offer society.

Here, the generally positive response of North American and EU lobbyists towards regulations contrast sharply with the opposition voiced by the Scottish lobbying industry towards the prospects of regulations in the Scottish parliament (Dinan 2006, 64). Where Dinan (2006) encountered disparities between what Scottish lobbyists said in public and in private, we found consistency between the questionnaire responses and what we gleaned through follow up interviews. The difference between our finding, and Dinan's, may be due to what Dinan (2006, 65) refers to as the 'aversion to public scrutiny in British political culture.' Nevertheless, this disparity deserves further investigation.

9. Conclusion

For deliberative democratic theory political acts are public acts. It suggests democracy can be enhanced through publicity and accountability. We know from states with regulations that political accountability can be achieved by making the lobbying process as transparent as possible – a sort of purification through exposition (Greenwood, and Thomas, 1998: 493; Rush,

1998: 523). However, these regulations must be implemented diligently; otherwise, they may have little impact (Yishai, 1998: 576-577).

However, most states have yet to implement lobbying regulations. Based on arguments central to deliberative democratic theory, we hypothesized that in unregulated jurisdictions there should be significant support for the transparency and accountability regulations offer. To test this we sought to gauge attitudes towards lobbying legislation through in-depth interviews and purposive sampling, from amongst actors in unregulated jurisdictions. While the survey data was not to be taken as representative in the statistical sense, its value lay in its mediation through the findings from our in-depth interviews. Indeed, one lesson to be taken from this paper by researchers studying the world of lobbying regulation is that actors' reluctance to participate in what seems to be a sensitive issue is a big hurdle in itself. With that in mind, future researchers might consider a type of multidimensional approach by combining email questionnaires, online questionnaires, and hard copies dispatched by post, in an effort to more forcefully gain the attention of respondents while also giving them the broadest possible means of reply.

In terms of the main findings that are presented, we discovered that most interviewees/respondents put the absence of lobbying regulations down to the feeling self-regulation was sufficient, or official regulations resulted in too much bureaucracy. Despite this, some respondents felt the absence of a register could result in loopholes. Almost two thirds of actors believed lobbyists should be required to register, although lobbyists were slightly less sympathetic to the idea. The vast majority of interviewees/respondents felt lobbyists should file spending reports at least annually, and their contributions to political parties should be made public. Most also felt that a list of lobbyists, and their expenditures, should be available to the public. Interviewees/respondents believed that requiring lobbyists to register would not affect

citizens' relationship with their representatives. However, interviewees/respondents were more reticent regarding an independent agency with the power to conduct mandatory audits of lobbyists. Most said yes, but, with the proviso that reviews occur only when deemed necessary. These findings fit with what deliberative democratic theory predicts in relation to greater transparency: a strengthening public confidence in political institutions, and a beneficial impact upon the policy-making process.

A majority of interviewees/respondents felt penalizing unprofessional lobbying would deter such behaviour. In line with deliberative democratic theory, and the view that exposition has a purifying effect, a majority of interviewees/respondents believed if legislation regulating lobbying was introduced, transparency, accountability, and effectiveness, in policy-making would be improved. This holds with our general hypothesis that if deliberative democratic theory is correct, then, even in jurisdictions without lobbying regulations, significant support should exist for the transparency and accountability regulations offer.

There is no doubt that the area of lobbying regulation is continuously evolving. From this perspective, our findings captured attitudes and opinions at a particular point in time. For example, since the research presented here was conducted, Australia and Hungary have introduced lobbying regulations, while Alberta and the European Commission are in the process of doing so. Interestingly, our findings are consistent with this change: the existence of an undercurrent of support for lobbying rules in unregulated jurisdictions. Time will tell if similar support exists in the wider family of democracies yet to introduce lobbying regulations.

Appendix A

Sample of Questionnaire sent to Manitoba

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?

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Endnotes

¹ “Next door they have regulation, but not here ...” is a comment from a senior legislative aide in Pennsylvania intimately involved in attempting to write lobbying regulation legislation, in an interview with the authors on 31 March 2006.

² <http://www.publicintegrity.org/hiredguns/default.aspx?act=methodology>

³ Please note that as of 23 June 2008, the EU Commission instituted a Register of Interest Representatives. Yet, registration is voluntary and it is not mandatory for lobby groups to register. As of September 2008, a very small percentage has actually registered: only 305 interest groups of the estimated 15,000 in Brussels. This is regarded as a year-long experiment after which the Commission will review the performance of the register. As our research was conducted prior to the register coming into existence we include the Commission in our list of unregulated institutions.

⁴ Please note that lobbying regulations, the Lobbyist Act, was introduced in the province of Alberta in early 2008, after our research was completed. As a result, we included Alberta in our list of Canadian provinces without regulations. The Lobbying Act will be fully implemented in Alberta by early 2009.

<http://www.lobbyistsact.ab.ca/LobbyistsAct.htm>

⁵ Council members, including permanent representations, represent the member states of the EU. Although the Council is different from the Commission members and MEPs who have a unique type of European accountability, the Council remains a main institution in the EU policy making process: it has the power to accept proposals initiated by the Commission, amend such proposal during the EU policy making process or even reject proposals. As such, it remains a hot-bed of lobbying activity in Brussels, precisely because of its key institutional role. See R. Chari and S. Kritzinger (2006), 19-59

⁶ <http://www.ncsl.org/programs/ethics/lobbyingdefinitions.htm>

⁷ The Bundestag has specific rules regulating lobbyists. Each Landtage (state legislatures) has similar codes. Thus, there is no jurisdiction in Germany which does not have lobbying legislation in place.

⁸ 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.

⁹ Office of the Commissioner of Lobbying of Canada; <http://www.ocl-cal.gc.ca/epic/site/Lobbyist-Lobbyiste1.nsf/en/nx00019e.html>

¹⁰ S.O., 1998, C.27

¹¹ S.N.S. 2001, c.34

¹² R.S.Q., c. T-11.011

¹³ S.B.C. 2001, c.42

¹⁴ S.N.L 2004, c L-24, 1.

¹⁵ <http://www.lobbyistsact.ab.ca/>

¹⁶ <http://laws.justice.gc.ca/en/ShowFullDoc/cs/L-12.4///en>; http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ081.110.pdf;

<http://www.oecd.org/dataoecd/18/15/38944200.pdf>

¹⁷ Interviews in Pennsylvania were carried out on March 30 and 31 2006.