

Public Affairs Summit

Lobbyists' Accountability to the Public

Tony Stikeman, President

TACTIX GOVERNMENT CONSULTING

www.tactix.ca

TACTIX: Our Firm

- Established in 1996; seven consultants.
- Our reputation rests on four business principles:
 - Very close client relationships founded 'hands-on' servicing and sound strategic advice
 - Deep knowledge and experience with senior level advisors
 - Solid working relationships with political and government officials
 - Integrity
- We work with clients to integrate their priorities into government agenda:
 - Understand the business and other factors influencing profitability and strategic interests
 - Explore the alternatives
 - Identify short- and long-term goals
 - Map out the strategy and action plan
 - Dig in and work hard to deliver results

Lobbying and Ethics have become Inextricably Intertwined

“Those who do not know the plans of competitors cannot prepare alliances. Those who do not know the lay of the land cannot manoeuvre their forces. Those who do not use local guides cannot take advantage of the ground”.

Sun Tzu

The Art of War

“ A riddle wrapped in a mystery inside an enigma” (Churchill 1939)

“Their system of ethics, which regards treachery and violence as virtues rather than vices, has produced a code of honour so strange and inconsistent that it is incomprehensible to a logical mind”. (Churchill – *Daily Telegraph*)

Why Dwell on Lobbyists' Accountability?

Federal Accountability Act (Lobbying Act) is the most significant Canadian legislative initiative governing lobbying in 20 years (1988)

Canadians' public trust in institutions: Government is last; lobbyists must surely rank below government

Canadians' knowledge / understanding of lobbying is shaped by negative and sometimes sensational media stories focused on lapsed ethics

Lobbyists' ability to operate effectively and bring value to the public policy process is changing

All lobbyists are implicated – consultants, corporate and association

Traditional Approaches to Business and Ethics

Shareholder theory

- Milton Friedman: management should serve the interests of the firm's owners
- Limit social obligations to obey laws, adhere to normal moral expectations, fulfill contracts, etc.

Stakeholder theory

- Management should serve the interests of all those with a stake in the firm, including communities and the broader public
- Management has moral responsibility to direct firm's activities in balanced way

Business Understands Need for Public Accountability

Business long ago accepted the need for public approval in order to operate for private / shareholder gain

Business is accountable to the public through maze of legal, regulatory and political checks

Corporate Social Responsibility (CSR) grew out of '60s protests:

- Account to those who made the firm's success possible
- Include non-shareholder interests in formulating business strategy and policy



Government self-imposes its own Accountability Measures

Government is held accountable to the public in several ways:

- Elections
- Opposition parties, parliamentary rules
- Officers of Parliament
- Auditor General
- Codes of Conduct
- Statutes – *Federal Accountability Act*, Access to Information, Privacy, Whistleblower, etc.

What is Meant by Lobbyists' Accountability?

Lobbyists' accountability should reflect society's expectations of high moral conduct:

- Disclosure and transparency
- Ethical conduct
- Professional conduct
- Sanctions

Lobbyists' Federal Accountability Regime

Lobbyists are and should be held accountable to the public like all businesses and professions. Lobbyists are accountable in several ways:

- *Lobbying Act* 2007 (replaces oft amended *Lobbyists Registration Act* 1988)
- Commissioner of Lobbying (Officer of Parliament)
- Public registry
- Lobbyists Code of Conduct (*Lobbying Act, Lobbyists Registration Act*)
- Code of Professional Conduct - Government Relations Institute of Canada (GRIC) (www.gric.ca)

Lobbying is one of three professions regulated by a federal statute

Lobbying is the only profession with its own statutory Commissioner and Code

Lobbyists are also regulated in some provinces

All other professions are provincially regulated with self-enforcement powers

New Legislation Holds Lobbyists to a High Level of Accountability

Lobbying Act (courtesy of *Federal Accountability Act*) swings the pendulum:

- Disclosure: Monthly reports will provide significantly more transparency
 - Uncertain protection of confidential business information
 - Concerns about willingness of public office holders to engage in open communications

- Freedom to practice: Five-year prohibition will significantly reduce the talent pool
 - Lobbyists without recent government experience will be less current, less informed
 - Restricts government's ability to recruit ministerial staff, regulators, public servants

- Enforcement: Commissioner of Lobbying has significant powers over lobbyists
 - Investigations (10 years after), public reports, prohibitions, initiate police investigations

Why Government Regulates Lobbyists unlike other Professions

- Lobbyists' core mission is to communicate to influence government
- Public mistrust of lobbyists and lobbying
- Concern that public interest is subordinated to special interests
- Incidents and suggestions of abuse, influence-peddling, fraud
- "Money talks": image that well financed business lobbyists capture the political process
- Lobbyists have closer proximity to power than any other profession
- intimate knowledge of people, process, pressures, policies and techniques to advance special interests

Solution: Shine spotlight on lobbyists and their activities

Lobbying is a “Legitimate Activity”

Preamble to *Lobbying Act* is unchanged from *Lobbyists Registration Act*:

“Free and open access to government is an important matter of public interest.

Lobbying public office holders is a legitimate activity.

It is desirable that public office holders and the public be able to know who is engaged in lobbying activities.

A system for the registration of paid lobbyists should not impede free and open access to government.”

- Lobbying is a socially responsible activity
- Business and other interests have a right and responsibility to advance their interests with government

Lobbying is Valuable to Society

Lobbying is a focused and useful information pipeline to government:

- Lobbyists facilitate two-way communications between government (often isolated and untravelled) and legitimate societal interests (business, not-for-profit, international, religious institutions, diplomats, etc.)
- Lobbyists inform and educate government policy- and decision-makers
- Lobbyists help narrow and broad-based interests across society to present their issues for government to weigh and decide within context of broader public interest
- Lobbyists facilitate communications with extremely busy and pressured people – MPs and public servants
- Lobbyists alert government to changing circumstances and situations in order to prepare public policy shifts

Lobbyists' Regulatory Regime Needs to Strike a Balance

There is a delicate balance between:

- Excess accountability requirements: could undermine lobbying's effective contribution to public policy, and
- Insufficient accountability: could undermine public's conditional acceptance / tolerance of lobbying

- Individual freedoms (i.e. to communicate with and influence elected government representatives) and
- Collective well-being (i.e. protect needs of broader public interest)

Lobbyists are Living in a Glass Box

- Future of lobbying is being decided by politicians reacting to public opinion reacting to sensational and exceptional incidents
- Legal and policy regime has evolved from (i) self identification to (ii) greater transparency to (iii) monthly reports of high level communications to (iv) recruiting limitations

Is New Lobbyists' Accountability Regime Sufficient?

Lobbyists' Codes (*Lobbying Act*, GRIC) are sensible and comprehensive

- Consistent with preamble in *Lobbying Act* (and LRA)

The Commissioner of Lobbying will have significant discretionary powers:

- Transparency
- Disclosure
- Compliance with Code findings
- Initiate sanctions / penalties proceedings
- Review incidents ten years after
- Lobbyist prohibition (two years)

Would Public Interest be Better Served by Tougher Lobbyists' Regulations?

More disclosure and transparency: Who, how, when, where, what?

- To what effect? How far does one go, e.g. fees and expenses? Monthly reports of all EX communications?

Tougher ethical conduct guidelines: Conflicts?

Professional licensing: Skills and competence levels?

Accountability: Prohibitions. Sanctions? More public reports?

- Commensurate with the offence? Public "convictions and sentencing"

If the regulatory regime restricts new lobbying talent and intimidates open communications, are good public policy and good governance well served?

Put the Focus on Enforcement

If current accountability measures are sufficient, change the focus from tougher standards to tougher enforcement

“if you don’t do it, government will do it for you”.

Follow the provincial script for professions, i.e.

- Let government determine the expectations and establish the regulatory framework
- Let the lobbying industry establish a real self-regulatory regime:
 - Accreditation
 - Competency
 - Disclosure of offences
 - Sanctions
 - Formal public reporting

Wrap

- Lobbyists are in a privileged position of working closely with government
- Strong accountability measures are appropriate and necessary
- Lobbyists' governing regime has evolved into ever tougher requirements over last 20 years – from self identification to more disclosure to recruiting limitations
- The public policy rationale for imposing tougher accountability measures on lobbyists is uncertain and undemonstrated (but makes good politics)
- Public policy, open dialogue and freedom to communicate could be limited by stricter regulations on lobbyists

Wrap

- Every profession – save lobbyists (plus air traffic controllers and air and marine pilots) – is governed provincially and self enforced
- Consider an industry-led initiative to assume responsibility for self-enforcing lobbyists' accountability regime – sanctioned by government
- Demonstrated success over time will reduce pressure (and temptation) on government to further limit lobbyists' activities