

# *Registering with the State: are lobbying rules registering with the public?*

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# Questions

- What are notable trends in lobbying and related ethical regimes?
- Is lobbying in a democratic society actually amenable to regulatory oversight?
- Are there other, better mechanisms to control lobbying?
- What is the role of public servants?

# A personal disclosure

- I am not a scholar of political ethics
- I am a political scientist and social policy analyst who studies regulatory systems, relations of public and private power
- Approach these questions in terms of how to be ruled, how strictly, by whom, to what ends, and by what methods

# Preliminary observations

- I recognize that rules are not enough
- I am not puzzled that regulatory ethics might increase the number of reported incidents
- Many ethics scholars/specialists demand too much of codes and laws in terms of their effects on political affairs and public attitudes
- I am not resistant to the idea of strengthening these codes and laws
- I also find debates on a rules versus values approach to political ethics to be a false dichotomy

# Trends in lobbying and politics

- Proliferation of private and public interests
- Organizational diversification of public policy sectors
- Multiplication of political techniques
- Professionalization of lobbying
- Growth of civil society watchdog groups

# Trends in lobbying and politics

- “Governmentalization” of lobbying – government departments as clients of lobbying firms
- Declining anonymity of public servants
- Legalizing lobbying through ethics infrastructures of codes, laws, registration systems, independent legislative officers with certain powers, judicial review of rulings

# And some continuities

- Partisan ties play a major part in lobbying activities
- Substantial inequalities in political resources and influence among groups and interests in Canada
- Divided views by public of lobbying:
  - a legitimate activity in a democracy
  - a murky underside of Canadian politics and business

# Political ethics and regulation

- Should ethics and lobbying rules be strengthened?

“We are turning government into gotcha. We have a series of rules that will catch people. The emphasis is on some kind of punishment – the consequences of straying from rules, rather than the spirit that would lead one to respect the rules.”

*Former Prime Minister Joe Clark, June 2009*



# Political ethics and regulation

“The *Lobbyist Registration Act* will be strengthened with new investigative and enforcement provisions.”

Speech from the Throne, August 2009 Government of British Columbia on legislation expected to be introduced in this session of the legislature

- Recent developments in enacting codes and ethics regimes in Australia, the United Kingdom, and new members states in the European Union

# Are we over-regulating ethics?

- Critics assert that:
  - Rules do not guarantee compliance or moral integrity
  - Non-compliance not necessarily detected
  - Regulations have costs as well as benefits
  - Ethics regimes do not inevitably enhance public trust in the integrity of political actors and institutions
  - More prohibitions could discourage good people from entering public life
  - Senior public servants play it safe by avoiding risk and controversy

# Are we over-regulating ethics?

“Internationally, Canada is often considered one of the more highly regulated systems in terms of lobbying activities.” *Professor L. Turnbull (2009)*

- However, most countries do not have such systems
- Not all jurisdictions in Canada have regulatory systems, reliance still on “soft codes”

# Canadian, eh?

- On a number of criterion, in the 7 Canadian jurisdictions that have lobby regulatory systems, these systems are not as rigorous as those in most American states (42 jurisdictions)
- Canadian systems are medium – not low, but also not high – in rules and sanctions

*Char, Murphy and Hogan (2007)*

# Lobbyist registries

- *Recognition*: of democratic rights and lobbyists, a domain of actors legitimated by this form of legislation
- *Reassurance*: symbolic promise and response to promote responsible conduct
- *Regulation*: rules of behaviour about interactions between public and private actors, backed up by the sanctions of the state

# What kind of regulation?

- Relatively low degree of state intervention (not a certification or licensing system)
- Registries are a form of *information regulation*
- Mandatory disclosure that requires lobbyists to provide information relating to their identity; subject matter or legislative bill number; name of each employer; type of lobbying work
- Some statutory–based enforcement mechanisms

# Humble modalities

On the keeping of registries in public administration:

“These are humble modalities, minor procedures, as compared with the majestic rituals or the great apparatuses of the state.”

*Michel Foucault (1995)*

# What to expect from ethics regulations as outcomes?

## Unrealistic

- Make governments scandal proof
- Eliminate greed and dishonesty
- Ensure all policy and program decisions are ethical
- Full compliance
- Restore or increase public trust in politics and politicians

## Realistic

- Set standards and expectations
- Partisan maneuverings
- Minimize possibilities for conflicts of interest
- Deter misconduct
- Facilitate interaction between public sector and private market and civil society sectors



# Future directions for ethics and lobbying regimes

- The debate often is expressed as a choice between rules versus values
- New and harder forms of laws or the softer touch of a values approach
- “Gotcha” or “good-on-ya” in advancing ethical behaviours by public officials and private actors

# The rules or values debate

“The alternative to Canada’s current legislative ethics regime is to return to a true “soft law” approach that ultimately relies on voluntary compliance, but a step in that direction is unlikely.”

*Turnbull (2009)*

# Towards a synthesis

- Rules and values are not incompatible in practice
- Rule making involves the selection and enforcement of objectives
- Values based approaches involve the promotion of sanctioned norms of behaviour
- A rules approach does not replace values but does reconfigure the nature and place of values

# Three logics of regulating lobbying

- Choices are a potential combination of three logics or approaches:
  - Government
  - Governance
  - Governmentality

# Government: regulatory oversight

- Classic rules-based approach
- Statutory mandates and structures
- Stylized as top-down, command and control regulating with permissions, prohibitions and penalties
- Visible, external surveillance
- Lobbyists as subjects of rules formulated and enforced by state agencies

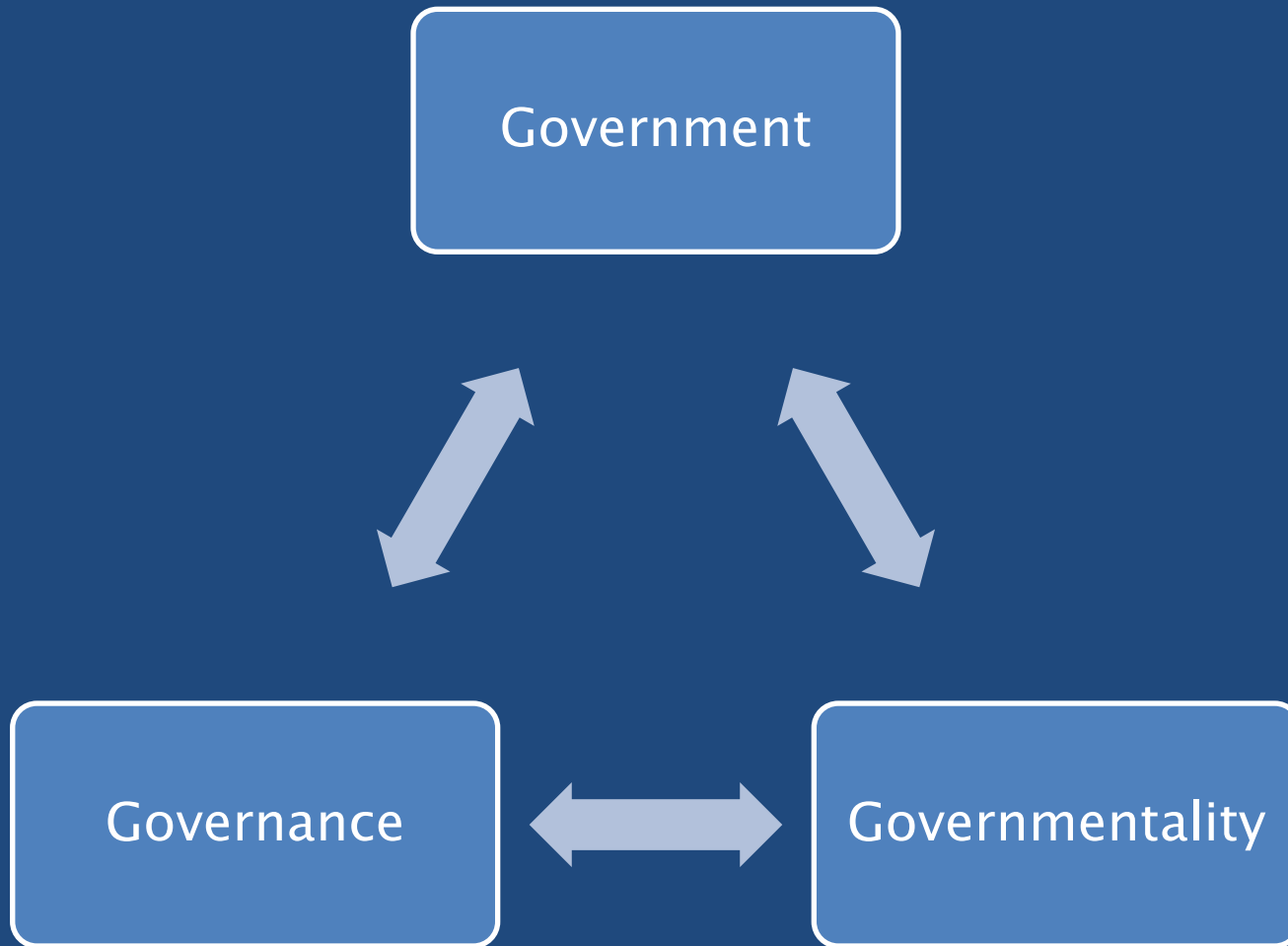
# Governance: regulatory inter-site

- Power is dispersed and networked
- Stylized as a shared and negotiated regulatory making process and policy regime
- Use of laws, standards, codes and guidelines
- Still a degree of visibility of ruling
- Lobbyists as co-regulators along with governments

# Governmentality: regulatory insight

- Bottom–up approach to rule making
- Lobbyists and other stakeholder groups as self–regulators
- Conducting and evaluating ourselves in line with public interest and social norms
- Discipline from personal commitments, codes of conduct, internalized norms of responsible citizenship and democratic participation
- Visibility of power expressed through compliance and facilitative role of state

# A dynamic framework





# Reform ideas

## Government logic:

- ✓ New or amended legislative regimes on lobbying activities
- ✓ Fuller disclosure, stronger enforcement and investigatory powers and a wider array of penalty powers
- ✓ Legislative protections for whistle-blowers in public administration
- ✓ Regular reports by public servants on meetings with lobbyists

# Reform ideas

## Governance logic:

- ✓ Outreach to support the voices of less well organized interests
- ✓ Equitable consultation processes and policy capacity building for disadvantaged groups
- ✓ Ongoing dialogue with lobby industry
- ✓ Encouraging the formation of open, stable networks of stakeholders in public policy communities
- ✓ Advisory opinions and bulletins

# Reform ideas

## Governmentality logic:

- ✓ Complements and goes well beyond the mandates of Lobbyist registrars and commissioners
- ✓ Roles for other public bodies and for mass media
- ✓ Education, training and information on ethics and civics
- ✓ Encouraging companies and industry associations and other interest groups to work on their democratic self-images

# Concluding thoughts

- Political landscape of interest groups and lobbying has changed dramatically over last generation
- Claims of regulatory overload in the area of lobbying are exaggerated
- Registration systems are a fairly modest form of regulation and state intervention

# Concluding thoughts

- Debate on political ethics regimes needs to get beyond the old rules versus values dichotomy
- An alternative is a more dynamic framework of government, governance and governmentality logics
- The last is the most ambitious but also the one that, over the long term, may register most with the general public