



# INTEGRITY COMMISSIONER'S REPORT LOBBYIST REGISTRAR'S REPORT INFORMATION ONLY

## Changes to Lobbyist Registry and Codes of Conduct

<b>Date:</b>	March 23, 2009
<b>To:</b>	Executive Committee
<b>From:</b>	Lorne Sossin, Interim Integrity Commissioner Linda L. Gehrke, Lobbyist Registrar
<b>Wards:</b>	All
<b>Reference Number:</b>	

### SUMMARY

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On January 5, 2009, the Executive Committee referred Councillor Suzan Hall's letter of November 6, 2008 entitled "Changes to the Lobbyist Registry" to the Lobbyist Registrar and the Integrity Commissioner with a request that they submit a report to the February 2, 2009, meeting of the Executive Committee with any recommendations for changes to the Lobbyist Registry and Code of Conduct By-laws to differentiate between correspondence and personal lobbying, and requisite Councillors' Code of Conduct obligations; and requested the Lobbyist Registrar and the Integrity Commissioner to hold a meeting for interested councillors to provide input into the development of the report.

The Lobbyist Registrar and Integrity Commissioner met with interested councillors on February 11, 2009, to obtain their views.

The Lobbyist Registrar and Interim Integrity Commissioner intend to issue a protocol addressing this issue, which will include the following provision:

"A member does not contravene this Article when a member (or the member's staff on the member's behalf) simply receives an unsolicited written or electronic communication. This exception applies if the member (or the member's staff acting on the member's behalf) does not read or respond to the communication. When this exception applies, there is no duty on the member to respond to the communication or to otherwise take further action under this Article."

As set out in this report, no changes are required to Article XIII, Conduct Respecting Lobbyists (Article XV for Adjudicate Boards) of the Codes of Conduct for members of Council or local boards. No changes are required to Municipal Code Chapter 140, Lobbying (the Lobbying By-law).

### **Financial Impact**

This report has no financial impact.

## **DECISION HISTORY**

Decision of Executive Committee dated January 5, 2009, EX28.10

(<http://www.toronto.ca/legdocs/mmis/2009/ex/decisions/2009-01-05-ex28-dd.pdf>)

## **ISSUE BACKGROUND**

Under Chapter 140 of the Toronto Municipal Code, Lobbying (the Lobbying By-law), lobbying is defined as communication with a public office holder about listed subjects, which generally relate to decisions that Council, its committees or other City officials may make. Communication is defined as expressive contact, including written and electronic communication.

Article XIII of the Code of Conduct for Members of Council provides that:

“Members of Council and their staff are public office holders. As a matter of general principle, as public office holders, members of Council should be familiar with the terms of this Lobbying By-law inclusive of the Lobbyists’ Code of Conduct (Chapter 140).

Specifically, members of Council should not engage knowingly in communications in respect of the list of subject matters contained in the definition of “Lobby” as set out in Chapter 140 with a person who is not registered as required by Chapter 140. Members of Council should also not knowingly communicate with a registered lobbyist who is acting in violation of Chapter 140.” (Emphasis added.)

The Code of Conduct for Local Boards (Restricted Definition) and the Code of Conduct for Adjudicative Boards have similar provisions.

In the correspondence that gave rise to the matter being referred to us, it was proposed that the Lobbying By-law should not apply to “benign” written and electronic communications.

## COMMENTS

While no other lobbying legislation in Canada defines “communication”, all lobbyist registries consider electronic and written communications to be subject to their legislation. This is reasonable, considering that electronic and written forms of communication are just as capable of being used as a vehicle for lobbying as are other forms of communication such as meetings and telephone calls.

If an unsolicited written or electronic communication is received by a councillor (or the councillor’s staff member acting on the councillor’s behalf) but not read or answered, then the councillor/councillor’s staff member has not “knowingly engaged in communication” with the parties sending the written or electronic communication, for the purposes of the Code of Conduct lobbyist provisions noted above. This may be the case even if registration of the communication is still required under the Lobbying By-law, for example, in the case of a mass e-mail used as part of a grass-roots communication campaign.

The Lobbyist Registrar and Interim Integrity Commissioner intend to issue a protocol for Article XIII of the Codes of Conduct (Article XV for Adjudicative Boards). The protocol will include the following provision:

“A member does not contravene this Article, when a member (or the member’s staff on the member’s behalf) simply receives an unsolicited written or electronic communication. This exception applies if the member (or the member’s staff acting on the member’s behalf) does not read or respond to the communication. When this exception applies, there is no duty on the member to respond to the communication or to otherwise take further action under this Article.”

No change is required to the Lobbying By-law or to the Codes of Conduct.

The City Solicitor has also advised that amending the Lobbying By-law to exempt these types of communications, based solely on how a member of Council or a local board chooses to process the communication after it is received, would not meet the legislative intent of Part V of the *City of Toronto Act, 2006*. Part V requires the City to have a lobbyist registry to promote accountability and transparency and there is no public interest basis for this type of exemption.

## Best Practices

While the limits of the duties of public office holders should be clear, public office holders may consider “best practices” which go beyond such duties, in order to facilitate the lobbying registry performing its function. For example, some councillors include the following notice (or a variation on this notice) at the bottom of their email communications:

“If you have scheduled a meeting with anyone in the councillor’s office, please be advised that you may be required to register as a lobbyist. City Council regulations are quite broad in the definition of lobbying, so regardless of the nature of your requested meeting you are advised to check for more information at: <http://www.toronto.ca/lobbying/index.htm>.”

Should councillors wish to develop or enhance notices of this kind, or other protocols for their office in relation to unsolicited communications and the lobbyist registry, both the Lobbyist Registrar and Interim Integrity Commission may provide advice and resources to assist councillors and their staff, and will consider the need for any advisory or interpretation bulletins in addition to the protocol described in this report.

## **CONTACT**

Lorne Sossin  
Interim Integrity Commissioner  
Tel.: 416-397-7770; Fax: 416-696-3615  
Email: [lsossin@toronto.ca](mailto:lsossin@toronto.ca)

Linda L. Gehrke  
Lobbyist Registrar  
Tel.: 416-338-5858; Fax: 416-338-5859  
Email: [lgehrke@toronto.ca](mailto:lgehrke@toronto.ca)

## **SIGNATURE**

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Lorne Sossin, Interim Integrity Commissioner

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Linda L. Gehrke, Lobbyist Registrar