
**REPORT ON LOBBYING DURING A
PROCUREMENT PROCESS**

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February 28, 2011

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Executive Summary

The Lobbyist Registrar is an accountability officer established under the *City of Toronto Act, 2006 (COTA)*, who is responsible for performing in an independent manner the functions assigned by City Council with respect to the Lobbyist Registry. Under *COTA*, inquiries by the Lobbyist Registrar are independent and confidential. However, if I make a report to City Council on an inquiry or investigation, I may disclose such matters as are necessary to the report, and City Council shall make my report available to the public. The Compliance Investigations Procedures of my office are published on our website at: http://www.toronto.ca/lobbying/pdf/compliance_investigations_procedures_2010.pdf.

This is my final report of my investigation into lobbying activities at the City of Toronto regarding RFP 9155-10-7028. The RFP was issued on January 25, 2010 by the City of Toronto for professional services for the operation of beach volleyball in Ashbridge's Bay Park and Woodbine Beach Park. A contract was awarded by City Council at its meeting held on March 31 and April 1, 2010 [<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.GM29.8>].

I conducted this investigation after receiving information that five registrations in the Lobbyist Registry concerned an active RFP. The lobbyists were notified of the allegations and evidence against them and given an opportunity to respond. Affected staff were also notified of any allegations about them and given an opportunity to respond. The City Manager and City Solicitor have also been given an opportunity to comment on my conclusions and recommendations.

My investigation disclosed that there was lobbying contrary to the Lobbying By-law (Municipal Code Chapter 140, Lobbying) during this RFP. The prior licenseholder and his lobbyist failed to register their lobbying activities as required by the by-law until March 22, 2010. The successful bidder lobbied about the RFP while registered for a different subject matter. The bidder and his associate proponents lobbied members of Council during the lobbying blackout period when it became clear that they might lose their bid. A fifth lobbyist lobbied during the blackout period for an alternative proposal to the RFP.

I revoked (closed) all five RFP-related subject matter registrations on March 24, 2010, when I learned that these registrations related to an active RFP. Four of the five lobbyists stopped lobbying immediately. One lobbyist, Mr. Morrison, continued to lobby through a grass-roots campaign and has refused to remove this campaign from his website.

I have not laid charges under the *Provincial Offences Act* against any of the participants. I considered a number of factors, including whether the breach was inadvertent; whether the lobbyist's conduct was egregious; whether the lobbyist had any prior history of breaching the by-law; whether the lobbyist stopped lobbying when their registration was revoked and complied with the investigation and any requests made by the registry; whether there were reasonable and probable grounds to believe a breach had occurred; whether there was a reasonable prospect of conviction; proportionality; and whether there was a useful purpose to be served by prosecuting.

None of the lobbyists had any prior history of breach of the Lobbying By-law. In the case of the non-proponents, a misunderstanding of the restrictions on lobbying provided a potential defence to a charge for breach of § 140-41A. Four lobbyists immediately ceased lobbying when their registrations were revoked and complied with the registry's requests to correct their registrations. In all but one case, the revocation of the registration was an effective measure that prevented further illegal lobbying. In one case, there is a potential for ongoing breach.

The instances of lobbying described in this report suggest that clarification of the Lobbying By-law would help to avoid breaches of the rules. One potential source for confusion that needs clarification in the Lobbying By-law is the application of the prohibition on lobbying to non-proponents. Another potential source for confusion is the application of lobbying prohibitions when a procurement goes to committee and Council for decision. Exempted communications under the Lobbying By-law, such as ward constituent communications and simple requests for information, provide the potential for lobbying to occur during a procurement process.

In order to clarify the Lobbying By-law's provisions on procurements, I issued an Interpretation Bulletin, *Lobbying and Procurements*, on April 30, 2010 (APPENDIX I).

I recommend that the following actions be taken to clarify and strengthen the effectiveness of the existing prohibitions on lobbying during City procurement processes:

- City Council request the City Solicitor in consultation with the Lobbyist Registrar to report back to Council on clarifying and strengthening the Lobbying By-law with respect to lobbying during City procurement processes.
- City Council request the City Manager and the City Solicitor to report back to Council on measures to require City staff to report breaches of the Lobbying By-law to the Lobbyist Registrar.

I thank members of City Council and their staff for reporting violations of the Lobbying By-law to my office and for their co-operation and assistance with this investigation.¹ As well, I thank City staff who co-operated with and assisted my office during this investigation. Co-operation with and support for the Lobbying By-law ensures the transparency and integrity of the City's decision-making processes, including procurements.

I am making this report to City Council as provided under *COTA*. I believe this to be in the public interest, as this report concerns systemic issues that are central to protecting the integrity of the City's procurement processes. In doing so, I have been mindful of the *COTA* provisions permitting me to disclose such matters as are necessary to the report.

¹ The Code of Conduct for members of Council requires a member to report instances of illegal lobbying to the Lobbyist Registrar.

Factual Background

The RFP that is the subject of this report involved a license for the provision of beach volleyball at Ashbridge's Bay. In 2005, as a result of a previous RFP, the City had entered into a five-year renewable license agreement with the prior licenseholder, TESSC Inc. (Not So Pro Sports). In December 2009, at the end of the first five-year term, the City decided not to renew the previously existing license, and instead to issue the RFP.

On January 25, 2010, the City of Toronto issued RFP 9155-10-7028 (the RFP) for professional services for the operation of beach volleyball in Ashbridge's Bay Park and Woodbine Beach Park. The RFP contains standard language which prohibits communications with anyone except a designated point of contact. The designated point of contact in the RFP was the Corporate Buyer, Purchasing and Materials Management. The Corporate Buyer was the only person with whom people were permitted to communicate about the RFP from January 25, 2010 until the contract was awarded.

Orest Stanko submitted a bid responding to the RFP on behalf of the Ontario Volleyball Association (OVA). This was the sole bid in response to the RFP. The bid named an associate proponent who would provide program services, Sport on Sand Inc. (Beach Blast).

On March 11, 2010, Government Management Committee considered agenda item GM29.8, a City staff report recommending that the RFP be awarded to the Ontario Volleyball Association. All motions regarding the staff recommendation to award the license to the OVA lost on tie votes. The Committee forwarded the item to City Council without recommendation. Item GM29.8 was placed on City Council's agenda for its meeting on March 31 and April 1, 2010.

On or about March 23, 2010, registry staff reported to me that five subject matter registrations were related to item GM29.8 on the City Council agenda. On March 24, 2010 the Office of the Lobbyist Registrar revoked (closed) all five subject matter registrations and advised the lobbyists that the reason for closing the registrations was that they related to an active RFP. Section 140-36B of the Lobbying By-law authorizes the Registrar to revoke (close) a registration that is subsequently found not to comply with the by-law or to contain information that is inaccurate or no longer accurate. Four of the five lobbyists immediately ceased lobbying when advised of the revocation of their subject matter registration.

I commenced an investigation into lobbying during the Ashbridge's Bay procurement process. Several members of Council and the Office of the then Mayor contacted me to report and provide copies of communications that they had received about the RFP from the lobbyists whose registrations were closed, during the period that the RFP was active.

Several members of Council also requested that emails they had received from the lobbyists but to which they had not responded be removed from the registry, pursuant to the *Protocol on Unsolicited Written and Electronic Communications to Members of Council* [http://www.toronto.ca/lobbying/pdf/protocol_written_comm_may2109.pdf]. This protocol addresses the obligations of members of Council or their staff acting on their behalf under Article XIII, Conduct Respecting Lobbyists of the Code of Conduct for Members of Council

when they receive unsolicited written or electronic communications. Under the protocol, unsolicited emails to which a member does not respond or take any other action (other than an automated response) do not trigger any obligations for the member, because they are not considered to fall within the definition of lobbying, which requires “expressive contact” between the lobbyist and the public office holder. I instructed registry staff to request lobbyists who had reported email communications to members of Council in their registrations to identify and remove those emails they had sent to members of Council which were unsolicited and to which no response had been received. Two lobbyists responded to this request by removing reports of emails from their registrations.

City Council on March 31 and April 1, 2010, adopted the following resolution with respect to the RFP:

1. City Council grant authority to enter into a Licence Agreement with the Ontario Volleyball Association in relation to professional services for the operation of beach volleyball in Ashbridge’s Bay Park and Woodbine Beach Park for a term of five years, during the period from May 1st to September 30th in each year 2010, 2011, 2012, 2013 and 2014, with an option to renew at the sole discretion of the General Manager of Parks, Forestry and Recreation (the “General Manager”) for an additional five-year term. Should the option be exercised, the General Manager will request the Director of Purchasing and Materials Management Division to provide the necessary contract renewal for the May 1, 2015 to September 30, 2019 term under the terms and conditions outlined in the report (February 22, 2010) from the General Manager, Parks, Forestry and Recreation and the Director, Purchasing and Materials Management Division, and satisfactory in form and content to the General Manager and the City Solicitor.

In order to clarify the application of the Lobbying By-law to procurements I issued an Interpretation Bulletin, *Lobbying and Procurements*, which is posted on the OLR website. I have asked registry staff to monitor the City’s procurements website in order to identify RFPs that are related to registrations. OLR staff are preparing a training module for public office holders and lobbyists on lobbying and procurements.

The Lobbying By-law and the City’s Procurement Processes Policy

“Lobbying” is defined by the Lobbying By-law, § 140-1 as communication with a public office holder about matters that will be decided by City Council, its committees or delegates, including the award of contracts. A lobbyist must have an approved registration as a lobbyist and an approved subject matter before they lobby. Lobbying as an unregistered lobbyist or without a registered subject matter contravenes the Lobbying By-law (§ 140-10). The by-law prohibits a lobbyist from using an approved subject matter registration to lobby about a different subject (§ 140-40B). A lobbyist is required to act with integrity and honesty, must provide information that is accurate and factual to public office holders, must not knowingly mislead anyone and must take proper care to avoid inadvertently misleading anyone (§§ 140-39 and 140-43).

A contravention of the Lobbying By-law is an offence under the *Provincial Offences Act*. Every person convicted of an offence under the by-law is liable on a first conviction to a fine of not more than \$25,000 and on each subsequent conviction to a fine of not more than \$100,000 (§§ 140-46 and 140-47).

The Lobbyist Registrar may refuse to accept, suspend or revoke (close) a registration that does not comply with the Lobbying By-law or contains inaccurate information (§ 140-36).

Section 140-41A of the *Lobbyists' Code of Conduct*, part of the Lobbying By-law, governs communications by lobbyists during a procurement process, and provides:

Lobbyists shall not communicate in relation to a procurement process except as permitted by applicable procurement policies and procurement documents.

Section 5.0 of the procurements policy applied to the Ashbridge's Bay RFP. Section 5.0 provides in part:

5.0 Official Point of Contact and Lobbying Prohibition

An official point of contact shall be named in all calls to respond to all communications in respect of the call from the time of issuance, during the competitive process, and up to and including the announcement of award. . . . All communications with respect to a call must be made to an official point of contact named in the call.

Vendors, or any representatives employed or retained by them, and any unpaid representatives acting on behalf of either, are strictly prohibited from communicating, either verbally or in writing, with any other City staff, City official or member of City Council with respect to any call from the time of its issuance until the time of the award.

Any vendor found to be in breach of the policy will be subject to disqualification from the Call or a future call or calls in the discretion of Council.

Some types of communications are exempt from the Lobbying By-law, including submitting a bid or proposal as part of the procurement process, and any communication with designated employees of the City as permitted in the procurement policies and documents. See § 140-5G, and the Lobbyist Registrar's Interpretation Bulletin, *Lobbying and Procurements*, APPENDIX I to this report.

Other communications exempted from the Lobbying By-law include ward constituent communications and simple requests for information.

The Lobbyist Registrar's Interpretation Bulletin, *Negotiating Settlements and Claims*, states that under § 140-5F, communicating with assigned legal or other senior staff to negotiate a settlement

of an action or a claim in order to reach a settlement agreement is not considered to be lobbying. However, communications with other public office holders are considered to be lobbying: Interpretation Bulletin, *Negotiating Settlements and Claims*, [http://www.toronto.ca/lobbying/pdf/interpretation_bulletin-gotiating_settlements_claims.pdf]

FINDINGS and DISPOSITIONS respecting the Individual Lobbyists

Orest Stanko

I have concluded that Mr. Stanko lobbied during the RFP blackout period, contrary to the Lobbying By-law. Mr. Stanko lobbied about the RFP under a different previously registered subject matter. He did not inform the registry that he was lobbying about the RFP. I revoked his subject matter registration on March 24, 2010. He has not lobbied since then and has complied with the requests of my office to correct his registration.

- In October 2009, Mr. Stanko registered to lobby as an in-house lobbyist on behalf of the Ontario Volleyball Association. He registered the Ashbridge's Bay Park beach volleyball "lease" as the subject matter about which he would lobby.
- In December 2009, the City decided not to renew its license agreement with the prior licenseholder regarding beach volleyball at Ashbridge's Bay. Instead, the City issued an RFP on January 25, 2010.
- Mr. Stanko made a proposal in response to the RFP. He named an associate proponent in the RFP, Beach Blast, who would provide program services. This was the sole proposal that was filed in response to the RFP.
- On January 13, 2010, Mr. Stanko met with a member of Council concerning the Ashbridge's Bay beach volleyball license. He reported this meeting in his subject matter registration, the Ashbridge's Bay beach volleyball "lease".
- On March 11, 2010, Government Management Committee met and considered the RFP but made no recommendation to Council. Immediately after this meeting, Mr. Stanko and his associate proponents spoke with the General Manager, Parks, Forestry and Recreation and two staff members of the City's Parks, Forestry and Recreation Division. Mr. Stanko and the associate proponents wrote to me that City staff advised them to contact councillors about the RFP. The General Manager and her staff denied this allegation.
- On March 17, 2010, the office of a member of Council received an email from Mr. Stanko requesting a meeting about the RFP to seek support for their proposal at the upcoming Council meeting. The councillor's office forwarded the email to me.
- On March 19, 2010, the Office of the then Mayor received an email from Mr. Stanko about the RFP, seeking support for his proposal. The Mayor's Office forwarded the email to me.

- On March 22, 2010, Mr. Stanko reported to the registry under his subject matter, the Ashbridge's Bay "lease", that he had sent emails to all members of Council and the then Mayor; and that he met with five members of Council and the then Mayor. The recipients forwarded these emails to me. The emails were about OVA's bid on the RFP.
- On March 24, 2010, I revoked (closed) Mr. Stanko's subject matter registration because it was related to an active RFP. Mr. Stanko ceased lobbying.
- On March 31 and April 1, 2010, registry staff requested Mr. Stanko to verify the communications in his registration. Mr. Stanko removed all of the reports of meetings with the Mayor and members of Council, as well as several email communications.

The emails that were forwarded to me by five members of Council and the Office of the then Mayor show that Mr. Stanko communicated or attempted to communicate with members of Council about the RFP during the period between March 11 and 24, 2010. All communications about the RFP were proscribed during that period, except as permitted by the City's Procurement Processes Policy. That policy only permits communications with the designated staff person, in this case, the Corporate Buyer.

Mr. Stanko responded through his counsel that his communications about the RFP occurred in and around the meetings of Government Management Committee and City Council. This fact does not exempt a communication from the lobbying prohibitions in § 140-41A of the Lobbying By-law. The RFP remained active until the contract was awarded as a result of Council's decision on April 1, 2010 and communications restrictions continued to apply.

Mr. Stanko lobbied about the RFP through emails to members of Council. In addition, he discussed the RFP with City staff after the Government Management Committee meeting. At this point it had become clear that he might lose the bid when it went to Council. The staff he spoke with were not designated as points of contact under the RFP.

Mr. Stanko wrote to me that he did not know that lobbying during the RFP was illegal. I accept that he did not intend to breach the Lobbying By-law and he may not have understood the prohibition on communications while the RFP was active. However, Mr. Stanko was the proponent and should have known by reading the RFP that he was only permitted to communicate with the point of contact in the RFP.

Mr. Stanko registered his lobbying subject matter as a "lease" in October 2009. He reported his email communications in March 2010 under this subject matter. However, the RFP was the central subject of his lobbying in the period between March 11 and March 31, 2010.

In my view, the nature of the subject matter changed when the RFP was issued. When a subject matter changes, the lobbyist must inform the registry and should seek advice from registry staff on whether the subject matter registration should be amended, or whether a new subject matter needs to be registered. Mr. Stanko should have informed the registry of the new subject matter about which he was lobbying.

In conclusion, Mr. Stanko breached the Lobbying By-law by lobbying about an active RFP, and by doing so under a different subject matter registration. When his registration was revoked, he stopped lobbying and has co-operated with the requests of my office. He may have been confused by the provisions in the Lobbying By-law pertaining to procurements, but should have known from reading the RFP that he was prohibited from lobbying during the RFP process.

DISPOSITION

I have revoked Mr. Stanko's subject matter registration and permitted him to close his lobbyist registration.

John Morrison

I have concluded that Mr. Morrison lobbied while not registered to lobby. Once he registered, he lobbied about a different subject matter than the subject matter that he registered. He did not disclose that he was lobbying about an active RFP. I revoked his subject matter registration on March 24, 2010. He continued to lobby after his registration was closed, and has refused to remove his grass roots campaign from his website. I have also revoked Mr. Morrison's lobbyist registration.

- On January 14, 2010, Mr. Morrison registered as a lobbyist on behalf of Not So Pro Sports. Not So Pro (TESSC Inc.) was the prior licenseholder for Ashbridge's Bay beach volleyball. Not So Pro is Mr. Morrison's organization.
- Mr. Morrison did not register a subject matter on January 14, 2010. He told registry staff that he was discussing the terms of an existing contract, but declined to give further details regarding the subject matter of his lobbying. Registry staff advised him that he was not permitted to lobby until he had received an approved subject matter registration from the Lobbyist Registry. Registry staff also advised Mr. Morrison that communications about the administration of a contract with staff were not required to be registered, but "should you have further communications with councillors regarding this issue, especially private meetings, please call us . . . to determine if you need to register a subject matter in order to comply with the By law".
- On January 19, 2010, Mr. Morrison wrote to a member of Council requesting a meeting about the decision of the General Manager, Parks, Forestry and Recreation (the General Manager) not to renew the City's agreement with them to provide beach volleyball at Ashbridge's Bay. He provided a detailed submission on why his license should be renewed for a further five-year term.
- In a letter to the General Manager dated February 11, 2010, Mr. Morrison stated: "I would like to take the necessary steps to renew our Agreement dated May 1, 2005." The letter discussed financing and repayment of arrears that accrued during the first five years of the agreement.

- On March 22, 2010, Mr. Morrison registered a subject matter, which he described as “Recreation” “Re: Ashbridges Bay Volleyball”. He also registered a grass-roots lobbying campaign.
- Also on March 22, 2010, Mr. Morrison sent emails discussing the RFP to all 44 members of Council and the then Mayor. The Mayor’s Office and members of Council forwarded Mr. Morrison’s email to me. In the March 22, 2010 email to a member of Council which was forwarded by the member to me, the Mr. Morrison wrote:

I’m contacting you to request an urgent meeting that goes before City Council on March 31 and likely affects a significant number of your constituents.

Two or three motions at Government Management Committee meeting called for the lone RFP bid on this item to be cancelled and it is extremely important that City Council follow through on those motions [emphasis added]

- On March 23, 2010, Mr. Morrison posted a grass-roots campaign about the RFP by blog on Not So Pro’s website. His blog urged Not So Pro’s members to contact their councillors about the award of the RFP when the matter came to Council. After being advised on March 24th that his registration was closed and that lobbying was not permitted, Mr. Morrison continued his grass-roots lobbying campaign. In a blog entitled “ASHBRIDGES BEACH 2010”, which was posted on March 23, 2010 and remains posted as of the date of this report, Mr. Morrison wrote:

The RFP Bid should be rejected

All we can ask right now of all of you is for your support. The subject of Ashbridges Beach Volleyball is being discussed at City Council on March 31st and April 1st. Please contact your local city councillor by email and follow up phone call in the next couple of days showing your support for [Not So Pro]. You can find out your local city councillor here. [bolding in original]

- On March 24, 2010, the Office of the Lobbyist Registrar closed Mr. Morrison’s subject matter registration because it related to an active RFP.
- On March 29, 2010, Mr. Morrison posted another grass-roots campaign blog.
- In December 2010, I wrote to Mr. Morrison, requesting that he remove his blogs about the RFP from the Not So Pro website. He refused to do so.

Mr. Morrison sent emails about the RFP to members of Council. He also communicated with the members of his organization, Not So Pro Sports, in a grass-roots campaign, with the aim of persuading the organization’s members to lobby their members of Council on behalf of Not So Pro. These communications were prohibited by the procurements policy and the *Lobbyists’ Code of Conduct*, § 140-41A. Mr. Morrison continued his grass-roots lobbying campaign about the RFP after the revocation of his registration, posting a further blog on March 29, 2010.

Mr. Morrison lobbied while not registered to lobby, continued to lobby after his registration was closed, and has refused to remove his grass-roots campaign from his website. His January 19, 2010 email about the license to a member of Council was unregistered lobbying, contrary to § 140-10. Communications with senior staff assigned to deal with the contract (such as the General Manager) are exempt from registration under § 140-5F, but communications with other public office holders (such as members of Council and their staff) are not exempt. When the letter was sent, he did not have an approved subject matter registration and therefore was not permitted to lobby.

The RFP was issued on January 25, 2010. After the RFP was issued, Mr. Morrison communicated with City staff and members of Council in an attempt to gain Council's support to cancel the RFP and renew his contract. From January 25th until the award of the contract by Council's decision of March 31 and April 1, 2010, the Lobby By-law § 140-41A prohibited all communications about the RFP except those with the designated staff person named in the RFP. The restrictions in § 140-41A on communications about the RFP applied to Mr. Morrison because he was a lobbyist, even though he was not a proponent in the RFP.

Section 140-1 defines "grass-roots communication" as including an appeal to members of an organization or special interest group through the mass media or by direct communication that seeks to persuade them to communicate directly with a public office holder. Mr. Morrison's blogs exhorted members of Not So Pro to write to their members of Council regarding a matter that was to be decided by Council. This was a grass-roots lobbying campaign. Mr. Morrison continued to conduct this grass-roots campaign after his subject matter registration was closed.

In a telephone conversation with Inquiries and Investigations Counsel, Mr. Morrison stated that his right to freedom of speech was being violated. The *Canadian Charter of Rights and Freedoms*, s. 2(b) provides that freedom of expression is a fundamental freedom. Section 109 of the *Courts of Justice Act* requires that notice of a constitutional question be served on the Attorney General of Canada and the Attorney General of Ontario when the constitutional validity or applicability of a by-law made under an Act of the Legislature is in question. Mr. Morrison has not provided me with any written notice that his freedom of expression has been violated by the Lobbying By-law or my application of it. Nor have I been advised that the notice required by s. 109 has been given. Therefore I have not considered this issue in this report.

In conclusion, the conduct of Mr. Morrison has been egregious. He continued to lobby after his registration was revoked and has refused to comply with the by-law and the requests of my office.

DISPOSITION

I have revoked Mr. Morrison's subject matter registration and lobbyist registrations.

Randy Coupland

I have concluded that Mr. Coupland lobbied as an unregistered lobbyist contrary to § 140-10 when he communicated with a member of Council and the member's Executive Assistant in January and February 2010 and when he wrote to another member of Council on March 19, 2010. Mr. Coupland lobbied about the RFP contrary to the provisions of the procurements policy and § 140-41A, when he communicated about the RFP with staff and members of Council who were not the designated point of contact in the RFP on January 27, March 19 and March 24, 2010.

I revoked Mr. Coupland's subject matter registration on March 24, 2010. Since then, he has stopped lobbying and has complied with the requests of my office. I have permitted him to close his lobbyist registration.

- On January 19, 2010, Mr. Coupland called the then Executive Assistant to a member of Council, requesting a meeting to discuss a contractual dispute between John Morrison of Not So Pro Sports and the City of Toronto. Mr. Coupland was not registered as a lobbyist.
- On January 25, 2010, the RFP was issued. From this date until the contract was awarded pursuant to the decision of City Council on March 31 and April 1, 2010, the procurements policy and Lobbying By-law prohibited all communications about the RFP – except those with the designated point of contact.
- On January 25, 2010, Mr. Coupland appeared at the office of the General Manager, Parks, Forestry and Recreation (the General Manager) and asked to speak with her about the Ashbridge's Bay contract. The General Manager did not meet with him. Instead, Mr. Coupland spoke to the then Manager, Business Services for Parks, Forestry and Recreation (the Manager). The Manager stated that he explained to Mr. Coupland the terms of the RFP, which was being released that day. They also discussed the contractual dispute between Mr. Morrison and Parks, Forestry and Recreation regarding the original contract and the monies owed under that contract.
- On January 27, 2010, Mr. Coupland met with the member of Council and his Executive Assistant to discuss the contractual dispute between the lobbyist and the City. The Executive Assistant has stated that he called Mr. Coupland on February 4, 2010 to inform him that Mr. Coupland's version of events had not been verified by the Manager. On February 5 and 8, 2010, Mr. Coupland wrote to the Executive Assistant, providing a detailed submission addressing the contractual dispute and the RFP.
- The Manager stated that he met with Mr. Coupland on February 10, 2010 because he wanted to clarify the situation for Mr. Morrison regarding his contract with the City. They discussed the amount of money owed by Not So Pro under the contract.
- On March 11, 2010, Mr. Coupland deputed to Government Management Committee that he spoke with the Manager by phone on February 10, 2010 and that the Manager told him what to put in a letter to the General Manager, Parks, Forestry and Recreation. Mr. Coupland also wrote that he was told by staff on February 10, 2010 that even though the RFP was closing, it

was still possible to pay the outstanding amount and move forward with the five-year renewal, and that the RFP could be rescinded. My Inquiries and Investigations Counsel put Mr. Coupland's version of the February 10, 2010 discussion to the Manager, who stated in reply that there was no discussion of renewal of the contract, nor did he indicate that the RFP would not continue.

- On March 19, 2010, Mr. Coupland wrote to another member of Council and provided a detailed submission about the RFP and the contractual dispute. A copy of this submission was provided to my office by the member of Council's office.
- On March 22, 2010, Mr. Coupland registered as a consultant lobbyist, declaring his client was John Morrison and Not So Pro Sports. At the same time he registered a subject matter to lobby on behalf of Mr. Morrison regarding the subject matter of "Recreation". The registration described the decision or issue to be lobbied as "Item GM29.8 Re: Beach Volleyball at Ashbridge's Bay Beach and Woodbine Beach" with a proposed start date of March 22, 2010 and end date of March 22, 2011. The subject matter registration disclosed email communications to 17 members of Council.
- On March 24, 2010, Mr. Coupland wrote to the Executive Assistant to a third member of Council about the RFP. These communications were provided by the respective members' offices to the OLR.
- On March 24, 2010, the Office of the Lobbyist Registrar revoked (closed) Mr. Coupland's subject matter registration.
- On or about April 1, 2010, the Office of the Lobbyist Registrar asked Mr. Coupland to verify the communications listed in his registration, and to remove any unsolicited emails sent to members of Council to which they did not respond. He complied with this request, removing several emails from his registration. The verified, corrected registration reports nine (9) emails to members of Council and a meeting with a member of Council and staff of a member of Council.

Mr. Coupland lobbied as an unregistered lobbyist contrary to § 140-10 when he communicated with the member of Council and the member's Executive Assistant in January and February 2010 and when he wrote to another member of Council on March 19, 2010.

Mr. Coupland lobbied about the RFP contrary to the provisions of the procurements policy and § 140-41A, when he communicated about the RFP with staff and members of Council who were not the designated point of contact in the RFP on January 27, March 19 and March 24, 2010. The Manager stated that at the January 25, 2010 meeting he discussed the contractual dispute and explained the terms of the RFP to Mr. Coupland. The discussion about the RFP appears to have been limited to the Manager providing information to Mr. Coupland about the RFP and if so was exempt from the Lobbying By-law by § 140-5C, which provides:

This chapter does not apply in respect of:

C. A communication that is restricted to a request for information.

There is a dispute between the statements of the Manager and Mr. Coupland about whether they discussed the RFP on February 10th. Mr. Coupland said that they discussed the RFP in his deputation to Government Management Committee and written submissions. Later, in response to my interim findings, Mr. Coupland denied discussing the RFP with anyone and stated that they only discussed the license. The Manager stated that they did not discuss the RFP. On a balance of probabilities, I find that the conversation of February 10th concerned the repayment of amounts owing under the license and not the RFP. I accept the Manager's version of this conversation, which is consistent with the subject they discussed on January 25th. The Manager had authority to discuss with Mr. Coupland the repayment of amounts owing under the license. The Manager had no authority to discuss the RFP. While Mr. Coupland initially stated that the RFP was discussed, he later recanted this version of events.

Mr. Coupland's discussions with the Manager about the repayment of arrears and settling of the contractual dispute are exempted under § 140-5F, as explained in the Interpretation Bulletin, *Negotiating Settlements and Claims*. He was not required to register discussions about the contractual dispute with staff assigned to discuss these matters with him. The Manager was such a staff member. I have found that both conversations related to the repayment of amounts owed under the license. Therefore, the conversations of January 25th and February 10th were exempt from registration, insofar as they related to the contractual dispute.

Mr. Coupland's communications with the Manager, other City staff and members of Council and their staff about the RFP were not exempt from registration and were required to comply with the procurements policy and the procurement documents (the RFP), as well as § 140-41A. The only communications about the RFP that were permitted were communications with the designated point of contact or public deputations.

Mr. Coupland wrote in response to my interim findings that he had acted as a concerned citizen to help a friend, not as a lobbyist. This assertion is not consistent with the fact that he registered as a consultant lobbyist. Accepting for the purposes of this report that Mr. Coupland was not being paid by Mr. Morrison, Mr. Coupland was a voluntary lobbyist acting on behalf of Mr. Morrison and Not So Pro Sports, the prior licenseholder, regarding the license. Under § 140-27, he was required to register before he conducted any lobbying activities. He was also required as a voluntary lobbyist to abide by the *Lobbyists' Code of Conduct*, which is part of the Lobbying By-law. If Mr. Coupland was a consultant lobbyist, as his lobbyist registration states, then he was still required to register before he lobbied and to comply with the Lobbying By-law.

In conclusion, Mr. Coupland breached the Lobbying By-law when he met with a member of Council and the member's staff, because he was not registered as a lobbyist. He also breached the by-law when he communicated with members of Council about the RFP. Accepting that Mr. Coupland was not paid by Mr. Morrison to act on his behalf, Mr. Coupland was a voluntary lobbyist. Mr. Coupland has complied with the by-law and the requests of my office since his subject matter registration was revoked on March 24, 2010. At his request, I have permitted Mr. Coupland to close his lobbyist registration.

DISPOSITION

I have revoked Mr. Coupland's subject matter registration and permitted him to close his lobbyist registration.

Beach Blast

I have concluded that the partners in Beach Blast (Sport on Sand Inc.) breached the Lobbying By-law when they communicated with City staff who were not the designated contacts and with their ward councillors about the RFP.

Beach Blast was the associate proponent in the RFP proposal of the Ontario Volleyball Association. On March 11, 2010, immediately after the Government Management Committee meeting, the partners in Beach Blast and Mr. Stanko discussed the RFP with City Parks, Forestry and Recreation staff. For the reasons stated in my findings regarding the proponent, Orest Stanko, I am not persuaded on a balance of probabilities that staff advised the lobbyists to contact councillors regarding the RFP. All three staff who were present denied making or hearing such statements. The lobbyists did not identify the particular staff member who allegedly gave the advice. They made the allegation in response to my letter of September 27, 2010, but not in their prior statements to Inquiries and Investigations Counsel.

On March 12, 2010, the Office of the Lobbyist Registrar approved Beach Blast's registration for the subject matter of "Parks/Open Space", described as "rfp for ashbridges bay volleyball process". Registry staff who approved the registration incorrectly inferred from discussions with the one of the partners in Beach Blast that the registration concerned an already-decided RFP.

One partner in Beach Blast called his ward councillor on March 15, 2010 to speak about the RFP. He stated that he was looking for information about the process, given the result of the Government Management Committee meeting. He told the member of Council that he was confused by what happened at Government Management Committee and was seeking the assistance of his elected representative as he thought this was the correct process. This was his only contact with a member of Council regarding the RFP.

The other partner contacted his ward councillor between March 12 and 24, 2010. He called his ward councillor because he was unsure of the process following the March 11, 2010 Government Management Committee meeting and wanted to know what was going to happen next. This was his only contact with a member of Council regarding this subject matter.

Beach Blast's communications were not permitted by the City's Procurement Processes Policy, which only permits communications with the designated point of contact in the RFP. If their communications with their ward councillors were restricted to the seeking of information, they were exempt from the Lobbying By-law by § 140-5C.

However, I find that their account that they were simply seeking information about the process from the ward councillors lacks credibility. They made inconsistent statements regarding the

purpose of their communications when they asserted that staff advised them to contact their councillors.

Their communications were not exempt under § 140-6., which permits ward constituents to communicate with their member of Council, since this communication was for the special benefit of Beach Blast.

In the result, I conclude that the partners in Beach Blast contravened § 140-6 when they communicated with staff after the Government Management Committee and when they communicated with their ward councillors about the RFP.

Beach Blast has complied with the by-law and requests of my office since I revoked their subject matter registration on March 24, 2010.

DISPOSITION

I have revoked the subject matter and lobbyist registrations for Beach Blast.

Lobbyist No. 5

Lobbyist No. 5 is a recreational sports organization. This lobbyist's representative inadvertently breached the procurements policy and the Lobbying By-law by communicating with a member of Council about the RFP on February 5, 2010. The lobbyist was not a proponent in the RFP. The member of Council contacted was the ward councillor. The purpose of the communication was to propose a system of issuing permits for beach volleyball rather than a license for beach volleyball at Ashbridge's Bay as an alternative to the RFP. In order for this alternative proposal to succeed, the RFP would need to be rescinded. Thus, the lobbying was related to the RFP.

I accept that the lobbyist's representative had no intent to breach the Lobbying By-law or the communications restrictions on active RFPs, and felt that she was exercising her democratic right to speak to her ward councillor. The representative was inexperienced and confused about the RFP process, including whether communications about an RFP by a non-proponent were permitted.

The representative complied with the directions of the Office of the Lobbyist Registrar when our office closed the lobbyist's subject matter registration and advised her that lobbying was not permitted during the RFP process. The representative co operated fully with my investigation, and apologized for the breach.

DISPOSITION

I have revoked the subject matter registration of Lobbyist No. 5 and permitted them to close their lobbyist registration.

CONCLUSIONS and RECOMMENDATIONS

107. There should be no lobbying of any kind at any time during a City procurement process.

Madam Justice Denise E. Bellamy, Toronto Computer Leasing Inquiry, Toronto External Contracts Inquiry, volume 4, p. 94, Recommendations

The Ashbridge's Bay procurement process engendered lobbying by a number of persons and organizations with an interest in the outcome, both proponents and non-proponents. There was unregistered lobbying as well as lobbying contrary to the prohibition on lobbying during an RFP. The prior licenseholder John Morrison and his lobbyist Randy Coupland lobbied members of Council as unregistered lobbyists when staff terminated the Not So Pro license and issued the RFP. They eventually registered on March 22, 2010. Mr. Morrison continued to lobby up to, including and after the Council meeting that determined the issue, despite the revocation of his registration. The proponent Orest Stanko and associate proponent Beach Blast started to lobby about the RFP after Government Management Committee met on March 11, 2010, when it became clear that they might lose their bid. Lobbyist No. 5 did not bid on the RFP but lobbied to have the RFP thrown out in favour of an alternative system of issuing permits.

My investigation disclosed that there was lobbying contrary to the Lobbying By-law during a procurement process. As well, the investigation revealed that the Lobbying By-law provision (§ 140-41A.) that prohibits communication by lobbyists during a City procurement process can be misunderstood, leading to confusion on the part of lobbyists about the prohibitions on lobbying. There is a need to clarify and strengthen § 140-41A. In addition, there is a need for a clear obligation on the part of staff to report illegal lobbying to the Lobbyist Registrar. I make recommendations about each of these issues in this report.

I recommend that the following actions be taken to clarify and strengthen the effectiveness of the Lobbying By-law regarding lobbying during City procurement processes:

- City Council request the City Solicitor in consultation with the Lobbyist Registrar to report back to Council on clarifying and strengthening the Lobbying By-law with respect to lobbying during City procurement processes.
- City Council request the City Manager and the City Solicitor to report back to Council on measures to require City staff to report breaches of the Lobbying By-law to the Lobbyist Registrar.

Linda L. Gehrke
Lobbyist Registrar

February 28, 2011