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**ANNUAL REPORT OF THE LOBBYIST REGISTRAR TO  
TORONTO CITY COUNCIL FOR THE YEAR 2011**

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LOBBYIST REGISTRAR

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# ANNUAL REPORT OF THE LOBBYIST REGISTRAR FOR THE YEAR 2011 TO TORONTO CITY COUNCIL

This is my fourth annual report to Toronto City Council on my activities and the discharge of my duties as Lobbyist Registrar in the year 2011, in compliance with § 3-7A of the Toronto Municipal Code.

## MESSAGE FROM THE LOBBYIST REGISTRAR

*The City should treat lobbying as a potentially helpful practice that should be carefully controlled.<sup>1</sup>*

The Office of the Lobbyist Registrar (OLR) promotes the transparency and integrity of City government by maintaining an online registry that is available to the public and regulating the conduct of lobbyists who lobby City staff, members and staff of Council and the City's boards and agencies. The OLR is the first municipal lobbyist registry and one of the largest registries in Canada.

Toronto's lobbyist registry was established under the *City of Toronto Act, 2006 (COTA)*. Our roots lie in the recommendations of the 2005 Report on the Toronto Computer Leasing Inquiry by **Madam Justice Bellamy**. In 2007, the City of Toronto adopted Chapter 140 of the City of Toronto Municipal Code, known as the Lobbying By-law. The lobbyist registry was launched in February 2008.

2011 was an active year for the OLR:

- The OLR received and reviewed 331 new lobbyist registrations, 514 lobbyist registration updates, 886 new subject matter registrations and 2,626 subject matter registration updates. This represents increases in all 2011 registrations over 2010 of 102 new lobbyist registrations, 208 lobbyist registration updates, 428 new subject matter registrations and 1,554 subject matter registration updates.
- On December 31, 2011, the lobbyist registry had 1,137 active lobbyist registrations and 1,653 subject matter registrations, an increase of 90 active lobbyist registrations and an increase of 229 subject matter registrations compared with registrations on December 31, 2010.
- The OLR website received 16,988 visits to its homepage in 2011, an increase of 3,522 over 13,466 visits in 2010.

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<sup>1</sup> The Honourable Madam Justice Denise E. Bellamy, Commissioner, Toronto Computer Leasing Inquiry Report, vol. 4, Executive Summary, page 94, Recommendation 97.

- The OLR received and answered 1,630 telephone inquiries in 2011, an increase of 373 over 1,257 telephone inquiries in 2010.
- The OLR opened 46 new inquiries in 2011, an increase of 36 over 10 new inquiries in 2010; and completed 21 inquiries, an increase of 11 over 10 completed in 2010.

In 2011, the OLR website [<http://www.toronto.ca/lobbying>] launched a new online tutorial for registrants and revised FAQs. Our online newsletter, *The Registry Insider*, provides updates and important information on lobbyist registration and the Lobbyists' Code of Conduct.

In our newest initiative, the data from the lobbyist registry is now available in machine-readable format through the City's Open Data<sup>2</sup> website. Open Data increases the accessibility of the information in the lobbyist registry, furthering our legislative mandate to provide a lobbyist registry that is available to the public.

In 2011, we published two new Interpretation Bulletins: *Late Registrations and Updates*<sup>3</sup>, and *Registration of Clients of Consultant Lobbyists*<sup>4</sup>; and four revised Interpretation Bulletins: *Applications for Approvals and Licences*<sup>5</sup>; *Consultations*<sup>6</sup>; and *Lobbying and Procurements*<sup>7</sup> and *Lobbying and Donations to Council Member-Organized Community Events*<sup>8</sup>.

In her Report on the Toronto Computer Leasing Inquiry, Madam Justice Bellamy recommended:

*100. No lobbyist should ever practice influence peddling. Councillors and staff should not risk compromising their positions by accepting any benefits of any kind from lobbyists.*<sup>9</sup>

The Lobbying By-law implements this recommendation as follows:

**§ 140-42. Prohibited Activities.**

A. *Lobbyists shall not undertake to lobby in a form or manner that includes offering, providing or bestowing entertainment, gifts, meals, trips or favours of any kind.*

.....

**§ 140-45. Improper influence.**

A. *Lobbyists shall avoid both the deed and the appearance of impropriety.*

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<sup>2</sup> <http://www.toronto.ca/open>

<sup>3</sup> [http://www.toronto.ca/lobbying/pdf/interpretation%20bulletin\\_late\\_registrations\\_updates.pdf](http://www.toronto.ca/lobbying/pdf/interpretation%20bulletin_late_registrations_updates.pdf)

<sup>4</sup> [http://www.toronto.ca/lobbying/pdf/interpretation-bulletin\\_registration.pdf](http://www.toronto.ca/lobbying/pdf/interpretation-bulletin_registration.pdf)

<sup>5</sup> [http://www.toronto.ca/lobbying/pdf/interpretation\\_bulletin\\_approvals\\_licences.pdf](http://www.toronto.ca/lobbying/pdf/interpretation_bulletin_approvals_licences.pdf)

<sup>6</sup> [http://www.toronto.ca/lobbying/pdf/interpretation-bulletin\\_consultations.pdf](http://www.toronto.ca/lobbying/pdf/interpretation-bulletin_consultations.pdf)

<sup>7</sup> [http://www.toronto.ca/lobbying/pdf/interpretation\\_bulletin\\_lobbying\\_procurements.pdf](http://www.toronto.ca/lobbying/pdf/interpretation_bulletin_lobbying_procurements.pdf)

<sup>8</sup> [http://www.toronto.ca/lobbying/pdf/interpretation\\_bulletin.pdf](http://www.toronto.ca/lobbying/pdf/interpretation_bulletin.pdf)

<sup>9</sup> Toronto Computer leasing Inquiry, The Honourable Madam Justice Denise E. Bellamy, Commissioner, vol. 4, page 94, Recommendation 100.

- B. *Lobbyists shall not place public office holders in a conflict of interest or in breach of the public office holders' codes of conduct or standards of behaviour.*
- C. *Lobbyists shall not propose or undertake any action that would bestow an improper benefit or constitute an improper influence on a public office holder.*

The OLR advised lobbyists that they could not offer tickets to events to members of Council. I advised lobbyists whose donations to a private charity were solicited by a member of Council that such donations are prohibited under § 140-42A and § 140-45.<sup>10</sup>

The City Clerk, the Integrity Commissioner and I worked together to revise our Joint Interpretation Bulletin, *Lobbying and Donations to Council Member-Organized Community Events*<sup>11</sup>. This interpretation bulletin provides important guidance to lobbyists and members of Council. It implements the City's policy on this subject<sup>12</sup>, § 140-42A, § 140-45 and Madam Justice Bellamy's recommendations.

Madam Justice Bellamy also recommended: *There should be no lobbying of any kind at any time during a City procurement process.*<sup>13</sup> Regulating lobbyists' conduct during procurements is essential to ensure the integrity of the City's procurement processes. I reported to Council on Lobbying during a Procurement Process at Council's meeting on March 8 and 9, 2011.<sup>14</sup> Council adopted the recommendations in the report to request the City Solicitor and Lobbyist Registrar to report back to Council on clarifying and strengthening the Lobbying By-law with respect to lobbying during City procurement processes, and to request the City Manager and 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. Council also requested the City Solicitor and Lobbyist Registrar to develop guidelines and protocols on post-contract lobbying by consultants who have worked for the City on contract.

In 2011, I consulted with the City Solicitor on clarifying and strengthening the Lobbying By-law with respect to lobbying during procurements, and on measures to require City staff to report breaches of the Lobbying By-law. I consulted with the City Solicitor and City Manager on post-contract guidelines for consultants. I consulted with City staff on the City's new Whistle Blower Protection Policy, which includes protection for staff who report illegal lobbying.<sup>15</sup>

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<sup>10</sup> See CC16.6, "Report on compliance with Council Decision CC52.1":

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.CC16.6>

<sup>11</sup> [http://www.toronto.ca/lobbying/pdf/interpretation\\_bulletin.pdf](http://www.toronto.ca/lobbying/pdf/interpretation_bulletin.pdf)

<sup>12</sup> Council Member-Organized Community Events Policy:

<http://www.toronto.ca/integrity/pdf/council-org-comm-events-policy.pdf>

<sup>13</sup> Toronto Computer leasing Inquiry, The Honourable Madam Justice Denise E. Bellamy, Commissioner, vol. 4, page 94, Recommendation 107.

<sup>14</sup> <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.CC5.1>

<sup>15</sup> EX6.2, June 14 and 15, 2011, <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.EX6.2>

I also consulted with Toronto Office of Partnerships staff on the Sponsorship and Naming Rights Policies, which was adopted by Council.<sup>16</sup> The policies contain the requirement that before proceeding with a sponsorship or naming right, the recipient division must consult with the Lobbyist Registrar.

At City Council's request, I provided a report to Executive Committee, Ability to Establish a Lobbyist Registry at Toronto Community Housing Corporation (TCHC).<sup>17</sup>

As the sole municipal Lobbyist Registrar in Canada, my role includes outreach to other jurisdictions. I have made presentations to and been consulted by representatives of other jurisdictions, including other municipalities in Ontario and national governments such as China and Nigeria. I made presentations to the Municipal Law Section of the Ontario Bar Association and to a conference on lobbying sponsored by the Canadian Institute. I moderated a session on the *Broader Public Sector Accountability Act* for the Annual Conference of the Society of Ontario Adjudicators and Regulators.

The Lobbyist Registrars and Commissioners Conference, a network of lobbyist registrars and commissioners that includes the provincial lobbyist registrars, the Commissioner of Lobbying (Canada) and myself, serves as an important forum to share best practices and knowledge. I have played an active role in this network, and look forward to hosting its annual meetings at Toronto City Hall in September 2012.

The staff of the Office of the Lobbyist Registrar and I look forward to continuing to promote transparency and integrity in City government decision-making through a public lobbyist registry and Lobbyists' Code of Conduct in the year 2012.

## STAFF

The Office of the Lobbyist Registrar (OLR) has two units corresponding to our legislated mandate: the Lobbyist Registry, and Inquiries and Investigations. In addition to the Lobbyist Registrar, the OLR is staffed by two Lobbyist Registry Advisors, Inquiries and Investigations Counsel, a Lobbyist Compliance Investigator, and two Administrative Assistants.

Lobbyist Registry Advisors provide advice and interpretation; maintain the lobbyist registry; review, verify and approve registrations and updates; develop and deliver information, training, and outreach programs and materials; and participate in the OLR's projects to improve our website.

Inquiries and Investigations Counsel provides advice on compliance issues, conducts inquiries, investigations and prosecutions on behalf of the Lobbyist Registrar and develops policies and procedures to support our inquiries and investigative processes. The Lobbyist Compliance Investigator assists Inquiries and Investigations Counsel in these functions.

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<sup>16</sup> EX 12.12, November 29, 30 and December 1, 2011,

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.EX12.2>

<sup>17</sup> <http://www.toronto.ca/legdocs/mmis/2011/ex/bgrd/backgroundfile-38138.pdf>

Administrative Assistants provide administrative support and assistance to the Registrar, Lobbyist Registry Advisors, and Inquiries and Investigations staff.

## REGISTRY SERVICES

### Information and Outreach

The OLR provides information and advice by phone, email and through our website to public office holders, lobbyists and members of the public. We strive to provide excellent customer service to public office holders, members of the public and lobbyists.

Our legislative mandate includes maintaining a lobbyist registry that is available to the public. We achieve this through a searchable online registry that is available to the public at <http://www.toronto.ca/lobbying>. As can be seen by the increasing numbers of visits to our website, this has proved to be an effective source of information for the public, public office holders and lobbyists. In addition, our registry data is now available in machine-readable format on the City's Open Data website at <http://www.toronto.ca/open>.

We have worked to make our website as accessible and informative as possible. In addition to the lobbyist registry, the OLR website provides a wealth of information to the public, public office holders and lobbyists, including:

- the Lobbying By-law;<sup>18</sup>
- a new online registration tutorial;<sup>19</sup>
- an online newsletter, *The Registry Insider*;<sup>20</sup>
- FAQs;<sup>21</sup>
- Interpretation Bulletins;<sup>22</sup>
- reports on investigations and inquiries;<sup>23</sup>
- annual reports;<sup>24</sup>
- expense reports;<sup>25</sup>
- links to the sites of other Accountability Officers; and
- information about how to contact our office for more information and advice.<sup>26</sup>

Providing information is essential to promote compliance with the Lobbying By-law. In 2011, the OLR developed and published online tutorials for lobbyists on registering and reporting

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<sup>18</sup> [http://www.toronto.ca/legdocs/municode/1184\\_140.pdf](http://www.toronto.ca/legdocs/municode/1184_140.pdf)

<sup>19</sup> <http://www.toronto.ca/lobbying/tutorials.htm>

<sup>20</sup> <http://www.toronto.ca/lobbying/newsletters.htm>

<sup>21</sup> <http://www.toronto.ca/lobbying/faqs.htm>

<sup>22</sup> [http://www.toronto.ca/lobbying/imp\\_docs.htm](http://www.toronto.ca/lobbying/imp_docs.htm)

<sup>23</sup> [http://www.toronto.ca/lobbying/imp\\_docs.htm](http://www.toronto.ca/lobbying/imp_docs.htm)

<sup>24</sup> [http://www.toronto.ca/lobbying/imp\\_docs.htm](http://www.toronto.ca/lobbying/imp_docs.htm)

<sup>25</sup> <http://www.toronto.ca/lobbying/expenses.htm>

<sup>26</sup> <http://www.toronto.ca/lobbying/contactus.htm>

lobbying activities. The OLR also provided information sessions for public office holders and lobbyists on the Lobbying By-law, the Lobbyists' Code of Conduct, registration procedures and searching the lobbyist registry.

In addition, as noted above, the OLR has been active in providing information to other jurisdictions both within and outside Canada.

## Advice and Interpretation

OLR staff provide advice about lobbying at the City to lobbyists, public office holders and members of the public. In 2011, the OLR received and answered 1,630 telephone inquiries, providing information and advice on and interpretation of the Lobbying By-law. This was an increase of 373 over 1,257 telephone inquiries received in 2010. We also answered numerous requests for information and advice by email and in person. Some of the advice we gave is found below:

*Q. May a lobbyist engage in lobbying during a City procurement process?*

A. No. Section 140-41A provides: "*Lobbyists shall not communicate in relation to a procurement process except as permitted by applicable procurement policies and procurement documents.*" Under the City's Procurement Processes Policy<sup>27</sup> and the Lobbying By-law, lobbying is prohibited from the time that the procurement is issued until the contract is awarded. During this period the only communications that are permitted are with the official point of contact named in the procurement document. The restriction on communications applies to non-proponents as well as proponents. See the Lobbyist Registrar's Interpretation Bulletin, *Lobbying and Procurements*.<sup>28</sup>

*Q. Must a client of a consultant lobbyist register before attending a meeting with a member of Council?*

A. Yes. Clients who attend meetings or communicate by phone or email with public office holders must register. See the Interpretation Bulletin, *Registration of Clients of Consultant Lobbyists*.<sup>29</sup>

*Q. What are the lobbying restrictions for former members of Council and their staff?*

A. Members of Council and their staff are senior public office holders. Under § 140-9 of the Lobbying By-law, former senior public office holders are prohibited from lobbying present public office holders for twelve months from the date that their employment or term of office ceased.

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<sup>27</sup> [http://www.toronto.ca/citybusiness/pdf/policy\\_procurement\\_process.pdf](http://www.toronto.ca/citybusiness/pdf/policy_procurement_process.pdf)

<sup>28</sup> [http://www.toronto.ca/lobbying/pdf/interpretation\\_bulletin\\_lobbying\\_procurements.pdf](http://www.toronto.ca/lobbying/pdf/interpretation_bulletin_lobbying_procurements.pdf)

<sup>29</sup> [http://www.toronto.ca/lobbying/pdf/interpretation-bulletin\\_registration.pdf](http://www.toronto.ca/lobbying/pdf/interpretation-bulletin_registration.pdf)



*Q. May a registered lobbyist donate to or sponsor a community event organized or run by a member of Council or their staff?*

A. No. Lobbyists are prohibited by § 140-42A of the Lobbying By-law from offering, providing or bestowing entertainment, gifts, meals, trips or favours of any kind to public office holders. Section 140-45 prohibits lobbyists from bestowing an improper benefit or one that would exert an improper influence on a public office holder. In addition, if the councillor or someone on the councillor's behalf organizes or runs the community event, **the** City's Council Member-Organized Community Events Policy<sup>30</sup> prohibits lobbyists and their clients and employers from donating to or sponsoring that event. This prohibition also applies to franchises, outlets and local branches of a registered lobbyist or client.

*Q. May a lobbyist donate to or sponsor a City-sponsored event?*

A. Yes. The donation or sponsorship must comply with the City's Policy on Donations to the City for Community Benefits.<sup>31</sup> The City Division must make all the arrangements with the lobbyist and receive the donation. See the Joint Interpretation Bulletin, *Lobbying and Donations to Council Member-Organized Community Events*.<sup>32</sup>

*Q. May a lobbyist give a ticket to a charity fundraiser event or a luncheon seminar to a member of Council?*

A. No. The Lobbying By-law, § 140-42A and § 140-45, prohibits lobbyists from offering or giving tickets to such events to public office holders.

*Q. May a lobbyist donate to a member of Council's private charity at the request of the member of Council?*

A. No. Section 140-42A of the Lobbying By-law and the City's Council Member-Organized Community Events Policy prohibit lobbyists from donating to, sponsoring or supporting Council member-organized community events. In addition, § 140-45 prohibits lobbyists from bestowing an improper benefit or exerting an improper influence on a public office holder. A donation by a lobbyist to a charity that is closely connected to a public office holder, particularly where the donation was solicited by the public office holder, constitutes a gift or favour and creates the perception of undue influence, impropriety and conflict of interest for the public office holder – all of which are prohibited by the Lobbyists' Code of Conduct.

## Registrations

A lobbyist must obtain an approved lobbyist and subject matter registration before lobbying. On December 31, 2011, the lobbyist registry had 1,137 active lobbyist registrations and 1,653

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<sup>30</sup> <http://www.toronto.ca/integrity/pdf/council-org-comm-events-policy.pdf>

<sup>31</sup> [http://www.toronto.ca/top/pdf/donation\\_policy.pdf](http://www.toronto.ca/top/pdf/donation_policy.pdf)

<sup>32</sup> [http://www.toronto.ca/lobbying/pdf/interpretation\\_bulletin.pdf](http://www.toronto.ca/lobbying/pdf/interpretation_bulletin.pdf)

subject matter registrations, an increase of 90 over 1,047 active lobbyist registrations and an increase of 229 over 1,424 subject matter registrations on December 31, 2010.

### Lobbyist Registrations

In 2011, the OLR:

- Received and reviewed 331 new lobbyist registrations, approving 257 and refusing 74. This represents an increase of 102 new lobbyist registrations over 229 received in 2010.
- Received and reviewed 514 lobbyist registration updates, approving 487 and refusing 27. This represents an increase of 208 lobbyist registration updates over 306 received in 2010.
- Closed 168 lobbyist registrations, 15 at the request of the registrants and 153 by the Office of the Lobbyist Registrar. This represents an increase of 136 over 32 lobbyist registrations closed in 2010.

### Subject Matter (SM) Registrations

In 2011, the OLR:

- Received and reviewed 886 new subject matter registrations, of which 830 were accepted and 56 were refused. This represents an increase of 428 over 458 new subject matter registrations received in 2010.
- Received and reviewed 2,626 subject matter registration updates, of which 2,508 were accepted and 118 were refused. This represents an increase of 1,554 over 1,072 subject matter registration updates received in 2010.
- Removed (withdrew) 185 subject matter registrations.<sup>33</sup> This represents an increase of 114 over 71 subject matter registrations removed in 2010.
- Revoked (closed) 337 subject matter registrations at the request of the registrants;<sup>34</sup> and 78 subject matter registrations<sup>35</sup> at the instance of the OLR. This represents an increase of 75 subject matter registrations closed at the registrant's request over 262 in 2010; and an increase of 65 subject matter registrations revoked by the OLR over 13 in 2010.

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<sup>33</sup> Under § 140-37, the Registrar may remove a return from the registry where no information is provided by the lobbyist. If a return is removed, the individual who filed it is deemed not to have filed the return.

<sup>34</sup> Registrants may request their registration be closed, for example, when lobbying has been completed and no further lobbying will take place.

<sup>35</sup> Under § 140-36, the Registrar may revoke a return that is found not to comply with Chapter 140.

## INQUIRIES

The Lobbyist Registrar is responsible for conducting, in private, inquiries to determine whether contraventions of the Lobbyist By-law have occurred, as permitted under section 169 of the *City of Toronto Act, 2006*.<sup>36</sup>

The OLR follows its Compliance Investigations Procedures<sup>37</sup> when conducting inquiries. These procedures are posted on our public website.<sup>38</sup> The procedures are intended to provide a fair, expeditious and effective investigations process.

The *City of Toronto Act, 2006 (COTA)* provides that if the Registrar when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the *Criminal Code* (Canada), the Registrar shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to City Council.

Section 169 of *COTA* requires the Registrar to preserve secrecy when conducting an inquiry into compliance with the system of registration. However, the Registrar may report to City Council in respect of an inquiry, and may disclose in the report such matters as in the Registrar's opinion are necessary for the purposes of the report. Section 3-7 of the Toronto Municipal Code provides that the Registrar reports to Council on investigations and inquiries.

The OLR opened 46 inquiries in 2011 and completed 21. At the end of 2011, 25 inquiries and investigations remained open. Our experience in 2011 indicates that OLR inquiries are increasing in number, becoming more complex and often involve systemic issues.

### Source of request to investigate for inquiries opened in 2011

Members of Council and their staff-----	6
City staff -----	9
Members of the public-----	1
OLR -----	17
Lobbyists -----	0
Referral from other Accountability Offices-----	13

### Outcomes of inquiries completed in 2011

Breach of Lobbying By-law substantiated -----	9
Breach of Lobbying By-law not substantiated -----	12

The following are summaries of some of the inquiries completed in 2011 where contraventions of the Lobbying By-law were substantiated.

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<sup>36</sup> § 140-33(5), Toronto Municipal Code, Lobbying.

<sup>37</sup> [http://www.toronto.ca/lobbying/pdf/compliance\\_investigations\\_procedures\\_2010.pdf](http://www.toronto.ca/lobbying/pdf/compliance_investigations_procedures_2010.pdf)

<sup>38</sup> [http://www.toronto.ca/lobbying/imp\\_docs.htm](http://www.toronto.ca/lobbying/imp_docs.htm)

## Lobbying during a Procurement Process

Lobbying during a procurement process is prohibited by § 140-41A of the Lobbying By-law. The OLR has published an Interpretation Bulletin on *Lobbying and Procurements*<sup>39</sup> to inform public office holders and lobbyists about the restrictions on lobbying during procurements.

An inquiry into lobbying during a procurement process substantiated that five lobbyists illegally lobbied public office holders, both City staff and members of Council, about a procurement that was considered by Council. Lobbying about a procurement is prohibited by the Lobbying By-law. The Registrar closed the lobbyist registrations and reported to Council.<sup>40</sup>

In a second inquiry, the Registrar found that a proponent in an RFP communicated with public office holders other than the official point of contact. The lobbyist was warned not to do so.

In a third inquiry, the Registrar found that lobbying about a TTC procurement breached § 140-41A. A separate report on this inquiry will be provided to Council.

## Unregistered Lobbying and Failure to Report Lobbying Activities

Unregistered lobbying and failure to report lobbying activities contravene the Lobbying By-law. Such activities may result in a report to Council; suspension, revocation or removal of a registration; or a charge under the *Provincial Offences Act*. Generally, we have taken an approach that permits first-time unregistered lobbyists who are not familiar with the by-law to register. This approach achieves the goal of transparency and promotes future compliance, which is in the public interest. The OLR Interpretation Bulletin, *Late Registrations and Updates*<sup>41</sup> explains that a late registration may be allowed, considering the following circumstances:

- Whether the lobbyist has a previous record of compliance with the Lobbying By-law;
- Whether the registrant had previous knowledge or an opportunity for previous knowledge of the Lobbyist Registry and by-law;
- Whether the lobbyist complies immediately with all requests for information by the Office of the Lobbyist Registrar;
- Whether the lobbyist provides a reasonable excuse for the late registration or update, such as an illness or other significant extenuating circumstance;
- Whether the lobbyist held an honest and reasonable but mistaken belief regarding the need to register the communication; and
- Whether it is in the public interest, including but not limited to the legislated mandate of the lobbyist registry to provide transparency, to allow the late registration.

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<sup>39</sup> [http://www.toronto.ca/lobbying/pdf/interpretation\\_bulletin\\_lobbying\\_procurements.pdf](http://www.toronto.ca/lobbying/pdf/interpretation_bulletin_lobbying_procurements.pdf)

<sup>40</sup> “Lobbying during a Procurement Process”:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.CC5.1>

<sup>41</sup> [http://www.toronto.ca/lobbying/pdf/interpretation%20bulletin\\_late\\_registrations\\_updates.pdf](http://www.toronto.ca/lobbying/pdf/interpretation%20bulletin_late_registrations_updates.pdf)

## **Unregistered Lobbying about an Unsolicited Proposal to Provide Business Services to the City**

Representatives of a corporation met with a member of Council, the Mayor and City staff in May and June, 2011. At these meetings, the possibility of the corporation providing a strategic business review of the City's printing processes was discussed. At the time of the meetings, the City was considering the outsourcing of printing services as part of its Core Service Review.

The Lobbyist Registrar found that the meetings constituted lobbying, and that the corporation had failed to register before lobbying. Nor had the corporation reported its lobbying activities as required by the Lobbying By-law.

The Office of the Lobbyist Registrar wrote to the lobbyists, advising them of their obligations under the Lobbying By-law. In the interests of transparency, the Lobbyist Registrar permitted the corporation to register and to report their lobbying activities in the lobbyist registry. There was no prior history of non-compliance. The member of Council and the Mayor confirmed that neither they nor their staff were aware that the corporation was not registered. The member of Council and Mayor affirmed their commitment to transparency and the Members Code of Conduct regarding lobbying, and undertook to inquire about the registration status of lobbyists in the future. The corporation has fully cooperated and has complied with the request to register and report its lobbying activities since being advised of its obligations under the Lobbying By-law. Subject Matter Registration SM17067 (Moore Canada Corporation – RR **Donnelley**).

## **Unregistered Lobbying about the Toronto Port Lands**

A business corporation and its consultant lobbyist met with two members of Council on May 12, 2011 and with one member of Council on July 12, 2011 to discuss a proposal to develop a shopping centre on Toronto's eastern waterfront Port Lands. The Lobbyist Registrar found that these meetings constituted lobbying under the Lobbying By-law. Neither the corporation nor their consultant lobbyist was registered. Nor had they reported their lobbying activities as required by the Lobbying By-law.

The Office of the Lobbyist Registrar wrote to the lobbyists, advising them of their obligations under the Lobbying By-law. In the interests of transparency, the Lobbyist Registrar permitted the lobbyists to register and report their lobbying activities in the lobbyist registry. There was no prior history of non-compliance. One of the members of Council who attended the meetings confirmed that neither he nor his staff were aware that the lobbyists were not registered, affirmed his commitment to transparency and the Members Code of Conduct regarding lobbying, and undertook to inquire about the registration status of lobbyists in the future. The lobbyists have fully co-operated and complied since being advised of their obligations under the Lobbying By-law. Subject Matter Registration SM17085 (Anthony Grossi); Subject Matter Registration SM17279 (Westfield, LLC).

## Offer of Tickets to a Luncheon Seminar

The Lobbyists' Code of Conduct, § 140-42A provides:

- A. *Lobbyists shall not undertake to lobby in a form or manner that includes offering, providing or bestowing entertainment, gifts, meals, trips or favours of any kind.*

An inquiry was initiated by a request for advice from a member of Council regarding an offer of a free ticket by a registered lobbyist corporation to an "Infrastructure Luncheon" on the subject of transportation in January 2011. The corporation was registered to lobby on the subject of transportation. The luncheon otherwise required the purchase of a ticket. The Lobbyist Registrar found that the offer of free tickets contravened § 140-42A of the Lobbying By-law. The OLR advised the lobbyist corporation that the offer of tickets to the luncheon contravened the by-law. In order to promote compliance, the Registrar allowed the corporation to retract the offer. The corporation complied with the advice given and retracted its offer to members of Council of free tickets to the luncheons. Subject Matter Registration SM15424 (Siemens Canada Limited).

## ENFORCEMENT OF THE LOBBYING BY-LAW

The tools available to enforce the Lobbying By-law include refusing, suspending, revoking or removing a registration;<sup>42</sup> reporting to Council; and prosecution under the *Provincial Offences Act*.

The OLR may revoke (close) registrations, where the registration is subsequently found not to comply with the Lobbying By-law. For an example of registrations that were subsequently found to be related to a procurement, contrary to § 140-41A, and were revoked. See the **Lobbyist Registrar's Report to Council**, Lobbying during a Procurement Process.<sup>43</sup>

Lobbyist registrations may also be removed where a registered lobbyist has failed to file a subject matter registration or failed to provide other information required by the Lobbying By-law. The effect of removal of a registration from the registry is that the individual who filed it shall be deemed not to have filed it.

A breach of the Lobbying By-law is an offence under the *Provincial Offences Act*. The Lobbyist Registrar is responsible for enforcing the by-law and is a provincial offences officer under the *Provincial Offences Act*. If a lobbyist does not register or fails to comply with the Lobbyists' Code of Conduct, the only applicable enforcement tools available to the Lobbyist Registrar are to report to Council or to initiate a charge under the *Provincial Offences Act*. The *Provincial Offences Act* is essential to the enforcement of the Lobbying By-law. Charges must be laid

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<sup>42</sup> A registration may be revoked under § 140-36 where the Registrar subsequently finds the registration does not comply with Chapter 140. A registration may be removed under § 140-37 where a lobbyist fails to provide required information within the period required.

<sup>43</sup> <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.CC5.1>

within six months after the offence. The **highest standard** of proof, beyond a reasonable doubt, applies. Prosecutions will usually require an independent prosecutor as a public office holder will almost always be involved as a potential witness. The Lobbyist Registrar initiated one charge under the *Provincial Offences Act* in 2009. This charge was withdrawn in 2010. In 2011, no charges were initiated under the *Provincial Offences Act*.

The OLR is working to ensure that charges under the *Provincial Offences Act* are laid when necessary, and that any charges laid are successfully prosecuted. This includes ensuring that the Lobbying By-law is as clear as possible, that inquiries are conducted expeditiously and with the highest standards, that breaches of the Lobbying By-law are reported to the OLR as soon as possible after they occur, and that the OLR is able to prosecute charges in an independent manner.

## **WORKING TOGETHER WITH THE ACCOUNTABILITY OFFICERS AND CITY STAFF**

In 2011, the Accountability Officers (the Auditor General, Integrity Commissioner, Lobbyist Registrar and Ombudsman) consulted with the City Manager and City Solicitor to develop and implement protocols under Chapter 3, Accountability Officers, for the submission of budget requests directly to Budget Committee and also for Human Resources matters. These protocols are important to ensure the independence and accountability of the Accountability Offices.

The City Clerk, **the** Integrity Commissioner and I worked together to revise our Joint Interpretation Bulletin on *Lobbying and Donations to Council-Member Organized Community Events*<sup>44</sup>. This bulletin provides guidance to lobbyists and members of Council on this issue. Lobbyists and their clients, including franchises, outlets and branches, may not provide support in any form to community events organized and run by members of Council or third parties on their behalf. Members of Council may not receive any funds from lobbyists or issue invitations to lobbyists to sponsor community events. In the case of City-sponsored joint events, City Divisions may accept sponsorships from lobbyists. Lobbyists may also donate to an outside group to support an event in which a member of Council is invited to participate.

In 2011, I consulted with the City Solicitor to ensure that the Lobbying By-law is clarified and strengthened around procurements. I worked with the Purchasing and Materials Management Division to provide a co-ordinated approach aimed at preventing and sanctioning lobbying during procurements. I consulted with the City Manager to ensure that City staff are protected under the City's Whistle Blower Protection Policy when they report illegal lobbying. I consulted with the City Solicitor on measures to require staff to report illegal lobbying to the OLR. I consulted with the Toronto Office of Partnerships during the development of the City's Policy on Sponsorship and Naming Rights.

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<sup>44</sup> [http://www.toronto.ca/lobbying/pdf/interpretation\\_bulletin.pdf](http://www.toronto.ca/lobbying/pdf/interpretation_bulletin.pdf)



## **RESOURCES AND PRIORITIES**

The OLR's priorities in 2011 have been to achieve our legislated mandate to provide a lobbyist registry that is accessible to the public; and to promote and ensure compliance with the Lobbying By-law, including the code of conduct for lobbyists.

We have worked to make our website as accessible and informative as possible. Achievements in 2011 included an online tutorial for registrants; new and revised FAQs and Interpretation Bulletins; and publishing our quarterly newsletter, *The Registry Insider*. Our searchable online registry continues to provide the public and public office holders with access to important information about lobbying at the City. The lobbyist registry is now available in machine-readable format through the City's Open Data website.

The number of inquiries into compliance with the Lobbying By-law increased significantly in 2011. The establishment of the inquiries function was a priority for 2011, in order to promote and ensure compliance with the Lobbying By-law.

The broad strategic outcome of these priorities has been to contribute to confidence in the integrity of City government decision-making through transparency and accountability in the lobbying of public office holders.

## **FINANCIAL INFORMATION**

The Office of the Lobbyist Registrar's approved operating budget for 2011 was \$1,023.3. An operating budget of \$1,052.3 has been approved by Council for the year 2012.

Expenses, including business travel and PCard expenses, are posted on the OLR website at <http://www.toronto.ca/lobbying/expenses.htm>.

## **AUDITS**

The Office of the Lobbyist Registrar successfully underwent an external compliance audit for the year 2010 and was part of the City's annual attest audit. These audits are required annually by Chapter 3 of the Toronto Municipal Code and are reported directly to Council. Audits for the year 2011 will be conducted in 2012.

## **ADVICE AND RECOMMENDATIONS ON LOBBYING MATTERS AND THE LOBBYING BY-LAW**

My duties include advising Council on lobbying matters and recommending improvements and amendments to the Lobbying By-law. Examples are found below.



## Lobbying and Procurements

The Lobbyist Registrar's revised Interpretation Bulletin, *Lobbying and Procurements*, provides guidance to public office holders, lobbyists and members of the public on the restrictions that apply to lobbying during an active procurement process.

Council adopted my Report on Lobbying during a Procurement Process<sup>45</sup>, including my recommendations regarding clarifying and strengthening the Lobbying By-law with respect to procurements.

Council also adopted my recommendation to request the City Manager and 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 would advise Council to consider City staff's obligation to report breaches of the Lobbying By-law as part of any new by-law or policy that Council adopts to govern the conduct of City staff.

## Establishing a Lobbyist Registry at Toronto Community Housing Corporation (TCHC)

My report to Executive Committee at Council's request, Ability to Establish a Lobbyist Registry at Toronto Community Housing Corporation (TCHC)<sup>46</sup>, advised that amendments to provincial legislation would be required in order to establish such a registry.

## Administrative Sanctions

In my Annual Report for the Year 2010<sup>47</sup>, I recommended that:

- City Council request the City Solicitor, in consultation with the Lobbyist Registrar, to report back to Council on amendments to the Lobbying By-law to permit the Registrar to impose conditions for registration, continued registration or renewal of a registration as permitted by the *City of Toronto Act*, s. 166.
- City Council request the City Solicitor, in consultation with the Lobbyist Registrar, to report back to Council on requesting legislative amendments to enable the Registrar to impose administrative sanctions, including administrative monetary penalties and prohibiting a lobbyist who has been found in breach of the by-law from lobbying.
- Administrative sanctions be included in the next opportunity for review of the *City of Toronto Act*.

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<sup>45</sup> <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.CC5.1>

<sup>46</sup> <http://www.toronto.ca/legdocs/mmis/2011/ex/bgrd/backgroundfile-38138.pdf>

<sup>47</sup> <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.CC9.1>

Council received my Annual Report for the Year 2010 without adopting these recommendations.

The City has the authority under the *City of Toronto Act, 2006* to adopt provisions authorizing the Registrar to impose conditions on registrations. The power to impose conditions on registrations in appropriate circumstances, for example where there is a history of non-compliance by a lobbyist, would provide a potentially effective tool for ensuring compliance with the Lobbying By-law.

Administrative sanctions are becoming a Canadian best practice in lobbying legislation. The power to impose administrative monetary penalties and other administrative sanctions is found in the lobbying legislation recently enacted by the provinces of Alberta and British Columbia.<sup>48</sup> In the five-year review of Canada's lobbying legislation, the Commissioner of Lobbying has requested powers to impose administrative monetary penalties.<sup>49</sup>

I would advise Council to consider the power to impose conditions on registrations and administrative sanctions in any future review of the City's Lobbying By-law.

## CHALLENGES AND GOALS FOR 2012

### 1. Providing Timely and Effective Service in a Climate of Increasing Demand for Service

The key challenge in 2012 will be to provide timely, effective service with the same staff levels in a climate of increasing demand for service. The Office of the Lobbyist Registrar's legislated mandate is to review and approve registrations, provide advice and interpretation, conduct inquiries and enforce the Lobbying By-law in a timely, effective manner. Based on continuing increases in registrations and inquiries in 2011, registrations and inquiries in 2012 are predicted to be above 2011 levels.

### 2. Promoting Transparency and Integrity

In 2012, the Office of the Lobbyist Registrar shall continue to provide transparency through our public, online lobbyist registry. Our work plan includes continuous improvement of the information available on the OLR website [<http://www.toronto.ca/lobbying/>] and its accessibility.

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<sup>48</sup> See Alberta's *Lobbyists Act*: <http://www.canlii.org/en/ab/laws/stat/sa-2007-c-1-20.5/latest/sa-2007-c-1-20.5.html>  
BC's *Lobbyists Registration Act*: [http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/LOC/freeside/--%201%20--/lobbyists%20registration%20act%20sbc%202001%20c.%2042/00\\_01042\\_01.xml](http://www.bclaws.ca/EPLibraries/bclaws_new/document/LOC/freeside/--%201%20--/lobbyists%20registration%20act%20sbc%202001%20c.%2042/00_01042_01.xml)

<sup>49</sup> Commissioner of Lobbying of Canada, *Administering the Lobbying Act* – Observations and Recommendations Based on the Experience of the Last Five years, Recommendation 7 (updated December 13, 2011), <http://www.ocl-cal.gc.ca/eic/site/lobbyist-lobbyiste1.nsf/eng/nx00693.html#summary>.

### **3. Ensuring Compliance with the Lobbying By-law**

The OLR promotes the integrity of City decision-making by ensuring that lobbyists comply with the registry system and the Lobbyists' Code of Conduct. We will continue to develop and improve our compliance functions, including inquiries and investigations and enforcement. We will continue develop and improve our compliance investigations, inquiries and enforcement procedures in accordance with Canadian best practices.

### **4. Clarifying and Strengthening the Lobbying By-law**

I shall continue to work with the City Solicitor to clarify and strengthen the Lobbying By-law around procurements.

### **5. Information and Outreach to Public Office Holders, Lobbyists and the Public**

Public office holders, lobbyists and the public are essential partners in promoting compliance. Our newsletter, interpretation bulletins, FAQs and information pages on our public website provide public office holders, lobbyists and the public with clear, practical information. This helps to promote and ensure understanding of and compliance with the Lobbying By-law. In 2012, we shall continue our efforts to provide effective information through our website and outreach activities.

### **6. Working Together with the Statutory Accountability Officers and City Staff**

I shall continue to work together with the Accountability Officers and City staff to develop policies and protocols to implement the Accountability Framework and Chapter 3 of the Toronto Municipal Code.

I shall also continue to work with City staff to ensure that the City's policies and procedures support the Lobbying By-law.

### **7. Advising and Reporting to Council**

I shall continue to advise and report to Council on lobbying matters, including the Lobbying By-law, the lobbyist registry system and regulation of lobbyists, inquiries and enforcement.