
**ANNUAL REPORT OF THE LOBBYIST REGISTRAR TO
TORONTO CITY COUNCIL FOR THE YEAR 2010**

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LOBBYIST REGISTRAR

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ANNUAL REPORT OF THE LOBBYIST REGISTRAR FOR THE YEAR 2010 TO TORONTO CITY COUNCIL

This is my third annual report to Toronto City Council on my activities and the discharge of my duties as Lobbyist Registrar in the year 2010, 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.¹

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, and members and staff of Council and the City's boards and agencies. The OLR is the first municipal lobbyist registry and also one of the largest registries in Canada.

The roots of Toronto's lobbyist registration system lie in the recommendations of the Honourable Madam Justice Denise E. Bellamy, Commissioner in her 2005 Report on the Toronto Computer Leasing Inquiry. The City was required to establish a lobbyist registry by *City of Toronto Act, 2006 (COTA)*. In 2007, the City of Toronto adopted Chapter 140 of the City of Toronto Municipal Code, known as the Lobbying By-law. The OLR launched its online registry in February 2008. Ours is the first municipal lobbyist registry and one of the largest registries in Canada. 2010 was an active year.

- On December 31, 2010, the registry had 1,047 active lobbyist registrations. This is an increase of 109 or 12% over 938 active registrations on December 31, 2009.
- On December 31, 2010, the registry had 1,424 active subject matter registrations. This is an increase of 60 from 1,364 at year-end 2009 or 4%.
- The OLR website received 13,466 visits to its homepage in 2010, an increase of 3,039 or 29% from 10,427 visits in 2009.
- In 2010, the OLR received and answered 1,257 telephone inquiries. This is a decrease of 85 or 6% over 1,342 telephone inquiries we received in 2009.

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

- 10 inquiries and investigations about compliance with the by-law were opened in 2010 (compared with 15 new investigations in 2009, a decrease of 5 or 33%) and 10 investigations were completed (compared with 19 completed in 2009).

Madam Justice Bellamy recommended in her Report on the Toronto Computer Leasing Inquiry: “There should be no lobbying of any kind at any time during a City procurement process.”²

Regulating lobbyists’ conduct during procurements is essential to ensure the integrity of the City’s procurement processes. In 2010, I conducted an investigation into lobbying related to a particular procurement process. In March 2011, I provided a Report to Council on Lobbying during a Procurement Process.³ In this report, I recommended strengthening and clarifying the Lobbying By-law regarding lobbying during procurements, and that City staff be required to report illegal lobbying to the Lobbyist Registrar. These recommendations were adopted by Council, together with a request that the City Solicitor and Lobbyist Registrar develop provisions, guidelines and protocols around the procurement process and lobbying by consultants after working for the City on contract.

In 2010, we completed Phase 3 of our IT project to improve our website. We launched new statistical reports, new registration screens, improved search tools and new information pages that are clearer and easier for the public, lobbyists and public office holders to use. Publication of the dates of communication by lobbyists with public office holders were added to the public online lobbyist registry. Work was begun on a web-based tutorial for lobbyists who register.

In the fall of 2010, we launched a quarterly online newsletter, the *Registry Insider*, which is available to the public, public office holders and lobbyists at www.toronto.ca/lobbying/. The *Registry Insider* provides news of new developments at the registry, and discusses issues under the Lobbying By-law and registry system.

Interpretation Bulletins are an important way to provide guidance on the interpretation and application of the Lobbying By-law to the public, lobbyists and public office holders. In 2010, I published an Interpretation Bulletin, *Lobbying and Procurements* to make clear the application of the *Lobbyists’ Code of Conduct* (Appendix I) to lobbyist communications with public office holders about procurements. The Integrity Commissioner and I published a Joint Interpretation Bulletin, *Lobbying and Municipal Elections*. This bulletin addresses the application of the *Lobbyists’ Code of Conduct* and *Members’ Code of Conduct* where lobbyists are involved in or contribute to municipal election campaigns.

The City’s Accountability Officers (the Auditor General, Integrity Commissioner, Lobbyist Registrar and Ombudsman) consulted with the City Manager and City Solicitor to develop and implement an Accountability Framework, which City Council adopted in 2010 as Chapter 3 of the Toronto Municipal Code. The Accountability Framework and Chapter 3 ensure the independence and accountability to Council of the City’s Accountability Officers. In furtherance of Chapter 3, we have worked together to develop and implement a protocol for the submission

² Recommendation 107, *Toronto Computer Leasing Inquiry*, Report, vol. 4, page 94.

³ <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.CC5.1>. Also available at www.toronto.ca/lobbying.

of our budgets directly to Budget Committee. This protocol has been observed in the 2011 budget process.

When adopting the 2011 budget, Council directed Accountability Officers to post their office expenses online as a measure of transparency. The statement of financial expenditures of the Office of the Lobbyist Registrar for the year 2010 is attached to this report, which will be posted on our website, www.toronto.ca/lobbying. My expenses and those of Inquiries and Investigations Counsel are also posted on our website.

In 2011, I look forward to continuing to ensure that lobbying at the City is transparent and ethical, through the OLR's public, online registry of lobbyists and regulation of their conduct; and to clarifying and strengthening the City's Lobbying By-law.

REGISTRY SERVICES

Advice and Interpretation

In 2010, the OLR received and answered 1,257 telephone inquiries for information, advice and interpretation.

Some of the questions we answered are below:

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 the Lobbying By-law, they are prohibited from lobbying present public office holders for twelve months from the date that their employment or term of office ceased.

Q. Can a lobbyist donate to or sponsor a community event organized by a member of Council?

A. Lobbyists must not donate to or sponsor community events organized by a councillor or someone on the councillor's behalf. The City's Council Member-Organized Community Events Policy prohibits lobbyists and their clients and employers from donating to community events that are organized or run by a member of Council or a third party on the member's behalf. See the Joint Interpretation Bulletin of the Lobbyist Registrar and Integrity Commissioner, *Donations to Council Member-Organized Community Events*, http://www.toronto.ca/lobbying/pdf/donations_to_member-organized_comm_events.pdf.

Q. Can lobbyists offer tickets to events to public office holders?

A. Section 140-42 of the Lobbying By-law provides that lobbyists must not give or offer gifts, meals, trips or favours of any kind to public office holders. A ticket to an event is considered to be a gift and is prohibited.

Q. Are lobbyists permitted to engage in political activities and campaign contributions during a municipal election campaign?

A. Lobbyists are permitted to make contributions in their personal capacity in accordance with the *Municipal Elections Act*. Under the *Lobbyists' Code of Conduct*, § 140-45, lobbyists must not place public office holders in a conflict of interest or in breach of their codes of conduct or standards of behaviour, and must not bestow an improper benefit or exert improper influence on a public office holder. Apart from contributions authorized by the *Municipal Elections Act*, lobbyists must not give or offer gifts, meals, trips or favours of any kind: § 140-42. Campaign activities such as fundraising by a lobbyist may place a public office holder in a conflict of interest or exert improper influence over a public office holder, or may be considered to be a favour, depending upon the circumstances. See the Joint Interpretation Bulletin of the Integrity Commissioner and Lobbyist Registrar, *Lobbying and Municipal Elections*.

Q. Can a lobbyist who is not a proponent (bidder) engage in lobbying during a City procurement process?

A. Under the Lobbying By-law, lobbyists must not communicate with public office holders about a procurement process, unless permitted to do so by the applicable procurement policies and documents. This provision applies to non-proponents as well as proponents. See § 140-41A and the Lobbyist Registrar's Interpretation Bulletin, *Lobbying and Procurements* (Appendix II).

Interpretation Bulletins are an important way to provide guidance on the interpretation of the Lobbying By-law and are published on our website. In 2010, I published an Interpretation Bulletin, *Lobbying and Procurements* (Appendix II). The Integrity Commissioner and I published a Joint Interpretation Bulletin, *Lobbying and Municipal Elections* (Appendix III). All of the Lobbyist Registrar's Interpretation Bulletins are posted on the OLR website, www.toronto.ca/lobbying.

Registrations

Under the Lobbying By-law, a lobbyist must obtain an approved lobbyist and subject matter registration before lobbying. Lobbyists must not lobby until they have *both* lobbyist *and* subject matter registrations approved by the OLR. Their registration is posted online only after both a lobbyist and a subject matter registration have been approved.

Lobbyist Registrations

In 2010, the OLR:

- Received and reviewed 229 new lobbyist registrations, approving 138 and refusing 91.

- Received and reviewed 306 lobbyist registration updates, approving 279 and refusing 27.
- Closed 32 lobbyist registrations, 12 at the request of the registrants and 20 by the Office of the Lobbyist Registrar.

Subject Matter (SM) Registrations

In 2010, the OLR:

- Received and reviewed 458 new subject matter registrations, of which 390 were accepted and 68 were refused.
- Received and reviewed 1,072 subject matter registration updates, of which 1,005 were accepted and 67 were refused.
- 71 subject matter registrations were withdrawn, 17 at the request of the registrants and 54 by the Office of the Lobbyist Registrar.
- 275 subject matter registrations were closed, 262 at the request of the registrants and 13 by the Office of the Lobbyist Registrar.

INQUIRIES AND INVESTIGATIONS

Under section 169 of the *City of Toronto Act, 2006 (COTA)* and § 140-33(5) of the Lobbying By-law, the Lobbyist Registrar is responsible for conducting, in private, investigations or inquiries to determine whether contraventions of the Lobbyist By-law have occurred and for enforcing the by-law.

The Registrar may suspend, revoke (close) or remove a non-compliant registration under the Lobbying By-law, §§ 140-33 and 140-37.

Breach of the Lobbying By-law is an offence under the *Provincial Offences Act*. The Registrar is a provincial offences officer under the *Provincial Offences Act*. The City Prosecutor is responsible for prosecuting any charges under the *Provincial Offences Act* that are laid by the Registrar.

The *City of Toronto Act, 2006* 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.

In February 2009, I published Compliance Investigations Procedures.⁴ The procedures are intended to provide a fair, expeditious and effective investigations process.

Our goal for the time taken to complete an investigation is six months. This goal is linked to a six-month time limit for laying a charge under the *Provincial Offences Act*. The average time taken to complete an investigation in 2010 was five months. Our ability to meet our mandate to investigate and the six-month time limit for prosecutions depends on a number of factors including numbers of requests, the complexity of the investigations, and the resources we have available to conduct investigations.

In 2010, OLR investigations increased in complexity and raised systemic issues such as lobbying during procurement processes.

Source of Request to Investigate for Investigations opened in 2010

Members of Council and their staff-----	6
City staff -----	1
Member of the public-----	1
Lobbyist Registrar -----	1
Lobbyist -----	1

Outcomes of Investigations completed in 2010

Breach of Lobbying By-law found -----	6
Breach of Lobbying By-law not found-----	3
Subject Matter Registration revoked (closed)-----	5
Lobbyist Registration revoked (closed)-----	3
Lobbyist permitted to close registration-----	3
Lobbyist permitted to register -----	1
Charge laid under <i>Provincial Offences Act</i> -----	1
Report to Council -----	5

Summaries of Inquiries and Investigations completed in 2010

The OLR completed ten investigations in 2010. They are described in more detail below.

- Five investigations concerned lobbying activities related to the RFP (Request for Proposals) for the Ashbridge’s Bay beach volleyball lease. This investigation is the subject of a separate Report to Council on Lobbying during a Procurement Process.⁵ In the report, I found that five lobbyists lobbied during an active procurement process, contrary to § 140-41A of the Lobbying By-law. I made recommendations to clarify and strengthen the Lobbying By-law and to require staff to report illegal lobbying to the Lobbyist Registrar. I closed (revoked) all five subject matter registrations and three lobbyist registrations, and permitted two lobbyists to close their registrations voluntarily. Council adopted my recommendations and an

⁴ http://www.toronto.ca/lobbying/pdf/compliance_investigations_procedures_2010.pdf

⁵ See footnote 3 above. See within Message from the Lobbyist Registrar, Lobbying and Procurements.

additional recommendation regarding lobbying by consultants after the conclusion of a contract.

- I charged a lobbyist under the *Provincial Offences Act* where I had reasonable and probable grounds to believe that the lobbyist had failed to provide accurate information to registry staff about the person whom they represented. The charge was later withdrawn when the prosecutor determined that there was not a reasonable prospect of conviction. I permitted the lobbyist to withdraw his registration.
- A lobbyist reported to the Office of the Lobbyist Registrar that they had failed to register before lobbying. As the lobbyist was forthright and the error was inadvertent, I permitted the lobbyist to register.
- A member of the public reported that a lobbyist was registered in the federal lobbyist registry to represent the Toronto Zoo as a consultant lobbyist to lobby the federal government. I found that the evidence did not establish that the lobbyist was engaged in lobbying City public office holders and therefore was not required to register with the City's lobbyist registry.
- A proponent in a City procurement process advertised in the media the merits of their proposal on the morning that the matter was to be determined by Council. I found that the media ads did not contravene the prohibition against lobbying during a procurements process. Because they did not advocate that readers should contact their members of Council, this was not a grass-roots campaign. Nor was there any direct communication with members of Council. Therefore, the ads did not constitute lobbying and were not prohibited by the Lobbying By-law.
- City staff reported that a former City employee had lobbied regarding a proposed project. The project involved a partnership between the City and the individual's employer. The individual was also a senior official in a not-for-profit organization whose activities include helping citizens to advocate for the same type of project that the partnership with the City involved. I found that the individual's communications were solely made on behalf of the employer as part of an application process. Communications with designated City staff as part of an application process are exempted from the Lobbying By-law under § 140-5F.

INFORMATION, TRAINING AND OUTREACH

The OLR website has proved to be an effective source of information for the public, public office holders and lobbyists. Through our website, members of the public, public office holders and lobbyists may search the lobbyist registry; find the Lobbying By-law, Interpretation Bulletins and other important documents; read FAQs and our newsletter, the *Registry Insider*; and contact us for more information, advice and interpretation.

Training and outreach to lobbyists is essential to promote compliance with the by-law. In 2010, I made a presentation to the Public Affairs Association of Canada (PAAC), a national organization for lobbyists.

In 2010, the OLR continued its practice of offering free training sessions for lobbyists. Notice of the training sessions is posted on the OLR website, www.toronto.ca/lobbying. The training sessions are conducted by OLR staff and held in the offices of the OLR. We conducted two in-house training sessions for lobbyists in 2010. In addition, we conducted focus group sessions with lobbyists and staff of members of Council in relation to Phase 3 of our information technology project.

We began work to develop web-based tutorials. The tutorials will explain each step of the registration process. The tutorials will be launched in 2011.

Informing the City's public office holders about the registry and Lobbying By-law is essential to our mandate. Well-informed public office holders help us to ensure that lobbyists comply with the requirement to register and *Lobbyists' Code of Conduct*. In 2010, OLR staff and I made informational presentations about the Lobbying By-law and registration system to City staff, members of Council and their staff.

Outreach to other jurisdictions is also essential to our mandate. In Canada, the provinces of Alberta, British Columbia, Newfoundland and Labrador, Nova Scotia, Ontario, Quebec and Manitoba, and the City of Toronto have lobbying legislation. A network of officials responsible for the administration of lobbying legislation in these jurisdictions was established. Since 2007, the Lobbyist Registrars and Commissioners of Canada have met annually to compare experiences, discuss emerging issues and learn from each other. I attended and conducted a seminar for the annual meeting of the Lobbyist Registrars and Commissioners of Canada in September 2010 in St. John's, Newfoundland.

As the first municipal lobbyist registry in Canada, we feel a special responsibility to reach out to other municipalities, particularly in Ontario, and to other levels of government. In 2010, I made a presentation to the Lobbyist Registry Review Sub-Committee of the Municipality of Halton and to the Integrity Commissioners of Ontario.

International ethics organizations enable the sharing of information, best practices and current developments in the law and practice of government ethics. The OLR maintained memberships in two international ethics organizations, Transparency International (TI) and The Council on Government Ethics Laws (COGEL). In April 2010, the Lobbyist Registrar presented to a visiting governmental delegation from China for their Second Study Tour, "Strengthening the Anti-Corruption Legal Framework to Promote Clean Local Governments", a project of Transparency International. OLR Inquiries and Investigations Counsel attended the annual COGEL conference in December 2010 in Washington, D.C. The OLR together with the City's Accountability Officers has assisted the City of Toronto to host a visiting fellow from the government of South Korea in his study of anti-corruption legislation and practices.

The OLR is involved in the developing area of accountability in the field of administrative law and practice. Professional organizations in the field of administrative law enable the sharing of information, best practices and current developments. In September 2010, I presented an overview of the Lobbying By-law and registry system to the Osgoode Professional Development Administrative Law Forum. I participated in the conference planning committees of the Society of Ontario Adjudicators and Regulators (SOAR) and the Council of Canadian Administrative Tribunals (CCAT); served as a Vice-President of CCAT until June 2010; and attended the annual administrative law roundtable of the Canadian Institute for the Administration of Justice (CIAJ) and annual CCAT Conference in May 2010.

WORKING TOGETHER WITH THE ACCOUNTABILITY OFFICERS AND CITY STAFF

The City's Accountability Officers (the Auditor General, Integrity Commissioner, Lobbyist Registrar and Ombudsman) worked together on common issues in 2010. We consulted with the City Manager and City Solicitor to develop an accountability framework, which Council adopted as Chapter 3 of the Toronto Municipal Code. We developed and implemented a protocol under Chapter 3 respecting the submission of our budget directly to Budget Committee.

In November 2010, the Accountability Officers conducted a joint orientation session for newly elected members of Council. In addition, the Integrity Commissioner and I issued a Joint Interpretation Bulletin, *Lobbying and Municipal Elections*, in April 2010.

RESOURCES AND PRIORITIES

The establishment of the inquiries and investigations function was a priority for 2010. Conduct of investigations is part of the Lobbyist Registrar's mandate under *COTA*. Hiring of Inquiries and Investigations Counsel enhanced and increased my capacity to conduct investigations into reports of non-compliance with the Lobbying By-law.

A second and equally important priority in 2010 was information and outreach, including the completion of Phase 3 of the office's information technology project. This project was achieved with the assistance provided by the City Clerk's Council and Support Services and by the City's Information and Technology Division. The focus of this project was to improve the information available to the public, lobbyists and public office holders on our website. The OLR's capacity to maintain the registry and to provide information to lobbyists, the public and public office holders has been enhanced through this project.

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

STAFF

In addition to the Lobbyist Registrar, the Office of the Lobbyist Registrar was staffed in 2010 by two Lobbyist Registry Advisors, the Administrative Assistant to the Registrar, and Inquiries and Investigations Counsel. Due to budgetary constraints in 2010, the positions of Lobbyist Compliance Investigator and Administrative Assistant were not filled in 2010. The position of Manager, Registry Operations was vacant for part of the year 2010.

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

Inquiries and Investigations Counsel provides advice on compliance issues, conducts inquiries and investigations on behalf of the Lobbyist Registrar and develops policies and procedures to support the OLR's inquiries and investigations processes.

APPENDIX IV: Organizational Chart

FINANCIAL INFORMATION

The Office of the Lobbyist Registrar's approved budget for 2010 was \$906,500. Our year-end statement of expenditures is attached to this report as Appendix V. This indicates a surplus of \$274,222.62. The greater part of this surplus is due to gapping of staff vacancies and lower than planned staffing costs, as well as lower spending on non-payroll items such as legal and investigative expenses.

AUDITS

The Office of the Lobbyist Registrar successfully underwent an external compliance audit for the year 2009 and was part of the City's annual attest audit. These audits are required annually by Chapter 3 of the Toronto Municipal Code, and will be conducted in 2011 for the year 2010. Reports of these audits are provided directly to Council and are available to the public.

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. The inquiries and investigations I conducted in 2010 have addressed issues of general interest and concern. A few of these issues are highlighted below.

Lobbying and Procurements

The Lobbyist Registrar's 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. Additionally, we are preparing a training module on lobbying and the procurements process for use in training sessions for public office holders and lobbyists.

In my Report to Council on Lobbying during a Procurement Process, I recommended that action be taken to clarify and strengthen the Lobbying By-law with respect to lobbying during procurements and to require staff to report illegal lobbying to the Lobbyist Registrar. On March 8 and 9, 2011, City Council adopted the following:

1. City Council receive the findings in the report (February 28, 2011) from the Lobbyist Registrar.
2. 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.
3. 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.
4. City Council request the City Solicitor and Lobbyist Registrar to develop guidelines and protocols to deal with the procurement process as it relates to the retention of consultants and in particular report on provisions to condition their lobbying activities after working for the City on contract.

Disclosure of Clients

The Lobbying Commissioner of Canada's Five-Year Review of the federal *Lobbying Act* notes a trend in consultant lobbyists hiring other consultant lobbyists to act on specific matters, without disclosing the real or ultimate client.⁶ We have seen a similar trend. Recommendation 5 in the Commissioner's report is to explicitly require consultant lobbyists to disclose their ultimate client. The Lobbying By-law requires a consultant lobbyist to disclose "any person, partnership or organization that, to the knowledge of the consultant lobbyist, controls or directs the activities of the client and has a direct interest in the outcome of the consultant lobbyist's activities on behalf of the client."⁷

⁶ http://ocl-cal.gc.ca/eic/site/lobbyist-lobbyiste1.nsf/eng/h_nx00548.html

⁷ Section 140-15B

Recommendation:

The Lobbyist Registrar recommends that 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 to explicitly require that consultant lobbyists disclose their ultimate client.

Registration Fees

In 2010, City Council requested me to report on a plan for full cost recovery for registrations. I did so in my Budget Report for 2011. In my report, I did not recommend that registration fees be charged. The level of fees that would be required for cost recovery could act as a disincentive to registering. This would be contrary to the lobbyist registry's statutory mandate to ensure that lobbying of the City's public office holders is transparent. Furthermore, full cost-recovery fees may interfere with access to City government. One of the guiding principles of the Lobbying By-law is: "B. Open and unfettered access to City government is a vital aspect of local democracy."

Enforcement

The Lobbyist Registrar is responsible for enforcing the Lobbying By-law. In most cases lobbyists comply voluntarily when advised of their obligations. However, there are instances when a lobbyist refuses to comply with the by-law, even after being advised and requested to do so.

The Registrar may refuse to register, suspend, revoke or remove a registration. However, these penalties are not applicable to a failure to register (secret lobbying) or to ethical breaches (contraventions of the *Lobbyists' Code of Conduct*). The *City of Toronto Act, 2006 (COTA)* permits the imposing of conditions on registrations, but the Lobbying By-law does not have corresponding provisions. The Registrar has no power to refuse to register a lobbyist who has a history of non-compliance.⁸ Nor does the Registrar have the power to impose fines for breach of the Lobbying By-law.⁹

⁸ Albert's *Lobbyists Act*, s. 19 empowers the Ethics Commissioner to prohibit a person who has been convicted of an offence from lobbying or registering to lobby for up to two years.

⁹ Legislation in BC and Alberta empowers the registrar to impose administrative sanctions (fines) on lobbyists whom they find to be non-compliant. The Commissioner of Lobbying of Canada has recommended the amendment of the *Lobbying Act* to provide for administrative monetary penalties for breach of the act and Lobbyists' Code.

Recommendations:

The Lobbyist Registrar recommends 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*.

CHALLENGES AND GOALS FOR 2011

1. Promoting Transparency and Integrity through the Lobbyist Registry

In 2011, the Office of the Lobbyist Registrar shall continue to provide transparency through its public, online lobbyist registry. We shall continue to develop and improve our processes, in accordance with best practices. We shall continue to monitor the effectiveness of the registry system, and to recommend improvements to it.

2. Promoting and Ensuring Compliance with the Lobbying By-law

The OLR promotes the integrity of City decision-making processes 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. We will continue develop and refine our compliance investigations, inquiries and enforcement procedures in accordance with best practices.

3. Clarifying and Strengthening the Lobbying By-law

I shall continue to consult with the City Solicitor and City Manager to clarify and strengthen the Lobbying By-law, as directed by Council.

4. Outreach to Public Office Holders, Lobbyists and the Public

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 2011, we shall continue to provide effective information, education outreach. We will provide training on lobbying during the procurements process, and online tutorials for registrants.

5. 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 consult with City staff on clarifying and strengthening the Lobbying By-law and other matters respecting lobbying.

6. Advising and Reporting to Council

The Lobbyist Registrar reports to Council, advises Council on the lobbying by-law and lobbying matters and performs the duties that Council assigns. I shall continue to advise and report to Council on the registry system and regulation of lobbyists. In particular, I shall report on the matters requested by Council with respect to lobbying. I shall provide financial transparency and accountability through reports to Council and posting of expenses on our website.

APPENDICES

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Lobbyists' Code of Conduct

§ 140-38. Standard of behaviour.

- A. Lobbyists shall comply with the standards of behaviour for lobbyists and the conduct of lobbying activities set out in this article when lobbying public office holders.
- B. Lobbyists shall observe and comply with the highest ethical and professional standards.
- C. The Code of Conduct in this article sets out minimum standards of behaviour for lobbyists in their dealings with the City government, including local boards and public office holders.

§ 140-39. Honesty.

Lobbyists shall conduct with integrity and honesty all relations with public office holders, clients, employers, the public and other lobbyists.

§ 140-40. Disclosure of identity and purpose.

- A. Lobbyists communicating with a public office holder shall disclose the identity of the individual, corporation, organization or other person, or the partnership, on whose behalf they are acting, as well as the reasons for the communication.
- B. Lobbyists communicating with a public office holder on a duly registered and disclosed subject matter shall not use that opportunity to communicate on another subject matter, unless first having registered as required and disclosing the identity and purpose.

§ 140-41. Compliance with policies restricting communication.

- A. Lobbyists shall not communicate in relation to a procurement process except as permitted by applicable procurement policies and procurement documents.
- B. Lobbyists shall not communicate in relation to an application for approval and the associated review process, except as permitted by applicable policies and procedures.

§ 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.
- B. Lobbyists shall not request public office holders to endorse or recommend their services.
- C. Lobbyists shall not conduct lobbying activities at a charitable event, community or civic event, or similar public gathering.

§ 140-43. Information; confidentiality.

- A. Lobbyists shall inform their client, employer or organization of the obligations under this chapter.
- B. Lobbyists shall provide information that is accurate and factual to public office holders.
- C. Lobbyists shall not knowingly mislead anyone and shall use proper care to avoid doing so inadvertently.
- D. Lobbyists shall be open and frank about their lobbying activities, while respecting confidentiality.
- E. Lobbyists shall not divulge confidential information unless they have obtained the informed consent of their client, employer or organization, or disclosure is required by law.
- F. Lobbyists shall not use any confidential or other insider information obtained in the course of their lobbying activities to the disadvantage of their client, employer or organization.

§ 140-44. Competing interests.

- A. Lobbyists shall not represent conflicting or competing interests without the written consent of those whose interests are involved.
- B. Lobbyists shall advise public office holders that they have informed their clients of any actual, potential or apparent conflict of interest and obtained the informed consent of each client concerned before proceeding or continuing with the undertaking.

§ 140-45. Improper influence.

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

Introduction

This interpretation bulletin discusses the rules in the City's Lobbying By-law (Chapter 140 of the Toronto Municipal Code)¹ that apply to lobbying about a procurement process. The Lobbying By-law prohibits lobbying about a procurement process unless permitted by the applicable procurement policies and procurement documents.

Provisions of the Lobbying By-law that apply to procurements are found below:

§ 140-1. Definitions.

LOBBY – To communicate with a public office holder on any of the following subject matters:

- B. (2) Procurement of goods, services or construction and awarding a contract.*

§ 140-5. Restriction on application (communication).

This chapter does not apply in respect of:

- G. Submitting a bid or proposal as part of the procurement process, and any communication with designated employees of the City, a local board (restricted definition) or the Board of Health (including a City employee when working as a designated employee for a board), as permitted in the procurement policies and procurement documents of the City, local board (restricted definition) or Board of Health.*

§ 140-41. Compliance with policies restricting communication.

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

What is a procurement process?

A procurement process is the process used by the City and its local boards to purchase or otherwise acquire goods or services.

A specific procurement process is generally referred to by the call document issued requesting bids for the goods or services and includes "calls" (in some cases called "requests") for:

- pre-qualification;
- expressions of interest;
- tenders;
- quotations (both formal and informal); and
- proposals.

¹ http://www.toronto.ca/legdocs/municode/1184_140.pdf

What communications about a procurement process must a lobbyist report to the Lobbyist Registry?

Generally, the Lobbying By-law requires lobbyists to register and report communications with public office holders about procurement of goods, services or construction and awarding of a contract. These communications are considered to be lobbying. However, there are some exemptions from this requirement. See below.

What communications do not need to be reported to the Lobbyist Registry?

Some communications about a procurement process do not need to be reported. The Lobbying By-law does not apply to, and registration is not required for:

- submitting a bid or proposal as part of a procurement process;
- communicating with a designated employee as permitted by the applicable procurement policies and documents.
- communications that are part of a meeting of Council, a local board (restricted definition), the Board of Health or their committees;
- communications at a public meeting, hearing, consultation presentation, open house or media event held or sponsored by the City, a local board (restricted definition), the Board of Health or a public office holder with respect to a procurement process;
- a communication that is restricted to a request for information;
- a communication to a public office holder in direct response to a written request from the public office holder; and
- a communication to a member of Council by a constituent of the member of Council, or an individual on behalf of a constituent of the member of Council on a general neighborhood of public policy issue. [See § 140-5]

When is lobbying about a procurement process permitted and when is lobbying prohibited?

A registered lobbyist may lobby about a procurement process only if the communication is permitted under the applicable policy about procurements.

Section 140-41A prohibits lobbyists from communicating about a procurement process *except as permitted by the applicable procurement policies and documents.*

It is important to check the applicable procurement policies and documents to see what communications are permitted.

For example, under the City's Policy on Procurement Processes², from the time a call or request is issued until the announcement of the award, only communication with an official point of contact named in the call is permitted. All other communications are strictly prohibited during this period, which is sometimes referred to as the "blackout period".

² http://www.toronto.ca/calldocuments/pdf/procurement_process.pdf

Offences and Penalties

Lobbying contrary to the Lobbying By-law is an offence for which a person is liable to a maximum fine of \$25,000 on a first conviction and \$100,000 on each subsequent conviction.

The Lobbyist Registrar may suspend or revoke a registration that is found not to comply with the requirements of the by-law.

In addition, the applicable procurement policies and documents may prescribe penalties for lobbying in breach of the policy. For example, the City's Procurement Processes Policy³ provides that 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.

Contact for More Information

Office of the Lobbyist Registrar
Email: lobbyistregistrar@toronto.ca
Tel.: 416-338-5858
www.toronto.ca/lobbying

³ http://www.toronto.ca/calldocuments/pdf/procurement_process.pdf



1. The City of Toronto has passed a by-law prohibiting corporate and trade union contributions to candidates for municipal office; therefore, only individuals may contribute. Lobbyists are permitted to make contributions in their personal capacity as individuals who are residents of Ontario, in accordance with the requirements of the *Municipal Elections Act*, and not as part of their lobbying activities as a consultant, in house or voluntary unpaid lobbyist. For more information about individual contributions, see the City's Elections website, www.toronto.ca/elections.
2. Chapter 140 of the Toronto Municipal Code (the Lobbying By-law) continues to apply when lobbying public office holders.¹ Lobbyists must register before they lobby a public office holder and they must report their lobbying activities.
3. The Lobbyists' Code of Conduct, which is part of Chapter 140, continues to apply to lobbyists in their dealings with public office holders. For example, § 140-42 prohibits lobbying in a form or manner that includes offering, providing or bestowing entertainment, gifts, meals, trips or favours of any kind; requesting public office holders to endorse or recommend lobbyists' services; and lobbying at a charitable event, community or civic event, or similar public gathering. Lobbyists must not place public office holders in a conflict of interest or in breach of their codes of conduct or standards of behaviour, and must not bestow an improper benefit or exert improper influence on a public office holder: § 140-45.
4. Members of Toronto City Council and members of City of Toronto local boards (restricted definition) are also bound by Codes of Conduct. Under these Codes of Conduct, the members are required to be familiar with the provisions of Chapter 140 and not to knowingly engage in prohibited lobbying communications. (See the Codes of Conduct on the Integrity Commissioner's web site at: <http://www.toronto.ca/integrity/integrity-protocols-policies.htm>)

¹ Public office holders include members of City Council and their staff; an officer or employee of the City; members of a local boards (restricted definition) of the City and their staff; officers, directors or employees of local boards (restricted definition) of the City; members of the Board of Health; and individuals appointed by Council, a Standing Committee or a Community Council under delegated authority, or a local board (restricted definition) to an advisory body to provide advice to Council, the Standing Committee, the Community Council or the local board (restricted definition) or to employees of the City or local board (restricted definition). See the *City of Toronto Act, 2006*, s. 156 and § 140-1 "PUBLIC OFFICE HOLDER".

FAQs – Frequently Asked Questions

I am lobbying City councillors about an issue that is expected to be discussed by Council in 2010. I also want to contribute to a councillor's re-election campaign.

Q. Can I contribute to the election campaign of a councillor who is running for re-election?

A. Yes, if you are an individual living in Ontario. The City of Toronto has passed a by-law prohibiting corporate and trade union contributions; therefore, only individuals may contribute. You may contribute up to \$750 to any councillor candidate and up to \$2,500 to any mayoralty candidate. The total amount you may contribute to all candidates for office on City Council is \$5,000. In addition, you must not make this contribution as a form of lobbying about the issue to be decided by Council. See § 140-42A.

Q. Can I volunteer to work on an election campaign?

A. Yes. However, your volunteer work must not be offered as a form of lobbying. See § 140-42A.

Q. Can I contribute the admission price of a fund-raising function to the campaign?

A. Yes, if you are an individual living in Ontario and this amount will not result in you exceeding the contribution limits under the Municipal Elections Act, as noted above. However, you must not offer the admission fee as a form of lobbying. You must not lobby any public office holder at the fund-raising function. See § 140-42.

Q. What steps might a public office holder be expected to take if a lobbyist violates Chapter 140, for example by using a fund-raising function as a lobbying opportunity?

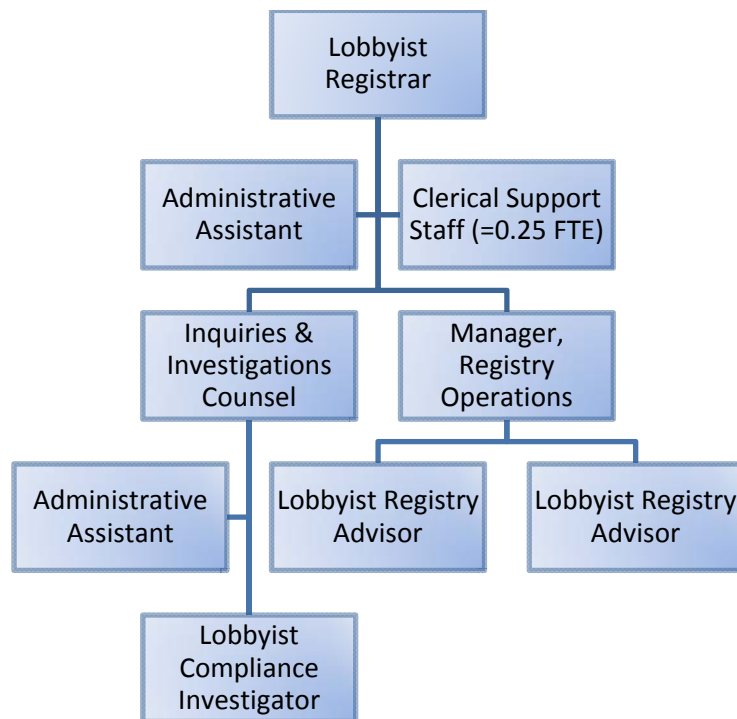
A. The Code of Conduct advises that the member of Council ought to terminate the conversation or, where appropriate draw the person's attention to the obligations imposed by Chapter 140. If the violation is significant and not made in good faith, the member must report such violation to the Lobbyist Registrar. Similar provisions apply to members of local boards (restricted definition), with additional restrictions applying to members of adjudicative boards. (See Part XIII of the Codes of Conduct for Members of Council and Members of Local Boards (Restricted Definition) and Part XV of the Code of Conduct for Members of Adjudicative Boards at: <http://www.toronto.ca/integrity/integrity-protocols-policies.htm>)

For further information, please see the websites of the Integrity Commissioner and the Lobbyist Registrar, or contact these offices as follows:

Office of the Lobbyist Registrar: www.toronto.ca/lobbying
E-mail: lobbyistregistrar@toronto.ca
Tel.: 416-338-5858
TTY: 416-338 6623

Office of the Integrity Commissioner: www.toronto.ca/integrity
E-mail: jleiper@toronto.ca
Tel.: 416-397-7770 / 416-392-3826

Office of the Lobbyist Registrar Organizational Chart 2010



OFFICE OF THE LOBBYIST REGISTRAR

2010 Year-end Statement of Expenditures

Cost Elements	Total-YTD	Plan-YTD	Variance-YTD	% Spent
Salaries and Benefits	580,251.87	820,447.85	240,195.98	70.72
Materials and Supplies	5,259.14	4,748.24	-510.90	110.76
Equipment	1,136.90	1,700.01	563.11	66.88
Services and Rents	40,092.77	75,800.12	35,707.35	52.89
Capital Transfers	1,317.64	1,317.64	0.00	100.00
Inter-Divisional Charges	4,232.94	2,500.02	-1,732.92	169.32
Expenditures	632,291.26	906,513.88	274,222.62	69.75
NET EXPENDITURES/REVENUE	632,291.26	906,513.88	274,222.62	69.75