

**Toronto Computer Leasing Inquiry
Research Paper**

LOBBYIST REGISTRATION

**Volume 3:
City of Toronto & Recommendations**

November 2003

Table of Contents

Executive Summary	iii
Part 1: Introduction	1
• Focus and Structure	1
Part 2: Current City Approach to Lobbyist Registration	3
• General Comments	4
• Lobbying Policy for Employees with Involvement in Outside Organizations (2000)	7
• Guidance re What Constitutes Lobbying/ Whether a External Contact is a Lobbyist (2000)	7
• Lobbyist Disclosure Information Policy: Registering Bidders on Large Contracts (2001)	11
• Lobbyist Registration Log-Books	13
Part 3: Current City of Toronto Proposal	14
• Oversight by an Integrity Commissioner	15
• Definition of Lobbying	16
• Classes of Lobbyists	17
• Disclosure Elements	17
• Need for Provincial Enabling Legislation	18

Part 4: Lobbying at the City of Toronto	21
• Why a lobbyist registry for the City of Toronto?	21
• What does the research say about lobbying at the municipal level?	22
• What did we hear about lobbying at the City of Toronto?	24
• Conclusions about Lobbying at the City of Toronto	28
Part 5: Recommendations	33
• Effectiveness of Lobbyist Registries	33
• Is There Such a Thing as Good and Bad Lobbying?	34
• Enhanced Disclosure	38
• Positioning Lobbyist Registration as Part of Suite of Ethics Related Policies/Creating a Strong Culture of Ethical Behaviour	42
• Other Operational Recommendations	44
Appendix A:	57
August 2003 Report to Council re Establishing a City Lobbyist Registry	
Appendix B:	84
City of Chicago Practical Examples	

Executive Summary & Summary of the Recommendations

Part 1: Introduction

Volume 3 focuses on lobbyist registration issues with respect to the City of Toronto and recommendations to strengthen the current City proposal for lobbyist registration. It builds on *Volumes 1* and *2* – respectively, a comparative overview of lobbyist registries in Canadian and U.S. jurisdictions, and an assessment of lobbyist registry effectiveness and related best practices.

The report draws on interviews with 29 academics and other experts, practitioners, and public servants, including lobbyists, lobbyist registry officials, federal, state/provincial, and municipal public servants, and associations representing Ontario municipal officials. Interviews have been supplemented by the available secondary material – academic papers, monographs, articles, etc.

Part 2: Current City Approach to Lobbyist Registration

In terms of formal policies, City currently deals with lobbying in four ways:

- A Conflict of Interest policy for employees who may also be involved in outside organizations that may, from time to time, lobby the City, e.g. for funding, new programs, etc.
- Guidelines for city employees (again under the Conflict of Interest policy) that provide clarification as to what constitutes lobbying/a lobbyist and a

set of standard questions that staff should ask themselves when contacted by an outside individual that will help them determine whether that individual is, in fact, a lobbyist.

- A requirement that bidders on large contracts that intend to contact Councillors directly with respect to their bid, register with the Clerk of Council.
- A recent decision by some councillors to voluntarily put log books in place to record visits by lobbyists.

These policies do not, nor were they intended to, constitute a lobbyist registry along the lines of what is in place at the Canadian and U.S. federal governments, various provincial and state governments, and a number of large U.S. municipalities. They can be seen as part of a broader and longer term effort to shape the culture and behaviour of the new City since amalgamation. As suggested to us in a number of interviews, the importance of taking action in this regard was recognized by senior administrative officials in the early days of the new City, particularly in light of the different experiences, approaches, etc. of the various amalgamating organizations.

More recently, the City has developed a *People Strategy* that attempts to move beyond the policy development phase to a more sustained and people-focused effort to shape and embed cultural expectations. This includes defining public service values and expectations for excellence and engaging staff in understanding and participating in a shared City culture.

As reported to us, this shift has been hastened by the recent computer leasing issue. One of the consequences has been a significantly higher level of awareness within the administration and Council with respect to the prevalence of lobbying.

Part 3: Current City of Toronto Proposal

In August 2003, the City of Toronto's Ethics Steering Committee recommended the establishment of a Lobbyist Registry modeled on the registry in place for the Government of Ontario. At this stage, the proposal lacks formal definition in a number of areas that would not likely be developed until after the November 2003 municipal election and potentially not until at least some initial discussions have taken place with the Province concerning additional legal powers for the City.

The City's proposed approach is very consistent with the general approach to lobbyist registration found in other jurisdictions. The approach is at least as rigorous as that of the Ontario Government and even goes further in some areas, such as identifying volunteers as lobbyists and (subject to further discussion at Council) requiring lobbyists to identify individual Councillors and their staff who are being lobbied. In doing so, the City would be positioned clearly within the mainstream of lobbyist registration systems in Canada and the U.S.

Having said this, however, the impact of lobbyist registries in terms of restoring, enhancing, or forestalling declines in public confidence in government is the most important test of effectiveness. The research indicates that lobbyist registries for the most part do not perform well in many key areas and that as currently constituted may not be worth the expenditure of public resources. Among these key areas, we would include:

- The general lack of emphasis on which public office holders (including both elected and appointed individuals) are being lobbied and the nature of the decisions that lobbyists are attempting to influence.
- The need to focus more on the substantive subject matter of the lobbying, specifically which decision is being sought. In effect, addressing the first

three of the five key questions posed in *Volume 2* and referenced on page 38 of this volume.

- The need to position lobbyist registries as part of a more comprehensive effort to define, promote, and sustain ethical behaviour and decision-making in government.

Part 4: Lobbying at the City of Toronto

Why a lobbyist registry for the City of Toronto?

As demonstrated during municipal election campaign in the City of Toronto, the immediate impetus for a lobbyist registry for the City comes from the political level. References were made to various forms of undesirable behaviour, e.g. “backroom decision-making”, “cronyism”, etc. The general concern appears to be that business is conducted behind closed doors by a host of political insiders – former councillors, former political and administrative staff, campaign officials, fundraisers, etc. – on behalf of unspecified outside interests.

In light of this public discussion, it would be reasonable for citizens to have an understanding that the problem to be addressed is more than just a matter of transparency for its own sake (as discussed in *Volume 2*, transparency is often put forward as the primary objective of most lobbyist registries). That understanding would include the view that changes in behaviour are necessary as part of enhancing public confidence. From our perspective, this important point sets the stage for whatever action the City will take in the future.

The Research on Lobbying at the Municipal Level

In *Volume 1* the view as expressed that a typical Ontario municipality has a mix of structural characteristics – some of which would tend to encourage more activity

along the lines of the U.S.-style lobbying of legislators, and some of which would tend to mitigate against lobbying. Given these characteristics, we would suggest the following major conclusions about lobbying at the municipal level in Ontario:

- *Larger Councils:* Municipalities, particularly those with larger Councils such as the City of Toronto, can legitimately be expected to be the subject of more of what we would call “legal lobbying” than would a provincial or federal legislature.
- *Trust in the bureaucracy:* The bureaucracy’s capacity to mitigate the need for lobbying appears to be highly dependent on the extent to which it is trusted by Council and that Council is comfortable delegating responsibility.
- *Delegation:* In many Ontario municipalities, delegation from Council to the administrative staff often does not take place to the extent that would be required for the bureaucracy to function more effectively as a check on lobbying.

Lobbying at the City of Toronto

Defining Good and Bad Behaviour

It is clear from our research that in the wake of amalgamation, the City of Toronto took steps to define and reinforce a consistent culture of ethics and integrity at both the bureaucratic and political levels, including procurement and conflict of interest policies. The difficulty and complexity of the challenge of bringing together the different operating approaches of the amalgamated municipalities cannot be underestimated.

In addition, the recent computer leasing issue has resulted in Councillors and administrative staff being much more aware of lobbying activity. However, this falls short of more formalized and consistently accepted thinking, definitions, etc.

Insufficient Clarity re Roles and Responsibilities

It is not whether and to what extent Councillors remain accessible to in-house and consultant lobbyists, but rather what action they take with the staff as a result of the lobbying contact that matters. In practice, however, with respect to lobbying and lobbyists, roles and responsibilities are not always clear and consistent.

Trust in the Staff/Perception of Too Much Influence

As one interviewee suggested, if Councillors had a high level of trust in the administrative staff, they would be more likely to simply listen politely and refer lobbyists to the appropriate staff person and/or existing policy decision-making process/senior department official. It appears, however, that a sufficient level of trust may not exist at the City of Toronto for this to occur. This has been heightened in the wake of the recent computer leasing issue. Some have suggested that its origins go back to the formation of the new City and the fact that the senior staff of the City were selected by the Transition Team as opposed to Council itself, i.e. were “not their people”.

This distrust is exacerbated by the concern of Councillors in many municipalities with respect to the increasing power of public servants. This perceived problem is a result of a number of factors coming into conflict with the traditional “hands-on”, local/operational orientation of many municipal Councils in Ontario, including:

- The increasing size, scope, and complexity of municipal issues.
- The increasingly professional class of municipal managers.

- The emerging *best practice* in municipal governance whereby Councils are assuming a governing/policy making role, rather than being more operationally focused.

Part 5: Recommendations

One of the major limitations of lobbyist registries is that they focus almost exclusively on the behaviour of the lobbyists. However, it is not solely about the lobbyists themselves, but as much or more about how a government and individual public office holders within that government deal with these efforts.

The reality is that the prevailing culture of an organization and the decisions of public office holders determine whether and to what extent both good and bad lobbying will be effective. In defining this culture and making these decisions, public office holders also influence and shape the behaviour of the lobbyists themselves. Simply put, if the culture of the City defines and reinforces good behaviour, it is more likely that good behaviour will result. Conversely, to the extent the culture countenances and rewards bad behaviour, the result will inevitably be more bad behaviour.

With this in mind, recommendations for enhancing the effectiveness of the City of Toronto's proposed lobbyist registry are presented in three parts:

1. Enhanced disclosure of who is being lobbied and the nature of the decision that the lobbyist is attempting to influence.
2. Defining how the City itself should respond to and deal with lobbying efforts and embedding those responses in the City's operating culture.
3. A number of more operational recommendations related to the more detailed mechanisms of the lobbyist registry.

1. Recommendations re Enhanced Disclosure

1 a) Disclosure of Public Office Holders

That the City of Toronto require lobbyists, as part of their registration, to identify the individual public office holders (including name and title) that they intend to communicate with as part of their lobbying efforts. In this category, we would include: individual Councillors and their staff, any member of the administrative staff, and any member or staff of a City agency, board, or commission.

1 b) Describing the Decision to be Influenced

We are recommending that the City of Toronto include as part of its lobbyist registry a requirement that registrants be more specific about the subject matter focus of their lobbying including that they be required to disclose and describe at a high level the actual decision they are trying to influence.

1 c) Additional Working-Level Recommendations re Enhanced Disclosure

- That after one year, the City review its requirements with respect to disclosing/describing the decision to be influenced with a view to determining whether lobbyists are reporting this information in the manner intended and whether this level of information is proving to be sufficient to allow citizens to understand the decision being sought.
- That the public handbook/registration instructions accompanying the registry be as descriptive as possible in terms of the kinds of decisions that lobbyists/lobbying organizations might be trying to influence. This should be set out in the form of a comprehensive list of situational examples so that lobbyists are as clear as possible with respect to how to characterize their activities.

- That registry staff be directed to be vigilant and vigorous in applying the above mentioned “informed member of the public” test and following up with registrants who have not been sufficiently clear with respect to the decision they are attempting to influence.
- That, as a general business practice, staff reports to Council should include summaries of the lobbying activity that took (or is continuing to take place) on the issues involved.
- That registrants be required to make reference to any publicly available submissions to City officials that they have made that relate to their lobbying effort to allow for easy follow-up by citizen or other interested parties.

2. Recommendations re Positioning Lobbyist Registration as Part of Suite of Ethics Related Policies/Creating a Strong Culture of Ethical Behaviour

The research is clear that to maximize effectiveness, lobbyist registries need to be positioned as part of a broader suite of ethics related policies, practices, and tools. This includes conflict of interest policies, codes of behaviour, systems of rewards and sanctions, and procurement policies. This also includes efforts to define and embed a strong culture of ethical behaviour and decision-making for public office holders. We suggest that the City’s process for defining the new cultural expectations could include the following steps:

- Describing the types of lobbying that its public officer holders are subject to. This would include consultant and in-house lobbying and run the full gamut of government decisions that lobbyists are attempting to influence. All Councillors and political and administrative staff would be asked to contribute and the results would be collected and communicated publicly.

- Assessing whether and to what extent these types of lobbying constitute “good” vs. “bad” lobbying – for example, where the lobbying is respectful of the decision-making process and delegated roles and responsibilities vs. where the lobbying seeks to circumvent established processes or subvert established roles and responsibilities.
- Defining in very situational terms what constitutes good and bad behaviour on the part of public office holders with respect to different types of lobbying efforts, i.e. guidance for how public office holders should be expected to respond to lobbying in various situations.
- Defining the consequences for public office holders who do not respond to on-going lobbying efforts appropriately.
- Embedding the desired behaviours/responses in the City’s various ethics policies, such as conflict of interest/codes of behaviour, procurement policies and procedures, Councillor and administrative staff training and mentoring programs, performance management systems, etc.

3. Other Operational Recommendations

Analytical Capacity

- That the City of Toronto’s registry include a robust search and analysis capacity that can be accessed and used effectively by citizens. Ideally, this would include the capacity to perform both issue-specific and aggregate analysis.

Enforceable Code of Conduct

- That the City of Toronto’s lobbyist registry include an enforceable Lobbyist Code of Conduct along the lines of the federal model.

Adequate Resources

- If the City is serious about changing behaviour with respect to lobbying (as opposed to simply putting a lobbyist registry in place) we recommend that careful consideration be given to adequate resourcing.

Education and Communication

- That the City's lobbyist registration program include training materials and training sessions for lobbyists/lobbying organizations and public office holders, as well as frequently asked questions, advisory/interpretive bulletins, and the publishing of complaints and the results of investigation/enforcement activities.

Actively Engaging Public Office Holders

- That the City's approach include the expectation that public office holders will:
 - Make use of the registry information on a regular basis.
 - Be actively engaged in ensuring that lobbyists are registered and conducting themselves appropriately.

Disclosing the Lobbyist's Other Relationship with Decision Makers

- That the City of Toronto require lobbyists to disclose the extent of their involvement with public office holders (the latter in their official capacity as opposed to personal friendships) that are the subject of their lobbying efforts.

Being clear that Lawyers and Other Professions are Included

- That the City's registration requirements be made clear up front that any individual engaged in activity that is captured by the definition of lobbying would be required to register.

Being clear to the Public about what is not considered to be Lobbying

- That the City define very clearly those types of activities that are not considered to be lobbying with particular emphasis on exclusions that emphasize the normal course of City business. We would include in this the kinds of day-to-day examples set out in Appendix B.

Including the full range of procurement related activities

- That the City's policy towards lobbyist registration should include all procurement related activity by lobbyists. This would include:
 - The various contacts with public office holders that would occur in preparing for and participating in the formal purchasing process.
 - All sales and marketing related activities.

Providing Value-added Reporting to the Public

- That the City's registry be responsible for producing value-added public reports that would:
 - Support and reinforce a more transparent climate and appropriate culture of high standards of ethical behaviour within the organization.
 - Establish the context within which the public (and media) should interpret the information from the registry.

Evaluating Program Effectiveness

- That the design and development of the City's lobbyist registry should include and incorporate the elements that will be necessary for ongoing effectiveness evaluation. These elements include a clear description of the intended outcomes, (e.g. improved public confidence in government decision-making, improved standards of ethical behaviour, etc.) and the

requirement that the necessary data and information be collected, analyzed, and reported.

Part 1

Introduction

Volume 3 on lobbyist registration continues to build on the base of information and analysis that we presented in the first and second volumes – respectively, a comparative overview of lobbyist registries in Canadian and U.S. jurisdictions, and an assessment of lobbyist registry effectiveness and related best practices.

Focus and Structure

The focus is on lobbyist registration issues with respect to the City of Toronto. As such, it has five parts in addition to this Introduction, including:

- An overview of the current policy in place at the City of Toronto with respect to lobbyist registration.
- A review and commentary on the proposed approach to lobbyist registration that was put forward to City Council at its last meeting in September 2003.
- A discussion of the issues and challenges associated with lobbying at the City of Toronto as encountered through the research.
- Recommendations with respect to how the City of Toronto's proposed approach to a lobbyist registration could be strengthened and made more effective.

To the extent possible, recommendations are based on best practices that exist in other jurisdictions. As discussed in *Volume 2*, however, the research indicates that current best practices from other jurisdictions include some major limitations (particularly related to disclosure) that impair registry effectiveness. Therefore, in a few key areas recommendations are made that go beyond practices that are

already in place in other jurisdictions but that we believe would position the City of Toronto as a leading jurisdiction in terms of setting a new and more meaningful standard.

This report draws on analysis and views expressed in interviews and informal surveys. A total of 29 individuals were contacted, including interviews with academics and other experts, practitioners, and public servants, including lobbyists, lobbyist registry officials, federal, state/provincial, and municipal public servants, and associations representing Ontario municipal officials. Interviews have been supplemented by the available secondary material – academic papers, monographs, articles, etc.

Wherever possible, the analysis and views have been supplemented by the available secondary material – academic papers, monographs, articles, etc.

Part 2

Current City Approach to Lobbyist Registration

It is clear from our research, as evidenced in current policies and procedures, that City officials are very much aware of the existence of lobbying and the challenges/issues that this can present. In terms of formal policies, the City currently deals with lobbying in four ways:

- A Conflict of Interest policy for employees who may also be involved in outside organizations that may, from time to time, lobby the City, e.g. for funding, new programs, etc.
- Guidelines for city employees (again under the Conflict of Interest policy) that provide clarification as to what constitutes lobbying/a lobbyist and a set of standard questions that staff should ask themselves when contacted by an outside individual that will help them determine whether that individual is, in fact, a lobbyist.
- A requirement that bidders on large contracts that intend to contact Councillors directly with respect to their bid, register with the Clerk of Council.
- A recent decision by some councillors to put “log books” in place to record visits by lobbyists: in effect, a form of voluntary registry.

General Comments

The current policies do not, nor were they intended to, constitute a lobbyist registry along the lines of what is in place at the Canadian and U.S. federal governments, various provincial and state governments, and some large U.S. municipalities. In the late 1980's and early 1990's the City made various efforts

to put a more robust lobbyist registry in place, having passed a by-law as early as 1989 that:

- Defined a lobbyist as a person acting on behalf of others with respect to an issue and doing so for remuneration and/or compensation.
- Required all lobbyists to file a form with the Clerk showing the name of the lobbyist, the employer(s) or client(s) of the lobbyist, and the issues on which the lobbyist was appearing.
- Allowed for fines of up to \$2,000 for lobbyist who undertook their lobbying activities without first registering.
- Defined an undertaking to include oral or written deputations to Council, its committees, or agencies and any communication, oral or written, with Councillors or senior staff.

However, these various by-laws were ultimately repealed by Council, apparently in response to:

- A general lack of evidence that the approach adopted at the time was seen as being of value to Councillors, staff, the general public.
- Legal challenges, primarily from within the legal community with respect to whether lawyers could be regulated as lobbyists.
- Concerns about adequacy of authority under the previous Municipal Act.
- Concerns about administrative burdens on City officials.

The various policies noted above (and described in more detail later in this section) can be seen as part of a broader and longer term effort to shape the culture and behaviour of the new City since amalgamation. As suggested to us in a number of interviews, the importance of taking action in this regard was recognized by senior administrative officials in the early days of the new City, particularly given the different experiences, approaches, etc. of the various amalgamating organizations. However, in the period immediately following

amalgamation the priority and overwhelming focus of senior staff time and attention was by necessity on other pressing matters such as maintaining service levels to the public, setting up decision-making processes, completing the organizational design, human resources/collective bargaining issues, etc.

In the subsequent years, efforts to shape the operating culture of the new City focused on the integration/development of various policies and procedures related to ethics/integrity, transparency, and accountability. With respect to integrity and transparency, this policy development included:

- A conflict of interest policy for Council members.
- A conflict of Interest policy for staff, with conflict of interest components built into the performance management system for senior staff.
- Inclusion of conflict of interest provisions in RFPs.
- An interim complaints protocol and procedures governing Council behaviour.

More recently, the City has developed a *People Strategy* that attempts to move beyond the policy development phase to a more sustained and people-focused effort to shape and embed cultural expectations. This includes defining public service values and expectations for excellence and engaging staff in understanding and participating in a shared City culture.

As reported to us, this shift has been hastened by the recent computer leasing issue. One of the consequences has been a significantly higher level of awareness within the administration and Council with respect to the prevalence of lobbying. On the administration side in particular, this led to discussion and agreement at the senior level with respect to what constitutes appropriate behaviour and is viewed as having resulted in a significant “cooling out” with respect to lobbyist access. This includes a new requirement for staff to seek more senior approval in order to accept lunches, dinners, invitations to sporting

events, etc. It also includes greater emphasis on channelling lobbying efforts into more formal decision-making processes, e.g. directing unsolicited proposals into the procurement/purchasing process. With respect to Council, the response has included the creation of a voluntary registry and a formal proposal for an Integrity Commissioner and more comprehensive lobbyist registry.

From our perspective, these post-computer leasing developments have major relevance with respect to lobbying. As will be suggested later in this report, the extent to which lobbying poses a problem for any government relates very much to what is deemed to be acceptable and unacceptable behaviour by the public office holders themselves. In Toronto's case, this would be how both Councillors and political and administrative staff deal with and respond to lobbyists. Furthermore, it is important to understand that the behaviour of public office holders with respect to lobbying shapes and sets the stage for how lobbyists behave.

As presented in Part 4, the awareness of lobbying issues is very high at the City of Toronto but in practice, a consistent and disciplined organizational approach is not yet in place. As we suggest in our recommendation in Part 5 of this volume, a lobbyist registry can be part of this disciplined approach but in and of itself has not been proven to be an effective tool for changing behaviour and enhancing public confidence. It is essential that organizations be clear internally about what constitutes appropriate (and inappropriate) responses to different types of lobbying activity and then through various policies and practices, to embed those responses in its operating culture.

City of Toronto Lobbyist-related Policies

The following is an overview of the current status of lobbyist related policies and practices at the City of Toronto.

Lobbying Policy for Employees with Involvement in Outside Organizations (2000)

The current City Conflict of Interest policy anticipates that employees may be involved in outside organizations that from time to time, may lobby City officials for a particular decision, e.g. as a Board member of a community group or agency that is making a funding request.

The policy requires that employees who are involved in outside organizations that are making a brief to the City and/or planning to meet with City officials to argue their case, are required to declare a conflict of interest and exempt themselves from contributing to the brief or participating in the lobbying activity.

Guidance re What Constitutes Lobbying/Whether a External Contact is a Lobbyist (2000)

Appendix 2 of the City's Conflict of Interest Policy provides for definitions of what constitutes lobbying and includes advice to staff in the form of questions that they should ask themselves in determining whether an external contact is, in fact, a lobbyist.

What constitutes lobbying?

The City's definition of what constitutes lobbying is similar to definitions in place at the provincial level in Ontario, B.C. and Nova Scotia, as well as the current federal definition, bearing in mind that this definition will change when Bill C-15, already passed by Parliament, is enacted. (Note: *Appendix II of Volume 1* includes a discussion of the new federal requirements that focus on the more general "communicating" with public office holders, as opposed to the more specific and in our opinion, more manageable and relevant "attempting to influence". This change flows from a Court decision that highlighted similarities in language between "influencing decision-making" under lobbyist legislation and the Criminal Code language related to influence peddling.

The following is the current City of Toronto description of what constitutes lobbying:

Lobbying is usually defined as direct or indirect efforts to solicit support and influence government decisions on behalf of another party or an organization, often away from public scrutiny.

What is not considered to be lobbying?

The City has a high level definition which, again, is consistent with the provincial and current federal approaches, in that it exempts routine inquiries for advice and/or information, committee deputations, or other processes that are a matter of public record. (Note: as outlined in *Appendix II*, Bill-C15 changes the federal requirement to be broader in that lobbyists will be required to register even if a public servant has initiated the contact.) The current City policy indicates that:

Lobbying activity is to be distinguished from routine advice seeking by members of the public, or contacts by members or employees of

government conducting official business. Lobbying is also distinguishable from matters that are the subject of committee deputation, or other processes that are a matter of public record where individuals are named and their interest and organizational affiliation identified.

What are the different types of lobbyists?

In this regard, the current City policy (see italics below) is consistent with the various provincial and federal definitions, with the exception that the City has included a fourth category – volunteer lobbyist – where the lobbying activity takes place without compensation:

- *"Consultant lobbyist" means a person who, for payment, lobbies on behalf of a client and includes, but is not limited to, government relations consultants, lawyers, accountants, or other professional advisors who provide lobbying services for their clients;*
- *"Corporate in-house lobbyist" means an employee of a corporation that carries on commercial activities for financial gain and who lobbies as a significant part of their duties;*
- *"Organization in-house lobbyist" means an employee of a non-profit organization, when one or more employees lobby public office holders and where the accumulated lobbying activity of all such employees would constitute a significant part of the duties of one employee; and*
- *"Volunteer lobbyist" means a person who lobbies without payment on behalf of an individual, corporation, or organization.*

Questions staff can ask themselves to determine whether they are being lobbied

The policy includes the following questions that are intended to be used by staff to assist them in determining whether they are, in fact, being lobbied:

- *During the past year, has the contact person attempted to influence you personally, for example, in any administrative action that would have benefited him or her or his or her employer financially?*
- *Does the contact person do business or seek to do business with the City?*
- *Is the contact person seeking to influence outcomes outside a public forum on a matter involving, for example, a license, permit or other entitlement for use currently pending before the city?*
- *Is the contact person a provincially or federally registered lobbyist employer or a client of a registered lobbyist? (Refer to the respective web sites)*
- *Is the contact person a provincially or federally registered lobbyist or lobbying firm?*
- *Does the contact person fall within the definitions provided above?*

Direction to Staff re how to respond to/deal with lobbyists?

The policy is not specific in terms of guidance to staff for how they should respond to/deal with lobbyists. The policy states:

Employees shall be vigilant in their duty to serve public interests when faced with lobbying activity.

Lobbyist Disclosure Information Policy: Registering Bidders on Large Contracts (2001)

As noted in *Volume 1*, the City's current policy on Lobbyist Disclosure Information was not intended to be a more comprehensive approach to the registration of lobbyists.

The focus of the policy is specifically on various components of the competitive tendering process. The policy specifically acknowledges that, as part of the City's current approach to procurement, bidders on City contracts are allowed to contact elected and appointed City officials as part of promoting their own bids and opposing the bids of competitors.

The following are the details of the policy:

- The policy applies only to purchases above the City's Bid Committee award limit of \$2.5 million.
- The policy deals with communication by bidders to "members of Council, city officials, appointed members of any City board, agency, commission, task force, or related organization".
- The policy requires that bidders wishing to communicate with any of the above be required to disclose that communication to the City Clerk.
- The policy specifically exempts communication to the "authorized City project contact person", i.e. the staff person officially designated in the RFP/tender call as the contact person for bidders.
- "Communication" is defined generally to include, but not be limited to "all meetings, written correspondence, and telephone conversations".
- Communication includes actions undertaken by employees of the bidding organization, as well as by a third party representative (e.g. consultant

lobbyist) “employed or retained by it to promote its bid/proposal or oppose any competing bid/proposal.”

- Disclosure is made by completing a form provided by the City Clerk’s Office. The form requests the following information:
 - The number of the competitive call/RFP.
 - The name, business address, and telephone number of the bidder.
 - The name, business address, and telephone number of the bidder’s representative (either retained or employed).
 - The list of individuals that were (note – past tense) contacted by the bidder.
- The form must be submitted prior to the contract being awarded (as opposed to prior to the lobbying activity actually taking place).
- Failure to disclose may result in rejection of a bid.
- Copies of the completed disclosure forms are posted on-line via the City’s web-site or available in person during regular business hours at the City Clerk’s Office.

At the time of writing, 17 disclosures from 15 different organizations were available on-line. The completed forms are presented as scanned PDF (Adobe ACROBAT) files – in effect, downloadable photocopies of the original. There is no searching capacity or accessible summary information available on the web site. To learn more about each disclosure, it is necessary to download the PDF versions of the actual submitted forms (a typical three-page form ranges in size anywhere from 13 to 24 megabytes).

Lobbyist Registration Logbooks

In September 2003, Council approved a staff proposal to create a formal lobbyist registry with oversight provided by an independent integrity commission (see Part 3 of this report for a summary of the proposed approach). However, the proposed approach is largely contingent on provincial enabling legislation. In the meantime, a number of Councillors have set up voluntary registries in their offices in the form of logbooks.

The practice is that lobbyists who are visiting those councillors' offices are asked to record their name, their organization/client, and the subject of interest.

Part 3

Current City of Toronto Proposal

In August 2003, the City's Ethics Steering Committee made a recommendation to Council that it accept a staff report (jointly made by the CAO and City Solicitor) for the establishment of a Lobbyist Registry modeled on the registry in place for the Government of Ontario. A copy of the report to Council is included as *Appendix A*. The report was accepted by the previous Council in September 2003.

At this stage, the City's proposal requires further definition in some areas. In discussion with staff, it was suggested that this level of detail would not be developed until after the November 2003 municipal election and potentially not until at least some initial discussions have taken place with the Province concerning additional legal powers for the City. With this as a backdrop, this section focuses on providing a general overview of the City's proposal. In Part 5 we make a number of recommendations that we believe would enhance the effectiveness of the City's efforts.

The City's proposed approach is very consistent with the general approach to lobbyist registration in other jurisdictions. This has both strengths and weaknesses. In its favour, the approach is at least as rigorous as that of the Ontario Government and even goes further in some areas, such as identifying volunteers as lobbyists and (subject to further discussion at Council) requiring lobbyists to identify individual Councillors and their staff who are being lobbied. In doing so, the City would be positioned clearly within the mainstream of lobbyist registration in Canada and the U.S. (taking into account obvious differences between Canadian and U.S. political life, i.e. campaign financing laws, etc.)

In terms of weaknesses, we return to the conclusions we set out at the end of *Volume 2* on lobbyist registration.

- That despite the various qualifiers expressed by registry officials and lobbyists alike, lobbyist registries are, in fact, about public confidence in government.
- How lobbyist registries perform in terms of restoring, enhancing, or forestalling declines in public confidence in government is the most important test of effectiveness and, ultimately, of whether the expenditure of public resources to create a registry was worthwhile.
- The research and expert opinion indicates that lobbyist registries for the most part do not perform well in many key areas and that as currently constituted may not be worth the expenditure of public resources. Among these key areas, is the general lack of emphasis on which public office holders are being lobbied and the nature of the decisions that lobbyists are attempting to influence.

The following are the major elements of the City's proposed approach:

Oversight by an Integrity Commissioner

Oversight of the registry would be provided by an independent City Integrity Commissioner. The intention is that this Commissioner, initially a part-time position, would include the power to:

- Prohibit individuals from lobbying City officials without being registered.
- Revoke or suspend a registration.
- Require disclosure of information/activities by lobbyists.
- Issue interpretations that have legal effect.
- Recover fees.

- Assess penalties up to \$25,000 for persons convicted under the by-law.

The Commissioner would also have broader responsibilities related to ethics at the City, including:

- Complaint assessment/investigation related to Council's Code of Conduct.
- Giving advice to members of Council on potential conflict of interest situations.
- Publishing an annual report on the findings of typical cases/inquiries.
- In cases where a member of Council has been found to be in violation of the code of conduct or other matter, recommending to Council that a penalty be imposed with Council making the final decision with respect to whether and what penalty will be enacted.

Definition of Lobbying

Lobbying would be defined as “communicating with a public office holder in an attempt to influence,

- The development of any legislative proposal by the Council or a member of Council.
- The introduction of any bill or resolution in Council or the passage, defeat or amendment of any by-law, bill or resolution that is before Council.
- The development or amendment of any policy or program of the City or the termination of any program of the City.
- A decision by Council to transfer from the City for consideration all or part of, or any interest in or asset of, any business, enterprise or institution that provides goods or services to the City or to the public.
- A decision by Council to have the private sector instead of the City provide goods or services to the City.

- The awarding of any grant, contribution or other financial benefit by or on behalf of the City.
- The awarding of any contract by or on behalf of the City.
- Arranging a meeting between a public office holder and any other person.”

Classes of Lobbyists

The proposal creates four classes of lobbyists, the first three of which align with the current definitions in place for Ontario and the Government of Canada:

- “Consultant lobbyist” – a person who, for payment, lobbies on behalf of a client and includes, but is not limited to, government relations consultants, lawyers, accountants, or other professional advisors who provide lobbying services for their clients;
- “Corporate in-house lobbyist” – an employee of a corporation that carries on commercial activities for financial gain and who lobbies as a significant part of their duties;
- “Organization in-house lobbyist” – an employee of a non-profit organization where one or more employees lobby public office holders and where the accumulated lobbying activity of all such employees would constitute a significant part of the duties of one employee; and
- “Volunteer lobbyist” – a person who lobbies without payment on behalf of an individual, corporation, or organization.

Disclosure Elements

The current draft by-law does not include the specific disclosure requirements. The intention was that these would be articulated at a later stage after further discussion. However, the policy paper prepared by City staff points to the same

kinds of general disclosure requirements in place for the Ontario and federal registries, including:

- Basic information on the individual lobbyists/lobbying organizations including names, addresses, nature of the business, information on other parties who have an interest in (e.g., a subsidiary or parent corporation) or who support the lobbying activity by contributing at least \$750.00).
- Whether the client/lobbying organization receives government subsidies or other funding.
- Whether the lobbyist is being paid on a contingency basis (i.e. payment is contingent on a successful outcome to the lobbying.)
- The subject matter of lobbying and, if an in-house lobbyist, the subject matter during the six months period of a return and the expected subject matter for the next six months.
- Specific information on the lobbying activity, e.g., the proposed bill or program that is the focus of the lobbying effort.
- The department, agency, etc. they have lobbied or expect to lobby.
- Councillors or Councillors' staff that they have lobbied or expect to lobby.
- The communication techniques to be used, including "grass-roots communication", letters, etc.

Need for Provincial Enabling Legislation

The City's proposal is contingent on the Province of Ontario passing enabling legislation. This could take the form of legislation that was specific to the City of Toronto or more general legislation that would apply to all municipalities in the province.

This enabling legislation is necessary if the City is to establish a lobbyist registry in the provincial/federal model, let alone to implement the recommendations as

set out in Part 5. This is particularly true with respect to aspects of the City's proposal that would give the kind of investigatory and enforcement "teeth" to the Integrity Commissioner and registry that the research indicates is critical for effectiveness. It includes the proposed exemption from Freedom of Information requirements, the ability to set fine levels, the power to make legal decisions about contraventions being divided between Council and the Integrity Commissioner, and the power to conduct an inquiry and access information under oath.

However, the City's ability to take action is not entirely contingent on provincial legislation. It may be possible for worthwhile elements of the City's approach to be implemented, albeit without the extent of the enforcement capacity that is ultimately required, including:

- Hiring an Integrity Commissioner that is focused on providing non-binding conflict of interest advice and interpretations for Councillors and City staff.
- Hiring someone to investigate code of conduct or other types of ethics policy infractions including violations of the lobbying or other ethics related aspects of procurement policies, etc. While this kind of investigation would not include the capacity to compel cooperation, there are many precedents within government for this type of approach, i.e. internal investigations into allegations of harassment or discrimination in the workplace.

Also in the absence of provincial legislation, many of the more specific concerns about lobbying could be addressed in part through other policies and practices. This could include, for example, rules for lobbying related to procurement, development, or public-private partnerships (as reported to us in interviews, the three most prevalent types of lobbying to which City officials are subjected) that would more clearly define and limit how and when lobbying can take place and how public officer holders at the City should respond to different types of lobbying

efforts. This would be consistent with recommendations made in Part 5 of this volume dealing with more definition with respect to how City officials should deal with different types of lobbying and then embedding these as operating values.

Part 4

Lobbying at the City of Toronto

The purpose of this section is not to reproduce an exhaustive series of anecdotes chronicling good and bad behaviour at the City related to lobbying. The research indicates that virtually everyone at City Hall has both positive and negative stories about lobbying. Rather the intention is to focus on the general trends and themes as evidenced in the research.

Why a lobbyist registry for the City of Toronto?

We begin with the question of “why a lobbyist registry for the City of Toronto?” This is the essential question because it frames the problem to be solved and in doing so establishes the basis for evaluating effectiveness. Put another way, if lobbying is a legitimate part of the public policy process, why does it need to be regulated?

Consistent with the experience of other jurisdictions, the immediate impetus for a lobbyist registry for the City comes from the political level. This was clearly demonstrated during the recent municipal election campaign in the City of Toronto. Most if not all of the candidates for Mayor identified relationships between lobbyists and public office holders as an “integrity issue”.

References were made to various forms of undesirable behaviour, e.g. “backroom decision-making”, “cronyism”, etc. The general concern appears to be that business is conducted behind closed doors by a host of political insiders – former councillors, former political and administrative staff, campaign officials, fundraisers, etc. – on behalf of unspecified outside interests. Implicit or inferred

in this is that by hiring one of these insiders, an outside interest receives some form of advantage.

In light of this public discussion, it would be reasonable for citizens to have an understanding that the problem to be addressed is more than just a matter of transparency for its own sake (as discussed in Volume 2, transparency is often put forward as the primary objective of most lobbyist registries). That understanding would include the view that changes in behaviour are necessary as part of enhancing public confidence. From our perspective, this important point sets the stage for whatever action the City will take in the future.

What does the research say about lobbying at the municipal level in general?

In *Volume 1* the view was expressed that a typical Ontario municipality has a mix of structural characteristics – some of which would tend to encourage more activity along the lines of the U.S.-style lobbying of legislators, and some of which would tend to mitigate lobbying. To recap those findings:

- Structural characteristics of Ontario municipalities that would tend to encourage more lobbying include:
 - A more diffuse decision-making process that involves a larger number of elected officials (in Toronto's case, its 44 member Council) in a very public setting.
 - No elected Executive Branch of municipal government with statutory powers to lead/dominate decision-making at the Council level.
 - An emphasis on relatively equal roles and responsibilities for individual Councillors, including equal voting powers and debating opportunities.

- The absence of party discipline and rigidly enforced party-based voting blocks, in favour of a system, by design, of an ongoing series of what are, according to observers, less political unaligned and constantly shifting coalitions.
- Structural characteristics of Ontario municipalities that would tend to mitigate lobbying include:
 - The relatively low financial cost to run for public office and significant limitations on campaign expenses, thereby reducing the need for candidates to be dependent on large amounts of third-party/lobbyist-related campaign financing.
 - The presence of an extensive and, ideally, trusted professional bureaucracy that can provide substantive, objective research, analysis and advice, as well as effectively manage public consultation across the full range of government issues and stakeholders.

Given these findings, the following major conclusions are offered with respect to lobbying at the municipal level in Ontario:

- *Larger Councils:* Municipalities, particularly those with larger Councils such as the City of Toronto, can legitimately be expected to be the subject of more of what we would call “legal lobbying” than would a provincial or federal legislature.
- *Trust in the bureaucracy:* The bureaucracy’s capacity to mitigate the need for lobbying appears to be highly dependent on the extent to which it is trusted by Council, e.g. that Council is comfortable delegating responsibility for public consultation and for the analysis, synthesis, and integration of competing positions from external organizations.

- *Delegation:* In many Ontario municipalities, delegation from Council to the administrative staff may not take place to the extent that would be required for the bureaucracy to function more effectively as a check on lobbying at the political level. This appears to happen most often because of either:
 - A lack of trust in the bureaucracy based on real or perceived demonstrated performance.
 - The tradition of Ontario municipalities (and current practice in many instances) still leans towards Councils as having significant involvement in operational decision-making, as opposed to focusing on setting policy and holding staff accountable for its implementation.

What did we hear about lobbying at the City of Toronto?

With these general findings in mind, the following are some of the highlights of our discussions related to lobbying at the City of Toronto:

- Lobbying has been generally pervasive at the City of Toronto in the wake of amalgamation and given the existence of larger economic opportunities for outside interests. Lobbyists have been and continue to be a familiar presence at City Hall and in particular on the second floor where Councillors' offices are located – a phenomenon known apparently in City circles as “working the second floor”.
- The bulk of lobbying at the City has taken place in three main areas:
 - Developers and the development industry – related primarily to variances that need to be approved by Toronto City Council.

- Procurement (purchasing decisions related to tenders, requests for proposals, etc.) decisions – as reported to us, primarily related to decisions that have not been delegated by Council to the staff level.
- Public-private partnerships – what are often unsolicited proposals from the private sector, venture capitalists, and others for new models of service delivery that tend to be presented as providing for more effective service, reduce costs, increase revenues, etc.

Lobbying by social agencies related to funding from the City and trade unions related to jobs and City services has also been noteworthy.

- Within the private sector, lobbyists at Toronto City Hall are seen by some as being more “intrusive” with politicians than they would be with politicians at the provincial or federal level. This was defined for us as a generally much more direct and open involvement with elected officials, e.g. attending Council meetings, providing clients with assurances about arranging meetings with politicians, providing assurance that the client’s issues or concerns will be brought to the attention of Councillors. It was suggested that this more intrusive behaviour is in part because City politicians are seen as much more open and accessible to lobbying contacts than their provincial or federal counterparts.
- Lobbyists have provided Councillors with information and questions that actually improve the quality of debate at Council meetings. By the same token, lobbyists sometimes have provided Councillors with inaccurate or misleading information/perceptions that can take inordinate amounts of staff time and effort to respond to and rectify.
- Lobbying efforts have not often resulted in Councillors changing a staff recommendation. It is more likely that the lobbying would have resulted in

a delay in the process as the staff are sent back to do more analysis. Generally speaking, however, if the staff analysis and recommendations are well thought out and if Council has confidence that the staff in question are competent and respected, the staff recommendations have been accepted eventually.

- Lobbying of City officials has for the most part taken place since amalgamation in the absence of a clearly established set of norms for what constitutes acceptable behaviour on the part of lobbyists or acceptable responses to lobbying by public office holders, i.e. what to do with the lobbyist's advice, suggestions, requests, etc.
- How Councillors respond to lobbying efforts can depend on an individual Councillor's view of their own role to provide direction to the staff. The area of unsolicited proposals provides an example of this. Some Councillors, upon receipt of an unsolicited proposal, might thank the lobbyist for their time and indicate that they will forward the proposal "FYI" to the appropriate department head. Other Councillors might call into a department, ask the staff to respond to the lobbyist's claims of savings and direct the staff to meet with the lobbyist. Middle-level or even more senior staff may be reluctant to disregard direction of this kind, particularly from especially powerful or influential Councillors
- How staff respond to a lobbyist can depend on who that lobbyist is and the real or perceived nature of their relationship with Councillors. Some of the most problematic lobbying apparently involves former councillors and staff who are seen as attempting to take advantage of their relationships with current Councillors and staff or who attempt to intervene with/provide direction to staff as if they were still in their official capacities. Staff may have found it difficult to deal with former Councillors who are now lobbyists but who apparently act as if they were still Councillors and

entitled to provide direction to staff. In addition, staff are generally aware of whether and to what extent individual lobbyists are “connected” to Councillors, particularly powerful/influential Councillors.

- In the wake of the recent computer leasing issue, there is clearly a heightened awareness of and sensitivity to lobbying at both the political and bureaucratic levels, and in particular to lobbying that seeks to influence decisions outside of the established decision-making process or delegated roles and responsibilities. It is also apparent that lobbying has diminished significantly since the recent computer leasing issue, particularly with administrative staff.
- At the same time, however, the recent computer leasing matter and other challenges are viewed as having reduced the general confidence that Councillors feel in the public service and make them more likely to be prepared to “second guess” staff advice and decisions and, in doing so, open the door for more lobbying of individual Councillors.
- It was suggested that Councillors have become increasingly aware of ethics and integrity related issues and public perceptions related to lobbying. This increased awareness is demonstrated through measures such as the creation of the Ethics Steering Committee, the interim complaints protocol for Councillors and the proposed integrity commission and lobbyist registry. However, there is also a sense that Councillor behaviour does not always reflect the policy as it exists on paper and that Council has generally not been very effective in terms of policing/enforcing behaviour on its own members.
- It was suggested that Councillors are not always satisfied with (or in all cases, clearly understand or agree with) being in the “governing role”. Depending on their own professional background, they may be more used

to managing/operating than governing. Furthermore, their constituents, including lobbyists, do not always understand this distinction and expect that they will be able to intervene directly with staff, etc. on their behalf. Given this, some Councillors might see any measures that would limit how they are to respond to different types of lobbying efforts, as a limit on their real and/or perceived power as an individual Councillors (as opposed to as a measure that makes for more effective public decision-making). More importantly, their constituents could see them as less powerful and influential.

- Lobbying at the City is seen as being related to fundraising for municipal Councillors. Lobbyists and lobbying organizations such as developers and suppliers of goods and services are recognized within the City as major contributors of campaign funds. The issue, however, is not one of whether this funding inappropriately affects decisions by Councillors. Rather it is one of access. The apparent concern is that if Councillors were less accessible to lobbyists and lobbying organizations or, at a minimum, to be less likely to take individual action on behalf of the lobbyist, their fundraising capacity could be impaired.

Conclusions about Lobbying at the City of Toronto

In drawing conclusions about lobbying at the City of Toronto, it is important to restate that everyone at City Hall has both good and bad stories about lobbying. Furthermore, what constitutes good or bad lobbying is most often in the “eye of the beholder”. However, based on our research and interviews, we want to highlight the following themes:

Defining Good and Bad Behaviour

A recurring theme in the research is that culture is a major pre-determinant of the extent to which any organization encounters ethics and integrity related challenges. Organizations that are serious about operating with high ethical standards usually demonstrate this through sustained and well-resourced efforts to develop, support, and reinforce the desired operating values. Policies and procedures are an important way to reinforce and put structure to the desired culture at the operational level.

It is clear from our research that in the wake of amalgamation, the City of Toronto has taken steps to define and reinforce a consistent culture of ethics and integrity at both the bureaucratic and political levels, including procurement and conflict of interest policies. It is also apparent that the difficulty and complexity of bringing together the different operating approaches of the amalgamating municipalities cannot be underestimated.

As reported to us, this shift has been hastened by the recent computer leasing issue. One of the consequences has been a significantly higher level of awareness within the administration and Council with respect to the prevalence of lobbying.

However, this falls short of more formalized and consistently accepted thinking, definitions, etc. with respect to lobbyist activity such as:

- What should be viewed as good and bad lobbying?
- What constitutes appropriate vs. inappropriate behaviour by City officials with respect to lobbying?
- How should different types of lobbying be dealt with relative to existing decision-making process, roles, and responsibilities, etc. within the City?
- What are the best practices for Councillors in terms of taking action in response to lobbyist requests?

- Should staff at different levels be able to “push back” at Councillors – particularly more powerful Councillors – who are attempting to take individual action in response to lobbyist pressures?

Roles and Responsibilities

As emphasized elsewhere, it is not whether and to what extent Councillors and administrative staff remain accessible to in-house and consultant lobbyists, but rather what action they take with the staff as a result of that lobbying contact that matters. Clearly, the governance model for the City of Toronto emphasizes the overall role of Council either as a whole or through its various committees to provide direction to the staff and has in place many transparent/public decision-making processes. In practice, however, it is not always quite as clear and consistent.

Our interviews indicate that individual Councillors often contact staff – not just senior staff but staff at a variety of levels – in response to a lobbying contact. The purpose of the contact can vary depending on the Councillor and their view of their own role in relation to the staff and the lobbyist. These purposes can include:

- Advising the staff that they met with a lobbyist/lobbying organization and that they have referred the individual to the staff as the appropriate point of contact.
- Asking the staff whether they are aware of the issues raised by the lobbyist.
- Asking the staff person to respond to various concerns or allegations put forward by the lobbyist.
- Requesting/directing the staff to meet with the lobbyist, including even if the staff have already had contact with the lobbyist.

- Requesting that staff give formal study to the lobbyist's proposal and bring forward an analysis for Council.

In terms of the relationship between Councillors and staff, this raises a number of issues:

- In which situations is it appropriate for individual councillors to be contacting middle and junior staff directly on matters that have been the focus of lobbying efforts.
- Whether individual Councillors should be attempting to provide direction to staff on these matters.
- Whether staff feel they have the capacity or permission to push back at these kinds of requests.

The prevailing culture at the City does not appear to be one where all staff feel that they have the capacity to politely decline an administrative request from an individual Councillor in response to a lobbying contact. By capacity, we mean that there is a clearly understood expectation of what kind of behaviour is expected in a given situation and that this behaviour will be supported and reinforced by the senior staff and other members of Council. The response seems to vary department by department and also depending on the Councillor involved and their own personality, level of insistence, demonstrated capacity to reward or punish cooperative bureaucrats, etc.

Trust in the Staff/Perception of Too Much Influence

As one interviewee suggested, if Councillors had a high level of trust in the administrative staff, they would be more likely to simply listen politely and refer lobbyists to the appropriate staff person and/or existing policy decision-making process, e.g. deputation before the appropriate Committee. This would include,

for example, unsolicited proposals for goods and services, a request for a grant, a density transfer, a complaint about an unsuccessful contract award, etc. Staff would be expected to gather the various views on a particular issue, including the views put forward by the lobbyist, and to reflect those views along with their own analysis and advice in a report to Council.

It appears, however, that a sufficient level of trust may not exist at the City of Toronto at this time. This has been heightened in the wake of the recent computer leasing issue but according to many observers predates this development. Some have suggested that its origins go back to the formation of the new City and the fact that the senior staff of the City were selected by the Transition Team as opposed to Council itself, i.e. were “not their people”.

This distrust is exacerbated by a more general concern of Councils in many municipalities including the City of Toronto, with respect to what they perceive to be the increasing power of public servants. As suggested to us, this perception is a result of a number of factors coming into conflict with the traditional “hands-on”, local/operational orientation of many municipal Councils in Ontario, including:

- The increasing size, scope, and complexity of municipal issues.
- The increasingly large and professional class of municipal managers.
- The emerging *best practice* in municipal governance whereby Councils are focusing more on their governing/policy making role, rather than being more operationally focused.

According to this view, Councillors could be expected to react negatively to any efforts to put more structured approaches to dealing with lobbying in place on the grounds that Councillors will become less powerful and public servants too powerful.

Part 5

Recommendations

Effectiveness of Lobbyist Registries

Volume 2 examined whether and to what extent lobbyist registries are effective tools in two important ways:

- The extent to which, in and of themselves, they change behaviour and result in a higher standard of ethical behaviour with respect to the interaction between external interests and public office holders.
- The extent to which they result in enhanced public confidence in the integrity of government decision-making.

As discussed in *Volume 2*, the evidence on these two fronts is not encouraging.

Lobbyist registries almost uniformly have their origins in various scandals or related public concern about integrity in government. When governments have announced their intentions to create registries, they have often talked about the need to restore public confidence, end the back room deals, etc. In the process of implementing registries, however, most governments appear to back away from this original intent.

There is a definite tendency, when it comes to the point of actually “putting policy on paper” for governments to reposition their registries as being about transparency for its own sake, as opposed to being clear that the intention is to raise standards of behaviour or enhance public confidence. Our interviews with registry officials confirmed that the decision to narrow the scope of registries was made at the political level – in effect, politicians could not be convinced to go

further in terms of measures that would be more likely to effect behaviour, often stating cost as the major issue.

In Canada and the U.S. the general public has not demonstrated an active interest in the information contained in lobbyist registries. The more extensive experience of the U.S. indicates that the primary users of the information – the media, political campaigns, advocacy groups, and even lobbyists themselves – more often make use of the information in a way that damages, rather than enhances, public confidence in public sector decision-making.

Part of the problem appears to be that the registries themselves provide only very limited disclosure with the focus primarily on the identity of the lobbyist, the identity of their client (in the case of consultant lobbyists) and the very general subject matter focus of the lobbying. Simply put, the information is not sufficient to allow a member of the public to determine whether and to what extent the lobbyist has successfully influenced public decision-making.

This is not to say that transparency for its own sake is not a public good. However, it is clear from the research that transparency in and of itself will not have the kind of impact that the general public, media, and politicians often appear to assume will result from putting a traditional lobbyist registry in place.

Is There Such a Thing as Good and Bad Lobbying?

As noted elsewhere, virtually all lobbyist registration starts from the premise that lobbying is a legitimate part of the public policy process. However, this is not the same as saying that all lobbying is good. Clearly from the research, lobbying, regardless of the jurisdiction, includes both good and bad behaviour. This is reinforced by the fact that lobbyist registries have been established in response to politicians' and the public's concerns about integrity in decision-making.

Is it really possible, however, to define the difference between good and bad lobbying? As demonstrated in the recommendations that follow, we think that, at least at a high level, it is important to take this step. The following are some suggested principles that we hope can be used to inform the coming debate at the City with respect to implementing its lobbyist registry.

For the purpose of this discussion we would define “good lobbying” as communication with public office holders that:

- Emphasizes accurate information and analysis.
- Is respectful of the decision-making processes that exist within an organization.
- Is transparent with respect to who is meeting with whom, which decisions are being sought, and what are the arguments being made.
- Focuses on attempting to inform and educate within those decision-making processes.
- Respects the respective decision-making roles and responsibilities of public office holders (for example, between and among politicians and administrative staff).
- Does not put public office holders in real or perceive conflicts of interest or in violation of other policies such as procurement/purchasing.

For the most part, if lobbying was confined to these kinds of activity, there would likely be much less demand for lobbyist registries. As the research indicates, however, lobbyist registries are generally created out of concerns about a lack of integrity in the relationship between lobbyists/lobbying organizations and public office holders. As such, “bad lobbying” would include:

- Attempts to create an advantage as a result of personal relationships or obligations with a public office holder.

- Attempts to convey misleading or inaccurate information.
- Lobbying that is not transparent with respect to who is lobbying, who is being lobbied, what decisions are being sought, etc.
- Lobbying that communicates with public office holders without regard for real or perceived conflicts of interest or that attempts to put them in violation of other ethics related policies, e.g. procurement, limits on gift giving, etc.
- Efforts that do not respect the established roles and responsibilities of public office holders or decision-making processes, including attempts to get public office holders to step outside those processes.

This kind of lobbying includes most of the negative stereotypes that have become so familiar to the public, including:

- Gaining access to “inside” information that would not otherwise be publicly available.
- Using relationships with politicians to have staff be directed to meet with you or, if you have already met with them, to take a “second look” at your proposal.
- Asking politicians to weigh in with staff to influence their recommendations to Council.
- Inviting politicians and bureaucrats to “social” opportunities (trips/vacations, professional sports events, golf tournaments, etc.) for the purposes of creating “good will”, particularly if they are now, or in future will likely be, in a position to decide upon your issue.
- Asking politicians to overturn or otherwise intervene in decisions (e.g. contract awards, grant decisions, etc.) that have been delegated to staff.

Recommendations

As discussed earlier in this paper, one of the major limitations of most lobbyist registries is their almost exclusively focus on the behaviour of the lobbyists. To be sure, this can be a critical part of ensuring high standards of ethical behaviour within government. At the end of the day, however, it is not solely about the lobbyists themselves, but as much or perhaps more so about how a government and individual public office holders within that government deal with these efforts.

The research indicates that it is the operating values of an organization and the decisions of public office holders relative to those values that determine the extensiveness of both good and bad lobbying. In defining these values and making decisions, public office holders also influence and shape the behaviour of the lobbyists themselves. Simply put, if the culture of the City defines and reinforces good behaviour, it is more likely that good behaviour will result. Conversely, to the extent that bad behaviour is countenanced and rewarded, the result will inevitably be more bad behaviour.

With this in mind, recommendations for enhancing the effectiveness of the City of Toronto's proposed lobbyist registry are presented in three parts:

1. Enhanced disclosure of who is being lobbied and the nature of the decision that the lobbyist is attempting to influence.
2. Defining how the City itself will respond to and deal with lobbying efforts and embedding those responses in the City's operating culture.
3. A number of more operational recommendations related to the more detailed mechanisms of the lobbyist registry.

Also, in making recommendations to strengthen the City's proposed approach, we want to reiterate three important points:

- In making these recommendations, we are in no way suggesting that lobbying is not a legitimate part of the political process. The research is clear that much of what constitutes lobbying does provide value to the process for clients, politicians, and bureaucrats alike.
- We are not suggesting that Councillors, their staff, or administrative staff should be restricted from meeting with lobbyists and lobbying organizations. The general concern appears to be not whether a Councillor or staffer meets with a lobbyist, but rather what that Councillor or staff decides to do in response to the lobbying effort.
- We are not suggesting that organizations attempting to influence City decisions through established and transparent/publicly accessible processes (deputations before committees, requests for formal submissions, grant or licence applications, zoning applications, etc.) should be captured as lobbyists. The research is clear that lobbying happens when the organization also goes outside the formal process in an effort to influence individuals.

1. Enhanced Disclosure

In *Volume 2* it was suggested that from a citizen's perspective there are five key questions related to transparency, lobbying, accountability, and the public interest. Those five key questions are:

1. Who is attempting to influence government decision-making?
2. Which government decision makers are the focuses of the influencing efforts?
3. Which decisions are the subjects of the influence attempt?
4. Was the attempt to influence successful?
5. Was the decision in the public interest?

These questions are consistent with the legal definition of lobbying that one finds in most jurisdictions (and that is absent from most lobbyist registries in terms of the information they collect). But it is more than a matter of consistency. In our view, these questions go to the very heart of what lobbying is all about – attempting by various means to influence decisions by public office holders.

It is not being suggested that a lobbyist registry system can or should provide citizens with the answers to all five of these key questions. However, we are suggesting that a lobbyist registry that does not provide citizens with information that answers at least the first three questions may be of very limited value to citizens.

Further, we are suggest that if the City decides to proceed with a lobbyist registry, that it move beyond the traditional approach of identifying the lobbyist, the client, and the very general subject matter focus of the lobbying in two important ways:

1 a) Disclosure of Public Office Holders

We are recommending that the City of Toronto require lobbyists, as part of their registration, to identify the individual public office holders (including name and title) that they intend to communicate with as part of their lobbying efforts. In this category we would include:

- Individual Councillors.
- Members of a Councillor's staff.
- Any member of the administrative staff, regardless of level.
- Any member of a City agency, board, or commission.
- Any staff member of a City agency, board, or commission.

1 b) Describing the Decision to be Influenced

We are recommending that the City of Toronto include as part of its lobbyist registry a requirement that registrants be required to disclose and describe at a high level the actual decision they are trying to influence.

In terms of the level of detail to be required, as we indicated in *Volume 2* of our report, there are no readily available models for this kind of disclosure that can be adapted for use in the City of Toronto. We are not suggesting at this point that the disclosure of the decision to be influenced needs to be exhaustive in terms of detail. The test should be whether the stated purpose of the lobbying would be clear to a reasonably informed member of the public, i.e. which decision the lobbyist/lobbying is attempting to influence. This could involve fairly general statements such as:

- Seeking individual Councillor support for a zoning variance on Property X.
- Seeking active support from individual Councillors for a grant application, for example where the decision-making process has been delegated to administrative staff.
- Seeking to overturn a recommendation from staff to award a contract.
- Seeking to interest Councillors and administrative staff in purchasing a new software package.
- Seeking support from individual Councillors to change the City's lobbyist registration by-law to eliminate the need for disclosure of the decisions that lobbyists are attempting to influence.

One useful approach for determining an appropriate level of detail would be to formally seek input from interested parties, including consultant lobbyists, in-

house lobbying organizations, the general public, with a view to how but not whether to provide for this disclosure. This has the added benefits of promoting a consensus-based approach, and heightening public office holder and public awareness of the importance of this issue.

1c) Additional Working-Level Recommendations re Disclosure

The following five recommendations also relate to disclosure are more working-level in nature:

- That after one year, the City review its requirements with respect to disclosing/describing the decision to be influenced. The purpose of this review would be determine whether lobbyists are reporting this information in manner intended, whether this level of information is proving to be sufficient to allow citizens to understand the decision being sought, and whether any further changes or additional requirements might be necessary.
- That the public handbook/registration instructions accompanying the registry be as descriptive as possible in terms of the kinds of decisions that lobbyists/lobbying organizations might be trying to influence. This should be set out in the form of a comprehensive list of specific examples so that lobbyists are a clear as possible with respect to how to characterize their activities.
- That registry staff be directed to be vigilant and vigorous in applying the above mentioned “informed member of the public” test and following up with registrants who have not been sufficiently clear with respect to disclosing the decision they are attempting to influence.
- That, as a general business practice, staff reports to Council should include summaries of the lobbying activity that took (or is continuing to take place) on the issues involved.

- That the City also require lobbyists, in their registration, to make reference to any publicly-available submissions to City officials that they have made that relate to their lobbying effort. The intention is to allow members of the public to more easily make the linkage between lobbying efforts and City decisions. For example, a developer who noted in his/her registration that they are lobbying individual Councillors to approve a density transfer request would also indicate that the details of the request have been submitted publicly to the City.

2. Lobbyist Registration as part of a Suite of Ethics Related Policies/Creating a Strong Culture of Ethical Behaviour

The research is clear that to maximize effectiveness, lobbyist registries need to be positioned as part of a broader suite of ethics related policies, practices, and tools. This includes conflict of interest policies, codes of behaviour, systems of rewards and sanctions, and procurement policies. The research confirms that this broader suite of ethics related policies, practices, and tools is the critical foundation for organizations in terms of promoting a culture and practice of ethical behaviour and decision-making. It is also through these various policies and practices that an organization has the opportunity to embed expectations in its operating culture.

It is suggested, therefore, that the essential element in ensuring a high ethical standard with respect to lobbying is how an organization decides to respond to and deal with lobbying. Also, it is important to note that the process of discussing and reaching a decision on how to respond to lobbying efforts in various situations is as important as the actual decisions themselves in terms of building consensus and establishing a commonly understood set of expectations.

To this end, we would suggest that the City's process for defining its expectations could include the following steps:

- Describing the types of lobbying that its public officer holders experience. This would include consultant and in-house lobbying and run the full gamut of government decisions that lobbyists are attempting to influence. All Councillors and political and administrative staff would be asked to contribute and the results would be collected and communicated publicly.
- Assessing whether and to what extent these types of lobbying constitute “good” vs. “bad” lobbying – for example, where the lobbying is respectful of the decision-making processes and delegated roles and responsibilities vs. where the lobbying seeks to circumvent established processes or subvert established roles and responsibilities.
- Defining what constitutes good and bad behaviour on the part of public office holders with respect to different types of lobbying efforts, i.e. guidance for how public office holders should be expected to respond to lobbying in various situations. Our suggestion would be that this definition be as situational as possible for the purpose of providing clear guidance in the future – for example:
 - What to do with unsolicited proposals.
 - How to deal with marketing pitches that do not have a specific sales component.
 - How to deal with lobbying on matters that have been delegated to staff.
- Defining what the consequences are for public office holders who do not respond to on-going lobbying efforts appropriately.
- Embedding the desired behaviours/responses in the City's various ethics policies, such as conflict of interest/codes of behaviour, procurement policies and procedures, Councillor and administrative staff training and mentoring programs, performance management systems, etc.

There is nothing particularly unique about the approach we have described above. It includes the basic elements of cultural change, with a focus on the simple but effective and essential step of “naming the behaviour”. This includes identifying the desired behaviour and also the undesirable behaviour, being clear about the consequences of both, and then reinforcing the desired behaviour in existing policies and practices.

3. Other Operational Recommendations

In this section, we present a number of more detailed operational recommendations related to the City’s proposed approach. For the most part, these align with the best practices we described in *Volume 2* of this report and are intended to build upon the basic structure already identified in the City’s policy proposal, including:

- Adopting the same general legal definitions of what constitutes lobbying as are in place at the Province of Ontario.
- Oversight being provided by an independent ethics/integrity commissioner with effective and meaningful powers to investigate and enforce the lobbyist registry requirements.
- Providing for meaningful penalties for violations of registry policy, including the failure to register or providing misleading information.
- Ensuring that registry staff has the power to request additional information or changes to how a lobbyist characterizes their activities and to effectively investigate areas of concern.
- Providing for a “cooling off” period for public office holders before they can become consultant lobbyists.

a) Analytical Capacity

As reported in *Volume 1*, a number of the registries reviewed as part of this study, including most Canadian registries, had only a very limited capacity for citizens to search and analyze the on-line data contained in registries. The focus appeared to be much more on disclosure of each individual transaction, rather than the ability to identify patterns, trends, etc.

We recommend that the City of Toronto's registry include a robust search and analysis capacity that can be accessed and used effectively by citizens. Ideally, this would include the capacity to perform both issue-specific and aggregate analysis, including:

- Which issues are the focus of the most lobbying?
- Which departments are the subject of the most lobbying?
- Which lobbyists/organizations are most active, e.g. lobbying on the most issues, doing the most contacting of public office holders?
- Which public office holders are the subjects of the most lobbying?
- Which types of lobbying activities are most common, e.g. phone calls, arranging or participating in meetings, lunches/dinners, etc?

b) Enforceable Code of Conduct

As noted in *Volume 2*, many registries are somewhat neutral with respect to what constitutes *good* versus *bad* lobbying. The Province of Ontario's registry, for example, is very neutral, with the exception of a general provision that lobbyists will not place public office holders in a real or potential conflict of interest.

However, the Government of Canada's *Lobbyist Code of Conduct* is a good example of an attempt to put more definition on *good* and *bad*, subject to the capacity of the registry to enforce these provisions.

Accordingly we recommend that the City of Toronto's lobbyist registry include an enforceable Lobbyist Code of Conduct along the lines of the federal model that identifies and defines both good and bad behaviour on the part of lobbyists, including that they should:

- Conduct all relations with public office holders, clients, employers, the public and other lobbyists with integrity and honesty.
- At all times, be open and frank about their lobbying activities.
- Observe the highest professional and ethical standards. In particular, lobbyists should conform fully with not only the letter but the spirit of the City's by-law and Lobbyist Code of Conduct.
- Ensure that they provide public office holders with accurate and factual information and that they are not knowingly misleading anyone and have taken proper care to avoid doing so inadvertently.
- Not propose or undertake any action that would constitute an improper influence on a public office holder.

We also recommend that the Lobbyist Code of Conduct be clear about the lobbyist's obligation to respect City policies and procedures as they relate to lobbying and ethics more generally, including, for example, not knowingly:

- Attempting to put City officials in a real or perceive conflict of interest.
- Requesting or encouraging City officials to violate rules on the receipt of gifts, etc.
- Requesting or encouraging City officials to violate or circumvent established procurement policies and practices.

c) Adequate Resources

In *Volume 2*, we identified *adequacy of resources* as a major cross-cutting best practice. The research clearly indicated that the effectiveness of registries is very dependent on the level of human and technology resourcing that is available.

If the City is serious about changing behaviour with respect to lobbying (as opposed to simply putting a lobbyist registry in place) we recommend that careful consideration be given to adequate resourcing, including education and communication but also enforcement, audit, etc. If only very limited resources will be available for a lobbyist registry, those resources might better be allocated towards other, arguably more effective policies and practices (conflict of interest, procurement, defining and embedding a culture based on high standards of ethical behaviour), rather than creating an ineffective registry.

d) Education and Communication

The research indicates that education and communications – for lobbyists, their current and potential clients, public office holders, and the public – is an important best practice. The experience in other jurisdictions suggests that this is particularly true where there are:

- More complex reporting requirements (for example, more rather than less disclosure).
- A greater emphasis on ensuring that disclosure information is in a format that is useful for citizens and public office holders alike.
- Expectations that public office holders will monitor the registry and identify/report contacts they have had with lobbyists who are not registered or who have provided misleading or false information.

Education and communication become even more important given our recommendation to require lobbyists to disclose the decision they are attempting to influence. Our sense is that without ongoing education of lobbyists and public office holders alike, the registry will not be able to produce consistent, high quality and useful information about lobbying activities at the City.

This communication and education should include:

- Training materials and training sessions for consultant and in-house lobbyists.
- Training materials and training sessions for public office holders (ideally this training should be part of an overall training effort focused on ethical behaviour as only one component of a more comprehensive culture change effort.)
- Frequently asked questions.
- Advisory/interpretive bulletins, whereby registry officials regularly publish official *rules clarifications* in response to inquiries or investigation/enforcement activities.
- Publishing complaints and the results of investigation/enforcement activities as a means to heighten general awareness of the registry and/or a particular form of *bad behaviour* and to demonstrate that the registry has an effective enforcement capacity.

We recommend that all of these materials be publicly available at a minimum through the Internet.

e) Actively Engaging Public Office Holders

From our perspective, part of the reason why many registries are not meaningful for public office holders within a jurisdiction is that there is usually no expectation, either formal or informal, that public office holders will:

- Make use of the registry information on a regular basis.
- Be actively engaged in ensuring that lobbyists are registered and conducting themselves appropriately.

Accordingly, we recommend that the City of Toronto establish a formal expectation that public office holders will actively reference the registry as part of the day-to-day conduct of the public's business. This would include:

- As part of the public policy development process, public office holders would regularly access the registry database to identify who/which organizations are lobbying on particular issues and, most importantly, the lobbyists' positions on issues. This would include a report on the extent to which lobbying has occurred on a particular issue as part of the formal staff advice and analysis presented in reports to Council and Council Committees.
- Reporting someone who a public office holder believes has lobbied them but who is not registered.
- Reporting a lobbyist who has violated the Code of Conduct and in particular the key provisions against providing false/misleading information and/or attempting to put public office holders in violation of conflict of interest, procurement, or other ethics related policies.

f) Disclosing the Lobbyist's Other Relationship with Decision Makers

The research suggests that requiring lobbyists to disclose at least some their other relationships with decision makers (i.e. fundraising, gift giving, etc.) as a potentially important practice in terms of the public's ability to hold public office holders accountable. Accordingly, we recommend that the City of Toronto require lobbyists to disclose the extent of their involvement with public office holders (the latter in their official capacity as opposed to personal friendships) that are the subject of their lobbying efforts.

Two firm recommendations, based on demonstrated best practices in other jurisdictions, include:

- Identifying whether and to what extent a lobbying organization or the client of a consultant lobbyist receives funding direct from government as well as the type of funding (e.g. grant) and source (department/program) of that funding. This is a standard feature of many lobbyist registries and would affect any organization that is actively lobbying City officials that also received a portion of their funding from a City department.
- Requiring the lobbyist or lobbying organization to disclose whether the lobbyist/lobbying organization has donated funds or provided other gifts (gift baskets, tickets to sporting events, etc.) to public office holders that are the subject of their lobbying efforts, including identification of the public office holder, and the amount of funding/value of the gift. This would mean that lobbyists would have to disclose in their publicly accessible registration information not only which public office holders they intend to lobby, but whether and to what extent they have donated money or provided other gifts to those individuals.

In addition to these two firm recommendations, we would suggest that the City give serious consideration to taking action in the following two areas where to date, most jurisdictions have been reluctant to take action:

- Requiring a lobbyist to identify as part of their registration, whether at the same time they are lobbying public officer holders or various departments of the City, they are also providing services under contract to any of those individuals or departments. This would include instances where for example, a consultant lobbyist is contacting Council members or different departments on behalf a client but may also be providing, for example, communications or other professional consulting advice under contact to one or more of those Councillors or departments.
- Requiring a lobbyist to identify as part of their registration whether either presently or in the past (we would suggest a reasonable time limit, e.g. two years) the lobbyist has acted in any paid or voluntary capacity on behalf of or in support of a public office holder that they intend to lobby. For example, a lobbyist would have to disclose whether they had been a campaign manager, campaign volunteer, fundraiser, etc. on behalf of a public office holder that they intend to lobby.

f) Being Clear that Lawyers and Other Professions are Included

As reported in *Volume 2*, the experience of some jurisdictions in implementing lobbyist registries was that it was not always clear up-front that professionals and in particular lawyers that were engaging in activity that met the legal definition of lobbying were considered to be lobbyists. This resulted in some initial confusion (and unsuccessful legal challenges) within the legal community that perhaps lawyers should not be required to register or disclose the same level of detail as non-lawyer lobbyists for reasons of solicitor-client privilege.

Accordingly, we recommend that the City's registration requirements be made clear up front that any individual engaged in activity that is captured by the definition of lobbying would be required to register.

g) Being Clear to the Public about what is not considered to be Lobbying

As discussed in *Volume 1*, most lobbyist registries attempt to be clear about the types of activities that are exempt from lobbying. The following are typical examples, emphasizing the normal course of City business, that are found in most other jurisdictions and that we recommend be put in place for the City of Toronto:

- Journalists with periodicals, newspapers, media, in the ordinary course of conducting their business.
- Officials of the City, or of any other unit of government, who appear in their official capacities before any City agency for the purpose of explaining the effect of any legislative or administrative matter pending before such body.
- Persons who participate in drafting by-laws, resolutions, or similar documents at the request of the City.
- Persons who appear in formal proceedings before the City Council, a committee or other subdivision of the City Council, or any City agency, department, board or commission.
- Submissions to a public official with respect to the enforcement, interpretation, or application of a law or regulation by that official.
- Submissions in direct response to written requests from the City for advice or comment.
- General requests by City officials for information

We also recommend, however, that the City of Toronto take this approach one step further by communicating in very plain language the various day-to-day interactions between citizens and the City that would not be considered to be lobbying. In this, we would refer the City to the example provided by the City of Chicago (see *Appendix B*).

h) Including the full range of procurement related activities

The experience of many jurisdictions clearly points to procurement as a problematic area for governments in terms of maintaining high standards of ethical behaviour. Our research specific to the City of Toronto confirms that procurement/purchasing, along with development and public-private partnerships are the three areas subject to the most intensive lobbying of City officials.

The research and expert opinion in this area points in the direction of ensuring that lobbyist registration and procurement policies are coordinated and integrated. To a degree, we have attempted to deal with that linkage under the section of our recommendations entitled *Positioning Lobbyist Registration as Part of Suite of Ethics Related Policies/Creating a Strong Culture of Ethical Behaviour*.

We want to use this opportunity, however, to emphasize that the City's policy towards lobbyist registration should include all procurement related activity by lobbyists. This would include:

- The various contacts with public office holders that would occur in preparing for and participating in the formal purchasing process (This would not, of course, include the official contacts that are designated as part of the official procurement process. It would, however, include contacts made during the upfront work by bidders to research a known

business opportunity, to prepare and submit a bid, and to follow up with public office holders once the bidding process has been concluded).

- All sales related activities, i.e. communicating with public office holders with a view to attempting to sell a product or service. This would include unsolicited proposals, cold calls, or similar contacts where the ultimate objective of the contact is to interest a public official in purchasing a product or service.
- All marketing related activities, i.e. communicating with public office holders with a view to informing them about a product or service but without specifically attempting to interest them in its purchase. This would include contacts with public office holders where message is along the lines of “We are not here to sell you anything. We just want you to know about the products and services we offer and if at some point in the future, you are thinking about purchasing along these lines, we would want to be included in the tendering process.”

i) Providing Value-added Reporting to the Public

In an earlier recommendation, we suggested that registry data be made available to the public in a manner that allows for citizens to do their own analysis of specific lobbying transactions, as well as more aggregate analysis.

Our review of best practices indicates that it is also important for lobbyist registries to prepare and publish their own analysis that goes beyond the basic statistical level and attempts to provide additional value. Accordingly, we recommend that the City's registry be responsible for producing value-added public reports that would:

- Support and reinforce a more transparent climate and appropriate culture of high standards of ethical behaviour within the organization.

- Establish the context within which the public (and media) should interpret the information from the registry.

This kind of reporting would include analysis of:

- Which consultant lobbyists and lobbying organizations are most active (number of clients, most contacts with public office holders) – although at least one jurisdiction we spoke with recently halted this practice because they felt it amounted to free advertising for the most active consultant lobbyists?
- Which issues, decisions, by-laws, purchasing opportunities, zoning applications, etc. were the subjects of the most intensive lobbying activity?
- Some explanatory information for the public that would help them to better understand the issue, decision, etc. that was the focus of the lobbying, i.e. what the various lobbyists wanted.
- Which departments, units within departments, and individual public office holders were the subjects of the most intensive lobbying?

j) Evaluating Program Effectiveness

As we noted in *Volume 2*, no jurisdiction that we looked at had engaged in or was planning to engage in a formal evaluation of the effectiveness of their lobbyist registry. This is consistent with a pattern that we have observed in many governments both in Canada, the U.S. and abroad – whereby there is often considerable discussion/rhetorical emphasis on the importance of evaluating the effectiveness of programs, but in practice, little focus in the program design phase on ensuring that a program is actually evaluable and similarly little emphasis on actually conducting program evaluations.

The evidence suggests that both politicians and bureaucrats are often reluctant to learn whether new or existing programs are actually achieving intended

results. However, program evaluation continues to be viewed as an important best practice in public administration.

Accordingly, we recommend that the design and development of the City's lobbyist registry should include and incorporate the elements that will be necessary for ongoing program/effectiveness evaluation. These elements include a clear description of the intended outcomes, (e.g. improved public confidence in government decision-making, improved standards of ethical behaviour, etc.) and the capacity/requirement that the necessary data and information be collected, analyzed, and reported.

Appendix A
August 2003 Report to Council
Re Establishing a City Lobbyist Registry

Request for Provincial Enabling Legislation to Establish a City Lobbyist Registry Within the Office of a City Integrity Commissioner

The Administration Committee recommends the adoption of the Recommendation of the Ethics Steering Committee embodied in the following communication (September 3, 2003) from the City Clerk:

Recommendation:

The Ethics Steering Committee recommends the adoption of the joint report (August 28, 2003) from the City Solicitor and the Chief Administrative Officer.

Background:

At its meeting on September 3, 2003, the Ethics Steering Committee gave consideration to the attached joint report (August 28, 2003) from the City Solicitor and the Chief Administrative Officer seeking authority from Council to make an application to the Province for enabling legislation to establish a City lobbyist registration system. The request to the Province is linked to the previous decision of Council to apply for enabling legislation to establish a City Integrity Commissioner office. Approval of the requests will provide Council with the powers it needs to pass by-laws that establish the functions along the same lines as the provincial model and recommends that:

- (1) Council grant authority to make an application to the Province for the special legislation contained in Appendix 2, to establish a permanent City lobbyist registration system in conjunction with the application for special legislation for a City Integrity Commissioner office, as previously authorized by Council;
- (2) the City Solicitor and the Chief Administrative Officer, prior to advertising the City application as required, consult with Provincial staff on the direction taken by the City in its draft legislation;
- (3) the Ethics Steering Committee report to the Administration Committee on the merits of including restrictions on former members of Council after they have left office in the future City by-law for a lobbyist registry system;
- (4) the City Solicitor and the Chief Administrative Officer report back to the Ethics Steering Committee, or the Administration Committee, as necessary on Council directives that are dependent on obtaining Provincial approval for the special legislation including the development of final City by-laws, implementation and resource requirements; and

- (5) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

(Joint report dated August 28, 2003, addressed to the Ethics Steering Committee from the City Solicitor and The Chief Administrative Officer, entitled “Request for Provincial Enabling Legislation to Establish a City Lobbyist Registry Within the Office of a City Integrity Commissioner”.)

Purpose:

This report seeks authority from Council to make an application to the Province for enabling legislation to establish a City lobbyist registration system. The request to the Province is linked to the previous decision of Council to apply for enabling legislation to establish a City Integrity Commissioner office. Approval of the requests will provide Council with the powers it needs to pass by-laws that establish the functions along the same lines as the provincial model.

Financial Implications and Impact Statement:

As previously reported and approved, there are one-time costs involved in filing and processing an application to the Province for special legislation. These costs include a filing fee, publishing weekly notices of application for four weeks, printing the private bill, and printing the Act in the annual statutes. It is estimated that the cost (most attributable to advertising) for an application will not exceed \$6,000.00. There will be additional costs if the requests for special legislation to establish a City Integrity Commissioner and Lobbyist Registry are processed separately.

Discussion with the Clerk’s division indicates that funding is available within the approved Council budget to cover the costs of the application for special legislation during 2003.

Recommendations:

It is recommended that:

- (1) Council grant authority to make an application to the Province for the special legislation contained in Appendix 2, to establish a permanent City lobbyist registration system in conjunction with the application for special legislation for a City Integrity Commissioner office, as previously authorized by Council;
- (2) the City Solicitor and the Chief Administrative Officer, prior to advertising the City application as required, consult with Provincial staff on the direction taken by the City in its draft legislation;

- (3) the Ethics Steering Committee report to the Administration Committee on the merits of including restrictions on former members of Council after they have left office in the future City by-law for a lobbyist registry system;
- (4) the City Solicitor and the Chief Administrative Officer report back to the Ethics Steering Committee, or the Administration Committee, as necessary on Council directives that are dependent on obtaining Provincial approval for the special legislation including the development of final City by-laws, implementation and resource requirements; and
- (5) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

While lobbying is an acknowledged part of government processes, Council has expressed a desire to ensure that information on lobbying activities (who is lobbying which public office holders) is available to the public. Council has considered the following reports on lobbying and related matters:

- (i) “Interim Report on a Registry of Lobbyists and Related Matters” in June 1998;
- (ii) “Code of Conduct for Members of Council” in September 1999;
- (iii) “Procedures under the Lobbyists Registration Act, 1998” in April 2000;
- (iv) “Lobbying Disclosure Policy for Certain Requests for Proposals and Tender/Quotation Calls” in March 2001;
- (v) “Feasibility of a Lobbyist Registration Policy Similar to Provincial and Federal Models” in April 2002; and
- (vi) “Establishing a City Lobbyist Registry Similar to Provincial and Federal Systems: Implementation Issues, Costs and Requirements” in February 2003.

In February 2003, Council adopted Clause No. 4(a) in Report No. 14 of The Administration Committee, as amended, and, among other matters, requested the Chief Administrative Officer and the City Solicitor to submit a joint report to the Administration Committee:

- (a) outlining a request to the Province of Ontario for enabling legislation for a permanent lobbyist registry system, within the context of the request for enabling legislation for a City Integrity Commissioner; and

- (b) on the administrative aspects of the lobbyist registry system as it relates to the Office of the Integrity Commissioner.

This report addresses the preceding directives and also contains in Appendix 2, a Draft Act providing Council with the necessary powers to pass by-laws establishing a City Lobbyist Registry as part of the responsibilities of a City Integrity Commissioner office.

The following additional directives to the Chief Administrative Officer and City Solicitor are wholly dependent upon the City obtaining approval for special legislation and will be addressed at the appropriate time:

- (i) consult with the City Clerk and Commissioners to ensure an effective City lobbyist registry that will address the applications, procedures and functions likely to attract a high degree of lobbyist activity, as well as being consistent with provincial and federal principles for the registration process;
- (ii) following consultation with the City Clerk and Commissioners, report to Administration Committee on a final form lobby registry by-law;
- (iii) establish a permanent and formal City-wide lobbyist registry system, similar to the system described in the joint report (October 30, 2002) from the Chief Administrative Officer and the City Solicitor (as embodied in the Clause); and
- (iv) under a permanent registration system, consider whether professional lobbyists should be charged an amount for registration.

Council also requested the Ethics Steering Committee to refine the details of data collection and definitions to be applied to lobbyist activities and report back to Council through the Administration Committee. It was specified that the report should also address the issue of lobbying by unions, developers, fundraisers and special interest groups.

Further directives to the CAO relate to ongoing policy development respecting lobbyist activities, and include:

- (i) with the City Solicitor, continue to develop policies and procedures governing lobbyists based on external industry/association policies, regulations and laws; and
- (ii) with the Commissioner of Corporate Services, take steps toward a general goal of City policy banning or implementing stronger controls on the lobbying of civil servants.

Council Authority and Powers Provided to the City by the Draft Legislation:

Appendices 1 and 2 to this report contain draft legislation that will provide Council with the necessary powers to pass by-laws permitting, respectively, the establishment of a City Integrity Commissioner office and, a City Lobbyist Registration system, similar to that provided by statute at the Provincial level. Obtaining approval from the Province for special legislation provides the Council with the general authority to fine-tune both the Integrity Commissioner office and the lobbyist registration system, by by-law.

Accordingly, much of the detail on definitions, procedures and administrative provisions in the provincial *Lobbyist Registration Act, 1998* and *Members' Integrity Act, 1994* that is being used as the basis for the proposed City operations, will be set out in the City's by-law and not the draft legislation in Appendices 1 and 2 of this report. One example of a matter to be included in the by-law, rather than in draft legislation, is the definition of classes of lobbyists. Another example is the requirement for the Integrity Commissioner to produce annual reports.

Overview of City Draft Legislation for an Integrity Commissioner Office (Appendix 1):

As described in City reports to-date, a City Integrity Commissioner is to be:

- (i) initially, a part-time contract position with the City;
- (ii) a retired judge with extensive adjudication, municipal and administrative law experience;
- (iii) responsible for complaint assessment/investigation within Council's Code of Conduct;
- (iv) given exemption from certain *Municipal Freedom of Information and Protection of Privacy Act* requirements;
- (v) responsible for advising members on potential (Code) conflict of interest situations; and
- (vi) responsible for publishing an annual report on the findings of typical cases/inquiries.

Council has already granted authority to make an application for special legislation to establish and implement a City Integrity Commissioner office similar to the Provincial model. The draft private bill is contained in Appendix 1 ("IC Draft Act") and, of importance to this report, provides for the appointment of the City Integrity Commissioner as the Registrar for an approved City lobbyist registration system.

In addition, the IC Draft Act includes provisions for dealing with confidential information (s.9), immunity (s.5), and the non-compelibility of the Commissioner and the Commissioner's staff in civil proceedings (s.6). It also provides that the Commissioner has rights of access to City records and to require evidence under oath, similar to the City Auditor.

The IC Draft Act provides that Council could, by by-law, adopt all or part of a City policy or by-law respecting the conduct of members of Council as a 'code of conduct' (s.2.). It also authorizes Council to pass by-laws respecting the procedures to be followed and any limitations Council deems advisable in these matters (s.7). Finally, the Draft Act will also provide that the Integrity Commissioner will perform such other duties as required by Council with respect to ethical matters or practices and procedures that, in Council's opinion, are related to, or may have an impact on, its Code of Conduct for Council Members (s.3(3)) and giving advice on the *Municipal Conflict of Interest Act* (s.3(4)).

If special legislation is granted, Protocols for requesting advice and for processing complaint investigations specific to the City will be adopted (per the Council authority noted above). For example, in contrast with the provincial model and in keeping with the compliance section of the (City) Code of Conduct, complaints by members of the public will be processed to the Integrity Commissioner for review if the by-law permits other referrals (s. 7(2)).

The IC Draft Act provides that it is Council that makes the final decision on whether any penalty (as may be recommended by the Integrity Commissioner) is imposed on a member found to have contravened the Code of Conduct. This approach follows the Provincial model because the Code of Conduct, like the Provincial Act (in terms of its conduct provisions) is not a precise document. The IC Draft Act also provides that Council's final decision may be reported to a meeting of Council or its committees that is open to the public (s. 14 (6)).

Overview of City Draft Legislation for a Lobbyist Registry (Appendix 2):

The City's draft private bill respecting lobbyist registration in Appendix 2 (the "LR Draft Act") is based upon the Provincial *Lobbyist Registration Act, 1998*, ("Provincial Act") that, in turn, replicates the federal government's lobbyist registration Act to a significant degree. The LR Draft Act permits the City to follow the Provincial model, where the Integrity Commissioner has been appointed as the Registrar and is responsible for managing the lobbyist registry and associated operations. The LR Draft Act permits the City to pass a by-law that will be similar in effect to the provincial Act provisions (as illustrated in the first draft lobbyist registration by-law attached to Clause No. 4(a) in Administration Committee Report No. 14). At the same time, the City by-law will allow those provisions to be fine-tuned so that a successful lobbyist registration system can be put in place at the City given that far

more of its activities technically fit into the definition of lobbying.

(a) Definition Matters:

Lobbying is usually defined as direct or indirect efforts to solicit the support of members and officials to influence government decisions on behalf of another party or an organization, often away from public scrutiny. The term “lobby” in the LR Draft Act (s.1) is based on the definition in the Provincial Act and reflects this general definition. Under the City’s by-law powers in the LR Draft Act, the by-law can set out activities and persons who are not subject to the by-law in order to be reflective of City operations. Examples of exemptions in the by-law could be routine constituency work, as well as members of Council and City staff when acting in their official capacity. Similarly, Committee deputation and other processes that are a matter of public record, where individuals are named and their interest and organizational affiliation identified, may also be excluded from the registration requirement.

Lobbyists are most commonly defined as individuals paid to communicate with elected or appointed officials and any staff of government, in a deliberate and concerted attempt to influence government decisions. The behaviour under scrutiny is specifically related to the phrase “attempt to influence government decisions” because the activity often occurs beyond public scrutiny and is on behalf of someone else.

In the approved Council Code of Conduct, the term “lobbyist” includes the following:

- (i) “consultant lobbyist” means a person who, for payment, lobbies on behalf of a client and includes, but is not limited to, government relations consultants, lawyers, accountants, or other professional advisors who provide lobbying services for their clients;
- (ii) “corporate in-house lobbyist” means an employee of a corporation that carries on commercial activities for financial gain and who lobbies as a significant part of their duties;
- (iii) “organization in-house lobbyist” means an employee of a non-profit organization when one or more employees lobby public office holders and where the accumulated lobbying activity of all such employees would constitute a significant part of the duties of one employee; and
- (iv) “volunteer lobbyist” means a person who lobbies without payment on behalf of an individual, corporation, or organization.

The LR Draft Act will allow the City to define classes of lobbyists in its by-law and specifically provides that this may include lobbyists who receive no payment (i.e., ‘volunteers’) or those who receive partial payment (s.2(2)). In contrast, the Provincial Act only applies to paid lobbyists.

(b) Powers, Information Filed, Registrar Duties, Exception and Offence Provisions:

Other provisions in the LR Draft Act also reflect the City context and provide flexibility as to what will be provided in the final by-law. For example, the City by-law could allow its Agencies, Boards, Commissions and City-controlled organizations to be added to the definition of public office holder (ss.1,2(2)) and, could provide a general power to the City to exempt any person or organization from all or any part of the by-law (s.2 (3)).

Under the LR Draft Act, the by-law could require returns to be filed that contain information on lobbyists and lobbying activities similar to the Provincial Act requirements (s.2(3)), as follows:

- (1) basic information on the individual lobbyists, the senior officer and the client or employer: name, address and the nature of the business or activities; information on other parties who have an interest in (e.g., a subsidiary or parent corporation) or who support the lobbying activity by contributing at least \$750.00);
- (2) information on financial matters: government subsidies to the client or employer, and contingency fees for the services of a consultant lobbyist;
- (3) information on the nature of the lobbying activity or proposed activity including:
 - (i) the subject matter of lobbying and, if an in-house lobbyist (organizations), the subject matter during the six months period of a return and the expected subject matter for the next six months;
 - (ii) specific information on the undertaking, e.g., the proposed bill or program;
 - (iii) the ministry, agency, etc. they have lobbied or expect to lobby;
 - (iv) MPPs or MPP staff they have lobbied or expect to lobby; and

- (v) the communication techniques to be used, including “grass-roots communication” (as defined in the Act).

Under the LR Draft Act the powers and duties of the registrar will be set out in the by-law (s.5). The by-law will, for example, provide for any annual report and other reporting requirements.

The LR Draft Act includes the special administrative, evidentiary and legal exception provisions of the Provincial Act. For example, the legal effect of a registrar’s interpretation bulletin (s.5(2)), fee recovery (s.3), evidence from records (s.4), an uncontested right to remove returns from the registry (s.6), and delegation powers (s.7).

The LR Draft Act also allows for the special offence provisions in the Provincial Act (s. 8) including the imposition of a fine, in the by-law, of up to \$25,000.00 (the *Provincial Offences Act* applicable to most municipal by-law offences, has a maximum fine of \$5,000.00.) and, making it an offence to knowingly place a public-office holder in a position of real or potential conflict of interest, as well as the offence to knowingly make a false or misleading statement in a return or other document.

Next Steps and Possible By-Law Provisions:

The draft private bill in Appendix 1 (“IC Draft Act”) now provides for the appointment of the City Integrity Commissioner as the Registrar under the draft private bill in Appendix 2 to establish a City Lobbyist Registry system (s.3(5)). For this reason, if authority is granted by Council to process the draft private bill for a Lobbyist registration system, it is appropriate that the two pieces of legislation be examined in conjunction and in light of the legislation affecting the draft private bills.

It is, therefore, recommended that Council grant authority for application to be made for special legislation from the Province to establish a permanent City lobbyist registration system in conjunction with the application for special legislation for a City Integrity Commissioner office, as previously authorized by Council.

It is also recommended that the City Solicitor and the Chief Administrative Officer, prior to advertising the City application as required, consult with Provincial staff on the direction taken by the City in its draft legislation.

In addition to the matters previously discussed, other provisions could be developed for inclusion in the future City by-law. For example, restrictions on former members of Council after they have left office in the lobbyist registration by-law may more clearly regulate the treatment of confidential or

insider information, as well as the dealings of City office-holders with other sectors both during and following their official duties. (Post office restrictions apply to Ministers under the provincial *Member's Integrity Act, 1994*.) Further assessment of the value, applicability and development of such policy for inclusion in the future City by-law, appears to be of value and is consistent with the mandate of the Ethics Steering Committee. This could include, for example, an examination of the needed Council authority to impose conditions beyond the "business activities" jurisdiction of the *Municipal Act*, an appropriate time-period of applicability for the limitations, as well as realistic City offence provisions for contravention.

It is, therefore, recommended that the Ethics Steering Committee report to the Administration Committee on the merits of including a post office-holder restriction provision in the future City by-law for a lobbyist registry system.

Finally, it is recommended that the City Solicitor and the Chief Administrative Officer report back to the Ethics Steering Committee, or the Administration Committee, as necessary on Council directives that are dependent on obtaining Provincial approval for the special legislation including the development of final City by-laws, implementation and resource requirements.

Conclusion:

This report seeks authority from Council to make an application to the Province for enabling legislation to establish a City lobbyist registration system. The request is linked to the previous decision of Council to apply for enabling legislation to establish a City Integrity Commissioner office along the same lines as the provincial model as directed by Council.

Much of the detail on definitions, procedures and administrative provisions in the provincial *Lobbyist Registration Act, 1998* and *Members' Integrity Act, 1994* that is being used as the basis for the proposed City operations, will be set out in the City's by-law and not the draft legislation in Appendices 1 and 2 of this report.

Accordingly, this report is recommending that Council authorize the request to the Province respecting the establishment of a lobbyist registration system and for staff to consult with the Province on the draft legislation in Appendices 1 and 2. The draft legislation provides Council with the necessary powers to pass by-laws permitting respectively, the establishment of a City Integrity Commissioner office and, a City Lobbyist Registration system.

The report also recommends further reporting to the Administration Committee on the merits of including a post office-holder restriction in the by-law, as well as other

Council directives that are dependent on obtaining Provincial approval for the special legislation being requested.

List of Attachments:

Appendix 1: Draft Bill for a City of Toronto Integrity Commissioner.

Appendix 2: Draft Bill for City of Toronto Lobbyist Registration.

Appendix 1

Draft Bill for a City of Toronto Integrity Commissioner

An Act respecting an integrity commissioner for the City of Toronto.

Preamble:

The Council of the City of Toronto has applied for special legislation in respect of the matters set out in this Act.

It is appropriate to grant the application.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1. In this Act,

“code of conduct” means a City policy respecting the conduct of members of council as adopted by by-law under section 2;

“Integrity Commissioner” means the person appointed as Integrity Commissioner under section 3;

“Council” means the Council of the City of Toronto;

“member” means a member of Council.

Code of conduct

2. (1) Council may pass by-laws for governing the conduct of its members.

(2) A by-law passed under subsection (1) may regulate or prohibit with respect to conduct matters and may require persons to do things.

Integrity Commissioner

3. (1) Council may by by-law appoint an Integrity Commissioner.

Powers and duties

(2) The Integrity Commissioner may exercise the powers and shall perform the duties assigned to him or her under this Act or under a by-law passed under subsection 3(3).

Same

(3) Council may pass by-laws assigning to the Integrity Commissioner other duties with respect to ethical matters or practices and procedures that, in Council’s opinion, are related to or may have an impact on the code of conduct.

Same

(4) Council may pass by-laws assigning to the Integrity Commissioner duties respecting the provision of advice on the *Municipal Conflict of Interest Act*.

Same

(5) Council may appoint the Integrity Commissioner as the registrar under the *City of Toronto Act (Lobbyist Registration), 2003*.

Term

(5) An Integrity Commissioner shall not be appointed for a term exceeding five years.

Same

(6) The person appointed continues to hold office after the expiry of the term until reappointed, or until a successor is appointed.

Acting Integrity Commissioner

(7) If the Integrity Commissioner is unable to act because of illness, Council may appoint an acting Integrity Commissioner, whose appointment comes to an end when the Integrity Commissioner is again able to act or when the office becomes vacant.

Remuneration

(8) The Integrity Commissioner shall be paid the remuneration, allowances and expenses as Council may provide.

Staff

(9) Council may provide to the Integrity Commissioner the municipal employees that Council considers necessary for the performance of the Integrity Commissioner's duties or, at the Council's request, the Integrity Commissioner may provide his or her own employees.

Reporting relationship

4. (1) The Integrity Commissioner shall report to Council or as otherwise provided in a by-law passed under section 7.

Annual report

(2) The Integrity Commissioner shall report annually on the affairs of the office.

Contents

(3) The annual report may summarize advice given by the Integrity Commissioner, but shall not disclose confidential information or information that could identify a person concerned.

Immunity

5. No proceeding shall be commenced against the Integrity Commissioner or an employee in his or her office, including a municipal employee seconded to that office

under subsection 3(9), for any act done or omitted in good faith in the execution or intended execution of the Integrity Commissioner's or employee's duties under this Act or a by-law passed under subsection 3(3).

Testimony

6. Neither the Integrity Commissioner nor an employee of his or her office, including a municipal employee seconded to that office under subsection 3(9), is a competent or compellable witness in a civil proceeding in connection with anything done under this Act or a by-law passed under subsection 3(3).

By-laws re procedures

7. (1) Council may pass by-laws respecting the procedures to be followed and any limitations Council deems advisable, on requests for advice from the Integrity Commissioner under section 8 and the processing of complaints to the Integrity Commissioner under section 10 or a by-law passed under this section.

Other referrals

(2) A by-law passed under subsection (1) may provide for the referral of a matter to the Integrity Commissioner to give an opinion, where a person other than a member has reasonable and probable grounds to believe that a member has contravened the code of conduct.

Time for requesting inquiry limited

(3) A by-law passed under subsection (1) shall provide for time limits on making a request for an inquiry under section 10 or a by-law passed under this section, which do not exceed the following limits,

- (a) a request for an inquiry by a member or a person who is not a member may be made within six weeks after the fact comes to his or her knowledge that a member may have contravened the code of conduct; and
- (b) no request for an inquiry under section 10 shall be brought after the expiration of six years from the time at which the contravention is alleged to have occurred.

REQUESTS FOR ADVICE

Opinion and recommendations

8. (1) A member may request that the Integrity Commissioner give an opinion and recommendations on any matter respecting the member's obligations under the code of conduct, subject to any by-law passed under section 7.

Inquiries

(2) The Integrity Commissioner may make such inquiries as he or she considers appropriate and shall provide the member with an opinion and recommendations, subject to any by-law passed under section 7.

Confidentiality

(3) The Integrity Commissioner's opinion and recommendations are confidential, but may be released by the member or with the member's consent.

Writing

(4) The member's request, the Integrity Commissioner's opinion and recommendations and the member's consent, if any, shall be in writing.

Confidentiality

9. (1) Information disclosed to the Integrity Commissioner under this Act is confidential and shall not be disclosed to any person, except,

- (a) by the member, or with his or her consent;
- (b) in a criminal proceeding, as required by law; or
- (c) otherwise in accordance with this Act.

Municipal Freedom of Information and Protection of Privacy Act

(2) Subsection (1) prevails over the *Municipal Freedom of Information and Protection of Privacy Act*.

REQUESTS FOR INQUIRIES

Matter referred by member

10. (1) A member who has reasonable and probable grounds to believe that another member has contravened the code of conduct may request that the Integrity Commissioner give an opinion as to the matter, subject to any by-law passed under section 7.

Request

(2) The request shall be in writing and shall set out the grounds for the belief and the contravention alleged.

File with Clerk

(3) The member making the request shall file the request with the City Clerk, who shall cause the request to be processed as provided in a by-law passed under section 7.

Matter referred by Council

(4) Subject to any by-law passed under section 7, Council may, by resolution, request that the Integrity Commissioner give an opinion as to whether a member has contravened the code of conduct or other matters assigned to the Integrity Commissioner under a by-law passed under subsection 3(3).

Inquiry by Council

(5) Council and its committees shall not conduct an inquiry into a matter that has been referred to the Integrity Commissioner under subsection (3) or (4), or a by-law passed under section 7.

Inquiry by Integrity Commissioner

11. (1) When a matter is referred to the Integrity Commissioner under section 10 or a by-law passed under subsection 7(2), the Integrity Commissioner may conduct an inquiry, after giving the member whose conduct is concerned reasonable notice.

Same

(2) If the matter was referred by a member, by Council or by another person under a by-law passed under section 7,

- (a) the Integrity Commissioner has right of access at all reasonable hours to all records respecting the referred matter of the municipality or any of its local boards,
- (b) the Integrity Commissioner may elect to exercise the powers of a commission under Parts I and II of the *Public Inquiries Act*, in which case those Parts apply to the inquiry as if it were an inquiry under that Act; and
- (c) the Integrity Commissioner shall report his or her opinion to the City Clerk.

Inquiry powers

(3) Clause 2(b) does not authorize the Integrity Commissioner to hold a full public inquiry under the *Public Inquiries Act*, unless Council has specifically authorized such an inquiry.

Copies

(4) The City Clerk shall,

- (a) give a copy of the opinion to the member whose conduct is concerned;
- (b) if the matter was referred by a member or other person, give a copy of the opinion to that member or person; and
- (c) cause the opinion to be laid before the next meeting of Council or one of its committees, as provided for in a by-law passed under section 7.

Refusal to conduct inquiry

(5) If the Integrity Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an inquiry, the Integrity Commissioner shall not conduct an inquiry and shall state the reasons for not doing so in the report.

Member not blameworthy

(6) If the Integrity Commissioner determines that there has been no contravention of the code of conduct or other matters assigned to the Integrity Commissioner under a by-law passed under subsection 3(3), or that a contravention occurred although the member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgment made in good faith, the Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed.

Reliance on Integrity Commissioner's advice

(7) If the Integrity Commissioner determines that there was a contravention of the code of conduct or other matter but that the member was acting in accordance with the Integrity Commissioner's recommendations and had, before receiving those recommendations, disclosed to the Integrity Commissioner all the relevant facts that were known to the member, the Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed.

(8) Subsection (7) does not apply to advice given to a member on the application of the *Municipal Conflict of Interest Act*.

Police investigation or charge

12. If the Integrity Commissioner, when conducting an inquiry, discovers that the subject-matter of the inquiry is being investigated by police or that a charge has been laid, or that an application under section 9 of the *Municipal Conflict of Interest Act* is being processed, the Integrity Commissioner shall suspend the inquiry until the police investigation, charge or application has been finally disposed of, and shall report the suspension to the City Clerk.

Reference to appropriate authorities

13. If the Integrity Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of the Criminal Code (Canada), the Integrity Commissioner 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 the City Clerk.

Recommendation re penalty

14. (1) Where the Integrity Commissioner conducts an inquiry under subsection 10(1) or (4) or a by-law passed under section 7, and finds that the member has contravened the code of conduct or other matter, the Integrity Commissioner shall recommend in his or her report,

- (a) that no penalty be imposed;
- (b) that the member be reprimanded; or
- (c) that the member's right to sit and vote in Council be suspended for a specified period or until a condition imposed by the Integrity Commissioner is fulfilled.

Duty of Council

(2) Council shall consider and respond to the report within 90 days after the day the report is laid before it.

Response

(3) If the Integrity Commissioner recommends that a penalty be imposed, Council may approve the recommendation and order that the penalty be imposed, or may reject the recommendation, in which case no penalty shall be imposed.

Power of Council

(4) Council may impose penalties binding on a member, but does not have power to inquire further into the contravention, to impose a penalty if the Integrity Commissioner recommended that none be imposed, or to impose a penalty other than the one recommended.

Decision final

(5) Council's decision is final and conclusive.

(6) Despite the *Municipal Freedom of Information and Protection of Privacy Act*, Council may cause its decision to be reported to a meeting of the Council or its committees that is open to the public.

Settlement

15. (1) If authorized by a by-law passed under section 3, the Integrity Commissioner may attempt to settle the complaint and shall include in the report any proposed terms of settlement and may recommend other corrective action.

(2) Section 14, does not prohibit Council from approving terms of settlement or adopting the suggestions for other corrective action.

Destruction of records

16. (1) The Integrity Commissioner shall destroy any record in his or her possession that relates to a member or former member of the Council, or to a person who belongs to his or her household, during the 12-month period that follows the tenth anniversary of the creation of the record.

Exception

(2) If an inquiry to which a record may relate is being conducted under this Act or section 100 of the *Municipal Act*, or if the Integrity Commissioner is aware of an application under section 9 of the *Municipal Conflict of Interest Act* to which it may relate or that a charge to which it may relate has been laid under the Criminal Code (Canada) against the member or former member or a person who belongs to his or her household, the record shall not be destroyed until the inquiry, the application or the charge has been finally disposed of.

Appendix 2

Draft Private Bill for City of Toronto Lobbyist Registration

An Act respecting lobbyist registration in the City of Toronto

Preamble

The Council of the City of Toronto has applied for special legislation in respect of the matters set out in this Act.

It is appropriate to grant the application.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1. In this Act,

“Council” means the Council of the City of Toronto;

“lobby” means to communicate with a public office holder in an attempt to influence,

- (a) the development of any legislative proposal by the Council or a member of Council,
- (b) the introduction of any bill or resolution in Council or the passage, defeat or amendment of any by-law, bill or resolution that is before Council,
- (c) the development or amendment of any policy or program of the City or the termination of any program of the City,
- (d) a decision by Council to transfer from the City for consideration all or part of, or any interest in or asset of, any business, enterprise or institution that provides goods or services to the City or to the public,
- (e) a decision by Council to have the private sector instead of the City provide goods or services to the City,
- (f) the awarding of any grant, contribution or other financial benefit by or on behalf of the City, and
- (g) if provided in a by-law passed under section 2,

- (i) to communicate with a public office holder in an attempt to influence the awarding of any contract by or on behalf of the City, or
- (ii) to arrange a meeting between a public office holder and any other person;

“lobbyist” means an individual who engages in lobbying activities;

“organization” means,

- (a) a business, trade, industry, professional or voluntary organization,
- (b) a trade union or labour organization,
- (c) a chamber of commerce or board of trade,
- (d) an association, a charitable organization, a coalition or an interest group,
- (e) a government, other than the City, and
- (f) a corporation without share capital incorporated to pursue, without financial gain to its members, objects of a national, provincial, territorial, patriotic, religious, philanthropic, charitable, educational, agricultural, scientific, artistic, social, professional, fraternal, sporting or athletic character or other similar objects;

“public office holder” means,

- (a) any officer or employee of the City not otherwise referred to in clauses (b) and (c) of this definition,
- (b) a member of the Council and any person on his or her staff, and
- (c) if specified in a by-law passed under section 2,
 - (i) a person who is appointed to an office or body by Council, and
 - (ii) an officer, director or employee of an agency, board or commission of the City or a corporation where the City is the majority shareholder;

“registrar” means the registrar appointed under section 5;

“senior officer” means the most senior officer of an organization who is compensated for the performance of his or her duties.

By-law

2. (1) The Council of the City of Toronto may:

- (a) pass by-laws to regulate or prohibit lobbying of public office holders, and
- (b) as part of the power to regulate or prohibit lobbying, may require persons and organizations to do things, provide for a system of registration and impose conditions as a requirement of continuing to hold or renew a registration.

Scope

(2) A by-law passed under subsection (1) may,

- (a) be general or specific in its application and may differentiate in any way and on any basis the City considers appropriate,
- (b) define different classes of lobbyists, including lobbyists who lobby without payment or receive partial payment, and may deal differently with different classes of lobbyists,
- (c) provide that the definition of “lobby” in clause (h)(i) or (ii) or both applies to a class of lobbyists,
- (d) define different classes of public office holders and deal differently with different classes of policy holders,
- (e) define different classes of organizations and deal differently with different classes of organizations, and
- (f) define when the duties of an employee to lobby on behalf of an employer constitute a significant part of his or her duties as an employee for the purpose of defining a class of lobbyists.

Registry

(3) The power to establish and maintain a registry and to require an individual who engages in lobbying activities or who is a senior officer of an organization that employs an individual to lobby on its behalf, to register respecting lobbyists and lobbying activities and to maintain its registration in the registry includes the power,

- (a) to prohibit the carrying on of or engaging in the lobbying activities unless the individual or senior officer has registered in the registry,

- (b) to revoke or suspend a registration,
- (c) to require that information on lobbyists and lobbying activities be provided, including the information set out in sections 4(4), 5(3) and 6(3) of the *Lobbyists Registration Act, 1998*, with necessary changes, including the changes necessary to apply to lobbyists who are not paid or receive only partial payment for engaging in a lobbying activity,
- (d) to require, for both initial and ongoing registration, that any other information for the registry specified in the by-law to be of municipal interest, be provided,
- (e) to require, within the time frame specified in the by-law, updated information for the registry to be provided if the information under clause (c) or (d) changes,
- (f) to exempt any person or organization from all or any part of the by-law,
- (g) to require a fee to be paid on the filing of a return or a return of a class of returns or for any service performed or the use of any facility provided by the registrar and may provided for a difference in or the waiver of the fee for filing a return based on the manner in which the return is submitted to the registrar; and
- (h) to permit public inspection of all or part of the registry.

Recovery of fees

3. (1) Fees imposed by the City under this Act constitute a debt of the person or organization to the City.

Amount owing added to tax roll

(2) The treasurer of the City may add fees imposed by the City under this Act to the tax roll for any property for which all of the owners are responsible for paying the fees and charges and collect them in the same manner as municipal taxes.

Storage

4. (1) Any return or other document that is received by the registrar, under a by-law passed under section 2, may be entered or recorded by any information storage device, including any system of mechanical or electronic data processing, that is capable of reproducing the stored return or other document in intelligible form within a reasonable time.

Evidence

(2) In any prosecution for an offence under this Act or by-law passed under section 2, a copy of a return or other document that is reproduced from an information storage device referred to in subsection (1) and certified under the registrar's signature as a true copy is admissible in evidence without proof of the signature or official character of the person appearing to have signed the copy and, in the absence of evidence to the contrary, has the same probative force as the original would have if it were proved in the ordinary way.

Registrar

5. (1) The City may appoint a registrar.

Powers and Duties

(2) A by-law passed under section 2 may,

- (a) provide for the powers and duties of the registrar including the power:
 - (i) to establish and maintain the registry, including the form of the registry,
 - (ii) to establish the manner and time for public inspection,
 - (iii) to verify the information contained in any return or other document submitted, and
 - (iv) to refuse to accept a return or document that does not comply with the by-law or that contains information and statements not requested,
- (b) permit the registrar to issue advisory opinions and interpretation bulletins with respect to the enforcement, interpretation or application of the by-law and this Act, and
- (c) provide that the advisory opinions and interpretation issued under the authority of the by-law are not binding.

Removal from registry

6. (1) A bylaw passed under section 2 may permit the registrar to remove a return from the registry if the individual who filed the return fails to confirm information contained in it, advise the registrar of matters required under the by-law or fails to give the registrar requested information within the time periods specified in the by-law.

Same

(2) The *Statutory Powers Procedure Act* does not apply with respect to the registrar's decision to remove a return from the registry, and the registrar may remove the return without giving notice to the individual who filed the return and without holding a hearing.

Effect of removal

(3) When a return is removed from the registry, the individual who filed it shall be deemed, for the purposes of his or her existing and future obligations under the by-law, not to have filed the return.

Delegation of powers

7. (1) A bylaw passed under section 2 may permit the registrar to delegate in writing any of his or her powers or duties under this Act or the by-law to a person employed in the registrar's office or a City employee seconded to that office and may authorize him or her to delegate any of those powers or duties to another person employed in or seconded to that office.

Conditions, etc.

(2) A delegation may be made subject to such conditions and restrictions as specified in the by-law and, if permitted in the by-law, as the person making the delegation considers appropriate.

Registrar retains powers and duties

(3) The registrar may continue to exercise any delegated powers and duties despite the delegation.

False or misleading statements

8. (1) A by-law passed under section 2 may provide that every individual who knowingly makes a false or misleading statement in a return or other document submitted to the registrar under the by-law is guilty of an offence.

Conflict of interest offence

(2) A by-law passed under section 2 may provide that a lobbyist or a specified class of lobbyist is guilty of an offence if, in the course of lobbying a public office holder, the lobbyist knowingly places the public office holder in a position of real or potential conflict of interest as described in subsection (3).

Same

(3) A public office holder is in a position of conflict of interest if he or she engages in an activity that is prohibited by the *Municipal Conflict of Interest Act* or that would be so prohibited if the public office holder were a member of the Council.

Limitation

(4) No proceeding in respect of an offence under a by-law passed under section 2 shall be commenced more than two years after the time when the subject-matter of the proceeding arose.

Penalty for by-law offence

(5) A by-law passed under section 425 of the *Municipal Act, 2001*, may also provide for the imposition of fines of not more than \$25,000 on every person who is convicted of an offence under the by-law.

(6) If the maximum amount of the fine that may be imposed under subsection (5) is less than the maximum fine under subsection 18(8) of the *Lobbyist Registration Act, 1998*, a by-law passed under section 2 may provide for the imposition of a fine of not more than the maximum fine under subsection 18(8) of that Act.

Commencement

9. This Act comes into force on the day it receives Royal Assent.

Short title

10. The short title of this Act is the City of Toronto Act (Lobbyist Registration), 2003.

Appendix B

City of Chicago Practical Examples

The City of Chicago provides a fairly comprehensive set of practical examples as to what it does not consider to be lobbying. This purpose of these examples is to provide guidance and reassurance to citizens and public office holders with respect to what is and is not considered to be lobbying:

- A restaurant owner who applies to the Department of Revenue for food and liquor licenses.
- An accountant who responds to a Department of Revenue request to produce his client's business records for purposes of a tax audit.
- A supplier of goods who responds to an RFP (a Request for Proposals).
- A homeowner who submits an application for a building permit.
- An attorney who appears before the Department of Administrative Hearings on behalf of a client to contest a notice of violation.
- An officer of a not-for-profit corporation who meets with a representative of a City department to learn how to apply for a City grant.
- An individual who calls the Department of Zoning to inquire whether a particular business activity is authorized at a specific location.
- A property owner who testifies before the City Council Committee on Zoning against a proposed building project in his neighborhood.
- A lawyer, architect or other representative of a building developer who testifies before the Chicago Plan Commission in support of a proposed development, and who is identified as testifying on behalf of the developer.

- A constituent who calls her alderman to request an additional stop sign on her block.
- A group of developers who, at the invitation of a department head or alderman, tours a neighborhood.
- An engineering consulting firm that seeks from City employees a status report on a client's project or license application.
- An attorney who files a notice of appearance in a case in which the City is a codefendant.
- An attorney representing the City's adversary in litigation who comes to the Law Department to try to work out a compromise and reach a settlement.
- An attorney who represents a client before the Zoning Board of Appeals.
- A consultant hired by a manufacturer who assists the company in responding to an RFP (Request for Proposals). (The consultant receives a fee if the company's proposal is accepted.)
- A property owner who, on her own behalf, calls the Department of Planning and Development to urge the creation of a TIF (Tax Increment Financing district) in her area.
- A citizen who calls on behalf of her mother to make an inquiry about a notice her mother received about a building violation.
- A lawyer who calls on behalf of a client to seek information about a notice the client received about a food preparation violation.
- A lawyer who files a client's application for a liquor license and asks office staff some questions about the procedures and timing.
- A citizen who, on behalf of a neighborhood group, speaks to a meeting of the Community Development Commission, and urges that it adopt a

particular plan for the neighborhood. The citizen states her name and identifies the neighborhood group she represents.

- A citizen who urges an alderman to do something to create more parking in the ward. The citizen is a member of a neighborhood group seeking more parking, but was not asked by the organization to act on its behalf.
- Constituents who meet with their alderman to oppose a halfway house in the neighborhood; the constituents are in the process of forming an informal organization for this purpose.