TORONTO

Lobbyist Registrar
Information Report

Status of the Office of the Lobbyist Registrar

Date:	July 3, 2008
To:	City Council
From:	Lobbyist Registrar

SUMMARY

This report conveys the Lobbyist Registrar's report on the status of the Office of the Lobbyist Registrar and the Lobbyist Registry after the first five months of operation.

This information report highlights the experience of the Registrar and the Office of the Registrar to date, outstanding matters, future requirements and observations on the ongoing direction of the Office of the Lobbyist Registrar.

DECISION HISTORY

Municipal Code, Chapter 140 was adopted by Council and brought into force on February 11, 2008. City Council had requested an early report from the Lobbyist Registry on the operation of the registry system. This report is being submitted prior to the departure of the incumbent Lobbyist Registrar.

SIGNATURE

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Lobbyist Registrar

ATTACHMENTS

Report of the Lobbyist Registrar on the Status of the Office of the Lobbyist Registrar

STATUS OF THE OFFICE OF THE LOBBYIST REGISTRAR

REPORT OF THE LOBBYIST REGISTRAR FOR THE PERIOD ENDING JULY 2, 2008

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LOBBYIST REGISTRAR

STATUS OF THE
OFFICE OF THE LOBBYIST REGISTRAR

REPORT OF THE LOBBYIST REGISTRAR
FOR THE PERIOD ENDING JULY 2, 2008

BACKGROUND

Toronto City Council adopted Municipal Code Chapter 140, Lobbying, at its meeting on February 5, 6, 7, and 8, 2007, and brought Chapter 140 into force on February 11, 2008.

Council amended Chapter 140 at its meeting on January 29 and 30, 2008. Council is to consider further amendments at its meeting on July 15 and 16, 2008, the meeting to which this Status Report is being submitted.

City Council requested an early progress report. As the incumbent Lobbyist Registrar, I am submitting this Status Report prior to my departure.

ACKNOWLEDGEMENTS

I would like to thank City Council for giving me the opportunity to be their first Lobbyist Registrar and the first lobbyist registrar of a municipal government in Canada. This was a challenging role that gave me the opportunity to meet many wonderful people and learn a great deal.

I would like to thank Shirley Hoy, City Manager for her steadfast support and her senior management team for making many resources readily available to the Office of the Lobbyist Registrar. I appreciate her understanding of the need for this Office to be independent while still requiring the services of so many of the City divisions. In the Office of the Lobbyist Registrar hangs a picture with the signatures of 85 City staff who contributed to the opening of the Office, staff who are second to none. They worked hard, were cooperative, professional and on time and on budget.

I would like to thank my own exemplary staff. You have brought many compliments to the new Office of the Lobbyist Registrar for your truly outstanding efforts. Launching a new business venture brings many twists and turns on a daily basis. You have risen to the occasion and I am proud of you.

Thank you to my many colleagues both within and outside of the City of Toronto who have offered advice and support. It really takes a team to have any measure of success.

INDEPENDENT OFFICER OF COUNCIL

The *City of Toronto Act, 2006* mandates the City to have a lobbyist registry. The Lobbyist Registrar is one of four accountability officers addressed in the *Act*. These independent officers of Council are part of a new governance model for all concerned, and the City is working through these challenges and is a leader in this regard.

Although the roles of each of the four officers are entirely different, their independence and requirement to report to City Council are the same. Independence is required for the integrity of these officers, and safeguarding their independent roles as well as essential to the successful operation of these offices. That independence has yet to be addressed and it is crucial to define just what that means. From the perspective of this Registrar, the lack of structure, protocol and understanding of the governance model has made the role unnecessarily difficult.

The most obvious difficulty was in July 2007 when the budget was cut over 60% from the previously approved budget, a realistic budget for a fully functioning office. This deep cut completely undermined the independence of the Registrar and has delayed the maturation and full functioning of the registry.

Prior to the end of December 2007, over 40 Council Members, often with their staff, were visited by the Registrar which took in excess of 80 hours. This was helpful in getting to know each other better, but was time-consuming and not an efficient means of communication.

It is my opinion that the governance model should consider the following. Like the Auditor General's relationship to the Audit Committee, there should be a committee established for the remaining three officers and any matters requiring communication between the Council to whom the officers report and the officers would be brought to that committee, including changes to policy or by-law.

The committee should be representative of the diverse range of views of the Council Members and provide a forum where some concerns and ideas can be consolidated. The diversity of expectations and perceptions communicated to the Registrar are so contrasting and distinct that the opportunity to respond positively to any majority of opinions is simply beyond achievement. Clearly, Members of Council should not be broadsided at Council with reports from the officers of Council nor should the officers be broadsided with motions that undermine their ability to function according to their legislated mandate. This committee structure would prevent that from reoccurring.

Once an initial policy and by-law is completed for establishing an independent officer of council, all subsequent activities in the absence of a neutral Speaker's office should be housed in the Office of the Clerk, a function that is outside of the City administration. Since this governance model is new and will take a maturation process, the independent officers should have as part of their protocol a written acknowledgement that an officer may seek assistance and advice from other City offices especially the City Manager's

office and Legal Services. The ability to seek that support should not be left to a casual relationship. The fact that independent officers do not and cannot report to staff requires reinforcement. A documented structure of the relationship to Council and to the City administration will protect the independence of each officer's role. Other authorities need to be documented such as the independent officer's right to hire, approve expenditures within their approved budget and more. These are but examples of the matters that need to be identified and articulated.

The Registrar trusts that the parties, Council Members and independent officers, will work together to define and establish protocols to meet their respective needs and roles while supporting the accountability framework established in the *City of Toronto Act, 2006*, especially protecting the independence of the officers of Council.

OFFICE OF THE LOBBYIST REGISTRAR

Statistics to Date

As of June 30, 2008 there are 537 lobbyists approved with 789 subject matters registered. There are 96 registrations that are under review, most requiring clarifications or with incomplete or missing documentation to be resolved. There have been 296 applications that were denied, including both lobbyists and subject matters. These included registrations in the wrong class, duplicates, no registration required and hackers.

Planning and Development Registrations

Approximately 60% of the subject matter registrations have been to communicate about a planning and development application. Initially, the by-law was interpreted in such a way that communication with public office holders on the merits of an application or approval was defined as lobbying. When revisited it became clear that most communication with staff assigned to the various decisions or approvals that fall within a planning or development application are necessarily of the nature that the merits of the application must be discussed. As a result of the initial interpretation of lobbying, registrants were registering so there would be no constraints on any future business meetings that might arise out of their planning and development application, but it also resulted in a great deal of registration and information being entered in the registry that was neither factual or necessary.

The nature of the communication, the responsibilities of the assigned planning staff and the range of the City staff assigned to the planning process, and the communication in this regard, has been reassessed with input from the Chief Planner, members of the lobbying community and our Legal Services. A new interpretation bulletin has been developed that explains clearly that communication with City staff assigned to the particular application is not communication that requires registration, even if the nature of the communication is to speak to the merits of the approval being sought. The bulletin also explains when communication with staff is lobbying and requires registration. This

revised approach will significantly decrease the amount of registration required and, with the change in the by-law to the process of registering the public office holder and method of communication after lobbying has occurred, lobbying will be transparent and more importantly will make disclosure in the lobbyist registry easier to search and accurate.

This does not mean that there is no registration required regarding a planning and development application. Unless there is an exemption in Municipal Code Chapter 140, registration is required for a communication with a Councillor, Councillor's staff or City staff who do not have a role in the administrative process of reviewing the specific planning application.

OUTSTANDING MATTERS

April 2008 City Council Motion

At the April 29 and 29, 2008 City Council meeting a motion was passed which read in part "the Lobbyist Registrar include options (in a report) for a Council mechanism to clarify interpretation of the Lobbying By-law and the Members' Code of Conduct in instances where they appear to be, or may be inconsistent."

Municipal Code Chapter 140 (the lobbying by-law) has no requirements for any public office holders including Councillors or City staff. Chapter 140 has responsibilities for the lobbyist only. Consequently, there is no manner in which Chapter 140 and the Members' Code of Conduct are consistent or inconsistent. Chapter 140 simply stands alone.

Chapter 140 and the Lobbyist Registrar have no authority over the Members' Code of Conduct and it would therefore be inappropriate for the Lobbyist Registrar to comment upon or make suggestions in that regard. It is also inappropriate for one independent officer of Council to be developing communication mechanisms involving another independent officer, particularly on an isolated matter.

The rhetoric, motions and reference linking together the lobbyist registry with the Members' Code of Conduct have serious inherent risks. Creating the perception that there is an effort to align responsibilities between any two officers of Council could create a perception of bias that would put at risk an investigation being carried out by one or any of the other three officers of Council. This is not to say that officers of Council need not consult with each other, as there are commonalities that from time to time need to be addressed, but the actions taken by the individual officers must not interfere with each other's areas of accountability.

Fees for Registration

Fees for registering would clearly be incongruent with the principles articulated in Chapter 140 including free and open access to government and recognition that lobbying has a legitimate and useful place in the decision making of City government.

Consequently, fees were not recommended with one exception, a fee for paper based applications.

A recommendation presented at the City Council meeting of January 29 and 30, 2008 was deferred. The recommended fee was, like other registries, a deterrent. Careful steps have been taken on advice of Legal Services to ensure that the City is protected from the responsibility of owning the lobbyist's information being posted in the registry. The directions were to have an online system.

There is an important difference between those who cannot register online due to some physical or language barrier and those who simply want someone else to do it for them. Staff of the Office of the Lobbyist Registrar are astute enough to know the difference and charge a fee only where warranted.

However, anyone who requires the staff to do their data input would be required to come to the registry office as there would be several sign offs required in exercising due diligence in order to authenticate the registrant and to protect the City in terms of the data input.

Deferral of the paper based fee recommendation leaves the registry office exposed to misuse of the demand for paper based registrations. This needs to be resolved.

OTHER MATTERS

Registration Requirements for Not-for-profit Organizations

The requirement to register to lobby for the small not-for-profit community groups or associations with limited staff and resources has been raised as a concern on the basis that registration is a burden to those with limited resources and the transparency of that lobbying for very small considerations is of questionable value to the public. Interestingly, when that group of applicants were advised about the need under Chapter 140 to register to communicate, many did not know that other groups were lobbying and now feel in the future that they will be compelled to do so.

On the other hand, there are other not-for-profit organizations who are awarded significant amounts of funding including several very large entities that the City regularly funds. Although such organizations are well established as part of the City's cultural fibre, there should continue to be a requirement to register to communicate when that communication comes under the requirements of Chapter 140. This would require consideration of criteria in the lobbying by-law to distinguish funding thresholds below which lobbying about minor funding to small not-for-profit community groups would be exempt from the registration requirement.

A motion was passed at Executive Council June 26, 2008 which suspends registrations for not-for-profit community services organizations and requests a report back to Council

on this matter. This motion is welcomed direction and will be passed to the next Lobbyist Registrar.

A second area of concern about exemptions for not-for-profit organizations has been expressed by the business community. There are not-for-profit organizations essentially engaging the public on various matters of public concern which range from a city-wide or societal issue to a local singular matter. These not-for-profit organizations are not required to register as they have no business interests to disclose. The business community with a business interest in the same subject matter would need to register to lobby.

Members of the business community are concerned that on a common subject matter, they are left unaware and therefore unable to lobby in response to the not-for-profit lobbying, the latter not being disclosed in the registry. This concern is expressed especially where the not-for-profit group is not simply a grassroots community group but an organization that is large, well organized, funded and in some cases staffed. In summary, the business position is that the transparency about who is talking to whom about what is unevenly applied.

The Provincial Registry

There have been ongoing comparisons and suggestions that the City of Toronto's lobbyist registry should be the same as that at the Province of Ontario. As enforcement protocols and policies come forward this could well be raised again. There are essential things that are the same as the provincial registry such as definitions, data required to register and the requirement to register on line. There are best practices to be considered such as no fees to register except for paper based applications. There are also very important differences, the most important being that the provincial registry is not a regulatory registry with an enforcement mandate and it does not have a lobbyist code of conduct.

Secondly, there are different requirements that determine who should be registering. Had the provincial model been adopted, considerable lobbying activity that occurs at the City would not require registration and transparency regarding City decision making would be compromised.

If the lobbying legislation is regulatory, as it is with the City and the federal government, the roles of Integrity Commissioner and Lobbyist Registrar cannot be combined as this has been successfully challenged in the courts at the federal level. If the regulatory requirement of the registry is abandoned, the registry would have no teeth to deal with lobbyists in violation of the lobbyist code of conduct, and the City would be unable to implement key recommendations made by the Bellamy Inquiry.

The business functions and the decision making timelines and processes are very different for the City than at the province and those differences appear to have been well considered. The comparison and reference to the provincial system needs to end as it serves no useful purpose except to communicate to the public that maybe the City made a

mistake, which undermines confidence in the lobbying by-law. The Registrar is convinced that the City made the right choice for transparency for the decision making at the City, and that changes will occur over time as the by-law is tested, but the basic premise of a regulatory registry with inclusive registration requirements makes good business sense.

If reference must be made to any other lobbyist registry it should be made to the federal system as it operates under a regulatory Act and has far more commonality with the City's lobbyist registry.

GOING FORWARD

Educational Initiatives – past and future needs

Education has been a key component to the implementation of the lobbyist registry. This was done through electronic communication, media advertising, distribution of printed materials and signage, and in-person contact. The Lobbyist Registrar has presented in many public and business forums before and after the launch on February 11, 2008 including law firms, lobbyists' firms, not-for-profit organizations and business and professional organizations. There have been many visits to the Office of the Lobbyist Registrar from senior staff and volunteers from both business and professional organizations. Internal communication has been steady and personal visits and or meetings were made with the City's large local boards as well as several of the smaller local boards.

As the full functions of Chapter 140 are implemented, education needs will have to be immediate and at the forefront. The website is an important communication tool but printed material and personal contact are also part of the educational package.

Of course the most effective educational method is when a public office holder brings the registry to the attention of someone who is trying to communicate and directs them to the website or the Office of the Lobbyist Registrar for further information.

Enforcement – behaviour outside of the City's direct control

Enforcement is the next and most important work for the Lobbyist Registrar to undertake and this should commence immediately.

The enforcement section of Chapter 140 requires very careful consideration, sufficient resources and well developed protocols. Unlike the requirements of the City's other three offices of accountability, violations of the Lobbyist Code of Conduct are external to the City and concern behaviour over which the City and local boards have no direct control or ability to correct. The impact of enforcement, even that of a simple administrative letter to a lobbyist for any violation of the lobbyist code of conduct, may be on the lobbyist's livelihood and further implicates the lobbyist's client or employer.

Although like the federal registry most enforcement will be administrative, it will be important that staff be hired that have expertise in investigation, but expertise beyond internal investigations. Investigative staff must know the legally defensible, appropriate and effective investigative techniques to enable them go out into the business and not-for-profit community and investigate businesses and persons who are not employed by the City. The same staff will also need to be able to investigate internally, as it relates to the external investigation. They should be able to understand any business processes and the roles and responsibilities of public office holders, which are essential in determining whether or not lobbying occurred and, if so, if it was appropriate and consistent with the lobbyist code of conduct.

The media does not need to wait for a public report to identify lobbying activity or even a violation of Chapter 140. Lobbying activity is not necessarily labelled but none-the-less is captured in the media on a regular basis. It will not take a formal complaint for some violations to be obvious. At this time, there have been suggestions and even indications that there are those who should be registering who are not. That must be addressed with conviction sooner rather than later, but with the support as outlined below under Requirements for Success.

Enforcement is a critical and essential part of Chapter 140. It has been left to date for two reasons. First, the by law must be doable and thus the registry itself must be working well. It was clear almost immediately that the registration requirements could not be implemented as envisioned and amendments were required. Those changes are addressed under a separate report to Council through the Executive Committee. Secondly, there needed to be sufficient opportunity and time for those who must register to learn about their obligations under the lobbyist code of conduct including the requirement to register. There has been time enough.

Requirements for Success

The Office of the Lobbyist Registrar is operating in 2008 on a budget amount that was requested, after twice being reduced, for nine months of operation in 2007. This clearly will not work for 2009.

Like other offices of accountability and particularly other lobbyist registries, this is a cost centre providing a benefit to an anonymous public at large. The value lies in advising those wanting to do business with the City or wanting the City to respond favourably to their requests that the door is open and decision making at this government is transparent, ethical and public. The Office of the Lobbyist Registrar will investigate and enforce a lobbyist code of conduct that says the City is serious about how lobbying is conducted.

City Council can make this registry a success, but the lack of understanding by some Members of what it is that the Council has passed and the obvious weak commitment undermines any chance of this registry working as it should or of being a model for any other municipal government that would like to follow our lead.

Amendments already recommended to Chapter 140 will make the implementation of the Chapter 140 more efficient and workable, the Office of the Lobbyist Registrar is staffed, and the registry internet system is in place. This infrastructure is not what will make the lobbyist registry successful. In order to succeed, commitment from Councillors and all public office holders to uphold the lobbying by-law as they would any other by-law is absolutely necessary. City Council needs to commit not just adequate resources but also commit to the principles of the accountability framework, the role of the independent officer and to the transparency that those two elements together were intended to achieve.

The lobbyist registry is not about watching Councillors or any other public office holders which appears for some to be a fear that paralyzes their support. For others the lobbyist registry is just a bleep on the radar that is intentionally or easily ignored. The lobbyist registry is about setting a higher standard of openness in which Council and the City carry out decision making, and gives the public information to which they are reasonably entitled. It gives public office holders the protection of letting the public know with whom they are doing business and eliminates speculation and misinformation about how that business is conducted.

The City passed a trailblazing lobbyist registry by-law that essentially has the capacity to serve the public well in delivering transparency to decision making at the City. The City needs to be applauded for pursuing this authority and then for responding to the requirements of the *City of Toronto Act, 2006*.

The decision to have this function is based on an unfortunate experience. The success of this function will be based a City Council that is willing to support in all ways possible an accountability framework, including the lobbyist registry, like other government bodies of this scope, size and maturity.