



**LOBBYIST REGISTRAR  
AND INTEGRITY  
COMMISSIONER REPORT -  
ACTION REQUIRED**

**Report on Congruence between Lobbying By-law and  
Obligations under Members Code of Conduct**

<b>Date:</b>	March 18, 2008
<b>To:</b>	Executive Committee
<b>From:</b>	Lobbyist Registrar and Integrity Commissioner
<b>Wards:</b>	All
<b>Reference Number:</b>	

**SUMMARY**

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This report addresses the issue of the relationship between the Lobbying By-law and the Code of Conduct for Members of Council and Local Boards (Restricted Definition) (“Members Code of Conduct”). It provides information on the current operating protocols of the offices of the Lobbyist Registrar and the Integrity Commissioner with respect to the responsibilities of members of Council and Local Boards (Restricted Definition) in engaging with lobbyists. It also proposes various amendments to the Members Code of Conduct to ensure greater clarity in the obligations of members of Council and Local Boards (Restricted Definition) in dealings with lobbyists.

**RECOMMENDATIONS**

The Integrity Commissioner recommends that the Executive Committee approve the following amendments to Articles XIII and IV of the Members Code of Conduct:

1. Substitute the following for existing Article XIII:

**XIII. CONDUCT RESPECTING LOBBYISTS:**

Lobbying of public office holders is a permissible but regulated activity in the City of Toronto. Lobbying is defined and regulated by Municipal Code Chapter 140, Lobbying (the City’s lobbying by-law inclusive of the Lobbyist Code of Conduct).

Members of Council and Local Boards (Restricted Definition), and their staff are public office holders. As a matter of general principle as public office holders, members of Council and Local Boards (Restricted Definition) should be familiar with the terms of this lobbying by-law inclusive of the Lobbyist Code of Conduct (Chapter 140).

Specifically, members of Council and Local Boards (Restricted Definition) should not engage knowingly in communications in respect of the list of subject matters contained in the definition of “Lobby” as set out in Chapter 140 with a person who is not registered as required by Chapter 140.

Members of Council and Local Boards (Restricted Definition) should also not knowingly communicate with a registered lobbyist who is acting in violation of Chapter 140.

If a member of Council or Local Board (Restricted Definition) is or at any time becomes aware that a person is in violation of Chapter 140, that member should either refuse to deal with the lobbyist or, where appropriate, either terminate the communication with the lobbyist at once or, if in the member’s judgment it is appropriate to continue the communication, at the end of the communication, draw that person’s attention to the obligation imposed by Chapter 140.

A member should report any such violation or attempted violation of Chapter 140 to the Lobbyist Registrar unless the member believes in good faith that the violation in communicating or attempting to communicate with the member was inadvertent or insignificant.

2. Substitute the following for the existing fourth paragraph of Article IV:

Except for category (c) (political contributions allowable by law), these exceptions do not apply where such gifts or benefits are provided by lobbyists or their clients or employers (as defined or described in Municipal Code Chapter 140, Lobbying). For these purposes, a lobbyist is an individual, organization or business that

- (i) is lobbying or causing the lobbying of any public office holder at the City, a local board (restricted definition) or the board of health;
- (ii) the member knows is intending to lobby, having submitted or intending to submit a registration to the Lobbyist Registrar for approval to communicate on a subject matter; or
- (iii) is maintaining an active lobbyist registration with the City even though not having a current active subject matter registered with the lobbyist registry.

## **Financial Impact**

This report will have no financial impact.

## **DECISION HISTORY**

At its meeting of September 25, 26 and 27, 2006, City Council conditionally approved various amendments to the Members Code of Conduct. These included a new provision (Article XIII) on Lobbying to come into force at the same time as the Lobbying By-law (Municipal Code Chapter 140, Lobbying, as enacted under the *City of Toronto Act, 2006*). The Lobbying By-law came into force on February 11, 2008. Article IV of the revised Members Code of Conduct also contained a revised provision on Gifts and Benefits that prohibited (with one exception) the receipt of gifts and benefits from lobbyists.

Subsequently, at its meeting of January 29 and 30, 2008, City Council passed a motion requesting the Integrity Commissioner and the Lobbyist Registrar to

*...review the Lobbying By-law as it relates to the Councillor Code of Conduct to ensure internal consistency, and report to the April 7, 2008 meeting of the Executive Committee on any possible changes.*

## **ISSUE BACKGROUND**

The revisions to the Members Code of Conduct took place at a time when there was no Lobbyist Registrar. With the appointment of the Lobbyist Registrar and the development of the protocols under which that official functions, it became important to review the provisions of the Code of Conduct respecting lobbyists. Further refinements to the Lobbying By-law as well as a greater awareness of the practicalities of lobbying under the new regime also required such a review.

## **COMMENTS**

### **The Operation of the Lobbying By-law as it Affects Members of Council and Local Boards (Restricted Definition) and Public Officials Generally**

The motion requested an explanation of how Municipal Code Chapter 140, Lobbying relates to the Members Code of Conduct. There is no regulatory relationship or requirement between the two. The Lobbying By-law deals exclusively with lobbyists and the requirement to register lobbying activity. When registering a subject matter, the registrant must name any councillor or councillor staff to be contacted. However, the onus under this By-law is upon the lobbyist to register and to behave within the requirements of the Lobbyist Code of Conduct. This By-law demands nothing of the public office holder whether that be City staff, councillor or councillor staff.

No formal recommendations regarding the Complaints and Investigation aspect of Municipal Code Chapter 140 have been presented for approval because in the initial stages of operation, the Lobbyist Registrar must allow for a reasonable learning period for those who are required to register and the staff needed to manage complaints are yet to be determined due to lack of operational experience. However, it is the Registrar's opinion that most complaints will be handled on the level of an administrative review and if the complaint implicates a public office holder, be that staff or councillor, it is not the role of the Lobbyist Registrar to refer the matter to either the City Manager or the Integrity Commissioner. That would be the responsibility of the complainant should they so wish to pursue those avenues of complaint. Similarly, it is expected that complaints filed against a councillor, their staff or City staff that implicate a lobbyist would not result in a referral to the Lobbyist Registrar, the onus would again be on the complainant or other involved or interested party to make that referral.

Although the basic principle of the Lobbyist Registry is to regulate the behaviour of those with business interests who are external to the City and to ensure disclosure of information, the Lobbyist Registrar will not be recommending that any complaint at an administrative review level be subject to the release of the details of that complaint, identification of the complainant, the subject of the complaint or the disposition of the complaint. More serious complaints requiring formal investigation will have a protocol brought to City Council for approval.

The Lobbyist Registry deals with business interests outside of the City governance structure and works on the basis of disclosure and thus transparency. On a going forward basis, this means that the protocols and responsibilities of the Office of the Lobbyist Registrar will vary from those of the Auditor General, Integrity Commissioner and the Ombudsman as by comparison, those mandates are essentially looking at internal matters.

As a consequence, it is the position of the Lobbyist Registrar that there is no need for any amendments to the Lobbying By-law in response to the concerns that prompted Council to refer this issue to us.

### **Lobbying from the Perspective of the Members Code of Conduct and the Integrity Commissioner**

The current Article XIII of the Members Code of Conduct (Appendix A) provides that members of Council and Local Boards (Restricted Definition) have a general responsibility to be aware of and uphold the provisions of the Lobbying By-law. It then sets out three specific obligations that members of Council and Local Boards (Restricted Definition) have when dealing with lobbyists. They are not to participate in lobbying by unregistered lobbyists, not to communicate with lobbyists who are otherwise in violation of the Lobbying By-law and its Code of Conduct, and to report known violations or attempted violations to the Lobbyist Registrar.

In giving advice to members of Council as to their practical obligations under this provision, the Integrity Commissioner has elaborated on the provisions of the Members Code of Conduct and his role in this area. A compilation of that advice is attached as Appendix B.

However, in the course of discussions and with the benefit of experience, it is apparent that some amendments to Article XIII are in order to both clarify and make more realistic the obligations of members of Council and Local Boards (Restricted Definition) under that provision. As a matter of policy, members do have a role in making the lobbying regime work. They should not be able to wash their hands of the issue and treat the regime as simply a matter between lobbyists and the Lobbyist Registrar. This means they should not ignore abuses without Members Code of Conduct consequences. On the other hand, the provisions of Article XIII should not be a trap for the unwary. They should also set realistic expectations.

With that in mind, the Integrity Commissioner proposes the following substantive amendments to Article XIII:

1. Making it clear that there is no open-ended obligation to uphold the terms of the Lobbying By-law inclusive of the Lobbyist Code of Conduct. Rather, the only grounds for a Members Code of Conduct complaint are the specific kinds of activity set out in the Article;
2. Requiring knowledge on the part of the member as a component of the three specific examples of misconduct dealt with in the Article; and
3. Giving the member room for manoeuvre in determining whether to report violations or attempted violations to the Lobbyist Registrar.

The preamble or introduction to the Article also requires rewriting to reflect what constitutes lobbying in the Lobbying By-law as ultimately approved by Council.

(See Appendix A for a comparison between the existing Article XIII and the proposed Article XIII.)

That final version of the Lobbying By-law also requires elaboration of the prohibition on members' accepting gifts and benefits from lobbyists. Given the width of what constitutes lobbying under the Lobbying By-law, the prohibition should be defined in terms of gifts from lobbyists currently engaged in lobbying or intending to engage in lobbying at the City of Toronto on a registered or about to be registered subject matter, and also from those maintaining an active lobbyist registration even though not with respect to an active subject matter. The Lobbyist Registrar will also address this with other possible changes to the Lobbying By-law within the next three months.

## **CONTACT**

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## **SIGNATURES**

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Marilyn Abraham, Lobbyist Registrar

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David Mullan, Integrity Commissioner

## **ATTACHMENTS**

Appendix A: Article XIII of Members Code of Conduct – Existing and Proposed

Appendix B: Compendium of Integrity Commissioner Advice on Article XIII

# Appendix A

## Code of Conduct for Members of Council and Local Boards (Restricted Definition)

### XIII. CONDUCT RESPECTING LOBBYISTS:

<b>Current</b>	<b>Proposed (Key Changes Highlighted)</b>
<p>Lobbying is a permissible but regulated activity. In the City of Toronto, it is defined in terms of any communication between a paid lobbyist, or a voluntary lobbyist on behalf of a for-profit entity, and a public official (including a member of Council) in respect of a broad range of subject matters.</p>	<p>Lobbying of public office holders is a permissible but regulated activity in the City of Toronto. <b>Lobbying is defined and regulated by Municipal Code Chapter 140, Lobbying (the City’s lobbying by-law inclusive of the Lobbyist Code of Conduct).</b></p>
<p>Members of Council are responsible for upholding the terms of Chapter 140, Lobbying, of the City of Toronto Municipal Code (the lobbying by-law, inclusive of the lobbyists’ code of conduct).</p>	<p><b>Members of Council and Local Boards (Restricted Definition), and their staff are public office holders. As a matter of general principle as public office holders,</b> members of Council and Local Boards (Restricted Definition) <b>should be familiar with the terms of</b> this lobbying by-law inclusive of the Lobbyist Code of Conduct (Chapter 140).</p>
<p>More particularly, members of Council should not engage in communications in respect of the list of subject matters contained in Chapter 140 with a person who is not registered as required by Chapter 140.</p>	<p>Specifically, members of Council and Local Boards (Restricted Definition) should not engage <b>knowingly</b> in communications in respect of the list of subject matters contained in the definition of “Lobby” as set out in Chapter 140 with a person who is not registered as required by Chapter 140.</p>
<p>Members of Council should also not knowingly communicate with a registered lobbyist who is acting in violation of Chapter 140.</p>	<p>Members of Council and Local Boards (Restricted Definition) should also not knowingly communicate with a registered lobbyist who is acting in violation of Chapter 140.</p>

**XIII. CONDUCT RESPECTING LOBBYISTS:**

**Current**

**Proposed (Key Changes Highlighted)**

<p>In the event that a lobbyist is in violation of Chapter 140, members of Council should either refuse to deal with the lobbyist on those terms or, where appropriate, terminate the communication with the lobbyist at once and communicate the violation or attempted violation to the Lobbyist Registrar.</p>	<p><b>If a member of Council or a Local Board (Restricted Definition) is or at any time becomes aware that a person is in violation of Chapter 140,</b> that member should either refuse to deal with the lobbyist or, where appropriate, either terminate the communication with the lobbyist at once or, <b>if in the member’s judgment it is appropriate to continue the communication, at the end of the communication, draw that person’s attention to the obligations imposed by Chapter 140.</b></p> <p>A member should report any such violation or attempted violation of Chapter 140 to the Lobbyist Registrar <b>unless the member believes in good faith that the violation in communicating or attempting to communicate with the member was inadvertent or insignificant.</b></p>
<p>[This provision shall come into force when Chapter 140, as enacted under the <i>City of Toronto Act, 2006</i>, comes into force. Until then, Part X, now renumbered as Part XIII, of the original <i>Code of Conduct</i> remains in effect.]</p>	



## **Appendix B**

### **Compendium of Advice Given on Article XIII by Integrity Commissioner**

It will generally be sufficient to meet the standards of the Members Code of Conduct to ask an obvious lobbyist whether he or she is registered. The only situation where this may not be adequate is where the Member has strong reasons to disbelieve an affirmative answer to that question. If the member admits to not being registered, do not engage.

In cases where it is unclear whether the contact in question amounts to lobbying the position is more fluid. Where the Member believes that the contact is at the margin, the Councillor should still ask whether the person is registered. If the answer is a negative and the person asserts that he or she is not lobbying but if the Member still has concerns, postpone any contact or meeting until the Member has sought the advice of the Lobbyist Registrar on whether the approach is lobbying.

This applies with appropriate modifications to electronic and written lobbying as well as to face to face encounters. In the case of electronic and written lobbying, it is not a violation of the Members Code of Conduct to review the documentation or communication for the limited purposes outlined above. Thereafter shedding or deleting is the best course of action if the Member forms the judgment that the lobbying is inappropriate for any of the reasons provided above. Where that lobbying is persistent, then the Member may want to contact the Lobbyist Registrar.

The Integrity Commissioner's advice to Members goes on to state:

Obviously, this is a whole new world and it will probably take some time for the parameters of what is appropriate to be worked out in detail. During that early period, I will be taking a very cautious approach to any complaints that a Member has acted inappropriately in dealing with an unregistered lobbyist or one otherwise in violation of the Lobbying By-law. I am also hoping that Members who are concerned about particular situations will have no hesitation in seeking advice from the Lobbyist Registrar or me. To further assist members, in consultation with the Lobbyist Registrar, I am also available to give formal advice and will be issuing FAQs as appropriate.