



**2009 ANNUAL REPORT OF THE LOBBYIST REGISTRAR
TO TORONTO CITY COUNCIL**

LINDA L. GEHRKE
LOBBYIST REGISTRAR

Table of Contents

MESSAGE FROM THE LOBBYIST REGISTRAR.....	1
OUR WEBSITE	2
STAFF	3
INFORMATION, ADVICE AND INTERPRETATION	3
TRAINING AND OUTREACH.....	4
REGISTRATIONS	5
Lobbyist Registrations.....	5
Subject Matter (SM) Registrations.....	5
INQUIRIES AND INVESTIGATIONS	6
Inquiries and Investigations Statistics	6
Summaries of Completed Inquiries and Investigations	7
WORKING TOGETHER WITH ACCOUNTABILITY OFFICERS AND CITY STAFF	12
RESOURCES AND PRIORITIES.....	12
FINANCIAL INFORMATION.....	13
AUDITS	13
ADVICE AND RECOMMENDATIONS OF THE LOBBYIST REGISTRAR ON LOBBYING MATTERS AND THE LOBBYING BY-LAW	13
Municipal Elections and the Lobbying By-law	13
Employee Conflict of Interest Policy and the Lobbying By-law	14
Lobbying Outside Regular Office Hours and Locations	14
Media Campaigns by Lobbyists	15
Staff Reports on Consultations	15
Enforcement	16
Registration Fees	16
CHALLENGES AND GOALS FOR 2010.....	17
1. Municipal Elections.....	17
2. Employee Conflict of Interest Policy	17
3. Completion of Phase 3 of the Website IT Project.....	17
4. Registry Services	18
5. Outreach to Public Office Holders, Lobbyists and the Public.....	18
6. Ensuring Compliance with the Lobbying By-law	18
7. Working Together with the Statutory Accountability Officers	18
8. Working Together with Council and City Staff.....	18

Appendix I: Organizational Chart

Appendix II: Compliance Investigations Procedures

Appendix III: 2009 Financial Statement

2009 ANNUAL REPORT OF THE LOBBYIST REGISTRAR TO TORONTO CITY COUNCIL

This is my second annual report to Toronto City Council on the activities of my office and the discharge of my duties as Lobbyist Registrar, in compliance with § 3-7A of the Toronto Municipal Code, for the year 2009.

MESSAGE FROM THE LOBBYIST REGISTRAR

The City should treat lobbying as a potentially helpful practice that should be carefully controlled.¹

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

- In 2009, the OLR received and answered 1,342 telephone inquiries. This is an increase of 280 inquiries or 26% over the 1,062 telephone inquiries we received in 2008.
- As of December 31, 2009, the registry had 938 active lobbyist registrations and 69 under review. This is an increase of 188 active lobbyist registrations or 25% over the number of active registrations (750) on December 31, 2008.
- As of December 31, 2009, the registry had 1,364 active subject matter registrations and 107 under review. This is an increase in active subject matter registrations of 357 from 1,007 at year-end 2008 or 35%.
- 15 inquiries and investigations about compliance with the by-law were opened in 2009 and 19 were completed.

The OLR was honoured with a 2009 Innovation Award at the Toronto Innovation Showcase, for Creating a Lobbyist Registry. This award recognizes that Toronto has been at the forefront in creating the first online municipal lobbyist registry.

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

In 2009, the OLR published Compliance Investigations Procedures on its website.² Council approved three staff positions (inquiries and investigations counsel, lobbyist compliance investigator and administrative assistant) to promote, ensure and enforce compliance by lobbyists with the Lobbying By-law.

Council adopted Chapter 3 of the Toronto Municipal Code and the Policy Framework for Toronto's Accountability Officers in 2009.³ The adoption of Chapter 3 is a significant step in establishing the nature and responsibilities of these offices as independent Accountability Officers of Council. The development of the policy framework and by-law involved active consultation by the City Manager and City Legal Services with all of the Accountability Officers. I was pleased to be a part of this process.

In addition to the new framework for Accountability Officers, in 2009 the Acting Integrity Commissioner⁴ and I consulted with Council members and developed a protocol on the issue of mass e-mails by lobbyists to councillors.⁵ We also consulted with the City Clerk's Council and Support Services to produce a protocol related to the City policy on Donations to Council Member-Organized Community Events.⁶

I look forward to continued efforts in all of these areas in 2010, to ensure that my office continues to play a leadership role through best practices in our lobbyist registration system and in compliance promotion, investigation and enforcement.

OUR WEBSITE

The Office of the Lobbyist Registrar's website, www.toronto.ca/lobbying, provides public access to the lobbyist registry and online registration for lobbyists. The website also provides information to members of the public, lobbyists and public office holders. It contains links to our interpretation bulletins, protocols, Lobbying By-law, Lobbyists' Code of Conduct, and relevant City policies.

We completed Phase 2 of our website IT project and commenced Phase 3 in June 2009. Phase 2 included legislated changes to the registry and improvements to its search capacity. Phase 3 includes making the website clearer, easier to read and easier to navigate; making it easier to search the lobbyist registry and to register; creating statistical reports and implementing legislative requirements. As part of Phase 3 of our website IT project, the OLR consulted with lobbyists and Council members' staff to determine how the OLR website could be improved to meet their needs. We launched improvements to the website in March 2010. Phase 3 of the project is expected to be complete in June 2010.

² Office of the Lobbyist Registrar, Compliance Investigation Procedures – www.toronto.ca/legdocs/mmis/2009/cc/bgrd/backgroundfile-18482.pdf#appendix-2

³ EX31.1 "A Policy Framework for Toronto's Accountability Officers" considered at April 29 and 30, 2009 Council Meeting – <http://www.toronto.ca/legdocs/mmis/2009/ex/reports/2009-04-07-ex31-cr.htm>

⁴ Lorne Sossin was Acting Integrity Commissioner for the City of Toronto in 2008 and 2009.

⁵ www.toronto.ca/lobbying/pdf/protocol_written_comm_may2109.pdf

⁶ www.toronto.ca/lobbying/pdf/donations_to_member-organized_comm_events.pdf

STAFF

The Office of the Lobbyist Registrar includes the permanent full-time staff positions of two lobbyist registry advisors; administrative assistant to the registrar; manager, registry operations; inquiries and investigations counsel; lobbyist compliance investigator; and administrative assistant to the inquiries and investigations counsel.

The registry advisors provide advice and interpretation; review, verify and approve registrations and updates; develop and deliver training programs for lobbyists; and participate in IT projects to improve the registry website. The manager, registry operations, is responsible for the day-to-day operations, maintenance and improvement of the lobbyist registry.

Effective March 2010, inquiries and investigations counsel is responsible for leading and conducting investigations as well as developing policies and procedures to support the registrar's inquiries and investigations. The lobbyist compliance investigator and administrative assistant will be hired in 2011 and mid-2010 respectively, completing the inquiries and investigations unit.

APPENDIX I: Organizational Chart

INFORMATION, ADVICE AND INTERPRETATION

In 2009, the Office of the Lobbyist Registrar received and answered 1,342 telephone inquiries. This is an increase of 280 inquiries or 26% over the 1,062 telephone inquiries we received in 2008.

Some of the questions we answered are below:

- Q. Can a registered lobbyist donate to a community event sponsored by a councillor?*
 - A. Not if the councillor or someone on the councillor's behalf is involved in organizing or running the community event. The City's Council Member-Organized Community Events Policy prohibits lobbyists and their clients and employers from donating to community events that are organized or run by a member of Council or a third party on the member's behalf. See the Interpretation Bulletin, Donations to Council Member-Organized Community Events, on the OLR website, www.toronto.ca/lobbying.
- Q. Can a registered lobbyist offer a discount on its products to Council members and staff of the City? Can a lobbyist invite a councillor to dinner paid for by the lobbyist at a fundraiser for a charity?*
 - A. No. The Lobbyists' Code of Conduct prohibits lobbying in any form or manner that includes offering, providing or bestowing entertainment, gifts, meals, trips or favours of any kind.

Q. The president of a company asks to meet with councillors and City staff to show them a product that it makes and sells. Should the president register?

A. If the purpose of the meeting is to sell a product to the City, the president must register.

Q. Can a registered lobbyist engage in lobbying during a procurement process?

A. No. Lobbying is prohibited from the time that the Request for Proposal (RFP) or Quotation (RFQ) is issued until the contract is awarded.

Q. Is a letter by a prospective applicant asking about the application process lobbying?

A. No. A request for information is exempt from the definition of lobbying. Registration is not required.

TRAINING AND OUTREACH

Training and outreach is essential to promote compliance with the by-law. In 2009, the OLR initiated training sessions for lobbyists. Notice of the training sessions is posted on our website. The sessions are held in our offices. The OLR conducted two training sessions for lobbyists in 2009. The first training session in 2010 was held on January 28.

In 2009, the registrar made presentations about the Lobbying By-law and registry to City staff, the Board of Directors of Exhibition Place, Lobbyist Registrars in other Canadian jurisdictions, and the Public Affairs Association of Canada. She participated in an information network and annual meetings with other Lobbyist Registrars in Canada; Transparency International; The Council on Government Ethics Laws⁷; the Society of Ontario Adjudicators and Regulators⁸, the Council of Canadian Administrative Tribunals⁹ and the Canadian Institute for the Administration of Justice¹⁰. These professional associations enable the sharing of information and best practices among accountability officers and other regulators in the administrative justice system.

⁷ COGEL

⁸ SOAR

⁹ CCAT

¹⁰ CIAJ

REGISTRATIONS

From its opening in February 2008 to December 31, 2009, the online registry has received 1,394 lobbyist registrations and 2,855 subject matter registrations (once registered as a lobbyist, the individual registers each subject about which he or she lobbies).

Lobbyist Registrations

In 2009, the Office of the Lobbyist Registrar:

- Received and reviewed 264 new lobbyist registrations, of which 193 were approved and 71 were refused.
- Received and reviewed 144 lobbyist registration updates, of which 127 were approved and 17 were refused.
- Closed 5 lobbyist registrations, 2 at the request of the registrants and 3 by the Office of the Lobbyist Registrar.

As of December 31, 2009, the registry had 938 active lobbyist registrations and 69 under review. This is an increase of 188 active lobbyist registrations or 25% over the number of active registrations (750) on December 31, 2008.

Subject Matter (SM) Registrations

In 2009, the OLR:

- Received and reviewed 528 new subject matter registrations, of which 441 were approved and 87 were refused.
- Received and reviewed 824 subject matter registration updates, of which 793 were approved and 31 were refused.
- 15 subject matter registrations were withdrawn, 9 at the request of the registrants and 6 by the Office of the Lobbyist Registrar.
- Closed 73 subject matter registrations at the request of the registrants.

As of December 31, 2009, the registry had 1,364 active subject matter registrations and 107 under review. This is an increase in active subject matters of 357 from 1,007 at year-end 2008 or 35%.

INQUIRIES AND INVESTIGATIONS

The Lobbyist Registrar is responsible for conducting, in private, investigations or inquiries to determine whether contraventions of the Lobbyist By-law have occurred, as permitted under section 169 of the *City of Toronto Act, 2006*.¹¹

In February 2009, the registrar provided Council with Compliance Investigations Procedures¹² for use in OLR investigations. These procedures are posted on our public website.¹³ The procedures are intended to provide a fair, expeditious and effective investigations process.

Voluntary compliance with the Lobbying By-law is the best approach. In most cases, this achieves the twin objectives of transparency and integrity. Therefore, the registrar's preferred approach is to give non-compliant lobbyists an opportunity to comply with the by-law, before considering sanctions such as the removal, revocation or suspension of a registration; or prosecution under the *Provincial Offences Act*. There will, however, be cases where enforcement of the by-law requires that further action be taken.

The *City of Toronto Act, 2006* provides that if the registrar, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the *Criminal Code* (Canada), the registrar shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to City Council. Breach of the Lobbying By-law is an offence under the *Provincial Offences Act*. Chapter 140 of the Toronto Municipal Code charges the Lobbyist Registrar with the responsibility for enforcing the by-law. The registrar is a provincial offences officer under the *Provincial Offences Act*.

The *City of Toronto Act, 2006*, section 169 requires the registrar to preserve secrecy when conducting an inquiry into compliance with the system of registration. However, the registrar may report to City Council in respect of an inquiry, and may disclose in the report such matters as in her opinion are necessary for the purposes of the report. Section 3-7 of the Toronto Municipal Code provides that the registrar reports to Council on investigations and inquiries.

APPENDIX II: Compliance Investigations Procedures

Inquiries and Investigations Statistics

15 inquiries and investigations about compliance with the by-law were opened in 2009 and 19 were completed. This compares with 23 inquiries and investigations opened and 17 completed in 2008.

¹¹ § 140-33(5), Toronto Municipal Code, Lobbying

¹² Annual Report 2008, Appendix II

¹³ www.toronto.ca/legdocs/mmis/2009/cc/bgrd/backgroundfile-18482.pdf#appendix-2

Of the 15 cases opened in 2009, the sources of requests to investigate were:

Source of Request to Investigate

Source	No. of Request
Members of Council and their staff	6
Lobbyists	3
Media reports	2
City staff	1
Integrity Commissioner	1
Members of the public	1
Lobbyist Registrar	1

In 8 of the 19 inquiries and investigations completed in 2009, the registrar determined that there had been a contravention of the Lobbying By-law by a lobbyist. These cases are summarized below. In 6 of the 8 cases where non-compliance was found, there was voluntary compliance by the lobbyist. In one case, the non-compliant lobbyist was permitted to withdraw their registration. In one case, an unregistered lobbyist was given the opportunity to register but failed to do so.

At the end of 2009, 2 inquiries and investigations remained open.

Summaries of Completed Inquiries and Investigations

This section contains summaries of completed inquiries and investigations. Not all investigations are reported. Included are those cases that illustrate the interpretation and application of the Lobbying By-law and would be in the public interest to report.

1. Soliciting Business

The sales staff of a business emailed City councillors, with the apparent purpose of selling lighting to the City. The business had not registered with the lobbyist registry. The registrar advised the business that registration was required before lobbying. The principal of the business responded that they were not aware that their sales staff had conducted an “email blast” of councillors, and that the company had no plans to continue with a campaign with the City. The matter was resolved on the basis that the email blast was not authorized by the business, that there were no plans to approach the City for business, and that an apology was made.

2. Soliciting Business

The business development manager of a currency exchange service delivered an unsolicited package of information to a councillor’s office, together with a note suggesting the councillor contact him for currency exchange services. The registrar advised the business development manager that lobbying a public office holder to obtain the award of a contract is prohibited,

unless the lobbyist is registered. The registrar advised that notwithstanding the business manager's view that the communication was of a personal nature, registration was required as the package was communication about procurement of services or awarding a contract. Delivering such a package without being registered contravened the by-law. The registrar provided the writer with an opportunity to register this lobbying activity. The lobbyist did not register. As this was a first occurrence and there were no further reports of lobbying, the registrar took no further action.

3. Incorrect Information

A councillor requested an investigation to determine whether a registered lobbyist had provided incorrect information about whom he was representing. Based upon information received during the investigation, the registrar suspended her investigation and swore an information under the *Provincial Offences Act*, that there were reasonable grounds to believe that a lobbyist had contravened § 140-43B of the Toronto Municipal Code, by providing information that was not accurate and factual to a public office holder. The City Prosecutor advised and assisted the registrar with the laying of the information and was responsible for its prosecution. In 2010, the City Prosecutor determined that there was no longer a reasonable prospect of conviction and withdrew the charge. Subsequently, the registrar decided to remove the registration at the request of the lobbyist, and because the lobbyist had not kept the registration up to date and had not reported a meeting with a councillor. The effect of removing the registration is that, for the purposes of present and future obligations under the Lobbying By-law, the lobbyist is deemed not to have registered.

4. Unreported Lobbying

The president of a business requested a meeting with the Mayor to discuss environmental issues. During the meeting, the president raised the issue of the Public Works and Infrastructure Committee's recommendation for a ten-cent refund on plastic bags brought and used by customers. This was a matter that was scheduled to be considered by Council at its next meeting. The Mayor reported this conversation to Council. The registrar advised the president that he was lobbying when he spoke to the Mayor about the recommendation of Public Works and Infrastructure Committee. Therefore, his name and a report of the meeting were required to be added to the registration of his business. The registrar permitted the correction of the registration by adding the president's name and the report of the meeting to the in-house registration of the business.

5. Offer of Food and Transportation – Unreported Lobbying

The media reported that a lobbyist representing an industry organization had invited all members of a Community Council to tour the facility of a member of the organization over the lunch break in the Community Council's meeting. On that same day, the Community Council's agenda included an item that affected the members of the lobbyist's organization. The letter of invitation offered free transportation and lunch. Four councillors attended the tour, but they did not accept the offer of food and transportation. The lobbyist informed the registrar that the purpose of the visit was to provide information about the industry to

councillors so that they could make more fully informed decisions. The lobbyist was registered but had not reported the tour to the registry.

The registrar advised the lobbyist that the tour constituted lobbying, as it was a form of communication or expressive contact about matters to be decided by Council or its committees. The tour was not exempt as a request for information or a response to a request for information. The registrar was satisfied that the lobbyist offered food and transportation to and from the premises of a member of the organization represented by the lobbyist, and advised the lobbyist that this was a breach of the Lobbyists' Code of Conduct, § 140-42A, which provides:

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

The registrar took into consideration that the councillors refused the offer of transportation and lunch, that the transportation and lunch offered were likely of little monetary value and were offered in order to facilitate a tour over the Community Council lunch break. The registrar cautioned the lobbyist against offering transportation and meals for similar tours, and permitted the lobbyist to report the tour in the organization's registration.

6. *Incorrect Report of Lobbying*

A member of Council reported that a lobbyist had incorrectly reported a telephone conversation. On inquiry, the lobbyist replied that he had not been able to reach the councillor and requested that the report be removed from the registry. The registrar permitted the correction of the registration by removing the report.

7. *Casual Conversation*

A member of Council reported that a registered lobbyist had spoken with him and other councillors before a meeting of a committee of Council about a matter that the committee was to consider on the same day. The lobbyist had not reported this conversation to the lobbyist registry. The lobbyist stated that the member had volunteered information about plans for the committee that day. The lobbyist asked the member if he could share this information with others who were monitoring the committee proceedings that day. The registrar concluded that the conversation, though it did concern an issue before committee, was casual. The information about the issue before committee was volunteered by the councillor. In the circumstances, the conversation did not constitute lobbying and was not required to be reported to the registry.

8. *Casual Conversation at Civic Event – Referral by Integrity Commissioner – Request for Information*

A member of Council reported to the Integrity Commissioner that a person lobbied him when he spoke to him and his executive assistant at a civic event. The person was not registered as a lobbyist. The Integrity Commissioner forwarded the councillor's report to the registrar. The registrar investigated and concluded that no lobbying had occurred. When the person spoke to the member and his executive assistant, he was seeking a meeting and information about the process for developing his property for social housing. This was a casual conversation in which the person outlined the nature of his interest but went no further, in no small part because the member ended the conversation quickly and referred him to staff. Requests for meetings and requests for information are not considered to be lobbying. Since no lobbying had occurred, no further action needed to be taken. However, the registrar advised the person to register if in the future he wished to lobby about an application to develop his property.

9. *Grass-Roots Communication – Letter-writing Campaign Organized by Church Group*

Staff of a member of Council reported that a community service agency had organized a letter-writing campaign concerning a local arena. Upon investigation, the registrar determined that the letter-writing campaign had been organized by the outreach committee of a local church. The registrar was satisfied that the outreach committee was part of a not-for-profit organization and therefore was exempt from the Lobbying By-law. There was no evidence that any for-profit organization was involved in the letter-writing campaign.

10. *Unregistered Lobbyist*

A member of Council reported that an applicant for a sign variance had made unwanted communications to the councillor about his application. The applicant was not a registered lobbyist. The registrar determined that the applicant should be registered as a lobbyist and advised him of this, giving him an opportunity to register his lobbying activities. The lobbyist complied with the registrar's advice by registering.

11. *Request for Information*

In May 2009, a member of the public complained to the registrar that a member of Council had been lobbied during a business lunch in January 2009. The councillor stated that she had requested a lunch meeting with a businessperson in order to obtain information about the sign industry. The businessperson with whom the councillor requested lunch was the principal of an outdoor sign company. He had registered as an in-house lobbyist but had not completed the registration at the time of the meeting.

The registrar concluded that the meeting did not constitute "lobbying", as the subject of the meeting was the councillor's request for information. Requests for information are specifically exempted from the Lobbying By-law.

12. Advertising during Procurement Process

Lobbying during the procurement process, from the date of issue of a Request for Proposal (RFP) or Quotation (RFQ) until the date of the award of the contract, is strictly prohibited. A bidder and its representatives may only communicate with the staff person responsible for administering the procurement process during this period. Concerns were raised by the Mayor and members of Council during the debate of a procurement matter at the November 2009 Council meetings. One of the businesses had placed advertisements in a newspaper and on radio on the morning that the award of the contract was to be considered by Council.

The registrar reviewed the advertisements and determined that they did not meet the definition of lobbying. They expressed a strong view advocating how councillors should vote. However, they were not direct communications with the councillors. They did not ask the public to contact councillors, and so could not be considered to be grass-roots communications.

13. Website Communications by Not-for-profit Organization

A consultant for the sign industry and staff of a councillor's office inquired whether an arts alliance was required to register as a lobbyist. The alliance website advocated a plan to tax billboards and use the proceeds for City beautification projects. On its website, the alliance was described as being composed of a number of arts and not-for-profit groups, but also included for-profit entities. The registrar determined that the arts alliance was a project of a registered charity. As a part of a registered charity, this organization was considered to be a not-for-profit organization and therefore was exempt from the requirement to register as provided by § 140-4A of the Lobbying By-law.

In a related matter, a registered lobbyist complained that a person was lobbying through a website. It was also alleged that the group represented by the website had extensive meetings with City staff and councillors about the Sign By-law. The website communicated its views to the general public. This in itself would not constitute lobbying under the by-law, as there was no direct communication with public office holders; nor was the public asked to communicate with public office holders. The registrar asked the complainant for further particular information. No further information was provided. The registrar closed the file as there was insufficient evidence to support an investigation.

14. Website Grass-roots Communication

A coalition representing members of an industry posted a grass-roots communication on its website. The communication asked members of the public to write to the Mayor and to their local councillor to demand that City Council defer the vote on a by-law that would affect the industry. The registrar wrote to the president of the coalition, advising that the Lobbying By-law requires grass-roots campaigns to be registered and approved before they begin, and that posting grass-roots communications without registration and approval was a contravention of the by-law. The matter was resolved when the organization removed the grass-roots communication from its website.

WORKING TOGETHER WITH ACCOUNTABILITY OFFICERS AND CITY STAFF

As noted above, the Lobbyist Registrar together with the other Accountability Officers consulted extensively with the City Manager's Office and City Solicitor concerning the accountability framework and new Chapter 3 of the Toronto Municipal Code, which were adopted by Council.

The Lobbyist Registrar together with the Acting Integrity Commissioner consulted with members of Council to produce a Protocol on Unsolicited Written and Electronic Communications to members of Council. This protocol clarifies the obligations of members of Council when they receive unsolicited email.¹⁴ The protocol is posted on the websites of the Integrity Commissioner and Lobbyist Registrar.

The Lobbyist Registrar consulted with the City Clerk and Acting Integrity Commissioner to publish an Interpretation Bulletin on Donations to Council Member-Organized Community Events.¹⁵ This Interpretation Bulletin clarifies the policy adopted by Council with respect to donations by lobbyists, and is posted on the Lobbyist Registrar's and Integrity Commissioner's websites.

RESOURCES AND PRIORITIES

The 2009 Approved Budget for the Office of the Lobbyist Registrar of \$941.9 thousand contained an increase over 2008¹⁶, in order to implement the Lobbyist Registrar's compliance investigations mandate. This increase has enabled the hiring of an inquiries and investigations counsel in 2010 and a lobbyist compliance investigator in 2011. The establishment of the inquiries and investigations function has been a priority for 2009 and continues to be a priority in 2010.

A second and equally important priority in 2009 has been the completion of Phase 3 of the office's IT project, which implements improvements to the website. A capital grant of \$500.0 thousand was granted to the Office of the Lobbyist Registrar in 2009 to achieve these objectives.

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

¹⁴ www.toronto.ca/lobbying/pdf/protocol_written_comm_may2109.pdf

¹⁵ www.toronto.ca/lobbying/pdf/donations_to_member-organized_comm_events.pdf

¹⁶ The approved budget for 2008 was \$711.2 thousand.

FINANCIAL INFORMATION

Fourth quarter financial statements for 2009 show savings of \$359.5 thousand. This is largely due to postponing the hiring of new staff for the inquiries and investigations unit,¹⁷ the gapping of one manager position and non-salary savings.

APPENDIX III: 2009 Financial Statement

AUDITS

The Office of the Lobbyist Registrar successfully underwent an external compliance audit for the year 2008 and was part of the City's annual attest audit. These audits are required by Chapter 3 of the Toronto Municipal Code.

ADVICE AND RECOMMENDATIONS OF THE LOBBYIST REGISTRAR ON LOBBYING MATTERS AND THE LOBBYING BY-LAW

My duties as the Lobbyist Registrar include advising Council on lobbying matters and recommending improvements and amendments to the Lobbying By-law. The inquiries and investigations conducted this year have addressed issues of general interest and concern. A few of these issues and other issues of concern are highlighted below.

Municipal Elections and the Lobbying By-law

The upcoming municipal elections will pose challenges with respect to gifts by lobbyists. Lobbyists are permitted to make political contributions if they are otherwise permitted to do so under the *Municipal Elections Act*. However, the Lobbyists' Code of Conduct continues to apply to lobbyists, and prohibits them from lobbying in the form of offering or bestowing entertainment, gifts, trips or favours of any kind to councillors. The City's policy on Donations to Council Member-Organized Community Events also continues to apply. This policy prohibits lobbyists from making donations to community events organized by councillors or third parties on their behalf.

I am working with the City Clerk and Integrity Commissioner to develop informational materials for lobbyists and candidates to address these issues. In this way, we hope to ensure compliance with the Lobbying By-law during the elections process.

¹⁷ Inquiries and investigations counsel was hired in March 2010. The lobbyist compliance investigator will be hired in 2011. An administrative assistant for the inquiries and investigations unit will be hired in mid-2010.

Employee Conflict of Interest Policy and the Lobbying By-law

The current Employee Conflict of Interest Policy¹⁸ does not refer to Chapter 140 of the Toronto Municipal Code, and needs to be updated to reflect the requirements of the Lobbying By-law. In 2010, I shall be working together with City Legal Services and Human Resources to draft amendments consistent with the Lobbying By-law.

Lobbying Outside Regular Office Hours and Locations

The Honourable Madam Justice Denise E. Bellamy in her Report on the Toronto Computer Leasing Inquiry recommended:

- 105. Lobbyists' access to councillors and staff should be restricted to regular office hours and locations.¹⁹*

The Lobbyists' Code of Conduct, which is part of the Lobbying By-law, requires lobbyists to observe a high level of ethical conduct.

Guidelines for ethical conduct by lobbyists when attending meetings outside regular office hours and locations are needed in order to preserve the integrity of Council and its processes. I intend to consult with public office holders and lobbyists, and to post guidelines for scheduling meetings on the Office of the Lobbyist Registrar's website in 2010. Suggested guidelines are as follows:

1. Lobbyists should schedule meetings with public office holders in their offices during office hours.
2. Lobbyists should observe a level of decorum and probity when they attend committee and Council meetings. Their communications at such meetings should be limited to the formal communications that are permitted by the procedural rules for committee and Council meetings. Lobbyists should not engage in informal conversations with or give materials to public office holders other than the City Clerk during meetings.

¹⁸ Human Resources Procedures/Guidelines – Conflict of Interest Policy, Appendix 3: Conduct Respecting Lobbyists

¹⁹ Toronto Computer Leasing Inquiry, Report, Volume 4: Executive Summary, page 94, Recommendation 105

Media Campaigns by Lobbyists

Lobbyists' use of the mass media, including the internet as well as newspapers and radio to comment on issues coming before Council arose as a concern in more than one context during the year 2009.

Generally, media campaigns addressed to the public at large are not considered to be lobbying under the by-law. However, media campaigns by lobbyists seeking to persuade members of the public to communicate directly with public office holders must be registered as a "grass-roots communication".

Madam Justice Bellamy recommended:

- 107. There should be no lobbying of any kind at any time during a City procurement process.²⁰*

Lobbying during a procurement process is strictly prohibited by the Lobbying By-law and the City's procurement policies. Media campaigns shortly before a vote by Council may raise the inference that they are intended to influence the outcome of the vote. However, since media campaigns are usually aimed at the public, they do not fall within the definition of lobbying in the by-law unless the public is asked to contact public office holders. A media communication that asks the public to contact public office holders is required to be registered as a grass-roots communication. Other types of media communication would not likely fall within the definition of lobbying since it would be very difficult to show that an advertisement communicated directly with a public office holder.

Staff Reports on Consultations

Madam Justice Bellamy recommended:

- 106. Staff reports to Council should list lobbyists who made presentations to staff on the subject matter of the report.²¹*

This recommendation is an important measure to achieve transparency in City decision-making. My review of staff reports to Council in some matters where there were staff consultations with stakeholders indicates that it is often but not always the practice of staff to include in their reports to Council lists of lobbyists who made presentations to staff during the consultation process.

I would recommend the implementation of Madam Justice Bellamy's recommendation that staff reports always include a list of lobbyists who make presentations to staff on the subject matter of the report.

²⁰ *Ibid.*, Recommendation 107

²¹ *Ibid.*, Recommendation 106

Enforcement

The Lobbyist Registrar is charged with enforcement of the Lobbying By-law. The statistics for 2009 show that substantial numbers of lobbyists do comply with the by-law, and that in most cases there will be voluntary compliance by lobbyists who are advised of their obligations. However, non-compliant lobbyists, particularly those who lobby without registering and those who contravene the Lobbyists' Code of Conduct, face limited administrative penalties. The Lobbyist Registrar may refuse to register, suspend, revoke or remove a registration. However, these administrative penalties are not applicable to a failure to register (secret lobbying) or to ethical breaches (a contravention of the Lobbyists' Code of Conduct).

For lobbyists who do not register or who fail to comply with the Lobbyists' Code of Conduct, the only applicable enforcement procedure is to lay information under the *Provincial Offences Act*. Charges under the *Provincial Offences Act* are difficult to pursue. There is a stringent six-month time limit for laying of charges, the prosecution process is resource-intensive and the standard of proof is difficult to meet.

The *City of Toronto Act, 2006* and the by-law do not empower the registrar to order compliance with the by-law. The by-law does not give the Lobbyist Registrar the power to impose conditions on registrations, although the *City of Toronto Act, 2006* does permit this.

In my submissions on the biennial review of the *City of Toronto Act*, I raised the issue of the administrative enforcement powers of the Lobbyist Registrar. I would recommend including these issues in the next opportunity for a review of the by-law and the *City of Toronto Act*.

Registration Fees

On February 5, 6, 7 and 8, 2007, City Council adopted the following motion:

"The new Lobbyist Registrar report on a plan to partially recover costs related to the operation of a Registry by charging lobbyists a registration fee from the beginning of the program."

On December 17, 2007, then Lobbyist Registrar Marilyn Abraham recommended that "there be a fee of \$150.00 for the processing of paper based applications for registration"; and that "no further fees be imposed at this time with the exception of photocopy and other information as supplied through the Office of the City Clerk" (Executive Committee Item 16.3, Fees for the Lobbyist Registry". City Council on January 29 and 30, 2008, deferred consideration of this item until Council has had an opportunity to review the operation of the registry. Recently, Budget Committee adopted a motion recommending that the Lobbyist Registrar submit a report to the Executive Committee on a full cost-recovery fee plan for the 2011 budget process.

Charging a fee for registrations would require amending Chapter 140 of the Toronto Municipal Code, which does not presently permit registration fees to be charged.

The majority of lobbyist registries in Canada, including the Ontario and federal registries do not charge a fee for registering online. Online registration fees are generally thought to create a disincentive to register. Creating a disincentive to register would run counter to the principle of transparency, which the lobbyist registry was established to uphold.

Charging a paper registration fee in order to encourage online registration would not appear to be a necessary step for Toronto's registry, which has processed only one paper registration since the registry opened two years ago.

CHALLENGES AND GOALS FOR 2010

1. Municipal Elections

It is expected that registrations, requests for information and advice, and investigations and inquiries will continue at least at the rate of 2009. The upcoming municipal elections may place increased demands upon the Office of the Lobbyist Registrar to provide advice and to conduct investigations. The goal of the OLR is to meet any increased demand effectively.

The Lobbyist Registrar will continue to work together with the City Clerk and Integrity Commissioner to develop protocols and informational materials for lobbyists and candidates, in order to ensure compliance with the Lobbying By-law by lobbyists during the election period.

2. Employee Conflict of Interest Policy

The Lobbyist Registrar has been invited to consult with City Legal Services and Human Resources on recommendations for revisions to the Employee Conflict of Interest Policy that will reflect the Lobbying By-law.

3. Completion of Phase 3 of the Website IT Project

The OLR website IT project should be completed in June 2010. This project involves substantial contributions of time from registry staff as well as City IT staff.

If Council directs that the OLR charge a fee for registrations, then a new capital IT project will be required to implement such a fee.

4. Registry Services

In 2010, the Office of the Lobbyist Registrar will continue to provide a high quality of service to lobbyists, public office holders and members of the public in accordance with best practices. We will continue to develop and improve the lobbyist registry's processes, monitor the effectiveness of the registry system and recommend improvements to it.

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

Public office holders, lobbyists and the public are essential partners in promoting compliance with the by-law. Developing and delivering training and outreach programs will continue to be a priority in 2010. New Frequently Asked Question (FAQ) and information pages on our public website will provide public office holders, lobbyists and the public with clear, practical information. This will help to promote and ensure understanding of and compliance with the Lobbying By-law.

6. Ensuring Compliance with the Lobbying By-law

The OLR will develop and refine its procedures for inquiries and investigations in accordance with best practices; and will continue to promote compliance by providing information and assistance, outreach and training to lobbyists, public office holders and members of the public.

7. Working Together with the Statutory Accountability Officers

The Lobbyist Registrar will continue to work together with Auditor General, Integrity Commissioner and Ombudsman to develop policies and protocols to implement the Accountability Framework and Chapter 3 of the Toronto Municipal Code.

8. Working Together with Council and City Staff

The Lobbyist Registrar will work with the City to ensure that its policies and practices are consistent with the Lobbying By-law. Members of Council and City staff will be consulted as is appropriate on the issues identified in this report.