
REPORT TO COUNCIL

ON AN INQUIRY: LOBBYING IN RELATION TO A PROCUREMENT PROCESS FOR THE BENEFICIAL USE OF BIOSOLIDS – CONNECT CONSULTING SOLUTIONS AND ORGAWORLD CANADA LTD.

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INTRODUCTION

This is a report by the Lobbyist Registrar on an inquiry under s. 169 of the *City of Toronto Act, 2006* and § 140-35B of the Lobbying By-law to determine whether Connect Consulting Solutions (CCS) and officials of Orgaworld Canada Ltd. (Orgaworld) lobbied on behalf of Orgaworld in relation to a procurement process for the beneficial use of biosolids generated at Ashbridges Bay, Request for Proposal 9155-11-7185, contrary to § 140-41A of the Lobbying By-law. Section 140-41A provides:

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

The Lobbyist Registrar found that CCS consultant lobbyists and an official of Orgaworld did not lobby in relation to this procurement process. The Registrar reinstated the registrations of CCS to lobby on behalf of Orgaworld.

The Registrar also found that CCS consultant lobbyists and Orgaworld lobbied public office holders without being registered, contrary to § 140-10, which provides:

- No person shall lobby a public office holder without being registered as required under Articles II, III or IV, unless otherwise exempted under this chapter.

CCS consultant lobbyists arranged meetings with councillors on behalf of Orgaworld; and both CCS consultant lobbyists and an Orgaworld official met with members of Council when they were not registered to lobby.

CCS also failed to report lobbying activities on behalf of Orgaworld when registered, contrary to § 140-17.

In addition, CCS failed to advise its client Orgaworld of its obligations under the Lobbying By-law, contravening § 140-43A, which provides:

- Lobbyists shall inform their client, employer or organization of the obligations under this chapter.

In the interest of transparency, the Lobbyist Registrar asked Orgaworld and CCS to register and report their previously unreported and unregistered lobbying activities.

The Registrar cautioned the lobbyists that they must comply with the Lobbying By-law, and asked that they attend training sessions on the Lobbying By-law offered by the Office of the Lobbyist Registrar (OLR).

Orgaworld and CCS received the findings and disposition in this report, which are not disputed.ⁱ Orgaworld has attended a training session, has registered and reported its lobbying activities.

CCS is scheduled to attend a training session and has updated its registrations to report lobbying activities in 2011 on behalf of Orgaworld.

FINDINGS

1. CCS consultant lobbyists and Orgaworld officials did not lobby in relation to a procurement process (Request for Proposal 9155-11-7185) and therefore did not breach § 140-41A of the Lobbying By-law.
2. CCS consultant lobbyists and an official of Orgaworld were not registered when they lobbied members of Council and their staff in May, June and July of 2011, breaching § 140-10 of the Lobbying By-law. CCS lobbyists also breached § 140-17 when they failed to report their lobbying activities on behalf of Orgaworld.
 - (a) Steve Strauss, a consultant lobbyist with CCS, was not registered to represent Orgaworld on any matter when he lobbied on behalf of Orgaworld as follows:
 - Mr. Strauss, together with CCS consultant Luke Nicholas and Ward Janssens of Orgaworld, met with staff in the Mayor's Office on behalf of Orgaworld on March 1, 2011. They were advised by the Mayor's staff to register.
 - Mr. Strauss emailed a councillor's assistant on January 24, 2011 to arrange a meeting for Orgaworld with the councillor.
 - Mr. Strauss emailed a councillor on or before March 1, 2011 to arrange a meeting for Orgaworld with the councillor.
 - Mr. Strauss attended a meeting on behalf of Orgaworld with a councillor and Ward Janssens of Orgaworld on March 1, 2011 to discuss a mixed waste processing facility.
 - (b) Mr. Strauss was registered as a lobbyist for Orgaworld but failed to report the following communications made on Orgaworld's behalf:
 - An email to a councillor on April 2, 2011 to arrange a meeting for Orgaworld;
 - A meeting with a councillor on May 5, 2011 to discuss a mixed waste processing facility; and
 - A voicemail to a councillor's Executive Assistant on July 4, 2011 to arrange a meeting for Orgaworld.
 - Mr. Strauss attended meetings on behalf of Orgaworld with three councillors on July 7, 2011, together with Ron Gersh and Ward Janssens.

- (c) Luke Nicholas, a consultant lobbyist with CCS lobbied as an unregistered lobbyist, breaching § 140-10, as follows:
- Mr. Nicholas met with staff in the Mayor’s Office on March 1, 2011.
 - Mr. Nicholas met with a councillor on May 5, 2011 on behalf of Orgaworld to discuss a mixed waste processing facility.
- (d) Ron Gersh, consultant lobbyist with CCS, lobbied on behalf of Orgaworld as an unregistered lobbyist when he attended meetings with four councillors on July 7, 2011, breaching § 140-10.
- (e) Ward Janssens, **who was** an official of Orgaworld **at the time**, lobbied on behalf of Orgaworld as an unregistered lobbyist, breaching § 140-10, as follows:
- Mr. Janssens met with staff in the Mayor’s Office on March 1, 2011.
 - Mr. Janssens attended meetings with a councillor on March 1, 2011 and four other councillors on July 7, 2011.
 - Mr. Janssens may also have attended a meeting on May 5, 2011 with a sixth councillor to discuss a mixed waste facility.

DISPOSITION

1. CCS registrations SM16004, SM16608 and SM16610 are reinstated.
2. In the interest of transparency, Orgaworld and CCS are permitted and requested to register and to report all of their previously unreported lobbying activities on behalf of Orgaworld.
3. CCS and Orgaworld are cautioned that they must comply with the requirements of the Lobbying By-law.
4. CCS is cautioned that they must advise their clients of the requirements and obligations under the Lobbying By-law.
5. CCS and Orgaworld are requested to attend training sessions at the Office of the Lobbyist Registrar on these requirements.

THE INQUIRY PROCESS

On July 11, 2011, the Executive Assistant to a member of Council forwarded a voicemail that had been received that day by his office from Steve Strauss, consultant lobbyist with CCS. Mr. Strauss' voice message sought to arrange a meeting on behalf of an organization identified in the voicemail as "Orgaworld". The Executive Assistant was concerned that Mr. Strauss wanted to lobby about the contracting out of solid waste collection.

At that time, there were a number of active procurements for solid waste processes, including Request for Proposal 9155-11-7815 for beneficial use of biosolids (the RFP). As a result, on July 12, 2011 the Lobbyist Registrar authorized an inquiry to be conducted, to determine whether lobbying had occurred in relation to a procurement process, contrary to § 140-41A.

Inquiries and Investigations Counsel conducted the inquiry on behalf of the Registrar. Inquiries and Investigations Counsel wrote a letter of inquiry to CCS, informing them of the nature of the inquiry and providing them with an opportunity to respond. The respective registrations of CCS were suspended pending the inquiry. OLR inquiries and investigations staff gathered documentary evidence from the registry, the offices of members of Council, City staff and the alleged lobbyists.

Throughout the inquiry process, the parties were provided an opportunity to respond to the evidence. The Lobbyist Registrar provided her proposed findings and disposition to CCS and Orgaworld for response. They have not disputed the findings or disposition. ⁱⁱ

FACTS

The inquiry established the facts set out in this section.

The lobbyists and their registrations

1. Orgaworld is a Dutch-based organic waste management company that is in the business of designing, constructing and operating mixed waste recycling facilities, including converting "green" garbage into compost and methane gas. It owns and operates two facilities in Ontario, in London and Ottawa. It is a subsidiary of Shanks Group.
2. CCS is a consulting firm, members of which registered in the Lobbyist Registry to act as consultant lobbyists for Orgaworld for the following subject matters that related to the processing of municipal waste. These registrations were suspended on July 13, 2011 because it appeared that they were related to a procurement process, Request for Proposal 9155-11-7815 for the beneficial use of biosolids (the RFP). Restriction of communication in relation to the RFP took effect on June 30, 2011, when the RFP was issued, until October 27, 2011, when the RFP was awarded.

- SM16004, Steve Strauss, Senior Consultant, CCS registered on March 14, 2011 to represent Orgaworld on the subject of “Environment – Meeting with city officials to see if there [are] any opportunities to work together (Orgaworld)”. The OLR suspended this registration on July 13, 2011.
 - SM16608, Rudy Barell, Consultant, CCS registered on June 22, 2011 to represent Orgaworld regarding “Economic Development; Environment – Toronto will be tendering Requests for Proposals for the construction, operations and maintenance of an Municipal Solid Waste processing facility in September 2011. We want to discuss this with City Council and the Toronto office of partnerships.” The OLR suspended this registration on July 13, 2011 pending the award of the RFP.
 - SM16610, Luke Nicholas, Consultant, CCS, registered on June 22, 2011 to represent Orgaworld regarding “Economic Development; Energy; Environment – Looking to expand city council’s knowledge on an anaerobic digester that separates land fill waste into methane to be used byproducts. Similarly we want to inform the Toronto Office of Partnerships.” On July 13, 2011, the OLR suspended this registration pending the award of the RFP; and permitted its reactivation in February 2013.
3. New registrations were filed after the award of the RFP as follows:
- SM19179, Steve Strauss filed a new registration on April 8, 2013 to represent Orgaworld regarding “Environment; Garbage/Recycling – Mechanical Biological Treatment (MBT) to process city of Toronto waste and assist in achieving municipal waste diversion targets.”
 - SM19182, Luke Nicholas, Consultant, CCS, registered on April 9, 2013 to represent Orgaworld regarding “Environment; Garbage/Recycling – Inform City of Toronto Councillors of Mechanical Biological Treatment (MBT) technologies available to municipalities to assist in waste diversion targets and strategies.”
 - SM19219, Shanks Group plc, of which Orgaworld is a subsidiary and beneficiary, registered on April 19, 2013, registered to lobby about “Economic Development; Environment; Garbage/Recycling – Engage city council and staff and inform them of new technologies available around the world that can help Toronto achieve its waste management and diversion objectives and goals; enabling city councillors to make informed decisions on policy direction”.
 - SM19211, Orgaworld registered on April 19, 2013 to lobby about “Economic Development; Environment; Garbage/Recycling – Mechanical Biological Treatment (MBT): New technologies available that enable cities and jurisdictions to achieve their waste management directives and objectives, assisting policy makers to make an informed decision.”
 - SM19224, Ron Gersh, Consultant, CCS, registered on April 22, 2013 to represent Orgaworld regarding “Environment; Garbage/Recycling – Share with City of Toronto

new technologies related to waste management processes, specific to MBT, and the waste processing landscape in Europe.”

- SM19511, Ron Gersh, CCS, was permitted to register on July 4, 2013 to represent Orgaworld regarding “Garbage/Recycling – Inform Politicians on the MBT Process and it’s benefits”, for the sole purpose of reporting meetings with four councillors on July 7, 2011. The OLR has closed this registration on July 4, 2013.
- SM19497, Ward Janssens was permitted to register as an in-house lobbyist for Orgaworld on July 8, 2013 for the sole purpose of reporting his lobbying activities in 2011.

The City’s procurement processes

4. On January 29, 2009, the City issued Request for Pre-Qualification No. 9150-10-3035 a Mixed Waste Processing Facility (the RFPQ). Its purpose was to pre-qualify major waste treatment operators, contractors and technology providers (or consortia thereof) capable of offering a solution regarding the proposed development of a residual waste treatment facility to help the City meet its “Getting to 70% Landfill Diversion” Plan of May 2007.
5. On November 30, December 1, 2, 4 and 7, 2009, City Council approved the Biosolids Master Plan Update Environmental Assessment regarding the Ashbridges Bay, Humber and North Toronto Treatment Plant and directed staff to implement the biosolids management strategies contained in the Master Plan for each of the three wastewater treatment plants at Ashbridges Bay, Humber and North Toronto; authorized the General Manager, Toronto Water, to procure additional beneficial use and landfill disposal services for biosolids from the Ashbridges Bay Treatment Plant on a sole source basis; and directed the General Manager, Toronto Water to execute one or more contracts or agreements to do so. (PW28.5)¹
6. On June 8 and 9, 2010, City Council approved both the Beneficial Use Option as the primary biosolids strategy and the Landfill Disposal Option as a contingency option, outlined in the Biosolids Master Plan Update Environmental Assessment, for the Highland Creek Treatment Plant and directed staff to implement the recommended beneficial use biosolids management strategy contained in it. (PW33.4)² On May 17, 18 and 19, 2011, City Council re-affirmed its approval of the strategy it adopted on June 8 and 9, 2010 for the Highland Creek Treatment Plant. (PW3.4)³
7. On June 22, 2010, the City pre-qualified Orgaworld as the lead of a consortium to bid on a Mixed Waste Processing Facility. To date, no procurement process has been issued for this facility.

¹ <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.PW28.5>

² <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.PW33.4>

³ <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.PW3.4>

8. On June 30, 2011, the City issued Request for Proposal 9155-11-7815 for beneficial use of biosolids (the RFP). The RFP was for the provision of specialized services to help diversify the City's biosolids beneficial use program at the Ashbridges Bay Treatment Plant. The RFP noted that in 2009, City Council approved the Biosolids Master Plan for the Ashbridges Bay Treatment Plant, "directing City staff to move forward in implementing a 100% Biosolids beneficial use program" (The RFP, Section 2 Overview).
9. Orgaworld did not purchase RFP 9155-11-7185, download it or bid on it.
10. On October 27, 2011, the City's Bid Committee awarded the RFP to four proponents, none of which were Orgaworld.
11. On April 19, 2013, the City issued RFP 9117-13-7098 for "Highland Creek Wastewater Treatment Plant Biosolids Management Schedule B – Environmental Assessment"; but subsequently cancelled this RFP in June 2013.

Communications by lobbyists for Orgaworld with members of Council and their staff

12. On January 24, 2011, Steve Strauss, consultant lobbyist with CCS, emailed a councillor's Executive Assistant on behalf of Ward Janssens, Manager of International Business of Orgaworld Canada Ltd. (Orgaworld). Mr. Strauss was requesting a meeting with the councillor "to discuss a proposed MSW processing plant". The email continued (in part):

Orgaworld Canada is a Dutch-based organic waste management company with two facilities in Ontario, London and Ottawa, representing an investment close to \$60 million. The organic waste collected is composted and by-products such as high grade compost for cash crop farmers, fuel, and energy are produced. Orgaworld has been pre-qualified by the City of Toronto as the only company capable of designing, constructing, operating and maintaining an MSW facility of this nature in the Province.

We would very much appreciate the opportunity to meet with [the councillor] in the near future and discuss our initiative to move forward with an MSW processing plant in Ontario. . . .

13. On or before March 1, 2011, Mr. Strauss requested a meeting with a councillor on behalf of Ward Janssens of Orgaworld as follows:

Good afternoon Councillor . . . ,

This is Steve Strauss on behalf of Ward Janssens, Manager of International Business for Orgaworld Canada Ltd. Orgaworld is a Dutch-based organic waste management company that owns and operates two facilities in Ontario, London and Ottawa, representing an investment of close to \$60 million. The company composts organic waste and produces by-products such as high-grade compost for cash crop farmers, fuel, and energy. Orgaworld is the only company in Ontario to be pre-qualified to design, construct, operate and maintain an MSW processing plant in the Province, and is seriously considering pursuing such a project.

We would greatly appreciate the opportunity to meet with you to discuss our initiatives in further detail and seek your advice and guidance about how to best move forward.

...

14. On March 1, 2011, Ward Janssens and Steve Strauss of CCS met with a councillor to discuss a mixed waste processing facility. The councillor's Lobbyist and Meeting Registry confirmed that this meeting occurred.
15. The councillor's calendar note on the meeting contained the following staff note:

Please note that [staff] from the Mayor's Office suggested that this company meet with [the councillor]
16. OLR Inquiries and Investigations Counsel confirmed with staff in the Mayor's Office that Mr. Strauss, together with CCS consultant Luke Nicholas and Ward Janssens of Orgaworld, met with staff in the Mayor's Office on March 1, 2011; and that the Mayor's staff advised them to register.
17. On May 5, 2011, Steve Strauss and Luke Nicholas met with a councillor. The visitors log book at City Hall reception recorded that Mr. Strauss and Mr. Nicholas attended to meet with the councillor on that date. Other evidence, including an email to the councillor arranging the meeting and the recollection of Mr. Strauss, indicates that Mr. Janssens may also have attended the meeting; and that the meeting was arranged on behalf of Orgaworld to discuss a mixed waste processing facility.
18. On July 4, 2011, Mr. Strauss left a voicemail with a councillor's Executive Assistant, requesting a meeting on behalf of Mr. Janssens. The Executive Assistant was concerned that the requested meeting related to the RFP, to which § 140-41A applied and therefore contacted the OLR, forwarding the voicemail on July 11, 2011. The Transcript of the voicemail is as follows:

Hi, Good afternoon . . . My name is Steve Strauss and I am calling on behalf of Ward Janssens of Orgaworld Canada. It is 2:00 p.m. on July 4th. . . We would very much like to organize a meeting with you and Ward. . . told me the councillor's schedule is very hectic before the holidays, so she suggested that we meet with you to just kind of talk to you and have an open exploratory discussion regarding the councillor's ideas or any thoughts or anything that she would like to see in terms of Toronto's waste diversions policies moving forward. Orgaworld has been in the business for a number of years. Our parent company is the largest recycler in the world. We have a lot of thoughts ourselves and we would just like to kind of share ideas and see where you guys are headed. . . Again, my name is Steve Strauss calling on behalf of Ward Janssens, of Orgaworld Canada. . .

The Executive Assistant replied by email to Mr. Strauss that they would not meet about this as it related to an active RFP.

19. On July 7, 2011, Ron Gersh and Steve Strauss of CCS, together with Mr. Janssens, met with three different councillors. Messrs. Gersh and Janssens met with a fourth councillor. The visitors log book at City Hall reception confirmed their attendance for these meetings. One councillor's calendar note states regarding their meeting with "Connect Consulting" that "Ward Yansen[sic], Steve Strauss, Luke Nicholas lead consultant will attend. Waste diversion company that is the global leader in advanced technologies and operations – non incineration."
20. On July 13, 2011, the OLR suspended all registrations by CCS representing clients Orgaworld and another company⁴ pending an inquiry to determine if these registrations related to a procurement process, for which communications were restricted. CCS was lobbying for both companies, both of which were involved in waste processing, in and around the same time period, and met with the same councillors on behalf of both companies.
21. The OLR Compliance Investigator wrote to Mr. Strauss on July 14, 2011 to confirm the details of their telephone conversation of July 13, 2011 as follows:

You stated that your lobbying on behalf of Orgaworld was unrelated to the ongoing Beneficial Utilization of Biosolids procurement (Call number: 9155-11-7185) and was instead related to garbage and recycling. You also stated that Lystek⁵ was a client of your firm that had engaged other members of your firm to lobby on biosolids and that you sometimes arranged meetings between your colleagues and public office holders at the City.

I informed you that this constitutes lobbying and advised you to cease lobbying on behalf of Orgaworld because there are ongoing procurement processes related to garbage and recycling. . . .

Section 140-41A of the Municipal Code prohibits lobbyists from communication about a procurement process except as permitted by the applicable procurement policies and documents. Under section 5.0 of the City's Purchasing and Materials Management Division's (PMMD) Policy on Procurement Processes, only communication with an official point of contact named in the call is permitted from the time a call or request is issued until the announcement of the award. All other communications are strictly prohibited during this period, which is sometimes referred to as the "blackout period". This means that you are prohibited from communicating with City staff, members of Council and staff of members of Council regarding a procurement from the time it is issued until the time the contract is awarded.

. . .

This is to reaffirm the advice given in yesterday's telephone conversation and to remind you that your sole subject matter registration, SM16004, is suspended. This means that you are not permitted to lobby any public office holders, including City

⁴ Lystek International Inc.

⁵ Ibid

staff, members of Council and their staff. Lobbying without an approved registration is a breach of the Lobbying By-law and an offence under the *Provincial Offences Act*.

Your registration will be reinstated only if this office is satisfied that the subject matter adequately describes the lobbying activity on behalf of Orgaworld and is not related to any ongoing procurement processes. . . .

22. Mr. Strauss replied to the OLR Compliance Investigator's letter (above) on August 12, 2011 that Orgaworld wished to speak with councillors about the mixed waste processing facility for which Orgaworld was pre-qualified, as follows (in part):

. . . In terms of Orgaworld however, no RFP that was included in the letter you sent over dated July 14 has to do with Orgaworld, its business or the current services Orgaworld provides for the City.

Orgaworld is an organic waste composting company that has SSO (Source Separated Organics) delivered to its facility in London where the waste is dumped and composted. The City of Toronto, or, quite possibly, one of the City's service providers, collects this waste from households across the city and subsequently transports it to the site. Orgaworld has no business with the physical collection and transportation of said waste. This being said, we would still very much appreciate the opportunity to meet with City Council and Staff at various levels to have open, exploratory discussions regarding the thoughts and ideas that are floating around with respect to the future of waste diversion in the City.

Orgaworld has been at the forefront of the industry for some time now, and in a jurisdiction that is considerably more developed than our own; the Netherlands diverts 97% of it's [sic] waste out of landfills, and has been the global leader in the industry of waste diversion for over 30 years. The fact that Orgaworld has thrived in a mature market such as the Netherlands puts us in a unique position to offer expertise built up over the lifetime of an industry from it's [sic] inception to its peak. For this reason we'd like to come to the table to expand on the ideas and thoughts of policy makers and staff, expand the knowledge base of the city of the different proven technologies available across the globe and right here at home. The Orgaworld - London, Ontario facility that currently services Toronto SSO is the world's most technologically advanced compost facility with state of the art technologies and processes.

There is currently no RFP that has been issued, nor is there discussion of one, that Orgaworld would consider bidding on in the near future, save for increases in quantity of existing materials or extensions to the current contract. Some years ago a Request for Qualifications was submitted for a massive MBT facility to which Orgaworld was deemed the only company qualified to design, build, own, and operate. Eventually, we'd like to have that discussion with folks at the table, but ultimately it will come down to whether or not the Council see's [sic] waste diversion as a high priority and is willing to move on it. Again, this is the reason why we'd like to continue meeting with Council and Staff, hopefully we can re-open a dialogue with the City and equip them with the most up to date and thorough information so policy makers can make an informed decision.

DISCUSSION

Law and Policy

Section 140-10 of the Lobbying By-law prohibits a person from lobbying a City public office holder unless they are registered or otherwise exempt:

No person shall lobby a public office holder without being registered as required under Articles II, III or IV, unless otherwise exempted under this chapter.

Section 1 of the Lobbying By-law defines “LOBBY” as communication with a public office holder about a range of matters requiring decision by the City or its delegates, including “[p]rocurement of goods, services or construction and awarding a contract”. The definition of “LOBBY” includes the arrangement of a meeting with a public office holder by a consultant lobbyist.

Section 140-41A of the Lobbying By-law provides:

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

The issues to be decided in this case under § 140-41A are:

- whether there were communications “in relation to” a procurement process by CCS or Orgaworld; and
- if so, whether these communications were prohibited by City procurement policies or documents. Under the City’s Procurement Processes Policy, section 5 and the Requests for Proposal (RFP) discussed in this report, no communications about the RFP were permitted from the date the RFP was issued until the contract was awarded, except with the point of contact named in the RFP.

The source of § 140-41A is Recommendation 107 of The Honourable Madam Justice Bellamy in the Report on the Toronto Computer Leasing Inquiry (2005, City of Toronto). Bellamy J. wrote in part (vol. 2, Good Government, p. 85):

107. There should be no lobbying of any kind during a City procurement process.

Public money, politics, and private interests are a volatile mix, and a source of scandal throughout history. Government procurement is one of the areas subject to the most intense lobbying, and if lobbying on behalf of commercial interest did not work, it would not continue.

Elected officials may of course be lobbied on policy matters. They may also be lobbied on the desirability of acquiring particular goods and services for which there is no ongoing tender process, broadly defined. But elected officials have no legitimate role in the details of specific procurements. Their job is to set procurement policies and

procurement priorities before a competitive bid starts, then openly debate and vote on the procurement recommendations proposed by staff after the competitive bid has ended. It is the responsibility of staff to carry out procurement by holding competitive bids and analyzing proposals based on value for the taxpayers. There should be no political component in that analysis, no involvement of elected officials, and therefore no lobbying of elected officials or staff during the tender process.

...

The City should require bidders responding to major tender documents to declare in the response whether they have used a lobbyist in any way and at any time in relation to the procurement in question, and if so, how.

The purpose of § 140-41A is to protect the integrity of the City's procurement processes, as is apparent from the recommendation and commentary of Bellamy J., above. This provision protects that integrity by prohibiting communications that may improperly influence the award of the RFP. This prohibition is necessary to ensure that the RFP process is not improperly influenced by any discussions between a proponent and an elected official or City staff other than the designated staff contact.

I interpret the phrase "communicate in relation to a procurement process" as communication that is connected to the procurement. A broad interpretation of this phrase is consistent with the history, purpose and intent of § 140-41A.

My findings are made on the balance of probabilities, which is the civil standard of proof. In assessing the credibility of the statements of interested witnesses, it is important to keep in mind that parties have an interest in persuading adjudicators to accept a particular view. The evidence of interested witnesses must therefore be assessed according to whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time. It must be consistent with the surrounding probabilities and in harmony with the surrounding circumstances. See *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.); *Phillips v. Ford Motor Co. of Canada Ltd.* (1971), 18 D.L.R. (3d) 641 (Ont. C.A.).

Discussion of Findings

Orgaworld's meetings were not related to the RFP for beneficial use of biosolids at Ashbridge's Bay

I find that meetings with councillors by CCS lobbyists and an official of Orgaworld, and the arranging of these meetings by CCS, did not contravene § 140-41A. These meetings did not relate to RFP 9155-11-7185. Rather, the meetings were held to discuss Orgaworld's interest as the lead in a consortium that had been pre-qualified to bid on a Mixed Waste Processing Facility. No RFP has been issued for this facility.

RFP 9155-11- 7185 had been issued and had not yet been awarded when the meetings of July 7, 2011 occurred and the voicemail of July 11, 2011 was sent by Mr. Strauss. The City's Procurement Processes Policy and the RFP document prohibited communications about the

procurement process with members of Council by lobbyists between the time the RFP was issued and the time of its award.

However, Orgaworld did not purchase the RFP for download, nor did Orgaworld bid on the RFP. Orgaworld is not in the business of the subject matter of the RFP, which was beneficial use processing of biosolids. Orgaworld's meetings with councillors did not relate to RFP 9155-11-7185 for beneficial use of biosolids, which was active at the time. Rather, the meetings were held to discuss Orgaworld's interest as the lead in a consortium that had been pre-qualified to bid on a Mixed Waste Processing Facility. This is shown by Mr. Strauss' emails to councillors of January 24 and March 1, 2011 (see paragraphs 12 and 13 above), and his email of August 12, 2011 (see paragraph 22 above). No RFP has been issued for a mixed waste processing facility. Therefore, the communications were permitted, so long as they were registered and reported as required by the Lobbying By-law – which will be discussed in the next section.

As a result, I find that Orgaworld's communications were not related to RFP 9155-11-7185 for beneficial use of biosolids at Ashbridges Bay. Therefore, Orgaworld and its consultant lobbyists, CCS, did not contravene § 140-41A.

Orgaworld and CCS consultants lobbied without being registered and failed to report lobbying activities

I have made the findings in this report with respect to unregistered and unreported communications based upon the records of the visitors log book at City Hall reception and contemporaneous emails and voicemails to councillors by Mr. Strauss. In every case except one, the meetings set out in this report were verified by the visitors log book at City Hall reception, which contains records of visitor passes. In one case, the meeting was verified by the visitors log book kept by the councillor's office. The communications were then compared with the Lobbyist Registry to determine whether they were registered or reported.

The lobbyists have not disputed that the communications occurred. Orgaworld has explained that they were not aware of the requirements to register and report their communications.

CCS failed to advise their client Orgaworld of its obligations under the Lobbying By-law

Section 140-43A provides:

Lobbyists shall inform their client, employer or organization of the obligations under this chapter.

I have concluded, based on information received from Orgaworld, that CCS failed to advise Orgaworld of the obligation of its officials to register and report their lobbying activities. CCS therefore breached § 140-43A.

Discussion of the Disposition

All lobbyists are required to comply with the Lobbying By-law. Consultant lobbyists are required by § 140-43A to advise their clients of the obligations under the by-law.

Breach of the Lobbying By-law is a provincial offence (§ 140-46). A non-compliant registration, including failure to provide accurate and up-to-date information, may lead to the suspension, revocation or removal of a registration (§§ 140-36, 140-37).

I suspended the registrations related to Orgaworld pending the completion of this inquiry. On their face, the registrations appeared not to comply with § 140-41A, which prohibits lobbying in relation to a procurement. As a result of this inquiry, I found that the registrations were not related to RFP 9155-11-7185. Therefore I have reinstated the registrations.

I also found that unregistered and unreported lobbying occurred; and that CCS failed to advise its client, Orgaworld, of the obligations under the Lobbying By-law.

The lobbyists have been cautioned that they must comply with the requirements of the Lobbying By-law. I have also requested that the lobbyists attend training sessions at the OLR on these requirements.

Orgaworld and CCS received the findings and disposition in this report, which are not disputed. Orgaworld has attended a training session, has registered and reported its lobbying activities. CCS is scheduled to attend a training session and has updated its registrations to report lobbying activities in 2011 on behalf of Orgaworld.

All of which is respectfully submitted,

Linda L. Gehrke
Lobbyist Registrar

ⁱ Orgaworld has also informed the Registrar that the employee who lobbied on its behalf in 2011 is no longer with the firm in any capacity.

ⁱⁱ On July 14, 2013, Stephen Sandre, General Manager, Orgaworld advised the Registrar that Ward Janssens was employed by Orgaworld until December 2012 and provided paid consulting services to Orgaworld until March 31, 2013.