

This memo is written to provide guidance for members of Council and Lobbyists about their roles and election fundraising. It is intended to ensure that questions or concerns can be addressed well in advance of an election period, to identify potential situations of conflict of interest or undue influence and to take appropriate action.

1. The City of Toronto has passed a by-law prohibiting corporate and trade union contributions to candidates for municipal office; therefore, only individuals may contribute.
2. Lobbyists are permitted to make contributions in their personal capacity as individuals who are residents of Ontario, in accordance with the requirements of the *Municipal Elections Act*. They may not do so as part of their lobbying activities as a consultant, in-house or voluntary unpaid lobbyist.¹
3. During the election period², City Council continues to meet and members of Council continue to hold office, whether or not they choose to seek re-election. Chapter 140 of the Toronto Municipal Code (the Lobbying By-law) continues to apply when lobbying public office holders, including members of Council.³ Lobbyists must register before they lobby a public office holder and they must report their lobbying activities.
4. The Lobbyists' Code of Conduct continues to apply to lobbyists in their dealings with public office holders. For example, the Code prohibits lobbying in a form or manner that includes offering, providing or bestowing entertainment, gifts, meals, trips or favours of any kind; requesting public office holders to endorse or recommend lobbyists' services; and lobbying at a charitable event, community or civic event, or similar public gathering.⁴
5. Lobbyists must not place public office holders in a conflict of interest or in breach of their codes of conduct or standards of behavior; and they must not bestow an improper benefit or exert improper influence on a public office holder.⁵

¹ For more information about individual contributions, see the City's Elections website, www.toronto.ca/elections.

² In Toronto, the "election period" runs from January 1 of an election year (the first date a nomination may be filed) until the date of the election.

³ "Public office holders" are members of City Council and their staff; an officer or employee of the City; members of local boards (restricted definition) of the City and their staff; officers, directors or employees of local boards (restricted definition) of the City; members of the Board of Health; and individuals appointed by Council, a Standing Committee or a Community Council under delegated authority, or a local board (restricted definition) to an advisory body to provide advice to Council, the Standing Committee, the Community Council or the local board (restricted definition) or to employees of the City or local board (restricted definition). See the *City of Toronto Act, 2006*, s. 156 and § 140-1 "PUBLIC OFFICE HOLDER".

⁴ § 140-42, Toronto Municipal Code, Lobbying (the Lobbying By-law)

⁵ § 140-45, Toronto Municipal Code, Lobbying (the Lobbying By-law)

6. A conflict of interest is any interest, relationship, association or activity that may be incompatible with the duties of the public office holder, including the duty to act in the public interest, whether real or apparent.⁶
7. Lobbyists should take all necessary measures to avoid creating any actual or apparent incompatibility between the public office holder's private interests or obligations and his or her public duties, including the duty to act in the public interest. Certain activities may result in a perception that a public office holder's ability to serve the public interest has been compromised by a personal interest or obligation. If so, a conflict of interest has been created.
8. One type of activity that may place a public office holder in a conflict of interest is political fundraising by a lobbyist.⁷ See the "FAQs – Frequently Asked Questions" below, for a discussion of this and other types of campaign activities.
9. Members of Toronto City Council and members of City of Toronto local boards (restricted definition) are also bound by Codes of Conduct. Under these Codes of Conduct, the members are required to be familiar with the provisions of the Lobbying By-law and not to knowingly engage in prohibited lobbying communications.⁸

⁶ In her report on the *Toronto Computer Leasing Inquiry and Toronto External Contracts Inquiry*, Madam Justice Denise E. Bellamy, Commissioner, wrote that "conflict of interest is essentially a conflict between public and private interests":

Conflicts of interest confuse decision-makers and distract them from their duty to make decisions in the best interests of the public, which can result in harm to the community. The driving consideration behind conflict of interest rules is the public good. In this context, a conflict of interest is essentially a conflict between public and private interests. . . . The core concern in a conflict is the presumption that bias and a lack of impartial judgement will lead a decision-maker in public service to prefer his or her own personal interests over the public good. . . . conflicts of interest extend to any interest, loyalty, concern, emotion, or other feature of a situation tending to make the individual's judgement less reliable than it would normally be. (Toronto Computer Leasing Inquiry, Toronto External Contracts Inquiry, Report, Vol. 2, Good Government, pp. 38ff)

⁷ In *Democracy Watch v. Campbell*, 2009 FCA 79, a lobbyist hosted a fundraising dinner for a federal minister who was seeking re-election. The Court discussed the definition of conflict of interest as follows:

"The common element in the various definitions of conflict of interest is . . . the presence of competing loyalties . . . the idea of conflict of interest is intimately bound to the problem of divided loyalties or conflicting obligations Any conflict of interest impairs public confidence in government decision-making. Beyond that, the rule against conflicts of interest is a rule against the possibility that a public office holder may prefer his or her private interests to the public interest." (paras. 40-51)

⁸ See the Codes of Conduct on the Integrity Commissioner's web site at: <http://www.toronto.ca/integrity/integrity-protocols-policies.htm>

FAQs - Frequently Asked Questions

- Q. *I am a registered lobbyist. May I contribute to the election campaign of a councillor who is running for re-election?*
- A. Yes, you are permitted to make a campaign contribution if you are an individual living in Ontario. You may contribute up to \$750 to any candidate for Council and up to \$2,500 to any mayoralty candidate. The total amount you may contribute to all candidates for office on City Council is \$5,000. In addition, you must not make this contribution as a form of lobbying about an issue to be decided by Council.
- Q. *I am a lobbyist or a client of a lobbyist. May I volunteer to work on a candidate's election campaign?*
- A. Yes. However, your volunteer work must comply with the Lobbyists' Code of Conduct. If you perform a significant role in the campaign (for example, as campaign manager), this may create a perception of conflict of interest or undue influence. You should seek the advice of the Lobbyist Registrar regarding whether your volunteer work and your individual circumstances are likely to result in a conflict of interest or undue influence.
- Q. *May I buy a ticket for a fundraising function?*
- A. Yes, if you are an individual living in Ontario and this amount will not result in you exceeding the contribution limits under the *Municipal Elections Act*, as noted above. You must comply with the Lobbyists' Code of Conduct. You must not buy the ticket as a form of lobbying.
- Q. *May I fundraise for a candidate?*
- A. Fundraising by a lobbyist creates a significant likelihood that a conflict of interest will result, should the lobbyist engage in lobbying that member of Council or candidate, once elected.⁹

Justice Bellamy recommended:

113. *Professional lobbyists should not engage in any type of political fundraising for candidates or councillors they lobby, beyond making their own donations.*

120. *When registering, lobbyists should certify that they have not engaged in political fundraising at the City beyond making their own allowable donations.*

Therefore, we advise that lobbyists should not fundraise for a candidate, if their intent is to lobby that candidate once elected, or if they are concurrently lobbying a candidate who is a member of Council during the election period. Alternatively, they should not lobby a public office holder for whom they fundraise. For further advice on particular situations, lobbyists should contact the Lobbyist Registrar.

⁹ *Democracy Watch v. Campbell*, 2009 FCA 79 (CanLII) (Federal Court of Appeal).

- Q. *May an organization that lobbies hold an all candidates meeting or a similar election event?*
- A. Yes, if it is an all candidates debate. All candidate debates to which the public is invited are not considered to be lobbying activities. In some circumstances, though, an organization may be required to report an election event as a lobbying activity.¹⁰ Lobbyists should seek advice from the Lobbyist Registrar on whether to report an election event as a lobbying activity if:
1. The holder or sponsor of the event is registered to lobby about subjects that will be considered in the current term of Council and these subjects will be discussed at the event; and
 2. The invited candidates include members of the current Council; and
 3. The event is not open to the public, is by invitation only or by purchase of a ticket.
- Q. *What steps might a public office holder be expected to take if a lobbyist violates Chapter 140, for example by fundraising for a member of Council whom they are lobbying or intend to lobby?*
- A. The Code of Conduct for Members of Council advises that the member of Council ought to terminate the conversation or, where appropriate draw the person's attention to the obligations imposed by the Lobbying By-law. If the violation is significant and not made in good faith, the member must report such violation to the Lobbyist Registrar. Similar provisions apply to members of local boards (restricted definition), with additional restrictions applying to members of adjudicative boards. (See Part XIII of the Codes of Conduct for Members of Council and Members of Local Boards (Restricted Definition) and Part XV of the Code of Conduct for Members of Adjudicative Boards at: <http://www.toronto.ca/integrity/integrity-protocols-policies.htm>)

For more information, please see the websites of the Integrity Commissioner and the Lobbyist Registrar, or contact these offices as follows:

Office of the Lobbyist Registrar: www.toronto.ca/lobbying
E-mail: lobbyistregistrar@toronto.ca
Tel.: 416-338-5858
TTY: 416-338 6623

Office of the Integrity Commissioner: www.toronto.ca/integrity
E-mail: jleiper@toronto.ca
Tel.: 416-397-7770 / 416-392-3826

¹⁰ See <http://www.toronto.ca/legdocs/mmis/2012/cc/bqrd/backgroundfile-46327.pdf>