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**REPORT TO COUNCIL**

**ON AN INQUIRY: LOBBYING AT THE MAYOR'S  
BALL FOR THE ARTS AND THE THOMPSON  
HOTEL ON OCTOBER 15, 2012**

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LOBBYIST REGISTRAR

OCTOBER 1, 2013

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## **SUMMARY**

In October 2012, media reported that two councillors left the Mayor's Ball for the Arts (the Ball) in the company of Sussex Strategy Group consultant lobbyists Jamie Besner and Kim Wright, and Nick Kouvalis of Campaign Research. It was reported that the group went to the Thompson Hotel (the Hotel). Mr. Besner and Ms Wright reported meetings with councillors, including those named in the media report, on the date of the Ball, in their registrations to lobby on behalf of MGM Resorts International (MGM) regarding the subject of "Potential Gaming Facilities".

The Ball was a charitable event. Lobbying at a charitable or other public event is prohibited by § 140-42C of the Lobbying By-law. In addition, Subsection 140-45 requires lobbyists to avoid exerting improper influence over public office holders, including avoiding "both the deed and the appearance of impropriety". The Registrar conducted an inquiry to determine if lobbying occurred at the Ball, or if improper influence had been exerted over the councillors at the ball or afterwards at the Hotel.

The Registrar found that Mr. Besner and Mr. Kouvalis did not lobby public office holders at the Ball or the Hotel. Mr. Besner reported in his registrations to lobby on behalf of MGM that he met with councillors regarding the subject matter of casinos on October 15, 2012, the date of the Ball. However, the Registrar found on the evidence of their statements through counsel and the statements of three councillors who were interviewed that Mr. Besner and Mr. Kouvalis only had casual conversations with them. Casual conversations at a charitable event that do not materially advance a lobbying matter are exempt from registration under § 140-5J. Since no registrable lobbying occurred, Mr. Besner's registration contained inaccurate information.

The Registrar found that the evidence did not support a finding of improper influence or impropriety by Mr. Besner or Mr. Kouvalis in their communications with councillors at the Ball or the Hotel. The communications were not inappropriate, and did not place public office holders in a conflict of interest or in breach of their code of conduct. Mr. Besner did not bestow any improper benefit or exert improper influence on the councillors.

The Registrar found that Ms Wright was not present at the Hotel. The Registrar also found that Ms Wright did not lobby two councillors whom she reported she met on October 15, 2012 in her registration to lobby on behalf of MGM. However, Ms Wright reported a meeting with a third councillor on October 15, 2012. The Registrar found that Ms Wright conducted lobbying activities at the Ball by asking the councillor to meet with her clients. The request and subsequent conversation with the councillor about whether the councillor would meet with Ms Wright's clients breached § 140-42C, which prohibits lobbying activities at a charitable event.

In the interest of transparency and accuracy of the information in the registry, it was appropriate to permit the correction of the information in the registrations that related to reports of lobbying that did not occur. The Registrar permitted Mr. Besner and Ms Wright to correct their returns to remove reports of lobbying that did not occur.

The Registrar found that it would not be appropriate to permit the removal of the report of a meeting that breached § 140-42C from the registry. Since the registration was non-compliant on its face and reflected a breach of § 140-42C, the Lobbyist Registrar suspended the registration for three months and requested Ms Wright to attend a training session on the Lobbying By-law.

## **FINDINGS**

1. Jamie Besner, Principal of Sussex Strategy Group and Nick Kouvalis of Campaign Research did not lobby councillors at the Mayor's Ball for the Arts. Their conversations with councillors at this event were casual conversations which are exempt from registration § 140-5J and did not breach § 140-42C of the Lobbying By-law.
2. Mr. Besner and Mr. Kouvalis did not lobby councillors at the Thompson Hotel after the Mayor's Ball for the Arts. Their communications with councillors were casual social conversations that did not fall within the definition of "lobbying".
3. Mr. Besner and Mr. Kouvalis did not breach § 140-45 when they met councillors at the Thompson Hotel after the Mayor's Ball for the Arts. The communications were not inappropriate, and did not place public office holders in a conflict of interest or in breach of their code of conduct. Mr. Besner did not bestow any improper benefit or exert improper influence on the councillors.
4. Kim Wright, Senior Associate of Sussex Strategy Group, did not lobby two councillors whom she reported lobbying in her registration SM17994.
5. Ms Wright breached § 140-42C when she lobbied a third councillor at the Mayor's Ball for the Arts, a charitable event, when she approached the councillor at this event to request that a meeting be scheduled on behalf of her clients in registration SM17994.

## **DISPOSITION**

1. Mr. Besner is permitted to remove from registration SM17995 reports of lobbying on October 15, 2012 which the Registrar has found did not occur.
2. Ms Wright is permitted to remove from SM17994 reports of lobbying two councillors on October 15, 2012 which the Registrar has found did not occur.
3. Registration SM17994 is suspended for three months.
4. Ms Wright is requested to attend a training session on the Lobbying By-law, to be provided by the Office of the Lobbyist Registrar (OLR).

## **THE INQUIRY PROCESS**

On October 29, 2012, Notices of Inquiry setting out the allegations were sent to Mr. Besner, Ms Wright and Mr. Kouvalis, together with an opportunity to respond to the allegations. Counsel for Ms Wright and Mr. Besner responded on November 26, 2012. Mr. Kouvalis responded through an official of his firm, Campaign Research on November 14, 2012.

On January 31, 2013, Inquiries and Investigations Counsel wrote to the parties requesting that they attend for interviews. The parties did not respond to the request for interviews and provided written responses through their counsel. The written responses of the parties are found in the section below.

The proposed findings were sent to the parties on July 29, 2013. Counsel for Mr. Besner and Ms Wright responded on August 19, 2013.

On August 27, 2013, Inquiries and Investigations Counsel wrote to counsel for Ms Wright providing further information for response. In this letter, excerpts of the interview with a councillor were provided. The opportunity to respond included an interview under oath at the Office of the Lobbyist Registrar in the presence of Ms Wright's counsel and submission of further evidence, as well as a written submission. Counsel for Ms Wright requested and was permitted to provide Ms Wright's affidavit in response.

The following additional evidence was obtained or requested:

- In December 2012, Inquiries and Investigations Counsel requested and received the guest list for the Mayor's Ball for the Arts from the events organizer, KIM Inc.
- Three councillors were interviewed under oath.

- Inquiries and Investigations Counsel conducted a search of the visitor log books kept by City staff at the member of Council reception desks in City Hall for entries made on October 15, 2012.

## **RESPONSES OF THE PARTIES**

On November 14, 2012, Aaron Wudrick, General Counsel, Campaign Research, wrote in response to the letter of inquiry that was sent to Mr. Kouvalis on October 29, 2012 as follows:

1. Regarding contravention of Chapters 140-10 (Registration requirement) & 140-42C (Prohibited activities) of the Lobbying By-law, Mr. Kouvalis is not a lobbyist, does not engage in paid or unpaid lobbying as defined in the Lobbying By-law, and therefore is not required to register as such. Specifically, Mr. Kouvalis did not in any way, shape or form engage in lobbying on October 15, 2012. On that evening, Mr. Kouvalis was seated at a table which did not include any public office holders nor anyone from MGM, and at no time during the evening did he communicate with any public office holders on MGM's behalf, or make introductions between MGM representatives and any public office holders.
2. Regarding contravention of Chapter 140-45 of the Lobbying By-law, as Mr. Kouvalis is not a lobbyist and was not engaged in lobbying, but rather a private citizen, this section of the Lobbying By-law does not apply to him.

Please note that Mr. Kouvalis[] is aware of the restrictions imposed by the Lobbying By law, and as a non-lobbyist ensures that his communications with public office holders fall under Chapter 140-5C (request for information), 140-5H (communication in response to a written request from public office holder) and 140-5J (casual communication at public gatherings where no material advancement of a lobbying matter).

On November 26, 2012, Michael I. Binetti, counsel for Mr. Besner and Ms Wright, wrote to Inquiries and Investigations Counsel in response to the letters of inquiry.

Regarding the conduct of Mr. Besner, Mr. Binetti submitted that no lobbying occurred at the Mayor's Ball for the Arts; and that nothing untoward happened at the Thompson Hotel. Mr. Binetti wrote in part:

“ . . . Mr. Besner informed us that at no time did he “lobby” anyone at the Mayor's Ball for the Arts, as that term is defined under Chapter 140 of the Toronto Municipal Code – Lobbying, nor did he even attempt to materially advance any matter on which he was retained.

“To the extent that Mr. Besner “communicated” with public office holders at the Mayor's Ball for the Arts, he did so simply by introducing public office holders to his clients without any discussion of the merits of any proposal. Mr. Besner's conduct is clearly covered by § 140-5(J) of Chapter 140 of the Toronto Municipal Code – Lobbying.

“ . . . Mr. Besner advised us that he neither invited public office holders of the City to the Thompson Hotel nor met with public office holders of the City at the Thompson Hotel in any way that was connected to a matter for which he was retained.

“Mr. Besner advised us that he did go to the Thom[p]son Hotel and “communicated” with [two councillors] on purely personal matters. Mr. Besner considers himself a friend of [the two councillors], and in the case of [one of the two councillors], Mr. Besner advised us that he has been friends with her since 1996, long before he was a lobbyist and she was a councillor. Mr. Besner and the public office holders made no attempt to hide that fact that they were in each other's company at the Thompson Hotel, precisely because nothing untoward was occurring. Mr. Besner advised us that the Thompson Hotel is a much-frequented public place and that some 200 people were at the Thompson Hotel on the night in question.

“What Mr. Besner did not do is offer or pay for any drinks, or anything else, for the public office holders. Moreover, Mr. Besner advised us that he [did] not travel to or from the Thompson Hotel with any public office holder . . . .

“To paraphrase § 140-45 of Chapter 140 of the Toronto Municipal Code – Lobbying:

- A. Mr. Besner avoided the *deed* of impropriety as nothing improper occurred on the night in question. Further, Mr. Besner avoided the appearance of impropriety as he made no attempt to hide the fact that he was meeting-up with old friends in a public place. The *appearance* of impropriety implies a surreptitious meeting or the like to have occurred, for which there is embarrassment at having been found together. This is not the case at hand.
- B. Mr. Besner did nothing that placed or would have placed public office holders in a conflict of interest or in breach of the public office holders' codes of conduct or standards of behaviour.
- C. Mr. Besner did not provide any improper benefit or improperly influence a public office holder. This item, along with “B” directly above, correspond generally to § 140-42(A).

“There is thus, nothing improper about Mr. Besner's conduct on the night in question. We have no doubt that the Lobbyist Registrar understands that lobbyists and public office holders can have relationships that pre-date their becoming lobbyists and public office holders. To rule out any social interaction between them would be akin to assuming that their pre-existing relationships have somehow become improper, which is completely unfair – especially in the absence of any evidence or even specific allegations of wrongdoing – and not specifically provided for in Chapter 140 of the Toronto Municipal Code – Lobbying.

“Mr. Besner informed us of why he registered “meetings” on the Lobbyist Registrar's website. Cognizant of the fact that he would be seen in a public venue with public office holders, he registered simple communications that occurred on October 15th out of an abundance of caution. You will admit that not all “communications” are required to be registered. Mr. Besner states that he made the registrations in keeping with the spirit of openness and transparency that is required under the Code, which he takes seriously. Moreover, “meeting” was the only logical choice of the selections on the website that

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corresponded with Mr. Besner's introductions of his clients (*i.e.*, permitted by § 140-5(J)) and his casual communications with friends (*i.e.*, not lobbying)."

Regarding the conduct of Ms Wright on the night of October 15, 2012, Mr. Binetti submitted that no lobbying occurred at the Mayor's Ball for the Arts, no meeting was arranged and Ms Wright was not present at the Thompson Hotel. Mr. Binetti wrote in part:

"Ms Wright informed us that at no time did she "lobby" anyone at the Mayor's Ball for the Arts, as that term is defined under Chapter 140 of the Toronto Municipal Code – Lobbying, nor did she even attempt to materially advance any matter on which she was retained.

"To the extent that Ms Wright "communicated" with public office holders at the Mayor's Ball for the Arts, she did so simply by introducing public office holders to her clients without any discussion of the merits of any proposal. Ms Wright's conduct is clearly covered by § 140-5(J) of Chapter 140 of the Toronto Municipal Code – Lobbying.

"To the extent that the Toronto Star reported on Ms Wright's communications with [a councillor], Ms Wright informed us that she only communicated with the Councillor after the Councillor had left the Mayor's Ball for the Arts. Ms Wright followed-up with the Councillor in respect of a previous enquiry about whether the Councillor was amenable to the idea of meeting with her client, which had gone unanswered by the Councillor.

"During that conversation, the Councillor rejected the idea of meeting with casino lobbyists out of hand and informed Ms Wright of the reasons why during a brief conversation. Despite this conversation, no meeting was arranged.

"What is dispositive from the above is that the conversation with the Councillor did not occur at the Mayor's Ball for the Arts (the Councillor had left) and as such, is not captured by § 140-42.

"Ms Wright informed us of why she registered "meetings" on the Lobbyist Registrar's website. Cognizant of the fact that she would be seen in a public venue with public office holders, she registered simple communications that occurred on October 15th out of an abundance of caution. You will admit that not all "communications" are required to be registered. Ms Wright states that she made the registrations in keeping with the spirit of openness and transparency that is required under the Code, which she takes seriously. Moreover, "meeting" was the only logical choice of the selections on the website that corresponded with Ms Wright's introductions of her clients (*i.e.*, permitted by § 140 5(J)) and her following-up with [the councillor] after she had left the Mayor's Ball for the Arts (*i.e.*, not lobbying at a charitable event)."

On April 22, 2013, Inquiries and Investigations Counsel wrote to counsel for Ms Wright regarding discrepancies between her account and that of a councillor concerning their conversation on the evening of October 15, 2102. Mr. Binetti responded in writing on May 3, 2013:

"As we stated in our letter of November 26, 2012, the conversation between [a councillor] and Ms Wright did not occur at the Mayor's Ball for the Arts (the Councillor

had left) and as such, is not captured by § 140-42. Ms Wright explains that they were outside the event space, and that [the councillor] had left the event space and was in the public areas of the Metro Toronto Convention Centre ("MTCC"). The MTCC is a large venue, as you know. Ms Wright remembers a number of non-Arts Ball events taking place. I called the MTCC and was informed over the telephone that there were several events, including an event for the International Council of Shopping Centres in a neighbouring hall, meetings and even a film shooting for the show *Covert Affairs* at the same time. The list of events on the MTCC's website does not go back that far, but I invite you to call them to confirm the above. I was told there were at least five events.

"As to [the councillor's] assertion that she agreed to a meeting, Ms Wright states categorically that no such thing happened: the Councillor did not accept a meeting, schedule a meeting, nor did the Councillor ever call to cancel any meeting.

"Ms Wright's position is entirely consistent with what [the councillor] was quoted as having said to the Toronto Star at the time, which was: "According to [a councillor], 'Kim chased me out the door (of the mayor's art ball) asking if I had time to meet with her clients. I said I hadn't met with any casino lobbyists and I wasn't feeling inclined to do so.'"<sup>1</sup> [The Toronto Star article dated October 25, 2012](#) is enclosed."

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On July 29 and 31, 2013, Inquiries and Investigations Counsel sent a letter inviting submissions on the proposed findings and on dispositions that could be made based on those findings. Counsel for Mr. Besner and Ms Wright responded on August 19, 2013 to the findings and disposition as follows:

"Thank you for your letters of July 29 and 31, 2013.

"Your proposed findings vis-à-vis Jamie Besner are acceptable.

"We are disappointed with your proposed findings vis-à-vis Kim Wright. As discussed over the telephone, we request that Ms Wright's position regarding the alleged lobbying of [a councillor], as previously communicated to you, be included in the Lobbyist Registrar's report to Council. If the Lobbyist Registrar is not going to name Ms Wright personally in her report, then Ms Wright's position to be included in the report should also be included on a no-names basis.

"Without limiting the generality of the foregoing, Ms Wright's position is that she was neither at the charitable event in that she and [the councillor] had left the Mayor's Ball for the Arts (as confirmed by [the councillor] in the Toronto Star), nor did Ms Wright actually arrange a meeting with the Councillor. To the extent [the councillor] took a different position with your office than she did months earlier with the Toronto Star, then such a discrepancy should also be reflected in the Lobbyist Registrar's report to Council.

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<sup>1</sup>[http://www.thestar.com/news/city\\_hall/2012/10/25/casino\\_lobbyists\\_face\\_scrutiny\\_under\\_bylaw\\_that\\_prohibits\\_improper\\_relationships\\_with\\_politicians.html](http://www.thestar.com/news/city_hall/2012/10/25/casino_lobbyists_face_scrutiny_under_bylaw_that_prohibits_improper_relationships_with_politicians.html)

"In that Ms Wright and [the councillor] were neither at a charitable event nor was a meeting arranged, then Ms Wright maintains her position that she did not breach the Lobbying By-law.

"Without prejudice to Ms Wright's position that she did nothing wrong, the following two options proposed in your letter of July 31st are acceptable to both her and Mr. Besner:

1. To permit corrections to the registrations regarding the lobbying that did not take place (reports of lobbying [two councillors] on October 15, 2012 in registrations SM 17994 and SM17995);
2. To permit the removal of Ms Wright's report of lobbying which breached s. 140-42 C, the lobbying of [a councillor] at a charity event.

"It would seem counterintuitive to revoke or suspend registrations in their entirety. Those registrations contain relevant and accurate information that should remain in the public domain.

"We would appreciate reviewing a draft report on a confidential basis to ensure that Ms Wright's position is accurately reflected. We understand that the Lobbyist Registrar does not agree. The *City of Toronto Act, 2006* does not permit a person subject to a Lobbyist Registrar's investigation to voice his or her position in the same way that the Lobbyist Registrar reports to Council. You and I discussed the fact that including the position of a person under investigation has been permitted by the Lobbyist Registrar in the past. We think it is fair that Ms Wright be given the same opportunity in this instance."

On August 27, 2013, Inquiries and Investigations Counsel wrote to counsel for Ms Wright providing further information for response. Mr. Binetti requested and was given permission to submit an affidavit in response. On September 19, 2013, Mr. Binetti submitted Ms Wright's Statutory Declaration of the same date.

## **EVIDENCE**

### *Media Reports*

Articles in the Toronto Star, published on October [24](#) and [25](#), 2012<sup>2</sup> reported that on the night of October 15, 2012, two councillors left the Ball and went to the Thompson Hotel in the company of lobbyists. The October 25 Star article reported a statement by a third councillor indicating possible lobbying activities by one lobbyist at the Ball.

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<sup>2</sup>[http://www.thestar.com/news/city\\_hall/2012/10/24/bailaos\\_arrest\\_followed\\_time\\_spent\\_with\\_casino\\_lobbyists.html](http://www.thestar.com/news/city_hall/2012/10/24/bailaos_arrest_followed_time_spent_with_casino_lobbyists.html)  
[http://www.thestar.com/news/city\\_hall/2012/10/25/casino\\_lobbyists\\_face\\_scrutiny\\_under\\_bylaw\\_that\\_prohibit\\_simproper\\_relationships\\_with\\_politicians.html](http://www.thestar.com/news/city_hall/2012/10/25/casino_lobbyists_face_scrutiny_under_bylaw_that_prohibit_simproper_relationships_with_politicians.html)

*Registrations*

In his registration to lobby about casinos on behalf of MGM, SM17995, Mr. Besner reported meeting on October 15, 2012 with three councillors.

In her registration to lobby about casinos on behalf of MGM, SM17994, Ms Wright reported meetings with three councillors on October 15, 2012.

Mr. Kouvalis is not a registered lobbyist and has not reported any lobbying activities at the City.

*Statements by Councillors regarding the Allegations*

Two councillors each stated in interviews under oath that they were not lobbied at the Ball or at the Hotel, and that they had only casual conversations with Mr. Besner, Ms Wright and Mr. Kouvalis. There were a number of different lobbyists at the Ball. All their conversations with lobbyists were casual social conversations unrelated to any City business.

The two councillors stated that they left the Ball with each other and went to the Hotel. They did not accompany the lobbyists to the Hotel. They saw Mr. Besner and Mr. Kouvalis at the Hotel, but only casual conversation took place. They did not recall seeing Ms Wright at the Hotel. One councillor paid for both councillors' drinks.

Neither of the two councillors could recall any other meetings with Mr. Besner or Ms Wright on October 15th.

A third councillor was at the Ball but left early and did not go to the Hotel. This councillor stated under oath in an interview by Inquiries and Investigations Counsel on December 12, 2012 that she was not lobbied by anyone except Ms Wright. In her interview, she stated (in part):

- Q. During the course of that event, and I'm talking about inside the actual Convention Centre, were you approached by anyone you know as someone who currently lobbies at the City of Toronto – so in the actual event?
- A. There were a number of people that greeted me. Many of them were developers. I had a quick conversation, just you know, sort of social pleasantries – nothing of substance and no City business was discussed. The only person who is a registered lobbyist that approached me would be Kim Wright from the Sussex Strategy Group.
- Q. Okay. When you say "she approached you" that was in the actual Convention Centre?
- A. Yes. I was getting ready to leave; I had one course and that was salad, and as I was rising from my chair I turned and she was not far from me and I was saying good-bye to my table and she was waiting and I was walking out the door to get my coat to get into a cab, knowing that I had a very tight time slot. So at that point in time she did approach me and said "Do you have . . . you know . . . can we talk for a second?"

. . .

- A. I don't recall all the words verbatim . . . but the essence of the conversation was that she wanted to know whether or not I would take a meeting with her clients, which is MGM, and I told her at that point in time that I was not feeling inclined to take any meetings with any of the casino owners or any casino lobbyists, largely because I just wasn't inclined to take the meetings. So, that's my response to her, and she was walking after me and I said "you know if you want to talk you can literally just escort me to my coat, I have to get my coat" so she walked me to get my coat, and almost out the door.
- Q. Right, and in terms of her saying "would you meet with my clients?" your understanding was that it wasn't at that particular time, she was talking or was it, or do you think she was talking about a later date to schedule a meeting?
- A. No it was . . . that's correct, it would be a scheduled meeting. It was . . . at the end of the conversation . . . like she almost literally walked me out the door, like almost to the door and we were several levels in the Metro Convention Centre so there was actually time to have a conversation because it was not as simple as leaving the banquet table and then walking to the front door. I think we were two or three levels down. By the end of the conversation I said "okay, fine, fine I will meet with your client" and then I had a change of heart afterwards because I was already inclined to feeling that I didn't want to meet with them, and so I said, "Yes, I will meet with them, and then afterwards I decided I wasn't going to meet with them, so I changed my mind again."

*Statement by Ms Wright*

On September 19, 2013, Ms Wright provided a Statutory Declaration regarding her conversation with the third councillor on the night of October 15, 2012. The Statutory Declaration was made after a relevant excerpt of the councillor's statement (above) was provided to her counsel on August 27, 2013 for response:

- "3. At the Mayor's Ball for the Arts, I asked [the councillor] whether she had a moment to be introduced to the MGM representatives who were in attendance. The Councillor declined because she indicated that she had to go to another event, but said that I could walk her out of the event. We walked out of the event hall into the common area of the Metro Toronto Convention Centre and proceeded up multiple escalators towards the taxi stand outside. During that conversation, I mentioned that I was having difficulties in getting a meeting with her office on this file.
4. I do not recall the exact words, but [the councillor] made it clear to me that she was not interested in meeting with lobbyists on the casino file.
5. There was never any correspondence from [the councillor] or her office about scheduling a meeting with MGM or the un-scheduling of a meeting. [The councillor] made her feelings on the matter clear to me that night.
6. I did not follow-up with her to schedule a meeting and she certainly did not follow-up with me to cancel anything. The next time I was made aware of [the councillor's]

position on the matter was by way of her comments to the Toronto Star that I previously provided to the Office of the Lobbyist Registrar, which were as follows: 'I said I hadn't met with any casino lobbyists and I wasn't feeling inclined to do so.'

### *Other Evidence*

The guest list for the Mayor's Ball for the Arts includes the names of Mr. Besner, Ms Wright, Mr. Kouvalis, and the three councillors who were interviewed under oath.

In July 2013, Inquiries and Investigations Counsel searched the visitors' reception log. At that time the particular log book related to that date was missing for C Street, where two of the councillors have offices. The log book was subsequently located and made available to Inquiries and Investigations Counsel in September 2013. No meetings between councillors and Mr. Besner, Ms Wright or Mr. Kouvalis are recorded in this log book or any of the other log books for the date October 15, 2012.

## **DISCUSSION**

My findings are made on a balance of probabilities, which is the civil standard of proof. In assessing 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.).

### *Messrs Besner and Kouvalis did not lobby councillors at the Ball or the Hotel*

The statements of the councillors are consistent that Mr. Besner and Mr. Kouvalis had only casual conversations and did not lobby anyone at the Ball or the Hotel. Mr. Besner reported meetings with three councillors in registration SM17995. However, he stated through counsel that these reports were made out of an abundance of caution and that his communications were social in nature and did not concern City business. That communications were purely social in nature is supported by the statements of the two councillors who were interviewed and who went to the Hotel, as well as statements by representatives Mr. Besner and Mr. Kouvalis.

The three councillors stated that no conversations of substance occurred at the Mayor's Ball for the Arts with any lobbyist except Ms Wright, which will be discussed below.

Ms Wright reported meetings with two councillors in registration SM17994. However, she stated through her counsel that she only did so out of an abundance of caution, and that these were simple communications, not lobbying. Two of the councillors stated

under oath that they had no more than casual social conversations at the Ball with Ms Wright.

### *No Improper Influence at the Thompson Hotel*

The evidence of the two councillors who went to the Hotel was that Mr. Besner, Ms Wright and Mr. Kouvalis did not invite them to the Hotel, agree to meet them there or accompany them there. The councillors stated that they decided on their own to go to the Hotel. They met Mr. Besner and Mr. Kouvalis by chance there and had only social conversations with them. No conversations of substance about City business occurred. One councillor paid for the other councillor's drinks. The statements of Mr. Besner and Mr. Kouvalis through their representatives are consistent with those of the councillors concerning the circumstances of their meeting at the Hotel and the nature of their conversations.

The two councillors who went to the Hotel did not recall seeing Ms Wright there. Mr. Besner and Ms Wright stated through their counsel that Ms Wright was not at the Hotel.

The OLR investigation did not substantiate the reports in the Toronto Star article that the councillors were accompanied by Mr. Besner, Mr. Kouvalis and Ms Wright to the Hotel. The statements of Ms Wright and Mr. Besner through their counsel, Mr. Kouvalis through his representative, and the two councillors are consistent and support the finding that the councillors met Mr. Besner and Mr. Kouvalis, but not Ms Wright, by chance at the Hotel.

Section 140-42A of the Lobbying By-law prohibits lobbyists from undertaking to lobby in a form or manner that includes offering, providing or bestowing entertainment, gifts, meals, trips or favours of any kind.

Section 140-45 of the Lobbying By-law prohibits lobbyists from the exercise of improper influence over public office holders, and includes the following prohibitions:

- A. *Lobbyists shall avoid both the deed and the appearance of impropriety.*
- B. *Lobbyists shall not place public office holders in a conflict of interest or in breach of the public office holders' codes of conduct or standards of behaviour.*
- C. *Lobbyists shall not propose or undertake any action that would bestow an improper benefit or constitute an improper influence on a public office holder.*

The test for appearance of impropriety is similar to that of test for appearance of bias or conflict of interest: Would it be reasonable for a person who is informed of all the facts to think that there is an appearance of impropriety? Social relationships between lobbyists and public office holders are not prohibited by Chapter 140. However, lobbyists must take care not to create an appearance of impropriety. For example, they must not use a personal relationship or a social setting to advance a lobbying matter on behalf of their clients. Lobbyists must not place the public office holder in a conflict of

interest between their duty to serve the public interest and their personal interests. They must not bestow gifts, entertainment, favours or benefits of any kind. An appearance of impropriety threatens the public's trust in the public service to serve the public interest and not private interests.

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

*. . . Business meetings between lobbyists and elected officials should be conducted in a business environment, during business hours whenever possible. . . .*

*This is not to say that lobbyists can never have social contact with councillors and staff. Of course they can. But it is reasonable to spell out limitations on socializing. Lobbyists may use an invitation to an apparently social event as a thinly disguised lobbying opportunity. Councillors and staff should recognize that they have been invited for a reason: the lobbyist wants to build goodwill with them.<sup>3</sup>*

In this case, the evidence does not support a finding on a balance of probabilities that there was any breach of § 140-42A or § 140-45. I find that Mr. Besner, Ms Wright and Mr. Kouvalis did not invite the councillors to the Thompson Hotel. Ms Wright was not present at the Thompson Hotel. The conversations Mr. Besner and Mr. Kouvalis had with the councillors at the Hotel were purely social. City business was not discussed. Mr. Besner and Mr. Kouvalis did not provide any gifts, benefits or entertainment to the councillors.

*Ms Wright conducted lobbying activities at the Ball contrary to § 140-42C*

Section 140-42C provides:

*Lobbyists shall not conduct lobbying activities at a charitable event, community or civic event, or similar public gathering.*

The sole remaining issue is whether Ms Wright conducted lobbying activities at the Mayor's Ball for the Arts by speaking to a councillor about meeting with her clients. It is not disputed that the Ball was a charitable event. Therefore, the prohibition against conducting lobbying activities set out in § 140-42C applied to that event. I have found that Ms Wright's request to the councillor asking her to agree to a meeting with her clients was a "lobbying activity" conducted by Ms Wright at a charitable event.

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<sup>3</sup> The Honourable Madam Justice Denise E. Bellamy, *Report, Toronto Computer Leasing Inquiry (2005)* Vol. 2, *Good Government*, page 84

The councillor stated that Ms Wright approached her and asked to speak with her as she was getting up to leave her table at the banquet:

- A. Yes. I was getting ready to leave; I had one course and that was salad, and as I was rising from my chair I turned and she was not far from me and I was saying good-bye to my table and she was waiting and I was walking out the door to get my coat to get into a cab, knowing that I had a very tight time slot. So at that point in time she did approach me and said "Do you have . . . you know . . . can we talk for a second?"

Ms Wright's counsel stated her position in his letter of November 26, 2012 as:

" . . . she only communicated with the Councillor after the Councillor had left the Mayor's Ball for the Arts."

Ms Wright, in her Statutory Declaration of September 19, 2013, stated:

" . . . I asked [the councillor] whether she had a moment to be introduced to the MGM representatives who were in attendance. The Councillor declined because she indicated that she had to go to another event, but said that I could walk her out of the event. We walked out of the event hall into the common area of the Metro Toronto Convention Centre and proceeded up multiple escalators towards the taxi stand outside. During that conversation, I mentioned that I was having difficulties in getting a meeting with her office on this file.

"I do not recall the exact words, but [the Councillor] made it clear to me that night that she was not interested in meeting with lobbyists on the casino file."

Ms Wright reported a meeting with the councillor in registration SM17994 to lobby on behalf of MGM. Ms Wright stated through her counsel that she requested a meeting with her clients. There is no dispute in the evidence of Ms Wright and the councillor on this point. The only issues disputed by Ms Wright's counsel were whether the request was made at the Mayor's Ball for the Arts; and whether the request to meet was accepted. Ms Wright stated through her counsel in letters to Inquiries and Investigations Counsel that the request occurred in the Metro Toronto Convention Centre but not at the Mayor's Ball for the Arts and therefore is not captured by § 140-42. Ms Wright stated through her counsel that the request to meet was declined by the councillor:

As we stated in our letter of November 26, 2012, the conversation between [the councillor] and Ms Wright did not occur at the Mayor's Ball for the Arts (the Councillor had left) and as such, is not captured by § 140-42. Ms Wright explains that they were outside the event space, and that [the councillor] had left the event space and was in the public areas of the Metro Toronto Convention Centre ("MTCC").

. . .

As to [the councillor's] assertion that she agreed to a meeting, Ms Wright states categorically that no such thing happened: the Councillor did not accept a

meeting, schedule a meeting, nor did the Councillor ever call to cancel any meeting.

The councillor stated under oath that Ms Wright approached her as she was rising from her table at the banquet. The conversation continued as she was leaving to get her coat, up to the door of the Convention Centre where she was getting a cab. The quote attributed to the councillor in the Star article is quite similar to and consistent with the councillor's statement under oath when interviewed by Inquiries and Investigations Counsel. Ms Wright's counsel wrote that Ms Wright's position is consistent with this statement quoted in the Star article: 'Kim chased me out the door (of the mayor's art ball) asking if I had time to meet with her clients. I said I hadn't met with any casino lobbyists and I wasn't feeling inclined to do so.'

Ms Wright's statement is in substantial agreement with the councillor's statement on where the conversation started. Both stated that the conversation started "[a]t the Mayor's Ball for the Arts", to quote from Ms Wright's Statutory Declaration, paragraph 3. Both also are in agreement that the conversation continued, at the councillor's invitation, as the councillor was proceeding from the banquet room through the Metro Toronto Convention Centre.

The councillor's interview statement and Ms Wright's Statutory Declaration are consistent in stating that Ms Wright initiated the request to the councillor at the Mayor's Ball for the Arts. The conversation continued as the councillor walked from the event through the Convention Centre (where the event was being held) to get her coat. Ms Wright has not disputed the following statement attributed to the councillor in the Star article, and in fact states through her counsel that this is consistent with her position: 'Kim chased me out the door (of the mayor's art ball) asking if I had time to meet with her clients . . . .'

The evidence discussed in the paragraph above shows a clear connection between the conversation and the event. As well, the evidence given by both Ms Wright and the councillor is clear that Ms Wright's intent in initiating this conversation was to discuss a meeting with her clients about the casino issue. This is a lobbying activity as defined by § 140-1D:

*LOBBY – To communicate with a public office holder on any of the following subject matters:*

. . .

*D. In relation to a consultant lobbyist, to arrange a meeting between a public office holder and any other person.*

The evidence is consistent that no meeting was arranged at that time or at any later date. However, in my view it is not material whether the meeting was actually arranged. There was a discussion about arranging a meeting with Ms Wright's clients about the casino issue, a subject matter that falls within the definition of "lobby". This evidence is

sufficient to establish that Ms Wright engaged in lobbying activity at a charitable event, which is prohibited by § 140-42C.

Whether the entire discussion occurred within the room where the banquet took place or started outside the door of the banquet room and continued as the councillor went through the building where the banquet took place to get her coat, or whether Ms Wright followed the councillor out of the banquet room and then spoke to her is not material.

The attendance of Ms Wright and the councillor at the Mayor's Ball for the Arts provided the venue and the opportunity for this discussion to occur. In my view, the intent of § 140-42C is to prohibit such communications by lobbyists from occurring.

The evidence of the councillor and Ms Wright is consistent that the conversation was started by Ms Wright at the Mayor's Ball for the Arts, in the banquet room, and that it concerned whether the councillor would meet Ms Wright's clients. The conversation continued as the councillor walked through the Metro Tonto Convention Centre to retrieve her coat and exit the building. On these facts, I find that Ms Wright engaged in lobbying activity at a charitable event.

#### *Disposition*

In the interest of transparency, I have permitted corrections to registrations SM17994 and SM17995 regarding lobbying that I have found did not take place.

I have found that a meeting reported in the registration SM17994 constituted lobbying that breached § 140-42C because it was conducted at a charitable event. This is a first offence for this lobbyist. However, the lobbyist is very experienced with Toronto's Lobbying By-law and registration system and should be well aware of § 140-42C.

Further, in my view the breach of § 140-42C is a serious one. Chapter 140 prohibits lobbying at charitable and other civic events for strong reasons. Madam Justice Bellamy, in her Report on the Toronto Computer Leasing Inquiry (2005), wrote (vol. 2, Good Government, p. 84):

Business meetings between lobbyists and elected officials should be conducted in a business environment, during business hours whenever possible. If lobbyists expect access to government decision-makers to persuade them directly, they should also expect that opportunities to persuade will be granted only in places of business, during appropriate work hours.

I have therefore suspended registration SM17994 for three months. The suspension does not remove the registration from the registry. However, it prevents the lobbyist from lobbying about this subject matter for this client during the suspension period.

Ms Wright is cautioned to comply with the Lobbying By-law in the future. Breach of the By-law is a provincial offence, punishable on a first conviction by a fine of up to \$25,000.

**Inquiry: Lobbying at the Mayor's Ball for the Arts and the Thompson Hotel**

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I request that Ms Wright attend a training session on the Lobbying By-law, to be provided by my office.

All of which is respectfully submitted,

Linda L. Gehrke  
Lobbyist Registrar