



## LOBBYIST REGISTRAR'S REPORT ACTION REQUIRED

### Response to Council's Request for a Report on Holding Lobbying Firms Responsible

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| <b>Date:</b>             | November 4, 2013   |
| <b>To:</b>               | City Council       |
| <b>From:</b>             | Lobbyist Registrar |
| <b>Wards:</b>            | All                |
| <b>Reference Number:</b> |                    |

#### **SUMMARY**

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On October 8, 9, 10 and 11, 2013, City Council adopted the following with respect to CC39.9, Report on an Inquiry: Lobbying at the Mayor's Ball for the Arts and the Thompson Hotel:

1. City Council receive the findings in the report (October 1, 2013) from the Lobbyist Registrar.
2. City Council request the Lobbyist Registrar to report to the November 13 and 14, 2013 meeting of City Council on a policy that holds lobbying firms responsible and not just individual employees.

This report responds to paragraph 2 of the above decision of City Council.

Like other Canadian lobbying laws, Toronto's Lobbying By-law defines consultant and in-house lobbyists as individuals. A voluntary lobbyist may be an employer firm as well as an individual. The principle that the lobbyist is individually responsible for compliance is common to all lobbying regimes in Canada.

There are four ways in which Toronto's Lobbying By-law (Chapter 140, Toronto Municipal Code, Lobbying) holds lobbying firms as well as individuals responsible for compliance:

1. Public registrations disclose information about the lobbying firm as well as the individual;

2. Public reports to Council on inquiries may disclose the name of the lobbying firm as well as the individual lobbyist;
3. The Registrar may publicly suspend, revoke or remove a registration, in which the name of the lobbying firm as well as the individual lobbyist is disclosed; and
4. A corporation as well as an individual lobbyist may be prosecuted under the *Provincial Offences Act* for breach of the Lobbying By-law.

Two possible additional options for holding lobbying firms responsible are considered but are not recommended.

It is not recommended that City Council expand the City's lobbying legislation beyond its current framework, with a focus on the individual lobbyist, at this time.

## **RECOMMENDATIONS**

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**The Lobbyist Registrar recommends that:**

1. City Council receive this report for information.

### **Financial Impact**

This report has no financial impact.

## **DECISION HISTORY**

[Report on an Inquiry: Lobbying at the Mayor's Ball for the Arts and the Thompson Hotel](http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC39.9)  
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC39.9>

## **COMMENTS**

### **The Principle of Individual Responsibility**

Lobbying legislation in Canada consistently defines the lobbyist as an individual. Like other Canadian lobbying laws, Toronto's Lobbying By-law defines consultant and in-house lobbyists as individuals.<sup>1</sup> Chapter 140's definition of "voluntary unpaid lobbyist" (§ 140-27) is unique and includes individuals as well as organizations and

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<sup>1</sup> See §§ 140-11 and 140-20. Toronto Municipal Code (Lobbying); Meunier, Turmel, Giorno and Hyndman, *Lobbying in Canada*, vol. 1 at page OE-4: "Each statute requires public reporting when individuals, for compensation, communicate with a public office holder about a government decision."

corporations. This is an exception to the principle in Canadian lobbying legislation that the individual who lobbies is the lobbyist.<sup>2</sup>

The Lobbying Control Framework report (EX2.4, December 21, 2006 Report from City Manager to Executive Committee, adopted by Council on February 5, 6, 7 and 8, 2007) provided the background to the By-law adopted by Council at the same time. The definitions adopted by Council in February 2007 have not changed.

The Report of the Honourable Madam Justice Denise E. Bellamy on the Toronto Computer Leasing Inquiry (2005, City of Toronto) considered the actions of individual lobbyists regarding a procurement process. The recommendations in this report, which formed the basis of much of Toronto's Lobbying By-law, reflect a focus on the responsibility of individual lobbyists for their conduct.

## **Holding a Lobbying Firm Responsible for the Actions of its Employees**

There are four ways in which Toronto's Lobbying By-law (Chapter 140, Toronto Municipal Code, Lobbying) holds lobbying firms as well as individuals responsible for compliance. They are set out below:

### *1. Public Lobbyist Registration*

The individual lobbyist, as well as the lobbying firm to which the individual lobbyist is associated, must be publicly disclosed in the lobbyist registration. Information about the firm where the consultant lobbyist is engaged in business must be provided in the consultant lobbyist's registration; the senior officer's registration on behalf of an in-house lobbying firm discloses the employer, associate firms and all in-house lobbyists.<sup>3</sup>

### *2. Public Report to Council*

The Registrar may make a public report to Council on an inquiry into a breach of the Lobbying By-law. The Registrar is permitted to publicly name the individual lobbyist as well as the firm with which they are employed or associated, where in her opinion this information is necessary for the purposes of the report.<sup>4</sup> Whether to name the individual lobbyist and/or their firm is a decision that must be made in the particular circumstances of the case. Generally, the lobbyist and their associated firm are named for purposes of transparency, unless countervailing considerations (such as threat to the safety of an individual) outweigh disclosure. The determinations in the report are usually made with

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<sup>2</sup> The authors of *Lobbying in Canada*, vol. 2 at page OM-E-12, note that § 140-27 is a "fundamental departure from a basic principle of Canadian lobbying law (namely, that the individual, not his or her employer, is considered to be the lobbyist)".

<sup>3</sup> See §§ 140-15 and 140-22.

<sup>4</sup> See *City of Toronto Act, 2006*, S.O. 2006, c. 11 as amended, s. 169

respect to the individual lobbyist.<sup>5</sup> The practice of naming the individual lobbyist and their firm, and making findings with respect to the individual, is consistent with the definitions of “lobbyist” in the Lobbying By-law and with the practice of other Canadian lobbying regimes.

### 3. *Suspending, Revoking or Removing a Return*

The Registrar may suspend or revoke a return (registration) that is found not to comply with Chapter 140 or to contain inaccurate information. The Registrar may remove a return where the registrant fails to advise the Registrar of changes to information, give the Registrar requested information, or update a return within the required time limits.<sup>6</sup>

The registration publicly discloses the name of the lobbying firm and the information that the registration has been closed by the Office of the Lobbyist Registrar. In an in-house lobbyist registration, the suspension, revocation or removal of an in-house return affects the lobbying activities of all of the firm’s listed lobbyists in relation to that registration. Suspension, revocation or removal of a consultant lobbyist’s return affects only that registration and not those of other consultant lobbyists in the firm.

### 4. *Prosecution under the Provincial Offences Act (POA)*

A corporation as well as an individual may be prosecuted under the *Provincial Offences Act* for a breach of the Lobbying By-law. See for example, the Registrar’s Report on a Prosecution for Breach of the Lobbying By-law ([CC36.1, received by City Council on June 11, 12 and 13, 2013](#))<sup>7</sup>. In that case, a charge was laid under the *Provincial Offences Act* against both an individual lobbyist and the associated corporate lobbyist for lobbying about a procurement process, in breach of § 140-41A. The corporate lobbyist pleaded guilty to a provincial offence.

Lobbying firms may or may not be incorporated. If incorporated, both the individual and the corporation may be charged under the *POA*, since both are “persons”.<sup>8</sup> If the lobbying firm with which the individual lobbyist is engaged in business or employed is a corporation, the Office of the Lobbyist Registrar (OLR) considers whether there are reasonable grounds to lay a charge under the *POA* against the corporation as well as the individual lobbyist for breach of Chapter 140. Whether the individual or the corporation or both will be charged depends upon the circumstances of the case. In any case where the OLR is contemplating a charge under the *POA*, we seek the advice of the City’s

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<sup>5</sup> See, for example, [CC37.6](#) [<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC37.6>]; [CC37.7](#) [<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC37.7>]; [CC39.9](#) [<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC39.9>]; [CC39.10](#) [<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC39.10>].

<sup>6</sup> See §§ 140-36 and 140-37.

<sup>7</sup> <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC36.1>

<sup>8</sup> *Ontario Legislation Act, 2006*, S.O. 2006, c.21 as amended, s. 87; *Provincial Offences Act*, R.S.O. 1990, c.P.33 as amended, s.23.

Prosecutions Group regarding whether there are reasonable and probable grounds and whom to prosecute under the *POA*.

## Options Considered

In addition to the above four ways in which lobbying firms are held responsible, two possible options for holding lobbying firms responsible were considered:

1. Expand the definition of “consultant lobbyist” to include “a corporation, organization or other person, or a partnership”, similar to § 140-27A; and
2. Impose new requirements and responsibilities on corporations, organizations, partnerships and other persons with respect to: registration, reports filing and general responsibilities as may be appropriate within the framework of Chapter 140.

These options are not considered to be necessary or advisable. The current provisions for registration and accountability described above are sufficient to hold individual lobbyists and associated lobbying firms responsible for their lobbying activities. The two possible additional options would be a departure from the fundamental principle in Canadian lobbying regimes that the lobbyist is individually responsible. Amendments to the Lobbying By-law as well as changes to the registry’s Internal Operating System would undoubtedly be required to implement these options, with associated operating and capital costs that cannot be estimated at this time.

## Conclusion

The concept of individual responsibility is a fundamental principal of lobbying legislation in Canada and of Toronto’s Lobbying By-law.

Lobbying firms as well as the individual lobbyist are held responsible under Toronto’s Lobbying By-law, through requirements for registration; reports to Council; suspension, revocation and removal of a registration; and prosecution under the *Provincial Offences Act*.

The two additional options considered imply changes to the City’s framework and systems of lobbyist registration and regulation, and depart from the principle of individual responsibility. Amendments to the Lobbying By-law as well as changes to the registry’s Internal Operating System would undoubtedly be required, with associated operating and capital costs. These options are not considered to be necessary or advisable.

It is not recommended that City Council expand the City’s lobbying legislation beyond its current framework, with a focus on the individual lobbyist, at this time.

I have consulted with the City Solicitor and City Manager's Office regarding this report.

**CONTACT**

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**SIGNATURE**

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