
**REPORT TO COUNCIL
ON AN INQUIRY INTO A FUNDRAISING EVENT**

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SUMMARY

This report provides information about political fundraising and the Lobbying By-law to Council, to the public, to public office holders and to lobbyists. Political fundraising by a lobbyist organization has been found to provide a gift or favour to advance its lobbying undertaking and to place a member of Council in an apparent conflict of interest. It is in the public interest to report on this matter to Council.

On June 27, 2011, the Toronto Chapter Chair of BILD (the Building Industry and Land Development Association) held a fundraising event at his home for Mayor Rob Ford, according to media reports.¹ BILD is a registered lobbyist organization for the building and land development industry, and was actively lobbying at the City on a number of issues at the time of the event. However, the event was not reported in any of its registrations.

The Lobbyist Registrar conducted an inquiry to determine whether the alleged event complied with the Lobbying By-law. In particular, the [Lobbying By-law](#), § 140-42A prohibits lobbyists from undertaking to lobby by providing entertainment, gifts, meals or favours of any kind; and § 140-45B prohibits lobbyists from placing public office holders in a conflict of interest or in breach of their codes of conduct or standards of behaviour.²

BILD informed the Office of the Lobbyist Registrar (OLR) that the event was a political fundraiser for Mayor Rob Ford organized by BILD. BILD sold 40 tickets at a cost of \$500 per ticket, payable by personal cheque to the Rob Ford Campaign. The event was hosted by the Chair of BILD's Toronto Chapter, who is a registered in-house lobbyist for BILD. BILD forwarded the personal cheques of the attendees to the Rob Ford Campaign. BILD promoted the event to its members as a reception hosting Mayor Rob Ford. A subsequent thank you letter to attendees indicated that BILD viewed the event as part of its strategy to achieve its lobbying goals at the City including the signage by-law, streamlining the development approvals process, the Sheppard subway extension, the elimination of the land transfer tax, a review of the City's Official Plan and the next Development Charges By-law. BILD lobbied the Mayor on these matters before the fundraising event and continued to lobby him afterwards.

The Lobbyist Registrar found that the fundraising activities in which BILD engaged in relation to the June 27, 2011 event breached §§ 140-42A and 140-45B of the Lobbying By-law. Through these activities, BILD undertook to lobby by providing a favour, and placed the Mayor in an apparent conflict of interest. Taken together, the following

¹The Globe and Mail, October 6, 2011, "Ford urged to allow forensic review of campaign finances": "Joe Vaccaro, the acting president of BILD, the GTA's development industry association, confirmed that the group's chairman, Paul Golini Jr., a senior executive at Empire Communities, hosted one of the fundraisers at his home."

²http://www.toronto.ca/legdocs/municode/1184_140.pdf

Inquiry into a Fundraising Event

factors contributed to placing the Mayor in an apparent conflict of interest and constituted an undertaking to lobby by providing a gift or favour:

- BILD held the fundraising event exclusively for the Mayor, providing an opportunity for members or invitees of BILD to meet him;
- The fundraiser was part of BILD's lobbying strategy, evidenced by its letter of thanks to attendees linking BILD's lobbying objectives to the event;
- BILD lobbied the Mayor before and after the event; and
- BILD collected personal contributions by attendees and forwarded them to the Rob Ford Campaign.

These actions placed the Mayor in an apparent conflict of interest by creating the appearance of special access to the Mayor, a special relationship or a personal obligation by the Mayor to BILD. The appearance of special access, a special relationship or personal obligation would reasonably be seen to conflict with the Mayor's duty to serve the public interest, particularly on matters about which BILD was lobbying and has continued to lobby the Mayor. BILD's political fundraising activities for the Mayor created the appearance that the Mayor's ability to act solely in the public interest would be compromised.

BILD's fundraising activities also breached § 140-42A of the Lobbying By-law based on the factors outlined above. By holding the fundraiser, collecting personal contributions and forwarding them to the Mayor Rob Ford campaign, BILD undertook to lobby the Mayor by providing a gift or favour to him or to his campaign fund.

Political fundraising by lobbyists is a relatively new issue that has been the subject of evolving jurisprudence. BILD co-operated fully with the inquiry. Therefore no sanctions were imposed. However, this is the second report to Council by the Lobbyist Registrar finding a breach of the Lobbying By-law by BILD. The Lobbyist Registrar advised BILD not to lobby the Mayor or his staff for the remainder of this term of Council, in order to avoid a further breach of § 140-45B by placing the Mayor in a conflict of interest; and requested BILD's in-house lobbyists to attend a training session on the Lobbying By-law, including the Lobbyists' Code of Conduct, to be provided by the Office of the Lobbyist Registrar.

Lobbyists and members of Council should seek advice from the Lobbyist Registrar and Integrity Commissioner on the involvement of lobbyists in political fundraising and other election activities. Lobbyists are encouraged to attend training sessions offered by the Office of the Lobbyist Registrar on the Lobbying By-law and Lobbyists' Code of Conduct.

FINDINGS

1. By engaging in fundraising activities related to the fundraising event of June 27, 2011, BILD placed Mayor Ford in an apparent conflict of interest, contrary to the Lobbying By-law, § 140-45B.
2. The apparent conflict of interest created by BILD's fundraising activities continues and is likely to continue during the present term of Council. Lobbying the Mayor during the remainder of this term of Council would likely also place the Mayor in a conflict of interest and therefore would contravene § 140-45B.
3. By engaging in fundraising activities related to the fundraising event of June 27, 2011, BILD undertook to lobby the Mayor by providing a gift or favour, contrary to the Lobbying By-law, § 140-42A.

SANCTIONS AND ADVICE

While §§ 140-42A and 140-45B were adopted by Council in 2007, political fundraising by lobbyists is a relatively new issue that was first addressed in detail by the Integrity Commissioner and Lobbyist Registrar in a July 2012 [Joint Interpretation Bulletin](#)³, after the fundraising event was held. BILD has fully co-operated with this inquiry. It is noted, however, that this is the Lobbyist Registrar's second report to Council finding that BILD has breached the Lobbying By-law.

1. In all the circumstances, no sanctions are imposed against BILD.
2. In order to avoid a further breach of § 140-45B by placing the Mayor in a conflict of interest, BILD is advised not to lobby the Mayor or his staff until the end of this term of Council on November 30, 2014.
3. BILD is advised to seek the advice of the Lobbyist Registrar before engaging in any political fundraising activities in the current municipal election campaigns, in order to avoid placing public office holders in a conflict of interest.
4. BILD's in-house lobbyists are requested to attend a training session in the Lobbying By-law, including the Lobbyists' Code of Conduct, to be provided by the Office of the Lobbyist Registrar.

³[Lobbying and Municipal Elections at the City of Toronto](http://www1.toronto.ca/City%20Of%20Toronto/Lobbyist%20Registrar/Files/pdf/L/interpretation%20bulletin_Lobbying_Elections.pdf) (July 23, 2012; updated January 10, 2014)

THE INQUIRY PROCESS

I initiated this inquiry in October 2011, after receiving a media report alleging that a fundraising event for Mayor Ford's election campaign was held by officials of BILD.⁴ BILD is a registered lobbyist organization that lobbies on behalf of the building and development industry. Inquiries and Investigations Counsel gathered the information in this inquiry under my instructions.

On March 19, 2012, Inquiries and Investigations Counsel sent a Notice of Inquiry setting out the allegations to Mr. Paul Golini of BILD, together with an opportunity to respond to the allegations. On April 16, 2012, Mr. Golini and BILD responded through Counsel, Mr. David Bronskill. On May 24, 2012, Inquiries and Investigations Counsel requested further information of Mr. Golini and BILD in a letter to Mr. Bronskill. On May 28, 2012, Mr. Bronskill asked for an extension to reply. On June 21, 2012, Mr. Bronskill provided further information. On October 19, 2012, Inquiries and Investigations Counsel requested further information of Mr. Golini and BILD in a letter to Mr. Bronskill. On December 7, 2012, Inquiries and Investigations Counsel had a phone conversation with Mr. Bronskill regarding the information requested in the October 19, 2012 letter. On December 19, 2012, Mr. Bronskill provided Inquiries and Investigations Counsel with the information previously requested.

A Compliance Audit of the Mayor's election expenses was initiated on May 13, 2011 by the Compliance Audit Committee and assigned to Froese Forensic Partners Ltd. on November 29, 2011. Froese Partners released their [Compliance Audit Report for the City of Toronto Re: Rob Ford](#)⁵ (the Compliance Audit Report) on February 1, 2013. The Compliance Audit Report included information about the June 2011 fundraising event. My inquiry was placed on hold until the Compliance Audit Committee had completed its consideration of the report. The Compliance Audit Committee considered the Compliance Audit Report on February 25, 2013.

In May and June 2013, Inquiries and Investigations Counsel reviewed the Compliance Audit Report and Municipal Elections Financial Disclosure in comparison with the information that had been provided by BILD. On August 1, 2013, Inquiries and Investigations Counsel requested further information of Mr. Bronskill. On August 14, 2013, Inquiries and Investigations Counsel had a phone conversation with Mr. Bronskill regarding the information requested on August 1, 2013 that resulted in an email of that same day from Inquiries and Investigations Counsel to Mr. Bronskill requesting a copy of a certain financial document. On August 26, 2013, Mr. Bronskill provided Inquiries and Investigations Counsel with a copy of the requested document.

Inquiries and Investigations Counsel provided the information gathered in the inquiry to me for review in December 2013. I provided my proposed findings and sanctions to

⁴See footnote 1, above.

⁵<http://www.toronto.ca/legdocs/mmis/2013/ea/bgrd/backgroundfile-55645.pdf>

Mr. Bronskill on January 6, 2014, together with an opportunity to respond. On January 14, 2014, in a supplementary letter, I provided the information on which my proposed findings and sanctions were based to Mr. Bronskill, with a further opportunity to respond. Mr. Bronskill provided a written response on January 22, 2014, which is quoted and considered in this report.

On January 14, 2014, I also wrote to Mayor Ford, providing my proposed findings and sanctions together with the information on which they were based. The letter provided the Mayor an opportunity to respond on or before February 4, 2014. To the date of this report, no response has been received.

INFORMATION GATHERED IN THE INQUIRY

The main sources of information I have considered in this inquiry were BILD's registrations in the lobbyist registry; information provided by Mr. Bronskill on behalf of BILD and Mr. Golini; and the [Compliance Audit Report for the City of Toronto Re: Rob Ford](#).⁶ I also referred to my previous [Report to Council on an Inquiry: Lobbying in an Election Event](#).⁷

1. BILD's Lobbyist Registrations

BILD (the Building Industry and Land Development Association) is a registered in-house lobbyist organization (Lobbyist registration number 11338S-2). In its registrations, BILD describes itself as a membership association that lobbies on behalf of professionals related to all aspects of the building and land development industry.

When the fundraising event was held on June 27, 2011, BILD had registered the following subject matter registrations:

- SM11191 (Active) Planning and Development: Planning Policies/Studies, "Review of Development Application Review Process". BILD reported that its in-house lobbyists met with Rob Ford as councillor on May 19, 2010; wrote to him as Mayor together with his staff on September 12, 2011; and met with the Mayor's staff on July 5, 2011 and September 28, 2012.
- SM11192 (Active) Planning and Development: Planning Policies/Studies, "Review of City of Toronto Guidelines: 'Green Development Standards'". BILD reported that its in-house lobbyists met with Rob Ford as councillor on May 19, 2010 and September 13, 2010.

⁶<http://www.toronto.ca/legdocs/mmis/2013/ea/bgrd/backgroundfile-55645.pdf>

⁷<http://www.toronto.ca/legdocs/mmis/2012/cc/bgrd/backgroundfile-46327.pdf>

- SM13673 (Active) Planning and Development, Planning Policy/Study, “Proposed New Zoning By-law”. BILD reported that its in-house lobbyists met with Rob Ford as councillor on May 19, 2010 and September 13, 2010; wrote to the Mayor’s staff on March 9 and 23, 2011; phoned the Mayor’s staff on March 23, 2011; wrote to Mayor Ford on April 11, 2011; and met with the Mayor’s staff, the Chief Planner and Executive Officer, Planning and staff, and a Deputy City Manager and staff on September 28, 2012.
- SM15855 (Closed January 4, 2012) Planning and Development, Planning Policy/Study, “TTC Metropass as related to development applications”. BILD reported that its in-house lobbyists met with Rob Ford as councillor on May 19, 2010 and September 13, 2010.
- SM15856 (Active) Financial Services, “Land Transfer Tax”. BILD reported that its in-house lobbyists met with Rob Ford as councillor on May 19, 2010, May 28, 2010 and September 13, 2010.
- SM15859 (Active) Planning and Development, Planning Policy/Study, “Transit City”. BILD reported that its in-house lobbyists met with Rob Ford as councillor on May 19 and September 13, 2010; and with Mayor Ford, his staff and a Deputy City Manager on February 29, 2012.
- SM16372 (Closed September 6, 2012), Planning and Development, Planning Policy /Study, “Section 37 Agreements”. BILD reported that its in-house lobbyists met with Rob Ford as councillor on May 19, May 28 and September 13, 2010.
- SM16374 (Active), Planning and Development, Planning Policy/Study, “City of Toronto Official Plan”. BILD reported that its in-house lobbyists met with Rob Ford as councillor on May 19 and September 13, 2010; and with the Mayor’s staff, the Chief Planner and staff, and a Deputy City Manager and staff on September 28, 2012.
- SM16375 (Active), Planning and Development, Planning Policy/Study, “Tall Buildings Guidelines”. BILD reported no meetings or other communications with Rob Ford as councillor or as Mayor under this subject matter. BILD’s lobbyists met with the Mayor’s staff, the Chief Planner and staff, and a Deputy City Manager and staff on September 28, 2012.

2. The Compliance Audit

In its Compliance Audit Report for the City of Toronto Re: Rob Ford, Froese Forensic Partners LLP wrote about the fundraising event at page 9, as follows:

- 7) *The BILD event was held on June 27, 2011 at a personal residence for which forty (40) tickets were sold. The total cost of the event was \$2,449.86 and was paid for personally by the late Stephen Dupuis, the former CEO of BILD. At this point, we do not have any additional information that would suggest that the contribution-in-kind exceeded the \$2,500 individual limit;*⁸

3. Information provided by BILD

Mr. Bronskill provided information to my office concerning the June 27, 2011 event, confirming that this was a fundraising event for Mayor Ford and that tickets to the event cost \$500. Mr. Bronskill wrote that BILD did not undertake any lobbying at this event in a letter dated April 16, 2012:

We note that the June 2011 event . . . was a fundraiser in respect of Mayor Ford's campaign deficit With respect to tickets, attendees paid \$500 to attend. All attendees were instructed that only personal cheques in the amount of \$500, payable to Rob Ford's campaign, would be accepted. All funds received were forwarded to the Rob Ford campaign. Mayor Ford attended the event as the sole guest of honour.

. . . neither Mr. Golini, any BILD employee nor any in-house BILD lobbyist undertook any lobbying at this event.

Paula Tenuta, BILD Vice-President, Policy and Government Relations Building, and senior officer and in-house lobbyist for BILD's lobbyist registrations, wrote to BILD members on June 13, 2011 inviting them to the fundraising event. Ms Tenuta wrote in part:

"BILD Members,

*Paul Golini, Chair of BILD and Executive VP of Empire Communities, will be hosting **City of Toronto Mayor Rob Ford** at a Cocktail Reception the evening of June 27th from 6:00pm to 8:00pm at [a private residential address]"*

⁸See footnote 6, above.

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A list of attendees was provided. A letter of thanks to the attendees dated August 26, 2011 from BILD Toronto Chapter Chair, Paul Golini, and the late Stephen Dupuis, who was then President and CEO of BILD, stated in part:

Please accept our most sincere thanks for attending the June 27th "Meet and Greet" event featuring City of Toronto Mayor Rob Ford.

Considering that 45 per cent of all new home sales and 80 per cent of all condo sales are happening in the 416 area code, we obviously have a huge stake in working with Mayor Ford over the balance of his four year term.

We have seen some instant wins on the consolidated zoning by-law and Metropass policy and are currently working very closely with the City on the signage by-law and streamlining the development approval process. Pending issues include the Sheppard subway extension, the elimination of the land transfer tax, a review of the City's Official Plan and, before the current term ends, the next Development Charges by-law.

The Toronto Chapter leadership, working closely with BILD's Government Relations staff, is doing phenomenal work and looks forward to continuing to represent your best interests on an on-going basis.

The list of 44 attendees to whom the letter of thanks was sent included 26 individuals who were registered lobbyists, clients of registered lobbyists or who held positions in a registered lobbyist firm or its parent firm. Forty of the attendees were associated with the development and real estate industry. Four were registered consultant lobbyists.

Those who sold tickets to the fundraising event were Stephen Dupuis, Joe Vaccaro and Paula Tenuta, all of whom are registered in-house lobbyists for BILD. In all, 40 tickets were sold.

Mr. Bronskill informed my office that personal cheques payable to the Rob Ford Campaign of \$500 each were collected at the event by BILD and that BILD forwarded these cheques to the Rob Ford Campaign, consistent with the event being a fundraiser, writing in part:

I can confirm that Mr. Golini did not solicit, pledge or collect any such funds, donations, gifts or benefits at the event. I can also confirm that we are not aware of any BILD employee or registered in-house lobbyist soliciting, pledging or collecting any such funds, donations, gifts or benefits at the event. The only "thing" collected were personal cheques made payable to the Rob Ford Campaign, consistent with the event being a fund-raiser.

Mr. Bronskill provided a copy of a catering bill in the amount of \$2,449.86, which was billed to another individual, who holds a joint account with Paul Golini, for catering items shipped to Mr. Golini at a residential address; and a copy of a cheque dated August 15,

2011 to Stephen Dupuis in the amount of \$2,449.86 from the joint account of Paul Golini and another individual, signed by the other individual holder of the joint account.

On January 6, 2014, I provided my proposed findings and sanctions to Mr. Bronskill for response. On January 14, 2014, I provided the information on which the proposed findings and sanctions were based to Mr. Bronskill and to the Mayor. On January 22, 2014, Mr. Bronskill provided the following submissions to me in response to my proposed findings sanctions:

We are in receipt of your letter dated January 6, 2014. At all times during this matter, BILD has cooperated in an effort to assist the Lobbyist Registrar and BILD is pleased that, regardless of your findings, the matter will come to an end.

BILD does appreciate the opportunity to address your proposed findings. There are three significant concerns:

- 1. The proposed findings appear to be based on the assumption that a fundraising contribution constitutes “entertainment, gifts, meals, trips or favours of any kind”, as listed in Chapter 140-42 of the Municipal Code. However, this finding runs contrary to the Joint Interpretation Bulletin (July 23, 2012), which specifically allows lobbyists to make contributions in their personal capacity. The proposed finding would suggest that a person who makes a contribution or otherwise fundraises for a candidate can never lobby that candidate should the candidate be elected to office.*
- 2. The suggestion that a fundraising event, in and of itself, could constitute lobbying was only communicated to the public in the Joint Interpretation Bulletin (July 23, 2012), which was released more than a year after the event. This suggestion is not set out in Chapter 140 of the Municipal Code.*
- 3. The definition of “election period” in the Joint Interpretation Bulletin (July 23, 2012) does not address subsection 68(1)(4) of the Municipal Elections Act, 1996, S.O. 1996, c. 32, which extends the election campaign period until June 30th if a candidate has a deficit at the time the election period would otherwise end.*

As noted above, no response has been received from the Mayor.

DISCUSSION

1. The Issues

This report considers two questions:

- (1) Did BILD place the Mayor in a conflict of interest, contrary to the Lobbying By-law, § 140-45B, by organizing and promoting the fundraiser, and by collecting and forwarding individual contributions to the Rob Ford Campaign? Paragraph 140-45B provides:

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.

- (2) Did these same activities breach § 140-42A of the Lobbying By-law? Paragraph 140-42A provides:

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

The focus of the inquiry was whether BILD's political fundraising activities complied with the Lobbying By-law. My authority is limited to determining whether the Lobbying By-law has been breached. I do not have authority to determine compliance with the *Municipal Elections Act (MEA)*. The permissibility of holding such a fundraiser under the *MEA* was not a subject of the inquiry.

For the same reasons, the permissibility under the *MEA* of contributions by individual attendees to the campaign is also not in issue. Individuals, including lobbyists, have a right to make election contributions in their personal capacity within the limits prescribed under the *Municipal Elections Act*. Individual contributions were not a focus of this inquiry.

There was no evidence that BILD members or staff lobbied the Mayor at the event. Therefore, unregistered or unreported lobbying was not in issue in this inquiry.

2. The Facts

The information provided by BILD is not in dispute. Based upon this information, I find that:

- BILD organized a fundraising event held by the Chair of its Toronto Chapter on June 27, 2011.
- The fundraising event was a cocktail reception at which the Chair of BILD's Toronto Chapter hosted Mayor Rob Ford as the sole guest of honour. It was a "Meet and Greet" event.

- The event was held at the home of Paul Golini, the Chair of BILD's Toronto Chapter, who is a registered lobbyist for BILD.
- The cost of catering the event, in the amount of \$2,449.86, was invoiced to an individual who holds a joint chequing account with Paul Golini. A cheque in the same amount was paid to the late Stephen Dupuis, then President and CEO of BILD, on August 15, 2011 from the host's personal joint chequing account, signed by the individual who had been invoiced for the catering.
- BILD sold 40 tickets at a cost of \$500 per ticket, payable by personal cheque to the Rob Ford Campaign. BILD forwarded the personal cheques of the attendees to the Rob Ford Campaign.
- BILD collected individual contributions consisting of personal cheques payable to the Rob Ford Campaign from attendees, and forwarded these personal cheques to the Rob Ford Campaign.
- BILD sent a letter of thanks to attendees on August 26, 2011. The letter indicates that BILD viewed the event as part of its strategy to achieve its lobbying goals at the City with respect to the signage by-law, streamlining the development approvals process, the Sheppard subway extension, the elimination of the land transfer tax, a review of the City's Official Plan and the next Development Charges By-law.
- BILD has reported in its registrations that it lobbied Rob Ford on matters for which BILD was registered when he was councillor (including when he was campaigning for Mayor) and after he was elected Mayor. BILD lobbied Mayor Ford both before the fundraising event and afterwards, most recently in September 2012.
- There is no evidence that any lobbying took place at the event itself. I accept BILD's statement that none occurred.
- In June 2011 when the fundraising event was held, BILD was registered to lobby and actively doing so on a number of issues, including the review of the development application review process; proposed new zoning by-law; Transit City; City of Toronto Official Plan; and Tall Buildings Guidelines.
- BILD's lobbyist registrations indicate that after the fundraiser was held, BILD continued to lobby the Mayor and his staff in relation to their registered subject matters. For example, BILD lobbyists met with Mayor Ford, his staff and a Deputy City Manager on February 29, 2012 to discuss SM15859 (Active) Planning and Development, Planning Policy/Study, "Transit City". BILD met with the Mayor's staff and senior City staff on September 28, 2012 to discuss key planning issues, including: SM11191 (Active) Planning and Development: Planning Policies/Studies, "Review of Development Application Review Process"; SM13673 (Active) Planning and Development, Planning

Policy/Study, “Proposed New Zoning By-law”; SM16374 (Active), Planning and Development, Planning Policy/Study, “City of Toronto Official Plan”; SM16375 (Active), Planning and Development, Planning Policy/Study, “Tall Buildings Guidelines”.

3. Conflict of Interest and § 140-45B

The Lobbying By-law, § 140-45B provides that “[l]obbyists shall not place public office holders in a conflict of interest”. It is necessary to understand the meaning of conflict of interest in order to determine the types of activities that are likely to place a public office holder in a conflict of interest, contrary to § 140-45B.

The law of conflict of interest is not new. However, the application of the law of conflict of interest principles to lobbying has occurred within the past decade. In 2005, Madam Justice Denise Bellamy made recommendations regarding fundraising by lobbyists in her Report on the Toronto Computer Leasing Inquiry.⁹ The City’s Lobbying By-law, including § 140-45B, was adopted by Toronto City Council in the year 2007. The case of *Democracy Watch v. Campbell*¹⁰ was decided by the Federal Court of Appeal in 2009. Subsequently, Canada’s Lobbying Commissioner issued the [Commissioner’s Advice on the Application of Rule 8 to Lobbyists involved in Political Activities](#).¹¹ More recently, in November 2013 Canada’s Conflict of Interest and Ethics Commissioner issued a [Guideline for federal public office holders, Fundraising and the Conflict of Interest Act](#).¹²

In her Report on the Toronto Computer Leasing Inquiry (2005), Madam Justice Bellamy discussed “conflict of interest” as “essentially a conflict between public and private interests”, as follows:

*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.*¹³

⁹ The Honourable Madam Justice Denise E. Bellamy, Commissioner, *Toronto Computer Leasing Inquiry, Toronto External Contracts Inquiry, Report* (2005, Toronto).

¹⁰ 2009 FCA 79, [2010] 2 F.C.R. 139, <http://reports.fja.gc.ca/eng/2010/2009fca79.html>.

¹¹ <http://ocl-cal.gc.ca/eic/site/012.nsf/eng/00150.html>.

¹² <http://ciec-ccie.gc.ca/%5Cresources%5CFiles%5CEnglish%5CPublic%20Office%20Holders%5CGuidelines%20and%20Information%20Notices%5CGuideline%20-%20Fundraising.pdf> (November 2013; updated January 2014).

¹³ *Toronto Computer Leasing Inquiry, Toronto External Contracts Inquiry, Report*, (2005, Toronto) Vol. 2, Good Government, pp. 38-39.

Madam Justice Bellamy recommended that professional lobbyists should not engage in political fundraising for candidates or councillors they lobby, beyond making their own donations, and commented on that recommendation in part:

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

. . . The connection between political donations by lobbyists and influence peddling is obvious. And whether political donations actually translate into inappropriate influence for the lobbyist does not really matter. The public reasonably believes that the connection exists, and this perception alone is enough to chip away at public trust in governments. Naturally, lobbyists are free to make lawful political donations on their own behalf like any other person, but they should not be involved in political fundraising. In other words, a person can carry on political fundraising or lobbying but should not do both.

. . .

Also objectionable is for a lobbyist to engage in the practice known as “bundling”, in which one person bundles together a number of political donations and delivers them to a candidate under one covering letter. The practice is a blatant form of influence peddling. The obvious message is that the lobbyist deserves special care and treatment because he or she can deliver large sums of money to the candidate. Another equally obvious message is that the money can go elsewhere next time if the lobbyist or the lobbyist’s clients are not given special treatment.¹⁴

In [*Democracy Watch v. Campbell*](#)¹⁵, the Federal Court of Appeal considered a case where a lobbyist hosted a fundraising dinner for a federal minister who was seeking re-election. The issue was whether the lobbyist had breached Rule 8 of the federal Lobbyists’ Code of Conduct. Rule 8, like § 140-45B, prohibits lobbyists from placing a public office holder in a conflict of interest. The Court discussed the definition of conflict of interest as follows at paragraphs 40-51:

*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. If one looks to the passages cited above, they refer to the possibility that one private interest **may** interfere with the discharge of one’s public duty:*

Conflict of interest in this context means a personal interest so connected with professional duty that it might reasonably be apprehended to give rise to a danger of actually influencing the exercise of the professional duty. [Cox, at page 469; emphasis added.]

¹⁴ibid., pp. 88-89.

¹⁵See footnote 10 above.

Following the reasoning in *Democracy Watch*, Canada's Lobbying Commissioner issued new guidelines on Rule 8 and conflict of interest for lobbyists. These guidelines make clear that the appearance of conflict of interest as well as actual conflict of interest must be avoided. The [*Commissioner's Advice on the Application of Rule 8 to Lobbyists Involved in Political Activities*](#)¹⁶ states in part:

. . . [L]obbyists should take all necessary measures to avoid any real or apparent conflict of interest involving themselves and their clients, as well as with public office holders with whom they may meet, assist or otherwise communicate resulting from their political activities.

. . . Lobbyists should ensure that their participation in political activities does not cause a tension between the public office holder's duty to serve or protect the public good and his or her private interest or obligation. In particular, lobbyists should ensure that they do not place public office holders in breach of their own code of conduct.

In November 2013, Canada's Conflict of Interest and Ethics Commissioner published a [*Guideline for federal public office holders, Fundraising and the Conflict of Interest Act*](#)¹⁷, advising public office holders with respect to section 4 of the federal *Conflict of Interest Act* (in part):

Section 4 describes a conflict of interest as follows:

4. For the purposes of this Act, a public office holder is in a conflict of interest when he or she exercises an official power, duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person's private interests.

. . .

When engaging in fundraising for charitable or political purposes, public office holders are advised not to:

. . .

- Solicit or accept funds from a person or organization who has lobbied or is likely to lobby the public office holders or their office, department or committee. Public office holders are advised to take particular care when lobbyists or other stakeholders become involved in political fundraising activities organized by their electoral district association or political party. There is the possibility that future dealings between the public office holders and those individuals could create situations where issues of preferential treatment or other conflicts of interest could arise. In addition, caution must be exercised when issuing invitations to political fundraisers stating that various ministers will be present. This would appear to imply an opportunity for lobbyists and other stakeholders to obtain special access to ministers by attending the event.*

¹⁶See footnote 11 above.

¹⁷See footnote 12 above. The guideline was updated in January 2014.

In July 2012, the Integrity Commissioner and Lobbyist Registrar issued a *Joint Interpretation Bulletin, Lobbying and Municipal Elections at the City of Toronto*¹⁸, which discussed conflict of interest and political fundraising by lobbyists. A previous Joint Interpretation Bulletin, *Lobbying and Municipal Elections* (issued April 15, 2010) discussed generally the application of § 140-5B and conflict of interest principles to lobbyists' activities during a municipal election. The July 2012 Joint Interpretation Bulletin discussed in more detail the meaning of the term "conflict of interest" and the application of the Lobbying By-law's provisions regarding conflict of interest to election activities by lobbyists such as political fundraising. The discussion of conflict of interest in the July 2012 Joint Interpretation Bulletin is consistent with the law of conflict of interest articulated by Madam Justice Bellamy in her Report on the Toronto Computer Leasing Inquiry and by the Federal Court of Appeal in *Democracy Watch*. The July 2012 Joint Interpretation Bulletin was updated in January 2014 by adding a new question and answer to the FAQ regarding lobbyists who run for office. The remainder of the Joint Interpretation Bulletin is the same as in July 2012.

The July 2012 Joint Interpretation Bulletin states in part:

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.*
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. . . .*

The FAQs appended to the July 2012 Joint Interpretation Bulletin state:

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.

¹⁸Integrity Commissioner and Lobbyist Registrar, [Joint Interpretation Bulletin, Lobbying and Municipal Elections at the City of Toronto](http://www1.toronto.ca/City%20Of%20Toronto/Lobbyist%20Registrar/Files/pdf/L/interpretation%20bulletin_Lobbying_Elections.pdf) (July 23, 2012; updated January 10, 2014): http://www1.toronto.ca/City%20Of%20Toronto/Lobbyist%20Registrar/Files/pdf/L/interpretation%20bulletin_Lobbying_Elections.pdf.

Madam Justice Bellamy, Commissioner, in her *Report on the Toronto Computer Leasing Inquiry* (2005) recommended:

113. *Professional lobbyists should not engage in any type of political fundraising for candidates or councillors they lobby, beyond making their own 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.¹⁹

4. Discussion of the Findings

I find that BILD's fundraising activities in relation to the fundraising event held on June 27, 2011 placed Mayor Ford in an apparent conflict of interest, contrary to the Lobbying By-law, § 140-45B. Specifically, these activities included holding a fundraiser, collecting individual political contributions from attendees and forwarding them to the Rob Ford Campaign.

I find that through these same fundraising activities, BILD undertook to lobby the Mayor by providing a gift or favour to the Mayor or to his campaign fund, contrary to the Lobbying By-law, § 140-42A.

I find that the apparent conflict of interest created by the fundraising event continues and is likely to continue during the present term of Council. Lobbying the Mayor during the remainder of this term of Council would likely place the Mayor in a conflict of interest, and therefore contravene § 140-45B.

My reasons follow.

a) Applicable Principles

A lobbyist who undertakes to lobby by providing a gift or favour of any kind breaches § 140-42A of the Lobbying By-law.

A lobbyist who places a public office holder in a conflict of interest, whether real or apparent, breaches § 140-45B of the Lobbying By-law. 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.²⁰

¹⁹Ibid.

²⁰*Joint Interpretation Bulletin, Lobbying and Municipal Elections at the City of Toronto* (July 23, 2012; updated January 10, 2014), FAQs.

Conflict of interest includes both real and apparent conflict of interest. It is appropriate to apply that principle when considering whether the June 2011 fundraising event breached § 140-45B by placing the Mayor in a conflict of interest.

b) Analysis

I have concluded that by holding a fundraising event, collecting individual contributions and forwarding them to the Rob Ford Campaign, BILD breached §§ 140-42A and 140-45B of the Lobbying By-law. BILD provided a gift or favour to advance its lobbying undertakings at the City, and it placed the Mayor in an apparent conflict of interest.

BILD's invitation to the reception hosting Mayor Rob Ford created the impression that attendees would have special access to the Mayor by attending the event. The letter of thanks to attendees also described the event as a "Meet and Greet" event featuring Mayor Ford. The letter of thanks explicitly linked the achievement of BILD's lobbying goals at the City to this event. The Mayor is an important figure in the achievement of these goals. The event was part of BILD's lobbying strategy at the City.

There is no evidence that any lobbying took place at the event itself. I accept BILD's statement that none occurred. However, BILD placed the Mayor in an apparent conflict of interest by hosting a fundraiser to raise funds for the Mayor's election campaign. BILD was lobbying the Mayor and continued to lobby him before and after the event, in close connection with its lobbying goals. On these same facts, BILD also provided a gift or favour to the Mayor or to his campaign fund in an aid of its lobbying goals.

Before the fundraiser was held, BILD lobbied the Mayor on a number of issues. In June 2011, BILD continued to have active lobbyist registrations and had reported lobbying on a number of issues, including the review of the development application review process; proposed new zoning by-law; Transit City; City of Toronto Official Plan; and Tall Buildings Guidelines. After the fundraiser was held, BILD continued to lobby the Mayor and his staff on their registered subject matters, including those stated to be part of BILD's lobbying strategy in its letter of thanks to attendees.

BILD collected personal cheques payable to the Rob Ford Campaign from attendees totalling approximately \$20,000 and forwarded these cheques to the Rob Ford Campaign. In doing so, the impression was created that BILD had delivered a significant sum of money to the Mayor's campaign, and therefore deserved special access to or special treatment by the Mayor.

Taken together, the following factors contributed to placing the Mayor in an apparent conflict of interest, and also underpin the finding that BILD undertook to lobby the Mayor by bestowing a gift or favour on him or his campaign fund:

- BILD held the fundraising event exclusively for the Mayor, providing an opportunity for members or invitees of BILD to meet him;

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- The fundraiser was part of BILD's lobbying strategy, evidenced by its letter of thanks to attendees linking BILD's lobbying objectives to the event;
- BILD lobbied the Mayor before and after the event; and
- BILD collected personal contributions by attendees and forwarded them to the Rob Ford Campaign.

BILD's fundraising activities placed the Mayor in apparent conflict of interest by creating the appearance of special access to the Mayor, a special relationship or a personal obligation by the Mayor to BILD. The appearance of special access, a special relationship or personal obligation would reasonably be seen to conflict with the Mayor's duty to serve the public interest, particularly on matters about which BILD was lobbying and continued to lobby the Mayor. BILD's political fundraising activities for the Mayor created the appearance that the Mayor's ability to act solely in the public interest would be compromised on matters about which BILD was lobbying him.

BILD's fundraising activities also bestowed a gift or favour on the Mayor, and are reasonably seen as part of BILD's strategy to advance its lobbying undertakings. The letter of thanks to attendees linking the fundraiser to BILD's lobbying objectives supports this conclusion. The letter of thanks to attendees shows that BILD expected its lobbying undertakings would benefit from holding this event. Many of the subjects about which BILD has registered to lobby were mentioned in the letter of thanks, including the zoning by-law; TTC Metropass policy; signage by-law; development approvals process; land transfer tax; subways; Official Plan and development charges.

Through the fundraising event, BILD raised significant funds for the Mayor's election campaign, which I would estimate at \$20,000 based on 40 attendees paying \$500 per ticket. BILD collected and forwarded the individual contributions to the Rob Ford Campaign. This was a significant benefit to the Mayor's election campaign fund, which may reasonably be inferred to have come from BILD. Thus, a gift or favour was bestowed by BILD, for the purpose of advancing its lobbying undertakings.

In Recommendation 113 of the Report on the Toronto Computer Leasing Inquiry, Madam Justice Bellamy recommended that lobbyists not engage in political fundraising beyond their own donations. The commentary to that recommendation discusses the harm associated with lobbyists "bundling" individual political contributions.²¹ This practice creates the impression that the lobbyist has bestowed a gift or favour on the public office holder whose campaign fund benefits from the contributions. The public may reasonably perceive that the lobbyist engages in such a practice to gain special access to or treatment by the public office holder. It may create a sense of personal obligation by the public office holder to the lobbyist, which the lobbyist can then use to obtain their objectives. This practice undermines the public's confidence that public office holders will act in the public interest and not be compromised by private interests

²¹See above, 3. Conflict of Interest and § 140-45B and footnote 14.

in carrying out their public duties. It is for these reasons that the Lobbying By-law, § 140-42 prohibits lobbyists from undertaking to lobby by bestowing “gifts or favours of any kind” and § 140-45 prohibits lobbyists from placing public office holders in a conflict of interest or otherwise exercising improper influence.

5. Discussion of Sanctions and Advice

I have taken into consideration that political fundraising by lobbyists is a relatively new issue in the context of the City’s Lobbying By-law. This issue was first addressed in a general way in April 2010 by a Joint Interpretation Bulletin of the Integrity Commissioner and Lobbyist Registrar. Detailed guidance to lobbyists on the matter of political fundraising was not provided until July 2012 by the Integrity Commissioner and Lobbyist Registrar in a new Joint Interpretation Bulletin.²² BILD co-operated fully with this inquiry. I note however that this is my second report to Council finding BILD has breached the Lobbying By-law. The first report found that BILD conducted unregistered lobbying in relation to an election event.²³

In all the circumstances, I have decided that it would not be appropriate to impose sanctions on BILD.

I have advised BILD not to lobby the Mayor or his staff for the remainder of this term of Council, in order to avoid a further breach of § 140-45B. This advice is consistent with the advice given in the FAQs appended to the July 2012 Joint Interpretation Bulletin as follows:

. . . 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.²⁴

I have advised BILD that it should seek my advice before engaging in similar activities during the current election period. In my view, had BILD asked for advice from the Lobbyist Registrar before holding the political fundraiser in June 2011, this inquiry may have been avoided altogether.

I have also requested that BILD’s in-house lobbyists attend a training session provided by my office on the Lobbying By-law, including the Lobbyists’ Code of Conduct. The OLR training sessions provide information to help lobbyists understand and comply with the Lobbying By-law.

²²See footnote 21, above.

²³[Report to Council on an Inquiry: Lobbying in an Election Event](#). See footnote 7 above.

²⁴*Joint Interpretation Bulletin, Lobbying and Municipal Elections at the City of Toronto*, cited at footnote 3 above, FAQs.

CONCLUSION

This report provides information about political fundraising and the Lobbying By-law to Council, to the public, to public office holders and to lobbyists. Political fundraising by a lobbyist organization has been found to provide a gift or favour to advance its lobbying undertaking and to place a member of Council in an apparent conflict of interest. It is in the public interest to report on this matter to Council.

Lobbyists and members of Council should seek advice from the Lobbyist Registrar and Integrity Commissioner on the involvement of lobbyists in political fundraising and other election activities. Lobbyists are encouraged to attend training sessions offered by the Office of the Lobbyist Registrar on the Lobbying By-law and Lobbyists' Code of Conduct.

Respectfully submitted,

Linda L. Gehrke,
Lobbyist Registrar
City of Toronto