

Annual Report of the Lobbyist Registrar for the Year 2013

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March 25, 2014

Table of Contents

- INTRODUCTION 1
- MESSAGE FROM THE LOBBYIST REGISTRAR 2
- STAFF 6
- REGISTRY SERVICES 7
 - Online Registration System and Website..... 7
 - Registrations 8
 - Advice and Interpretation 9
 - Interpretation Bulletins 10
 - Education and Outreach 10
- INQUIRIES AND INVESTIGATIONS..... 12
 - Reports to Council on Inquiries..... 16
- WORKING TOGETHER WITH THE ACCOUNTABILITY OFFICERS AND CITY STAFF 18
- OLR BUDGET 18
- FINANCIAL INFORMATION..... 19
- RECOMMENDATIONS AND ADVICE ON LOBBYING MATTERS AND AMENDMENTS TO THE LOBBYING BY-LAW 20
 - Enforcement of the Lobbying By-law 20
 - Clarifying and Strengthening the Lobbying By-law – Procurements..... 22
 - Report to Council on Holding Lobbying Firms Responsible 22
 - Lobbying By-law – Exempted Bodies 22
 - Report to Executive Committee on Amending the Lobbying By-law – Time and Place of Lobbying 23

- APPENDIX A – Report to Council on the Provision of Gifts by a Consultant Lobbyist Firm27

ANNUAL REPORT OF THE LOBBYIST REGISTRAR FOR THE YEAR 2013

INTRODUCTION

This is my 6th annual report to Toronto City Council on my activities and the discharge of my duties as Lobbyist Registrar for the year 2013, in compliance with Chapter 3 of the Toronto Municipal Code, § 3-7A.

The mandate of the Office of the Lobbyist Registrar (OLR) is to promote the transparency and integrity of City government by maintaining an online registry that is available to the public, and by regulating the conduct of lobbyists at the City.

Toronto's Lobbying By-law established the first municipal lobbyist registration system in Canada.¹ Its roots lie in the recommendations of Madam Justice Denise Bellamy in her Report on the Toronto Computer Leasing Inquiry. The *City of Toronto Act, 2006* requires the City to establish and maintain a lobbyist registry that is available to the public, and authorizes Council to appoint a Lobbyist Registrar. In 2007, the City adopted Chapter 140 of the City of Toronto Municipal Code (the Lobbying By-law) and appointed its first Lobbyist Registrar. The lobbyist registry was launched in February 2008.

The duties of the Lobbyist Registrar are set out in the *City of Toronto Act, 2006*, Chapter 3 (Accountability Officers) and Chapter 140 (Lobbying) of the Toronto Municipal Code. The *City of Toronto Act, 2006 (COTA)* requires the City to establish and maintain a public lobbyist registry and permits the City to appoint a registrar; requires the registrar to perform her duties in an independent manner; gives the registrar powers of inquiry under the *Public Inquiries Act, 2009*; requires that secrecy of an inquiry be preserved; and provides that the registrar may make a public report on an inquiry to Council.

Chapter 3 of the Toronto Municipal Code provides the framework for the relationship of the City's Accountability Officers, including the Lobbyist Registrar, to City Council and the City administration. The Accountability Officers report directly to Council, are independent of City administration and, subject to the provisions of Chapter 3, are fully responsible for the conduct and accountability of their offices. The Lobbyist Registrar is required to report annually to Council on the activities of her office and discharge of her duties, report to Council on investigations and inquiries conducted by her and submit the Capital and Operating Budget for her office directly to Budget Committee for consideration and recommendation to Council. The Office of the Lobbyist Registrar is

¹In Quebec and Newfoundland and Labrador, municipal lobbyist registration is administered by the province. The City of Ottawa established a lobbyist registry in 2012. The City of Surrey, British Columbia, adopted a Lobbyist Registration Policy in 2008.

included in the annual attest audit of the City and undergoes an annual compliance audit, both of which are conducted by an external auditor appointed by and reporting to Council.

Under the Toronto Municipal Code, Chapter 140 (the Lobbying By-law), the Lobbyist Registrar is responsible for maintaining the lobbyist registry; providing advice, opinions and interpretations pertaining to the administration, application and enforcement of the Lobbying By-law; reviewing and verifying returns for acceptance and for compliance with the Lobbying By-law; conducting, in private, investigations and inquiries to determine whether the Lobbying By-law has been breached, as permitted under COTA; suspending or revoking a registration; enforcement of the Lobbying By-law; advising Council on lobbying matters and recommending improvements and amendments to the Lobbying By-law; and performing other duties as assigned by Council.

MESSAGE FROM THE LOBBYIST REGISTRAR

*The City should treat lobbying as a potentially helpful practice that should be carefully controlled.*²

2013 was a year of change, challenge and achievement in the registration and regulation of lobbying at the City.

At its October 2013 meetings, Toronto City Council adopted changes to the Lobbying By-law to clarify and strengthen the restrictions on lobbying about procurements. Council adopted a new provision, § 140-41C, which provides that the restrictions on communications by lobbyists about procurements prevail over other provisions in the Lobbying By-law. I issued a revised [Interpretation Bulletin, Lobbying and Procurements](#) which includes a discussion of this new provision.³

In [October](#) and [December](#) 2013, Council amended the Lobbying By-law's Schedule A, which lists corporations and bodies that are exempt from registration as follows: adding "Toronto Pan Am Sports Centre Inc.",⁴ "Casa Loma Corporation" and "Lakeshore Arena Corporation"; changing the names of two listed bodies so that they now appear as "Toronto Waterfront Revitalization Corporation (operating as Waterfront Toronto)" and "Toronto Transit Infrastructure Ltd."); and removing "Enwave Energy Corporation".⁵

²The Honourable Madam Justice Denise E. Bellamy, Commissioner, *Toronto Computer Leasing Inquiry, Toronto External Contracts Inquiry*, Recommendation 97, vol. 4, p. 94.

³http://www1.toronto.ca/city_of_toronto/lobbyist_registrar/files/pdf/interpretation-bulletin_lobbying-procurements.pdf

⁴<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX34.8>

⁵<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX36.4>

Reports of lobbying activity by lobbyists in their registrations have continued to increase. In 2013, lobbyists made 4,705 reports of lobbying activity to the registry compared with 3,920 in 2012, 2,626 in 2011 and 1,072 in 2010. This represents an increase of 20% from 2012 to 2013; and an increase of 339% compared with lobbying activity reported to the registry in 2010. Telephone inquiries increased by 18% in 2013 compared with 2012, from 2,038 to 2,410.

The workload of the OLR's Lobbyist Registry Advisors has increased significantly as a result of the increase in registration activities and demand for their services. We expect the upward trend in lobbying activity and demand for the services provided by our office to continue. In order to meet this increased demand, we hired a third Lobbyist Registry Advisor to complete our team in November 2013.

A key goal in 2014 is to prepare a 10-Year Capital Plan for the State of Good Repair of the online lobbyist registration system which meets best practices, for approval in the 2015 budget process. This plan is necessary because the City's lobbyist registration system is likely to become obsolete in or around 2018. Without an up-to-date, functional online lobbyist registration system, my office would be unable to meet the City's obligation under the *City of Toronto Act, 2006* to maintain a lobbyist registry that is available to the public.

The Registrar's inquiry reports to Council provide important information and examples to the public, public office holders and lobbyists about issues that arise under the Lobbying By-law. These reports are public documents that may be found on Council's agenda and on the OLR website.

I submitted six reports to Council in 2013 which highlight the need for continued vigilance, particularly with respect to lobbying during procurements. In April 2013, for the first time, a lobbyist was convicted under the *Provincial Offences Act* for breach of the Lobbying By-law, § 140-41A. The lobbyist communicated with public office holders about a procurement process when not permitted to do so. As a result of two reports on lobbying during a procurement process, the OLR has entered into a protocol with the City's Purchasing and Materials Management Division to ensure that our efforts to protect the integrity of the City's procurement processes are co-ordinated, while preserving the secrecy of my inquiries and investigations required by the *City of Toronto Act, 2006*.

In my view, the administrative enforcement mechanisms available under Toronto's Lobbying By-law should be reviewed in the context of current best practices and the experience we have gained since the Lobbying By-law was adopted in 2007. I intend to review and make recommendations on enforcement mechanisms in 2014.

Outreach, information, advice and interpretation enable lobbyists, public office holders and the public to understand and comply with the Lobbying By-law. In 2013, the OLR initiated a new business card that provides our office's contact information to lobbyists

and encourages them to register and report their lobbying activities.⁶ We distributed this card to senior public office holders, so that they can provide it to lobbyists who meet with them. We issued four new or revised interpretation bulletins and two newsletters, and conducted four in-house training sessions for lobbyists. My staff and I presented information about the Lobbying By-law to other provincial, municipal and federal jurisdictions and to externally-organized conferences whose audiences included members of the public, public office holders from other jurisdictions and lobbyists; and to senior public office holders of the City, its boards and agencies.

The City of Toronto's Lobbying By-law, registration system and code of conduct for lobbyists are models for other jurisdictions. As the first municipal lobbyist registry in Canada, and now one of two municipal lobbyist registries in Ontario, the OLR's role includes outreach to other jurisdictions. In 2013, provincial, municipal and federal jurisdictions in Canada consulted me regarding the City's lobbyist registry and Lobbying By-law. The Lobbyist Registrars and Commissioners Network (LRCN), a Canadian network of lobbyist registrars and commissioners for the federal government, provinces and cities of Ottawa and Toronto, serves as an important forum to share best practices and knowledge. My staff and I have played an active role in the LRCN, attending and making presentations to the mid-year LRCN meetings in February 2013 and annual conference in September 2013. We participated in discussions with colleagues in other jurisdictions throughout the year. My office is also a member of the Council on Governmental Ethics Laws (COGEL), an international ethics organization that is an important source of information about lobbying and registration systems in the United States, Canada and elsewhere. My staff and I attended and participated in COGEL's annual conference in December 2013. We continue to be active participants in both organizations in 2014.

2014 is a significant year for the City of Toronto, as it is a municipal election year. The Integrity Commissioner and I have issued a [*Joint Interpretation Bulletin, Lobbying and Municipal Elections at the City of Toronto*](#).⁷ I attended City Council in December 2013 to provide information to Council about lobbying and municipal elections, and am continuing to provide information and outreach on this issue. My staff attended an information meeting for candidates in the 2013 municipal by-election to provide information about the Lobbying By-law and elections. The Lobbying By-law, including the Lobbyists' Code of Conduct, continues to apply during the election period. While lobbyists are permitted as individuals to make political contributions under the *Municipal Elections Act*, they also have obligations under the Lobbyists' Code of Conduct.⁸ In particular, § 140-45B prohibits lobbyists from placing public office holders in a conflict of interest; and § 140-42A prohibits undertaking to lobby through entertainment, meals, trips, gifts or favours of any kind. Activities such as political fundraising, when engaged in by lobbyists, may place public office holders in a conflict of interest where the lobbyist

⁶ I thank my colleague Robert Marleau, Integrity Commissioner for the City of Ottawa, for providing the model for these cards.

⁷ http://www1.toronto.ca/City%20of%20Toronto/Lobbyist%20Registrar/Files/pdf/L/interpretation%20bulletin_Lobbying_Elections.pdf

⁸ ARTICLE VI, Chapter 140, Toronto Municipal Code

is currently lobbying a public office holder or intends to lobby them once they are elected. I encourage lobbyists and candidates to seek advice from me and the Integrity Commissioner on the involvement of lobbyists in election campaigns.

The Ontario government has introduced Bill 179, *An Act to promote public sector and MPP accountability and transparency by enacting the Broader Public Sector Executive Compensation Act, 2014 and amending various Acts*.⁹ The Bill includes provisions to extend the role of the Ontario Ombudsman to include municipalities. The City has an established accountability framework under the *City of Toronto Act, 2006* that promotes and ensures the transparency and integrity of City government and the public's trust in it. That accountability framework includes the City's Lobbying By-law, lobbyist registry and Office of the Lobbyist Registrar. It is important that the effectiveness of this accountability framework be preserved.

Many people have supported the City's Lobbying By-law and lobbyist registration system, including OLR staff, who maintain the lobbyist registration system and ensure compliance with the Lobbying By-law; the City Clerk's Council and Support Services, who provide financial, information technology and administrative services; Legal Services, who provide legal advice and conduct prosecutions on the OLR's behalf; my fellow Accountability Officers, who support and work together with me on common issues; the Office of the City Manager, senior management and City staff; members of Council and their staff; members and staff of City boards and agencies; lobbyists; and members of the public. The combined support and interest of the City's public office holders, lobbyists and the public help to us provide transparency and ensure integrity in lobbying. My thanks to all of you. By working together we will maintain the transparency and integrity upon which the public's trust in the City of Toronto's government decision-making depends.

⁹http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=2962

STAFF

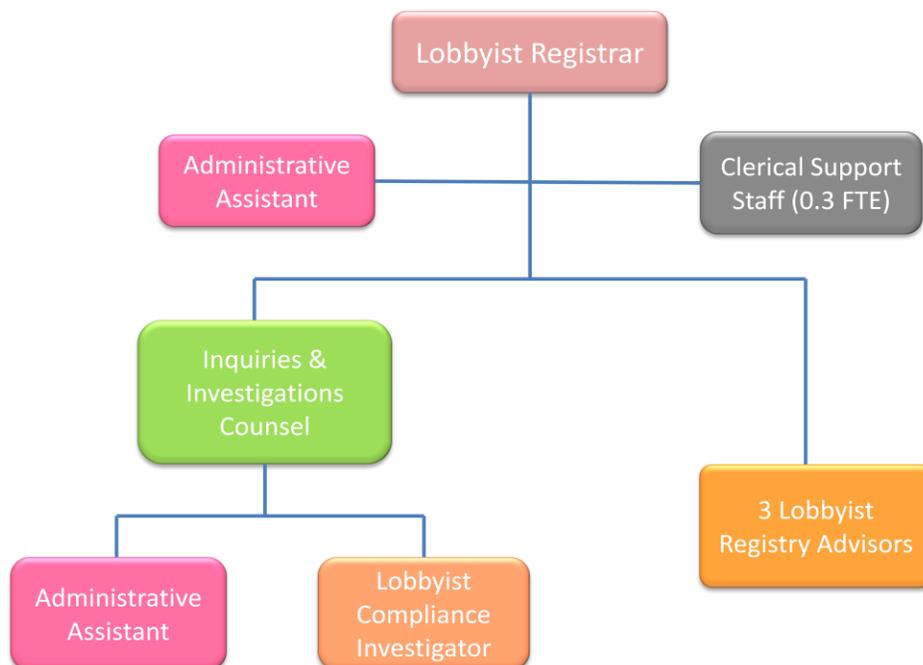
The staff of the Office of the Lobbyist Registrar (OLR) is a team of eight with two units corresponding to our legislated mandates to maintain the registry and to conduct inquiries, investigations and enforcement activities.

Our total staff complement is 8.3 full-time employees. This number has not changed since 2010. In addition to the Lobbyist Registrar, the OLR is staffed by three Lobbyist Registry Advisors, Inquiries and Investigations Counsel, a Lobbyist Compliance Investigator, and two Administrative Assistants. A part-time clerical position is allocated for summer students or periods of increased administrative needs.

Lobbyist Registry Advisors provide advice and interpretation; maintain the lobbyist registry; review, verify and approve registrations and updates; monitor compliance with registration and reporting requirements; develop and deliver information, training, and outreach programs and materials; and participate in the OLR's website projects.

Inquiries and Investigations Counsel provides advice on compliance issues; conducts assessments, inquiries and investigations on behalf of the Lobbyist Registrar; and develops policies and procedures to support OLR assessment, inquiry and investigation processes. The Lobbyist Compliance Investigator assists Inquiries and Investigations Counsel in these functions.

Two Administrative Assistants provide administrative support and assistance to the Registrar, Lobbyist Registry Advisors, and Inquiries and Investigations staff.



REGISTRY SERVICES

Online Registration System and Website

In 2013, there were 18,039 visits to the OLR website. This compares with 18,999 visits in 2012; 16,988 visits in 2011; and 13,466 visits in 2010. From 2010 through 2013, visits to the OLR website have increased by 4,573 visits or 34%.

The OLR maintains and administers a searchable online registry on our website that is available to the public at all times. The registry meets the requirements of s. 165 of COTA, that the City maintain a registry of persons who lobby public office holders, and that this registry be available for public inspection. The registry is accessible through our public website at www.toronto.ca/lobbying. Data from the registry is also available in machine-readable format on the [City's Open Data](http://www.toronto.ca/open) website at www.toronto.ca/open.

Lobbyists register online through an internal operating system that is administered by OLR staff. OLR Registry Advisors review all registrations and updates to ensure that they meet the requirements of the Lobbying By-law. Once the registration or update has been approved by a Registry Advisor, the information is posted in the public online lobbyist registry. In most cases, review, approval and posting on the public registry occurs within two days of a registration or update being submitted.

In 2013, we completed a major project to migrate our public website to the City's new website. This was a team effort requiring a great deal of OLR staff time and effort. Everyone in our office worked on this project. OLR staff attended training sessions, rewrote web materials, and entered them in the new system. OLR staff keep the website up-to-date.

We work continuously to make the OLR website as accessible and informative as possible. In addition to the lobbyist registry, our website provides a wealth of information to the public, public office holders and lobbyists, including:

- the Lobbying By-law;
- an online registration tutorial;
- an online newsletter, The Registry Insider;
- FAQs;
- Interpretation Bulletins;
- reports on investigations and inquiries;
- annual reports;
- expense reports;
- links to the sites of other Accountability Officers; and
- information about how to contact our office for more information and advice.

In 2013, we issued four new and revised interpretation bulletins and two newsletters, which are posted on the OLR website.

Registrations

The following table summarizes registration activities and telephone inquiries in the years 2010 through 2013:

**TABLE 1
REGISTRATIONS and TELEPHONE INQUIRIES, 2010-2013**

	2013	2012	2011	2010
Registrations				
New Lobbyists	450	444	331	229
New Subject Matters	936	879	886	458
Lobbyist Updates	1,018	677	514	306
Subject Matter Updates (reports of lobbying activities)	4,705	3,920	2,626	1,072
Closed Lobbyist Registrations	347	199	168	32
Closed Subject Matters	574	762	600	346
TOTAL Active Lobbyists	1,279	1,278	1,137	1,047
TOTAL Active Subject Matters	1,870	1,726	1,653	1,424
Telephone Inquiries Answered	2,410	2,038	1,630	1,257

As may be seen in this table, there have been increases in 2013 compared to 2012 in the following areas: New Subject Matters, Lobbyist Updates, Subject Matter Updates, Closed Lobbyist Registrations, Total Active Subject Matters and Telephone Inquiries Answered. Decreases from 2012 to 2013 occurred in Closed Subject Matters.

**TABLE 2
REGISTERED SUBJECT MATTERS**

The ten most frequently registered subject matters as of December 31, 2013, were as follows:

Subject Matter Category	Number of Active Registrations
Planning and Development Applications	935
Economic Development	123
Technology	116
Procurement	90
Transit/TTC	82
Transportation – Roads/Bridges	71
Environment	66
By-law/Regulation	64
Signs	63
Attractions/Tourism	55

Advice and Interpretation

In 2013, the OLR answered 2,410 telephone inquiries, providing information and advice on and interpretation of the Lobbying By-law. This was an increase of 372 or 18% over 2,038 telephone inquiries answered in 2012.

In addition to telephone inquiries, the OLR provided advice, information and interpretation of the Lobbying By-law in person and by mail or email. We provided information about registrations, assistance with searches of the registry, the requirements for registration and the Lobbyists' Code of Conduct to public office holders, lobbyists and the public. We provided advice and interpretation of the Lobbying By-law on such subjects as the status of broader public sector, not-for-profit and citizen activist organizations under the Lobbying By-law; grass-roots communications; conflict of interest; gifts and favours; lobbying and municipal elections; and lobbying and procurements.

Interpretation Bulletins

Seventeen OLR Interpretation Bulletins, as well as Reports and other important documents, may be found on our website at http://www.toronto.ca/lobbying/imp_docs.htm.

OLR interpretation bulletins provide information and advice about the requirements of the Lobbying By-law and how these requirements apply in particular situations. In 2013, the OLR published the following four new or revised interpretation bulletins:

- [Grass-roots Campaigns](#)¹⁰ (new March 7, 2013);
- [Lobbying and Procurements](#)¹¹ (revised September 20 and November 21, 2013);
- [Pre-Registration and Post-Registration Requirements](#)¹² (revised August 22, 2013); and
- [Registration of Clients of Consultant Lobbyists](#)¹³ (revised March 7, 2013).

Education and Outreach

The OLR provided four in-house training sessions on the Lobbying By-law and registration system for lobbyists in 2013. The training sessions were well-subscribed and response from the lobbyists who attended was positive.

We initiated a new business card that provides OLR contact information to lobbyists, and distributed this to senior public office holders.

We presented information on the Lobbying By-law to senior City staff, City agencies, boards and advisory committees.

We presented information on lobbying and municipal elections to a meeting organized by the City Clerk for by-election candidates and to a meeting of City Council in December 2013.

¹⁰<http://www1.toronto.ca/City%20Of%20Toronto/Lobbyist%20Registrar/Files/pdf/I/Interpretation%20Bulletin%20-%20grass-roots.pdf>

¹¹http://www1.toronto.ca/city_of_toronto/lobbyist_registrar/files/pdf/interpretation-bulletin_lobbying-procurements.pdf

¹²http://www1.toronto.ca/city_of_toronto/lobbyist_registrar/files/pdf/interpretation-bulletin-pre-post-registration.pdf

¹³<http://www1.toronto.ca/City%20Of%20Toronto/Lobbyist%20Registrar/Files/pdf/I/Interpretation%20Bulletin%20-%20Reg%20of%20Clients%20of%20Consultant.pdf>

We presented information on the Lobbying By-law to conferences organized by external groups, including the Lobbyist Registrars and Commissioners Network and the Council on Governmental Ethics Laws, Transparency International Canada and The Commons Institute.

We provided information to other jurisdictions who visited us or requested information, including the Office of the Commissioner of Lobbying of Canada, the City of Regina and the City of Windsor.

INQUIRIES AND INVESTIGATIONS

In 2013, 24 new assessments were opened and 24 were completed; 17 new inquiries were opened and 26 inquiries were completed. Of the 26 completed inquiries, 16 were substantiated.

The Lobbyist Registrar is responsible for conducting, in private, inquiries or investigations¹⁴ to determine whether contraventions of the Lobbying By-law have occurred. When the OLR receives a report of a potential contravention of the Lobbying By-law, Inquiries and Investigations staff conducts an assessment to determine whether it is necessary to conduct an inquiry. Often, the matter can be resolved quickly at the assessment stage. If there is sufficient evidence to indicate a potential contravention of the by-law, and it is not appropriate to resolve the matter less formally (for example, by permitting a late registration), the Registrar may authorize an inquiry to be conducted. Inquiries and Investigations staff conduct the inquiry in the strictest confidence, in accordance with the requirements of COTA. OLR [Compliance Inquiry Procedures](#) are found at http://www1.toronto.ca/city_of_toronto/lobbyist_registrar/files/pdf/compliance_investigations_procedures.pdf.

TABLE 3
SOURCE of INFORMATION or REQUEST for INQUIRY – 2013

An assessment or inquiry may be commenced as a result of a request of Council, a member of Council or their staff, an Accountability Officer, a member of the public, or a lobbyist. Assessments and inquiries may also be initiated by the OLR, based upon information in the registry or received through other sources such as the media.

The table below shows the source of request for the 26 completed inquiries:

Source of Request	No. of Inquiries
Council	--
Member of Council or their staff	1
City staff	11
OLR	13
Other Accountability Offices	1
Member of the Public	--
Lobbyist	--

¹⁴The term "inquiries" includes "investigations".

**TABLE 4
ASSESSMENTS, INQUIRIES, PROSECUTIONS and REPORTS TO COUNCIL**

The following table shows assessments, inquiries, prosecutions and reports to Council from 2010 through 2013:

	2013	2012	2011	2010
Inquiries (new)	17	18	46	10
(completed)	26	18	21	10
Assessments (new)	24	30	N/A	N/A
(completed)	24	30	N/A	N/A
Prosecutions (new)	0	1	0	0
(completed)	1	0	0	1
Reports to Council on Inquiries	6	5	1	0

**TABLE 5
OUTCOMES of ASSESSMENTS**

The following table shows the outcomes of the 24 preliminary assessments completed in 2013:

Outcomes of the Preliminary Assessments	Completed Assessments
Inquiry Files Opened	17
Advice Given	2
Late Registration or Update Permitted	1
No Further Action Taken	4

TABLE 6
CONTRAVENTIONS of LOBBYING BY-LAW

The table below shows the sections of the Lobbying By-law found to be contravened among the 16 substantiated inquiries in 2013:

Sections of the Lobbying By-law	No. of Contraventions
§ 140-10. Registration requirement. (Unregistered lobbying)	9
§ 140-21D. Duty to file return; transitional. (Duty to report lobbying within three business days)	1
§ 140-41A. Compliance with policies restricting communication. (Lobbying in relation to a procurement process)	4
§ 140-42A. Prohibited activities. (Lobbyists shall not lobby by providing gifts, meals, trips or favours of any kind)	4
§ 140-42C. Prohibited activities. (Lobbyists shall not lobby at charitable, community or civic events, or similar public gatherings)	1
§ 140-45. Improper Influence. Lobbyists shall: <ul style="list-style-type: none"> • avoid the deed and appearance of impropriety, • not place a public office holder in a conflict of interest or in breach of the public office holder's codes of conduct, • not propose or bestow an improper benefit or improperly influence a public office holder. 	4

TABLE 7
OUTCOMES of SUBSTANTIATED INQUIRIES

The following table shows the outcomes of substantiated inquiries in 2013:

Outcomes of Substantiated Inquiries	No. of Inquiries
Advice Given	14
Lobbyist Training Attended	5
Apology Provided	5
Commitment to Comply	6
Late Registration or Update Permitted	9
Report to Council	6
Suspension, Revocation or Removal of Registration	4
<i>POA</i> Charge Laid/Conviction Obtained	1

Reports to Council on Inquiries

The Registrar may report to Council on an inquiry or investigation into whether the Lobbying By-law has been contravened: *COTA* s. 169 and Toronto Municipal Code § 3-7. Reports to Council are public. In 2013, I submitted the following six reports to Council regarding inquiries that my office conducted.

[Report on an Inquiry into Lobbying about Request for Proposal 9144-13-7160](#)¹⁵

In this report, I found that a lobbyist had contravened § 140-41A by communicating with a member of Council about a procurement process, when this was not permitted by the applicable procurement policies and documents. After he was advised that his communications breached the procurement policy and Lobbying By-law, the lobbyist stopped all communications about the RFP. At my request, the lobbyist attended an OLR training session on the Lobbying By-law.

[Report on an Inquiry: Lobbying at the Mayor's Ball for the Arts and the Thompson Hotel](#)¹⁶

In this report, I found a consultant lobbyist who attended the Mayor's Ball for the Arts, a charitable event, and a hotel afterwards did not breach the Lobbying By-law. The Lobbying By-law § 140-42C, prohibits lobbying at charitable events. The lobbyist did not lobby members of Council at the event or at the hotel afterwards. However, an associate lobbyist in the same firm lobbied at the charitable event by attempting to arrange a meeting between a councillor and the firm's clients. I permitted both lobbyists to correct their subject matter registrations, with the exception of the non-compliant lobbying by the second lobbyist. Because the second lobbyist's registration was non-compliant, it was suspended for three months. At my request, the lobbyist attended an OLR training session.

[Report to Council on an Inquiry: Lobbying about Zip-Lines in Earl Bales Park](#)¹⁷

Officials of a corporation communicated with a councillor about the corporation's unsolicited proposal to build and operate zip-lines, canopy tours and aerial trekking tours at a City park. The corporation did not register to lobby before communicating with the councillor or report their lobbying activities afterwards. I found that the corporation breached § 140-10, which requires a lobbyist to register before lobbying; and § 140-41A, by communicating about an unsolicited proposal for which City policy restricts communications to designated staff. The corporation was advised of the

¹⁵ Adopted by Council on December 16, 17 and 18, 2013:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC45.1>

¹⁶ Adopted by Council on October 8, 9, 10 and 11, 2013:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC39.9>

¹⁷ Adopted by Council on October 8, 9, 10 and 11, 2013:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC39.10>

breaches and permitted to register. The corporation was not located in Canada and was not aware of the City's Lobbying By-law. The corporation's lobbyists were requested to attend an OLR training session.

[Report to Council on an Inquiry: Lobbying in Relation to a Procurement Process for the Beneficial Use of Biosolids – Connect Consulting Solutions and Orgaworld Canada Ltd.](#)¹⁸

I found that a corporation and its consultant lobbyists lobbied public office holders without being registered, contrary to § 140-10 of the Lobbying By-law, but did not lobby about a procurement process and therefore did not contravene § 140-41A of the Lobbying By-law. The corporation informed me that the employee who had lobbied on its behalf without registering is no longer with the firm in any capacity. At my request, the corporation and the consultant lobbyists attended an OLR training session, registered and reported their lobbying activities.

[Report to Council on an Inquiry: Lobbying in Relation to a Procurement Process for the Beneficial Use of Biosolids – Connect Consulting Solutions and Lystek International Inc.](#)¹⁹

I found that a corporation and its consultant lobbyists lobbied in relation to Request for Proposal 9155-11-7185 for the beneficial use of biosolids, and therefore contravened § 140-41A of the Lobbying By-law. In addition, they lobbied public office holders without being registered, contrary to § 140-10. I requested that the corporation and the consultant lobbyists attend an OLR training session. The consultant lobbyists attended an OLR training session. The corporation has not attended training.

[Report to Council on a Prosecution for Breach of the Lobbying By-law](#)²⁰

On April 17, 2013, a corporate lobbyist pleaded guilty in the Ontario Court of Justice to the provincial offence that the corporation, on January 12, 2012, being a lobbyist, illegally communicated in relation to a procurement process when not permitted to do so. This was a breach of § 140-41A of the Lobbying By-law. The court imposed a fine of \$750.00. This is the first time the City has obtained a conviction under the *Provincial Offences Act* for breach of the Lobbying By-law. The prosecution was commenced by the OLR and conducted by the City's Legal Services Division, Prosecutions.

¹⁸ Adopted by Council on July 16, 17, 18 and 19, 2013:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC37.6>

¹⁹ Adopted by Council on July 16, 17, 18 and 19, 2013:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC37.7>

²⁰ Adopted by Council on June 11, 12 and 13, 2013:

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

Report to Council on the Provision of Gifts by a Consultant Lobbyist Firm

I have appended to this annual report a new Report to Council on the Provision of Gifts by a Consultant Lobbyist Firm (APPENDIX A).

WORKING TOGETHER WITH THE ACCOUNTABILITY OFFICERS AND CITY STAFF

I have worked with my fellow Accountability Officers and City staff to implement the accountability framework adopted by Council in April 2009 and established by the adoption of Chapter 3 of the Toronto Municipal Code in 2010, as required by COTA.

In 2013, I consulted with the Integrity Commissioner, City Clerk, City Solicitor, City Manager and Director of Purchasing and Materials Management on a variety of issues including lobbying and procurements; lobbying during municipal election periods; enforcement provisions; and the development of an ethical framework for City Staff.

The results of these consultations included amendments to the Lobbying By-law to strengthen and clarify its provision restricting communications about procurements, adding § 140-41C; implementing a protocol for communications about procurement-related registrations with the Purchasing and Materials Management Division; amending Schedule A of the Lobbying By-law; and developing an ethics education program for staff.

OLR BUDGET

In accordance with Chapter 3 of the Toronto Municipal Code, the Lobbyist Registrar submits the OLR operating and capital budget requests directly to Budget Committee for consideration and recommendation to Council.

[On January 15 and 16, 2013, Council approved the OLR Operating Budget](#) for the year 2013 of \$1,065.4 thousand net, a reduction of \$6.9 thousand or 0.6% compared with the approved net operating budget for 2012.²¹ The Operating Budget enabled the OLR to meet the operating costs of its legislated mandate in 2013. Council approved the 2013-2022 Recommended Capital Plan for the Accountability Offices, including \$3.555 million in project estimates, reflecting deferral of consideration of the Lobbyist Registrar's Capital Plan until the 2014 Budget process. The project estimates included the OLR's estimates of \$2.0 million for State of Good Repair and \$0.355 million to provide access to the registry via mobile device in 2014.

²¹<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX27.1>

The OLR's State of Good Repair Plan is necessary to ensure that the technology platform supporting the online lobbyist registry will remain functional and meet the legislated requirement that the City maintain a publicly available lobbyist registry. We are reviewing our 10-Year Capital Plan for State of Good Repair to ensure that it meets best practices and will resubmit it in the 2015 budget process.

FINANCIAL INFORMATION

OLR business, travel and [PCard expenses](#) are posted on the OLR website at <http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=c3dfb7537e35f310VgnVCM1000071d60f89RCRD&vgnnextchannel=cf1fb7537e35f310VgnVCM1000071d60f89RCRD>

Each year, the Office of the Lobbyist Registrar undergoes an external compliance audit and is part of the City's annual attest audit. These audits are required under Chapter 3 of the Toronto Municipal Code to be conducted annually by independent auditors and are reported directly to Council. The external compliance audit report for the year 2012 was adopted by [Council on June 11, 12 and 13, 2013](#) and is found at the following link: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC36.6>. The independent auditor found the Office of the Lobbyist Registrar to be compliant with the City's financial policies, procedures and delegated authorities in the year 2012. The compliance audit for the year 2013 is not yet available.

RECOMMENDATIONS AND ADVICE ON LOBBYING MATTERS AND AMENDMENTS TO THE LOBBYING BY-LAW

My mandate under the Lobbying By-law includes reporting to and advising Council on the by-law and lobbying matters.

Enforcement of the Lobbying By-law

The Lobbyist Registrar's duties under § 140-33 include enforcement of the Lobbying By-law. The enforcement mechanisms that the Lobbyist Registrar may use to enforce the Lobbying By-law are:

- Refusal to accept, suspension, revocation or removal of a registration return under §§ 140-36 and 140-37 where the return fails to comply with the Lobbying By-law or where the lobbyist fails to provide required or requested information; and
- Prosecution for breach of Lobbying By-law under the *Provincial Offences Act*. The court may impose a fine of not more than \$25,000 on a first conviction and \$100,000 on each subsequent conviction: § 140-47.

In previous annual reports, I have discussed the six-month time limit for prosecutions under the *Provincial Offences Act* and the need for effective administrative sanctions where a lobbyist has breached the Lobbying By-law. Where an unregistered lobbyist breaches the Lobbying By-law, there is no administrative sanction provided. The Registrar may report to Council on her inquiry into the matter, or launch a prosecution under the *Provincial Offences Act*.

Section 166 of *COTA* authorizes the City to include in the Lobbying By-law conditions for registration, continued registration and renewal of registration. The Lobbying By-law does not include such provisions.

Madam Justice Bellamy recommended that there should be provisions to prohibit lobbying for specified periods of time where a lobbyist breaches the registration requirements.

In my 2010 Annual Report, I recommended in part that:

- City Council request the City Solicitor, in consultation with the Lobbyist Registrar, to report back to Council on amendments to the Lobbying By-law to permit the Registrar to impose conditions for registration, continued registration or renewal of a registration as permitted by the *City of Toronto Act*, s. 166.

- City Council request the City Solicitor, in consultation with the Lobbyist Registrar, to report back to Council on requesting legislative amendments to enable the Registrar to impose administrative sanctions, including administrative monetary penalties and prohibiting a lobbyist who has been found in breach of the by-law from lobbying.
- Administrative sanctions be included in the next opportunity for review of the *City of Toronto Act*.

Council received my 2010 Annual Report without adopting these recommendations.

In my view, the administrative enforcement mechanisms available under Toronto's Lobbying By-law should be reviewed in the context of current best practices and the experience we have gained since the Lobbying By-law was adopted in 2007.

Lobbyist registries and commissions in Alberta and British Columbia have the power to impose administrative monetary penalties (AMPs) where a lobbyist has been found in breach of the lobbying legislation. Administrative monetary penalties are an alternative to prosecution.²² The Commissioner of Lobbying of Canada and the Ontario Lobbyists Registrar have recommended that the power to impose administrative monetary penalties be added to their legislation.²³ Substantial fines may be levied by the courts when convicting a person for an offence under the *Provincial Offences Act (POA)* for breach of the Lobbying By law; however prosecution, which is subject to a six-month time limit, is not always available or appropriate. The implementation and collection of AMPs likely would incur staff and system costs.

Some lobbyist registries and commissions in Canada have the authority to impose a temporary ban on communication or to temporarily prohibit registration upon a finding of breach by the Registrar or Commissioner or after conviction for an offence for breach of lobbying legislation.²⁴ In my view, a temporary ban on lobbying is a potentially effective enforcement mechanism. There would be no associated implementation costs.

²² [Alberta, *Lobbyists Act*, S.A. 2007 Chapter L-20.5](http://www.qp.alberta.ca/1266.cfm?page=L20P5.cfm&leg_type=Acts&isbncln=9780779729647), s. 18:

http://www.qp.alberta.ca/1266.cfm?page=L20P5.cfm&leg_type=Acts&isbncln=9780779729647

British Columbia, *Lobbyists Registration Act*, [SBC2001] Chapter 42, s. 7.2:

http://www.bclaws.ca/Recon/document/ID/freeside/00_01042_01

²³ Office of the Commissioner of Lobbying of Canada, "*Administering the Lobbying Act*", Recommendation 7:

[http://www.ocl-cal.gc.ca/eic/site/012.nsf/vwapj/Administering_LA_2011-12-13-en.pdf/\\$FILE/Administering_LA_2011-12-13-en.pdf](http://www.ocl-cal.gc.ca/eic/site/012.nsf/vwapj/Administering_LA_2011-12-13-en.pdf/$FILE/Administering_LA_2011-12-13-en.pdf);

Ontario, Office of the Integrity Commissioner, "*Recommendations for amendments to the Lobbyists Registration Act, 1998*", Recommendation 1:

[https://lobbyist.oico.on.ca/web-att.nsf/vw/LRO/\\$FILE/LRA_Issues_Summary_2012_05_24.pdf?OpenElement](https://lobbyist.oico.on.ca/web-att.nsf/vw/LRO/$FILE/LRA_Issues_Summary_2012_05_24.pdf?OpenElement)

²⁴ Canada, *Lobbying Act*, s. 14.01:

<http://laws.justice.gc.ca/eng/acts/l-12.4/page-12.html>

Alberta, *Lobbyists Act* (supra), s. 19

British Columbia, *Lobbyists Registration Act* (supra), s. 10(5), 10(6), 10(7)

City of Ottawa, *By-Law No. 2012-309*, s. 9(1):

<http://ottawa.ca/en/city-hall/accountability-and-transparency/accountability-framework/lobbyist-registry-law>

Clarifying and Strengthening the Lobbying By-law – Procurements

As a result of a request by Council in a previous report to Council by me on lobbying during a procurement process, I was consulted by the City Solicitor on clarifying and strengthening the Lobbying By-law with respect to procurements.

In October 2013, [Council adopted § 140-41C of the Lobbying By-law](#)²⁵ to clarify and strengthen the by-law's restrictions on lobbying about procurements, as recommended by the City Solicitor. The new provision makes clear that the prohibition on lobbyists communicating in relation to procurements prevails over other provisions in the Lobbying By-law. It reads:

C. In the event of a conflict or inconsistency between Subsection A and any other provision of this chapter, Subsection A prevails.

As a result of this amendment, I issued a [revised Interpretation Bulletin on Lobbying and Procurements](#) in November 2013.²⁶

Report to Council on Holding Lobbying Firms Responsible

City Council requested that I report to the November 13, 14, 15 and 18, 2013 meeting of City Council on a policy that holds lobbying firms responsible and not just individual employees. This [report](#) sets out four ways in which the Lobbying By-law holds lobbying firms as well as individuals responsible for compliance.²⁷

Lobbying By-law – Exempted Bodies

As a result of recommendations in a report by the City Manager, in [October](#) and [December](#) 2013 City Council amended Schedule A of the Lobbying By-law, which

[Quebec, Lobbying Transparency and Ethics Act](#), s. 53:

http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=%2F%2FT11_11_011%2FT11_011_A.htm

[Newfoundland and Labrador, Lobbyist Registration Act, S.N.L. 2004, Chapter. L-24.1, s. 28:](#)

<http://assembly.nl.ca/Legislation/sr/statutes/l24-1.htm#28>

See also Bill 179 (supra, footnote 9), Schedule 7, s. 17.9

²⁵<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC39.8>

²⁶http://www1.toronto.ca/city_of_toronto/lobbyist_registrar/files/pdf/interpretation-bulletin_lobbying-procurements.pdf

²⁷<http://www.toronto.ca/legdocs/mmis/2013/cc/bgrd/backgroundfile-63497.pdf>

exempts the listed bodies from the Lobbying By-law as follows: adding “Toronto Pan Am Sports Centre Inc.”, “Casa Loma Corporation” and “Lakeshore Arena Corporation”; removing “Enwave Energy Corporation”; and changing the names of the following three listed corporations, so that they now read: “Toronto Economic Development Corporation (operating as Toronto Port Lands Company)”, “Toronto Waterfront Revitalization Corporation (operating as Waterfront Toronto)”, and “Toronto Transit Infrastructure Ltd.”²⁸

The City Manager’s Office consulted me during the preparation of the reports on these items. At Council’s request, I wrote to Enwave Energy Corporation informing them of Council’s decision, and explained that this change of status means that Enwave is no longer exempt under § 140-3C(2) of the Lobbying By-law. I offered to answer any questions Enwave might have, and to provide advice and training on the by-law and registration.

Report to Executive Committee on Amending the Lobbying By-law – Time and Place of Lobbying

In this [report](#), I recommended to Executive Committee that a provision be added to the Lobbying By-law prescribing the time and place that lobbying may occur. Executive Committee deferred my recommendation indefinitely.²⁹

Madam Justice Bellamy, Commissioner recommended and commented in the *Report on the Toronto Computer Leasing Inquiry* (2005) volume 2 at pages 84-85:

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

a. Contact with Elected Officials

There are times when it could be in the public interest for a councillor to meet with a lobbyist. A lobbyist could be a useful source of information about what is happening in an industry or a business sector. Lobbyists should have access to elected officials, but that access should be restricted to contacts that are subject to some form of public scrutiny, such as through a lobbyist registry.

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.

²⁸<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX34.8>

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX36.4>

²⁹<http://www.toronto.ca/legdocs/mmis/2013/ex/bgrd/backgroundfile-56546.pdf>

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.

b. Contact with Staff

Staff are not elected and therefore are not accountable to citizens in a direct way. Yet a great many decisions at Council are made based on staff reports: staff weigh the pros and cons of policy choices and provide briefing notes. Their influence on the decision-making process cannot be underestimated. They are often the drivers of policy and are an excellent source of information. Knowing this, effective lobbyists will often focus strategically on City staff rather than on councillors. Lobbyists' contact with staff should be subject to the same requirements for transparency as their contact with elected officials.

The Lobbying By-law does not prescribe the appropriate time and place of lobbying, but prohibits lobbying at a “charitable event, community or civic event, or similar public gathering” (§ 140-42C). I adopt the view expressed by Madam Justice Bellamy that lobbying should occur in a business environment, during business hours whenever possible. Such a practice would enhance the transparency and integrity of lobbying at the City, and thereby improve the public’s trust in City government decision-making. This should be stated in the Lobbying By-law as a best practice.

CHALLENGES AND GOALS FOR 2014

1. Achieving our Mandate in a Fair, Accessible, Timely and Effective Manner

The Office of the Lobbyist Registrar’s legislated mandate is to review and approve registrations, conduct inquiries and investigations and enforce the Lobbying By-law. We will do so in a fair, accessible, timely and effective manner.

2. Maintaining an Online Lobbyist Registry that is available to the Public

It is the mandate of the Office of the Lobbyist Registrar to ensure the transparency of lobbying activities at the City by maintaining an online public lobbyist registry.

In order to ensure that the online lobbyist registry is maintained and accessible to the public, we will prepare and submit to Budget Committee and Council a 10-Year Capital Plan that includes State of Good Repair of the online lobbyist registration system, which will meet best practices.

3. Providing Information to the Public, Public Office Holders and Lobbyists

It is the mandate of the OLR to provide advice, information and interpretation of the Lobbying By-law.

We will ensure that the OLR's website is maintained and available to the public. We will provide continuous improvement of the information available on the OLR website [<http://www.toronto.ca/lobbying/>].

We will provide interpretation of the Lobbying By-law, information and advice to lobbyists, public office holders and the public through training, interpretation bulletins, FAQs, newsletters and outreach.

4. Ensuring Compliance with the Lobbying By-law

The mandate of the OLR promotes the integrity of City decision-making by ensuring that lobbyists comply with the Lobbying By-law.

We will continue to develop and improve our compliance inquiry and enforcement procedures in accordance with Canadian best practices.

We will promote compliance through outreach, information, advice and training.

We will conduct inquiries and investigations, prosecutions under the *Provincial Offences Act* and other enforcement activities where appropriate.

5. Clarifying and Strengthening the Lobbying By-law

I shall continue my review of Chapter 140 to ensure that the Lobbying By-law is clear, effective and consistent with current best practices in Canada by lobbyist registries. A particular focus in 2014 will be the enforcement provisions of the Lobbying By-law.

6. Working Together with the Statutory Accountability Officers and City Staff

I shall continue to work together with the Accountability Officers and City staff to develop policies and protocols to implement the City's accountability framework and Chapter 3 of the Toronto Municipal Code. I shall also continue to work with public office holders to ensure that the Lobbying By-law is observed and reflected in the City's policies and procedures.

7. Advising and Reporting to Council

I shall advise and report to Council on lobbying matters, including the Lobbying By-law, the lobbyist registry system and regulation of lobbyists, inquiries and enforcement.

Respectfully Submitted,

Linda L. Gehrke
Lobbyist Registrar, City of Toronto

Report to Council on the Provision of Gifts by a Consultant Lobbyist Firm

On March 7 and 8, 2013, registered consultant lobbyists with a consultant lobbyist firm delivered a package containing a congratulatory letter and a cookie to each of 57 female councillors and senior public office holders with the City. The letter was signed by three registered lobbyists and stated in part:

International Women's Day has grown to become a global day of recognition and celebration. The theme was expanded by the United Nations in 1975 with the International Women's Year. By 1977, the United Nations had adopted a resolution designating March 8 as International Women's Day.

Each year, March 8 provides an opportunity to take stock of our progress towards gender equality and to honour the contributions women have made and are making – both in Canada and around the world.

On behalf of our partners, . . . the municipal affairs team at The Capital Hill Group celebrates your contribution to politics.

The Capital Hill Group had a number of active subject matter registrations when the firm sent this package to public office holders.

Several public office holders who received the package containing the letter and cookie were concerned that this gift might violate the Lobbying By-law and delivered the package to the Lobbyist Registrar with a request that the matter be followed up. Some of them told the Lobbyist Registrar that the receipt of this package made them feel uncomfortable. The Lobbyist Registrar also received a package.

The Lobbyist Registrar wrote to the firm to advise them that the provision of the package containing a cookie and a letter to City public office holders was an apparent breach of the Lobbying By-law.

Paragraph 140-42A of the Lobbying By-law provides:

- *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.*

Madam Justice Bellamy, Commissioner recommended in the *Report on the Toronto Computer Leasing Inquiry* (2005), at volume 2, page 86:

109. Outside of City procurement processes, ethically appropriate lobbying is permitted. However, at no time should lobbying take the form of entertainment or bestowing of gifts, meals, trips, entertainment, or favours of any kind on staff or councillors.

A member of the public would reasonably infer that the purpose of sending cookies to senior female public office holders at the City, coupled with a congratulatory letter celebrating the public office holder's contributions on the occasion of International Women's Day, was to create goodwill and raise the profile of the Capital Hill Group among these public office holders, to Capital Hill's special advantage as a lobbyist at the City. The gift appeared to be related to Capital Hill's undertakings to lobby at the City.

The Capital Hill Group apologized for sending the package and provided a list of those who received it. They attended a training session provided by OLR staff to ensure that they have an understanding of the City's Lobbying By-law. The OLR gave the cookies to a local charity. In the circumstances, no further action was required.

Respectfully Submitted,

Linda L. Gehrke
Lobbyist Registrar, City of Toronto