
REPORT TO COUNCIL

ON AN INQUIRY INTO PLACING

A CITY EMPLOYEE IN AN APPARENT

CONFLICT OF INTEREST

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Report on Inquiry into Placing a City Employee in an Apparent Conflict of Interest

INTRODUCTION

The Lobbyist Registrar (“Registrar”) conducted an inquiry to determine whether Sussex Strategy Group Inc. (“Sussex”), also operating as Prime Strategies Group Inc. (“Prime”), including any of its partners, associates or employees, placed a City employee in a conflict of interest or in breach of the City employee’s code of conduct by lobbying about clothing drop boxes on behalf of their client.

The Registrar found that an apparent conflict of interest arose as a result of the spousal relationship between a consultant lobbyist working with Sussex and the City employee, who wrote a staff report on regulation of clothing drop boxes that was considered by the Licensing and Standards Committee and City Council. While the spouse did not lobby the City employee, other consultant lobbyists with Sussex did so, thereby placing the City employee in an apparent conflict of interest.

After the events described in this report occurred, Sussex consultants have attended training sessions provided by the Office of the Lobbyist Registrar (“OLR”). Sussex has consulted the Registrar regarding a compliance protocol for the firm. The Registrar requests that Sussex continue to consult with her regarding a compliance protocol; and that Sussex seek the Registrar’s advice on particular situations that may create a conflict of interest.

FINDING

Lobbying activities concerning a clothing drop box report by Kim Wright and Vic Gupta, who were then registered as consultant lobbyists with Sussex, also known as Prime, placed a City employee in an apparent conflict of interest, contrary to the Lobbying By-law, § 140-45B, which provides:

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.

DISPOSITION

1. Sussex is requested to continue to consult with the Registrar on a protocol to ensure compliance with the Lobbying By-law by the firm and its consultants.
2. Sussex is requested to seek the Registrar’s advice on any potential conflicts of interest that may arise.

THE INQUIRY PROCESS

On February 19, 2013, OLR Inquiries and Investigations Counsel (“OLR counsel”) sent a Notice of Inquiry to the President of Sussex together with an opportunity to respond to the allegations set out in it. Michael I. Binetti of Affleck Greene McMurtry LLP responded on behalf of Sussex and the lobbyists named in the allegations. The allegations in the Notice of Inquiry were that Sussex lobbyists had placed a City employee in a conflict of interest, contrary to § 140-45B.

On January 23, 2014, a Notice of Inquiry was sent to Vic Gupta, setting out the allegations together with an opportunity to respond to those allegations. On March 3, 2014, counsel for Sussex responded to the Notice of Inquiry on behalf of Mr. Gupta.

On June 27, 2014, OLR counsel interviewed Mr. Gupta under oath in the presence of his counsel. At the conclusion of the interview, OLR counsel requested a copy of a Share Purchase Agreement referenced in the interview. On September 15, 2014, counsel for Sussex provided OLR counsel with a copy of the Share Purchase Agreement.

On November 19, 2014, the Registrar sent notice of her proposed findings, disposition and facts upon which they were based to counsel for Sussex, Kim Wright and Mr. Gupta. The Registrar’s letter provided the respondents with an opportunity to respond on or before December 10, 2014.

On December 4, 2014, Jack B. Siegel of Blaney McMurtry LLP informed the Registrar that he was now acting as counsel for Mr. Gupta regarding this inquiry.

On December 4, 2014, the Registrar and OLR counsel met with counsel for Sussex, members of Sussex and counsel for Mr. Gupta to discuss the proposed findings, disposition and facts. Counsel for Sussex provided OLR counsel with a copy of a common share certificate in Sussex and undertook to provide details regarding a Sussex consultant’s share agreement with Sussex.

On December 10, 2014, OLR counsel provided counsel for Mr. Gupta with disclosure of the evidence in this inquiry relevant to Mr. Gupta.

On December 18, 2014, counsel for Sussex and counsel for Mr. Gupta responded to the Registrar’s proposed findings and disposition. Counsel for Sussex provided copies of a contract of employment and share agreement with Sussex.

On December 19, 2014, OLR counsel wrote to counsel for Sussex and counsel for Mr. Gupta to advise and provide disclosure of newly received electronic evidence. The letter provided the respondents with an opportunity to respond to the new evidence. On January 2, 2015, counsel for Mr. Gupta responded to the new information. Counsel for Sussex responded on January 6, 2015.

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On January 13, 2015, the Registrar sent notice of revised proposed findings, disposition and facts upon which they were based to the respondents and their counsel, and permitted Ms Wright and Mr. Gupta to file late reports of their communications with City employees about the clothing drop box issue in April and May 2012. The Registrar's letter provided the respondents with an opportunity to respond on or before February 5, 2015. On February 6, 2015, counsel for Sussex provided submissions on the conflict of interest issue on behalf of Ms Wright. In February 2015, Ms Wright and Mr. Gupta updated their registrations to show lobbying activities related to the clothing drop box issue in April and May 2012.

FACTS

The Sale of Prime to Sussex

1. Under a Share Purchase Agreement dated June 1, 2011, Vic Gupta sold all of his shares and equity in Prime to Sussex. The agreement provided for Mr. Gupta to become an employee of Sussex.
2. The corporate registration filings of Sussex and Prime show that effective November 2011, Mr. Gupta relinquished his directorship of Prime and that the officers and directors of Sussex became the officers and directors of Prime.
3. The Sussex website and lobbyist registry show that Mr. Gupta became Senior Counsel with Sussex. He registered several subject matters to lobby for Sussex clients, which were active until the end of September 2014.

Kim Wright's Status with Sussex

4. Ms Wright has since 2008 been registered in the lobbyist registry as a Senior Associate with Sussex, and is described as "Senior Associate and key member of our Municipal Affairs practice" on the Sussex website.

Transfer of the Client File from Sussex to Prime

5. Counsel for Sussex submitted that at a meeting of Sussex, its lobbying about clothing drop boxes for a Sussex client was discussed. The concern discussed was that a Sussex consultant was the spouse of the City employee assigned to write a report on clothing drop boxes to be submitted to Licensing and Standards Committee and City Council. To avoid a conflict of interest from occurring, Sussex decided to transfer the file to Prime.
6. Counsel for Sussex provided a redacted letter dated February 29, 2012 from "Prime Strategies", signed by Vic Gupta, Senior Counsel, to the client, confirming an agreement for "municipal government relations services". The letterhead address of Prime was the same as the address of Sussex. The letter described "THE TEAM" as Vic Gupta and Kim Wright. Ms Wright is described as "Senior Associate,

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Municipal Affairs”. The descriptions of Mr. Gupta and Ms Wright in the letter described their association with Prime.

7. When examined under oath by OLR counsel, Mr. Gupta testified that the contract was a referral to him by a colleague, and he had some obligations under his agreement with Sussex to continue to do some work under Prime. In addition, Mr. Gupta stated:

“We were also mindful of wanting to ensure that there was no conflict or appearance of conflict, and so we kind of siloed it under Prime Strategies for that reason as well.”

8. The Executive Director, Municipal Licensing and Standards informed OLR counsel that Ms Wright told her that the clothing drop box file had been referred to another lobbying company due to a direct conflict of interest with a Sussex consultant.

Lobbying by Mr. Gupta and Ms Wright on the Subject of Clothing Drop Boxes

9. In SM18669, Mr. Gupta reported that he lobbied a senior policy officer about the subject of clothing drop box policy on May 8 and May 16, 2012. Mr. Gupta’s lobbying firm is named in this registration as “Sussex Strategy Group”. “Prime Strategies Group Inc.” is named under “Other trade names used”.
10. In SM21377, Ms Wright reported that she lobbied a senior policy and research officer on April 16, April 19, April 20 and May 3, 2012. The lobbying firm is named in the registration as “Sussex Strategy Group”. “Prime Strategies Group Inc.” is named under “Other trade names used”.
11. When interviewed under oath by OLR counsel, Mr. Gupta testified that Kim Wright, a senior associate of Sussex, provided some work and monitoring on the file, but that ended shortly after the commencement of the work. Mr. Gupta said that Ms Wright was working under his direction on the clothing drop box project. In answer to the question why Ms Wright did not continue working on the file, Mr. Gupta replied:

“Because [the City employee] expressed to me that she was concerned that . . . she couldn’t continue to be involved . . . in the file, or she couldn’t continue to discuss the file with Kim and so at that point is when I asked Kim to step back from it.”

12. Mr. Gupta testified that he lobbied the City employee who was writing the report about the clothing drop box issue. He spoke with her while she was writing the report and he participated in a stakeholder discussion with the City employee, her supervisor and the client. There was a phone conversation “which was a follow-up to a meeting request that Kim Wright had made for Kim and I to sit down with [the City employee] and . . . so I followed up on that discussion, on that email that Kim had sent us.”

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13. In emails to the City employee dated April 16 and 19, 2012, Ms Wright requested a meeting to discuss the clothing drop box issue. In the April 16 email, Ms Wright stated:

I hope you are well. I wanted to schedule a meeting to discuss the clothing drop box issue. Through Prime Strategies, Vic and I are representing the [client]. We have some ideas on enhancing the bylaw.

14. The City employee wrote to OLR counsel that she drafted the staff report, "Regulating Use of Clothing Drop Boxes" (November 2, 2012) for signature by the Executive Director. She stated that in the course of preparing the report, she consulted with charitable organizations, including the client of Ms Wright and Mr. Gupta.
15. The City employee wrote that she met with Vic Gupta and the client on May 17, 2012 regarding the issue of clothing drop boxes. Also present was the Supervisor, Licensing Services. They discussed the decision of the Licensing and Standards Committee, which asked Municipal Licensing and Standards Division ("MLS") to consider the feasibility of a revised by-law that either banned all boxes or allowed them with additional regulations. They provided information on their operations and the reliance on donations from drop boxes to fund their charitable activities. They suggested what the City could do to differentiate between legitimate charitable operations and illegal operations. The City employee also stated that she spoke to Mr. Gupta by phone on a couple of occasions regarding the timelines of the report and when it was expected to be presented at committee for consideration.
16. The City employee wrote to OLR counsel that when they met in May 2012 she was not aware that Mr. Gupta was associated with Sussex: "My knowledge at the time was that Vic Gupta of Prime Strategies was lobbying on behalf of [the client]." She stated that the association of Mr. Gupta with Sussex "was brought to my attention by my Executive Director and Director in March 2013."

Committee and Council Decisions

17. City Council on November 27, 28 and 29, 2012 adopted the staff-proposed draft by-law to regulate drop-boxes, with amendments: [LS17.3 Regulating the Use of Clothing Drop Boxes](#). The Director, Policy and Strategic Support, MLS has confirmed that the City employee wrote the November 2, 2012 staff report, and that she did not declare a conflict of interest with respect to writing the staff report.

ANALYSIS

Submissions by Counsel for Sussex

18. With respect to conflict of interest, counsel for Sussex submitted on February 6, 2015 that there was no actual conflict of interest because the City employee “in no way benefited financially from work being conducted by other consultants at Sussex or Prime Strategies at the time Mr. Gupta was engaged in the matter at issue”
19. Further, counsel for Sussex submitted that the Sussex consultant who was the spouse of the City employee was isolated behind an ethical wall at Sussex with respect to the clothing drop box issue; and that Sussex understood that the City employee had long ago advised her superiors that the City employee’s spouse lobbied on municipal issues and that the City employee reconfirmed this yearly in writing.
20. On February 28, 2014, counsel for Sussex submitted the following information:

Prior to being associated as an individual lobbyist with Sussex Strategy Group, Mr. Gupta operated as an individual lobbyist through his own consulting company known as Prime Strategies Group. The [clothing drop box] matter was referred to him by one [of] his contacts that he knew through Prime Strategies Group.

At a regular meeting to discuss conflicts, [the Sussex consultant] flagged the fact that his wife worked in Municipal Licensing and Standards and that he would be putting himself behind an ethical wall

At that time, Mr. Gupta had recently joined Sussex Strategy Group as an individual lobbyist. He was also still operating Prime Strategies Group working towards an eventual winding down of that business. Given the potential for a conflict raised by [the consultant lobbyist] during the regular Sussex Strategy Group meeting to identify conflicts, Mr. Gupta asked Kim Wright of Sussex Strategy Group to enquire with the Lobbyist Registrar’s office about whether it was possible to use his Prime Strategies Group registration to reflect that [the spouse of the City employee] was being isolated behind an ethical wall. Ms Wright advises that she was informed by [a Lobbyist Registry Advisor] of the Lobbyist Registrar’s Office to register the matter separately under Mr. Gupta’s Prime Strategies Group registration, which was a pre-existing registration and which ultimately occurred.

*To that end, enclosed is an email string between Kim Wright and [the City employee] from April 16, 2012 to April 19, 2012 discussing arranging a meeting “**through Prime Strategies**”. Mr. Gupta advises that he never discussed his own involvement with Sussex Strategy Group with [the City employee]; rather, he had communicated with her under the auspices of Prime Strategies Group.*

Subsequent to this email exchange, Mr. Gupta advises that [the City employee] advised him that she could not deal with Kim Wright given her association with

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Sussex Strategy Group and asked that she be removed from the file. Again, Mr. Gupta was operating through Prime Strategies Group vis-à-vis [the City employee].

Mr. Gupta and Ms Wright both advise that Ms Wright had no substantive communications with [the City employee] about this matter. Ms Wright monitored the item at City public meetings and reported the contents of those public meetings to Mr. Gupta. Mr. Gupta does not recall any specific details of substantive discussions with Ms Wright, not least of which because the matter was commenced two years ago.

The Office of the Lobbyist Registrar thereafter changed its opinion on the Prime Strategies Group registration and insisted that it be changed to Sussex Strategy Group It is important to note that the matter had concluded by this time and neither individual lobbyists from Prime Strategies Group nor Sussex Strategy Group were working on the file.

Submissions by Counsel for Mr. Gupta

21. Subsequent to his departure from Sussex at the end of September 2014, Mr. Gupta retained Mr. Siegel to represent him in this matter. Mr. Siegel met with the Registrar and OLR counsel together with counsel for Sussex to make submissions and provided written submissions on December 18, 2014 and January 2, 2015.
22. Mr. Siegel submitted that Mr. Gupta had not been provided with a Notice of Inquiry. The Registrar notes that Mr. Gupta was provided with effective notice effectively through the Notice of Inquiry that was provided to Sussex. Further, Mr. Gupta was provided a formal Notice of Inquiry in January 2014. Mr. Gupta has had a full opportunity to respond to the issues in this inquiry, and has done so, initially through Sussex counsel and subsequently through his counsel, Mr. Siegel.
23. Counsel for Mr. Gupta submitted that the May 17, 2012 meeting was a consultation that would be exempt under the Lobbying By-law. On January 2, 2015, subsequent to the provision by OLR counsel of additional emails recently obtained by him, Mr. Siegel submitted that the evidence was consistent that “while the initial intention was to carry out lobbying of a conventional nature, the meeting that was ultimately carried out had evolved into something a bit different, namely a consultation at the City employee’s initiative by the time she was engaging instead with Mr. Gupta”.
24. With respect to whether the City employee was placed in a conflict of interest by Mr. Gupta’s lobbying, Mr. Siegel submitted in addition to the submissions on behalf of Sussex, which he adopted in their entirety, that Mr. Gupta’s actions were intended to further the purpose of the conflict of interest provisions by attempting to ensure that the City employee had no knowledge of Mr. Gupta’s relationship with Sussex; and that while the City employee was aware of Ms Wright’s relationship with Sussex, she apparently was not aware that Mr. Gupta was also associated with Sussex: “Whether or not you agree that this was an appropriate or effective means of avoiding a conflict of interest, I would submit that it was a bona fide effort

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to do so, and that a negative finding in this respect would be disproportionate to the circumstance.”

25. Mr. Siegel requested that the matter be disposed of without any adverse findings being made with respect to Mr. Gupta’s conduct.

Interpretation of § 140-45B

Paragraph 140-45B of the Lobbying By-law provides:

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.

The purpose of paragraph 140-45B is to enhance public confidence in the integrity of City government by preventing lobbyists from placing public office holders in a conflict of interest. Paragraph 140-45B is part of the code of conduct established by the City of Toronto in Chapter 140 of the Toronto Municipal Code (the Lobbying By-law).

City policy prohibits an employee from doing anything that would create a conflict of interest. The City’s Conflict of Interest Policy for employees states:

A conflict of interest refers to a situation in which private interests or personal considerations may affect an employee’s judgement in acting in the best interest of the City of Toronto. It includes using an employee’s position, confidential information or corporate time, material or facilities for private gain or advancement or the expectation of private gain or advancement. A conflict may occur when an interest benefits any member of the employee’s family, friends or business associates.

In my view, the purpose of § 140-45B is best achieved by interpreting “conflict of interest” consistently with the common law as including both “real” and “apparent” conflict of interest. The nature and purpose of § 140-45B is preventive, not punitive. Conflict of interest, both real and apparent, is to be avoided in order to promote the public trust in City government. Including “apparent” conflict of interest in the definition of conflict of interest is consistent with a broad and purposive interpretation of § 140-45B. The common law definition of conflict of interest is also consistent with the City’s Conflict of Interest Policy for employees.

The Integrity Commissioner and Lobbyist Registrar adopted the following definition of “conflict of interest” in [The Joint Interpretation Bulletin of the Lobbyist Registrar and Integrity Commissioner, Lobbying and Municipal Elections at the City of Toronto \(January 10, 2014\)](#):

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.

As explained in the Interpretation Bulletin, the Integrity Commissioner and the Lobbyist Registrar apply the common law definition of the term “conflict of interest” used by Madam Justice Denise E. Bellamy, Commissioner, in her report on the *Toronto*

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Computer Leasing Inquiry and Toronto External Contracts Inquiry (2005) and by the Federal Court of Appeal when considering a similar federal lobbyists' code of conduct provision in *Democracy Watch v. Campbell*, 2009 FCA 79.

In her report on the *Toronto Computer Leasing Inquiry* (see above), Madam Justice Bellamy wrote when considering conflict of interest in a municipal context in an inquiry about the involvement of lobbyists with Toronto City staff and members of Council in the City's computer leasing contracts, that "conflict of interest is essentially a conflict between public and private interests" (Volume 2, Good Government at pages 38 and 39):

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.

In *Democracy Watch v. Campbell*, the Federal Court of Appeal considered Rule 8 of the federal *Lobbyists' Code of Conduct*, which is similar to § 140-45B and provides:

Rule 8

Lobbyists shall not place public office holders in a conflict of interest by proposing or undertaking any action that would constitute an improper influence on a public office holder.

The Federal Court of Appeal adopted a definition of "conflict of interest" regarding Rule 8 that:

- Includes apparent as well as real conflict of interest;
- Defines conflict of interest as the presence of competing loyalties or conflicting obligations, a tension between the person's duty and some other interest or obligation, a "real or seeming incompatibility" between one's private interests and one's public duties or fiduciary duties;
- Does not require proof of actual influence by the personal interest upon the professional duty; and
- Does not require proof of actual receipt of a benefit.

The court discussed the meaning of "conflict of interest" in Rule 8 at paragraphs 41-49 as follows, in part:

[41] The common element in the various definitions of conflict of interest is . . . the presence of competing loyalties . . .

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[45] As this brief survey demonstrates, the idea of conflict of interest is intimately bound to the problem of divided loyalties or conflicting obligations. While the specific facts giving rise to a conflict of interest will vary from one profession to another, that which leads to the conclusion that a person is subject to a conflict of interest is the presence of a tension between the person's duty and some other interest or obligation.

[48] . . . It can hardly advance public confidence in the integrity and transparency of government decision-making to condone certain conflicts of interest, while prohibiting others. Any conflict of interest impairs public confidence in government decision-making.

[49] 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.

. . .

Since § 140-45B is not punitive but rather is preventive in nature, it should be interpreted as being remedial and in a broad and purposive way. This is consistent with s. 64 of the *Legislation Act, 2006*, S.O. 2006, c. 21, Sched. F, s. 64(1), which provides:

64. (1) An Act shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects. 2006, c. 21, Sched. F, s. 64 (1).

Including "apparent" conflict of interest in the definition of conflict of interest is consistent with a broad and purposive interpretation of § 140-45B. The common law definition of conflict of interest, which includes both real and apparent conflict of interest, accords with the purpose of the Lobbyists' Code of Conduct provision that lobbyists not place public office holders in a conflict of interest or in breach of their codes of conduct or standards of behaviour.

The purpose of § 140-45B is to enhance the public's confidence in the integrity of City government by preventing conflicts of interest from occurring. In the *Commission of Inquiry into the Facts and Allegations of Conflict of Interest Concerning the Honourable Sinclair M. Stevens* (1987), The Honourable W.D. Parker, Commissioner, wrote (Part One, at page 30):

The concern about appearance of conflict of interest as an important ethical postulate of modern government is one that is well founded. The reasons are obvious. Trust and confidence in government can be maintained and enhanced only if the occasions for apparent conflict are kept to a minimum. Public perception is important. Indeed, the perception that government business is being conducted in an impartial and even-handed manner goes a long way to enhancing public confidence in the overall integrity of government.

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The Honourable Jeffrey J. Oliphant, Commissioner, wrote in the *Report of the Commission of Inquiry into Certain Allegations respecting Business and Financial Dealings between Karlheinz Schreiber and The Right Honourable Brian Mulroney* (“Oliphant Commission Report”)(2010) at page 531 on defining conflict of interest, adopting the Parker Commission definition of conflict of interest, as follows:

. . . The 1987 Parker Commission defined a real conflict of interest as a “situation in which a minister of the Crown has knowledge of a private economic interest that is sufficient to influence the exercise of his or her public duties and responsibilities”. An apparent conflict of interest “exists when there is a reasonable apprehension, which reasonably well-informed persons could properly have, that a conflict of interest exists”.

An apparent conflict of interest may exist even if there is, in fact, no actual conflict. Although the final holding of the Parker Commission was ultimately challenged successfully in Federal Court on administrative law grounds, the definition of apparent conflicts of interest it offered is amply justified by other authorities. The Supreme Court of Canada, for example, seems to have equated an “apparent” conflict of interest with the administrative law standard of “reasonable apprehension of bias”.

The Federal Court of Appeal has applied what amounts to the same standard: “Would an informed person, viewing the matter realistically and practically and having thought the matter through, think it more likely than not that the public servant, whether consciously or unconsciously, will be influenced in the performance of his official duties by considerations having to do with his private interests?”

Apparent conflict of interest does not require actual knowledge of the conflict. The Parker Commission adopted the view that “real” and “apparent” conflicts of interest are distinguishable partly by whether actual knowledge by the public office holder of the conflict existed (Part One, page 32). A real conflict requires such knowledge whereas an apparent conflict does not:

. . . Real conflict requires, inter alia, knowledge on the part of the public office holder of the private interest that could be affected. No such actual knowledge is necessary for an apparent conflict because appearance depends upon perception.

Commissioner Parker took the view that “although appearance of conflict requires that the perception be fair-minded and reasonably well-informed, it does not require that the perception be based on a complete understanding of *all* the facts, including the public office holder's actual knowledge”.

The observations of the Oliphant and Parker Commissions regarding the purpose and interpretation of the conflict of interest provisions in codes of conduct for public office holders are relevant to § 140-45B. This provision clearly has the purpose of preventing lobbyists from placing public office holders in a conflict of interest. This achieves the object and purpose of the Lobbyists’ Code of Conduct, which is to enhance the integrity of government decision-making, and the public trust in that integrity.

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Discussion of Finding of Apparent Conflict of Interest

On the facts of this case set out above, I find that the test for “apparent” conflict of interest is met. A fair-minded member of the public, reasonably informed of the facts, would reasonably think that lobbying by lobbyists associated with Sussex created an apparent tension or incompatibility between the City employee’s private interest (her spousal relationship with a Sussex consultant lobbyist) and her public duty to write an impartial professional report on the issue of clothing drop boxes in the public interest.

I have concluded that lobbying by Ms Wright and Mr. Gupta regarding clothing drop boxes placed the City employee they lobbied in an apparent conflict of interest, contrary to § 140-45B. An appearance of conflict of interest resulted from the facts that a spousal relationship existed between another Sussex consultant and the City employee; Ms Wright, Mr. Gupta and the City employee’s spouse all worked for Sussex as consultant lobbyists in matters registered with the City of Toronto; and Prime (in whose name the lobbying was contracted and conducted) was wholly owned by Sussex.

Counsel for Mr. Gupta and Sussex submitted that there was no intent to place the public office holder in a conflict of interest; that there was a bona fide attempt to avoid a conflict of interest; that there was no actual knowledge by the City employee of the conflict; and that the City employee did not actually benefit from the conflict of interest. I accept all of these submissions.

In a finding of apparent conflict of interest, intent to place the public office holder in a conflict of interest, actual benefit by the public office holder and actual knowledge by the public office holder are not necessary elements.

I do not accept Mr. Binetti’s submission that Ms Wright sought advice on whether it would be possible to use Mr. Gupta’s Prime registration to reflect that the spouse of the City employee was being isolated behind an ethical wall. This has been refuted by the Registry Advisor, who was not aware that a member of Sussex was being isolated behind an ethical wall nor was she aware of the relationship between Sussex and Prime when Ms Wright sought advice on how a consultant lobbyist who worked for two firms should register. The Registry Advisor advised Ms Wright that the lobbyist should register under both firms. Subsequent to the giving of this advice, the OLR learned of the relationship between Sussex and Prime. As a result, the OLR requested Sussex to disclose that relationship in all of its registrations. Sussex did so. I draw no inference from these facts that Ms Wright was inappropriately advised or induced by OLR advice to transfer the file to Prime.

The meeting of May 17, 2012 was not a “public consultation” and therefore was not exempt under the Lobbying By-law, § 140-5B. This was a private meeting with Mr. Gupta and his client, not a public consultation. The Registrar permitted Mr. Gupta to correct his registration by reporting this meeting, which he has done. No adverse finding is made in this regard against Mr. Gupta.

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The City employee stated that she did not know Mr. Gupta was associated with Sussex and Mr. Gupta confirmed that he did not tell the employee this. This did not avoid placing the employee in an apparent conflict of interest.

Knowledge of a conflict of interest and intent to place the public office holder in a conflict of interest is not required in a finding that a lobbyist placed a public office holder in a conflict of interest. I accept the submissions made on behalf of Ms Wright and Mr. Gupta that they did not intend to place the City employee in a conflict of interest. I also accept that Sussex, by structuring the contractual relationship as between the client and Prime, and by removing the City employee's spouse from contact with the file, intended to avoid a conflict of interest. However, these attempts did not avoid creating an apparent conflict of interest.

As was made clear by the Federal Court of Appeal in *Democracy Watch v. Campbell*, actual influence by the private interest on the performance of the public duty is not required. What is at issue is the *appearance* of conflict of interest created by the juxtaposition of the City employee's private interest and her public duty around the writing of the clothing drop box report.

As the Parker Commission noted, actual knowledge by the public office holder of the conflict is not required in a finding of apparent conflict of interest. Full knowledge of all the facts is also not required. "Real" and "apparent" conflicts of interest are distinguishable partly by whether actual knowledge by the public office holder of the conflict existed (Part One, page 32). A real conflict requires such knowledge whereas apparent conflict does not:

. . . Real conflict requires, inter alia, knowledge on the part of the public office holder of the private interest that could be affected. No such actual knowledge is necessary for an apparent conflict because appearance depends upon perception.

Commissioner Parker took the view that "although appearance of conflict requires that the perception be fair-minded and reasonably well-informed, it does not require that the perception be based on a complete understanding of *all* the facts, including the public office holder's actual knowledge".

In conclusion, I find that the lobbying of the City employee by Sussex consultants placed the City employee in an apparent conflict of interest. This apparent conflict consisted of a tension or incompatibility between the City employee's spousal relationship with another Sussex consultant and her public duty to write an impartial report on the matter of clothing drop boxes.

Reasons for Disposition

The disposition in this report recognizes that breach of the Lobbying By-law's conflict of interest provisions is significant. The disposition also recognizes the lobbyists' lack of intent to breach the Lobbying By-law. Intent is not an element of breach of the Lobbying By-law, but may be relevant to the disposition where a breach has been found.

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Sussex has acted to mitigate past non-compliance and ensure future compliance by reporting their lobbying activities, attending OLR training sessions and consulting with the Registrar on a compliance protocol. These positive actions are taken into account in my disposition. I am supportive of these efforts, and have requested that Sussex continue to consult with me on its compliance protocol. I have also requested that Sussex seek my advice regarding any situations that potentially involve a conflict of interest, in order to ensure that future conflicts are prevented before they occur.

Respectfully submitted,

Linda L. Gehrke
Lobbyist Registrar
City of Toronto