
REPORT TO COUNCIL

**ON AN INQUIRY INTO PLACING MEMBERS OF
COUNCIL IN AN APPARENT CONFLICT OF
INTEREST**

LINDA L. GEHRKE
LOBBYIST REGISTRAR

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Table of Contents

INTRODUCTION.....	1
FINDINGS	1
Breach of § 140-42A	1
Apparent Conflict of Interest.....	1
DISPOSITION	2
INQUIRY PROCESS.....	2
BACKGROUND	3
ANALYSIS OF FINDING 1: BREACH OF § 140-42A.....	4
FINDING 2: APPARENT CONFLICT OF INTEREST	6
Interpretation of § 140-45B	6
Discussion of Finding of Apparent Conflict of Interest.....	11
Reasons for Disposition	13

Inquiry into Placing Members of Council in an Apparent Conflict of Interest

INTRODUCTION

In this report, the Lobbyist Registrar (“Registrar”) finds that officers of Apollo Health and Beauty Care (“the corporation”) breached the Lobbying By-law, §§ 140-45B and 140-42A by lobbying then-Mayor Rob Ford and then-Councillor Doug Ford about the relocation of the corporation and by inviting them to a tennis match and dinner. These activities placed the then-mayor and then-councillor in an apparent conflict of interest as a result of the business relationship between the corporation and the members’ family business.

The Registrar accepted that these breaches of the Lobbying By-law were inadvertent and unintentional. The corporation and its officers were not aware of the City’s Lobbying By-law and registry system.

The corporation has registered and reported its lobbying activities, and has undertaken to attend training in the Lobbying By-law. The corporation and its representatives have undertaken not to lobby Councillor Rob Ford in the current term, in order to avoid placing the member of Council in a conflict of interest.

FINDINGS

Breach of § 140-42A

1. Officers of Apollo Health and Beauty Care (“the corporation”) undertook to lobby then-Mayor Rob Ford (“the then-mayor”) and then-Councillor Doug Ford (“the then-councillor”) by inviting them to dinner and a tennis match, contrary to the Lobbying By-law, § 140-42A, which 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.

Apparent Conflict of Interest

2. The lobbying activities by the officers and the invitation to dinner and a tennis match placed the then-mayor and then-councillor in an apparent conflict of interest, contrary to § 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.

Inquiry into Placing Members of Council in an Apparent Conflict of Interest

DISPOSITION

1. The Lobbyist Registrar has permitted the corporation to retroactively register and report the lobbying activities described in this report.
2. The corporation has undertaken to attend training in the Lobbying By-law provided by the Office of the Lobbyist Registrar (“OLR”).
3. The corporation and its representatives have undertaken not to lobby Councillor Rob Ford during his current term of office.

INQUIRY PROCESS

The Registrar initiated this inquiry based upon information gathered by OLR Inquiries and Investigations Counsel (“OLR counsel”).

On March 4, 2013, OLR counsel sent a Notice of Inquiry to the corporation, setting out an allegation of unregistered lobbying related to a meeting in August 2012 with City staff, the then-mayor and then-councillor, together with an opportunity to respond to the allegations.

On March 20, 2013, Patricia Wilson of Osler, Hoskin & Harcourt LLP responded to the Notice of Inquiry on behalf of the corporation.

On June 29, 2013, OLR counsel requested and received from the Executive Assistant to the then-councillor email correspondence related to the allegations in the Notice of Inquiry.

On July 29, 2013, OLR counsel wrote to the president of the corporation informing him that the inquiry file would be closed, since the allegations of unregistered lobbying had not been substantiated.

On January 22, 2014, OLR counsel sent a new Notice of Inquiry with an opportunity to reply to the president of the corporation advising that as a result of the receipt of new information, the inquiry into the corporation’s lobbying activities respecting the then-mayor and then-councillor had been re-opened.

On March 11, 2014, Ms Wilson responded to the January 22, 2014 Notice of Inquiry on behalf of the corporation.

In March 2014, OLR counsel requested information from the offices of the then-mayor and then-councillor. The then-mayor’s Chief of Staff provided this information. The then-mayor also responded to the request for information.

On March 24, 2014, the then-councillor was issued a summons to give evidence under oath. On March 31, 2014, OLR counsel interviewed the then-councillor under oath.

Inquiry into Placing Members of Council in an Apparent Conflict of Interest

On April 23, 2014, OLR counsel wrote to the then-councillor, seeking certain information pertaining to an assistant in the then-councillor's office.

On May 12, 2014, the then-councillor authorized the release of the information pertaining to the assistant that coincided with his employment in the then-councillor's office. The then-mayor's Chief of Staff provided OLR counsel with the information pertaining to the assistant.

On July 25, 2014, OLR counsel sent a new Notice of Inquiry with opportunity to respond regarding whether the corporation had contravened §§ 140-42A and 140-45B of the Lobbying By-law.

On September 12, 2014, counsel for the corporation provided submissions in response to the July 25, 2014 Notice of Inquiry.

On October 3, 2014, OLR counsel sent an addendum to the July 23, 2014 Notice of Inquiry, advising that the OLR was conducting additional inquiries to determine whether the corporation had lobbied the then-mayor and/or then-councillor or other public office holders on additional matters.

On December 18, 2014, the Registrar sent notice of her proposed findings and facts upon which they were based to the respondents and their counsel. On January 8, 2015, the Registrar discussed her proposed findings with counsel for the corporation by telephone. On January 30, 2015, counsel for the corporation provided submissions in response to the proposed findings together with a statement by the corporation's chairman.

On February 25, 2015, the Registrar provided amended proposed findings and disposition to counsel for the corporation, together with an opportunity to respond. Counsel for the corporation discussed these proposed findings and disposition with the Registrar by telephone on March 3, 2015. Counsel for the corporation provided additional written submissions on the disposition of this inquiry to the Registrar on March 12, 2015.

BACKGROUND

1. The president of the corporation lobbied the then-mayor and then-councillor by email dated April 10, 2011, requesting their assistance with the corporation's facility expansion in Toronto.
2. The chairman of the corporation lobbied the then-mayor and then-councillor and their staff with respect to the relocation of the corporation to Toronto as follows:
 - a. By email dated April 21, 2011, requested their assistance regarding the terms of the award of a Tax Increment Equivalent Grant;

Inquiry into Placing Members of Council in an Apparent Conflict of Interest

- b. By emails dated June 14, 15, and 20, 2011 and in a meeting on June 17, 2011 with respect to the parking requirements in the site plan application;
 - c. By email dated October 20, 2011, requesting the Executive Assistant's assistance with the issue of planning permits;
 - d. By email dated November 8, 2011, requesting the then-councillor's assistance with the issue of a building permit;
 - e. By email dated November 17, 2011, requesting assistance to expedite road and street signage;
 - f. By email dated December 19, 2011, requesting help to obtain approval of the corporation's amended site plan with respect to parking and driveway width;
 - g. By email dated May 30, 2012, requesting assistance with the occupancy permit.
3. The corporation has registered and reported these lobbying activities in the City's registry as SM21555.

ANALYSIS OF FINDING 1: BREACH OF § 140-42A

On June 16, 2012, the president of the corporation wrote to the then-mayor, inviting him to attend a tennis match. The invitation to a tennis match and dinner was extended to the then-councillor and his mother on July 30, 2012. On August 8, 2012, the then-councillor and his mother attended dinner and the tennis match with the officers of the corporation.

The relevant section of the Lobbying By-law, § 140-42A, provides:

§ 140-42. Prohibited activities.

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

The purpose of this provision is to prevent lobbyists from using gifts and any form of benefit as a means to lobby a public office holder. This provision is an essential part of the Lobbyists' Code of Conduct. When lobbyists provide gifts and benefits to public office holders, this is a form of influence peddling and is improper conduct. The gift need not be specifically linked to a particular lobbying activity. A gift or benefit may create goodwill for future lobbying activities as well as current ones, as well as a sense of personal obligation giving rise to a real or apparent conflict of interest. The purpose of § 140-42A is to prevent these types of harmful results, which undermine the public confidence in the integrity of City government decision-making.

Inquiry into Placing Members of Council in an Apparent Conflict of Interest

Madam Justice Denise E. Bellamy, Commissioner, in her report on the *Toronto Computer Leasing Inquiry and Toronto External Contracts Inquiry* (Toronto, 2005), wrote in Volume 2, Good Government at pages 82-83 as follows:

100. No lobbyist should ever practise influence peddling. Councillors and staff should not risk compromising their positions by accepting any benefits of any kind from lobbyists.

Influence peddling includes giving gifts, buying meals, entertaining, bestowing favours, trading secrets, or taking any other steps with a government official to attempt to create a relationship of personal obligation. This is the heart of misconduct for a lobbyist.

Entertainment-based influence and relationship building have no place in lobbying the public sector. Entertainment- or favour-based relationship building does absolutely nothing to advance the public interest. It undermines public trust in the independence of public sector decision making, and therefore it has no legitimate role to play.

The practice of giving benefits, favours, or entertainment to staff or councillors can sometimes be subtle and indirect. A lobbyist might invite a member of staff to a friendly dinner. Vendors' associations and commercial interests of all kinds organize "information nights" or other forms of social contact with elected officials and staff involving meals or entertainment paid for by vendors. Such an event might be a boat cruise, the opening night of a hot new play or musical in town, a sports event, a concert, or a golf tournament. Elected officials and staff may be sorely tempted to accept such treats at a lobbyist's or commercial supplier's expense. But this would be wrong, and staff and councillors alike should decline these invitations.

Commercial suppliers and lobbyists who spend money on entertainment events for public servants expect an eventual return on their investment. They hope for influence. This practice, however, amounts to using favours or benefits to acquire influence. It is an inappropriate lobbying practice in the public sector, and as such should neither be offered by lobbyists or vendors nor be accepted, if offered, by councillors or staff.

The responsibility to stop these practices lies primarily with government officials, both councillors and staff. They should decline these types of invitations, explain why, and put forward policies that discourage lobbyists and vendors from offering favours or benefits as part of their public sector strategies. Lobbyists and businesses, for their part, should respect and abide by these imperatives. They should devise alternative ways of promoting their products or ideas that focus on the merits of the product or the idea itself, rather than on lavish dinners or professional sports events.

The corporation submitted that the tickets for the tennis match were four club tickets (not a suite); that the then-councillor and his mother attended only briefly; and that no discussion of corporate business or City of Toronto business occurred. There was no intent to act without propriety or place the then-mayor or then-councillor in any conflict of interest by extending this informal invitation. Further, there was no connection between the invitation and any lobbying. There was no discussion of corporate business or City of Toronto business at the event. The president issued the invitation and attended the event. The only instance of lobbying by the president was more than

Inquiry into Placing Members of Council in an Apparent Conflict of Interest

one year before the invitation was issued. There was no intent to breach § 140-42 or to act improperly by extending the invitation.

The test in § 140-42A is whether the officers undertook to lobby by offering and bestowing meals and entertainment. I find that they did so.

There is no minimum threshold below which the offer, providing or bestowing of a gift or entertainment would be exempt from the prohibition in § 140-42A. Intent to breach the section is not required. A lack of intent to breach the section or inadvertent breach is taken into account in the disposition of the case, once a finding of breach has been made.

The application of § 140-42A does not depend upon whether lobbying occurred during the event for which the invitation was issued. In 2011 and 2012, the officers were engaged in a course of lobbying the then-mayor and then-councillor about matters at the City of Toronto related to the relocation of the corporation to Toronto. When the invitation was issued on June 16, 2012 by the officers to these members of Council, the chairman had recently lobbied them on May 30, 2012, requesting assistance with the corporation's occupancy permit. The invitation to dinner and tennis is reasonably seen as part of that lobbying effort, cementing the relationship of the lobbyists and the public officer holders whom they were lobbying.

FINDING 2: APPARENT CONFLICT OF INTEREST

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, whether real or apparent. 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).

The corporation submits that the City has no legislative authority to enact § 140-45B. With respect, I disagree with this submission. Paragraph 140-45B is part of the code of conduct for lobbyists established by the City in the Lobbying By-law. The City's lobbyist registry and code of conduct for lobbyists is part of its accountability and transparency regime, established under Chapters 3 and 140 of the Toronto Municipal Code and authorized by COTA, PART V, ACCOUNTABILITY AND TRANSPARENCY. COTA section 166, paragraph 6 expressly authorizes the City to establish a code of conduct for lobbyists. The Lobbying By-law establishes a code of conduct for lobbyists, of which

Inquiry into Placing Members of Council in an Apparent Conflict of Interest

§ 140-45B is part. The code of conduct is established under authority of the *City of Toronto Act, 2006 (COTA)*, s. 166:

166. Without limiting sections 7 and 8, those sections authorize the City to provide for the registry described in subsection 165(1), to provide for a system of registration of persons who lobby public office holders and to do the following things:

...

6. *Establish a code of conduct for persons who lobby public office holders.*
[Emphasis added.]

COTA sections 7 and 8 give the City the powers of a natural person and “broad authority grants of power”.¹ COTA subsection 8(1) provides: “The City may provide any service or thing that the City considers necessary or desirable for the public.” The Ontario Court of Appeal has held that “in the absence of an express direction to the contrary, all municipal powers were to be interpreted broadly and generously within their context and statutory limits”.²

Subsection 8(2) paragraph 2 provides that the City may pass by-laws respecting:

7. *Accountability and transparency of the City and its operations and of its local boards (restricted definitions) and their operations.*

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 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 Computer Leasing Inquiry and Toronto External Contracts Inquiry* (2005) and by the

¹ Longo and Mascarin, *A Comprehensive Guide to the City of Toronto Act, 2006*, (2008) at page 89, citing *Croplife Canada v. Toronto (City)* (Ont CA), 2005 CanLII 15709 (ONCA); leave to appeal refused, 2005 CanLII 44363 (SCC).

² *Ibid.*, at page 88.

Inquiry into Placing Members of Council in an Apparent Conflict of Interest

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; and
- Does not require proof of actual receipt of a benefit.

The Federal Court of Appeal 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

[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

Inquiry into Placing Members of Council in an Apparent Conflict of Interest

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.

Inquiry into Placing Members of Council in an Apparent Conflict of Interest

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 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.

Inquiry into Placing Members of Council in an Apparent Conflict of Interest

Counsel for the corporation has submitted that the interpretation of “conflict of interest” in § 140-45B should be consistent with the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 (“MCIA”). I have concluded that the MCIA does not bind my interpretation of the Lobbying By-law. The MCIA is a code that applies to elected officials. The MCIA has no application to lobbyists. The MCIA is punitive whereas the Lobbying By-law is preventative. Applying the common law definition of conflict of interest to § 140-45B achieves the purpose of the provision and is not inconsistent with the MCIA. The nature of § 140-45B is quite different from the MCIA. The purpose of § 140-45B is to promote and enhance the integrity of City government by preventing conflicts of interest. It is a part of a Lobbyists’ Code of Conduct which is not penal in nature; rather the Code of Conduct seeks to ensure the integrity of the interactions between lobbyists and public office holders. By contrast, the MCIA is “a penal statute and punitive in nature”.³ The purpose of the MCIA is “to prohibit any member with a pecuniary interest, in a matter to be considered [by council or a local board] from participating in the decision-making process dealing with that matter”.⁴

Discussion of Finding of Apparent Conflict of Interest

In my view, a fair-minded member of the public, reasonably informed of the facts, would reasonably think that lobbying of the then-mayor and then-councillor by the officers of the corporation and the invitation to dinner and tennis match placed the members of Council in an apparent conflict of interest. The lobbying activities of the corporation created an apparent tension or incompatibility between the private interests of the then-mayor and then-councillor related to their family business and their duty as members of Council to serve the public interest in City matters. I have found that the officers placed the members of Council in an apparent conflict of interest. I have not found that the members of Council were placed in any actual or real conflict of interest. My reasons follow.

At the time the lobbying activities described in this report occurred, the corporation had a long-standing business relationship with the family business of the then-mayor and then-councillor. The family business was a wholly-owned subsidiary of a corporation of which the then-mayor and then-councillor were directors. The then-councillor was the sole director of the family business.

The corporation submitted the following, which I accept as undisputed facts. The corporation had a customer relationship with the family business of the then-mayor and then-councillor beginning in 2005 and continuing through 2011 and 2012. The family business was one of 26 label suppliers to the corporation in 2011 and 2012. Out of a total of over 2,000 suppliers, the family business represented less than 0.5% of the corporation’s annual supplier purchases. The corporation’s relationship with the family business continued in the normal course of business during the period 2011-2012. Decisions about the purchasing of labels from the family business did not involve the

³ O’Connor and Rust-D’Eye, *Ontario’s Municipal Conflict of Interest Act, A Handbook* (2007, Municipal World) at page 12.

⁴ Ibid.

Inquiry into Placing Members of Council in an Apparent Conflict of Interest

officers of the corporation. The purchasing process was administered by purchasing staff and a competitive bid or supplier canvas process. The family business was not given special consideration and did not have favoured supplier status. The then-mayor's interest in the family business was not known to the officers of the corporation.

I invited the corporation to provide the dollar amount of their annual business with the family business in the relevant time period. The corporation declined to do so for business confidentiality reasons. In these circumstances, I draw no conclusions from the percentage figure the corporation provided to me. The chairman stated that the corporation did not consider that their account was a significant part of the family business's business. However, I find that even if the significance of the business was small to both parties, this does not negate the fact that the corporation and the family business had a longstanding business relationship.

I find that it is likely that the then-councillor's interest in the family business was known to the officers of the corporation. In an interview under oath, the then-councillor stated that he had interacted with the officers of the corporation in his role at the family business. The family business was one of about five other companies in the label business supplying labels to the corporation. The family business was doing ongoing work supplying labels to the corporation around the time of the officers' lobbying activities.

The corporation submitted that the then-mayor and then-councillor initiated contact with the officers of the corporation in 2011, offering to assist them with the relocation of the corporations to Toronto. The officers responded to this offer of assistance with a number of requests, described in the "BACKGROUND" section of this report. The officers were under the impression that this was properly within the role of the official role of the then-mayor and then-councillor, since the corporation was a large manufacturer bringing over 450 jobs to the City. There was no discussion of business between the corporation and the family business as part of these requests for assistance. I accept this submission.

The business relationship between the corporation and the family business was a private interest of the then-mayor and then-councillor. When the officers of the corporation lobbied them, this placed these public office holders in an apparent conflict of interest between this private interest (the business relationship between the corporation and the family business) and their public duty to act solely in the public interest on the matters about which they were being lobbied.

Intent and actual knowledge of the conflict are not necessary elements in a finding of apparent conflict of interest. I accept that the officers of the corporation had no intent to place the then-mayor and then-councillor in a conflict of interest and no actual knowledge that they were doing so, and that their breaches of the Lobbying By-law were inadvertent. As noted by Commissioner Parker in the Sinclair Stevens Commission of Inquiry (see above), "no actual knowledge is necessary for an apparent conflict because appearance depends upon perception".

Inquiry into Placing Members of Council in an Apparent Conflict of Interest

In conclusion, while the then-mayor and then-councillor may have initiated contact with the officers of the corporation, they responded to that contact and invitation with requests for assistance, which constituted lobbying. These requests and the invitation to the tennis match and dinner placed the then-mayor and then-councillor in an apparent conflict of interest by creating an apparent tension or incompatibility between their private interest in their family business and its business relationship with the corporation, and their public duty as members of Council with respect to the matters about which the corporation lobbied them.

Reasons for Disposition

In the disposition of this matter, I have taken into account the purposes of the Lobbying By-law, which are to promote and ensure transparency and integrity in lobbying at the City, in the public interest; the remedial and preventive nature of the Lobbying By-law; and the novel nature of the finding that the corporation placed members of council in an apparent (not actual) conflict of interest. I have taken into account the fact that the corporation and its officers had no previous contact with the City's lobbyist registry, were not aware that they were in breach of the Lobbying By-law and did not intend to do so. Their breaches of the Lobbying By-law were inadvertent. I have taken into account the corporation's registration of its lobbying activities; its undertaking not to lobby the member of Council whom they placed in an apparent conflict of interest; and its undertaking to attend training in the Lobbying By-law offered by the OLR. The corporation's undertakings will ensure future compliance with the Lobbying By-law. The registration of lobbying activities provides the required transparency.

Counsel for the corporation has submitted that I have discretion whether to report to Council in this matter and whether to name the individuals and corporation involved. Counsel submits that this report should not "name and shame" the corporation or its officers; naming the corporation and its officers would cause negative publicity for the officers and the corporation, particularly in respect of the conflict of interest finding, that would have a real and significant negative impact. The publicity associated with previous media reports about the corporation has resulted in negative commercial and other repercussions for the corporation, including threatened suspensions of purchasing by customers and threatening emails.

Section 169 of *COTA* provides the Registrar with the discretion to report on an inquiry to City Council; when doing so, the Registrar may disclose such information as is necessary for the purposes of the report. I have carefully considered the corporation's submissions in deciding how to exercise my discretion under s. 169 of *COTA* to report on this matter to Council; and if so, whether it is necessary for the purposes of the report to disclose the identities of the corporation and its officers.

I am sympathetic to the impact of negative publicity upon this corporation and its officers. I recognize the inadvertence of the breaches of the Lobbying By-law found in this report. The corporation's registration and its undertakings help to ensure transparency and future compliance. However, I have decided that it is necessary and in the public interest to provide the transparency of a report to Council on this matter.

Inquiry into Placing Members of Council in an Apparent Conflict of Interest

The seriousness of the breaches of the Lobbying By-law in this case require that there be a report to Council. It is necessary and in the public interest to provide enough information to ensure transparency with respect to these events.

The purpose of this report is not to “name and shame”. It is to provide transparency and to educate the public, public office holders and lobbyists on the important issue of conflict of interest. Its purpose is also to ensure future compliance through awareness of the issues around conflict of interest.

Simply to provide an interpretation bulletin would serve the purpose of education, but would not achieve the purpose of transparency. The particular facts of this case need to be reported to Council and the public. While it is not necessary to name the officers who lobbied, it is necessary to identify the corporation in order to provide the necessary transparency to enable the public to scrutinize the public lobbyist registry in relation to the events described in this report.

The transparency provided by a report to Council is necessary in order to restore the public’s trust in government decision-making. The public is entitled to know what happened in this case and what has been done about it. The public needs to be able to scrutinize the public record provided by the lobbyist registry in relation to this matter in order to satisfy itself that the Lobbying By-law is complied with and the corporation’s undertakings are observed.

Respectfully submitted,

Linda L. Gehrke,
Lobbyist Registrar
City of Toronto