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## DUXBURY LAW PROFESSIONAL CORPORATION

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*Certified Specialist - Civil Litigation*

T. David Marshall B.A., B.A., L.L.B. L.L.M.

July 3, 2015

### VIA EMAIL & ORDINARY MAIL

City of Toronto  
Office of the Lobbyist Registrar  
375 University Ave.  
Suite 201  
Toronto ON.  
M5G 2J5

Attention: Mr. Stephen Littlejohn

### Re: Draft Lobbyist Registrars Report

Dear Mr. Littlejohn:

We are in receipt of your email of July 2, 2015 and the draft report of the Lobbyist Registrar, Linda E. Gehrke. This report is factually incorrect, misleading and should not be distributed. If this report has been distributed it should be rescinded and removed from any record before Council or the City's files.

Your report misleads or conflates the facts in this matter. Firstly, you are well aware that the charges in this matter were withdrawn and a lesser charge of lobbying without registration was the only charge pled to by the Equipment Specialist Inc. The charge against Mr. Vanderlinden was withdrawn; the facts and the only facts are those as set out on page 3 of the draft report. Those were the facts read into Court. You are also well aware that this was a negotiated resolution entered into in good faith and to avoid an extensive trial which would have required the attendance of several individuals from the City and which would have involved an extensive analysis and exposure of the City's record keeping and accounting practices and its tendering and contract award practices.

The Comments section of the draft report improperly purports to advance another history of the matter that was not agreed to as part of the plea bargain process. You have cited Section 140-41 of the City's By-law and you certainly infer from the manner in which you have described events that our client was in violation of this subsection. You clearly imply from this report that our client was interfering in a procurement process. That is not the case and that was not the bargain that was made; no findings were made on this matter.

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In addition, your Comments section is factually wrong. There was nothing improper with our client's discussion with City's employees about concerns our client had with parts and maintenance for sweepers. At the time of our client's communication a contract for parts and maintenance for sweepers was in place. This contract renews every year in the spring. It was a closed contract at the time and our client was trying to bring helpful information to the City's attention. A contract was in place and there was no procurement process under way at the time in the respect to parts and maintenance for City sweepers.

Our client questions the purpose of this report. While the City of Toronto Act does allow the Lobbyist Registrar the discretion to report to Council clearly our client questions the purpose and timing of this report. If the purpose of the report is to simply document to Council that there has been another incident involving the lobbying by-law then there was no need to go well beyond the recitation of that fact and tread into unproven and untested allegations against our client. Indeed, in your summary section you say that "this is the second time the City has obtained a conviction..." While this may be true of your By-law, the clear inference is that this is the second conviction against our client. This is not true.

Our client's plea was negotiated on the specific basis that the lesser charge would not be used as a foundation to in any way affect our client's ability to fairly compete and submit tenders to the City of Toronto. Our client can only conclude that the purpose and timing of this report is to adversely affect our client's ability to compete on a level playing field.

Our client wants a fair and bias free chance to provide services to the City of Toronto. Please withdraw or amend your report and confirm.

Yours very truly,

DUXBURY LAW  
PROFESSIONAL CORPORATION

Per:

A handwritten signature in black ink, appearing to read 'Brian Duxbury', with a large, stylized loop at the end.

Brian Duxbury  
BD:td  
Encls.