
REPORT TO COUNCIL

**ON AN INQUIRY FOR INACCURATE AND
MISLEADING REGISTRATIONS**

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SUMMARY

The Lobbying By-law requires that accurate and factual information be provided through the public registry and to public office holders. Lobbyists must not knowingly mislead anyone and should use proper care when providing information to the public and to public office holders. Information provided by lobbyists to the public through the registry must be free of error. When communicating with public office holders, lobbyists must ensure that both, the identity of who they are acting on behalf of, and the purpose for the communication, are disclosed correctly.

FINDINGS

1. Chris Korwin-Kuczynski, a registered consultant lobbyist, reported meetings on May 1, 2015 with 16 councillors regarding SM11093. The meetings did not happen. As a result, these reports are inaccurate and mislead the public, contrary to s. 140-43 of the Lobbying By-law, which provides:
 - A. *Lobbyists shall inform their client, employer or organization of the obligations under this chapter.*
 - B. *Lobbyists shall provide information that is accurate and factual to public office holders.*
 - C. *Lobbyists shall not knowingly mislead anyone and shall use proper care to avoid doing so inadvertently.*
 - D. *Lobbyists shall be open and frank about their lobbying activities, while respecting confidentiality.*
 - E. *Lobbyists shall not divulge confidential information unless they have obtained the informed consent of their client, employer or organization, or disclosure is required by law.*
 - F. *Lobbyists shall not use any confidential or other insider information obtained in the course of their lobbying activities to the disadvantage of their client, employer or organization.*
2. On April 30, 2015, Sid Catalano sent an email to 16 councillors and the Mayor's Office regarding SM21287. He reported these emails as occurring on May 1, 2015. As a result, these reports are inaccurate and mislead the public, contrary to s. 140-43.
3. The email package suggested wording for a proposed amendment to recommendations in PG3.2, a staff report titled "Sign By-law Enforcement: Potential Amendments to the City of Toronto Act, 2006". **The package also contained a**

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document titled “Backgrounder & Fact Sheet”. Suggesting an amendment to a recommendation is not a breach of the Lobbying By-law.

4. Mr. Korwin-Kuczynski attended Toronto City Hall on the second floor on May 1, 2015 and met with a staff member of the Mayor’s Office, Ms. Chris Phibbs. He reported this meeting as a telephone call. He met Ms. Phibbs and provided her with a package of materials in the Council members’ office area which was identical to the email package sent by Mr. Catalano. He did not sign the log book, which is a required procedure when visiting the Council members’ area. His failure to sign the log book is not a breach of the Lobbying By-law. However, it is a breach of the City Clerk’s established procedures for visiting the councillors’ area. These procedures are posted on the website of the Office of the Lobbyist Registrar (“OLR”).
5. One councillor found a package of materials in the councillor’s mailbox which was identical to that which was emailed by Mr. Catalano. The sender was not identified, however, it is presumed to be Mr. Catalano or Mr. Korwin-Kuczynski, who are known to have provided the same package by email and personally. Failure to identify the sender of the package found in the councillor’s mailbox is a breach of s. 140-40 of the Lobbying By-law, which provides:
 - A. *Lobbyists communicating with a public office holder shall disclose the identity of the individual, corporation, organization or other person, or the partnership, on whose behalf they are acting, as well as the reasons for the communication.*
 - B. *Lobbyists communicating with a public office holder on a duly registered and disclosed subject matter shall not use that opportunity to communicate on another subject matter, unless first having registered as required and disclosing the identity and purpose.*

DISPOSITION

1. Mr. Korwin-Kuczynski and Mr. Catalano are provided an opportunity to correct subject matters SM11093 and SM21287 within three business days. Failing correction of SM11093 within three business days, this registration will be revoked under s. 140-36B of the Lobbying By-law, which provides:
 - B. *The Registrar may suspend or revoke a return or other document submitted to the Registrar under this chapter that is subsequently found to not comply with the requirements of this chapter or to contain information or a statement that is inaccurate or no longer accurate.*
2. Mr. Korwin-Kuczynski is advised to follow the procedures of the City Clerk requiring that he log in at the reception desk and be escorted to and from the councillor’s office when visiting the office of a member of Council.
3. Mr. Korwin-Kuczynski and Mr. Catalano are advised not to leave unidentified packages of materials in the mailboxes of members of Council.

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4. Mr. Korwin-Kuczynski and Mr. Catalano as a condition of continued registration with the OLR, within six months of the date of this report, attend training on the Lobbying By-law provided by the OLR, as required by s.140-36.2B(1) of the Lobbying By-law which provides:

B. Without limiting the generality of Subsection A, conditions for registration, continued registration or a renewal of registration of a lobbyist may include:

(1) a requirement to attend training and other educational courses;

5. The results of this inquiry shall be reported to Toronto City Council in accordance with s. 169, *City of Toronto Act, 2006* and Chapter 3, s. 3-7B., Toronto Municipal Code.

COMMENTS

The disclosure of lobbying activity to the public through the registry and compliance with the Lobbyists' Code of Conduct are important to building confidence in City government. Proper adherence to the Lobbying By-law, which includes the Lobbyists' Code of Conduct, requires that the information provided through the registry and to public office holders be accurate and factual.

FACTS

1. On March 25, 2015, the Chief Building Official and Executive Director, Toronto Building submitted a report to the Planning and Growth Management Committee ("PGMC") titled, Sign By-law Enforcement: Potential Amendments to the City of Toronto Act, 2006, a report concerning Subsection 110(1) of COTA. The wording of s. 110(1) of *City of Toronto Act, 2006* ("COTA") prevents City Council from regulating signs which were compliant with the regulations in force at the time subsequent regulations were enacted. As a result of s. 110(1), an estimated 60,000 existing signs are excluded from having to comply with any of the regulations contained in the harmonized Sign By-Law which City Council enacted in 2010.

The staff report recommended that:

1. *City Council request that the Province of Ontario amend Subsection 110(1) of the City of Toronto Act, 2006, to provide increased authority for the City to regulate the operation of existing advertising devices, including signs; and,*
2. *City Council request that, following amendments to Subsection 110(1) of the City of Toronto Act, 2006, the Chief Building Official and Executive Director, Toronto Building engage in further consultation with stakeholders and members of the public concerning what regulations should be applied to existing non-conforming signs.*

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2. On April 13, 2015, PGMC considered the report as agenda item PG3.2 and amended the staff recommendations. The Planning and Growth Management Committee recommended that:
 1. *City Council request that the Province of Ontario amend Subsection 110(1) of the City of Toronto Act, 2006, to provide increased authority for the City to regulate the operation of existing advertising devices, including signs;*
 2. *Prior to Council's consideration of the 2016 review of the City of Toronto Act, City Council request the Chief Building Official and Executive Director, Toronto Building, to consult further with affected stakeholders and the public on potential amendments to Subsection 110(1) of the City of Toronto Act, 2006 to remove or define the term 'substantial alteration' so that the extent of protection provided to existing signs by the legislation is clarified, for consideration by Council as part of the 2016 review; and*
 3. *City Council request that, following amendments to Subsection 110(1) of the City of Toronto Act, 2006, the Chief Building Official and Executive Director, Toronto Building engage in further consultation with stakeholders and members of the public concerning what regulations should be applied to existing non-conforming signs.*
3. On April 30, 2015, Mr. Sid Catalano, on behalf of Pattison Outdoor Advertising, by way of an email copied to Mr. Korwin-Kuczynski, sent 16 City councillors and the Mayor's Office the following proposed amendments to the PGMC recommendations:

Proposed amendment to Recommendation 1, contained in PG Item 3.2, so that it reads

1. *City Council request that the Province of Ontario amend Subsection 110(1) of the City of Toronto Act, 2006, to provide increased authority for the City to regulate the operation of existing advertising devices, and the City be permitted to apply current illumination standards currently in the harmonized Sign By-law to legally non-conforming signs, and that previously authorized signs (legally non-conforming) not be required to be removed or made to comply with height, size or location requirements of the harmonized Sign By-law, should the Province amend or repeal S 110(1).*

OR

Delete # 1, 2 & 3, contained in PG item 3.2 and in their insert the following:

1. *Prior to Council's consideration of the 2016 review of the City of Toronto Act, City Council request the Chief Building Official and Executive Director, Toronto Building, to establish a working group with members of Council, to be appointed in accordance with regular Council procedure, stakeholders and the public, and to report back to Planning and Growth Committee not later than November 16 2015, on potential amendments to Subsection 110(1) of the City of Toronto Act, 2006, concerning legal non-conforming signs, the removal or definition of the term "substantial alteration" so that the*

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extent of protection provided to existing signs by the legislation is clarified, and a voluntary compliance by sign industry members to reduced hours of illumination as proposed on April 13 2015 at Planning and Growth Committee, for consideration by Council as part of the 2016 review.

4. On May 5, 6 and 7, 2015, City Council considered PG3.2, the PGMC recommendations. City Council amended the recommendations and adopted the following:
 1. *City Council request the Province of Ontario to give the City of Toronto the authority to govern all signs in the City by deleting Subsection 110(1) of the City of Toronto Act, 2006.*
 2. *Prior to any change to City By-laws respecting signs, City Council request the Chief Building Official and Executive Director, Toronto Building, to establish a working group composed of industry representatives and affected stakeholders to provide advice to the Chief Building Official and Executive Director, Toronto Building about potential amendments to Chapter 694, Signs, General of the City of Toronto Municipal Code; and City Council direct that working group meetings be held in public.*
 3. *City Council request the Chief Building Official and Executive Director, Toronto Building, to report on the recommendations of the working group to Planning and Growth Management Committee in the fall of 2016 with respect to potential amendments to Chapter 694, Signs, General of the City of Toronto Municipal Code.*

Information obtained by the OLR Inquiry

1. On May 4, 2015, a member of Council told the Lobbyist Registrar (“Registrar”) that a person or persons unknown left a document package (the “package”) related to an upcoming Council meeting in their mailbox in the secure Council Chamber area. The councillor informed the Registrar that they suspected lobbyists Mr. Korwin-Kuczynski and Mr. Catalano, as the contents of the package were substantially similar to an electronic package they recently received from the pair. The councillor provided the Registrar with a copy of the package and the electronic package they felt was similar.
2. As of May 4, 2015, Mr. Korwin-Kuczynski and Mr. Catalano’s registrations SM11093 and SM21287 did not contain a communication that reflected the package and instructed the Lobbyist Registry Advisor to monitor lobbyists Mr. Korwin-Kuczynski and Mr. Catalano’s registrations for the next three days and to report any updates.
3. On May 7, 2015, Mr. Catalano updated SM21287. The update did not reflect the package.
4. The City Council Agenda for PG3.2 did not reflect any submissions to Council that paralleled the package.

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5. As of May 14, 2015, the security log books at the Council reception areas, A, B and C, to the secure councillor office area did not record any visits from Mr. Korwin-Kuczynski or Mr. Catalano in and around May 1, 2015.
6. On June 22, 2015, a second councillor's office informed the OLR that the councillor did not meet with Mr. Korwin-Kuczynski on May 1, 2015 as reported in SM11093
7. On August 10, 2015, Mr. Catalano informed Counsel that the May 1, 2015 communications reported were actually made on April 30, 2015. Mr. Catalano emailed a screenshot of the original email to the 16 councillors and the Mayor's Office, the date reflected April 30, 2015.
8. On August 12, 2015, Mr. Korwin-Kuczynski told Counsel that he did not meet with any public office holders on May 1, 2015 as reported in SM11093. He said the method of communication was by telephone and that he left messages for public office holders, but only three returned his call. He indicated that his daughter sometimes enters his data as he is not good with computers and she may have made the errors in reporting.
9. A witness who is a senior public office holder told Counsel that she saw Mr. Korwin-Kuczynski on May 1, 2015 on the second floor of City Hall.
10. Mr. Korwin-Kuczynski and Mr. Catalano corrected the deficiencies in subject matters SM11093 and SM21287 respectively.
11. The Lobbyist Registrar sent her proposed findings, disposition and facts upon which they were based, to each of Mr. Korwin-Kuczynski and Mr. Catalano on November 1, 2016. The Registrar requested that they respond to her proposed findings and dispositions by November 15, 2016. Mr. Korwin-Kuczynski and Mr. Catalano each advised the OLR that they had no submissions.
12. Both Mr. Korwin-Kuczynski and Mr. Catalano co-operated with the OLR throughout this inquiry. They are each scheduled to attend training on the Lobbying By-law as provided by the OLR on December 7, 2016, in satisfaction of the terms and conditions of continued registration with the OLR.

This report is made in the public interest.

Respectfully submitted,

Cristina De Caprio
Lobbyist Registrar