January 2015

Inside This Issue

Message from the Registrar 1
Municipal Round Tables & Advisory Panels 2
The Role of POHs in Supporting a Lobbyist Registration Regime 2
How do I Confirm if a Lobbyist is Registered with the OLR? 5
What is Pay to Play? 6
New Lobbyist Registry – City of Hamilton 7

* The statements or opinions that appear in this newsletter reflect the personal views of the authors in their individual capacities and do not represent the views of the Office of the Lobbyist Registrar.

Message from the Registrar

By Linda Gehrke*

As we start a new year and a new term of City Council, it is a time to reflect and to move forward. Whether we are public office holders, members of the public or lobbyists, all of us have a stake in promoting and ensuring the transparency and integrity of the government of our great city.

We all have a role to play in local democracy.

I hope you will find this newsletter informative and helpful. Please feel free to contact us with your questions and comments, and visit our website at www.toronto.ca/lobbying.

Best wishes for a healthy and happy 2015.

*Linda Gehrke is the Lobbyist Registrar for the City of Toronto.
Municipal Round Tables and Advisory Panels

By Barbara Broden*

On occasion the City invites stakeholders to take part in discussions that help shape City policy. Stakeholder input offers expertise, recommendations and alternate viewpoints that municipal policy decisions might otherwise lack. Often the stakeholders are representatives of private businesses and/or members of organizations that represent commercial interests.

The problem, however, whether merely perceived or in fact, arises when roundtables and advisory panels attended by representatives of private interests are not open to public scrutiny. The Organization for Economic Co-operation and Development (OECD) cites this as one reason for erosion of public trust in government:

"...an emerging risk to the integrity of policy making is the capture of advisory groups by private interests to exert undue influence. When, for example, corporate executives or lobbyists advise governments as members of an advisory group, they act not as external lobbyists, but as part of the policymaking process with direct access to decision-makers." 1

The Lobbying By-law allows that when consultations are public, transparency is achieved and communication that must otherwise be reported as lobbying is exempt from registration requirements (Lobbying By-law 140-5 A. and B.)

Lobbying communication that takes place at municipal round tables and advisory panels that are not open to the public, unless other exemptions apply, must be reported. This transparency reinforces trust that officials are making policy decisions for the good of all City residents, and that private interests are not directing the decision-making process for their particular benefit.

If you have been invited to take part in a round table or advisory panel at the City, please contact the Office of the Lobbyist Registrar for advice on whether you need to register and report communications that occur in the course of the meeting.

Please contact us at 416-338-5858 or email lobbyistregistrar@toronto.ca.

* Barbara Broden is a lobbyist Registry Advisor at the City of Toronto’s Office of the Lobbyist Registrar.

The Role of Public Office Holders in Supporting a Lobbyist Registration Regime

By Joan Teri*

The lobbying regulations in Canada (i.e. federal2, provincial3 and the few municipalities which have the regulations4) regulate the interactions between public officials and the people who try to influence government decisions or policies. The regulations are based on the core principles: that lobbying of public office holders is a legitimate activity; transparency - public holders and the public should be able to know who is influencing the government; and integrity

2 Office of the Commissioner of Lobbying Canada
4 City of Ottawa Lobbyist Registry, City of Hamilton Lobbyist Registry and City of Toronto Office of the Lobbyist Registrar

- public disclosure of lobbying activities and the standard of conduct for lobbyists are important to the integrity of the government decision-making processes. These principles are balanced so that they do not interfere with the public interest of free and open access to the governments.

The public interest is served well by having well-informed governments that have benefited from the input and viewpoints of a wide range of stakeholders in formulating and developing workable policies and programs. However, the viewpoints from the stakeholders are required to be obtained in a transparent manner and within acceptable limits so that the public can have confidence in the integrity of government decision-making processes. For example, the City of Toronto’s codes of conduct for the City’s employees, members of Council and their staff state that they are expected to serve the government in a manner which upholds the highest standards of propriety in public life by taking care of the public interest as the first priority. With respect to lobbyists, Members of Council must not take gifts or benefits of any kind from lobbyists or their clients; they must not knowingly communicate with unregistered lobbyists; and they must report breaches of the Lobbying By-law to the Lobbyist Registrar. City staff involved with procurements will have similar obligations when amendments to the Lobbying By-law come into effect on December 31, 2015. New conflict of interest provisions for City staff and for staff of Members of Council import provisions that are consistent with the Members Code of Conduct.

The role of lobbyist registrars is to enforce the lobbying legislation, provide advice and interpretation of the legislation, conduct inquiries or investigations where applicable and maintain the lobbyist registries which are publicly available. In the case of the City of Toronto Lobbyist Registry, the Lobbying By-law provides that lobbyists are required to register themselves before communicating with public office holders and also report the subject matter (the issues which they would like to discuss). This is done before any communication has been made with a public office holder. When registering themselves, the lobbyists are required to provide information such as their business names, subject matter which will provide the nature and implications of the issues they would like to discuss, their accurate disclosure of clients information, beneficiaries of the particular lobbying activity, financial contributors, coalition members and also register grassroots communications (when applicable). They are required to report their lobbying activities within three business days after they had communicated with the public office holders. The information includes the identification of the public office holder whom they have communicated with, the date of the communication and the mode of communication.

The Lobbying By-law puts the onus on lobbyists to comply, but public office holders too on the other hand are expected to uphold the lobbyist registration.

---

5 Human Resources Policies – Conflict of Interest
6 Code of Conduct for Members of Council, City of Toronto
7 Human Resources Management and Ethical Framework for Members’ Staff
8 Human Resources Policies – Conflict of Interest and Attachment 1 - Human Resources Management and Ethical Framework for Members’ Staff
9 The City of Toronto Lobbyist Registrar conducts inquiries. Most but not all jurisdictions conduct investigations: Toronto, Ottawa, Québec, Canada, Newfoundland Labrador, Alberta, British Columbia and now Ontario (schedule 8 of Bill 8, the Accountability and Transparency Act - not yet proclaimed legislative amendments). Manitoba does not conduct investigations or inquiries.
10 www.toronto.ca/lobbying

11 The Lobbying By-law: Chapter 140 of the Toronto Municipal Code
regime. Their role is to ensure that lobbying is transparent and that lobbyists comply with their code of conduct. They are required to be familiar with the regulations, and to help in the compliance process by not knowingly engaging in unregistered lobbying, by reporting breaches of the Lobbying By-law and by consulting with the Lobbyist Registrar when they have questions about lobbying. The public interest favouring disclosure of the relationship between public office holders and the lobbyist is of utmost importance so as to make it clear who is exerting influence in the government decision-making process. As a best practice, we recommend that public office holders refer potential lobbyists to the Office of the Lobbyist Registrar (OLR) for registration and advice. In this way, public office holders can encourage potential lobbyists to register themselves properly with the registry before they communicate with them.

Public office holders should be familiar with the Lobbying By-law, including the definitions of lobbying and lobbyist; the requirement to register before lobbying and to report all lobbying activities within 3 business days; and the lobbyists’ code of conduct. The public office holder can assist the lobbyist registry to ensure the accuracy of its data by regularly reviewing the lobbyist registry’s reports of lobbying with respect to them. Moreover, if the public office holder feels that the communication they had with the lobbyists was not solely based on the registered subject matter, they might encourage the lobbyist to register the appropriate subject matter and report this to the OLR. Public office holders can also remind lobbyists to register a communication if they feel that the communication they have had with them could be a lobbying activity. They should report any suspected unregistered lobbying to the OLR.

To maintain professionalism between public office holders and lobbyists, it is best that their communications are conducted during business hours and in formal business settings. This will make the interaction between the public office holder and the lobbyist more transparent and business-like and less casual, and thus encourages the lobbyist to register and report their lobbying activities.

Public office holders are expected to conduct themselves in conformity with the highest ethical standards. By refusing gifts and benefits from lobbyists and their clients and by avoiding conflicts of interest with and other forms of improper influence by lobbyists, they are upholding the Lobbying By-law as well as complying with their own Code of Conduct.

Senior public office holders are also expected to adhere to the post-employment lobbying "cooling-off period". The Lobbying By-law restricts former senior public office holders from lobbying current public office holders for 12 months. The intent of this provision is to prevent improper influence and conflicts of interest resulting from the former senior public office holder cultivating close connections and using confidential information they may have developed or received while working in City government. This addresses concerns about the "revolving door" between government and lobbyists.

Public office holders should contact the Office of the Lobbyist Registrar for information and advice on particular situations, as well as training about the Lobbying By-law. The frequent interaction between public office holders and the lobbyist registry increases

---

12 Code of Conduct for Members of Council, City of Toronto; Human Resources Procedures/Guidelines - Appendix 2 Supplementary Guidelines; and Attachment 1 - Human Resources Management and Ethical Framework for Members’ Staff

13 Section 140-9 Restrictions on Former Senior Public Office Holders
the awareness of the public office holder and helps to promote compliance with the Lobbying By-law. The lobbyist registration regime will be greatly strengthened with public office holders' commitment to identify lobbying activities and ensure compliance of the lobbying bylaws. This will therefore establish "win-win" solutions for government and the public in achieving transparency and integrity.

*Joan Teri is a Lobbyist Registry Advisor at the City of Toronto's Office of the Lobbyist Registrar.

**How do I Confirm if a Lobbyist is Registered with the OLR?**

By Concetta Volpe*

An individual is not permitted to lobby public office holders at the City of Toronto until they have obtained a lobbyist registration number and an approved subject matter registration number from our office. Once these are received, the lobbyist's name and subject matter information are posted to the Registry's public disclosure site about the particular subject matter(s) they propose to lobby about.

If you wish to confirm a lobbyist and their subject matter are registered, you can find this information on our public disclosure site. To get to the public disclosure site, you need to log on to the Registry's main web page found at www.toronto.ca/lobbying, and click on the "Search the Registry" link on the right side of the screen and then select "search" on the Search the Lobbyist Registry – Disclaimer page that appears.

If you know the lobbyist's name, but not the lobbyist's class, ie Consultant, In-House or Voluntary, you can search by their last name. In the box under "Search For" enter the individual's last name, ensuring to place quotations around the name, and select "Search".

This will bring up all ongoing, active, subject matter registrations in which the individual lobbyist is lobbying.

If you do not know the name of the lobbyist, but know their registration class, you may search for them using the "List of" section located in the middle of the "Search the Lobbyist Registry" screen, which will allow you to search by lobbyist classification if the lobbyist is registered.

If you select "Lobbyists" in the "List of" section, you will get an alphabetical listing of all the Consultant/Voluntary Lobbyists, by last name that are registered with the Office of the Lobbyist Registrar. If you know the Consultant/Voluntary Lobbyist's firm or the name of the client of the lobbyist, but not the lobbyist's name, you can select "Firms or Clients" and an alphabetical list will appear with either the Consultant/Voluntary Firms or Clients, depending on which you selected.

If you know the lobbyist is registered as an In-House Lobbyist but do not know the individual's last name you can select "Senior Officers". This will provide you with the list of In-House Lobbyists responsible for filing returns and sometimes also lobbying on behalf of their business or organization. If you select "In-House Lobbyists" you will get an alphabetical listing of all lobbyists registered to lobby on behalf of their business or organization.

If you still don't find the individual you are looking for, this individual may not be approved to lobby at the City of Toronto. To make sure, please contact the Office of the Lobbyist Registrar by telephone at 416-338-5858 or email at lobbyistregistrar@toronto.ca and a Lobbyist Registry Advisor will be happy to assist you.
*Concetta Volpe is a Lobbyist Registry Advisor at the City of Toronto’s Office of the Lobbyist Registrar

What is "Pay to Play"?

By Geoff Gallagher*

This term is used in many different areas of life (sports: "paying to get in the game"; the music industry: the NFL asked potential performers to pay for the opportunity to perform during the halftime show of the Super Bowl; beer brewing: pubs accuse brewery owners of "beer bribery" when they must pay certain brewers to carry their beers; and the list goes on).

The above examples are from the private sector, where public and private interests do not cleanly intersect. But it is also a term commonly used in politics. Campaign financing is described by various academics and commentators as the wealthy paying to play - buying access to, and influence over, elected politicians.

But there is more to political pay to play than campaign financing; in the lobbying world the term is often used to refer to the provision of gifts, meals, tickets and favours of various other kinds given by lobbyists to public office holders. To most of the working public such activity is perceived as perks that the public wouldn't get in the course of their own work, and also as blurring the line between private benefits and public service.

Public office holders who say that they can't be bought for a coffee make a valid point. But this point is overshadowed by two others: 1) public perception is that gifts are a form of influence, eroding public trust in government and 2) lobbying is about building relationships over time and people have a psychological tendency to repay even small favours. As Kevin A. Ring states in an article for the Washington Post entitled "Advice on How to Stay Out of Jail - from a Lobbyist who Didn't:"

"Numerous psychologists and behavioral economists have confirmed the principle of reciprocity: People are hard-wired to repay even small favors or gifts". 14

Lobbyists often overlook a collateral benefit to bans on gifts and favours to public office holders; they cannot be asked to pay to play by public office holders that may seek out such favours. They cannot be put in a position where they are asked to do so or can at least cite in response that it is prohibited by law. This should lessen concerns that other lobbyists, perhaps with more resources, are able to curry more favour – or at least avoid disfavour - than they themselves can afford. And this should also assuage members of the public that wish to lobby their officials; well heeled professional lobbyists need not have an upper hand in this area.

Chapter 140 of the Municipal Code, Lobbying states:

§ 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.

This is otherwise known as a total gift ban. Total gift bans are a key aspect of avoiding the pitfalls of pay to play and strengthen the functioning and accountability of local

________________________
New Lobbyist Registry – City of Hamilton

By Geoff Gallagher*

Hamilton is joining only two other Ontario municipalities (Toronto and Ottawa) in regulating the role that lobbying plays in its local government.

Seven years ago Hamilton formed an accountability and transparency subcommittee which resulted in a lobbyist registry / integrity commission. Approved by Council on Wednesday September 10, 2014 the new lobbying regime is scheduled to be effective Jan. 25, 2015. The role of Integrity Commissioner was filled in 2008.

The debates leading up to the passage at Council raised the same concerns faced by other attempts to establish lobbyist registry regimes: that a registry may scare away business by driving potential investors to other less regulated jurisdictions, and what level and manner of reporting of lobbying activities is sufficient to protect the transparency and accountability of municipal decision making. Under the Hamilton Registry By-law (the "By-law"), lobbyists will register a subject matter that they intend to lobby on at least one business day before the communication occurs; his or her identity and contact information, the type of lobbyist (consultant, voluntary unpaid or in-house); the name of the individual or individuals he or she is lobbying; the identity of the individual, client or entities on behalf of whom the communications are taking place; and the start and end dates of the intended lobbying.

It also provides that the Registrar may prohibit an individual from lobbying for 30 days after a first offence, 60 days after a second offence and a longer period after a third or further offence, as determined by the Registrar.

In two years the By-law will face review.

The search for a new Registrar has begun with interviews expected in January 2014.

*Geoff Gallagher is the Lobbyist Compliance Investigator at the City of Toronto's Office of the Lobbyist Registrar.

You're Invited!

The Office of the Lobbyist Registrar is always looking to expand the community of contributors to the Registry Insider.

If you have an idea or an article that you would like to share with Registry readers please submit it by email to: ggallag@toronto.ca.

Please be advised that we retain editorial discretion.