



# **Lobbyist Registration & Disclosure Systems in Ontario**

**December 7, 2021 General Committee Meeting**

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## INTRODUCTION

- There is growing public interest in matters related to ethics & integrity in municipal government.
- Local democracy in particular is based on the fundamental notion of respect & equality. These concepts imply positive ethical conduct by elected officials & municipal staff.



## INTRODUCTION

- In general, “lobbying” refers to communication with government & administration in an effort to influence policy or decision making.
- The public often considers the lobbying of elected officials & administrators at any level of government to be troubling.
- However, lobbying plays an important role in the creation of public policy & is a **legitimate activity** provided it is done in an honest & appropriate manner.
- The public has a right to know what lobbying has occurred & who has been lobbying whom.
- The public also has the right to expect those that lobby will do so within the law & within socially acceptable standards of conduct.



## INTRODUCTION (CONT'D)

- On September 5, 2012, General Committee (GC) received a report regarding new *Municipal Act* (the Act) provisions explicitly authorizing the establishment of lobbyist registration & disclosure systems in Ontario municipalities.
- The report recommended against the establishment of a Lobbyist Registry in Markham due to:
  - The relative immaturity of lobbyist frameworks in Ontario & Canada;
  - The potential for changes to the relevant Provincial legislation as a result of the review of the Act that was underway at the time; &
  - The costs associated with the establishment & maintenance of a lobbyist registry.
- Since 2012, the issue of establishing a lobbyist registry in Markham has been periodically discussed at GC.



## INTRODUCTION (CONT'D)

- On September 13, 2021, GC briefly reviewed the City's history with respect to deliberations on the establishment of a lobbyist registry in the Markham.
- At the conclusion of this meeting, staff were requested to return to GC prior to December 1, 2021, with an update to the original September 5, 2012 presentation. Staff were requested to include any recommendations for action by Markham City Council in the revised presentation.



## LOBBYIST REGISTRATION & DISCLOSURE SYSTEMS

- In Canada, lobbyist registration legislation was first enacted in the mid-1980s & was subsequently enhanced by the Federal *Accountability Act* in 2006.
- In Ontario, Section 223.9 of the Act now contains explicit provisions for the creation & maintenance of registrations for those who lobby Public Office Holders.
- The Act requires the registry to be public & authorizes municipalities to:
  1. define what constitutes “lobbying”.
  2. prohibit a person from lobbying Public Office Holders without being registered.
  3. impose conditions on registrations, continued registrations or renewals of registration.



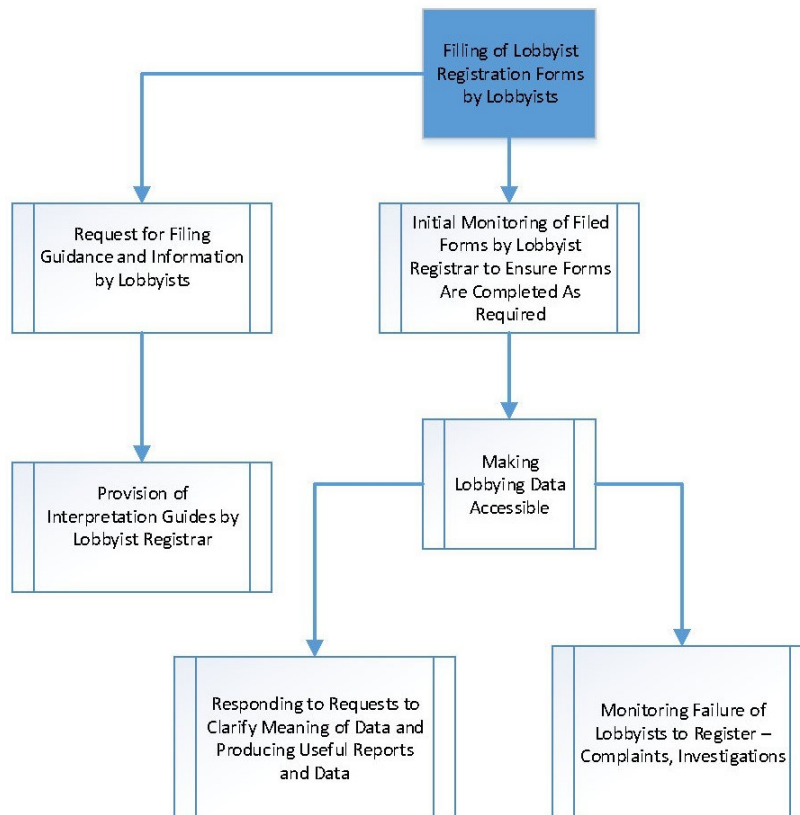
## LOBBYIST REGISTRATION & DISCLOSURE SYSTEMS (CONT'D)

4. require a Lobbyist to file 'returns' & provide information to the municipality.
5. establish a *Lobbyist Code of Conduct*.
6. prohibit former Public Office Holders from lobbying current Public Office Holders for a specified period of time.
7. prohibit Lobbyists from receiving payment that is in whole or in part contingent on the successful outcome of any lobbying activities.
8. prohibit persons on whose behalf another undertakes lobbying activities from making payment for lobbying activities that are contingent on the successful outcome of any lobbying activities.





## Lobbyist Registration & Disclosure Systems – Typical Process





## LOBBYIST REGISTRATION & DISCLOSURE SYSTEMS (CONT'D)

- Most lobbyist registration & disclosure systems focus on those who attempt to lobby government & most place an obligation on Lobbyists to register.
- An important issue for municipalities to consider when developing a system is who will NOT have to register (i.e. who will be exempt from registration requirements). For instance, most registries exempt government employees from registration.
- Most registration & disclosure systems concentrate on **paid** Lobbyists in an effort to mitigate against undue influence of those individuals who have money or act on behalf of others with money.
- However, some argue the public should also know about the efforts of powerful lobbyists who act as volunteers for various causes & attempt to influence decision makers.



## LOBBYIST REGISTRATION & DISCLOSURE SYSTEMS (CONT'D)

- Requiring the registration of **unpaid** lobbyists may be perceived as an encroachment on the right of individuals to petition/contact government. If unpaid lobbyists are to be monitored, clear rules must be established as to which of these lobbyist are to be regulated.
- Rules on who is to register as a Lobbyist & who is exempt should be clearly stated in a policy or by-law establishing the lobbyist registry. **A sample Lobbyist Bylaw is in Attachment A**
- Most registration systems require the disclosure of: 1.Lobbyist name; 2. the person or entity on whose behalf they are lobbying; & 3. the issue(s) upon which lobbying is to occur (or has occurred).



## LOBBYIST REGISTRATION & DISCLOSURE SYSTEMS (CONT'D)

- Municipalities establishing lobbyist registration systems will need to:
  - Determine the nature & extent of the information to be disclosed by Lobbyists. Consideration should be given to whether or not the data will contribute to an accurate picture of the lobbying activity happening within the municipality; &
  - Determine the frequency of the disclosure; &
  - Decide on the form of registration (online or paper or a combination of both). Where there is a computerized system, it is prudent & fair to offer a paper alternative for those who do not have convenient access to a computer.



## LOBBYIST REGISTRATION & DISCLOSURE SYSTEMS (CONT'D)

- The costs associated with the implementation of lobbyist registration & disclosure systems vary based on a number of factors.
- Over the past decade, the costs of providing an online lobbyist registry tool have decreased significantly. At least one vendor now offers a cost effective & “off the shelf” solution to municipalities.
- Training of both registration officials & general municipal staff on the registry system is important.
- Public education on the system is also critical. This includes the development of online information as well as printed materials such as brochures. FAQs & specific guidance on how to use the system & interpret the data are an integral part of a successful registration & disclosure system.



## LOBBYIST CODES OF CONDUCT

- In democratic societies, people generally accept that there will be those who try to persuade legislators & administrators to make or change decisions & policies.
- However, people will not/should not accept undue influence & socially inappropriate behaviour.
- While egregious behaviour such as bribery or breach of trust is regulated by the *Criminal Code*, there are sets of inappropriate behaviour that have remained unregulated.
- *Lobbyist Codes of Conduct* were created to address this behaviour & to provide rules to help ensure lobbying is carried out in a professional manner. **A sample Lobbyist Code of Conduct is in Attachment B.**



## LOBBYIST CODES OF CONDUCT (CONT'D)

- A *Lobbyist Code of Conduct* should include:
  - A statement of principles of positive conduct (e.g. Lobbyists communicating with Public Office Holders shall disclose the identity of the person, corporation, etc. on whose behalf they are acting).
  - Prohibitions against inappropriate conduct (e.g. Lobbyists shall not request Public Officer Holders to endorse or recommend their services).
  - A requirement for Lobbyists to know & understand the *Lobbyist Code of Conduct*.
  - Consequences for failure to abide by the rules as well as a process for receiving & investigating complaints regarding non-compliance with the Code.



## LOBBYIST REGISTRARS

- Section 223.11 of the Act permits a municipality to appoint a Lobbyist Registrar.
- A Lobbyist Registrar is the central official in a lobbyist registration disclosure system – they are responsible for guiding the system's creation & maintenance. Their broad skill set should include knowledge of records systems, governance & investigative processes.
- A Lobbyist Registrar is required to perform their functions in an independent manner.





## LOBBYIST REGISTRARS

- Municipalities should establish conditions that will protect Lobbyist Registrars from interference of any kind.
- This may include:
  - indemnifying the Lobbyist Registrar for actions taken in good faith;
  - shielding the Lobbyist Registrar, as much as practically possible, from law suits;
  - providing some permanence around the position; &
  - implementing a direct reporting relationship between the Lobbyist Registrar & municipal council.



## LOBBYIST REGISTRARS

- A Lobbyist Registrar typically performs duties with respect to:
  1. The administration & enforcement of the lobbyist registration & disclosure system.
  2. Provision of advice to lobbyists who need to register & to members of the public who want to use the registry.
  3. Delivery of education to internal & external stakeholders.



## LOBBYIST REGISTRARS (CONT'D)

- In conducting an inquiry into compliance with the registration requirements or with a *Lobbyist Code of Conduct*, a Lobbyist Registrar may elect to exercise the powers under the *Public Inquiries Act*.
- The municipality & its local boards are required to give the Lobbyist Registrar any information the Registrar believes is necessary to conduct the inquiry.
- All Lobbyist Registrar reports regarding an inquiry must be made public.



## LOBBYIST REGISTRARS (CONT'D)

- A Lobbyist Registrar should be required to produce an annual report which includes:
  - a summary of the costs incurred for lobbying investigations, etc.;
  - statistics on any requests respecting compliance (failure to register as a Lobbyist & breaches of the *Lobbyist Code of Conduct*);
  - investigative reports issued;
  - an anonymized discussion of cases; &
  - an overview of key ethics issues & policy questions that have arisen throughout the year.



## JURISDICTIONAL SCAN

- The Canadian Federal Government has had a Lobbyist Registry since 1989 (online since 1997).
- Ontario was the first Canadian Province to establish a registry in 1999.
- Over the past decade: [Brampton](#), [Hamilton](#), [Region of Peel](#), [Ottawa](#), [Toronto](#), & [Vaughan](#) have adopted lobbyist registration & disclosure systems.
- Many municipalities are actively reviewing the issue. For instance, in May 2021, the City of Burlington passed a motion to establish a Lobbyist Registry.



## JURISDICTIONAL SCAN (CONT'D)

- [Brampton](#), [Hamilton](#), [Region of Peel](#), [Ottawa](#), [Toronto](#), & [Vaughan](#) have defined lobbying in a consistent manner & all have appointed a Lobbyist Registrar to oversee their lobbyist registration & disclosure systems.
- The [Region of Peel](#), [Ottawa](#), [Toronto](#), & [Vaughan](#) all developed & maintain their systems in-house. [Hamilton](#) engaged a vendor ([OpenPlus](#)) to develop its system.
- The [Region of Peel](#), [Ottawa](#), [Toronto](#), & [Vaughan](#) all appointed their Integrity Commissioners to also serve as their Lobbyist Registrars.



## LOBBYIST CODES – PENALTIES & SANCTIONS

Municipality	First Offence	Second Offence	Third Offence
Toronto	Fine up to \$25,000	Fine up to \$100,000 for second or subsequent offences	
Ottawa	1 month ban of lobbying	3 month ban of lobbying	Integrity Commissioner to determine appropriate sanction
Hamilton	1 month ban of lobbying	2 month ban of lobbying	Lobbyist Registrar to determine appropriate sanction
Brampton	1 month ban of lobbying	3 month ban of lobbying	Lobbyist Registrar to determine appropriate sanction
Region of Peel	1 month ban of lobbying	3 month ban of lobbying	Lobbyist Registrar to determine appropriate sanction



## MUNICIPAL REGISTRATION SYSTEMS – COST COMPARISON

Municipality	Implementation Cost	Maintenance/Operating Budget
Brampton	\$180,000	\$240,000
Ottawa	\$230,000	\$270,000
Toronto	\$1.3 million	\$1.236 million
Hamilton	\$100,000	\$114,000
Region of Peel	\$150,000	\$120,000
Vaughan	\$250,000	\$250,000





## CONCLUSION

- Provincial legislation authorizes Ontario municipalities to regulate the practice of lobbying Public Office Holders.
- The objective of lobbyist registration & disclosure systems is to open up government & administration – to shine a light on the influences behind policy.
- The question of whether or not these systems actually accomplish this policy objective remains an open question.
- The establishment of such systems is still a relatively new endeavour that challenges Ontario municipalities to consider how they do business & to reflect on the potential for achieving new levels of transparency.



## CONCLUSION

- The most effective municipal lobbyist registration & disclosure systems make it easy for Lobbyists to register & for the public to access registry information.
- Lobbyist registration systems can be established in phases – for instance:
  - Phase 1 (year 1) – implement a lobbyist registry to simply tracks lobbying activity. In this Phase, there is no Lobbyist Code of Conduct & no Lobbyist Registrar to oversee the Registry. All Public Office Holders are required to refuse meetings from non-registered Lobbyists. Staff assess the experience throughout Phase 1 & make recommendations to enhance system in the next Phase.
  - Phase 2 (year 2) – implement a *Lobbyist Code of Conduct* & appoint a Lobbyist Registrar to oversee the lobbyist registry. All Lobbyists are required to register with the municipality prior to engaging in lobbying.



## STAFF RECOMMENDATIONS

1. That the presentation entitled “Lobbyist Registries & Lobbyist Registrars in Ontario” be received; &
2. That, should Council decide to proceed with the implementation of a Lobbyist Registry, staff be requested to report back to GC prior in the first quarter of 2022 on:
  - a proposed *Lobbyist Registry By-law* for Markham;
  - an online lobbyist registry process;
  - a proposed *Lobbyist Code of Conduct* based on municipal comparators;
  - the appointment of a Lobbyist Registrar for Markham – including the feasibility & costs associated with adding Lobbyist Registrar duties to those already performed by the City’s Integrity Commissioner; & further
3. That staff be authorized to do all things necessary to give effect to this resolution.



Questions?