

Integrity Commissioner and Lobbyist Registrar

Report to Council on an Inquiry by the Lobbyist
Registrar: Playground Partnership Project at
Mooney's Bay Park

July 8, 2016

BACKGROUND

On May 13, 2016, the City of Ottawa announced that it was partnering with Sinking Ship Entertainment to build a playground in Mooney's Bay Park. The playground is meant to celebrate Canada's 150th anniversary in 2017, and its construction will be documented as part of the fourth season of a Sinking Ship Entertainment television program, titled *Giver*, which airs on TVO.

The playground is described by the City as a "partnership project" with Sinking Ship Entertainment, which is a Toronto-based company. Under the project agreement, each party will contribute half of the funding, with the City providing a maximum of \$959,750. The City is funding its share of the project from its City-wide Cash-in-lieu of Parkland Fund.

On May 29, 2016, I received a complaint from a member of the public who requested that I investigate whether unregistered lobbying occurred between Sinking Ship Entertainment and public office holders as defined in the Lobbyist Registry By-law, prior to the signing of a partnership agreement between the company and the City. This request relates to my oversight function as Lobbyist Registrar with respect to the City of Ottawa's Lobbyist Registry, Lobbyist Registry By-law (By-law No. 2012-309) and Lobbyists' Code of Conduct.

Specifically, the complaint addressed the following issues:

- that the complainant had searched the City's Lobbyist Registry and did not find a registration by Sinking Ship Entertainment;
- that the complainant believed a press release issued by the City suggested that Sinking Ship Entertainment had lobbied specific public office holders; and
- that the complainant believed an agreement between the City and Sinking Ship Entertainment likely developed over the previous six months, and therefore the complainant requested that the Integrity Commissioner investigate.

Upon receiving this complaint, I conducted a preliminary review of the Lobbyist Registry and found that there were no entries of recorded lobbying activity involving Sinking Ship Entertainment and the playground at Mooney's Bay Park. I further noted that information made public by the City suggested there may have been contact between City staff and Sinking Ship Entertainment prior to a formal partnership being established. Based on the request from the member of the public and my preliminary

review, I proceeded with an Inquiry into this matter in my capacity as Lobbyist Registrar, in accordance with the Lobbyist Registry By-law and the *Municipal Act, 2001*.

Section 223.12 of the *Municipal Act, 2001* provides for an Inquiry conducted by a Lobbyist Registrar. Specifically, subsection 223.12(1) states that:

“This section applies if the registrar conducts an inquiry under this Part in respect of a request made by council, a member of council or a member of the public about compliance with the system of registration described in subsection 223.9 (2) [being a Lobbyist Registry] or with a code of conduct established under that subsection.”

In addition, subsection 9(e) of the Lobbyist Registry By-law states that the Integrity Commissioner is responsible for the enforcement of the By-law, while subsection 9(c) of the By-law provides that the Integrity Commissioner is responsible for:

“conducting, in private, investigations or inquiries to determine whether contraventions of this by-law have occurred, as permitted under section 223.12 of the Municipal Act, 2001.”

INQUIRY TERMS OF REFERENCE

The main and narrow focus of this Inquiry was to determine whether unregistered lobbying took place in relation to the Mooney’s Bay Park playground project and whether public office holders at the City of Ottawa advised representatives of Sinking Ship Entertainment to register any communications as lobbying activities.

All other issues, real or perceived, relating to decision-making, funding, policy adherence, administration and public consultation are not relevant to the Terms of Reference of this Inquiry. If such issues warrant investigation, there are other accountability and transparency authorities with proper jurisdiction within the City’s structure.

INQUIRY PROCESS

After sending formal Notices of Inquiry to affected parties, I conducted interviews and requested documentation from two members of City staff in Parks, Recreation and Cultural Services. I also interviewed two representatives of Sinking Ship Entertainment as well as one member of City Procurement staff.

I indicated to all parties, and note for the purposes of this report, that I conducted the Inquiry under a collaborative and cooperative approach. Although subsection 223.12(2) of the *Municipal Act, 2001* provides me with the authority to elect to exercise powers under sections 33 and 34 of the *Public Inquiries Act, 2009*, and these sections relate to the power to issue summons requiring a person to give evidence or produce documents and other materials, I elected to not exercise such powers unless necessary. I received co-operation from all parties during this Inquiry and was not required to exercise these powers. All parties were given an opportunity to respond to parts of this report that apply to them. The timeline and evidence was established through interviews and documentation review.

There were no external costs to undertaking this Inquiry. The Inquiry was undertaken by the Integrity Commissioner with the support of existing Clerk's resources.

EVIDENCE AND TIMELINE

Sinking Ship Entertainment is a Toronto-based production company established in 2004. It has created 15 television series, including *Giver*, which first aired in 2012. The general premise of *Giver* is to document children as they design and build playgrounds in different communities, and 33 playgrounds were constructed in the first three seasons of the program. The playground projects are typically built on public property (municipal lands), but have also been completed for schools or not-for-profit organizations.

For the fourth season of *Giver*, Sinking Ship Entertainment indicated that it was interested in completing a playground project that would recognize Canada's 150th anniversary and serve as a gift to the children of Canada. The company decided to pursue such a playground in Ottawa, where it had not previously proposed or undertaken a *Giver* project. Sinking Ship Entertainment representatives stated that they approached the National Capital Commission (NCC), but were told that a better option would be to contact the Parks, Recreation and Cultural Services Department at the City of Ottawa.

On January 5, 2016, the General Manager, Parks, Recreation and Cultural Services received an email from a producer with Sinking Ship Entertainment. This email came through the City's Web form utility, which members of the public can use to contact City staff through the employee directory. In the email, the producer introduced herself and provided some background with respect to the *Giver* television program and playground projects. The email included a link to the trailer for Season 3 of the program and noted the following:

“... For our 4th season of *Giver* (summer/fall of 2016), we are aiming to build Canada’s largest playground to celebrate Canada’s 150th birthday! With 6 children from all 13 provinces and territories, we would like to build a playground that celebrates all of Canada’s provinces and territories and Canada’s amazing 150 year history. Throughout this experience, *Giver* kids will learn about giving back but also about their country, their capital and their province. And the playground will be a destination for visitors, families and children alike. We are currently speaking to the NCC about the possibility of putting the park on one of their sites but I thought I’d reach out to you the city of Ottawa about your interest in hosting this site as well. I’d be very interested in setting up a further conversation with you. I would love to talk to you further about *Giver*, your city and our Canada 150 show.”

The producer provided her telephone number and a link to the Sinking Ship Entertainment website. The General Manager, Parks, Recreation and Cultural Services and Sinking Ship Entertainment producer appear to have spoken by telephone, and in a follow-up email sent in the afternoon on January 5, 2016, the General Manager wrote:

“Further to our phone conversation, I am e-mailing you as well so that you can contact me directly.

Thank you for your message and for thinking of the City as a possible host for this very exciting project. As the nation’s capital we are very excited about celebrating Canada’s 150th birthday and plans are already afoot for a variety of celebratory projects. We would love to find out more about your initiative and to explore opportunities to work together. My Department has a team of Recreation Planners that work on park development that could support a potential partnership, and the City of Ottawa has established a 2017 Office to help support and promote celebration projects. As discussed, we will provide information on some potential City owned locations that might be of interest for your project.”

The Sinking Ship Entertainment producer responded by email a short time later, stating that she was “very excited to explore a possible partnership with the City on this exciting project!” The email included another link to the Sinking Ship Entertainment website, as well as to the TVOKids website where episodes of *Giver* may be viewed. Attached to the email were letters of reference from other cities with which the company has worked, including Toronto and Hamilton. The communication between

the General Manager, Parks, Recreation and Cultural Services and the Sinking Ship Entertainment producer continued through January.

On January 7, 2016, the General Manager, Parks, Recreation and Cultural Services sent an email to the Sinking Ship Entertainment producer which noted that staff had identified several sites and that Mooney's Bay Park was among them. The email stated that Mooney's Bay Park "is a large City operated park on land leased from the NCC. This might be an opportunity to have a three way collaboration."

Following some additional correspondence, in an email sent January 8, 2016, the Sinking Ship Entertainment producer noted:

"... I will meet with my team today and I also have a conversation scheduled with the NCC folks about potential sites. I'll be in touch soon to set up a further conversation with you to talk next steps etc. We can also plan an in person scout/conversation at that time too. ..."

On January 18, 2016, the producer sent an email to the General Manager which noted as follows:

"I left a voicemail message on your machine Friday and I'd love to get in touch with you as we are going to be in Ottawa in the next couple weeks and it would be great to set up an in person scout/chat with you and your team. ..."

I've attached a proposed timeline with outline of what we would need and when and I'd really love to talk further.

Can you give me a call at your earliest convenience?"

A document titled, "Proposed Timeline/Role of City," was attached to the email. This document included references to "What we are doing" and "What we might need your help with" under the following section headings:

- Developing/Financing stage/Location Selection – Present – Feb 2016
- Pre-Production Selection Stage – March 2016 – April 2016
- May 2016
- The Build – to be scheduled June – August 2016
- Post Build – Oct 2016 – July 2017

The first stage, "Developing/Financing stage/Location Selection – Present – Feb 2016," stated as follows:

“What we are doing – We are in the process of lining up all logistics, financing, sponsors and fundraising. We are hoping to be conducting our first rounds of scouts, preliminary sketches and ideas, site visits etc.

What we might need your help with – Green light from the city that we are welcome to pursue a Giver project with you. Being available for any questions we might have as we develop further. We also might need your assistance during this stage facilitating department introductions, providing anything that comes up that we need for grants (letter of interest, city information etc.). We will be organizing a ‘scout day’ within your city and we will need your assistance facilitating the introductions to our community coordinators/schedule so we can meet and choose our final location within your city.”

Arrangements were made for Sinking Ship Entertainment to meet with City staff and visit potential playground sites on February 3, 2016.

City staff stated that it was at the meeting on February 3, 2016, where they first learned from Sinking Ship Entertainment that a financial contribution from the City would be required. Sinking Ship Entertainment representatives indicated to me that they discussed how the company normally finances playgrounds, touching on matters such as sponsorship, grants and community fundraising. The Sinking Ship Entertainment representatives also said that City staff were made aware that the company had applied to the Canada 150 Fund (federal funding for “Canada 150” activities) and was still seeking funding. The Acting Manager, Recreation Planning and Facility Development, stated that upon learning of the need for a financial contribution, he told Sinking Ship Entertainment during that same meeting that it should apply to the City of Ottawa’s *Community Partnership Major Capital Program*. This program has a deadline of March 1st and is described by the City as follows:

“The Community Partnership Major Capital Program is an initiative to implement major capital improvements and additions to facilities related to parks and recreation on a cost-sharing basis between the City and community groups. The project may relate to an asset that is owned by the City, or operated by a community partner who delivers service on behalf of the City or assists the City in the delivery of programs and services. The funding program applies to major capital programs for new facilities, renovations and expansions. It will only apply to fixed assets. It will not fund other components such as furniture, equipment, feasibility or fundraising studies.”

On February 4, 2016, the Acting Manager, Recreation Planning and Facility Development, wrote the following in an email to the Sinking Ship Entertainment producer:

“... It occurs to me that Sinking Ship is likely a for profit company? It may create a problem with my partnership funding program but there are some possible work around. Easiest would be to seek if TV Ontario could front the application and use Sinking Ship as its coordinator / manager for the project ...”

On March 1, 2016, Sinking Ship Entertainment submitted a proposal for the *Community Partnership Major Capital Program*. Sinking Ship Entertainment was noted as the applicant on the proposal. This proposal indicated the cost of the playground project was estimated at \$1.9 million and that Sinking Ship Entertainment was looking for the City to pay 50 per cent of the costs.

While the proposal and application went ahead under the *Community Partnership Major Capital Program*, the General Manager, Parks, Recreation and Cultural Services subsequently provided approval by way of email on April 5, 2016, for the project to proceed with funding from an alternative funding source, the *Cash-in-lieu of Parkland Funds Policy*. This approval was provided under delegated authority, as set out in Section 6 of the Policy, as follows:

6. Subject to policies 1-5 above the Council of the City of Ottawa hereby delegates authority to Staff and Councillors to establish budgets, access cash-in-lieu funds and approve expenditures of cash-in-lieu funds for ‘eligible projects’ subject to the following:

a. Delegates authority to the General Managers of Parks, Recreation and Cultural Services and Infrastructure Services to access and use cash-in-lieu funds for any eligible project associated with an existing park or for the creation of a new park that is not associated with the development review process. This delegation is subject to the following:

- i. the use of cash-in-lieu funds from a Ward account requires the concurrence of the Ward Councillor;*
- ii. the acquisition of land requires the concurrence of the Director, Real Estate Partnership and Development and the General Manager, Planning and Growth Management is to be advised;*
- iii. the General Manager shall confirm the availability of funds with the*

General Manager, Planning and Growth Management prior to committing funds to any project.

On May 10, 2016, Sinking Ship Entertainment signed the project agreement between the City and Sinking Ship Entertainment. The General Manager, Parks, Recreation and Cultural Services signed the project agreement on May 11, 2016.

On May 13, 2016, the project was announced to the public by way of a news release issued by the City. The headline on the news release stated, "New playground in Mooney's Bay Park to be biggest in Canada."

FINDINGS

Under the Lobbyist Registry By-law, the term "lobby" is defined as:

"any communication with a public office holder by an individual who is paid or who represents a business or financial interest with the goal of trying to influence any legislative action including development, introduction, passage, defeat, amendment or repeal of a by-law, motion, resolution or the outcome of a decision on any matter before Council, a Committee of Council, or a Ward Councillor or staff member acting under delegated authority."

The term "communication" is defined as:

"any substantive form of communication including a formal meeting, email, letter, phone call or meaningful dialogue or exchange that materially advances a matter that is defined as lobbying, whether in a formal or in an informal setting."

The By-law does not apply to certain activities, such as:

- *"communication that is restricted to a request for information," and*
- *"communication by an applicant, an interested party or their representatives with respect to an application for a service, grant, planning approval, permit or other license or permission:*
 - *with an employee of the City or a Member of Council if the communication is restricted to providing general information on an application, including a proposed or pending application, or to inquire about the application review process."*

Under subsection 6(1) of the By-law, all lobbyists are required to file a return regarding a specific lobbying communication within 15 business days of the communication occurring.

In reviewing communication between Sinking Ship Entertainment and City staff, I find that the initial contact by Sinking Ship Entertainment with a City General Manager (a “public office holder” as defined within the By-law) went beyond that of being restricted to a request for information and was squarely into the realm of proposing a partnership. At its very least, the initial contact and correspondence on January 5, 2016, raises a potential request for the authority for Sinking Ship Entertainment to build a playground on municipal lands, and City staff acted consequently to try to find an appropriate site. Furthermore, the *Ottawa Option Policy*, which outlines the City’s approach to evaluating and pursuing an unsolicited proposal from a private sector proponent for the supply of goods and/or services, specifically does not apply to “projects undertaken using a public-private partnership (P3) approach.” As a result, I could find no approved City business process under which the interactions between Sinking Ship Entertainment and City staff could take place with respect to the playground proposal prior to the submission of the application to the *Community Partnership Major Capital Program* on March 1, 2016.

As the proposed partnership continued and escalated throughout January and into February, with email and telephone communications culminating in a site visit on February 3, 2016, where information was provided that City funding would be necessary, these communications were also beyond the scope of a request for information and could influence potential decisions made by City staff acting under delegated authority.

Sinking Ship Entertainment

I note that Sinking Ship Entertainment is a for-profit operation, although its representatives indicated that *Giver* was not designed to make money. Unlike Sinking Ship Entertainment’s other programs, *Giver* is not pitched internationally and is made solely for a Canadian audience.

According to the company’s representatives, all corporate money raised for the program is directed to the playground projects. In addition, the program airs on TVO, which is funded primarily by the Province of Ontario and is a registered charity. That said, I find that the *Giver* playground projects do provide a business interest for Sinking Ship Entertainment. Company representatives acknowledged that the program pleases the

network and generates press. In this way, there is a business interest in continuing to achieve success with *Giver* projects, and certainly being connected to sesquicentennial celebrations in the Nation's Capital and a playground that is the "biggest in Canada" may raise profile and be good for business. There clearly is a business benefit return for this not-for-profit activity.

Based on the information provided by City staff and representatives of Sinking Ship Entertainment, I find that Sinking Ship Entertainment did lobby City staff ("public office holders") under the Lobbyist Registry By-law and failed to register to the Lobbyist Registry and to file returns regarding specific lobbying communications within 15 business days of the communication occurring, as required by the By-law. The lobbying communications occurred from the time that the initial contact with City staff was made by Sinking Ship Entertainment on January 5, 2016, and continued until the proposal was filed to the *Community Partnership Major Capital Program* on March 1, 2016.

I found no evidence that Sinking Ship Entertainment representatives had any direct contact with Members of Council in the period prior to the initial contact with City staff on January 5, 2016, up to the filing of the *Community Partnership Major Capital Program* proposal on March 1, 2016. Sinking Ship Entertainment representatives stated that they had no contact with Members of Council during this time, and any briefings of Members of Council regarding the project during this period appear to have been conducted by City staff. Registration of lobbying activity was not addressed in any of the said briefings.

Sinking Ship Entertainment representatives and City staff stated during interviews that there were no formal secrecy provisions in place with respect to the partnership agreement. However, there was an informal understanding to not prematurely disclose the design aspects and other details of the project. I informed them that lobbyists can apply to my Office for a confidentiality code in cases where transparency is a business risk or confidentiality is required to ensure the potential success of a proposal. If I approve such a code, the lobbying activity will eventually be reported out when an agreement is successful.

City Staff

I note that the City of Ottawa does not have a specific business process in the form of a Donations Policy to oversee proposals for partnership opportunities that involve donations for community benefits, particularly with respect to parks and recreation. Often, as is the case with the Mooney's Bay Park playground project, there are

considerable transformation and long-term maintenance costs associated with such offers. When such proposals come from the private sector, the benefactor can profit from a business benefit return, resulting in a registrable lobbying activity.

City staff in Parks, Recreation and Cultural Services stated in interviews that they did not believe lobbying had taken place with respect to the Mooney's Bay Park playground project. It was stated that initially at least, the staff believed they were dealing with an offer of donated assets. Some of this belief appears to be due to the fact that a financial requirement from the City did not arise until the time of Sinking Ship Entertainment's site visit on February 3, 2016. However, I find that lobbying had already occurred before that time with respect to the company's initial contact seeking to build a project on City lands. Communications between the sides prior to the February meeting had involved a discussion with respect to various sites and requirements needed of the City in order for the project to proceed. Furthermore, the conclusion reached by the Acting Manager, Recreation Planning and Facility Development in his email of February 4, 2016, that Sinking Ship Entertainment "is likely a for profit company," should have led to a discussion of the Lobbyist Registry or a consultation with the Integrity Commissioner regarding the communication that had occurred to that point and to determine whether a business interest existed with respect to the proposed project. It also appears that after Sinking Ship Entertainment was directed to the *Community Partnership Major Capital Program*, staff contemplated using the alternative funding source for the project prior to the company's application being submitted to the program.

I can advise that City Procurement staff appear to have played no significant role in this case from a lobbying-related perspective; evidence was that Procurement staff attended a meeting regarding the project on March 29, 2016, but went no further as the decision had already been made to proceed under the *Community Partnership Major Capital Program*.

Staff are required to review the Lobbyist Registry on a monthly basis to ensure that those instances where they have been lobbied have been disclosed through the Registry, as set out in the report titled, "[Lobbyist Registry – Update](#)," (ACS2012-CMR-CCB-0033), which was considered by a joint meeting of the Finance and Economic Development Committee and Governance Renewal Sub-Committee on July 6, 2012, and by Council on July 11, 2012. This report states on Page 21 that:

"Efforts to lobby City staff at all levels shall be logged with the lobbyist registry by the lobbyist as a mandatory requirement. Staff will be expected to routinely review the Lobbyist Registry, in the same manner as elected officials and citizen

members of the Transit Commission, to ensure that lobbying activity involving them has been disclosed. If staff observes that disclosure has not occurred or if the disclosure is inaccurate, contact should be made with the Integrity Commissioner to resolve the matter.”

Staff in Parks, Recreation and Cultural Services acknowledged that they did not review the Lobbyist Registry with respect to the communications from Sinking Ship Entertainment. Nor did they advise Sinking Ship Entertainment of any requirement to register in the lobby or file returns regarding specific lobbying communications.

The Lobbyist Registry By-law does not currently extend to requiring that City staff inform lobbyists of the need to register lobbying activity. However, I note that a requirement to advise lobbyists of the need to register is set out in the Code of Conduct for Members of Council. Section IX of the Code of Conduct states:

“Further, Members of Council should ensure that individuals who are lobbying them are aware of their requirement to register as required under the requirements of the Lobbyist Registry.”

ACTION TAKEN

1. Sinking Ship Entertainment

Sinking Ship Entertainment representatives stated during an interview that they were unaware of the City of Ottawa’s Lobbyist Registry and the need to register their activities. They noted that the company has never been asked or directed to register as a lobbyist in the 33 other projects it has completed, including three playgrounds in the City of Toronto, which has a Lobbyist Registry. The policy used in the Toronto projects was the *Donations to the City of Toronto For Community Benefits Policy*.

I have accepted this explanation, noting in particular that the company was not advised by City staff of the existence of the Lobbyist Registry By-law and the Lobbyists’ Code of Conduct.

In order to achieve transparency, regrettably after the fact, I have exercised my discretion to permit a late registration and reports of lobbying activity by Sinking Ship Entertainment. Only the communications prior to the March 1, 2016, proposal under the *Community Partnership Major Capital Program* are registered as lobbying events because I have deemed those thereafter are not captured by the Lobbyist Registry By-law. From that point forward, Sinking Ship Entertainment entered a regular City business process stream. The registration requirement does not apply to grant and

funding applicants when they communicate with staff who have a role in the administration of the application review process, as set out in subsections 4(g)(a) and 4(g)(b) of the Lobbyist Registry By-law, as follows:

- g. communication by an applicant, an interested party or their representatives with respect to an application for a service, grant, planning approval, permit or other license or permission:*
 - a. with an employee of the City or a Member of Council if the communication is restricted to providing general information on an application, including a proposed or pending application, or to inquire about the application review process,*
 - b. with an employee of the City if the communication is part of the normal course of the approval process.*

The company co-operated fully with the Inquiry and complied with my request to retroactively register its lobbying communications.

Accordingly, I have concluded that no sanctions are warranted in this case.

2. City Staff

City staff is under the authority of the City Manager. As Integrity Commissioner, I have no jurisdiction over performance or decision-making. That is as it should be.

However, the Integrity Commissioner is available to both lobbyists and public office holders for advice and interpretations. I therefore intend to pursue discussions with the City Manager to hold refresher training sessions with respect to requirements related to lobbying for all City staff with full or partial delegated authority.

3. Lobbyist Registry By-law

The Lobbyist Registry By-law is silent on the duty of public office holders to inform lobbyists of the existence and requirements of the By-law. That said, the Code of Conduct for Members of Council includes a requirement for Members of Council to advise lobbyists of the need to register, as described earlier in this report. Therefore, at the time of the Mid-term Governance Review, I intend to bring forward for Council's consideration specific proposed amendments to the By-law that will seek to define the "duty to inform and assist" responsibilities of all public office holders, specifically those City staff with delegated authority. These amendments would also bring the requirements of City staff who are lobbied in line with those of Members of Council.

In closing, I want to thank the staff in the Deputy Clerk's Office who assisted me in this Inquiry in producing a timely report.

Respectfully submitted,

Robert Marleau
Integrity Commissioner and Lobbyist Registrar