



## INVESTIGATION REPORT 14-07

**LOBBYIST: Brad Zubyk**

**June 5, 2014**

**SUMMARY:** A consultant lobbyist filed a return with the Office of the Registrar of Lobbyists (ORL) on August 8, 2013. The lobbyist certified that the commencement date of his undertaking was June 18, 2013. He failed to meet his obligations under s. 3(1) when he did not file a return within 10 days of entering into an undertaking to lobby on behalf of a client. The consultant lobbyist was fined \$600.

**Statutes Considered:** *Lobbyists Registration Act*, S.B.C. 2001, c. 42.

[1] This report concerns an investigation under s. 7.1 of the LRA. This section gives the Registrar of Lobbyists (Registrar) the authority to conduct an investigation to determine whether there has been compliance with the *Lobbyist Registration Act* (LRA) or its regulations. If, after an investigation under s. 7.1, the Registrar or her delegate believes that the person under investigation has not complied with a provision of the LRA or its regulations, s. 7.2 of the LRA requires her to give notice of the alleged contravention and the reasons for her belief that the contravention has occurred. Prior to making a determination under s. 7.2(2), the Registrar must under s. 7.2(1)(b) give the person under investigation a reasonable opportunity to be heard respecting the alleged contravention.

[2] The LRA recognizes two types of lobbyists. This report focuses on “consultant lobbyists”, individuals who undertake to lobby for payment on behalf of a client.

[3] Under the LRA, registrations must be filed within specific time frames. The electronic Lobbyists Registry automatically checks the dates of registrations, and alerts ORL staff if the date of a registration appears to be at odds with the required time frames.

[4] The LRA requires that, within 10 days of entering into an agreement to lobby, consultant lobbyists register the fact that they have entered into such an undertaking.

[5] This investigation commenced when the lobbyist registered an undertaking to lobby on behalf of Scientific Games Int. (the “client”). The consultant lobbyist registered an undertaking on August 8, 2013. In the registration, he certified that the start date of the undertaking was June 18, 2013. This meant the consultant lobbyist failed to file a return within the legislated time lines.

## ISSUES UNDER CONSIDERATION

[6] The questions that must be considered are:

- (a) Whether the lobbyist filed a return within the time lines set out in s. 3(1) of the LRA.
- (b) If the lobbyist did not comply, what, if any, administrative penalty is appropriate in the circumstances?

## RELEVANT SECTIONS OF THE LRA

**"client"** means a person or organization on whose behalf a consultant lobbyist undertakes to lobby;

**"consultant lobbyist"** means an individual who, for payment, undertakes to lobby on behalf of a client;

**"lobby"**, subject to section 2 (2), means,

- (a) in relation to a lobbyist, to communicate with a public office holder in an attempt to influence
  - (i) the development of any legislative proposal by the government of British Columbia, a Provincial entity or a member of the Legislative Assembly,
  - (ii) the introduction, amendment, passage or defeat of any Bill or resolution in or before the Legislative Assembly,
  - (iii) the development or enactment of any regulation, including the enactment of a regulation for the purposes of amending or repealing a regulation,
  - (iv) the development, establishment, amendment or termination of any program, policy, directive or guideline of the government of British Columbia or a Provincial entity,
  - (v) the awarding, amendment or termination of any contract, grant or financial benefit by or on behalf of the government of British Columbia or a Provincial entity,

- (vi) a decision by the Executive Council or a member of the Executive Council to transfer from the Crown for consideration all or part of, or any interest in or asset of, any business, enterprise or institution that provides goods or services to the Crown, a Provincial entity or the public, or
  - (vii) a decision by the Executive Council or a member of the Executive Council to have the private sector instead of the Crown provide goods or services to the government of British Columbia or a Provincial entity,
- (b) in relation to a consultant lobbyist only, to arrange a meeting between a public office holder and any other individual...

**"lobbyist"** means a consultant lobbyist or an in-house lobbyist;

**"undertaking"** means an undertaking by a consultant lobbyist to lobby on behalf of a client, but does not include an undertaking by an employee to do anything...

#### **Requirement to file return**

- 3(1) Within 10 days after entering into an undertaking to lobby on behalf of a client, a consultant lobbyist must file with the registrar a return in the prescribed form and containing the information required by section 4.

## **BACKGROUND**

[7] On June 18, 2012, the lobbyist filed a return, registration ID 10972030, indicating he entered into an undertaking to lobby on behalf of his client. The registration had an undertaking end date of June 18, 2013.

[8] On August 8, 2013, the lobbyist filed a return with the ORL, registration ID 17159305, indicating he had entered into a new undertaking to lobby on behalf of the same client.

[9] The LRA, s. 4(1)(b)(ii), requires a consultant lobbyist to submit the start date and the scheduled end date of any undertaking to lobby. In this case, the lobbyist certified that the start date for the undertaking was June 18, 2013.

[10] ORL staff received an automatic system alert that the lobbyist's registration was possibly non-compliant.

[11] On August 8, 2013, ORL staff asked the lobbyist to confirm that the start date of the return was June 18, 2013.

[12] On August 8, 2013, an employee of Wazuku Advisory Group, the consulting company in which the lobbyist is a principal, informed the ORL that the correct start date for the undertaking was August 8, 2013. The employee stated that the June 18, 2013 start date was entered in error.

[13] Section 7(4)(a) of the LRA authorizes the Registrar of Lobbyists or her delegate to verify information contained in a return.

[14] On August 29, 2013, ORL staff wrote to the lobbyist's client requesting confirmation of the undertaking start date and inquiring whether this was a new undertaking or an extension of the preceding June 18, 2012 agreement (registration ID 10972030).

[15] On September 4, 2013, the lobbyist's client verified that the start date for the undertaking was June 18, 2013. On September 9, 2013, the client confirmed that this undertaking was an extension of the June 18, 2012 agreement.

## **INVESTIGATION**

[16] On October 7, 2013, pursuant to s. 7.2 of the LRA, the Deputy Registrar sent a notice to the lobbyist setting out the basis for his belief that the lobbyist had not complied with s. 3(1) of the LRA. He invited the lobbyist to respond in writing to the alleged contravention and provide any information or documentation pertinent to the alleged contravention and any potential penalty. The file was assigned to me for review and decision.

[17] On October 8, 2013, the lobbyist maintained that the undertaking start date was the same date as the filing of his return, which was August 8, 2013.

## **DISCUSSION**

[18] Prior to submitting a return, a lobbyist must review the return for accuracy and certify that the information in the return is correct.

[19] The previous undertaking, registration ID 10972030, expired on June 18, 2013. The lobbyist certified, in his subsequent return for the same client (registration ID 17159305), that the start date was June 18, 2013.

[20] When ORL staff informed the lobbyist that he had filed his return late, the lobbyist advised the ORL that he had entered the wrong start date.

[21] The client verified that they had extended their undertaking with the lobbyist on June 18, 2013. This indicates that the lobbyist had an undertaking to lobby on June 18, 2013, yet he filed his new registration on August 8, 2013.

[22] This is a case where the lobbyist and client disagree as to whether an undertaking was entered into on June 18, 2013 or August 8, 2013. The evidence indicates that the lobbyist had an existing undertaking to lobby, which expired on June 18, 2013. The return submitted to the ORL by the lobbyist on August 8, 2013 reflects a start date that coincides with the exact date of expiration of the previous undertaking.

Furthermore, the lobbyist did not correct the return (registration ID 17159305) to reflect a start date of August 8, 2013 after he advised the ORL that the June 18, 2013 start date was incorrect. The weight of the evidence leads me to conclude, on a balance of probabilities, that the start date for the undertaking was June 18, 2013. Therefore, the lobbyist filed a return, registration ID 17159305, on August 8, 2013, which is more than 10 days after the start date of the undertaking.

## **FINDING**

[23] I find the lobbyist contravened s. 3(1) of the LRA when he failed to file a return with the Registrar within 10 days of entering into an undertaking to lobby on behalf of his client.

## **ADMINISTRATIVE PENALTY**

[24] The purpose of the LRA is to promote transparency in lobbying by requiring lobbyists to disclose accurate, current and complete information. Failing to keep information in registrations up to date and accurate undermines the ability of the public to know who is actually attempting to influence government at any point in time, thereby defeating the LRA's goal of transparency.

[25] The LRA makes clear that transparency includes timeliness. This includes the requirement to file a return within the legislated time frames. The goal of transparency is frustrated if the deadlines required by the LRA are not met.

[26] In assessing whether a penalty is necessary in this instance, I must consider, among other things:

- previous enforcement actions for contraventions by this person,
- the gravity and magnitude of the contravention,
- whether the contravention was deliberate,
- whether the registrant derived any economic benefit from the contravention,
- any effort the registrant made to report or correct the contravention, and
- whether a penalty is necessary for general and specific deterrence.

[27] The lobbyist's file history shows that on January 10, 2012, ORL staff notified the lobbyist that he had apparently contravened the LRA on two separate occasions when he failed to file returns within the legislated time frames. The lobbyist was warned that future instances of possible non-compliance would result in the ORL taking further action. The warning letter offered an educational opportunity and alerted the lobbyist to his responsibilities under the LRA. The lobbyist is aware of his responsibility to register within 10 days after entering into an undertaking to lobby on behalf of a client.

[28] I have no evidence before me which would indicate that the contravention was deliberate or that the lobbyist gained an economic benefit by registering late.

[29] In terms of the gravity and magnitude of the contravention, the LRA makes it clear that transparency includes timeliness. This includes the requirement to file a return within the legislated time lines. The goal of transparency is frustrated if the deadlines required by the LRA are not met.

[30] On the question of specific deterrence, this investigation, hearing process, the ensuing administrative penalty and the publication of the outcome of this investigation, will encourage the lobbyist to check that he has met his obligations under the LRA prior to submitting future returns.

[31] I must also take into consideration the notion of general deterrence. The publication of this report and recognition that the ORL will issue administrative penalties to those who contravene the LRA will remind all lobbyists of their legal obligations to be diligent in keeping their registrations current.

[32] The ORL policies and procedures, which are intended to act only as a guide, suggest that a lobbyist be assessed a penalty between \$100 and \$5000 for the first time a lobbyist fails to submit a registration within the legislated time lines.

[33] The ORL will consider a contravention to be a second instance only when it occurs after the lobbyist has already received an administrative penalty for a previous contravention.

## **CONCLUSION**

1. Under s. 7.2(2) of the LRA, I find that the lobbyist contravened s. 3(1) of the LRA. The notice of alleged contravention has been substantiated.
2. After considering the circumstances of this case, I impose an administrative penalty of \$600.
3. The designated filer must pay this penalty no later than July 17, 2014.

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4. If the lobbyist requests reconsideration under s. 7.3 of the LRA, he is to do so within 30 days of receiving this decision by providing a letter in writing directed to the Registrar of Lobbyists at the following address, setting out the grounds on which reconsideration is requested:

Office of the Registrar of Lobbyists for British Columbia  
PO Box 9038, Strn. Prov. Govt.  
Victoria, BC V8W 9A4

Email: [info@bcorl.ca](mailto:info@bcorl.ca)

June 5, 2014

**ORIGINAL SIGNED BY**

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Tim Mots  
Investigator  
Office of the Registrar of Lobbyists