

INVESTIGATION REPORT 14-11

LOBBYIST: Benjamin Chin

September 18, 2014

SUMMARY: A consultant lobbyist filed a registration to undertake lobbying on behalf of a client organization. Shortly after registration, the lobbyist resigned from his contract with the client organization and accepted other employment. The lobbyist did not update his registration until more than seven months after the time required by the *Lobbyists Registration Act*. He was found to be in contravention of s. 4(3) of the *Lobbyists Registration Act* and fined \$500.

Statutes Considered: *Lobbyists Registration Act*, S.B.C. 2001, c. 42; *Financial Administration Act*, R.S.B.C. 1996, c. 138.

INTRODUCTION

[1] This report concerns an investigation under s. 7.1 of the *Lobbyists Registration Act* (LRA). This section gives the Registrar of Lobbyists (Registrar) the authority to conduct an investigation to determine whether there has been compliance with the 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. Relevant to this report are “consultant lobbyists”, individuals who undertake to lobby for payment on behalf of a client. 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. The LRA, s. 4(3), also requires consultant lobbyists, within 30 days of the completion or termination of an undertaking for which a return was filed, to inform the Registrar of the completion or termination of the undertaking and indicate the date on which the completion or termination occurred.

[3] Under s. 7(4)(d) of the LRA, the Registrar has delegated to me the authority to conduct this investigation.

ISSUES UNDER CONSIDERATION

[4] The issues considered are:

- (a) whether the lobbyist, who registered an undertaking to lobby on behalf of LoyaltyOne\Air Miles for Social Change, complied with s. 4(3) of the LRA by informing the Registrar of the termination of his undertaking to lobby within 30 days, and
- (b) if he did not comply, what, if any, administrative penalty is appropriate in the circumstances?

RELEVANT SECTIONS OF THE LRA

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

“designated filer” means

- (a) a consultant lobbyist

“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...
 - (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,...
- (b) in relation to a consultant lobbyist only, to arrange a meeting between a public office holder and any other individual, and...

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.

Form and Content of Return

- 4(1) Each return filed under section 3 must include the following information, as applicable:
 - (a) the name and business address of the designated filer, and whether he or she is a consultant lobbyist or the designated filer for an in-house lobbyist;

- (b) if the return is filed by a consultant lobbyist,
 - (i) the name and business address of the firm, if any, where the consultant lobbyist is engaged in business,
 - (ii) the date on which the undertaking with the client was entered into and is scheduled to terminate, and
 - (iii) the name of each individual engaged by the consultant lobbyist to lobby on behalf of the client;...
 - (d) the name and business address of the client or organization;
 - (e) a summary of the business or activities of the client or organization;
 - (f) if the client or organization is a corporation, the name and business address of each affiliate of the corporation that, to the designated filer's knowledge after making reasonable inquiries, has a direct interest in the outcome of the activities of each lobbyist named in the return who lobbies on behalf of the client or organization;...
 - (j) particulars to identify the subject matter concerning which a lobbyist named in the return has lobbied or expects to lobby, during the relevant period;
 - (k) if a lobbyist named in the return has lobbied or expects to lobby, during the relevant period, a public office holder employed by or serving in a ministry of the government of British Columbia or a Provincial entity, the name of the ministry or Provincial entity;...
 - (n) a declaration that no lobbyist named in the return is in violation of section 2.1;...
 - (p) additional prescribed information...
- 4(3) Within 30 days after the completion or termination of an undertaking for which a return was filed, the consultant lobbyist who filed the return must inform the registrar of the completion or termination of the undertaking and indicate the date on which the completion or termination occurred.

BACKGROUND

[5] On November 13, 2012, the lobbyist registered with the Office of the Registrar of Lobbyists (ORL) as a consultant lobbyist for LoyaltyOne\Air Miles for Social Change (LoyaltyOne) under Registration ID 12891325. The registration named a single target contact, British Columbia Hydro and Power Authority (BC Hydro).

[6] The lobbyist provided an undertaking start date of November 12, 2012 and an end date of November 12, 2013.

[7] On August 20, 2013, the lobbyist changed the end date on Registration ID 12891325 to November 30, 2012.

[8] This investigation began when it came to the attention of ORL staff that the lobbyist had apparently not informed the ORL of the termination of the undertaking within 30 days after the termination of the undertaking as required by s. 4(3) of the LRA.

INVESTIGATION

[9] On August 30, 2013, ORL staff asked the lobbyist to “...explain the discrepancy between the deadline for updating the end date upon completion or termination of an undertaking and the date on which you actually submitted the change.”

[10] The lobbyist replied on September 18, 2013 stating that he simply overlooked the need to de-register at the time. He eventually recalled that he was listed on the registry and that he should take action to correct it.

[11] On October 2, 2013, the Deputy Registrar sent, pursuant to s. 7.2(1) of the LRA, a notice to the lobbyist setting out the basis for the allegation that the lobbyist had not complied with s. 4(3) 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.

[12] The lobbyist responded on October 8, 2013. With respect to the issue of the late termination, he stated that he was unfamiliar with both lobbying and the registry. Not recognizing the urgency of his obligation, he became busy with work and allowed time to pass before terminating his registration.

[13] This file was assigned to me for review and decision. As well as the correspondence referred to in this report, I had telephone interviews with the lobbyist on February 4 and February 19, 2014. Information from those interviews was also used in preparing this report.

[14] The lobbyist sent me a copy of his contract with LoyaltyOne. The description of services in the contract includes activities that could come within the definition of lobbying.

[15] From the contents of the contract and other information the lobbyist provided, I conclude that the lobbyist was not an employee of LoyaltyOne; he was an independent contractor. If he lobbied, it was as a consultant lobbyist.

[16] As an example of the type of work he did under his contract, the lobbyist told me of a proposal he made on behalf of LoyaltyOne to a manager of BC Hydro, whereby BC Hydro would adopt a program involving air miles as rewards.

[17] The definition of “lobbying” in the LRA includes “communicating with a public office holder” in an attempt to influence “the development, establishment, amendment or

termination of any program, policy, directive or guideline of the government of British Columbia or a Provincial entity.”

[18] The definition of public office holder in the LRA includes “an ...employee of any *government corporation* as defined in the *Financial Administration Act...*” BC Hydro comes within the definition of government corporation and accordingly an employee of BC Hydro is a public office holder. BC Hydro is a Provincial entity.

[19] The proposal the lobbyist made to BC Hydro was an attempt to encourage BC Hydro to establish a program involving air miles and, therefore, constituted lobbying. Consequently, as a consultant lobbyist, he had an obligation to not only register his undertaking to lobby, but also update his return within 30 days after the termination of his undertaking.

[20] The lobbyist has acknowledged that he did not update his return within the time period required by s. 4(3) of the LRA.

FINDING

[21] I find that the lobbyist did not inform the Registrar of the termination of the undertaking and indicate the date of the termination within 30 days after the termination of his undertaking, as required under s. 4(3) of the LRA. The lobbyist informed the Registrar more than seven months after the time required by the LRA.

ADMINISTRATIVE PENALTY

[22] The purpose of the LRA is to promote transparency in lobbying by requiring lobbyists to register in a timely fashion and to disclose accurate, current and complete information. Failing to keep information in the Lobbyists Registry current 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.

[23] The LRA makes clear that transparency includes timeliness. Timeliness includes the requirements to file a return and update an existing registration within the legislated time limits.

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

- previous enforcement actions for contraventions
- the gravity and magnitude of the contravention
- whether the contravention was deliberate
- any economic benefit derived from the contravention

- the efforts to report and/or correct the contravention
- whether a penalty is necessary for general and specific deterrence

[25] I have considered these factors.

[26] There have been no previous enforcement actions arising from contraventions by the lobbyist.

[27] On the question of the gravity and magnitude of the contravention under investigation, the lobbyist updated his registration on August 20, 2013 to give a new end date for his undertaking of November 30, 2012. This was in excess of seven months after the time required for updating under s. 4(3) of the LRA.

[28] I accept that the contravention resulted from inattention.

[29] There is no evidence that the lobbyist derived any economic benefit from the contravention.

[30] The lobbyist updated his registration on his own initiative, without intervention from the ORL.

[31] On the question of specific and general deterrence, it is important for the objectives of the LRA that lobbyists be diligent in meeting their legal obligations to keep their registrations current and report the termination or completion of an undertaking within 30 days.

[32] With respect to specific deterrence, the lobbyist now has other employment. However, if the lobbyist were to be in a position to lobby again, this investigation, the administrative penalty assessed and the publication of this investigation report will encourage him to ensure he meets his obligations under the LRA.

[33] With respect to general deterrence, the publication of this report and recognition that the ORL will issue administrative penalties to lobbyists for contraventions of the LRA will remind all lobbyists to be diligent in complying with their legal obligations under the LRA in a timely fashion.

[34] The ORL policies and procedures, which are intended to act only as a guide, suggest that a penalty between \$100 and \$5,000 be levied for a first contravention of failing to report changes or late reporting of changes to a registration.

CONCLUSION

1. Under s. 7.2(2) of the LRA, I find that the lobbyist contravened section 4(3) of the LRA in respect of Registration ID12891325. The notice of alleged contravention has been substantiated.
2. I impose an administrative penalty of \$500.
3. The lobbyist must pay this penalty no later than October 30, 2014.
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, Stn. Prov. Govt.
Victoria, BC V8W 9A4

Email: info@bcorl.ca

September 18, 2014

ORIGINAL SIGNED BY

Darrel Woods, Investigator
Office of the Registrar of Lobbyists