



INVESTIGATION REPORT 14-14

LOBBYIST: Laura Fitzgerald

October 30, 2014

SUMMARY: A consultant lobbyist (the lobbyist) filed a return with the Office of the Registrar of Lobbyists (ORL) on May 1, 2014. The lobbyist certified that the commencement date of her undertaking was January 1, 2014. She failed to meet her obligations under s. 3(1) when she did not file a return within 10 days of entering into an undertaking to lobby on behalf of a client. The lobbyist was fined \$500.

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

INTRODUCTION

[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] Section 3(1) of the LRA requires that, within 10 days after entering into an agreement to lobby, the lobbyist must file a return.

[5] This investigation commenced when the lobbyist registered an undertaking to lobby on behalf of Lundbeck Canada Inc. (the “client”). The lobbyist registered an undertaking, under registration ID 20059206, on May 1, 2014. In the registration, she certified that the start date of the undertaking was January 1, 2014. It appeared the lobbyist had failed to file a return within the legislated timelines.

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.

RELEVANT SECTIONS OF THE LOBBYISTS REGISTRATION REGULATION ("LRR")

Deemed receipt of returns

- 2(2) Despite subsection (1), if the registrar requests that corrections be made to a return submitted to the registrar,
 - (a) the return is deemed not to have been received by the registrar, and
 - (b) subsections (3) and (4) apply.
- 2(3) If the registrar requests that corrections be made to a return and all of the corrections are submitted to the registrar within 10 days after the registrar makes the request, the return as corrected is deemed to be received by the registrar on the date the return, before the corrections were requested, would have been deemed under subsection (1) to have been received by the registrar if no corrections had been requested to it.
- 2(4) If the registrar requests that corrections be made to a return and all of the corrections are not submitted to the registrar until more than 10 days after the registrar makes the request, the date the return as corrected is deemed to be received by the registrar is the date on which the last correction is deemed to be received by the registrar by applying subsection (1) as though that last correction was a return submitted as described in subsection (1).

BACKGROUND

[7] On May 1, 2014, the lobbyist filed a return, registration ID 20059206, certifying she entered into an undertaking to lobby on behalf of her client. The registration had an undertaking start date of January 1, 2014.

[8] ORL staff received an automatic system alert indicating the lobbyist's registration was potentially non-compliant.

[9] By email dated May 2, 2014, ORL staff informed the lobbyist that they were commencing an investigation under s. 7.1 of the LRA to determine whether the lobbyist had or had not complied with s. 3(1) of the LRA. The lobbyist was asked to explain the "...discrepancy between the deadline for submitting a registration and the date on which [she] actually registered."

[10] In a separate email dated May 2, 2014, ORL staff notified the lobbyist that her registration was missing required information and the registration required correction. The lobbyist needed to provide information about her client's business activities and provide at least one lobbying target. ORL staff attached their Quick Tips guide to assist the lobbyist in making the required corrections.

[11] Section 2(2)(a) of the LRR stipulates that if the Registrar requests corrections be made to a return, the return is deemed not to have been received by the Registrar. Section 2(3) of the LRR provides 10 business days for the lobbyist to make the required corrections. If corrections are received within 10 business days of the return being submitted, the return is deemed to have been received on the day it was originally submitted. Section 2(4) of the LRR stipulates that if the corrections are made more than 10 business days after the Registrar makes the request, the return is deemed to be received on the date the last correction was submitted to the ORL.

[12] If the return remains in the queue awaiting updates for more than 30 days, the Lobbyists Registry system automatically rejects the return.

[13] The lobbyist failed to respond to the May 2, 2014 email or make the required corrections.

[14] In an email dated May 12, 2014, ORL staff reminded the lobbyist that she had 10 days to make the corrections to her return or it would be deemed to be received on the date of her final correction. The lobbyist failed to respond to the May 12, 2014 email or correct her return.

[15] On May 23, 2014, in an email, ORL staff asked the lobbyist if there were any reasons why she was not responding to the ORL's emails. The lobbyist did not respond.

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

[17] In a letter dated June 3, 2014, ORL staff wrote to the lobbyist's client requesting the following information:

- Did the lobbyist agree to lobby on behalf of the client,
- Was the agreement written or verbal,
- If written, provide a copy of the agreement,
- If verbal, confirmation of the undertaking start date, end date and the services to be provided,
- Whether the organization met with provincial public office holders,
- If so, who arranged and who attended the meetings.

[18] On June 11, 2014, the lobbyist responded on behalf of her client to the letter of June 3, 2014. She provided an unsigned copy of the contract between herself and her client. The lobbyist also provided the contact names of public officials in the public agencies with whom she had arranged meetings.

INVESTIGATION

[19] This file was assigned to me for review and decision.

[20] On June 12, 2014, pursuant to s. 7.2 of the LRA, I sent notice to the lobbyist informing her that I believed she had not complied with s. 3(1) of the LRA. In the notice I set out the basis for my belief. I invited the lobbyist to respond in writing to the alleged contravention and provide any information or documentation pertinent to the alleged contravention, or the potential administrative penalty.

[21] On July 14, 2014, the lobbyist replied to the notice. The lobbyist advised that she intended to file a return as soon as the contract was signed. The lobbyist expected to receive the signed contract shortly after she had entered into the agreement. On February 2, 2014, she proceeded to set up a meeting with a public office holder for February 26, 2014. However, she stated she did not attend the meeting. She received the signed contract on or about April 14, 2014 and filed her return on May 1, 2014.

[22] The lobbyist stated that she did not receive email correspondence from the ORL due to technical problems with her email address during the months of April through May. She also had hardware problems with her office computers during the month of May. The lobbyist stated that "...emails sent to this address were not received and resulted in my lack of response to [the Registry Manager's] earlier requests for clarification."

[23] She described several personal issues which interfered with her ability to monitor her registration.

[24] I understand that it was not until the ORL contacted her client that she was made aware of the ORL's inquiries.

[25] On August 20, 2014, I emailed the lobbyist asking her for a signed copy of the agreement to lobby on behalf of her client. I questioned the lobbyist on whether she believed that she was not required to submit a return until after she received a copy of the signed Service Agreement.

[26] On August 29, 2014, the lobbyist responded. She provided a signed copy of the Service Agreement. It indicated the effective date of the agreement was January 1, 2014. In response to my question, the lobbyist stated that "...I did not believe that the agreement needed to be submitted until after I had received a signed copy". The lobbyist indicated that she did not register with the ORL until after she received the "...fully executed copy of the Agreement..." I understand this to mean that the lobbyist felt she was not required to file a return until the Service Agreement was signed.

[27] In reviewing the lobbyist's return, registration ID 20059206, the Registry Manager discovered that the lobbyist had failed to make the corrections to her return specified by the ORL. As I explained earlier, if a return sits in the awaiting update queue for more than 30 days, the return is automatically rejected by the Lobbyists Registry system. I brought this to the lobbyist's attention, at which point she filed a new return and included the previously missing information.

DISCUSSION

[28] In addressing the request for corrections, the lobbyist submitted that she did not receive the ORL's emails asking her to make corrections to her return. Based on the information provided by the lobbyist, I accept that she was not aware of the ORL's requests for corrections due to problems she had with her email.

[29] In respect to the late filing, I understand that the lobbyist was operating under the mistaken belief that she was not required to file a return until she had received the signed contract governing the undertaking. Acting under this misinterpretation of the LRA, the lobbyist set up a meeting with a public official prior to filing a return.

[30] There is no statutory support for the position that an undertaking does not commence until a contract is signed. The interpretation of the statutory language involves giving meaning to the words in their ordinary and grammatical sense. The LRA defines undertaking as "an undertaking by a consultant lobbyist to lobby on behalf of a client," and makes no requirement that the undertaking be written. Furthermore, the plain language meaning of "undertaking" is "to make a promise"¹ or "make an agreement"².

¹ Black's Law Dictionary, West Publishing Company, Fifth Edition. 1979.

² Merriam-Webster dictionary, <http://www.merriam-webster.com/>

[31] Therefore, I do not interpret the LRA as restricting the meaning of “undertaking” to a signed contract. According to the plain language meaning of “undertaking”, an undertaking to lobby begins once a lobbyist agrees with a client to lobby on behalf of that client, whether that agreement results in a written contract or not.

[32] The Service Agreement specified an effective date of January 1, 2014, which the lobbyist entered and certified as the start date in the return she filed on May 1, 2014. Based on the facts before me, I conclude that the start date of the undertaking to lobby on behalf of her client was January 1, 2014. The lobbyist did not file a return until May 1, 2014, more than 10 days after entering into an undertaking to lobby on behalf of her client. Furthermore, the lobbyist set up a meeting with a public official prior to filing her return, registration ID 20059206, on May 1, 2014.

[33] During the investigation, I discovered that the original return, registration ID 20059206 entered on May 1, 2014, was rejected by the Lobbyists Registry when corrections specified by the ORL were not completed. The lobbyist believed that her return had been accepted. She states that she was not aware the return had been rejected. As mentioned above, the lobbyist immediately addressed this issue. Based on our conversation, I believe that the lobbyist did not intentionally disregard her responsibility to make corrections to her return.

[34] It is the lobbyist’s responsibility to ensure they have met their requirements under the LRA. It is important to note that lobbyists should always check to ensure that their return has been accepted by the Registrar. If a lobbyist is not clear about their responsibilities, they can contact the ORL for assistance.

FINDING

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

ADMINISTRATIVE PENALTY

[36] 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.

[37] 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.

[38] I have no information that would indicate the lobbyist has had a previous contravention.

[39] When considering 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 timelines. The goal of transparency is frustrated if the deadlines required by the LRA are not met. I do not doubt that the lobbyist believed she was acting in compliance with the LRA. However, due to her misinterpretation of the LRA, she failed to meet the deadline for filing her return.

[40] The lobbyist advised that she had technical difficulties with her email service. She did not receive the emails from the ORL informing her of the problems with her registration. I accept the lobbyist's explanation.

[41] The ORL assists lobbyists with their registrations to ensure they are fulfilling their commitments under the LRA. The fact that a lobbyist did not receive emails from the ORL informing the lobbyist of problems with their registration does not excuse the lobbyist from meeting their obligations under the LRA.

[42] The lobbyist stated that she had faced personal issues which affected her ability to properly monitor her registration. I have taken these circumstances into consideration in determining an appropriate penalty.

[43] 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.

[44] On the question of specific deterrence, this investigation, the hearing process, the ensuing administrative penalty and the publication of the outcome of this investigation will encourage the lobbyist to ensure that she has met her obligations under the LRA when submitting future returns.

[45] 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.

[46] 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 timelines.

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 in this case, I impose an administrative penalty of \$500.
3. The lobbyist must pay this penalty no later than December 11, 2014.
4. If the lobbyist requests reconsideration under s. 7.3 of the LRA, she 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

October 30, 2014

ORIGINAL SIGNED BY

Tim Mots
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Office of the Registrar of Lobbyists