

INVESTIGATION REPORT 15-02

LOBBYIST: Ian Todd

August 19, 2015

SUMMARY: A consultant lobbyist filed a return to register as a lobbyist on behalf of a client after the deadline required by the *Lobbyists Registration Act* (“LRA”). The lobbyist was found to be in contravention of s. 3(1) of the LRA and was fined \$1,200.

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

INTRODUCTION

[1] This report concerns an investigation commenced 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 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 s. 7(4)(d) of the LRA, the Registrar has delegated to me the authority to conduct this investigation.

ISSUES UNDER CONSIDERATION

[4] The questions for consideration are:

- (a) whether the lobbyist, who registered an undertaking to lobby as a consultant on behalf of Black Diamond Group Limited, complied with s. 3(1) of the LRA, and
- (b) if the lobbyist did not comply with the requirements of the LRA, 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

"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

[5] On July 10, 2014, the lobbyist registered with the Office of the Registrar of Lobbyists (“ORL”) as a consultant lobbyist for the Black Diamond Group Limited (“Black Diamond”) under Registration ID 20845006. The undertaking in the return filed by the lobbyist had a start date of June 15, 2014 and an end date of December 31, 2014.

[6] The ORL received an automatic system alert that the registration filed by the lobbyist appeared to contravene the required timelines stipulated in the LRA. Section 3(1) of the LRA requires a consultant lobbyist to file a return within 10 days after entering into an undertaking to lobby on behalf of a client.

INVESTIGATION

[7] The ORL commenced an investigation under s. 7.1 of the LRA to determine whether the lobbyist had complied with s. 3(1) of the LRA.

[8] In a letter to the lobbyist dated September 15, 2014, the ORL registry manager pointed out that with an undertaking start date of June 15, 2014, the lobbyist was required to register no later than June 25, 2014. The registry manager asked the lobbyist to “explain the discrepancy between the deadline for submitting a registration and the date on which you actually registered.”

[9] The lobbyist responded on September 23, 2014. He wrote that the undertaking start date of June 15, 2014 “...appears to be a clerical error.” He also wrote that:

“The June 15, 2014 date is not relevant to any work I have done for Black Diamond Group Limited, in fact I have not conducted any lobbying activity on their behalf. I simply wanted to register in the event I was required to undertake lobbying activity at any time this year.”

[10] On October 7, 2014, the registry manager explained to the lobbyist that registration is not dependent on whether “...you have lobbied on behalf of your client. A registration must be submitted within 10 days of an undertaking (agreement) between you and your client that you intend to lobby on their behalf, which includes setting up meetings.”

[11] The lobbyist responded that he had arranged for his client’s Chief Executive Officer to meet with a British Columbia cabinet minister on May 23, 2014. He described this as “an introductory meeting” at which “no policy issues or objectives were discussed.” He also stated that “I was not aware I was required to register when arranging a meeting.”

[12] The lobbyist later clarified that his initial contact with the Minister’s office to request the meeting was on May 6, 2014.

[13] As a result of the information provided by the lobbyist, the registry manager pointed out that it appeared the undertaking start date and the undertaking end date needed to be reviewed and revised to reflect the correct dates. The lobbyist updated his registration on October 16, 2014 with a revised undertaking start date of May 6, 2014 and an end date of May 23, 2014.

[14] On November 26, 2014, I 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. 3(1) of the LRA. I 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 administrative penalty.

[15] On November 27, 2014, I spoke with the lobbyist by telephone. He indicated that he had a written contract to lobby on behalf of his client and that he would send a copy to the ORL.

[16] The lobbyist responded to the s. 7.2(1) notice on December 30, 2014. He explained that his late registration was largely related to a misunderstanding of the process. The lobbyist also sent a copy of an email from his client dated December 3, 2014, extending their contract for a six month period.

[17] Also on December 30, 2014, as a result of follow up communications by the ORL, the lobbyist forwarded an unsigned copy of his General Consultancy Agreement with Black Diamond. It states that "*This Agreement shall be for an initial six month term commencing November [●], 2013 and end April 1, 2014. If required, and mutually agreed, a further term may be negotiated.*" The lobbyist reported that his original six month term with Black Diamond started November 1, 2013. The lobbyist also provided a copy of another email from his client dated June 5, 2014, extending their contact from April 1, 2014 to December 31, 2014.

[18] On January 14, 2015, the lobbyist submitted a corrected registration with an undertaking start date of September 1, 2013 and an end date of June 30, 2015. The lobbyist did not explain why he chose a start date that was earlier than the November 1, 2013 effective date of his written agreement.

DISCUSSION

[19] I have reviewed the lobbyist's Consultancy Agreement with Black Diamond (the "Agreement"). In my opinion it is clear that it includes a provision for services that come within the definition of lobbying in the LRA. Accordingly, the Agreement incorporates an undertaking to lobby and the lobbyist was required to file a return with the Registrar within 10 days of reaching an agreement with his client that he would lobby on their behalf. Based on the lobbyist's declared undertaking start date of September 1, 2013, he was required to register no later than September 11, 2013.

[20] The meeting the lobbyist set up between his client's CEO and a Cabinet Minister in May 2014 falls clearly within the definition of lobbying in the LRA, that is "...to arrange a meeting between a public office holder and any other individual...". Therefore, the lobbyist had lobbied without being registered with the Lobbyists Registry.

FINDING

[21] Based on the evidence, I find that the lobbyist did not comply with s. 3(1) of the LRA when he failed to file a return within 10 days after entering into an undertaking to lobby on behalf of a client.

ADMINISTRATIVE PENALTY

[22] The purpose of the LRA is to promote transparency in lobbying by requiring lobbyists to disclose accurate, current and complete information.

[23] The LRA makes clear that transparency includes timeliness. This includes the requirement to file a return within the legislated deadline. Failing to file a return in a timely manner undermines the ability of the public to know who is attempting to influence government at any point in time, thereby defeating the LRA's goal of transparency.

[24] In assessing the amount of a penalty, I must consider the following:

- previous enforcement actions for contraventions by the person,
- the gravity and magnitude of the contravention,
- whether the contravention was deliberate,
- any economic benefit derived from the contravention,
- the person's efforts to report and/or correct the contravention,
- the need to deter the individual and others from contravening the LRA in the future, and
- other relevant factors.

[25] I have considered these factors and the submissions made by the lobbyist.

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

[27] On the question of the gravity and magnitude of the contravention under investigation, the lobbyist filed a return as a consultant lobbyist on July 10, 2014, with an undertaking start date of June 15, 2014. After the ORL commenced a compliance investigation, the ORL learned that the lobbyist had reached an agreement with the client to lobby on their behalf much earlier than first reported. Following subsequent

communications with the ORL registry manager to clarify the meaning of “undertaking start date”, the lobbyist reported his undertaking start date as September 1, 2013. Based on the start date in the lobbyist’s final registration, the lobbyist was ten months late in filing his initial return. During this period of time there was no public record in British Columbia of the lobbyist having entered into an undertaking to lobby on behalf of this client. In addition, the lobbyist lobbied without being registered. Lobbyists need to be aware of their obligations under the LRA.

[28] The lobbyist described the contravention as a misunderstanding on his part as to when registration is required. Lobbyists need to inform themselves of the requirements of the LRA. ORL staff is available to answer queries and provide guidance.

[29] I have no evidence to suggest that the lobbyist gained an economic benefit by registering late.

[30] The lobbyist’s initial filing, although inaccurate, was submitted without prompting from the ORL. However, it was only after an investigation was commenced by the ORL that the much earlier undertaking start date was discovered. The lobbyist filed an amended return in an effort to comply with the LRA, and filed a further return to correspond to the terms of his actual undertaking.

[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 file their returns as required by the legislation.

[32] I have considered whether an administrative penalty is necessary for specific or general deterrence. In my opinion, an administrative penalty is appropriate in the circumstances of this case to encourage the lobbyist to ensure he meets his obligations under the LRA. 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.

[33] The ORL policies and procedures, which are intended only as a guide, suggest a range of penalties for contraventions of the LRA. The penalty for a late filing has a range of \$100 to \$5000 for a first instance of non-compliance. For some time the ORL has put lobbyists on notice of a gradual escalation in administrative penalties where appropriate.

[35] The penalty in this case is intended to reflect the fact that commencement of an investigation revealed that there was a lengthy delay in filing the return. In addition, during that period, the lobbyist had lobbied without being registered.

CONCLUSION

1. Under s. 7.2(2) of the LRA, I find that the lobbyist contravened s. 3(1) of the LRA in respect of registering his undertaking on behalf of Black Diamond. The notice of alleged contravention has been substantiated.
2. I impose an administrative penalty of \$1,200.
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4. The lobbyist must pay this penalty no later than September 30, 2015.
5. 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

August 19, 2015

ORIGINAL SIGNED BY

Darrel Woods, Investigator
Office of the Registrar of Lobbyists