O.R.L.
office of the registrar of lobbyists
BRITISH COLUMBIA

INVESTIGATION REPORT 15-11

LOBBYIST: Sarah Beuhler

October 14, 2015

SUMMARY: A consultant lobbyist entered into an undertaking to lobby on behalf of her client. The lobbyist filed her return more than 10 days after entering into the undertaking contrary to s. 3(1) of the *Lobbyists Registration Act* ("LRA"). Furthermore, the lobbyist entered inaccurate information, the undertaking start date, into her return contrary to s. 4(1)(b)(ii) of the LRA and certified under s. 5(1) of the LRA that the information was true. An administrative penalty of $1,700 was imposed.

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 is or has been compliance by any person 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] This report and determination are issued under the authority delegated to me by the Registrar under s. 7(4)(d) of the LRA..

ISSUES UNDER CONSIDERATION

[4] The questions for consideration are:

(a) whether the lobbyist, who registered an undertaking under Registration ID 23330761 to lobby as a consultant on behalf of the Federation of Post-Secondary Educators of BC complied with s. 3(1) of the LRA,

(b) whether the lobbyist entered inaccurate information into her return contrary to s. 4(1) of the LRA, and

(c) 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.

Form and content of return

4(1) Each return filed under section 3 must include the following information, as applicable:

(b) if the return is filed by a consultant lobbyist,...

(ii) the date on which the undertaking with the client was entered into and is scheduled to terminate,

Certification of documents and date of receipt

5(1) An individual who submits a document, including a return, to the registrar under this Act must certify,

(a) on the document, or

(b) in the manner specified by the registrar, if the document is submitted in electronic or other form under section 6,

that, to the best of the individual's knowledge and belief, the information contained in the document is true.

RELEVANT SECTIONS OF THE *LOBBYISTS REGISTRATION REGULATION* (the "Regulation")

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 business 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 business 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

[5] On February 26, 2015, the lobbyist contacted the Office of the Registrar of Lobbyists ("ORL") via email advising that she needed to register and the website was not working. ORL staff provided information to the lobbyist to assist her in registering.

[6] On March 2, 2015, ORL staff advised the lobbyist that the LRA required registration within 10 days of an undertaking to lobby on behalf of a client. Several emails were exchanged as the lobbyist did not understand that she met the definition of a consultant lobbyist and misunderstood the criteria for registration. The lobbyist advised that her firm's principal would register her, as planned.

[7] On March 9, 2015 and March 26, 2015, ORL staff followed up to inquire why the lobbyist still had not registered.

[8] On March 27, 2015, the lobbyist submitted Registration ID 23330761 with an undertaking start date of March 26, 2015.

[9] ORL staff inquired about the undertaking start date entered on the return as the lobbyist had originally contacted the ORL in February advising that she needed to register. She was asked to provide a copy of any written agreement with the client. If the agreement was verbal, the lobbyist was asked to provide the date an agreement was reached with the client. The lobbyist was also directed to resources on the ORL website which defined "undertaking".

[10] The lobbyist responded on March 27, 2015 advising that a verbal agreement with the client was reached on December 22, 2014 and one meeting with an MLA took place on February 13, 2015.

[11] On March 30, 2015, ORL staff asked the lobbyist to correct the registration's undertaking start date to reflect the date an agreement was reached with the client.

[12] On April 9, 2015, ORL staff notified the lobbyist of her obligations under the Regulation for making corrections to her return. ORL staff advised the lobbyist that if the corrections were not completed within the timelines set out in the Regulation, she would be in contravention of s. 4(1) of the LRA for entering incorrect information into a return. The timeline for making corrections passed without any response or correction being made to the lobbyist's return.

INVESTIGATION

[13] The ORL commenced an investigation under s. 7.1 of the LRA to determine whether the lobbyist had complied with ss. 3(1) and 4(1)(b)(ii) of the LRA.

[14] In a letter to the lobbyist dated April 20, 2015, ORL staff asked the lobbyist to explain the discrepancy between the timelines for registration in the LRA and the date on which she completed and submitted her registration. In addition, the lobbyist was asked to provide an explanation on why the apparently inaccurate undertaking start date was not corrected within the timelines in the Regulation.

[15] The lobbyist responded on May 19, 2015. She wrote that:

> "The principal of my employer was going through the BCeid registration for the first time in March on my behalf and thus he entered the undertaking start date as the date that he began the registration process."

[16] The consultant lobbyist is legally responsible for filing the return within the required timelines specified in the LRA and only the consultant lobbyist can be held accountable under the LRA for failure to file on time.

[17] The lobbyist also pointed out that she made an error in advising that an agreement to lobby on behalf of the client was reached on December 22, 2014. She stated that although a creative agreement was signed with the client on December 24, 2014, it "made no mention of any tactics that we would or would not employ over the course of our campaign. Our first external communication with our client wherein we directly refer to meeting with provincial MLAs was on January 12, 2015 and not December 22, 2014."

[18] On May 19, 2015, the lobbyist's colleague changed the undertaking start date on Registration ID 23330761 from March 26, 2015 to January 12, 2015.

[19] On June 19, 2015, 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 ss. 3(1) and 4(1)(b)(ii) of the LRA. I invited the lobbyist to respond in writing to the alleged contraventions and provide any information or documentation pertinent to the alleged contraventions and any potential administrative penalty.

[20] The lobbyist responded by email to the s. 7.2(1) notice on July 31, 2015. She outlined the technical problems she encountered when she tried to register as a lobbyist. She also explained that:

> "...we were in the middle of an absolutely frenzied time in our campaign...it wasn't right, but frustration and preoccupation forced it [the registration] to the back burner.... "

DISCUSSION

[21] In the lobbyist's submissions to the ORL, she cites the BCeID system, her employer, the ORL, and her workload as reasons that she was unable to register in compliance with the LRA. I appreciate that the lobbyist must balance her workload with her compliance obligations. However, properly registering with the ORL is an important

obligation and all lobbyists must ensure that they make time to meet their regulatory requirements.

[22] The lobbyist took 82 days from her initial contact with the ORL to register her undertaking in a correct return. During this period of time numerous follow up emails from ORL staff were sent reminding the lobbyist of her obligations under the LRA. As the required correction was not made within the timelines in the Regulation, the lobbyist's registration is deemed not to have been received until the corrections were made. This means the registration was deemed to have been received on May 19, 2015 for an undertaking that commenced on January 12, 2015, which is an unacceptable delay. When any lobbyist is contacted by ORL staff, they should ensure they make it a priority to bring themselves in compliance with the LRA timelines.

[23] The meeting the lobbyist set up on February 13, 2015 between her client and an MLA falls clearly within the definition of lobbying, 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. This is a factor taken into consideration when determining any potential administrative penalty.

FINDING

[24] Based on the evidence, I find that the lobbyist submitted her return more than 10 days after entering into the undertaking contrary to s. 3(1) of the LRA. In addition the lobbyist entered inaccurate information, the undertaking start date, into her return contrary to s. 4(1)(b)(ii) of the LRA and certified under s. 5(1) of the LRA that the information was true.

ADMINISTRATIVE PENALTY

[25] Section 7.2(2) of the LRA provides that if, after giving a person under investigation a reasonable opportunity to be heard respecting an alleged contravention, the Registrar determines that the person has not complied with a prescribed provision of this Act or the regulations, the Registrar must inform the person of the Registrar's determination that there has been a contravention and may impose an administrative penalty of not more than $25,000. Such person must be given notice of the contravention determination and, if a penalty is imposed, "the amount, the reason for the amount and the date by which the penalty must be paid" (LRA s. 7.2(2)(c)(ii)).

[26] Section 7.2 of the LRA confers a broad discretion on the Registrar to impose administrative penalties. To provide a measure of structure in the exercise of that discretion, the ORL has published "Policies and Procedures" (the "Policy"), whose purpose is to advise members of the public and those engaged in lobbying about what will guide the ORL in exercising its duties under the LRA and the regulations. As the Policy document makes clear, its purpose is to structure discretion. It does not fetter discretion. It is not law. I have approached the Policy as a document intended to provide a principled guide to the exercise of my discretion to determine a penalty.

[27] The Policy document seeks to operate in a principled fashion by setting out firstly, a general financial range for particular infractions (depending on whether it is a first, second or third infraction of that nature), secondly, a list of factors that will be taken into account in determining the amount of administrative penalty, and finally, a clear statement that the Policy "does not fetter the ORL's ability to conclude that no administrative penalty is appropriate in the circumstances, or to fashion a remedy on either side of the range set out in the general policy, in special circumstances."

[28] I should state at the outset that I have considered and rejected the view that this might be a case where "no penalty" is appropriate. The current LRA provisions have now been in place for five years. The contravention in this case is clear. A penalty is necessary for both specific and general deterrence.

[29] In deciding what the appropriate administrative penalty within that range is, I have taken the following factors into account:

- 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.

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

[31] This brings me then to the gravity and magnitude of the contravention. In my view, these contraventions were moderately severe in nature.

[32] The purpose of the LRA is to promote transparency in lobbying by requiring consultant lobbyists to disclose accurate, current and complete information about their lobbying activities. This is a solemn legal obligation. It reflects the legislative intent that while consultant lobbyists have a right to lobby, the public have a right to know about their intended activities as defined in s. 4 of the LRA, and to have that knowledge in a timely and transparent fashion. The 10 day time limit is not an optional or arbitrary administrative deadline. The failure to comply with the deadline is a contravention. The 10 day deadline is inextricably linked with the obligation to register itself, as it emphasizes the legislature's concern that the public have a right to know not only the substance of the information set out in s. 4, but to have that information provided in a timely manner. 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.

[33] The lobbyist's return was deemed to be submitted almost four months late due to the corrections not being made within the timelines stipulated in the Regulation. Moreover, during the period of contravention, actual lobbying took place without the details being publicly available on the Registry for several months.

[34] In addition, incorrect information was initially entered into the Registry. As mentioned above, it is vital that the Registry contain accurate and up to date information to achieve its goal of transparency. Entering incorrect information in the Registry and failing to correct this information in a timely fashion frustrates this objective. An aggravating factor here is the length of time the lobbyist took to correct this information, even when asked to do so multiple times by ORL staff.

[35] The next factor I have considered is whether the contravention was deliberate. I accept, on balance, that the lobbyist was trying to properly register her lobbying activities as stipulated by the LRA. The infraction was not "deliberate" in the sense that the lobbyist actively sought to avoid the LRA.

[36] The finding that the contravention was not deliberate does not, however, conclude the matter. While the lobbyist's good intentions are accepted, the lobbyist did not provide a reasonable explanation as to why she was not able to comply with the LRA. Thus, while I do not make a finding that the contravention here was deliberate, the lobbyist must understand and adhere to her obligations under the LRA.

[37] The next factor to consider is whether the lobbyist derived any economic benefit from the contravention. I consider this a neutral factor. On one hand, the lobbyist gained an economic benefit when she received payment for lobbying when she had not filed the returns with the ORL. On the other hand, she did not obtain that payment *because* of the contravention.

[38] I have already addressed the next factor – "any effort the registrant made to report or correct the contravention." As mentioned above, a factor that weights against the lobbyist is the time it took her to correct her undertaking start date, even after being prompted by ORL staff.

[39] As noted above, I have considered whether an administrative penalty is necessary for specific or general deterrence. In my view, the circumstances of this case call for an administrative penalty both to encourage this lobbyist to take her obligations under the LRA with the utmost seriousness, and to remind all lobbyists of their legal obligations to be diligent in keeping their registrations current and accurate.

[40] 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 $5,000 for a first instance of non-compliance. The penalty for entering information that is not true into a return has a range of $1,000 to $7,500 for the first instance of non-compliance.

[41] Based on the above factors, I impose an administrative penalty of $700 for registering late contrary to s. 3(1) of the LRA.

[42] Nothing frustrates transparency more than failing to enter correct information, in this case the undertaking start date. In addition, the lobbyist did not correct this information until after the ORL had commenced a compliance investigation. For this reason, I impose an administrative penalty of $1,000 for failing to enter the correct undertaking start date in the return contrary to s. 4(1)(b)(ii) of the LRA.

[43] The penalty in this case is intended to reflect the fact that the lobbyist ignored several email reminders from ORL staff to correct the undertaking start date and this was not completed until after the commencement of an investigation. In addition, the lobbyist had lobbied without being registered.

CONCLUSION

1. Under s. 7.2(2) of the LRA, I find that the lobbyist contravened ss. 3(1) and 4(1)(b)(ii) of the LRA in respect of Registration ID 23330761.

2. The notice of alleged contraventions has been substantiated.

3. The total amount of the penalty is $1,700.

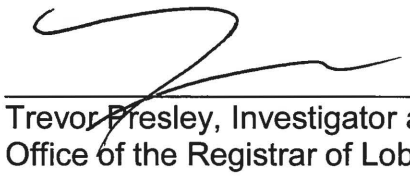
4. The lobbyist must pay this penalty no later than November 25, 2015.

5. 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 14, 2015



Trevor Presley, Investigator and delegate of the Registrar
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