

INVESTIGATION REPORT 16-06

LOBBYIST: Dana Hayden

May 2, 2016

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*. The lobbyist was found to be in contravention of section 3(1) of the LRA and an administrative penalty of \$800 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 *Lobbyists Registration Act* (“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 24639652 to lobby as a consultant on behalf of Oka Holdings, 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

"public office holder" means

- (a) a member of the Legislative Assembly and any person on the member's staff,
- (b) an officer or employee of the government of British Columbia,...

"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 22, 2015, the lobbyist submitted a return as a consultant lobbyist for Oka Holdings under Registration ID 24639652. The lobbyist certified an undertaking start date of July 22, 2015.

[6] On September 10, 2015, staff at the Office of the Registrar of Lobbyists (“ORL”) sent the lobbyist an email inquiry to determine whether or not she was a former public office holder and should have reported this on her return. The lobbyist requested information on the registry and registration requirements. After reading the resources provided, the lobbyist realized that she should have registered with the Lobbyists Registry within 10 days of October 14, 2014 as she had requested and attended meetings with public servants.

[7] Subsequently, the lobbyist added her former positions to her return that met the definition of “former public office holder” according to s. 1.4 of the *Lobbyists Registration Regulation*. In addition, on September 16, 2015, the lobbyist updated the undertaking start date on Registration ID: 24639652 from July 22, 2015 to October 14, 2014.

[8] ORL staff received an automatic system alert that the consultant lobbyist 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

[9] 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.

[10] On October 15, 2015, ORL staff sent the lobbyist a compliance investigation letter asking the lobbyist to explain the discrepancy between the deadline for submitting a registration and the date on which she registered. In addition, the lobbyist was asked to provide a copy of any written agreement to lobby or the date the lobbyist reached a verbal agreement with her client and to provide the details of any meetings arranged and attended with public office holders on behalf of her client.

[11] The lobbyist responded on October 30, 2015 to advise that the discrepancy between the time when she was required to register and when she submitted a registration was due to the fact that:

“Based on my (incorrect) understanding of the definition of a public office holder, I was genuinely trying to ensure that I was in compliance with ORL guidelines before requesting any meeting with an elected official.”

[12] The lobbyist confirmed that her agreement with her client was verbal. She also provided the details of a number of meetings that she either requested or attended between October 2014 and July 2015, the period of time the lobbyist was not registered with the Lobbyists Registry. The lobbyist stated that some meetings she attended were requested by public office holders, while others were requested by her.

[13] On February 24, 2016, 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 this contravention and any potential penalty.

[14] The lobbyist responded on March 28, 2016 advising that:

“Based on my 30 years of working for the BC Public Service, my working understanding of ‘public office holder’ was that that term referred to an elected official.”

[15] The lobbyist confirmed that after she was contacted by ORL staff she then studied the LRA and the ORL website and realized that she “should have registered with the ORL within 10 days of October 14, 2014 because I was asked to and attended meetings with public servants.” She stated that she was trying to register before she met with any public office holders and her late registration occurred because she assumed an incorrect definition of public office holder.

[16] The lobbyist acknowledged that her registration for this undertaking was late.

DISCUSSION

[17] The meetings the lobbyist arranged between October 2014 and July 2015 with public office holders on behalf of her client fall clearly within the definition of lobbying in the LRA. Therefore, the lobbyist had actually lobbied in advance of registering with the Lobbyists Registry. This is taken into consideration in determining any potential administrative penalty.

[18] The lobbyist attributes her failure to register on her mistaken belief that public servants were not considered “public office holders”. In her October 30, 2015 letter to the ORL she admits that she had not read the LRA prior to commencing her lobbying activities. In the LRA, the definition of a public officer holder clearly includes public servants. I cannot stress enough how important it is that all lobbyists must ensure that

they are familiar with the LRA prior to commencing their lobbying activities. Failure to do so increases the likelihood that a lobbyist will run afoul of the LRA and be subject to administrative penalties.

FINDING

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

ADMINISTRATIVE PENALTY

[20] 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))

[21] Section 7.2 of the LRA confers discretion on the Registrar to impose administrative penalties. To provide a measure of structure in the exercise of that discretion, the Office has published "Policies and Procedures" (the "Policy") 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.

[22] 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."

[23] 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 six years. The lobbyist should be aware of her obligations under the LRA. The contraventions in this case are clear. A penalty is necessary for both specific and general deterrence.

[24] 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.

[25] 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 specific and general deterrence.

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

[27] There have been no previous enforcement actions for contraventions by the lobbyist. This is the first registration that the lobbyist has submitted to the Lobbyists Registry.

[28] On the question of the gravity and magnitude of the contravention under investigation, the lobbyist was nearly nine months late in submitting a registration. During this period of time the lobbyist had lobbied on a number of occasions without being registered.

[29] 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.

[30] The next factor I have considered is whether the contravention was deliberate. I accept, on balance, that the contravention resulted from the lobbyist's misunderstanding of the definition of a "public office holder". The lobbyist's filing was submitted without prompting from the ORL and the lobbyist amended her undertaking

start date after she realized that it was incorrect. It is in the lobbyist's favour that she was honest and forthright with the ORL and sought to immediately correct the undertaking start date she initially entered in her registration.

[31] 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.

[32] I have already addressed the next factor – “any effort the registrant made to report or correct the contravention.” It is in the lobbyist's favour that she corrected her undertaking start date after she realized it was incorrect.

[33] 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.

[34] 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 in this case is intended to reflect the lobbyist's delay of nearly nine months in filing her return as a consultant lobbyist.

[35] To provide additional guidance on the applicable penalty in this instance, I have also reviewed previous ORL Investigation Reports and their associated penalties. Investigation Report 15-12 dealt with a similar misunderstanding of the LRA and involved the same client, however in that case the consultant lobbyist was only five months late in registering.

[36] This case is also similar to 15-02 where a consultant lobbyist was found to be in contravention of s. 3(1) of the LRA for an undertaking and was issued an administrative penalty of \$1200. In that case, the consultant lobbyist was 10 months late in registering and had lobbied while unregistered. In that case, the lobbyist did not report the correct undertaking start date until after an investigation by the ORL had commenced.

[37] However, this case shares the most in common with Investigation Reports 16-01 and 16-02 where the consultant lobbyists were seven months late in filing and were both fined \$700. In this case, the consultant lobbyist was nine months late. Therefore, I have determined that an administrative penalty of \$800 is appropriate.

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 her undertaking on behalf of Oka Holdings. The notice of alleged contravention has been substantiated.
2. I impose an administrative penalty of \$800.
3. The lobbyist must pay this penalty no later than June 13, 2016.
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

May 2, 2016

ORIGINAL SIGNED BY

Trevor Presley, Investigator and
Delegate of the Registrar of Lobbyists