

INVESTIGATION REPORT 16-07

LOBBYIST: Marnie Mitchell

June 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* (“LRA”). The lobbyist was found to be in contravention of section 3(1) of the LRA for failing to file a return within 10 days after entering into an undertaking. An administrative penalty of \$750 was imposed.

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

Authorities Considered: Investigation Report 15-04 and Investigation Report 15-12

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: 24759373 to lobby as a consultant lobbyist on behalf of McKesson Canada, 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.

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,

4(2) An individual who files a return must supply the registrar with the following information within the applicable period:

(a) particulars of any change to the information in the return, within 30 days after the change occurs;

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.

BACKGROUND

[5] The consultant lobbyist ("lobbyist") had entered into an undertaking to lobby on behalf of her client, McKesson Canada. The lobbyist filed a return, Registration ID: 15010202. The start date of the undertaking was March 12, 2013 with an end date of March 12, 2015.

[6] On August 31, 2015, the lobbyist filed a return, Registration ID: 24759373, for an undertaking she entered into with the same client. The lobbyist certified the undertaking start date as August 3, 2015.

[7] ORL staff observed that the previous registration end date for this same client was March 12, 2015, which raised the question whether this was an extension of an existing undertaking (which was not reflected in the new registration's undertaking start date), or whether the lobbyist had entered into a new undertaking with her client at a later date.

[8] On September 8, 2015, ORL staff sent an email to the lobbyist asking her to clarify whether this was a new agreement with this client or whether the original agreement had been extended. In the event this was a new agreement, the lobbyist was asked to explain why she failed to comply with the timelines set out in s. 3(1) of the

LRA. In the event this was an extension of the original undertaking, the lobbyist was asked why the undertaking end date had not been extended according to the timelines set out in s. 4(2) of the LRA.

[9] On September 10, 2015, the lobbyist responded explaining that she had missed the end date on Registration ID: 15010202. She confirmed that her undertaking with her client was ongoing. She discovered her registration for this client had terminated when she received an ORL reminder notice for a different registration. The lobbyist stated that she has now taken steps to prevent this from happening in the future.

[10] The lobbyist also stated that during the period she was not registered with the Registry, she had provided advice to her client derived from occasional discussions she had with Ministry officials about policy matters.

[11] Based on the information provided by the lobbyist, ORL staff sent an email on October 6, 2015 requesting that the lobbyist review the undertaking start date she entered into Registration ID: 24759373 and revise accordingly. The lobbyist was also informed that due to the length of time that had transpired between the end date of her previous registration and when she had submitted a new registration, she would be receiving a compliance investigation letter.

[12] On October 6, 2015, the lobbyist updated Registration ID: 24759373 changing the undertaking start date from August 3, 2015 to March 13, 2015.

INVESTIGATION

[13] 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.

[14] In a letter to the lobbyist dated October 28, 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 return. The lobbyist was also asked about any lobbying activities on behalf of her client during the period she was unregistered. She was asked to provide copies of any written agreement(s) to lobby on behalf of her client. If she did not have a written agreement, she was asked for the date she reached a verbal agreement with her client to extend their undertaking.

[15] The lobbyist responded on November 12, 2015 advising she failed to track her registration for this client and subsequently missed the deadline for updating the undertaking end date on the registration. The lobbyist did not have a written agreement with her client. She explained that her undertaking with her client is continuous with no specific end date and no requirement for “formal extensions”. The lobbyist explained that she did attend one meeting with a public office holder on August 28, 2015 without her client during the time she was not registered.

[16] On February 25, 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 to provide any information or documentation pertinent to the contravention and any potential penalty.

[17] On March 30, 2016, the lobbyist responded reiterating that this was an administrative error and not an attempt to conceal her lobbying activity. She stated the August 28, 2015 meeting was not lobbying within the meaning of the LRA since there was no attempt "...to influence legislation, policy, programs, guidelines, or contracts or grants." The lobbyist pointed out that she had not received any warnings or contraventions in the past.

DISCUSSION

[18] The lobbyist and her client have an ongoing verbal agreement with no specific end date. The lobbyist entered an undertaking end date of March 12, 2015 on her original return (Registration ID: 15010202). The lobbyist had 30 days under s. 4(2) of the LRA from that date to make the necessary changes to her return. In this case, it was extending the undertaking end date to reflect that the undertaking was continuing. When the lobbyist failed to make the changes within the 30 day time limit, the Lobbyists Registry system automatically terminated this registration.

[19] Once the return was terminated, the lobbyist had to complete and submit a new return for her undertaking with this client. The lobbyist submitted Registration ID: 24759373 on August 31, 2015, more than 10 days after entering into an agreement to extend her undertaking with her client. The circumstances of this case automatically placed the lobbyist in contravention of s. 3(1) of the LRA.

[20] The lobbyist admitted that she failed to monitor her registration and allowed it to terminate. The lobbyist did not realise her error until approximately five and a half months after her return had terminated. She filed a new return on August 31, 2015, certifying that the start date was August 3, 2015. When ORL staff challenged the lobbyist on the start date of her new return, she changed the date on Registration ID: 24759373 to the correct start date of March 13, 2015.

[21] By entering an erroneous start date and certifying it to be true under s. 5(1) of the LRA, the lobbyist apparently contravened s. 4(1)(b)(ii) of the LRA. It is not clear why the lobbyist certified the start date as August 3, 2015 when she knew or should have known the correct start date needed to reflect her ongoing agreement with her client. Since the lobbyist corrected this error shortly after it was brought to her attention, the ORL did not pursue this issue.

[22] The lobbyist set up one meeting during the period she had an undertaking with her client, but was not registered with the Registry. She attended this meeting without her client. She stated that this meeting "...was *not set up explicitly* on behalf of [her

client] (emphasis added). *It included* broad discussion of ...” policies which are related to her client’s industry (emphasis added).

[23] To the public, the lack of an active registration on the Registry would appear to indicate that the lobbyist was no longer lobbying on behalf of her client. This undermines one of the fundamental purposes of the LRA, which is to promote transparency.

FINDING

[24] 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 her client.

ADMINISTRATIVE PENALTY

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

[26] 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.

[27] 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.

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

[29] On the question of the gravity and magnitude of the contravention under investigation, the lobbyist allowed her return to lapse. Therefore, she was required to complete and submit a new return. The lobbyist filed a new return and certified an incorrect start date. This was only corrected after the ORL initiated inquiries into the lobbyist’s return. The return was filed more than five months past the timelines in the LRA. The result of these actions was that there was no active return on the Registry open to public scrutiny when she had an active undertaking with her client. For these reasons, I do not believe this is a minor contravention.

[30] There have been no previous investigations for contraventions by the lobbyist and she has not received any prior warnings.

[31] The next factor I have considered is whether the contravention was deliberate. The lobbyist noted that this was an administrative error, which was not meant to conceal her lobbying activities. I accept, on balance, that failing to extend her undertaking end date and initially entering an incorrect undertaking start date in her new registration was not meant to deceive the ORL but was an unintentional error.

[32] I do not believe the lobbyist derived any economic benefit from the contravention.

[33] 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 the ORL inquired about the date.

[34] Together with the above factors, I have also considered whether an administrative penalty is necessary for specific or general deterrence. In my opinion, 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.

[35] The ORL policies and procedures, which are intended only as a guide, suggest a range of penalties for contraventions of the LRA. The suggested range for filing past the timelines is \$100 to \$5,000 for a first contravention. Penalties assessed in recent investigations for contravening s. 3(1) of the LRA have ranged from \$500 to \$750.

[36] Investigation Report 15-04 involved similar circumstances to this investigation. The lobbyist had failed to extend his undertaking end date with his client. Approximately four months later the lobbyist realized his error and filed a new return with an incorrect start date. When the ORL inquired about the new return, the lobbyist corrected the date. Since the lobbyist failed to file his new return within 10 days of entering into an undertaking with his client, he was found to be in contravention of s. 3(1) of the LRA. The investigator issued an administrative penalty of \$750.

[37] In Investigation Report 15-12, the lobbyist filed a return four months after he was required to do so under s. 3(1) of the LRA. Moreover, the lobbyist lobbied while he was unregistered. The investigator found the lobbyist contravened s. 3(1) of the LRA. The investigator issued an administrative penalty of \$700.

CONCLUSION

[1] Under s. 7.2(2) of the LRA, I find that the lobbyist contravened s. 3(1) of the LRA for submitting her return past the timelines. The notice of alleged contravention has been substantiated.

[2] Based on the circumstances in this case and previous investigation reports with similar circumstances, I impose an administrative penalty of \$750.

[3] The lobbyist must pay this penalty no later than July 14, 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

Date: June 2, 2016

ORIGINAL SIGNED BY

Tim Mots, Investigator and
Delegate of the Registrar of Lobbyists