



INVESTIGATION REPORT 17-06

LOBBYIST: Lorne Valensky

August 21, 2017

SUMMARY: A consultant lobbyist was found to be in contravention of section 3(1) of the *Lobbyist Registration Act* (LRA) for failing to file a return within 10 days after entering into an undertaking to lobby on behalf of his client. An administrative penalty of \$500 was imposed.

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

Authorities Considered: Investigation Reports 16-03 and 16-04.

INTRODUCTION

[1] This report concerns an investigation 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 his 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 him to give notice of the alleged contravention and the reasons for his 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 31464278 to lobby as a consultant lobbyist on behalf of the British Columbia Dental Association (the client), 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(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;

BACKGROUND

[5] On March 31, 2017, the lobbyist advised the ORL that he had forgotten to make changes to his return (Registration ID: 3731738) within 30 days of the February 28, 2017 end date.

[6] Section 4(2)(a) of the LRA, provides a lobbyist with 30 days to make changes to their registration, in this case to update and extend the undertaking end date. If the lobbyist misses this deadline, the Lobbyists Registry system will automatically terminate the return and require the lobbyist to complete and submit a new return with a start date that accurately reflects the ongoing undertaking.

[7] On March 31, 2017, the lobbyist submitted a new return, Registration ID: 31464278, after entering into an undertaking to lobby on behalf of his client and certified an undertaking start date of March 1, 2017. The ORL received an automatic system alert that this registration appeared to contravene the required timeline set out under the LRA. Section 3(1) of the LRA requires a consultant lobbyist submit a return within 10 days after entering into an undertaking to lobby on behalf of a client.

INVESTIGATION

[8] On April 7, 2017, ORL staff sent a formal compliance investigation letter under s. 7.1 of the LRA to the lobbyist informing him that the ORL was investigating whether he had contravened s. 3(1) of the LRA when he did not submit a registration within 10 days after entering into an undertaking to lobby on behalf of his client. The letter also asked the lobbyist to respond to several questions concerning any lobbying activities on behalf of this client and to provide a copy of any written agreement(s) with his client or details of any verbal agreements.

[9] In his response dated May 1, 2017, the lobbyist noted that he has represented this client for many years. He had made an entry in his diary to remind himself that he

had 30 days from the end date of his Registration ID 3731738 to make changes to the registration. The lobbyist noted that he had inadvertently entered the renewal deadline as March 31, 2017, as opposed to the actual deadline of March 30, 2017.

[10] Upon realizing, on March 31, 2017, that Registration ID: 3731738 had passed the time limit for changes, the lobbyist submitted a new return on March 31, 2017. The lobbyist also contacted the ORL on March 31, 2017 to advise that he had missed the deadline to make changes to Registration ID: 3731738 and had submitted a new registration (Registration ID: 31464278).

[11] In response to the ORL questions, the lobbyist stated that he had not set up any meetings between March 1, 2017 and March 31, 2017. The lobbyist also stated that he did not attend any meetings with public office holders on behalf of his client during this time period.

[12] The lobbyist provided a copy of his written “Agreement for Services” (the Agreement) with his client signed February 28, 2017. The Agreement stipulates the lobbyist would provide government relations services for his client.

[13] On May 30, 2017, I sent a notice, pursuant to s. 7.2(1) of the LRA, 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 contraventions and to provide any information or documentation pertinent to the alleged contraventions and any potential penalty.

[14] The lobbyist responded on July 1, 2017. The lobbyist took full responsibility for failing to make changes to his return. He agreed with the facts set out in the s. 7.2(1) notice emailed on May 30, 2017. He pointed out that the contravention (s. 3(1) of the LRA) set out in the May 30, 2017 letter did not accurately reflect the circumstances of this case.

[15] The lobbyist stated that “...I attempted to file my renewal on March 31st, I was locked out of the system which resulted in my having to complete and submit a “new registration” as opposed to “renewing” as I have done in previous years. The lobbyist stated further, “...in attempting to renew one day late, and the resulting requirement to re-registrar [sic], the system now views me as not registering...” his client “...as a “new client” within 10 days of signing my contract, vs my being in contravention of not registering renewal within 30 days of notice.”

DISCUSSION

[16] The lobbyist admits that he failed to make changes by not entering a new end date into his return, Registration ID 3731738, within 30 days after the changes occurred. He acknowledges that he did not meet his obligations under s. 4(2)(a) of LRA. The lobbyist contends that this is a more accurate representation of the facts than a contravention of s. 3(1) of the LRA.

[17] The lobbyist stated that this is a renewal of an existing undertaking. I have reviewed the Agreement between the lobbyist and his client. Section 3. General, subsection 3.1 stipulates that this agreement:

“...supersedes all prior oral and written understandings, agreements and agreements between the parties relating thereto.”

[18] Furthermore, the Agreement states that “...any amendments to this Agreement shall be in writing and signed by both parties.” The Agreement was signed on February 28, 2017 by both parties to the agreement.

[19] This is not a renewal or an amendment to an existing agreement. Based on the language of this Agreement, if this was a renewal or amendment it would be in the form of an amendment signed by both parties. This is a new Agreement entered into by both parties.

[20] The services contemplated by the Agreement include:

“Strengthening communication and collaboration between the Association, and Government of British Columbia in order to develop and align strategies which improve oral health care for individuals across the province.”

I understand this sentence to mean that the purpose of the undertaking is to influence government to guarantee an alignment of strategies between government and the lobbyist’s client. This meets the definition of lobbying set out in the LRA.

[21] Section 3(1) of the LRA requires a lobbyist to file a return within 10 days after entering into an undertaking. The lobbyist did not file his return within 10 days and therefore contravened s. 3(1) of the LRA.

FINDING

[22] 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 his client.

ADMINISTRATIVE PENALTY

[23] 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))

[24] 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 makes clear, its purpose is to structure discretion. It does not fetter discretion. It is not law. I have applied the Policy as a principled guide to the exercise of my discretion to determine a penalty.

[25] The Policy operates 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.”

[26] 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 since April 2010. The lobbyist should be aware of his obligations under the LRA. The contraventions in this case are clear. A penalty is necessary for both specific and general deterrence.

[27] 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.

[28] In determining the appropriate administrative penalty within that range, 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 efforts made by the registrant to report or correct the contravention, and
- whether a penalty is necessary for specific and general deterrence.

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

[30] There have been no previous enforcement actions for contraventions under the LRA. The lobbyist admits he has received two warning letters in the past for filing a late return and for making late changes to a return. The lobbyist argued that these warnings

should not be taken into consideration in arriving at an administrative penalty. However, it is relevant that, having registered late and made late changes in the past and having received warning letters, the lobbyist clearly was aware of his obligation to file a return within the timelines set out in s. 3(1) of the LRA.

[31] On the question of the gravity and magnitude of the contravention under investigation, the lobbyist failed to file a new return until 21 days after he was required to do so. Consequently, his lobbying activity was not open to public scrutiny. The lobbyist has received a warning in the past for filing a late return. He is aware of his obligations to file under s. 3(1) of the LRA. Given these circumstances I do not consider this a minor contravention.

[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 timelines set out in the LRA are not optional or arbitrary administrative deadlines. The failure to comply with the deadline is a contravention of the LRA. The time limits are inextricably linked with the obligation to register, emphasizing 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 defeats the LRA's goal of transparency because undermines the ability of the public to know who is attempting to influence government at any point in time.

[33] The next factor I have considered is whether the contravention was deliberate. I do not believe that the failure to register was intentional. I accept, on balance, that the contravention resulted from an unintended error on the part the lobbyist.

[34] I must consider whether the lobbyist derived any economic benefit from the contravention. I consider this a neutral factor. The lobbyist did gain an economic benefit when he received payment for lobbying while unregistered, but he did not obtain that payment because of the contravention.

[35] I have already addressed the efforts the lobbyist made to report or correct the contravention. It is in the lobbyist's favour that he brought his error to the attention of the ORL.

[36] 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 his 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.

[37] The Policy suggests a range of penalties for contraventions of the LRA. The suggested range of penalty for a late filing is \$100 to \$5,000 for a first contravention. I have reviewed previous ORL investigation reports and their associated penalties.

[38] After reviewing previous Investigation Reports I believe IR 16-03 and 16-04 are similar to this case. In IR 16-03 and 16-04 the lobbyists were approximately one month late in filing their returns. The lobbyists reported the error to the ORL. They had both received a previous warning letter. The administrative penalty imposed in these cases was \$500. Given the similar circumstances in this case with those of IR 16-03 and IR 16-04, I have assessed a penalty consistent with these past Investigation Reports.

CONCLUSION

1. Under s. 7.2(2) of the LRA, I find that the lobbyist contravened s. 3(1) of the LRA for submitting his return past the timelines. The notice of alleged contravention has been substantiated.
2. I impose an administrative penalty of \$500.
3. The lobbyist must pay this penalty no later than October 2, 2017.
4. 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

Date: August 21, 2017

Tim Mots, Investigator and
Delegate of the Registrar of Lobbyists