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## REGISTRAR'S MESSAGE

The Government of British Columbia passed the *Lobbyists Registration Amendment Act, 2017* last November. It went into effect on May 1, 2018, and addressed one of five recommendations for reforms to the LRA that our office made in 2013: establish a “cooling off” period for former public office holders.

As the year draws to a close, there are changes on the horizon that will add greater transparency to lobbying activities. I am pleased that government introduced a new, more comprehensive suite of reforms to the LRA with another piece of legislation, the *Lobbyists Registration Amendment Act, 2018*, during the fall session of the legislature.

These amendments, which received Royal Assent on November 27, 2018, correct a drafting error in the definition of “former public office holder.” Read more about why this is so important in our feature article on page 5.

The amendments also address the remainder of our 2013 recommendations and introduce additional requirements for lobbyists. For instance, once the *Lobbyists Registration Amendment Act, 2018* comes into force, lobbyists will be required to provide monthly reports on who they have lobbied. Greater transparency will be required in terms of who controls, directs, or funds lobbying. Lobbyists will also need to declare any promise or actual gift to a public office holder and disclose any political, sponsorship, or recall contributions in monthly reports.

Changes to the Lobbyists Registry will be necessary to accommodate these significant reforms. We are confident that once the new system is in place the registration experience will greatly facilitate compliance with the legislation.

Our goal next year will be to ensure the sound implementation of the amendments. We will provide lobbyists and the public with information about the new registry on the ORL website in the new year, along with guidance and resources.

As always, we welcome your questions at any time.

**Michael McEvoy, Registrar of Lobbyists for BC**

## ASK THE REGISTRAR

### When does the change to the “former public office holder” definition come into effect, and who is now considered a former public office holder?

When the *Lobbyists Registration Amendment Act, 2018* comes into effect 30 days after the date of Royal Assent, it will close the loophole in the definition of “former public office holder.” This change means that anyone who was formerly employed in a Minister’s office, whether the Minister is currently in office or not, is now considered to be a former public office holder and must declare that fact in the Lobbyists Registry.

### Are BC lobbyists required to log funding from all three levels of government?

Funding from any level of government or government agency, such as crown corporations, is covered by the legislation and should be included. The wording of Section 4 of the *Lobbyists Registration Act* is as follows:

Form and content of return

4 (1) Each return filed under section 3 must include the following information, as applicable:  
the name of any government or government agency that funds or partly funds the client or organization, and the amount of the funding;

### I’m a consultant lobbyist and I just submitted my registration. Do I need to wait until my registration is accepted to start lobbying?

No. You can start lobbying before submitting a registration to the Registry. Just submit your registration within 10 days of entering into an undertaking to lobby on behalf of your client.

### What level of detail is required in the “Lobbying Activities” section of the Lobbyists Registry?

Indicate the particulars of the subject matter and summarize your lobbying activity. Be concise with your descriptions, and note that vague or overly broad responses will not be accepted. For example:

**Right:** Consultation on improvements to wildlife management policy, including Caribou plans, policy, and management.

**Wrong:** Environmental issues.

**Do you have a question for the Registrar? Email it to us at [info@bcorl.ca](mailto:info@bcorl.ca)**

# AMENDING THE LRA

## Drafting error corrected in latest amendment to *Lobbyists Registration Act*

The *Lobbyists Registration Amendment Act, 2017* came into force on May 1, 2018 and included a two-year cooling-off period for lobbyists who are former public office holders. Lobbyists affected by this restriction can request an exemption from the Registrar if they believe it is in the public interest for them to lobby.

When processing the initial exemption requests, Registrar Michael McEvoy realized that the definition of “former public office holder” contained a drafting error. The definition of “former public office holder” in section 1 of the *Lobbyists Registration Act* (LRA) only applies to lobbyists who were employed in the former office of a former member. A loophole exists for any individual seeking to lobby who was formerly employed by a Cabinet minister who is currently in office.

Section 1 of the LRA defines a “former public office holder” (boldface for emphasis) as:

(a) a former member of the Executive Council and any individual formerly employed in the **former member's former office**, other than administrative support staff,...

As a result, the Registrar found that an individual who was formerly employed in a current member’s former office was not subject to the cooling-off period. In fact, there was nothing to prevent the lobbyist from lobbying the very Minister who had employed them.

A recent Reconsideration Decision had a similar outcome based on the definition of “former public office holder.” The ORL investigated a lobbyist who failed to declare in the Lobbyists Registry that he worked as an Executive Assistant for three Cabinet ministers. All three ministers were still members of the Executive Council during the period he was registered to lobby. Again, based on the long-

standing definition of “former public office holder,” the Registrar found that the lobbyist was not obligated to declare his past government connections. The definition raised the potential for undue influence and the use of insider information—the very outcomes the legislation was designed to eliminate. For this reason, the Registrar brought the error to government's attention.

On October 29, 2018, the BC government introduced Bill 54, the *Lobbyists Registration Amendment Act, 2018*. Among its many important reforms to increase transparency in lobbying, the bill included a change to the definition of “former public office holder.” The new definition, which will come into force on December 27, 2018, aims to close the loophole and would ensure that that former staff of a current Minister’s office are also subject to the two-year prohibition on lobbying.

The amendments read as follows (boldface for emphasis):

Section 1 (1) is amended,...

(b) by repealing paragraph (a) of the definition of “former public office holder” and substituting the following:

(a) a former member of the Executive Council and any individual, other than administrative support staff, formerly employed in the former member's former office,  
(a.1) **any individual**, other than administrative support staff, **formerly employed in a current or former office** of a current member of the Executive Council,...

The *Lobbyists Registration Amendment Act, 2018* contains other amendments that will improve transparency in lobbying. They will come into force at a later date after the Lobbyists Registry is rebuilt. The ORL will provide education about the amendments and their implications for lobbyists in the new year.

**Contact us at [info@bcorl.ca](mailto:info@bcorl.ca) if you have any questions.**

## LESSONS LEARNED

To maintain the integrity of the Registry, the ORL regularly investigates alleged lobbyist contraventions, such as neglecting to register, entering incorrect information, or not maintaining registrations in an accurate or timely manner. Investigators review the circumstances of the case, examine the evidence, and if the contravention is substantiated, levy an appropriate penalty.

Penalties depend on the following factors: severity of the contravention, previous enforcement actions, whether the contravention was deliberate, if the contravention resulted in economic gain, if the registrant sought to report or correct the contravention, and whether a penalty is needed for general or specific deterrence.

We publish summaries of investigation reports to educate the lobbyist community and provide transparency to the public.

### Consultant lobbyist fails to register undertaking within 10 days

Ms. Gale submitted a return as a consultant lobbyist for Canadian Biosimilars Forum on January 24, 2018 with an undertaking start date of September 5, 2017. On January 24, 2018, the ORL asked Ms. Gale to explain the discrepancy between the deadline in the LRA for submitting a registration and the date on which she registered.

The lobbyist stated that “...The date listed as the undertaking start date is September 5, 2017...this is the date we, on behalf of the Forum, first reached out to BC public office holders to coordinate a meeting. At that time, we were acting on the understanding from our client that, in a conversation with her, BC officials had requested a meeting...We did not recognize the possibility that registration might be required with respect to scheduling a meeting that we had understood was initiated or suggested by the public office directly to our client...”

The lobbyist is referring to s. 2(2)(c) of the LRA, which does not require a lobbyist to register if they are responding directly to a written request from a public office holder for advice or comment on a specific issue. However this is not the case here.

The lobbyist noted that she had set up one meeting with public office holders between September 5, 2017 and January 24, 2018. Setting up this meeting on behalf of her client falls clearly within the LRA definition of lobbying. Therefore, the lobbyist had actually lobbied in advance of filing a return with the Lobbyists Registry.

The investigator found 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 and imposed an administrative penalty of \$500.

**Read more: Investigation Report 18-04**

## Consultant lobbyist fails to register undertaking within 10 days

Mr. Wallace submitted a return as a consultant lobbyist for Canadian Biosimilars Forum on January 23, 2018 with an undertaking start date of September 5, 2017. On January 24, 2018, the ORL asked Mr. Wallace to explain the discrepancy between the deadline in the LRA for submitting a registration and the date on which he registered.

The lobbyist stated that “...The date listed as the undertaking start date is September 5, 2017...this is the date we, on behalf of the Forum, first reached out to BC public office holders to coordinate a meeting. At that time, we were acting on the understanding from our client that, in a conversation with her, BC officials had requested a meeting...We did not recognize the possibility that registration might be required with respect to scheduling a meeting that we had understood was initiated or suggested by the public office directly to our client...”

The lobbyist is referring to s. 2(2)(c) of the LRA, which does not require a lobbyist to register if they are responding directly to a written request from a public office holder for advice or comment on a specific issue. However this is not the case here.

The lobbyist noted that he had set up and attended one meeting with public office holders between September 5, 2017 and January 23, 2018. Setting up this meeting on behalf of his client falls clearly within the LRA definition of lobbying. Therefore, the lobbyist had actually lobbied in advance of filing a return with the Lobbyists Registry.

The investigator found 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 and imposed an administrative penalty of \$500.

**Read more: Investigation Report 18-05**



## Organization fails to declare that in-house lobbyist was a former public office holder

On January 29, 2018, Ms. Catherine Holt, the designated filer for the Greater Victoria Chamber of Commerce (GVCC), submitted a return to the Lobbyists Registry. In this registration, Ms. Holt declared that one of GVCC's in-house lobbyists was not a former public office holder. On January 31, 2018, the ORL asked Ms. Holt to look at the definition for former public office holder in the LRA and correct the registration if necessary. Ms. Holt corrected the registration and listed the in-house lobbyist's former public office holder position.

The ORL also asked Ms. Holt to explain why she did not declare that the in-house lobbyist was a former public office holder. She responded that she made an error, believing that the term "former public office holder" referred only to elected officials. She explained that she was unaware that the in-house lobbyist's past position as Assistant Deputy Minister meant that the lobbyist was a former public office holder.

The investigator found that Ms. Holt did not comply with s. 4(1)(o) of the LRA when she failed to declare that the in-house lobbyist was a former public office holder. Ms. Holt left her position as Assistant Deputy Minister in 1998. The investigator noted that the elapsed time diminishes the potential for undue influence and eliminates any concern that the designated filer may have insider knowledge. He imposed an administrative penalty of \$500.

**Read more: Investigation Report 18-06**

## Consultant lobbyist fails fails to declare that he was a former public office holder

On January 5, 2018, Mr. Heaney submitted a return as a consultant lobbyist for Nuuvera Corp. to the Lobbyists Registry. In this registration, the lobbyist declared that he was not a former public office holder.

On January 8, 2018, the ORL asked Mr. Heaney to look at the definition for former public office holder in the LRA and to correct his registration if necessary. Mr. Heaney corrected his registration the next day and listed his former public office holder roles. The ORL also asked Mr. Heaney to explain why he did not declare that he was a former public office holder in his registration. He responded, noting that he made an error when he had not reviewed the definition of former public office holder in the LRA prior to filing his return. Mr. Heaney explained that at the time he filed his return he believed the term "former public office holder" referred to a "former holder of an elected public office."

The investigator found that Mr. Heaney did not comply with s. 4(1)(o) of the LRA when he failed to declare that he was a former public office holder and imposed an administrative penalty of \$1,000.

**Read more: Investigation Report 18-01**

**Questions about your registration? Please contact us at [info@bcorl.ca](mailto:info@bcorl.ca) if you need assistance.**



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