

INVESTIGATION REPORT 19-04

LOBBYIST: Dimitri Pantazopoulos

February 12, 2019

SUMMARY: A consultant lobbyist was found to be in contravention of section 3(1) of the *Lobbyists Registration Act* (LRA) for failing to file a return within 10 days after entering into an undertaking to lobby on behalf of his client. This was the second occasion on which the lobbyist contravened s. 3(1) of the LRA. The lobbyist received an administrative penalty of \$5,000 for this contravention.

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

Authorities Considered: Investigation Report 14-09, Investigation Report 14-14, Investigation Report 16-11, Investigation Report 17-01, Investigation Report 17- 03 and Investigation Report 17-06.

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: consultant and in house 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 37685207 to lobby as a consultant lobbyist on behalf of Comcast, complied with s. 3(1) of the LRA,
- (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.

Power to investigate

7.1 (1) If the registrar considers it necessary to establish whether there is or has been compliance by any person with this Act or the regulations, the registrar may conduct an investigation.

Hearing and administrative penalty

7.2 (1) If after an investigation under section 7.1 the registrar believes that a person under investigation has not complied with a provision of this Act or the regulations, the registrar must

(a) give notice to the person

(i) of the alleged contravention,

(ii) of the reasons why the registrar believes there has been a contravention, and

(iii) respecting how the person may exercise an opportunity to be heard under paragraph (b) of this subsection, and

(b) give the person a reasonable opportunity to be heard respecting the alleged contravention.

(2) 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

(a) must inform the person of the registrar's determination that there has been a contravention,

(b) may impose an administrative penalty of not more than \$25 000, and

(c) must give to the person notice

(i) of the registrar's determination that the person has not complied with a prescribed provision of this Act or the regulations and the reason for the decision,

(ii) if a penalty is imposed, of the amount, the reason for the amount and the date by which the penalty must be paid, and

(iii) respecting how the person may request reconsideration, under section 7.3, of the determination of non-compliance or the imposition or amount of the penalty.

BACKGROUND

[5] On April 3, 2018, the lobbyist submitted Registration ID 37685207 for his undertaking with Comcast and certified an undertaking start date of March 1, 2018. The ORL received an automatic system alert which indicated the return was submitted more than 10 days after the undertaking start date. Section 3(1) of the LRA requires a consultant lobbyist to submit a return within 10 days of entering into an undertaking to lobby on behalf of a client.

INVESTIGATION

[6] 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.

[7] On May 24, 2018, ORL staff sent the lobbyist a formal compliance investigation letter under s. 7.1 of the LRA asking the lobbyist to explain the discrepancy between the deadline in the LRA for submitting a registration and the date on which he 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 his client and to provide the details of any meetings arranged and attended with public office holders on behalf of his client.

[8] The lobbyist responded on June 20, 2018 admitting that he was late in registering. He noted that his actions were not an attempt "...to circumvent the process or obfuscate [his] activities." He declared that he had made an honest error, he apologized, accepted responsibility for his actions and said he would be more rigorous in the future.¹

[9] On June 25, 2018, 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. The lobbyist was invited to respond in writing to the alleged contravention and provide any information or documentation pertinent to the alleged contravention and any potential penalty.

[10] On July 20, 2018, counsel for the lobbyist responded to the s. 7.2(1) notice. The lobbyist provided a sworn affidavit accompanied by several emails, between the lobbyist and his client, marked as exhibit A. In his affidavit the lobbyist stated his client contacted him on March 20, 2018 asking the lobbyist if he could set up meetings in British Columbia. The lobbyist replied with potential meeting dates and suggested a meeting with a specific public office holder.

¹ June 20, 2018, email from the lobbyist to the ORL

[11] When the lobbyist did not hear back from his client, he contacted his client on March 26, 2018 requesting dates for meetings. On March 27, 2018, the client confirmed which dates he was available for meetings, but did not confirm who he wished to meet with.

[12] On March 29, 2018, the lobbyist, acting on behalf of his client, asked for a meeting with the Assistant Deputy Minister of Tourism, Arts and Culture. The lobbyist states that the meeting did not proceed due to a scheduling conflict.

[13] On April 3, 2018, the lobbyist stated that he submitted his return, registration ID 37685207. He stated that at the time he filed his return, “I could not recall the precise date that I requested meetings on [his client’s] behalf. Out of an abundance of caution, I chose the start date of the undertaking as March 1, 2018.”²

[14] After being notified by the ORL he was not in compliance, the lobbyist contacted the ORL and apologized. He stated that he “...did not attempt to conceal or explain the mistake, but to acknowledge [his] error.”³

[15] Counsel for the lobbyist confirmed the dates of the conversations held between the lobbyist and his client leading up to the date the lobbyist entered into an undertaking with his client. Counsel further verified the date the lobbyist asked for a meeting with the Acting Deputy Minister of Tourism, Arts and Culture. This information is supported by the emails in exhibit A.

[16] Counsel stated that the lobbyist entered into an undertaking to lobby on behalf his client on or about March 27, 2018.

DISCUSSION

[17] The definition of lobbying includes arranging meetings between a public office holder and a client. In Investigation report 14-14 (para 31), I said, “[a]ccording to the plain language meaning of ‘undertaking, an undertaking to lobby begins once a lobbyist agrees with a client to lobby on behalf of that client...’”⁴ In Investigation report 14-09, the former Deputy Registrar noted that an agreement with a client to set up meetings with government officials falls within the definition of lobbying.⁵ I agree with the approach taken in these reports for the purpose of identifying an undertaking start date.

[18] Counsel submits the actual start date of the undertaking was March 27, 2018.

[19] In the March 20, 2018 email the lobbyist’s client states that he will be in Vancouver and asks if there is anyone that he should meet.⁶ The lobbyist responds on the same day stating, “We should get a list of meetings. Thinking of the new Minister of

² Lobbyist’s affidavit, page 1, paragraph 6, signed July 20, 2018.

³ Lobbyist’s affidavit, page 1, paragraph 8, signed July 20, 2018.

⁴ Investigation Report 14-14, para. 31, October 30 2014

⁵ Investigation Report 14-09, para. 12, June 4, 2014.

⁶ Lobbyist’s affidavit, page 5, July 20, 2018

culture.”⁷ By agreeing to set up meetings for his client, the lobbyist entered into an undertaking to lobby on behalf of his client on March 20, 2018.

[20] Section 3(1) of the LRA requires a lobbyist to file a return within 10 days after entering into an undertaking. The lobbyist submitted his return on April 3, 2018, more than 10 days after he entered into his undertaking, thereby contravening s. 3(1) of the LRA.

[21] During the course of this investigation I noticed that the lobbyist entered incorrect information into his registration contrary to s. 4(1)(b)(ii) of the LRA. Since the lobbyist was not notified about this incident I will make no finding in relation to this contravention.

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 gives the Registrar discretion 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”) 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 approached the Policy as intended to provide a principled guide to exercise my discretion and determine a penalty.

[25] The Policy first sets out a general financial range for particular infractions (depending on whether it is a first, second or third infraction of that nature). The Policy then lists factors that will be taken into account in determining the amount of an administrative penalty. Finally, the Policy states that it

“... does not fetter the ORL’s ability to conclude that no administrative penalty is appropriate under the circumstances, or to fashion a remedy on either side of the range set out in the general policy, in special circumstances.”

⁷ Lobbyist’s affidavit, page 4, July 20, 2018

[21] 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.

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

- *Prior contraventions*

[23] The lobbyist has received a written warning in the past for failing to file his return on time. He has contravened s. 3(1) of the LRA on two other occasions, resulting in public Investigation Reports 16-04 and 16-05. These two contraventions were received by the ORL on or about the same date. At that time, they were dealt with as if they were the lobbyist's first contravention of s. 3(1) of The LRA.

- *Gravity and magnitude of the contraventions*

[24] 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. 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. This is a solemn legal obligation.

[25] Counsel for the lobbyist argues that the entering an incorrect date is minor in nature and should not attract a significant penalty. Furthermore, the meeting the lobbyist set up did not take place due to a conflict in schedules.

[26] Counsel submits that this second contravention is minor similar to his first contraventions. He points out that the lobbyist recognizes his obligations under the LRA and treats them seriously. He states the lobbyist acknowledges his error and will accept his penalty.

[27] Section 3(1) of the LRA requires lobbyists to register their returns within 10 days of entering into an undertaking. The 10-day time limit is not an optional or arbitrary administrative deadline. Failing to file a return in a timely manner is a serious matter. It defeats the LRA's goal of transparency undermining the public's ability to know who is attempting to influence government at any point in time. This is compounded by the fact that the lobbyist has contravened s. 3(1) of the LRA in two other instances.

[28] Based on my calculations, the correct start date of the undertaking was March 20, 2018. The lobbyist filed his return on April 3, 2018, which means he was only two

days late. I recognize two days is not a substantial delay in magnitude. Still, registering late is significant in gravity as it frustrates the purpose of the LRA.

- *Whether the contravention was deliberate*

[29] The next factor I have to consider is whether the contravention was deliberate. Counsel for the lobbyist states that this was a simple administrative error for which the lobbyist has accepted responsibility.

[30] The lobbyist is an experienced lobbyist and he is aware that he is required under s. 3(1) of the LRA to file a return within 10 days of entering into an undertaking. Moreover, the lobbyist has been warned in the past for filing a late return. He received two previous administrative penalties for registering his returns late. The lobbyist knows, based on his prior contraventions, that he must file his return on time.

[31] The lobbyist stated in his affidavit, that "...I could not recall the precise date requested meetings on [his client's] behalf. Out of an abundance of caution, I chose the start date of the undertaking as March 1, 2018."⁸ Yet the start date he entered placed him outside the 10 day limit required under s. 3(1) of the LRA.

[32] Even if the lobbyist had entered the correct start date he still would have failed to file his return within the required 10 days.

[33] A lobbyist is expected to note their undertaking start date, establish the deadline for filling a return and file that return within the legislated timeframe. Legislators did not provide an allowance in the LRA for lobbyists that enter an incorrect date out of an abundance of caution. In this case, the lobbyist had a set of emails from which he could have established a start date. Rather than reviewing his emails he guessed at a start date. The lobbyist was aware of his s. 3(1) obligations under the LRA and would have known that there was a possibility that the start date he entered was wrong.

[34] Based on the evidence, I conclude that the lobbyist's actions may not have been deliberate, but they were clearly reckless, demonstrating an indifferent attitude towards his obligations under s. 3(1) of the LRA.

- *Economic benefit*

[35] Next I must consider whether the lobbyist derived any economic benefit from this contraventions. Counsel for the lobbyist states that since no meeting occurred, the lobbyist did not receive payment. I accept that the lobbyist did not benefit economically from this undertaking.

- *Effort to report or make the corrections*

[36] The lobbyist did not report to the ORL that he had failed to file his return within the timelines set out in s. 3(1) of the LRA. It was an ORL staff member who informed

⁸ Lobbyist's affidavit, July 20, 2018. Page 1, paragraph 6.

the lobbyist that there was an issue with the start date in his return. In a June 20, 2018 email to the ORL, the lobbyist admitted that he had registered late.

[37] The lobbyist, however, did have a short window of opportunity to remedy this error by correcting the start date in his return. The lobbyist failed to do this. Again the lobbyist appears not to take seriously the underlying intent of the LRA, which is to promote transparency.

- *Necessity of penalty for specific or general deterrence*

[38] The LRA makes clear that transparency includes timeliness and accuracy. This includes the requirement to file an accurate 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.

[39] I have considered and rejected the view that this might be a case where “no administrative penalty” is appropriate. The current LRA provisions have now been in place for eight years. The lobbyist should be aware of his obligations under the LRA, and in a case where there are previous contraventions there is no doubt the lobbyist has been made aware.

[40] The circumstances of this case call for an administrative penalty both to encourage this lobbyist to take his obligations under the LRA seriously and to remind all lobbyists of their legal obligations to be diligent in keeping their registrations current and accurate.

- *Appropriate penalty*

[41] Counsel for the lobbyist suggests a penalty of \$500 is consistent with similar investigation of minor administrative contraventions. Counsel cited investigation reports (IR) 17-06, 16-11 and 17-01. In each of those investigations the lobbyist had received previous warning letters for filing their returns late. He submits that in each those investigations the lobbyist took full responsibility for the contravention and that his client also took full responsibility. Counsel points out the delays in each of those investigations were much longer than in the current investigation and that the lobbyists in each of those three investigations received a \$500 penalty. He notes the lobbyist in this investigation was late only because he entered an incorrect start date.

[42] There is one profound difference between IR 17-06, 16-11 and 17-01 and the current investigation. While the lobbyists in these three investigations had received warnings for filing their returns late, they had no prior contraventions under s. 3(1) of the LRA. In this investigation, the lobbyist has had two prior contraventions under s. 3(1) of the LRA where he received a \$500 penalty for each contravention. Therefore the investigation reports cited by counsel are not consistent with this case.

[43] Counsel also argues that this investigation is similar to IR 17- 03. In that investigation an individual who had never lobbied, mistakenly, through incorrect advice,

assumed he was acting as a lobbyist and subsequently filed a return. It was determined that the individual was not a lobbyist. Given the special circumstances of IR 17-03, the individual was given a reduced penalty of \$100.

[44] The circumstances in IR 17-03 are completely different from the current investigation. The lobbyist in this investigation is a seasoned lobbyist who, through two prior investigations under the LRA, ought to have been aware of his obligations. I do not accept that IR 17-03 offers guidance to the present case.

[45] In his June 20, 2018, email to the ORL, the lobbyist admitted that he "...was late in compliance." He could have referred to his emails to determine the correct date, but he didn't. I realize the lobbyist was only two days late in filing his return, but his previous contraventions cannot be ignored.

[46] The Policy, which is intended only as a guide, suggests a range of penalties for contraventions of the LRA. With regards to s. 3(1), I have taken into consideration that the lobbyist's contraventions relating to Investigation Reports 16-04 and 16-05 were treated as one contravention. As a result, and in consideration of the lobbyist's acknowledgement that he registered late, I have decided to treat this instance as the lobbyist's second contravention of s. 3(1) of the LRA rather than as a third contravention. The penalty for contravening s. 3(1) of the LRA has a range of \$5,000 to \$10,000 for a second instance of non-compliance, in contrast to the \$10,000 to \$25,000 range for a third instance of non-compliance.

[47] I have considered all of the above factors, including the appropriate range of penalties, the significance of the contravention to the integrity of the purpose of the LRA, and the fact that the registration was only two days late. I have decided that a penalty of \$5,000, at the bottom of the range for a second contravention of s. 3(1) of the LRA, is appropriate in these circumstances.

CONCLUSION

1. Under s. 7.2(2) of the LRA, I find that the lobbyist committed a second contravention s. 3(1) of the LRA. The notice of alleged contravention has been substantiated.
2. I have imposed an administrative penalty of \$5,000 for his contravention of s. 3(1) of the LRA.
3. The lobbyist must pay this penalty no later than March 26, 2019.
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: February 12, 2019

ORIGINAL SIGNED BY

Tim Mots, Investigator and
Delegate of the Registrar of Lobbyists