

INVESTIGATION REPORT 20-01

BC Salmon Farmers Association

DESIGNATED FILER: John Paul Fraser

September 24, 2020

SUMMARY: The BC Salmon Farmers Association (BCSFA) employs an in-house lobbyist. The organization was found to be in contravention of section 4(1)(o) of the *Lobbyists Registration Act* (LRA) when the designated filer failed to declare that one of BCSFA's in-house lobbyists was a former public office holder. An administrative penalty of \$500 was imposed.

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

Authorities considered: Investigation Report 18-01 and Investigation Report 18-06

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 compliance with the LRA or its regulations. If 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 lobbyists and in-house lobbyists. This report focuses on the activities of BCSFA, an organization that employs in-house lobbyists. An in-house lobbyist is a paid employee, officer, or director of an organization that lobbies on behalf of the organization, alone or with others, for at least 100 hours annually.¹

[3] This report and its determination are issued under the authority delegated to me by the Registrar under s. 7(4)(d) of the LRA.

¹ The 100-hour threshold under the LRA was in place until May 4, 2020 when it was amended under the *Lobbyist Registration Amendment Act, 2018*. The 100-hour threshold no longer exists under the *Lobbyists Transparency Act*.

ISSUES UNDER CONSIDERATION

[4] The questions for consideration are:

- (a) whether John Paul Fraser, the designated filer of the organization, contravened s. 4(1)(o) of the LRA for failing to declare that one of the in-house lobbyists (John Paul Fraser is the in-house lobbyist in this case) was a former public office holder; and
- (b) if the designated filer did not comply with the requirements of the LRA, what, if any, administrative penalty is appropriate in the circumstances?

RELEVANT SECTIONS OF THE LRA

"designated filer" means

- (a) a consultant lobbyist,
- (b) in the case of an organization that has an in-house lobbyist,
 - (i) the most senior officer of the organization who receives payment for performing his or her functions, or
 - (ii) if there is no senior officer who receives payment, the most senior in-house lobbyist

"former public office holder" means

- (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
- (b) a former parliamentary secretary, or
- (c) any individual who formerly occupied
 - (i) a senior executive position in a ministry, whether by the title of deputy minister, chief executive officer or another title,
 - (ii) the position of associate deputy minister, assistant deputy minister or a position of comparable rank in a ministry, or
 - (iii) a prescribed position in a Provincial entity;

"in-house lobbyist" means, subject to subsection (4), a person

- (a) who receives a payment for the performance of his or her functions, and
- (b) whose lobbying or duty to lobby on behalf of the organization or an affiliate, either alone or together with other individuals in the organization,
 - (i) amounts to at least 100 hours annually, or

(ii) otherwise meets criteria established by the regulations;

“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, and

(c) in relation to an in-house lobbyist only, to arrange a meeting between a public office holder and any other individual for the purposes of attempting to influence any of the matters referred to in paragraph (a) of this definition;

"lobbyist" means a consultant lobbyist or an in-house lobbyist;

Form and content of return

4(1) Each return filed under section 3 must include the following information, as applicable:

- (o) If any lobbyist named in the return is a former public office holder, the nature of the office formerly held by the lobbyist and the term of the office;

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.

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 investigate.

7.1(2) The registrar may refuse to investigate or may cease an investigation with respect to any matter if the registrar believes that

- (b) the matter is minor or trivial,
- (c) dealing with the matter would serve no useful purpose because of the length of time that has elapsed since the matter arose,

Hearing and administrative penalty

7.2(3) Despite subsection (2), the registrar must not impose an administrative penalty if more than 2 years have passed since the date of the contravention.

BACKGROUND

[5] On July 9, 2019 the designated filer submitted a registration to the Office of the Registrar of Lobbyists (ORL), Registration ID 996910, on behalf of the BCSFA. The registration had an undertaking start date of July 9, 2019 and an end date of January 9, 2020. The designated filer, upon submitting the registration, certified that the information in the return was true.

[6] Registration 996910 was terminated on January 22, 2020.

[7] On January 31, 2020, the ORL notified the designated filer that it had discovered several Order in Council (OIC) appointments for the in-house lobbyist. This included OIC number 130, dated April 8, 2011, which indicated that the in-house lobbyist was an Assistant Deputy Minister (ADM) of Government Communications and Public Engagement (GCPE), in the Ministry of Labour, Citizens' and Open Government (from April 8, 2011 to December 9, 2014). This information was not disclosed in his Registration ID 996910.

[8] OIC 674, dated December 9, 2014, specified the in-house lobbyist was appointed to Deputy Minister (DM) of GCPE in the Ministry of Technology, Innovation and Citizens' Services. He was later appointed DM of GCPE, in the Ministry of Advance Education. In OIC 210, dated July 17, 2017, the in-house lobbyist's appointment to DM of GCPE, in the Ministry of Advance Education was rescinded. The designated filer disclosed these two Former Public Office Holder (FPOH) positions in Registration ID 996910.

[9] On January 31, 2020, the designated filer replied that the in-house lobbyist only had one position in government. He was DM of the GCPE. He noted that the GCPE is not a stand-alone Ministry, accordingly, it is attached to a government Ministry. The designated filer stated "[w]hile [the] unit was transferred from Citizens Services to Advanced Education during my tenure, the unit I led and the job I did had not change in any way."

[10] The ORL advised the designated filer that the definition of FPOH includes any individual "...who formerly occupied...the position of associate deputy minister, assistant deputy minister or a position of comparable rank in a ministry." An ADM is a distinct FPOH position under the LRA. The LRA requires that each FPOH position be included in a registration. In this case the designated filer failed to enter the in-house lobbyist's FPOH position as ADM of GCPE in the Ministry of Labour, Citizens' Services and Open Government in Registration ID 996910.

[11] After several days of discussion with the ORL, the designated filer recognized his error and realized what his obligations were under the LRA. He did complete a new return, Registration ID 55495408, which included the in-house lobbyist's previous position as an ADM. He could not correct Registration ID 996910 because it was inactivated on January 22, 2020.

INVESTIGATION

[12] On April 27, 2020, I provided the designated filer with formal notice under s. 7.2(1)(a) outlining the basis for the allegation that he had contravened s. 4(1)(o) of the LRA when he failed to disclose the in-house lobbyist's FPOH position as ADM GCPE in the Ministry of Labour, Citizens' Services and Open Government in Registration ID 996910. I invited the designated filer to respond in writing to the alleged contravention

and to provide any information or documentation pertinent to the contravention and any potential penalty.

[13] On May 25, 2020, the designated filer responded, stating that "...he inadvertently failed to declare [his] former public office holder position as ADM in the Ministry of Labour, Citizens' Services and Open Government in Registration ID 996910." The designated filer noted the oversight was not "intentional or malicious".

[14] The designated filer described the in-house lobbyist's FPOH positions. He entered the public service on April 8, 2011 in the position of ADM GCPE, within the Ministry of Labour, Citizens' Services and Open Government. He was appointed to DM, GCPE, Ministry of Technology, Innovation and Citizens' Services on December 9, 2014. On December 18, 2014, he was appointed DM, GCPE, Ministry of Advanced Education. I verified these appointments through OIC appointments and rescindments.

[15] The designated filer incorrectly believed that he was not required to enter the in-house lobbyist's past ADM position because it was subordinate to his position as DM in the GCPE. He noted that his position as ADM changed to DM, but the entity he worked in, the GCPE, remained the same, even after it was moved to the Ministry of Technology, Innovation and Citizens' Services and later to the Ministry of Advanced Education.

[16] The designated filer recognizes he made a mistake and stresses that it was not deliberate or made with the intent to mislead the public.

DISCUSSION

[17] Section 4(1)(o) of the LRA requires a designated filer to declare in the registration if an in-house lobbyist is a FPOH, and to provide the nature of the office formerly held by the lobbyist and the term of the office.

[18] The designated filer did not declare every one of the in-house lobbyist's FPOH positions and therefore contravened s. 4(1)(o) of the LRA. There is no exception under the LRA for an unintentional failure to meet a registration requirement. The language of the LRA stipulates that a FPOH must include in their registration return "the nature of the position formerly held by the lobbyist and the term of office". Section 28(3) of BC's *Interpretation Act* states that singular words in an enactment include the plural. As a result, a lobbyist is required to submit *all* FPOH positions to the Lobbyists Registry.

[19] Information about an in-house lobbyist's positions in public office is very important. The purpose of this provision is to increase public confidence in government decision-making by reducing the scope for the exercise of undue influence. It is to address the public concern that certain former public office holders, at least for a time, can have more "insider knowledge" and influence over former colleagues than lobbyists who did not formerly work as public office holders in similar positions. There is the perception of the existence of a revolving door of public office holders and lobbyists developing greater influence by moving freely between the public service and lobbying the public service.

[20] The designated filer was under the belief that he was not required to enter a subordinate position, ADM in the GCPE, the in-house lobbyist held prior to becoming a DM in the GCPE. He did enter the two Ministries in which the in-house lobbyist held the position of DM of GCPE.

[21] Failure to meet one's obligations under the LRA undermines transparency and the public's confidence in the registry.

FINDING

[22] Based on the evidence, I find that the designated filer did not comply with s. 4(1)(o) of the LRA when he failed to declare the in-house lobbyist's FPOH position of ADM.

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 Registrar 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.² 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 delegated discretion to 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). Second, it provides a list of factors that will be considered in determining the amount of administrative penalty. Finally, it includes 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 LRA provisions were in place from April of 2010. Recent amendments under the *Lobbyist Registration Amendment Act* did not change the lobbyist’s responsibilities in this case. The designated filer should be aware of his obligations under the LRA. The contravention in this case is clear. A penalty is necessary for both specific and general deterrence.

[27] The Policy suggests a range of penalties for contraventions of the LRA. The suggested range of penalty for entering inaccurate or failing to include information in a registration is \$1,000 to \$7,500 for a first contravention.

[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; and
- Any other factors that, in the opinion of the Registrar or their delegate, are relevant to the administrative penalty.

² While these have since been replaced by the “[Registrar of Lobbyists: Guide to Investigations](#),” the guidance for determining an administrative penalty in relation to the subject of this investigation remains the same.

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

[30] The designated filer has no previous contraventions or warnings. This is his first contravention which weighs towards a lower penalty.

[31] I now turn to the question of the gravity and magnitude of the contravention under investigation. The purpose of the LRA is to promote transparency in lobbying by requiring designated filers to disclose accurate, current and complete information about their organization's lobbying activities. This is a solemn legal obligation. It reflects the legislative intent that while organizations have a right to lobby, the public also has a right to know that the information in the return is complete. The designated filer failed to file a complete registration when he did not include the in-house lobbyist's position of ADM. Initially, he did not understand his obligations under the LRA, but later realized his error. Not understanding one's obligations under the LRA is not an excuse and does not take away from fact that the contravention occurred.

[32] A primary concern when a FPOH fails to disclose a former position is its potential for undermining the public's confidence in government decision-making. FPOHs are in a position to exercise undue influence through insider knowledge or through relationships with former colleagues. However, in this case the designated filer declared in the Registry the in-house lobbyist's DM positions at GCPE in the Ministry of Technology, Innovation and Citizens' Services then at the Ministry of Advanced Education. Therefore, the public was aware of the FPOH positions he held as DM and the potential influence the in-house lobbyist may have had as a result of those positions. As a result, my view is that failing to disclose the in-house lobbyist's ADM position is not a critical oversight. This is a factor that weighs in favour of a reduced penalty.

[33] I must next consider whether the BCFSA derived any economic benefit from the contravention. I found no evidence which would lead me to believe that the Association benefitted monetarily from this contravention. This also weighs in favour of a penalty at the lower end of the scale.

[34] The registrant did not report the error to the ORL, but with some discussion after the ORL notified him of his error he filed a corrected registration. Expedious corrections weigh in favour of a lower penalty.

[35] I have considered whether any other factors are relevant in determining the appropriate administrative penalty and have identified investigation reports that are instructive.

[36] In Investigation Report IR 18-01, the consultant lobbyist, failed to enter accurate information into his registration when he did not disclose his former public office position in two registrations. In that case the public had no knowledge that the the lobbyist was a former public office holder therefore were not aware of the fact that the lobbyist was in a position to exploit past relationships with public office holders. That was the lobbyist's first contravention and similarly it was a misunderstanding of the legislation and not intentional. The lobbyist did not benefit economically from the contravention and corrected the error shortly after being alerted to it by the ORL. The lobbyist received a \$1000 penalty for that contravention.

[37] I have also considered Investigation Report IR 18-06, where the designated filer failed to enter the in-house lobbyist's former public officer holder positions. A former staff member had disclosed this information in past registrations, but the designated filer failed to enter the information into current registrations. The focus in that investigation centered around the potential influence wielded by the in-house lobbyist over former colleagues and government decision making. Given the span of time, it was deemed that there was little possibility that the in-house lobbyist still had influence over past colleagues and government decision making. Furthermore, previous registrations did disclose the in-house lobbyist's former public office holder positions. That was the designated filers first contravention, as is the case in this investigation. Also similar to this investigation, in IR18-06 there was no economic benefit and the corrections were made shortly after the designated filer was notified by the ORL. In that case the investigator exercised his discretion and imposed a penalty of \$500. This penalty was below the minimum penalty recommended in the Policy.

[38] In my view this case can be distinguished from IR18-01 in that the public was aware of the potential for undue influence based on the DM positions being declared in the registry. It is also similar to IR18-06 in that a contravention may attract a reduced penalty in specific circumstances. Still, a complete declaration of FPOH positions was not submitted and a penalty is appropriate.

[39] In summary, the designated filer did contravene s. 4(1)(o) of the LRA when he did not enter his in-house lobbyist's former ADM position into Registration ID 996910. The designated filer did enter the in-house lobbyist's two previous DM positions into the registration. Accordingly, the public was aware that the in-house lobbyist was a FPOH

and had influence with past colleagues and potentially with government decision making. This is the designated filer's first contravention. He did not receive any direct economic benefit from the error and he made appropriate corrections once the ORL altered him to the error. This case calls for an administrative penalty both to encourage the designated filer to take his obligations under the LRA with the utmost seriousness, and to remind all designated filers of their legal obligations to be diligent in submitting complete information in their registrations.

[40] Given the circumstances of this case and taking into consideration relevant investigation reports, I have assessed a penalty of \$500.

CONCLUSION

1. Under s. 7.2(2) of the LRA, I find that the designated filer contravened s. 4(1)(o) of the LRA for failing to include in the registration one of the in-house lobbyist's former public office holder positions. The notice of alleged contravention has been substantiated.
2. I impose an administrative penalty of \$500 for the reasons set out above.
3. The designated filer must pay this penalty no later than November 5, 2020.
4. If the designated filer 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: September 24, 2020

ORIGINAL SIGNED BY

Tim Mots, Investigator and
Delegate of the Registrar of Lobbyists