

EXEMPTION DECISION 22-01

Erin Seeley (YWCA Metro Vancouver)

December 1, 2022

SUMMARY: The applicant served as the former Senior Vice President of the BC Financial Services Authority for ten months and Chief Executive Officer of the Real Estate Council of British Columbia for five years. She is now the Chief Executive Officer of the YWCA Metro Vancouver. Her application for an exemption under s. 2.3 of the *Lobbyists Transparency Act* is granted with conditions that she not lobby any public office holders in the Ministry of Finance and certain senior public office holders she worked closely with, regardless of their current position. An organization's status as a charity on its own is not determinative on whether granting an exemption under s. 2.3 is in the public interest. Not everything a charity or a non-profit does is necessarily in the public interest. The Registrar was satisfied the applicant intends to lobby on matters that do not concern the narrow organizational interests of the YWCA Metro Vancouver but on initiatives that a significant portion of the public stands to benefit from.

Statutes Considered: *Lobbyists Transparency Act*, SBC 2001, c 42

Authorities Considered: Exemption Decision 18-01

BACKGROUND

[1] The applicant has applied for an exemption, in the public interest, from the two-year cooling-off period that applies to her, as a "former public office holder," under s. 2.2 of the *Lobbyists Transparency Act* (LTA).

[2] The applicant was the Senior Vice President, Policy and Stakeholder engagement at the BC Financial Services Authority (BCFSA) for 10 months, from August 2021 to May 2022. Before the BCFSA, she worked as the Chief Executive Officer of the Real Estate Council of British Columbia (RECBC) for five years from October 2016 to July 2021. She is now the Chief Executive Officer of the YWCA Metro Vancouver (YWCA).

[3] The application is made by the Board Chair of the YWCA and is written in the third person. For the purposes of this decision, references I make to the “applicant” will include the submissions made by the Board Chair on behalf of the individual applicant.

DISCUSSION

Overview of the LTA’s scheme

[4] This is the first Exemption Decision since the LTA was amended and renamed from its former title of the *Lobbyists Registration Act* (LRA).¹ While those changes were significant, the Act’s general purpose remains the same: to ensure the lobbying of public office holders in British Columbia is transparent.

[5] The LTA regulates two kinds of individuals who undertake the work of lobbying activity: in-house lobbyists and consultant lobbyists.

[6] The LTA defines the term “lobby,” in relation to any lobbyist, as “to communicate with a public office holder in an attempt to influence” a range of activities. These include the establishment of programs or policies, development or enactment of legislation, awarding of contracts, outsourcing of services, and sale of assets. Also included is the act of “arranging a meeting between a public office holder and any other individual for the purpose of attempting to influence” any of the matters described above. The above activities in the definition of “lobby” are themselves defined as “lobbying activity.”

[7] The term “public office holder” is defined broadly under the LTA, covering any officer or employee of the provincial government, elected members of the Legislative Assembly (and anyone on their staff), anyone appointed to an office or body by or with the approval of Cabinet or a minister, and an officer, director or employee of any government corporation as defined in the *Financial Administration Act*.

Overview of the two-year rule

[8] Since 2018, the LTA has contained a two-year prohibition on lobbying activity by certain former public office holders (referred to below as the “two-year rule”).

¹ 2018 Bill 54, c. 52, *Lobbyists Registration Amendment Act*, 2018, effective May 4, 2020, in force by B.C. Reg. 235/2019.

[9] Section 1 of the LTA defines the term “former public office holder”. The part relevant to this Decision reads as follows:

"former public office holder" means

...

(c) any individual who formerly occupied

...

(iii) a prescribed position in a Provincial entity;

[10] The *Lobbyists Transparency Regulation* (Regulation) in turn states:

2 (1) For the purposes of paragraph (c) (iii) of the definition of "former public office holder" in section 1 (1) [interpretation] of the Act, the following positions in a Provincial entity are prescribed:

(a) the most senior or next most senior ranking executive position of a Provincial entity listed in the Appendix of this regulation;

[11] The RECBC and the BCFSa are each listed in the Appendix to the Regulation.

[12] Sections 2.2 and 2.3 of the LTA set out, respectively, the two-year rule and the authority for the Registrar to grant exemptions from that rule:

2.2 Subject to section 2.3, a person who is a former public office holder must not lobby, in relation to any matter, for a period of 2 years after the date the person ceased

(a) to be a member of the Executive Council,

(a.1) to be an individual employed in a current or former office of a current member or former office of a former member of the Executive Council,

(b) to be a parliamentary secretary, or

(c) to occupy a position referred to in paragraph (c) of the definition of "former public office holder".

2.3 (1) If the registrar is satisfied that it is in the public interest, the registrar may, on request and on any terms or conditions the registrar considers advisable, exempt a person from a prohibition set out in section 2.1 (2) or 2.2.

(2) If the registrar grants an exemption under subsection (1), the registrar must enter the following into to the registry:

- (a) the terms or conditions of the exemption;
- (b) the registrar's reasons for granting the exemption.

[13] The two-year rule prevents individuals from marketing information and relationships they formed at public expense for private advantage. It is also about creating a “level playing field” among former public office holders and other lobbyists.²

[14] The two-year rule is also about preventing “undue influence” by certain lobbyists with insider knowledge, connections or both. This concern was specifically addressed by the Attorney General in debate on the introduction of this rule:

These reforms will balance the interests of having well-informed policy-makers who contribute to the democratic process and ensure a level playing field for all lobbyists. They will eliminate the potential for undue influence and the improper use of insider knowledge in lobbying.³

[15] Nothing in the LTA prevents former office holders from leveraging the knowledge, expertise, and relationships they acquired, at public expense, over the years.⁴ What is prohibited, for a period at least, is lobbying. The rationale of this rule is to prevent organizations from purchasing influence by hiring former office holders for their connections and access to government decision-makers. This is why the act of setting up a meeting is captured by the definition of “lobbying activity” in the LTA: opening doors to senior decision-makers is valuable.

Basis for the applicant’s request

[16] In her submissions, the applicant states that “the YWCA CEO’s advocacy efforts are focussed on serving the public good and on improving the safety, health and well-being of women, families and vulnerable community members; they are not focused on influencing government to advance or arrange financial benefits for the organization or sector.”⁵ The applicant distinguishes her current work in the social services sector from her previous work in

² ED 18-01 at para 16.

³ British Columbia Legislative Assembly, *Hansard*, No. 38 at 3:30 P.M., (Hon. D. Eby).

⁴ ED 18-01, para 19.

⁵ Application, p. 8.

the two Crown agencies, which she describes as “specific to financial services and real estate regulation under the responsibility of the Ministry of Finance.”⁶

[17] In support, the applicant describes her involvement in an executive steering committee supporting a merger of the RECBC into the BCFSa as a single regulator for the financial services sector. Between November 2019 and August 2021, the applicant participated in meetings with senior officials, including the Deputy Minister of Finance, the Assistant Deputy Minister of the Finance and Corporate Sector Policy Branch of the Ministry of Finance, and the occasional participation of the Deputy Attorney General and the head of the Public Sectors Employers’ Council Secretariat.⁷

[18] According to the application, the YWCA does interact with the Ministry of Finance, but the interactions are only with the Gender Equity Office, such that “there would not be any expected reason to interact with the Finance and Corporate Sector Policy branch in respect of the work of the YWCA.”⁸ Nonetheless, the applicant recognizes that, given her “regular contact with the senior staff at the Ministry of Finance, she would be prepared to accept a condition that any lobbying activities would not include either (i) any senior staff of the Ministry of Finance other than those specifically, and only, assigned to the Gender Equity Office; or (ii) if necessary, any public office holder of the Ministry of Finance including elected members of the legislature responsible for such ministry.”⁹ In addition, the applicant has provided a list of names of individuals who she interacted with regularly in an appendix, and is prepared to accept conditions on lobbying those individuals.

[19] The applicant states that she is “the only individual at the YWCA who can effectively advocate for the organization as a whole.”¹⁰ In support of this position, she describes the position of CEO as uniquely situated as the only member of the senior leadership team with the “authority to speak on behalf of the board and management through an organization-wide lens.”¹¹ Other management team members are “responsible only for dedicated programs or specific operational areas.”¹² She further states that board members are not suited to take on a lobbying function owing both requirements they be volunteers and governance documents that provide that “all communications regarding the purpose and operations of the organization are

⁶ *Ibid.*

⁷ Application, p. 9.

⁸ Application, pp. 11-12.

⁹ Application, p. 12

¹⁰ Application, p. 3.

¹¹ Application, p. 10

¹² Application, p. 9.

carried out by the CEO and not by the Board.”¹³ The applicant also states that, due to the nature of the YWCA as a charitable organization, it “does not, and should not, pay for outside contractors to lobby government on its behalf.”¹⁴ Finally, the applicant states that the CEO is also the only position that maintains relationships with 31 other YWCA membership organizations and CEOs across Canada.¹⁵

[20] The YWCA is registered with the Lobbyists Registry and lists six individuals as in-house lobbyists, four of whom are Vice Presidents, one who is a Director of Communications and Advocacy, and the last is the organization’s Staff Lawyer and Legal Educator.¹⁶ Fifteen Ministries are listed by the organization, including the Ministries of Finance and Attorney General, and the Office of the Premier.¹⁷ A number of lobbying topics are listed by the organization, including “[t]o discuss the structural barriers to the non-profit sector, including the requirements for charities to register as lobbyists.”¹⁸

[21] The applicant distinguishes the YWCA as a charitable organization from other organizations who have requested exemptions under s. 2.3 of the LTA. In support of this position the applicant cites similar legislation in Alberta and Manitoba, which each contain forms of exemptions for lobbying by charitable organizations.¹⁹ The applicant submits that the fact that some jurisdictions have recognized a public interest in the exemption of charities from their legislation as relevant and persuasive in interpreting the LTA’s application to the YWCA in this application.²⁰

[22] In addition to the YWCA’s status as a charitable organization, the applicant has provided details on the specific work the organization conducts “advocating for issues that serve the public interest, especially as they relate to supporting equitable opportunities for women and

¹³ Application, p. 4.

¹⁴ Application, p.9.

¹⁵ Application, p. 10.

¹⁶ British Columbia Lobbyists Registry, <https://www.lobbyistsregistrar.bc.ca/app/secure/orl/lrs/do/guest>, accessed October 11, 2022.

¹⁷ The Ministries of Advanced Education and Skills Training, Attorney General and Minister responsible for Housing, Children and Family Development, Education, Finance, Jobs, Economic Recovery and Innovation, Labour, Minister of State for Child Care, Minister of State for Infrastructure, Minister of State for Trade, Office of the Premier, Parliamentary Secretary for Community Development and Non-Profits, Parliamentary Secretary for Gender Equity, Parliamentary Secretary for Technology and Innovation, and Social Development and Poverty Reduction.

¹⁸ Lobbyists Registry.

¹⁹ *Ibid.*

²⁰ Application, p. 11.

families.”²¹ The applicant cites a number of examples of “provincially-focused advocacy”²² initiatives and lists eight ministries the YWCA currently works with.²³ The application goes on to name a number of other initiatives and impacts of the organization, stating that the YWCA has effectively worked with government officials for “decades” to “improve the economic well-being and safety of women, single mothers and families.”²⁴ Finally, the applicant states that as the “lead spokesperson” for the organization’s initiatives, “[proactive engagement] with provincial office holders on a routine basis is critical.”²⁵

The factors to be considered

[23] What I must determine is whether I am satisfied it is in the public interest to grant the requested exemption and if so whether conditions should be attached to such approval.

[24] I identified several factors to consider in making such a determination, in Exemption Decision 18-01. They include:

- the applicant’s previous position (both in nature and in duration) under a particular category of s. 2.2 of the LTA;
- the length of time since that position concluded;
- the nature of the proposed undertaking to lobby, including the client and the target(s) of lobbying;
- how the public can be assured that no information or relationships acquired in the previous position will be used in the proposed lobbying;
- why the particular lobbyist, as distinct from some other lobbyist, is proposing to carry out the lobbying;
- how the public will benefit from lobbying activity by the applicant;
- any terms and conditions that might be proposed that would satisfy the Registrar that an exemption would be in the public interest.²⁶

The nature and length of the applicant’s previous position and time since the position’s conclusion

²¹ Application, p. 5.

²² Application, p. 7.

²³ Application, pp. 7-8.

²⁴ Application, p. 12.

²⁵ Application, p. 13.

²⁶ ED 18-01, para 38.

[25] The applicant held relevant senior roles within Crown corporations for just under six years, which concluded in May 2022. In particular, she had significant interactions with senior government decision-makers in both the Ministries of Finance and Attorney General for nearly two years on an executive steering committee. Together, the ministries and officials the applicant had interactions with are related to a wide array of provincial government people and matters.

[26] I find the length of time to be significant, as it would have allowed the applicant to develop longstanding relationships and knowledge of government. The nature of the positions the applicant held were for entities separate from core government, but as mentioned above, with significant interaction with senior government officials in key ministries. The applicant recognizes this fact in her submissions and addresses it with her suggested conditions which are further discussed below.

The nature of the proposed undertaking to lobby and how the public will benefit from the lobbying activity

[27] The nature of the lobbying activity proposed by the applicant is broad and involves a number of senior government officials owing to the YWCA's wide range of work. The applicant does not identify any individual targets of lobbying, but considering the numerous initiatives and the eight ministries listed by the applicant I understand she seeks to lobby a considerable range of officials.

[28] The applicant correctly points out that this is the first exemption application before me by an applicant working for an organization with a charitable purpose. My reading of the applicant's argument is that because she is doing work for an organization that serves the broader community, it is in the public interest that she be exempted from the two-year rule.

[29] The applicant submits that I should consider legislative exemptions in Alberta and Manitoba for charitable organizations to be persuasive in my interpretation of the public interest under s. 2.3. I do not find this argument persuasive given that the Legislature did not include an exemption in the LTA for charitable organizations, and it is the BC legislation that I must interpret and apply.

[30] What does constitute the public interest is a matter considered in Exemption Decision 18-01. I observed in that decision that a public interest is one shared by the entire public (or a significant segment of the public). It is also one which reflects broad areas of public concern or

one that provides benefit or advantage to the whole community (or some combination of these things).

[31] By contrast, a private interest relates to an individual interest, or the interest of a small or narrowly defined group of people, *i.e.*, that which benefits individuals or groups, rather than the entire community.²⁷

[32] I agree that the YWCA advocates for measures and programs that directly benefit a wide range of the public. At the same time, it should be observed that not everything a non-profit or charity does is necessarily in the public interest as defined above. This point is acknowledged by the applicant herself when she distinguishes what she specifically proposes to lobby about from other activities her organization might undertake. She states that her activity would not be “focused on influencing government to advance or arrange financial benefits for the organization or sector.” In other words, there are some activities about which the YWCA might potentially lobby that would benefit the organization itself rather than the broader community. There is of course nothing wrong with this. What it ultimately means, though, is that an organization’s status alone cannot form the basis for an exemption under the LTA.

[33] Taking account of the above, I am satisfied the applicant intends to lobby on matters that do not concern the narrow organizational interests of the YWCA nor of the sector in which she operates but rather the broad range of initiatives the YWCA is currently involved in and has historically led. Those in my view are directly linked to the public interest. By that I mean that a significant portion of the public, if not the entire public, stands to benefit from the current and future initiatives identified by the applicant. The public interest is served with effective input and participation from the YWCA on behalf of a significant and often marginalized constituency of women, families and vulnerable community members. This all weighs in the applicant’s favour.

Why the particular lobbyist, as distinct from some other lobbyist, is proposing to carry out the lobbying.

[34] Even if lobbying may serve the public interest, an applicant must still demonstrate why the applicant in particular must carry out the lobbying.

[35] The applicant states that the position of CEO is unique in the organization and that she is the only individual who has knowledge of each of the dedicated program areas within the

²⁷ *Ibid*, para 32.

organization and outside of the organization with other YWCA affiliates across Canada. This assertion is perhaps intended, in part, as an explanation for the YWCA's current lobbying efforts which have been entered into the Lobbyists Registry.

[36] These disclose that the YWCA currently has six registered in-house lobbyists covering a range of activities in 15 ministries. One could infer it is necessary for a large number of YWCA staff to lobby because none of them possess the overall knowledge of the YWCA's operations to economize their efforts. I say perhaps because the applicant did not explain in explicit terms the current state of the YWCA's lobbying efforts. Therefore, while I assign some weight to this factor in the applicant's favour, barring a clearer explanation, it is not conclusive.

Weighing all the relevant factors

[37] Taking all the factors together I am persuaded it is in the public interest that the applicant be permitted an exemption from the lobbying prohibition provisions of s. 2.3 subject to the conditions set out below. I base this on my findings concerning the public interest nature of the YWCA's work, the applicant's submission that any lobbying on her part will not be done to promote the YWCA's or the non-profit sector's private interest, and the likelihood that her ability to lobby will economize the YWCA's lobbying resources as opposed to having six senior staff doing the lobbying.

Any terms and conditions on lobbying activity

[38] In making any conditions, I must be mindful of how the public can be assured that no information or relationships related to the applicant's previous position could be used in the proposed lobbying. The applicant's primary position is there is no risk of this materializing because her previous work was limited to the Finance and Corporate Sector Policy Branch and the proposed lobbying is with the Gender Equity Office, each housed within the Ministry of Finance.

[39] The applicant recognizes the challenges with this position and has put forward two alternative positions. The first is to only allow her to lobby officials "assigned to" the Gender Equity Office. The second is to prohibit any lobbying of any public office holders currently employed by the Ministry of Finance, and any individuals who held positions of Deputy Minister or Assistant Deputy Minister at the Ministries of Finance and Attorney General.

[40] The applicant must be credited for recognizing the challenges of her initial position and advancing a position in the alternative. The reality of government bureaucracy is offices or work

units within a Ministry all report up to senior leaders and ultimately the Minister. I find the only way the public can be assured that no information or relationships acquired in the applicant's previous position will be used in the proposed lobbying is to impose the more restrictive of the conditions the applicant has suggested.

[41] Imposing such conditions on the applicant's lobbying activity will strike the appropriate balance between the assuring the public that relationships or information acquired during the applicant's previous position will not be used in her proposed lobbying and the significant and demonstrated public benefit the applicant's activities will bring.

CONCLUSION

[42] For the reasons set out above, I am satisfied that it is in the public interest to exempt the applicant from the two-year prohibition in s. 2.2, with conditions.

[43] Pursuant to section 2.3, the applicant's request is granted subject to the following conditions:

1. The applicant is prohibited from lobbying:
 - a. Any public office holder of the Ministry of Finance, including elected members of the Legislature responsible for that ministry; and
 - b. the following individuals, regardless of their current role:
 - i. Heather Wood;
 - ii. Renee Mounteney;
 - iii. Lori Wanamaker;
 - iv. Tara Richards;
 - v. Shauna Brouwer;
 - vi. Richard Fyfe; and
 - vii. Michael Noseworthy.
2. The applicant must ensure that reference to Exemption Decision Number: **ED 22-01** is included in all Registration Returns in which the applicant is registered as a lobbyist.
3. Failure to comply with either conditions 1 and 2 above renders this Exemption Decision null and void.

Date: December 1, 2022

ORIGINAL SIGNED BY

Michael McEvoy
Registrar of Lobbyists for British Columbia