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

RECONSIDERATION 15-01
(INVESTIGATION REPORT 15-01)

LOBBYIST: Brad Zubyk

August 18, 2015

SUMMARY: The finding in Investigation Report 15-01 that the lobbyist failed to file a return within 10 days after entering into an undertaking to lobby is upheld. The finding that he identified the wrong organization as his client is not confirmed. The finding that he failed to correct information in the registry when required is also confirmed. It is also noted in passing that the lobbyist ought to have identified in the return the members of the coalition of which his client was a member.

Statutes Considered: *Lobbyists Registration Act*, S.B.C. 2001, c. 42; *Lobbyists Registration Regulation*, B.C. Reg. 284/2002

INTRODUCTION

[1] This report flows from Investigation Report 15-01, which itself flows from Investigation Report 14-06 and Reconsideration 14-06. In the former, an investigator with this Office found, after an investigation under s. 7.1 of the *Lobbyists Registration Act* ("LRA"), that the lobbyist, Brad Zubyk ("lobbyist") had failed to comply with s. 3(1) of the LRA, by filing a return outside of the 10-day period permitted under the Act. The lobbyist requested a reconsideration of this finding. In Reconsideration 14-06, I concluded that, in light of the information that the lobbyist submitted on that reconsideration, I was unable to find that he had violated s. 3(1). I noted, however, that it appeared he may have failed to correct an error in the report he did file.

ISSUES UNDER CONSIDERATION

[2] The questions for consideration are whether the findings made, and administrative penalty imposed, in Investigation Report 15-01 should be confirmed. The issues are set out, and dealt with, separately below.

RELEVANT SECTIONS OF THE LRA

1(1) …

"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, …

"consultant lobbyist" means an individual who, for payment, undertakes to lobby on behalf of a client; …

"organization" includes any of the following, whether incorporated, unincorporated, a sole proprietorship or a partnership:

(a) a person other than a person on whose behalf a consultant lobbyist undertakes to lobby;

(b) a business, trade, industry, professional or voluntary organization;

(c) a trade union or labour organization;

(d) a chamber of commerce or board of trade;

(e) a charitable or non-profit organization, association, society, coalition or interest group;

(f) a government, other than the government of British Columbia;

"undertaking" means an undertaking by a consultant lobbyist to lobby on behalf of a client, ...

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

(b) if the return is filed by a consultant lobbyist,

(i) the name and business address of the firm, if any, where the consultant lobbyist is engaged in business,

(ii) the date on which the undertaking with the client was entered into and is scheduled to terminate, and

(iii) the name of each individual engaged by the consultant lobbyist to lobby on behalf of the client; ...

(d) the name and business address of the client or organization; ...

(h) if the client or organization is a member of a coalition, the name and business address of each member of the coalition; ...

(2) An individual who files a return must supply the registrar with the following information within the applicable period:

(b) any information required to be supplied under subsection (1) the knowledge of which the individual acquired only after the return was filed, within 30 days after the knowledge is acquired; ...

BACKGROUND

[3] As noted above, this is a reconsideration, under s. 7.3 of the LRA, of Investigation Report 15-01, dated June 15, 2015, respecting Brad Zubyk (referred to below as "the lobbyist"). The history of this matter extends back almost two years, and is summarized here:

1. On August 13, 2013, the lobbyist submitted a return to the ORL under registration 17159308, with an undertaking start date of July 1, 2013. The submission listed the lobbyist's client as "Urban Impact". Noting the dates contained in the submission, the ORL formed the view that the lobbyist might have filed the return outside the 10-day period permitted under the LRA. The ORL launched an investigation under s. 7.1 to inquire into whether the lobbyist had violated s. 3(1).

2. The finding in Investigation Report 14-06 was that the lobbyist had contravened s. 3(1) by failing to file this return within 10 days after entering into an undertaking to lobby. The lobbyist had been given an opportunity to be heard during the investigation. He represented to the investigator that he complied with the LRA because at the relevant time he had been "waiting for the client to sign the contract."[1]

3. In Reconsideration 14-06, I reconsidered Investigation Report 14-06 and decided, based on the representations made then, to rescind the investigator's finding that the lobbyist had contravened s. 3(1). It therefore followed that I rescinded the $700 administrative penalty imposed.

4. In his July 3, 2014 reconsideration request, the lobbyist admitted that Urban Impact had engaged him on July 1, 2013. However, he stated at that time that he had believed there was no undertaking to lobby any "public office holder" and thus no need to register under the LRA.[2]

5. During the reconsideration, however, the lobbyist stated that, on or about August 13, 2013, he became aware that lobbying within the meaning of the LRA would be required and this is why he registered under the LRA. He further stated that he had entered the July 1, 2013 start date for the undertaking in error, and that the August 13, 2013 date is the one he should have entered.[3]

6. I accepted the lobbyist's representation to me that he had made a simple error in dates, such that August 13, 2013 was the correct date for LRA registration purposes. I therefore rescinded the finding that the lobbyist had contravened s. 3(1) and rescinded the administrative penalty.

7. However, during the course of the reconsideration, it came to my attention that, accepting the lobbyist's statement that August 13, 2013 was the proper date, he had yet to update his filing to show that date. In other words, it came to my attention that the registration date of July 1, 2013 was still showing in the registration, not the August 13, 2013 date the lobbyist represented was the proper date. Reconsideration 14-06 was dated September 13, 2014, more than a year after the lobbyist's original filing.

---

[1] Investigation Report 14-06, para. 15.

[2] The LRA applies only to an undertaking to lobby a "public office holder", with that term defined in such a way that, in essence, only holders of provincial government elected office and provincial public officials are covered. An undertaking to 'lobby' a local government office-holder or official would not, therefore, be caught under the LRA.

[3] It should be noted here that, during the course of the reconsideration, the ORL contacted the client, Urban Impact. Urban Impact stated that the lobbyist had entered into an agreement to lobby for Urban Impact on July 1, 2013. Urban Impact was not asked, and did not say, whether the lobbyist had undertaken to lobby any public office holders or to lobby local government officials (or both).

8. In light of this information, I said the following in Reconsideration 14-06:

> [16] It is also important to note that to date the lobbyist has not updated the information originally entered on August 13, 2013[:] his registration still shows a start date of July 1, 2013 for this undertaking. If the lobbyist is correct that this undertaking did not begin until August 13, 2013, then his failure to update his registration with the correct information is currently in contravention of s. 4(1) of the LRA.
>
> [17] Based on the information before me, I am unable to conclude that s. 3(1) of the LRA has been contravened.
>
> [18] However, I have concluded that a new investigation should be initiated in regard to a possible contravention of s. 4(1) of the LRA. The lobbyist will be contacted shortly by the ORL to initiate this investigation. As a result, I cannot confirm the Investigator's finding that the lobbyist failed to meet his obligation under s. 3(1) of the LRA.

DISCUSSION

[4] The ORL commenced an investigation under s. 7.1 of the LRA to determine whether the organization had complied with s. 4(1) of the LRA. This investigation resulted in Investigation Report 15-01. In that report, Investigator Tim Mots concluded that the lobbyist had contravened ss. 3(1), 4(1)(b)(iii), 4(1)(d) and 4(2)(a) of the LRA in respect of the same registration. Regarding the contravention of s. 3(1), he imposed an penalty of $1,500.00, and in relation to the breach of s. 4(1)(d), he imposed a further penalty of $2,000.00. Because the lobbyist corrected the breaches of ss. 4(1)(b)(iii) and 4(2)(a) when notified of them, no penalty was imposed for those contraventions.

[5] On July 13, 2015, counsel for the lobbyist requested a reconsideration of Investigation Report 15-01. The lobbyist's submissions and representations through counsel are reflected in the discussion below of the issues.

Administrative fairness

[6] Before reconsidering the findings made in Investigation Report 15-01 I will address the lobbyist's concern about administrative fairness. Although he indicated that he was not making a formal objection, the lobbyist expressed concern about two aspects of the process in particular. The first was the fact that the investigation I directed in Reconsideration 14-06 ultimately had a wider scope that the s. 4(1) issue to which I referred. Although I do not understand the lobbyist to go so far as to say the ORL is duty-bound to ignore new evidence of possible non-compliance, that came to light during the course of the reconsideration, this would be one consequence of the concerns expressed.

[7] Regarding the scope of the further investigation, two points are of particular importance. First, where an investigation uncovers evidence of further possible contraventions of a statute, it would be, to say the least, unfortunate if procedural fairness concerns required a regulatory body to overlook the new contraventions. Second, I note that the lobbyist in any event was given notice of the alleged new contraventions and made submissions in response. The lobbyist has, in other words, been given notice of the alleged contraventions and was given an opportunity to be heard. He has, of course, also been heard in this reconsideration.

[8] Last, I respectfully agree with these observations by Investigator Mots on this point:

> [30] The reconsideration decision dealt solely with the decision made in the investigation report and the representations made in counsel's letter. The Registrar noted, however, that if the lobbyist's new evidence was true, he was possibly in contravention of s. 4(1) of the LRA. She determined that a new investigation should be initiated, to evaluate the new evidence, as it is a separate and distinct matter from the initial investigation and resulting reconsideration. Given the different explanations tendered at the two levels, and the Registrar's direction to consider the s. 4(1) issue, it was an obvious and necessary step to now look into the nature of the undertaking by speaking to others. When information came to light which cast serious doubt on the second version of events advanced on behalf of the lobbyist, it would not have been either appropriate or responsible for this office to ignore it because a previous investigative conclusion had been reached based on a different version of events given by the lobbyist.
>
> [31] In my view, the powers and the nature of the investigative function under s. 7.1 of the LRA are broad enough to allow this Office to reopen a file within the statutory limitation period if new and highly relevant information comes to light concerning compliance with the Act. If that were not the case, the Act's purpose could be frustrated by a lobbyist who provided an incomplete or inaccurate version of events that, as was initially the case here, appeared to be reliable and did not require further investigation. In my view, the current investigation process is not administratively unfair, and that is particularly so where, as here, the lobbyist was given a full and fair opportunity to respond to the additional concerns raised in my December 29, 2014 letter.

[9] The second concern expressed is that the same investigator, Investigator Mots, handled the further investigation and issued Investigation Report 15-01. The lobbyist intimated that may create a perception of bias, since the same investigator was reviewing, in essence, his own previous efforts and findings. In essence, a reasonable apprehension of bias may be raised where an informed, right-minded, person, viewing the matter realistically and practically, would think it likelier than not that the decision-maker would not decide the matter fairly and on its merits. The test requires serious grounds to be shown before it will be met and each case must be examined

contextually.[4] Given the differences in the focus and scope of the investigation leading to Investigation Report 15-01, and the findings made there, neither the context nor the grounds raised create, in my view, a reasonable apprehension of bias.

Failure to register in time

[10] Regarding whether the lobbyist had filed a return within the time required under s. 3(1), Investigator Mots observed in Investigation Report 15-01 that the lobbyist's explanation for why he registered when he did had shifted over time. As noted above, the lobbyist originally represented to the ORL that he had not registered within 10 days after July 1, 2013 because he was waiting for his client to sign the contract. In the course of Reconsideration 14-06, however, he said something else. He said that, when he undertook to lobby, he did not expect to lobby provincial officials, which meant he need not register at the outset. Only when he later realized that LRA-covered lobbying was involved did he register, on August 13, 2013. There is no indication in the material before me, including his submissions in this reconsideration, that the lobbyist has ever clearly explained this discrepancy between the two versions he gave this office.

[11] During the course of the investigation leading to Investigation Report 15-01, Investigator Mots obtained a copy of the proposal that the lobbyist had made to Recycle First, dated June 24, 2013. On p. 2 of that proposal, the lobbyist, under the name of Wazuku Advisory Group, said this:

> Recycle First has asked Wazuku to prepare a brief to assist Recycle First to position the coalition's solution with the Metro Vancouver Zero Waste Committee, the Metro Board, the provincial government and key Metro and provincial officials. The approach should clearly and positively differentiate Recycle First from those being proposed [*sic*] by Northwest Waste Solutions and the Waste Management Association. At the current time, Recycle First has a low profile among key decision-makers compared to those enjoyed by Northwest and the WMA.

[12] As was noted in Investigation Report 15-01, what was proposed to Recycle First at no point differentiated between communication with local government and provincial officials. For example, at p. 3, the lobbyist proposed that "[s]uccess will require that all decision-makers are identified and incorporated into a tracking document with clear responsibilities assigned to both Wazuku team and Recycle First members."

[13] In Investigation Report 15-01, Investigator Mots cited the fact that a representative of Recycle First had confirmed during the investigation leading to that report, that Recycle First had, on July 1, 2013, entered into a verbal undertaking "with the lobbyist to lobby provincial government officials as well as municipal officials" (para. 34). This conclusion, based on evidence acquired during the investigation, is consistent with the terms of the lobbyist's June 24, 2013 proposal to Recycle First.

---

[4] For a discussion of these principles, see, for example, *Taylor Ventures Ltd. (Trustee of) v. Taylor*, 2005 BCCA 350.

[14] The lobbyist's July 13, 2015 submission in this reconsideration sets out no evidence or representations that plausibly call this finding into question. Rather, the lobbyist characterized the June 24, 2013 presentation to Recycle First as merely a "business pitch", one intended to show that the lobbyist could provide a comprehensive solution covering both local government and provincial matters. He said that no one knew, however, where the matter might lead, as it was a political issue that was dynamic and shifting, possibly leading in many directions. Thus, "[i]t was not clear…in July 2013 as to which directions those would be". At the time the lobbyist was engaged, "it wasn't clear to him whether the file would ultimately involve provincial lobbying", adding the following:

> While we acknowledge that Mr. Zubyk could have speculatively registered in respect of this matter on July 1, 2013 on the basis that the matter *could* result in lobbying at the provincial level, such an approach is problematic to the integrity of the registry. … [italics original]
>
> Mr. Mots may wish to second guess Mr. Zubyk's judgement call with the benefit of hindsight but we would submit that Mr. Zubyk made a reasonable judgement in the circumstances and should be granted some deference in making this judgement.

[15] It was also submitted that the lobbyist registered, on August 14, 2013, "approximately four months before he ever had contact with provincial officials on this file." In closing, it was submitted that the lobbyist did not act with "malice" and had tried to "comply, to the best of his ability, with a complicated regulatory regime and we submit that he made a reasonable judgement call in the circumstances."

[16] Investigations and findings under the LRA do not involve, as the lobbyist has suggested, a "second guess", with "hindsight", of an individual's "judgement call". Nor is there any basis for the suggestion that an individual in the lobbyist's position should be granted some sort of "deference" in making a "judgement call". What matters is whether a lobbyist has, on the evidence, complied with the LRA, which is not, with all respect to the lobbyist, no more "a complicated regulatory regime" than other statutes that apply to business persons.[5]

[17] I am satisfied based on the material before me that, on or about July 1, 2013, the lobbyist entered into an undertaking to lobby within the meaning of the LRA. Specifically, I conclude that the proposal to his prospective client, which he now labels a mere "business pitch", in fact led to an undertaking to lobby between the lobbyist and an organization. As already noted, the proposal itself explicitly describes the intended services as involving covered communications with both local government officials and public office holders within the meaning of the LRA. Further, the investigative material

[5] Moreover, I note in passing only, that the lobbyist's July 3, 2014 request for reconsideration of Investigation Report 14-06 acknowledged that the lobbyist "has a large number of active registrations", and had on "numerous occasions" communicated with the ORL to clarify matters or seek guidance (page 1), which surely speaks to some familiarity with the LRA's requirements.

before me contains written confirmation from the lobbyist's client as to the nature and timing of the undertaking.

Investigator Mots communicated this information to the lobbyist in a letter of December 29, 2014. In a January 26, 2015 letter from his legal counsel, the lobbyist took the position that the June 23, 2013 proposal was a "business pitch", such that "at the time he was engaged it was not clear to Mr. Zubyk that his engagement would in fact lead to lobbying at a provincial level", noting that this was in part because the relevant bylaw had not yet been approved.

[18] I am not persuaded by the lobbyist's assertion that it was not clear to him at the outset of the undertaking, which he entered into little more than a week after he made his proposal, that the enterprise contemplated more than local government communications. Nor has he persuaded me that the provincial aspect of the undertaking only became apparent in early August. The lobbyist has been aware since last December of the nature of the evidence on this point. He has not, however, provided particulars of why, or how, it was that it only "became clear" to him at an unspecified date in early August, but not before, that "provincial lobbying" was involved. I note again that his own June 23, 2013 proposal explicitly contemplated this kind of activity. I also note again the evidence that his client understood that "provincial lobbying" was contemplated as of July 1, 2013.[6] The evidence before me satisfies me that there was an undertaking at July 1, 2013 and that it was an undertaking to lobby within the meaning of the LRA.

[19] Another aspect of the lobbyist's representations bears discussion. In his submission in this proceeding, the lobbyist has said, as noted above, that "at the time he was engaged it was not clear" that the "engagement would *in fact* lead to lobbying at a provincial level" (my emphasis). Whether or not an undertaking to lobby provincial officials within the meaning of the LRA "in fact" ever results in actual communication with them is immaterial.

[20] This is clear from the language of the relevant LRA provisions and the scheme of the LRA as a whole. An "undertaking" is defined as "an undertaking by a consultant lobbyist to lobby on behalf of a client".[7] If an undertaking by its terms provides for lobbying within the meaning of the LRA, the lobbyist is required to register. If it later turns out for some reason that lobbying, as the lobbyist put it here, "in fact" does not occur for some reason, this does not mean that registration was never required in the first place. There might be any number of reasons why lobbying intended, or

[6] I note here the reference, in the January 26, 2015 letter, to the reasonableness of the lobbyist's "approach in light of the facts known to [him] at the relevant times". As noted above, apart from asserting that he did not become "aware" until later that the undertaking involved provincial lobbying, the lobbyist has not provided particulars of "the facts known to him at the relevant times".

[7] It is convenient to confirm here that the lobbyist does not dispute, and I find, that in this matter he was a lobbyist personally, and that he was retained to lobby municipal and, later, provincial officials. The dispute, as discussed above, is as to when that retainer evolved into an "undertaking" to "lobby" within the meaning of the LRA. The lobbyist has argued that it only became clear in August, not July, of 2013 that he would be lobbying within the meaning of the LRA.

contemplated, under an undertaking in fact never takes place. It could be due to sheer chance, to a lobbyist's failure to fulfil the undertaking, or due to some other cause. This does not matter. What matters is the nature of what has been undertaken for payment, not whether lobbying "in fact" actually occurred later, at some point.[8]

[21] For reasons set out above, I conclude that the lobbyist entered into an undertaking on July 1, 2013 and that the undertaking was at that date an undertaking to lobby within the meaning of the LRA. The lobbyist was duty-bound to file a return within 10 days after that date but did not do so. I therefore confirm, under s. 7.3(3)(b) of the LRA, the Investigator's determination in Investigation Report 15-01 that the lobbyist contravened s. 3(1) of the LRA.[9]

Did the lobbyist register the correct organization as his client?

[22] The second issue I must address is the finding in Investigation Report 15-01 that, when he filed his return, the lobbyist did not, as required by s. 4(1)(d), name the appropriate organization. A related issue is whether, contrary to s. 4(1)(h), he failed to identify all of the members of a coalition. The lobbyist entered "Urban Impact" as the organization in his return. The Investigator found that in doing so the lobbyist named the wrong organization, which should have been "Recycle First", a coalition of companies.

[23] As a first point, I agree with Investigator Mots that the LRA definition of "organization" does not require that an organization be incorporated to qualify as an "organization".[10] The LRA does not set out an exhaustive definition of what might qualify as an "organization", since the definition says that the term "includes" the things it lists. These include, "whether incorporated, unincorporated, a sole proprietorship or a partnership", entities such as business, trade, industry, professional or voluntary" organizations. Canadian law recognizes that unincorporated associations can exist for certain legal purposes and, in light of the definition of "organization", such an association could in principle be an "organization" within the LRA's meaning. The lobbyist also acknowledged this in his submission for this reconsideration.[11]

[24] As regards the s. 4(1)(d) issue, Investigator Mots observed, at para. 37, that the lobbyist's proposal was explicitly directed at Recycle First. This is undoubtedly the case.

---

[8] It should be plain from this that I do accept the lobbyist's argument that, if a lobbyist were to be required to file a return even where lobbying will not clearly happen (where it only "could" result) would be "problematic to the integrity of the registry". If the arrangement is from the outset, by its terms, an undertaking to lobby, the return must be filed. If the terms change such that what is involved is no longer an undertaking to lobby, s. 4(2) would apply. That section would require the lobbyist in such a case to provide "particulars of any change to the information in the return". This supports the registry's integrity. The same can be said of the s. 4(3) duty to inform the registrar of the "completion or termination" of an undertaking. Termination would include situations where the parties amend the terms of the arrangement such that it is no longer an undertaking to lobby under the LRA.

[9] Implicit in this is my conclusion that the Investigator appropriately found, at para. 36 of Investigation Report 15-01, that the lobbyist did not enter an incorrect date in his return contrary to s. 4(1) of the LRA. That finding is confirmed.

[10] The lobbyist acknowledged this point at page 5 of his submission in this reconsideration.

[11] July 13, 2015 submission, p. 5.

The proposal's cover page says that it was "[p]repared for Recycle First" and its text names only Recycle First. Its opening paragraph begins with this passage:

> Recycle First has asked Wazuku to prepare a brief to assist Recycle First to position the coalition's solution with the Metro Vancouver Zero Waste Committee, the Metro Board, the provincial government and Key Metro and provincial officials. The approach should clearly and positively differentiate Recycle First from those being proposed by [other named organizations].[12]

[25] He observed, at para. 38, that Urban Impact, the client identified in the lobbyist's return, was not mentioned, adding that "Urban Impact's contact person confirmed that her company was one member of a coalition of companies", having the name "Recycle First". Investigator Mots also said this, again at para. 38, about what Urban Impact's representative said:

> ...She was under the impression that the lobbyist could not register an unofficial association so her company was listed in the return for the sake of convenience. She stated that Urban Impact was not the lead company in the coalition. The lobbyist acknowledged he knew Recycle First consisted of a coalition of companies.

[26] In this context, Investigator Mots made the following finding:

> [40] As made crystal clear in the LRA, an organization does not have to be incorporated for a lobbyist to be required to register that organization. Recycle First is an organization within the meaning of the LRA. I conclude that the lobbyist entered into an undertaking to lobby on behalf of a coalition of companies who operated under the name of Recycle First.

[27] The lobbyist made submissions on this issue (and made similar submissions in the process leading to Investigation Report 15-01):

> We provided submissions in our January 25th letter regarding our views on whether Recycle First constituted a coalition. As noted therein, Mr. Zubyk was provided very little detail as to the structure of this coalition. As far as he could tell (i) the coalition wasn't organized in any formal way; (ii) it was unclear to him whether there were any members beyond Urban Impact; and (iii) there did not appear to be any decision makers beyond Urban Impact. In addition, it was Urban Impact that provided him instructions and paid his invoices. Mr. Zubyk did not have much visibility to any parties other than Urban Impact and, in particular: (i) any communication to other parties was directed by Urban Impact; and (ii) at no time did Mr. Zubyk have any ability to reach out to other "members" without directions from Urban Impact. It was clear to Mr. Zubyk that Urban Impact was his "client" for all relevant purposes and for the foregoing reasons listed them as the party he was representing on his return.

[12] The proposal mentions third parties, competitors to Recycle First, but not any organization that was or might be a member of Recycle First.

> With respect to the assertion that Recycle First is an "organisation" for which Mr. Zubyk should have registered, the challenge is that Recycle First is an entity that, in a sense, doesn't really exist. It exists only in a notional sense, as a brand under which Urban Impact has chosen to represent certain arguments. It is not incorporated, does not have bylaws, an address, contact people, decision makers or anything else other than as provided by Urban Impact.[13]

[28] I agree with Investigator Mots that a "coalition" of companies or other organizations can be an "organization" within the meaning of the LRA. However, in light of the material before me, including the lobbyist's submissions, I am unable to confirm his finding, set out above, that Recycle First was, on the evidence, such an organization.

[29] The material before me is also such that I am, in addition, unable to confirm the finding that Recycle First was the "client" or "organization" with whom the lobbyist undertook to lobby.[14] Neither the lobbyist nor Urban Impact has produced a contract. The evidence consists of the lobbyist's proposal, information provided by Urban Impact's representative, and the lobbyist's representations. On the first point, we do not know how or why it was that the lobbyist addressed the proposal to "Recycle First" in the first place. Nor does the proposal itself provide any information about the nature of Recycle First, including any members. The lobbyist's submission provides no such information, and in fact it suggests that he believed Recycle First was a "brand" of Urban Impact. For its part, Urban Impact told the ORL, through its representative, that Recycle First was a "coalition" of companies and provided a list of their names. But this is not, in my view, sufficiently determinative of whether Recycle First was an "organization" under the LRA. I am not in a position, given this evidence, to find with sufficient confidence, on the applicable civil standard of proof of a balance of probabilities, that Recycle First was an organization and, if it was, that it was the lobbyist's proper client.

[30] To be clear, this has no general implications for future cases. As I made clear earlier, a "coalition" of companies can, in principle, qualify as an "organization" for LRA purposes. My finding is limited to the circumstances of this particular case. Lobbyists should be aware that, in future cases of this kind, they have a duty to work with their prospective clients to ensure there is a clear understanding of whether a particular coalition is an organization.

[31] As regards the second issue, the identity of the lobbyist's client, I am also unable to confirm the finding that it was Recycle First. This follows from my finding that Recycle First was not an "organization", but it is also, in my view, the appropriate conclusion in light of the evidence summarized above. Urban Impact's representative cited practical registration issues as the reason Urban Impact was chosen to be registered as the

---

[13] Pages 4 and 5 of his July 13, 2015 submission.

[14] This does not, of course, affect the finding, which I confirmed above, that from the outset the undertaking was to "lobby" within the meaning of the LRA. Regardless of whether the lobbyist's client, or the organization with which he entered into an undertaking, was Recycle First or Urban Impact, it is abundantly clear that it was an undertaking to "lobby".

"client". Yet it is also apparent from the lobbyist's representations to the ORL that Urban Impact provided his instructions, he communicated with and through Urban Impact, and Urban Impact paid his firm's invoices. On this basis alone, I would find that Urban Impact was the client (or, organization) that the lobbyist ought to have named in his return, which he did. I therefore do not confirm the finding of a violation of s. 4(1)(d).

[32] One other issue should be mentioned, in passing. As Investigator Mots noted in Investigation Report 15-01, s. 4(1)(h) requires a lobbyist to file information about coalition members. The lobbyist must, "if the client or organization is a member of a coalition", provide "the name and business address of each member of the coalition". Accordingly, even though Urban Impact was the client, the lobbyist would be obligated to provide this information about the coalition's members. The lobbyist's proposal and his representations to the ORL, including his July 13, 2015 representations, show that he knew Recycle First was a coalition, *i.e.*, that it had members. This is further demonstrated by the information provided by Urban Impact to the ORL.

[33] The lobbyist submits that he did not know who the members were, that he had no real contact with them. This does not matter. In light of s. 4(1)(h), the lobbyist ought to have made inquiries, through Urban Impact or otherwise, to ascertain the membership and then include the required information in his return. He did not do so.

[34] My authority under s. 7.3 of the LRA does not permit me to make original findings. I can only rescind, vary or confirm findings or penalties. Investigation Report 15-01 contains no finding of a violation of s. 4(1)(h), so the above observations are offered only in passing, for the information of all lobbyists in a similar position.

Incorrect information about lobbyists

[35] In Investigation Report 15-01, Investigator Mots also found that the lobbyist had contravened ss. 4(1)(b)(iii) and 4(2)(a) of the LRA. He found that the lobbyist had, in addition to registering himself, included in his return the name of another lobbyist. That other individual did not file a return, but it turned out that, as the lobbyist's counsel advised the ORL the other individual was incorrectly entered. This inaccurate entry, Investigator Mots found, contravened s. 4(1)(b)(iii) of the LRA. He also found that the lobbyist had failed to correct this error, contrary to s. 4(2)(a). Because the lobbyist rectified the error after the ORL pointed it out, Investigator Mots did not impose a penalty on this account. The lobbyist has not requested a reconsideration of this finding, which therefore stands.

ADMINISTRATIVE PENALTY

[36] As regards the penalties imposed, I note that the lobbyist did not, in his July 13, 2015 submission, explicitly request that I vary the administrative penalties imposed on him other than by submitting only that "the sanctions should be overturned." Given the entirety of the submission was targeted at the findings as to contravention of

LRA provisions, I do not understand reference to "sanctions" to necessarily refer to the administrative penalties that flowed from these findings.

[37] Nonetheless, I have considered in assessing the penalties imposed the lobbyist's further submission that the language used in Investigation Report 15-01 suggests these matters "should have been as clear as day" to the lobbyist. This submission was tied in particular to the finding that Recycle First was an "organization" and the registration should have reflected this. I have, of course, set aside that finding for the reasons given above, but I have considered this submission in relation to the penalty for late filing as part of my assessment of the administrative penalties. This is because the lobbyist went on to submit that "these are complicated issues" and that "it may not always be a case of wilful blindness or ignorance that gets someone caught up in things," adding "we are dealing with an individual that is trying to comply with the regulatory landscape."[15]

[38] In assessing whether a penalty was necessary, Investigator Mots considered the following:

- previous enforcement actions for contraventions by the lobbyist;
- the gravity and magnitude of the contravention;
- whether the contravention was deliberate;
- any economic benefit derived from the contravention;
- the efforts to report and/or correct the contravention; and
- whether a penalty is necessary for general and specific deterrence.

[39] In relation to the circumstances before him, Investigator Mots said this, at para. 46:

> The infractions I have found here are not merely technical requirements. The purpose of the LRA is to promote transparency in lobbying by requiring lobbyists to disclose accurate, current complete information. Failing to keep information in registrations up to date and accurate undermines the ability of the public to know who is actually attempting to influence government at any point in time, thereby defeating the LRA's goal of transparency.

[40] I wholeheartedly agree with this comment as regards the s. 3(1) obligation to file within the specified time, the only finding I need consider at this stage. While I acknowledge that business relationships, including undertakings to lobby, can arise in dynamic, fast-moving situations, with varying degrees of fluidity, it is incumbent on all lobbyists to exercise due diligence, including to take the time to clearly document what it

[15] Page 7, July 13, 2015 submission.

is they are undertaking, and with whom. They are then obligated to file accurate and timely returns, and amend or correct them where necessary, and do so in a timely way.

[41] It is clear from the history of this particular registration by the lobbyist, and the contents of the ORL file relating to it, that the lobbyist is an experienced and active individual in this area. The lobbyist must understand what the LRA requires of him in terms of the timeliness of any future returns that he files.

[42] Since I have not confirmed the finding of a violation of s. 4(1)(d) of the LRA, I rescind the penalty of $2,000.00 that Investigator Mots imposed for that contravention.

[43] Regarding the penalty of $1,500.00 that Investigator Mots imposed for contravention of s. 3(1), having reviewed his reasons, and considering all of the circumstances and the principles set out above, I confirm that penalty.

CONCLUSION

[44] For the above reasons:

1. Under s. 7.3 of the LRA, I do not confirm the finding that the lobbyist contravened s. 4(1)(d) of the LRA but I do confirm the finding that he contravened s. 3(1).

2. I confirm the administrative penalty of $1,500 imposed for the contravention of s. 3(1).

3. Pursuant to s. 7.4(1)(b) of the LRA, the lobbyist must pay this penalty on or before **September 29, 2015**.

August 18, 2015

Elizabeth Denham
Registrar of Lobbyists