

**RECONSIDERATION 16-07
(INVESTIGATION REPORT 16-07)**

LOBBYIST: Marnie Mitchell

November 29, 2016

Summary: The administrative penalty of \$750 imposed on the consultant lobbyist in Investigation Report 16-07 is upheld. The consultant lobbyist did not provide compelling grounds that the Delegate's findings should be varied.

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

INTRODUCTION

[1] Investigator and Delegate of the Registrar of Lobbyists Tim Mots ("Delegate") issued Investigation Report 16-07 ("IR16-07") on May 3, 2016. The circumstances surrounding IR16-07 relate to the responsibility under the *Lobbyists Registration Act* ("LRA") of Marnie Mitchell ("consultant lobbyist") to file a return in a timely manner that sets out her lobbying responsibilities and to inform the Registrar in a timely manner of the extension of her undertaking to lobby.

[2] In IR16-07, the Delegate determined under s. 7.2(2) of the LRA that the consultant lobbyist had contravened s. 3(1) and imposed an administrative penalty of \$750. On June 29, 2016, the consultant lobbyist requested reconsideration of the amount of the administrative penalty under s. 7.3 of the LRA.

BACKGROUND

[3] A consultant lobbyist, is a lobbyist who undertakes to lobby for payment on behalf of a client. A consultant lobbyist is required under s. 3(1) of the LRA to file a return that sets out her or his lobbying activities with the Office of the Registrar of Lobbyists for British Columbia ("ORL") within 10 days of entering into an undertaking to lobby on behalf of a client. It is this return that ensures the individual is registered as a consultant lobbyist under the LRA.

[4] A consultant lobbyist is also required under s. 4(2) of the LRA to inform the Registrar of any change to the information in the return within 30 days after the change occurs.

[5] The consultant lobbyist filed a return (ID: 15010202) stating that she had entered into an undertaking to lobby on behalf of McKesson Canada on March 12, 2013. The return set March 12, 2015, as the end date for the undertaking.

[6] That return expired March 12, 2015, and was terminated by the Lobbyists Registry System 30 days later when the consultant lobbyist made no amendments within the time limit set by s. 4(2).

[7] The consultant lobbyist subsequently filed a return on August 31, 2015, (ID: 24759373) stating that on August 3, 2015, she had entered into another undertaking with McKesson Canada. On September 8, 2015, ORL staff emailed the consultant lobbyist asking her whether this was a new undertaking or an extension of the previous undertaking.

[8] On September 10, 2015, the consultant lobbyist replied that it was the same undertaking, and had been ongoing since March 12, 2013. She stated that she had missed the end date of the first return and had only become aware of its expiry after the 30 day limit had passed.

[9] On October 6, 2015, the consultant lobbyist amended the return (ID: 24759373) to indicate a start date of March 13, 2015, rather than the August 3, 2015 date that had originally been filed.

[10] Registry staff asked the consultant lobbyist about the discrepancy between the reported start dates and asked whether she had lobbied on behalf of McKesson during the time between the expiry of the first return and her filing of the second.

[11] The consultant lobbyist replied that she had failed to keep track of her registration for McKesson and had mistakenly allowed it to lapse. She also stated that she had attended one meeting with a public office holder on August 28, 2015, during the period when she was not registered, as well as provided advice to her client based on the information she had acquired from public office holders about policy matters.

[12] On February 25, 2016, the Delegate sent a formal notice to the consultant lobbyist setting out the basis for the allegation that she had not complied with s. 3(1) of the LRA. He invited her to respond in writing to the alleged contravention and with any information relevant to the determination of a penalty.

[13] On March 30, 2016, the consultant lobbyist responded to the notice. She reiterated that allowing her return to lapse was an administrative error, and was not an attempt to conceal her lobbying activity. In support of this, she noted that she had not received any warnings or findings of contraventions in the past. Further, she submitted that the meeting on August 28, 2015, was not lobbying as it did not meet the definition for lobbying under the LRA.

ISSUES

[14] The consultant lobbyist does not dispute the finding in IR16-07 that she contravened s. 3(1) of the LRA. Therefore, the only issue in this reconsideration is whether I should confirm or vary the \$750 administrative penalty imposed by the Registrar's Delegate.

DISCUSSION

Should I confirm or vary the \$750 administrative penalty imposed by the Registrar's Delegate?

[15] The Delegate stated in IR16-07 that "[t]o the public, the lack of an active registration on the Registry would appear to indicate that the lobbyist was no longer lobbying on behalf of her client. This undermines one of the fundamental purposes of the LRA, which is to promote transparency."

[16] Failing to keep information in the Registry current and accurate removes the ability of the public to know who is attempting to influence government at any point in time, defeating the LRA's primary goal of transparency and accountability. The integrity of the Registry is entirely reliant upon this currency, and as no other person is in a position to report on and update the undertakings of a lobbyist, it is essential that lobbyists meet their responsibility to do so under the Act.

[17] The Delegate identified various factors that this Office considers in determining the amount of an administrative penalty. In considering attempts to report or correct the contraventions, the Delegate noted that the lobbyist allowed her return to lapse, and on filing a new return certified an incorrect start date. The Delegate also noted that the lobbyist did not correct this error until the ORL initiated inquiries into the return.

[18] As a result of this error, there was no ability for the public to scrutinize the lobbying activity of the consultant lobbyist despite her having an undertaking to lobby on behalf of her client. I agree with the Delegate that this is not a minor contravention.

[19] The consultant lobbyist cited IR16-03 as an example of a similar contravention which resulted in an administrative penalty of \$500, and suggested that such a penalty was more appropriate in her case. I disagree that IR16-03 is similar. The lobbyist in IR16-03 contacted the ORL upon becoming aware of the termination of his return and sought advice on how to correct the error. Upon filing a return to remedy the termination, the lobbyist cited a start date which coincided with the end date of the previous return. In contrast, the consultant lobbyist originally set a start date some four and a half months after the actual start date, and only remedied the error when questioned by ORL staff.

[20] It is essential that lobbyists update and maintain the information in their ORL returns. I am satisfied that this investigation, reconsideration and the resulting administrative penalty will be sufficient to encourage the consultant lobbyist to meet her obligations under the LRA in the future.

[21] I agree with the Delegate about the importance of general deterrence, and the need “to remind all lobbyists of their legal obligations to be diligent in keeping their registrations current and accurate.”

[22] I agree with the reasoning of the Delegate as set out above and find that the \$750 administrative penalty for this contravention of the LRA is appropriate to meet the objectives of specific and general deterrence in relation to this contravention of s. 3(1) of the LRA.

CONCLUSION

[23] For the above reasons, under s. 7.3(3)(b) of the LRA, I confirm the Delegate’s determination in IR16-07 that the consultant lobbyist should pay an administrative penalty of \$750 for her contravention of s. 3(1) of the LRA.

[24] As required by s. 7.3(3)(c) of the LRA, I extend the date by which the confirmed administrative penalty of \$750 must be paid to 30 days after the publication of this decision, that is on or before January 11, 2017.

November 29, 2016



Drew McArthur
Registrar of Lobbyists