



**RECONSIDERATION 17-08
(INVESTIGATION REPORT 17-08)**

LOBBYIST: Hector Bremner

July 31, 2018

Summary: The finding in Investigation Report 17-08 (IR 17-08) that the consultant lobbyist was a former public office holder and failed to declare this in contravention of section (4)(1)(o) of the *Lobbyists Registration Act* (LRA) is rescinded. The consultant lobbyist was not a former public office holder under the definition in the LRA.

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

Authorities Considered: Investigation Report 14-12 and Investigation Report 15-11.

INTRODUCTION

[1] An Investigator and Delegate of the Registrar of Lobbyists (Delegate) issued Investigation Report 17-08 (IR 17-08) on February 13, 2018. The circumstances surrounding IR 17-08 relate to the responsibility under the *Lobbyists Registration Act* (LRA) of Hector Bremner (consultant lobbyist) to file a return with the requisite information in or related to a return, in the form and content specified in s. 4(1) of the LRA.

[2] In IR 17-08, the Delegate determined in an investigation under s. 7 of the LRA that the consultant lobbyist had contravened s. 4(1)(o) and imposed an administrative penalty of \$2,000.

[3] On March 15, 2018, the consultant lobbyist requested reconsideration of the finding and the amount of the administrative penalty under s. 7.3 of the LRA.

RELEVANT SECTIONS OF THE LRA

"client" means a person or organization on whose behalf a consultant lobbyist undertakes to lobby;

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

“lobby,” subject to section 2 (2), means,

- (a) in relation to a lobbyist, to communicate with a public office holder in an attempt to influence
 - (i) the development of any legislative proposal by the government of British Columbia, a Provincial entity or a member of the Legislative Assembly,
 - (ii) the introduction, amendment, passage or defeat of any Bill or resolution in or before the Legislative Assembly,
 - (iii) the development or enactment of any regulation, including the enactment of a regulation for the purposes of amending or repealing a regulation,
 - (iv) the development, establishment, amendment or termination of any program, policy, directive or guideline of the government of British Columbia or a Provincial entity,
 - (v) the awarding, amendment or termination of any contract, grant or financial benefit by or on behalf of the government of British Columbia or a Provincial entity,
 - (vi) a decision by the Executive Council or a member of the Executive Council to transfer from the Crown for consideration all or part of, or any interest in or asset of, any business, enterprise or institution that provides goods or services to the Crown, a Provincial entity or the public, or
 - (vii) a decision by the Executive Council or a member of the Executive Council to have the private sector instead of the Crown provide goods or services to the government of British Columbia or a Provincial entity,
- (b) in relation to a consultant lobbyist only, to arrange a meeting between a public office holder and any other individual

"undertaking" means an undertaking by a consultant lobbyist to lobby on behalf of a client, but does not include an undertaking by an employee to do anything...

- (a) on the sole behalf of the employer, or
- (b) if the employer is a corporation, at the direction of the employer on behalf of a subsidiary of the employer or any corporation of which the employer is a subsidiary.

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;

(1.1) For the purposes of subsection (1)(o), “**former public office holder**” means

- (a) a former member of the Executive Council and any individual formerly employed in the former member’s former office,
- (b) any individual who
 - (i) formerly occupied a senior executive position in a ministry, whether by the title of deputy minister, chief executive officer or another title, or
 - (ii) formerly occupied the position of associate deputy minister, assistant deputy minister of a position of comparable rank in a ministry, or
- (c) any individual who formerly occupied a prescribed position in a Provincial entity.

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 conduct an investigation.

(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.

Reconsideration

7.3(1) Within 30 days after being informed of a contravention in accordance with section 7.2, a person may request the registrar to reconsider a decision under section 7.2(2)(a) or (b), or both.

(2) A request under subsection (1) must be in writing and must identify the grounds on which a reconsideration is requested.

(3) On receiving a request for a reconsideration under subsection (1), the registrar must do all of the following:

- (a) consider the grounds on which the reconsideration is requested;
- (b) rescind the decision under section 7.2 (2) (a) or (b), or both, or confirm or vary the amount of the penalty;
- (c) if the amount of an administrative penalty is confirmed or varied, extend the date by which the penalty must be paid;
- (d) notify the person in writing of the matters under paragraphs (b) and (c) of this subsection, as applicable, and of the reasons for the decision to confirm, vary or rescind under paragraph (b) of this section.

Offences and penalty

10(3) A person does not commit an offence under subsection (2) if, at the time the information was supplied, the person did not know that it was false or misleading and, with the exercise of reasonable diligence, could not have known that it was false or misleading.

BACKGROUND

[4] 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 and is thereby subject to public scrutiny.

[5] A consultant lobbyist is also required under s. 4(1)(o) of the LRA to include information as to whether they are a former public office holder, the nature of the office formerly held by the lobbyist and the term of office.

[6] The consultant lobbyist filed a return (ID: 23049206) stating that he had entered into an undertaking to lobby on behalf of Steelhead LNG on February 9, 2015. The registration had an undertaking start date of February 9, 2015, and an undertaking end date of February 1, 2017. In his registration, the consultant lobbyist declared that he was not a former public office holder. The consultant lobbyist certified that the information in the return was true.

[7] Once a registration reaches its end date, and the status changes from “Active” to “Terminated,” updates to the registration can no longer take place.

[8] On September 1, 2017, ORL staff received a report that the consultant lobbyist had failed to declare in his return that he was a former public officer holder.

[9] The consultant lobbyist had served as the Executive Assistant to the Deputy Premier and Minister of Natural Gas Development and Minister Responsible for Housing. He served as Executive Assistant to the Minister of International Trade, Responsible for Asia Pacific Strategy and Multiculturalism, and he had served as Executive Assistant to the Minister of State for Tourism and Skills Training and Minister Responsible for Labour.

[10] In IR 17-08 the Delegate found that the consultant lobbyist did not comply with s. 4(1)(o) and imposed an administrative penalty of \$2000.

[11] In an email dated March 15, 2018 to this office, the consultant lobbyist requested reconsideration under s. 7.3 of the LRA. He submits that his case warrants only a warning and not a full investigation for the following reasons:

- the grounds of discontinuation were met under s. 7.1(2);
- the suspected offence occurred more than two years prior, barring an administrative penalty from the ORL under s. 7.2(3);
- the finding and penalty imposed is excessive in comparison to more serious breaches listed under the published reports on the ORL website; and
- the finding and penalty are “inconsistent with a general judicial review and the spirit of both the LRA and the BC sentencing guidelines, which are the basis from which the LRA is derived.”

[12] In accordance with s. 7.3(3), in making this decision, I have considered the consultant lobbyist’s reconsideration request as well as his submission, the evidence, his arguments, and the law in the hearing process that led to IR 17-08.

ISSUES

[13] The first issue in this reconsideration is whether I should confirm or rescind the Delegate's finding on non-compliance with s. 4(1)(o) of the LRA reached in IR 17-08.

[14] The second issue, should it be necessary to consider it, is whether I should confirm or vary the \$2,000 administrative penalty imposed by the Delegate in IR 17-08.

[15] The third issue is whether IR 17-08 and this reconsideration should be published.

DISCUSSION

1. *Should I confirm or rescind the Delegate's finding that the consultant lobbyist did not comply with s. 4(1)(o) of the LRA when he failed to declare that he was a former public office holder?*

[16] In IR 17-08, the Delegate found that the consultant lobbyist failed to comply with s. 4(1)(o) of the LRA when he failed to declare that he was a former public office holder.

[17] Section 4(1)(o) of the LRA requires a lobbyist to declare in the registration if they are a former public office holder and to provide the nature of the office formerly held by the lobbyist and the term of the office.

[18] As described above the definition of "former public office holder" is as follows (emphasis added):

- (1.1) For the purposes of subsection (1)(o), "**former public office holder**" means
- (d) a former member of the Executive Council and any individual formerly employed in the former member's former office,

[19] This definition applies to a former member of Cabinet and, apart from administrative support staff, anyone else who was formerly employed in the office of a *former* member of Cabinet. The meaning is clear. An individual seeking to lobby, and who worked for a Cabinet minister still in office, does not have to declare past government connections in the Lobbyists Registry.

[20] The consultant lobbyist was formerly employed as an Executive Assistant for three different Cabinet ministers. A review of Hansard reveals that all three Cabinet ministers were still members of Executive Council during the period in which the consultant lobbyist undertook his lobbying work.

[21] Therefore, the consultant lobbyist does not meet the definition of a former public office holder.

[22] Perhaps the Legislature erred in using the word “former,” but it is not my proper role, as a statutory decision-maker, to ignore the Legislature’s clear and unambiguous choice of language.

[23] I therefore overturn the Registrar’s Delegate’s finding that the consultant lobbyist failed to declare his status as a former public office holder.

2. *Should I confirm or vary the \$2,000 administrative penalty imposed by the Delegate?*

[24] Given the above finding I therefore rescind the \$2,000 administrative penalty imposed by the Registrar’s Delegate.

3. *Should IR 17-08 and this reconsideration be published?*

[25] Given the legal finding in this case as it concerns the definition of former public office holder, I find that it is in the public interest to publish this reconsideration.

CONCLUSION

[26] For the above reasons, under s. 7.3(3)(b) of the LRA, I rescind the Delegate’s determination in IR 17-08 that the consultant lobbyist contravened s. 4(1)(o) of the LRA and I rescind the accompanying administrative penalty of \$2,000.

July 31, 2018

ORIGINAL SIGNED BY

Michael McEvoy
Registrar of Lobbyists