

**RECONSIDERATION REPORT 23-03**

**(DETERMINATION DECISION 23-03)**

**DESIGNATED FILER: Walt Judas**

**December 20, 2023**

**SUMMARY:**

In Determination 23-03 the Deputy Registrar and Delegate of the Registrar of Lobbyists (Delegate) found that the designated filer for the Tourism Industry Association of British Columbia (TIABC) had both lobbied and promised a gift to three public officer holders contrary to section 2.4 of the *Lobbyists Transparency Act* (“LTA” or the “Act”). The Delegate imposed a monetary penalty for three violations of s. 2.4.

The Delegate also found that the TIABC’s offer of a gift to a fourth public officer was not in violation of the LTA because the TIABC had not lobbied that public office holder. The Delegate thereupon recommended that TIABC refrain from lobbying the Minister of Jobs for a period of one year from the offer of the gift in recognition of the fact that if TIABC did so, the offer of a gift might be contrary to s. 2.4 of the Act.

TIABC requested reconsideration of the recommendation that TIABC refrain from lobbying the Minister of Jobs for a period of one year. The Registrar determined that s. 7.3 of the *Lobbyists Transparency Act* (LTA) does not permit reconsideration of a recommendation because it is not an administrative penalty imposed pursuant to ss. 7.2(2)(a)(b) or (b.1) of the LTA. The Registrar found that the recommendation at issue was aimed at assisting the TIABC to avoid its offer of a gift combined with lobbying activity becoming a potential violation of s. 2.4 of the Act.

**Statutes Considered:** *Lobbyists Transparency Act*, S.B.C. 2001; *Lobbyists Transparency Regulation*.

**Authorities Considered:** Determination Decision 23-03.

## INTRODUCTION

[1] In Determination 23-03 the Deputy Registrar and Delegate of the Registrar of Lobbyists (Delegate) found that the designated filer for the Tourism Industry Association of British Columbia (TIABC) had both lobbied and promised a gift to three public officer holders. The combination of those two matters is contrary to s. 2.4 of the *Lobbyists Transparency Act* (“LTA” or the “Act”). The Delegate imposed a monetary penalty for three violations of s. 2.4.

[2] The Delegate also found that the TIABC’s offer of a gift to a fourth public officer was not in violation of the LTA because the TIABC had not lobbied that public office holder. The Delegate thereupon recommended the TIABC refrain from lobbying that public office holder for a period of one year from the offer of the gift in recognition of the fact that if TIABC did so, the offer of a gift might be contrary to s. 2.4 of the Act.

[3] TIABC accepts the Delegate’s findings of violations and the fines imposed and asks only that the Delegate’s recommendation be reconsidered. That latter issue is what this Reconsideration Report will deal with.

## RELEVANT SECTIONS OF THE LTA

[4] Part 1.1 of the Act creates prohibitions on certain activities in connection with the lobbying of public officers. In particular, s. 2.4 of the LTA prohibits lobbyists from promising to give, directly or indirectly, any gift or other benefit to a public officer holder the lobbyist is lobbying.

[5] Section 7.1 of the Act permits the Registrar of Lobbyists (“Registrar”) or a delegate (see s. 7(4)(d)) to investigate whether there is or has been compliance by any person with the Act. In accordance with s. 7.2(2), at the conclusion of an investigation, if the Registrar determines that the person has not complied with a prescribed provision of the Act (including s. 2.4: *Lobbyists Transparency Regulation*, s. 14(c)), the Registrar:

- (a) must inform the person of the registrar's determination that there has been a contravention,
- (b) may impose a monetary administrative penalty of not more than \$25 000,
  - (b.1) if the registrar considers it to be in the public interest, taking into account the gravity of the contravention and the number of previous contraventions or administrative penalties imposed, if any, may impose a prohibition on

lobbying and on filing or on having a registration return filed in respect of the person, for a period of not more than 2 years,

- (c) must give to the person notice
  - (i) if the registrar determines that the person has contravened a prescribed provision of this Act or the regulations, and the reason for the determination,
  - (ii) if a monetary administrative penalty is imposed, of the amount, the reason for the amount and the date by which the penalty must be paid,
  - (iii) if an administrative penalty of prohibition is imposed, of the reason for the prohibition and the start date and end date of the prohibition, and
  - (iv) respecting how the person may request reconsideration, under section 7.3, of the determination of contravention and, as applicable, the imposition or amount of the monetary administrative penalty or the imposition or duration of the administrative penalty of prohibition.

[6] A person who has been informed of a contravention in accordance with s. 7.2 may, within 30 days, request the Registrar reconsider a decision under ss. 7.2(2) (a), (b) or (b.1) as applicable, which identifies the grounds on which a reconsideration is requested. The request for reconsideration may include a request for a stay of a prohibition order that imposes a prohibition on lobbying pursuant to s. 7.2(2)(b.1).

[7] On receiving a request, the Registrar must do all of the following (s. 7.3(3)):

- (a) consider the grounds on which the reconsideration is requested;
- (b) confirm or rescind the decision referred to in any or all of section 7.2 (2) (a), (b) or (b.1), as applicable, or confirm or vary the monetary amount or the prohibition duration;
- (c) if the monetary amount is confirmed or varied, confirm or extend the date by which the amount must be paid;
- (d) if the prohibition duration is confirmed or varied, specify the dates that the prohibition starts and ends;
- (e) notify the person in writing of the matters under paragraphs (b) to (d) of this subsection, as applicable, and of the reasons for the decision to rescind, confirm or vary under this section.

[8] In connection with a request for a stay of a prohibition order, the Registrar may grant or refuse a stay, and impose conditions on a stay (s. 7.3(4)).

## BACKGROUND

[9] The Decision concerns an investigation under s. 7.1 of the LTA. The Decision addresses whether Walt Judas, the designated filer of TIABC, contravened s. 2.4 of the LTA by promising or giving a gift to public office holders that the lobbyist was lobbying. TIABC specifically offered four public office holders tickets to a hosted suite at a Vancouver Canucks hockey game that was held on March 14, 2023. One public office holder, the Minister of Tourism, Arts, Culture and Sport (“Minister of Tourism”), accepted the gift and attended the suite. Three public officer holders were offered tickets to the hosted suite but did not attend, specifically the Minister of Housing, the Minister of Transportation and Infrastructure (“Minister of Transportation”) and the Minister of Jobs.

[10] The Delegate considered that for a gift or benefit to be prohibited pursuant to s. 2.4(1), the following factors must be met:

- i. there must be a gift or benefit;
- ii. the gift or benefit must be given or promised, whether directly or indirectly, by a lobbyist to a public office holder;
- iii. that lobbyist must be lobbying the public office holder(s) (to which the gift is given or promised).

[11] The Delegate concluded that three out of four of the designated filer’s gifts given or promised to the public officers were prohibited pursuant to s. 2.4(1).

[12] With respect to all four office holders, the Delegate was satisfied that the ticket to the hosted suite constituted a gift or benefit, and that the gift of the ticket was promised to all ministers when the invitation was offered to them.

[13] With respect to whether the “lobbyist is lobbying” the public officers, the Delegate interpreted the words “lobbyist is lobbying” to include a reasonable amount of time in proximity to the lobbying activity. The temporal requirement remedies the prospect of undue influence of public office holders. She found that it is “generally appropriate, when determining whether a ‘lobbyist is lobbying’ a public office holder under section 2.4(1), to review the lobbyist’s lobbying activities during the year before or after the gift (or promise of a gift) was given (or promised).” While it may be reasonable to consider a longer period in some circumstances, such as where a gift has exceptional value, in the case before her, the Delegate considered the relevant timeframe was one year.

[14] The Delegate reviewed the Lobbyists Registry and found that in the one year prior to promising or giving the gift, TIABC had lobbied the Minister of Tourism, the Minister of Housing

and the Minister of Transportation. The requirement that the lobbyist be lobbying the public officer holder was met for those three office holders.

[15] However, the Delegate was not satisfied that TIABC had lobbied the Minister of Jobs within the previous year. As a result, s. 2.4(1) did not prohibit the promise of a gift to the Minister of Jobs.

[16] After considering all the circumstances, the Delegate imposed a monetary penalty on TIABC pursuant to s. 7.2(2) of the LTA. She specifically imposed an administrative penalty of \$1,200 for the gift promised and given to the Minister of Tourism, and an administrative penalty of \$500 each for the gifts promised to the Minister of Housing and the Minister of Transportation.

[17] No penalty was imposed pursuant to s. 7.2 in connection with the promised gift to the Minister of Jobs given that there was no contravention of s. 2.4 concerning that promise of a gift. However, the Delegate recommended, in accordance with the reasoning of her Determination, that TIABC wait until 12 months after the gift was promised before lobbying that Minister and confirmed that the Registrar maintains discretion to investigate whether the promise of a gift is in contravention of the LTA if lobbying occurs in that period.

### **TIABC'S SUBMISSIONS**

[18] The TIABC requested a reconsideration of the Delegate's Determination by way of letter on September 14, 2023. TIABC confirmed that it generally accepts that the administrative penalty imposed by the Delegate is fair. However, TIABC requested a reconsideration of the recommendation that TIABC wait until March 7, 2024 before lobbying the Minister of Jobs. TIABC points to the challenge of labour shortages in the tourism industry, and the need for advocacy efforts on that issue to further the interests of TIABC, its members and the tourism industry as a whole. It also refers to the fact that its contravention was inadvertent and that it took responsibility for the contravention. TIABC therefore respectfully requests "a stay on the prohibition of lobbying component of the administrative penalty."

### **FINDING**

[19] I find there is no basis to reconsider the Delegate's recommendation that TIABC refrain from lobbying the Minister of Jobs for a period of one year from the date TIABC offered the Minister tickets to the hosted suite.

[20] My power of reconsideration can be exercised where a delegate has imposed a penalty pursuant to s. 7.2(2). In this case the Delegate did not impose any penalties pursuant to s. 7.2(2) in connection with the offer of a gift to the Minister of Jobs that I could confirm, vary

or set aside. Given the Delegate found that the promise of a gift to the Minister of Jobs was not contrary to s. 2.4 because TIABC was not lobbying the Minister of Jobs, there was no basis on which she could have imposed any administrative penalty pursuant to s. 2.4, including a prohibition on lobbying pursuant to Rule 7.2(2)(b.1).

[21] The recommendation is just that – a recommendation. The recommendation is linked to the fact that the Delegate concluded that in this case, any lobbying activities within one year of the offer of the gift would mean the “lobbyist is lobbying” the relevant public office holder. While I do not propose to decide this issue, I note that if TIABC were to begin lobbying the Minister of Jobs before the one-year timeframe the Delegate found to be appropriate had passed, the gift to the Minister of Jobs could run afoul of s. 2.4 for the same reasons the offer of gifts to the Minister of Tourism, Minister of Housing and Minister of Transportation did. The Delegate’s recommendation appears to be designed to assist TIABC to avoid its offer of a gift becoming prohibited because of its lobbying activities. In this way, the recommendation seems to be designed to ensure that the prospect of undue influence of public office holders is minimized going forward.

## CONCLUSION

[22] Given the recommendation is not an order pursuant to ss. 7.2(2)(a), (b), or (b.1) of the Act, s. 7.3 does not permit a reconsideration in respect of it. The application for reconsideration is therefore dismissed.

[23] Accordingly, and as required by s. 7.3(3)(c) of the LTA, I extend the date by which the total administrative penalty of \$2,200 (being the administrative penalty of \$1,200 for the gift promised and given to the Minister of Tourism, and an administrative penalty of \$500 each for the gifts promised to the Minister of Housing and the Minister of Transportation) must be paid 30 business days after the date of this decision, that is on or before **February 5, 2024**.

Date: December 20, 2023

ORIGINAL SIGNED BY

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Michael McEvoy  
Registrar of Lobbyists for British Columbia