

INVESTIGATION REPORT 12-14

LOBBYIST: MICHAEL BAILEY

Summary: The Lobbyist admitted to terminating the registration for the lobbying activity after the 30-day requirement of s. 4(3) of the LRA. The Acting Deputy Registrar found the alleged contravention to be substantiated and issued a monetary penalty of \$25.

Statutes Considered: *The Lobbyist Registration Act*, S.B.C. 2001, c. 42, ss. 3(1), 4(1), 7.1, 7.2.

Cases Considered: *Re Cartaway Resources*, [2004] 1 S.C.R. 672.

INTRODUCTION

[1] This report concerns an investigation under s. 7.1 of the *Lobbyists' Registration Act* ("LRA"). This provision gives the Registrar of Lobbyists the authority to conduct an investigation to determine whether there has been compliance with the LRA or its regulations. In the event that, as a result of the investigation, the Registrar or her delegate believes that the person under investigation has not complied with a provision of the LRA or its regulations, s. 7.2 of the LRA requires her to give notice of the alleged contravention and the reasons for her belief that the contravention has occurred. The Registrar must also give the person a reasonable opportunity to be heard respecting the alleged contravention.

[2] Investigations comprise just one component of a larger compliance strategy that the Officer of the Registrar of Lobbyists ("ORL") has implemented for administering the *Lobbyists' Registration Act* ("LRA"). The other components include: education and outreach, incentives, verification of registration information, environmental scanning, and administrative reviews of the Registry.¹ A formal investigation can commence as result of a complaint from an outside party, or from the Registrar's mandate under s. 7(4)(a) to verify registration information. An investigation can also result from environmental scanning, which refers to proactive monitoring of government and organizations through reviewing news reports and websites to determine whether lobbying activity might be taking place, and comparing the outcome of these reviews with information on the

¹ The "*Lobbyist Registration Act Compliance Strategy*" is available at:
<http://www.lobbyistsregistrar.bc.ca/images/pdfs/2011%2009%2007%20orlcompliance%20strategy.pdf>.

Registry. This process can uncover evidence suggesting that further investigation is warranted to determine whether there is a matter of non-compliance.

[3] This investigation was initiated as the result of an environmental scan of news media, which included a story that indicated that one of the organizations for which the Lobbyist had registered as consultant lobbyist had denied that he was lobbying on its behalf.² This led the Deputy Registrar of Lobbyists to contact the organizations listed on his various registrations to enquire whether the information that he supplied was accurate.

[4] In this case, on November 2, 2011, the Deputy Registrar gave the required notice to the Lobbyist. Counsel for the Lobbyist responded on November 15, 2011. Shortly thereafter, the Deputy Registrar was unable to complete this investigation. In accordance with s. 7(4)(d) of the LRA, the Registrar has delegated to me, in my capacity as Acting Deputy Registrar, the authority to conclude this investigation. To this end, I have reviewed all of the correspondence between the Deputy Registrar and the Lobbyist, as well as her correspondence with the organizations he identified in his registrations. This documentation forms the basis on which I am issuing this decision.

ALLEGED CONTRAVENTION

[5] The question I must determine is whether the Lobbyist failed to inform, within the 30-day period required by s. 4(3) of the LRA, the Registrar of the completion or termination of an undertaking and the date on which the completion or termination occurred. The undertaking at issue was Port Metro Vancouver (Registration ID 253434).

[6] Section 4(3) of the LRA reads as follows:

Within 30 days after the completion or termination of an undertaking for which a return was filed, the consultant lobbyist who filed the return must inform the registrar of the completion or termination of the undertaking and indicate the date on which the completion or termination occurred.

INVESTIGATION

[7] A review of the Lobbyist's registration activities led the Deputy Registrar to question whether all of the information that the Lobbyist had entered into the Registry was accurate. The Deputy Registrar initiated an investigation into Registration ID 253434 under s. 7.1 of the LRA. This registration listed the "Stated Intended Outcome" as to arrange meetings with public office holders so that Port Metro Vancouver could monitor government policy of interest to Port

² *Public Eye Online* May 13, 2011, <http://www.publiceyeonline.com/archives/006091.html>.

Metro Vancouver. The Deputy Registrar contacted the Director of Communications and Government Affairs of Port Metro Vancouver, who responded the following statement: “[the Lobbyist was] retained by us from January 1, 2008 until May 31, 2010.”

[8] As the registration at issue was still active, this led the Deputy Registrar to form the belief that the Lobbyist had failed to inform, within the 30-day period required by s. 4(3) of the LRA, the Registrar of the completion or termination of the undertaking and the date on which the completion or termination occurred. In accordance with s. 7.2 of the LRA, the Deputy Registrar gave the Lobbyist notice of the alleged contravention, the reasons why she believed there had been a contravention, and provided him with an opportunity to be heard respecting the alleged contravention.

LOBBYIST’S RESPONSE

[9] The Lobbyist provided a formal response to his opportunity to be heard under s. 7.2 of the LRA. He stated that he gave his staff instructions to continue all registrations over the transition date to the amended LRA of April 1, 2010. I take this to mean that he instructed his staff to enter all existing registrations into the new Registry that the ORL implemented along with the LRA amendments. He did not review these registrations to determine whether they were still current. Once he became aware of these instances of non-compliance, he terminated the registrations on May 24, 2011. He stated that originally he was not aware that he needed to deregister at the termination of an assignment.

FINDING

[10] Based on the evidence collected during the investigation, I conclude that the Lobbyist failed to inform, within the 30-day period required by s. 4(3) of the LRA, the Registrar of the completion or termination of the undertaking. The termination was overdue by four years. The Lobbyist admits that he failed to meet the required timelines. As a result, I find that the Lobbyist failed to meet the requirement of s. 4(3) of the LRA.

ADMINISTRATIVE PENALTY

[11] The Lobbyist suggests that I should decline to issue an administrative penalty, owing to the minor nature of the contravention and the fact that he has rectified it.

[12] As I noted in the previous Investigation Reports concerning this Lobbyist, the purpose of the LRA is to promote transparency in lobbying by requiring lobbyists to register. The Registry will only provide transparency, if the information it records is accurate. By failing to terminate registrations relating to

lobbying activities that were no longer taking place, the Lobbyist undermined the integrity of the Registry and clouded the transparency it is supposed to provide. If the public cannot trust that the information in the Registry is accurate, it will cease to fulfill the function as the Legislature intended. I suggest that it is possible that members of the public and other lobbyists and organizations might rely on the inaccurate information in the Registry to their detriment. Other Lobbyists might not pursue opportunities with a potential client, if they believe another lobbyist is already providing them with services. Therefore, I disagree that this contravention of the LRA is a minor matter. Even if the intent of the Lobbyist was innocent (considered further below) the effect on the Registry was significant. While his explanations do mitigate the amount of penalty that is appropriate in this case, they do not amount to due diligence and they are not a defence to his duty to comply with the law. As such, an administrative penalty is warranted.

[13] The policies of the Office of the Registrar of Lobbyists provide that the range of penalties with respect to providing false or misleading information is \$1000-7000, but also grant the discretion to assess amounts either above or below those amounts, depending on the circumstances.

[14] In assessing the administrative penalty, I note that this case involves unusual circumstances that warrant leniency. The registration regime is a relatively recent requirement. This is a first offence. While the effect of the Lobbyist's actions had the negative effects pointed out above, there is no evidence that the Lobbyist undertook the improper registrations with the intent to deceive and no evidence that he obtained financial benefit from so doing. The Lobbyist acknowledged his errors and, upon being notified of them, attempted to correct them. While the Lobbyist has made a series of similar errors at the same time,³ I consider it appropriate in this case to consider each one independently as a "first offence". It is also worth noting that the ORL has taken the view that administrative penalties should primarily be used as a means of correcting the behavior of the Lobbyist and other lobbyists. While general deterrence is an appropriate factor to consider in imposing an administrative penalty,⁴ and may call for higher penalties in some cases, I have concluded that the finding of contravention and the penalty I have imposed in this case are sufficient to satisfy the purposes of the LRA.

[15] Taking into account all of the relevant factors, I find that assessing a penalty for providing false or misleading information within the standard range that the ORL has established would be excessive. In all the circumstances, I find that the appropriate administrative penalty for the contravention in this case is \$25.

³ I address the others in separate Investigation Reports.

⁴ See *Re Cartaway Resources*, [2004] 1 S.C.R. 672.

CONCLUSION

1. Under s. 7.2 of the LRA, I find that the Lobbyist contravened s. 4(3) of the LRA in Registration ID 253434. The notice of alleged contravention has been substantiated.
2. I impose an administrative penalty of \$25.
3. The Lobbyist must pay the penalty no later than March 30, 2012.
4. If the Lobbyist requests reconsideration under s. 7.3 of the LRA, he is to do so within 30 days of receiving notice of this decision, by providing a letter in writing, directed to the Registrar of Lobbyists at her business address, setting out the grounds on which reconsideration is requested.

February 27, 2012

ORIGINAL SIGNED BY

Jay Fedorak
Acting Deputy Registrar