



INVESTIGATION REPORT 14-12

LOBBYIST: Patrick Kinsella

November 3, 2014

SUMMARY: A consultant lobbyist filed a return with the Office of the Registrar of Lobbyists (“ORL”) on October 29, 2013. The lobbyist certified that the commencement date of the undertaking was September 23, 2013. The contract indicated a start date of September 1, 2013. The return was filed in excess of 10 days after the lobbyist entered into an undertaking to lobby on behalf of his client, contrary to s. 3(1) of the *Lobbyists Registration Act* (“LRA”). Furthermore, the lobbyist entered inaccurate information, the undertaking start date, into his return, contrary to s. 4(1) of the LRA and certified under s. 5(1) of the LRA that the information was true. The consultant lobbyist was fined \$1,500.

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

Authorities Considered: Investigation Report 14-02, Investigation Report 14-04.

INTRODUCTION

[1] This report concerns an investigation under s. 7.1 of the LRA. This section gives the Registrar of Lobbyists (“Registrar”) the authority to conduct an investigation to determine whether there has been compliance with the LRA or its regulations. If, after an investigation under s. 7.1, 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. Prior to making a determination under s. 7.2(2), the Registrar must, under s. 7.2(1)(b), give the person under investigation a reasonable opportunity to be heard respecting the alleged contravention.

[2] The LRA recognizes two types of lobbyists. This report focuses on “consultant lobbyists”, individuals who undertake to lobby for payment on behalf of a client.

[3] This investigation, conducted under the authority delegated to me by the Registrar under s. 7(4)(d) of the LRA, commenced when the lobbyist, Patrick Kinsella, registered an undertaking on October 29, 2013 to lobby on behalf of Al Watt Consulting Inc. dba MariFarma (the “client”). The investigation revealed that the lobbyist had failed to file a return under s. 3(1) of the LRA within 10 days of entering into an undertaking to

lobby on behalf of his client. Furthermore, the lobbyist entered an incorrect undertaking start date into his return contrary to s. 4(1)(b) of the LRA and certified it to be true under s. 5(1) of the LRA.

ISSUES UNDER CONSIDERATION

[4] The questions that must be considered are:

- a) Whether the lobbyist failed to file a return within the timeline set out in s. 3(1) of the LRA.
- b) Whether the lobbyist entered inaccurate information into his return contrary to s. 4(1)(b) of the LRA.
- c) If the lobbyist did not comply with the requirements of the LRA, what, if any, administrative penalty is appropriate in the circumstances?

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...

"lobbyist" means a consultant lobbyist or an in-house lobbyist;

"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...

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,...

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

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.

BACKGROUND

[5] On October 2, 2013, Cynthia Shore, a partner in the firm The Progressive Group, filed a return with the ORL, registration ID 17697056. The return listed the client details, the undertaking start date, the undertaking end date, details of subject matter and the intended targets. In the return, Ms. Shore listed Patrick Kinsella (the "lobbyist"), who is a partner in The Progressive Group, as another consultant lobbyist working on this undertaking.

[6] On October 28, 2013, ORL staff informed the lobbyist by email that Ms. Shore had listed him as another consultant lobbyist working with her on the undertaking. ORL staff subsequently asked the lobbyist to clarify whether he was in fact working on the undertaking for this client.

[7] On October 29, 2013, the lobbyist contacted the ORL by email apologizing, stating “I forgot that an individual registry is also required. I will have it rectified today.”

[8] On October 29, 2013, the lobbyist filed a return, registration ID 18020055, providing the same client details, undertaking start date, undertaking end date, subject matter and intended targets found in Ms. Shore’s registration. He listed Ms. Shore as another consultant lobbyist working on the undertaking.

[9] The electronic Lobbyists Registry monitoring function reported that the lobbyist’s return was possibly non-compliant with the LRA.

INVESTIGATION

[10] By letter dated October 30, 2013, the lobbyist was given notice that the ORL was initiating an investigation under s. 7(1) of the LRA to determine whether he was in compliance with s. 3(1) of the LRA. The notice pointed out that the lobbyist had entered a start date for the undertaking as September 23, 2013. The lobbyist did not file a return until October 29, 2013, which exceeded the 10 day deadline set out in s. 3(1) of the LRA. The lobbyist was asked to explain the discrepancy between the dates and to provide a copy of the agreement he had with his client.

[11] On November 12, 2013, the lobbyist responded via email. He stated that failing to file the return was an oversight, which was rectified immediately once he learned of the omission. The lobbyist did not provide a copy of his agreement with his client.

[12] On December 4, 2013, the Deputy Registrar informed the lobbyist he was providing formal notice under s. 7.2(1)(a) of the LRA that he had formed the belief, subject to hearing from the lobbyist, that the lobbyist had failed to comply with s.3(1) of the LRA. The notice set out the details of the contravention. He invited the lobbyist to respond in writing to the alleged contravention and provide any information or documentation pertinent to the allegations and the potential administrative penalty.

[13] On December 12, 2013, the lobbyist responded. The lobbyist stated that the “...purpose of the *Act* is to provide transparency about current and past lobbying activities. Transparency was provided by being listed as another consultant lobbyist with...” his client.

[14] The lobbyist submitted that his registration was premature. The lobbyist stated that he and his partner registered “...immediately upon signing the undertaking...” While the lobbyist entered into the undertaking with his client believing he would contact

government officials on behalf of his client, lobbying was only one part of the agreement; the undertaking also required the lobbyist to conduct a policy review and business assessment. The subsequent analysis revealed there was no strong business case to advance. Consequently, the lobbyist and his client decided to terminate their agreement. Because of this, the lobbyist did not believe that he had entered into an undertaking within the meaning of the LRA. The lobbyist confirmed that no lobbying took place.

[15] Section 7(4)(a) of the LRA authorizes the Registrar or her delegate to verify information contained in a return. In a letter dated January 28, 2014, the Deputy Registrar asked the lobbyist's client to respond to a series of questions related to the business relationship between the lobbyist and the client. The Deputy Registrar also asked the client to produce any written agreement between himself and the lobbyist.

[16] On January 29, 2014, the client responded stating "All information provided to you by the Progressive Group with respect to their entering and terminating an agreement with MariFarma is accurate and up to date." The client mentioned that "[w]hile they had indicated an intention to communicate with government, due to business decisions taken, no communication with any government officials or public office holders were undertaken." I understand that there was intent to lobby; however, it was abandoned when the analysis demonstrated no business opportunities existed.

[17] The file was assigned to me for review and decision.

[18] On April 16, 2014, I asked the client for a copy of the signed agreement the parties had entered into.

[19] On April 17, 2014, the client provided a copy of the *Agreement for Services* (the "Agreement"). The Agreement commenced on September 1, 2013. It stipulated that the lobbyist would provide the client "...with strategic communications counsel on political and public policy and to provide such advice...on a timely basis." It was signed by the lobbyist on September 20, 2013 and by the client on September 23, 2013. The Agreement did not specifically refer to lobbying on behalf of the client.

[20] On May 22, 2014, I wrote to the lobbyist asking him to clarify whether he had an undertaking or agreement to lobby on behalf of his client, or whether he was providing services for his client which did not include lobbying.

[21] On June 6, 2014, the lobbyist responded. He stated that he did not lobby on behalf of his client. He stated that "...at The Progressive Group we sign contracts with clients that during the life of the term, may or may not include lobbying." The lobbyist suggested that the current wording in his agreements is confusing. The lobbyist proposes to rectify this by creating an "Undertaking Agreement" which specifically addresses lobbying.

[22] On August 26, 2014, I provided a further formal notice under s. 7.2(1)(a) of the LRA that I had formed the preliminary belief, subject to hearing from the lobbyist again, that he had not complied with s. 4(1)(b) of the LRA. I asked the lobbyist to explain the discrepancy between the start dates of September 23, 2013 he entered into his return, registration ID 18020055, and the effective date of September 1, 2013 stipulated in his agreement with his client. I invited the lobbyist to respond in writing to the alleged contravention and to provide any supporting documentation or information pertinent to the allegations.

[23] On September 11, 2014, the lobbyist responded to my query. He stated that "...I did not enter inaccurate information into my return for the registration..." He went on to say that when he "...entered into a contractual relationship with [his client], I had every intent to lobby on behalf of their business interests following a policy analysis and business impact assessment. Our engagement contracts at the time did not differentiate between the various consulting services we offer yet the *Act* requires us to register once we enter into an undertaking that may include lobbying." The lobbyist stated that he has since changed the structure of his contracts.

DISCUSSION

[24] The first issue turns on whether the lobbyist had entered into an undertaking to lobby, contemplated by the LRA, as part of his agreement with the client. If he did, he was required to file a return.

[25] In his October 29, 2013 email to the ORL, the lobbyist apologized for failing to register and he filed a return. In his November 12, 2013 email to the ORL, the lobbyist stated that failing to file a return was an oversight which he corrected.

[26] In his December 12, 2013 response to the ORL, the lobbyist stated that he thought he would be contacting public office holders on behalf of his client. The lobbyist stated he did not "...fully enter into an undertaking..." since part of the contractual obligations was to conduct an assessment of potential business opportunities. When it was determined that there was "...not a sufficient business opportunity..." the file was closed and no lobbying took place. In the client's January 29, 2014 email to the ORL, the client mentioned that even though the lobbyist "...had indicated an intention to communicate with government, due to business decisions taken, no communication with any government officials or public office holders were undertaken." In his June 6, 2014 response, the lobbyist stated that when he signs agreements with clients there is an expectation that the agreement may or may not include lobbying.

[27] I acknowledge that the Agreement obliged the lobbyist to provide services other than lobbying. However, in my opinion, the outcome of an analysis, conducted as part of the agreement, resulting in a decision to terminate the agreement prior to lobbying, does not negate the fact that one of the original purposes of the Agreement was to lobby. Once a lobbyist enters into an undertaking to lobby on behalf of a client, s. 3(1) of

the LRA requires that the lobbyist file a return within 10 days of entering into the undertaking. In this case the lobbyist failed to file his return on time.

[28] The second issue is the discrepancy in the undertaking start date entered by the lobbyist in his return and the commencement date stipulated on the agreement with his client.

[29] There is no statutory support for the position that an undertaking does not commence until a contract is signed. The interpretation of the statutory language involves giving meaning to the words in their ordinary and grammatical sense. The LRA defines undertaking as “an undertaking by a consultant lobbyist to lobby on behalf of a client,” and makes no requirement that the undertaking be written. Furthermore, the plain language meaning of “undertaking” is “to make a promise”¹ or “make an agreement”².

[30] Therefore, I do not interpret the LRA as restricting the meaning of “undertaking” to a signed contract. According to the plain language meaning of “undertaking”, an undertaking to lobby begins once a lobbyist agrees with a client to lobby on behalf of that client, whether that agreement results in a written contract or not.

[31] The undertaking start date for the purposes of the LRA is the date the lobbyist entered into an agreement to lobby on behalf of his client. In this case, the Agreement for Service specified that the commencement date was September 1, 2013. Therefore, the correct start date of the undertaking was on or before this date and should have been the latest start date entered into the return. The lobbyist entered an incorrect start date into his return, registration ID 18020055, contrary to s. 4(1)(b) of the LRA and certified the information to be true under s. 5(1) of the LRA.

FINDING

[32] I find that the lobbyist failed to meet his obligations under ss. 3(1) and 4(1)(b) of the LRA.

ADMINISTRATIVE PENALTY

[33] The purpose of the LRA is to promote transparency in lobbying by requiring lobbyists to disclose accurate, current and 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.

¹ Black’s Law Dictionary, West Publishing Company, Fifth Edition. 1979.

² Merriam-Webster dictionary, <http://www.merriam-webster.com/>

[34] In assessing whether a penalty is necessary in this instance, I must consider, among other things:

- previous enforcement actions that have been taken in relation to this lobbyist,
- the gravity and magnitude of the contravention,
- whether the contravention was deliberate,
- whether the registrant derived any economic benefit from the contravention,
- any effort the registrant made to report or correct the contravention, and
- whether a penalty is necessary for general and specific deterrence.

[35] The lobbyist's file history shows that on October 9, 2013, ORL staff notified the lobbyist that he had apparently contravened the LRA on one other occasion when he failed to make changes to a return within the legislated timelines. The lobbyist was warned that future contraventions of the LRA would result in the ORL taking further action. The warning letter offered an educational opportunity and alerted the lobbyist to his responsibilities under the LRA.

[36] The ORL will consider a contravention to be a second instance only when it occurs after the lobbyist has previously received an investigation report with a finding of non-compliance.

[37] In terms of the gravity and magnitude of the contravention, the LRA makes it clear that transparency includes timeliness. This includes the requirement to file an accurate return within the legislated timelines. The goal of transparency is frustrated if the deadlines required by the LRA are not met and information in the return is incorrect.

[38] There is no evidence which would indicate that the lobbyist derived an economic benefit from the contravention, nor is there any evidence which would lead me to believe that the contravention was deliberate.

[39] On the question of specific deterrence, this investigation, the hearing process, the ensuing administrative penalty and the publication of the outcome of this investigation, will encourage the lobbyist to ensure that he meets his obligations under the LRA.

[40] I must also take into consideration the notion of general deterrence. The publication of this report and recognition that the ORL will issue administrative penalties to those who contravene the LRA will remind all lobbyists of their legal obligations to be diligent in keeping their registrations current and accurate.

[41] The ORL policies and procedures, which are intended only as a guide, suggest a range of penalties for contraventions of the LRA. The penalty for a late filing has a range of \$100 to \$5,000 for a first instance of non-compliance. Recent investigations have issued penalties in the range of \$600 to \$700 for a first instance of filing late. The penalty for entering information that is not true into a return has a range of \$1,000 to \$7,500 for the first instance of non-compliance.

CONCLUSION

1. Under s. 7.2(2) of the LRA, I find that the lobbyist contravened ss. 3(1) and 4(1)(b) of the LRA in respect of registration ID 18020055.
2. The notice of alleged contravention has been substantiated.
3. For the reasons outlined above, I have assessed penalties on the lower end of the range for penalties. I impose an administrative penalty of \$500 for failing to file a return within 10 days of entering into an undertaking and \$1,000 for entering incorrect information into his return. The total amount of the penalty is \$1,500.
4. The lobbyist must pay this penalty no later than December 15, 2014.
5. If the lobbyist requests reconsideration under s. 7.3 of the LRA, he is to do so within 30 days of receiving this decision by providing a letter in writing directed to the Registrar of Lobbyists at the following address, setting out the grounds on which reconsideration is requested:

Office of the Registrar of Lobbyists for British Columbia
PO Box 9038, Stn. Prov. Govt.
Victoria, BC V8W 9A4

Email: info@bcorl.ca

November 3, 2014

ORIGINAL SIGNED BY

Tim Mots
Investigator
Office of the Registrar of Lobbyists