

INVESTIGATION REPORT 15-03

British Columbia Teachers' Federation

DESIGNATED FILER: Moira Mackenzie

August 19, 2015

SUMMARY: The British Columbia Teachers' Federation ("BCTF") employs an in-house lobbyist. The organization's designated filer failed to file a return within 30 days of the end date of its previous return contrary to s. 3(3)(b) of the *Lobbyists Registration Act* ("LRA"). The designated filer was fined \$1,000.

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

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 the activities of the BCTF, an organization that employs an in-house lobbyist. An in-house lobbyist is a paid employee, officer or director of an organization who lobbies on behalf of the organization, alone or with others, for at least 100 hours annually.

[3] The LRA requires that the designated filer of an organization must file a return with the Office of the Registrar of Lobbyists ("ORL") if the organization meets the criteria for registration. Under s. 3(3)(b) of the LRA, the designated filer must file a return within 30 days of the end of each 6-month period from the date of the previous filing. In this case, the organization's designated filer is the Executive Director, Moira Mackenzie.

[4] Under s. 7(4)(d) of the LRA, the Registrar has delegated to me the authority to conduct this investigation.

ISSUES UNDER CONSIDERATION

[5] The questions that must be considered are:

- (a) whether the designated filer of the organization filed a return within the timelines set out in s. 3(3)(b) of the LRA, and
- (b) if the designated filer did not comply with the requirements of the LRA, what, if any, administrative penalty is appropriate in the circumstances?

RELEVANT SECTIONS OF THE LRA

"designated filer" means

- (a) a consultant lobbyist,
- (b) in the case of an organization that has an in-house lobbyist,
 - (i) the most senior officer of the organization who receives payment for performing his or her functions, or
 - (ii) if there is no senior officer who receives payment, the most senior in-house lobbyist;

"in-house lobbyist" means an employee, an officer or a director of an organization

- (a) who receives a payment for the performance of his or her functions, and
- (b) whose lobbying or duty to lobby on behalf of the organization or an affiliate, either alone or together with other individuals in the organization,
 - (i) amounts to at least 100 hours annually, or
 - (ii) otherwise meets criteria established by the regulations;

"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...
 - (c) in relation to an in-house lobbyist only, to arrange a meeting between a public office holder and any other individual for the purposes of attempting to influence any of the matters referred to in paragraph (a) of this definition.

Requirement to file return

- 3(3) The designated filer of an organization must file with the registrar a return in the prescribed form and containing the information required by section 4,
 - (b) if a return has been filed previously, within 30 days of the end of each 6-month period after the date of filing the previous return.

BACKGROUND

[6] On August 15, 2014, the ORL's Registry Manager sent a courtesy email reminder to the BCTF advising that its return had expired on August 13, 2014. The notification reminded the BCTF that if its in-house lobbyist continued to lobby, and if lobbying activities met the criteria of 100 hours in the previous 12-month period, it was required to file a return within 30 days of the expiration of its current return. The BCTF did not file a return. I note that the email reminder sent by the Registry Manager is a courtesy and is not required by the LRA.

[7] On September 10, 2014, the Registry Manager sent a follow up email to the designated filer for the organization advising her that the BCTF was required to file a return by September 11, 2014 if it was required to register. The designated filer did not respond or file a return.

[8] In an email dated October 16, 2014, the Registry Manager followed up and asked the designated filer to confirm whether or not the BCTF still met the criteria for registration. The Registry Manager asked the BCTF to respond by October 23, 2014.

[9] Subsequently, an employee of the BCTF contacted the Registry Manager by phone to advise that the BCTF would be registering. The Registry Manager followed up with an email on October 23, 2014 asking the BCTF if they intended to register. The employee responded via email to advise that it would register immediately.

[10] On October 23, 2014, the BCTF filed a return, registration ID 21767557.

INVESTIGATION

[11] The ORL commenced an investigation under s. 7.1 of the LRA to determine whether the designated filer of the organization had complied with s. 3(3)(b) of the LRA.

[12] In a letter dated November 6, 2014, the Registry Manager asked the designated filer to explain why she did not file a return within the legislated timelines set out in s. 3(3)(b) of the LRA.

[13] The designated filer responded by email on November 18, 2014. In her response she explained that after the BCTF reviewed its past lobbying activity, it decided not to continue lobbying its previous targets. At this time the BCTF was involved in the negotiation of a collective agreement which led to a full strike commencing on June 17, 2014, and concluded on September 18, 2014. As a result, according to the BCTF, it did not have an opportunity to discuss future lobbying activities and targets.

[14] The designated filer advised that the BCTF tried to file its return on September 11, 2014, but the ORL registration system required the designated filer to complete the lobbying activities section of the return. The designated filer believed re-entering previous targets would undermine the "...integrity of the information..."¹ The designated filer stated that it was not until the second week of October that the BCTF was in a position to discuss potential lobbying targets. It compiled its list of lobbying targets and filed its return, registration ID# 21767557, on October 23, 2014.

[15] On November 19, 2014, the Registry Manager emailed the designated filer asking her to confirm whether the organization had, within the past 12 months, lobbied 100 hours. The Registry Manager explained that if the BCTF had met the criteria, it was required to file a return within the timelines stipulated in s. 3(3)(b) of the LRA.

[16] On November 20, 2014, the designated filer confirmed that the BCTF did meet the threshold of 100 hours of lobbying within the past 12 months. The designated filer also pointed out that the "...BCTF has been meticulous and timely in filing all [past] lobbying activity...."² The designated filer stated that the BCTF made two attempts to register on September 11, 2014, but believed it was required to enter new lobbying

¹ BCTF letter dated November 18, 2014, p. 2, para. 3.

² BCTF letter dated November 20, 2014, p. 1, para. 3.

activities, which it had not yet decided on. The BCTF stated “[i]t was our understanding at that time that in order to protect the integrity of the information being filed that we not “roll over” the lobbying activities that had already been registered unless there was an intention to go forward with future lobbying on these activities.”³ The designated filer further stated that the labour dispute prevented the BCTF from deciding what targets it would lobby in the future.

[17] On December 3, 2014, pursuant to s. 7.2 of the LRA, I sent a notice to the designated filer notifying her that I had formed the preliminary belief that she had failed to comply with s. 3(3)(b) of the LRA. In the notice, I set out the basis for my belief and invited the designated filer to respond in writing to the alleged contravention and provide any information or documentation pertinent to the alleged contravention and the potential administrative penalty.

[18] On January 7, 2015, the BCTF responded to my letter of December 3, 2014. The designated filer stated that “...the contravention was entirely accidental and arose as a result of technical misunderstandings and efforts to ensure that the BCTF’s registration had substance and merit rather than being pro-forma or disingenuous.”⁴ She acknowledged that “...a contravention had occurred...”⁵ and wished to address whether an administrative penalty should be imposed, which I have detailed below.

FINDING

[19] The designated filer confirmed that the BCTF did meet the threshold of 100 hours of lobbying within the past 12 months and that she failed to file its return within the legislated time limit. I find that the designated filer contravened s. 3(3)(b) of the LRA when she failed to file a return within 30 days of the expiration of the previous return.

ADMINISTRATIVE PENALTY

[20] I will now address whether there should be an administrative penalty in this case.

[21] The purpose of the LRA is to promote transparency in lobbying by requiring lobbyists to disclose accurate, current and complete information. Failing to keep registration information up to date and accurate undermines the ability of the public to know who is attempting to influence government at any point in time, thereby defeating the LRA’s goal of transparency.

³ BCTF letter dated November 20, 2014, p. 1, para. 5.

⁴ BCTF letter dated January 7, 2015, p. 1, para. 2

⁵ *ibid*, p. 1, para. 3.

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

- previous enforcement actions for contraventions by this designated filer,
- 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.

[23] The designated filer noted that the BCTF has “...never been the subject of previous enforcement actions under the Act and has made every effort...to diligently and in good faith [register] its activities in a detailed, accurate and timely manner.”⁶ I confirm that the designated filer has received no previous enforcement actions or any written warnings for apparent non-compliance in the past.

[24] The goal of transparency is frustrated if the deadlines required by the LRA are not met. The greater the delay in filing a return increases the magnitude of the contravention. In this case, the designated filer was required to file a return by September 11, 2014. She did not file a return until October 23, 2014. The designated filer submits that the “...breach was minor...”⁷ that the delay was a result of “...inadvertence and systemic registration issues rather than intent and was for a period of six weeks during which time we were actively trying to rectify this error in consultation with the ORL.”⁸

[25] The ORL Registry Manager sent a courtesy email reminder to the staff contact for the BCTF on August 15, 2014 advising her of the expiration of the BCTF’s return. The Registry Manager sent a second email on September 10, 2015 to both the designated filer and staff contact for the BCTF advising that it must file its return by September 11, 2015, or the existing return would automatically be terminated. There was no response and the designated filer did not submit a return. The designated filer stated that she left a voice mail with the ORL on September 11, 2014, but no one returned her call. As the Registry Manager did not receive responses to her emails, she sent two additional emails on October 16, 2014 and October 23, 2014. A BCTF employee contacted the ORL by email on October 23, 2014, well after the legislated timeline for filing a return had expired. On the same day the designated filer filed registration ID #21767557.

⁶ *ibid*, p. 2, bullet 1.

⁷ *ibid*, p. 2, second bullet.

⁸ *ibid*, p. 2, second bullet.

[26] In her November 18, 2014 letter to the ORL, the designated filer stated that the BCTF "...decided not to "roll over" the activity that was registered at that time as we did not contemplate future lobbying on these particular topics."⁹ In her further response of November 20, 2014, the designated filer stated "[i]t was our understanding at that time that in order to protect the integrity of the information being filed that we could not 'roll over' the lobbying activities that had already been registered unless there was an intention to go forward with future lobbying on these activities."¹⁰

[27] In her January 7, 2015 response to my notice, the designated filer stated that the "...contravention...was not deliberate."¹¹ She noted she did attempt to file the return twice on September 11, 2014. She stated "...[t]he computer registration system would not allow us to re-register the same activities moving forward into the coming year which was an unexpected complication with the on-line registration process."¹² She notes since "...the electronic system would...not allow this, despite the fact that this accurately reflected our activities, we were put into a position of having to determine a different lobbying agenda on very short notice."¹³ She pointed out that the BCTF was trying to enter accurate information, "...rather than just being a "pro forma" filing."¹⁴

[28] As clarification, when the online Lobbyists Registry was created, an organization's designated filer would re-register by selecting the re-register button in the Registry. This would bring up the organization's previous return, which the designated filer could use as a template to complete their new registration. The template contained all the information found in the terminated return. The designated filer was responsible for reviewing and making any required changes, certifying the information to be true and correct by accepting the certification statement and finally submitting the registration. This template was modified in October 2013 by removing the in-house lobbyist(s) and their previous lobbying activities from the template. Lobbying activities include the subject matter, intended outcome(s), lobbying details and target contacts. The designated filer now had to enter the current in-house lobbyist(s) and their lobbying activities into the new return, certify it be correct and submit the new registration to the ORL.

[29] It is not correct that the Registry will not allow a designated filer to re-enter (re-type) lobbying activities that were contained in a previous return into a new return. To clarify, the Registry will not repopulate or automatically roll over lobbying activities from an old return into a new return, but it will allow a filer to type the information that was in the old return into a new return if it is still accurate and current.

⁹ BCTF letter dated November 18, 2014, p. 2, para. 3.

¹⁰ BCTF letter dated November 20, 2014, p. 1, para. 5.

¹¹ BCTF letter dated January 7, 2015, p. 2, third bullet.

¹² Ibid, p. 2, third bullet.

¹³ Ibid, p. 2, para. 4.

¹⁴ Ibid, p. 3 para. 2.

[30] In this case, the designated filer stated the lobbying activities from their past return were still accurate¹⁵, but they were not sure if they intended to continue to lobby the same targets. If information in the preceding return was correct and no decision had been made to render the information inaccurate, the designated filer could have complied with the LRA by re-entering this information into the new return. I found no evidence to support the designated filer's claim that the system prevented her from doing this.

[31] I found no evidence that the BCTF derived an economic benefit during the period it was unregistered.

[32] In summary, the designated filer was aware she was responsible for filing a return by September 11, 2014 if her organization met the criteria for registration. Also, the BCTF's lobbying activities had not changed and remained accurate. This meant that the designated filer could have filed its return within the timelines of the LRA. The designated filer filed the BCTF's return on October 23, 2014, six weeks after the termination of its previous return.

[33] Together with the above factors, I have also considered whether an administrative penalty is necessary for specific or general deterrence. In my view, the circumstances of this case call for an administrative penalty both to encourage the designated filer not to disregard her obligations under the LRA, and to remind all lobbyists of their legal obligations to be diligent in keeping their registrations current and accurate.

[34] The ORL's 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 assessed penalties for late registration between \$500 and \$1,000. For failing to file a return within 30 days of the expiration of the previous return, in contravention of s. 3(3)(b) of the LRA, I impose an administrative penalty of \$1,000.

CONCLUSION

1. The notice of alleged contravention has been substantiated. Under s. 7.2(2) of the LRA, I find that the designated filer contravened s. 3(3)(b) of the LRA when she failed to file a return within the legislated timelines.
2. I impose an administrative penalty of \$1,000.
3. The designated filer must pay this penalty no later than September 30, 2015.

¹⁵ Ibid, p. 2, para. 4.

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4. If the designated filer requests reconsideration under s. 7.3 of the LRA, she 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

August 19, 2015

ORIGINAL SIGNED BY

Tim Mots
Investigator
Office of the Registrar of Lobbyists