

INVESTIGATION REPORT 15-08

LOBBYIST: Gordon Hunter

Date: October 6, 2015

SUMMARY: On January 22, 2014, a consultant lobbyist filed a return, registration ID 18815955, with the Office of the Registrar of Lobbyists (“ORL”) after entering into an undertaking to lobby on behalf of his client. On January 21, 2015, the lobbyist changed the undertaking end date of the registration from January 22, 2015 to August 14, 2014. The lobbyist failed to inform the ORL of the termination of his undertaking within 30 days of its end date, contrary to s. 4(3) of the *Lobbyists Registration Act* (“LRA”). An administrative penalty of \$500 was imposed.

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

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 is or has been compliance by any person 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 report and determination are issued under the authority delegated to me by the Registrar under s. 7(4)(d) of the LRA.

ISSUES UNDER CONSIDERATION

[4] The questions that must be considered are:

- (a) whether the lobbyist terminated the registration within the timelines set out in s. 4(3) of the LRA; and
- (b) if the lobbyist did not comply with the provisions 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

“**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...

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,

4(3) 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.

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 January 22, 2014, the lobbyist filed a return, registration ID 18815955, to lobby on behalf of Akamai Technologies Incorporated (the “client”). The return had an undertaking start date of January 22, 2014 and an undertaking end date of January 22, 2015.

[6] On January 21, 2015, the lobbyist changed the undertaking end date on his registration from January 22, 2015 to August 14, 2014.

[7] If the lobbyist’s undertaking with his client was completed or terminated on August 14, 2014, he was required to update the end date on his registration within 30 days of that date. The lobbyist did not make the change to his registration until January 21, 2015, more than four months past the legislated due date.

[8] On February 6, 2015, ORL staff sent the lobbyist a compliance investigation letter under s. 7.1 of the LRA asking the lobbyist to explain why he did not terminate his registration within 30 days after the end date of his undertaking to lobby.

[9] The lobbyist responded via email on February 26, 2015 advising that “[t]his omission was due entirely to an inadvertent administrative error that was brought to my attention toward the latter part of January 2015. Upon noting the omission, I took immediate action on 21 January 2015 to inform you of the termination of the undertaking.”¹ The lobbyist stated that he did not engage in any lobbying efforts with B.C. public office holders while he was registered. He further stated that he did not lobby on or after August 14, 2014. The lobbyist apologized for the oversight.

¹ Lobbyist’s email dated February 26, 2015, para. 1.

[10] On that same date, ORL staff asked the lobbyist if he had a written or oral agreement with his client, if the agreement included lobbying or arranging meetings with public office holders, whether the agreement had a set end date and whether that date was August 14, 2014.

[11] On March 4, 2015, the lobbyist responded stating that he had a written agreement with his client to lobby the Federal Government spanning from August 2013 to August 2014. During this period, the lobbyist discussed with his client the possibility of lobbying B.C. Government officials but never finalized those discussions nor did he create a separate written or signed agreement. However, the lobbyist stated he filed a return with the ORL as he understood he should register in anticipation of entering into an agreement with a company to lobby.

[12] On March 11, 2015, I provided the lobbyist with formal notice under s. 7.2 of the LRA that I had formed the preliminary belief that he had contravened s. 4(1) of the LRA for filing a return when he was not required to do so, hence entering inaccurate information into registration ID: 18815955, and certifying that information to be true under s. 5(1) of the LRA. I invited the lobbyist to respond in writing to the alleged contravention and to provide any information or documentation pertinent to the alleged contravention, or any potential administrative penalty.

INVESTIGATION

[13] On April 17, 2015, the lobbyist responded to the notice. The lobbyist noted that his registration "...was completed in good faith, with the intention of being as open and transparent as possible, and to be in full compliance with the British Columbia Lobbyists Registration Act."² He confirmed that although the agreement with his client included the prospect that they may lobby or arrange meetings with provincial public office holders, he did not communicate with British Columbia government officials. The lobbyist confirmed that the contract with his client to lobby the Federal Government "...expired on 14 August 2014 and the relationship between the parties was terminated on this date."³ He stated that the failure to terminate the agreement within the timelines set out in the LRA was an administrative error. When he discovered the error he corrected it on January 21, 2015. The lobbyist pointed out that this was the first time he had filed a return with the ORL. He has since reviewed ORL policies and procedures and created internal processes to avoid a similar incident in the future.

[14] On July 30, 2015, I asked the lobbyist to provide a copy of his agreement to determine whether the lobbyist had an undertaking to lobby provincial public office holders and to confirm the termination date of the agreement.

[15] A Senior Associate of Hunter Strategies responded to my request on behalf of the lobbyist. He provided a Statement of Work which formed part of the "Master Services Agreement" between the lobbyist's company, GJH Strategies, Inc. and the client. The Statement of Work shows that the undertaking commenced in August of

² Lobbyist's letter dated April 17, 2015, p. 1, para. 3.

³ Ibid, p. 1, para. 7.

2013, was renewed in February of 2014 and ended on August 15, 2014. After reviewing the Statement of Work and discussing it with the lobbyist, it is clear that the focus of the lobbying activities proposed in the contract were directed at the Federal Government; however the Statement of Work did include a general clause which contemplated lobbying other Canadian Public Sector Markets, which included Provincial Governments. I understand that, based on the targets identified in the Statement of Work and discussions with the lobbyist, at the outset of the agreement there was originally no intention to lobby public sector agencies outside of the Federal Government.

[16] I understand that in January 2014, the client and the lobbyist discussed lobbying the Government of British Columbia. Based on these discussions, the lobbyist expected that he would be lobbying B.C. Government officials so he submitted his return with the ORL, registration ID 18815955, on January 22, 2014. The lobbyist specified an end date in his registration of January 21, 2015. Based on the evidence, the lobbyist was not in contravention of s. 4(1) of the LRA. I believe the lobbyist entered into an undertaking to lobby on behalf of his client. Therefore, he was required to file a return with the ORL.

[17] The lobbyist and his client ended their relationship on August 15, 2014 and the lobbyist failed to notify the ORL of the termination of his agreement with his client until January 21, 2015. Therefore, the lobbyist did not terminate his registration within 30 days of the end date of his undertaking with his client, as required by s. 4(3) of the LRA.

[18] On October 1, 2015, I sent a revised notice to the lobbyist indicating that I had formed the belief that he had contravened s. 4(3), not s. 4(1) of the LRA. I provided the lobbyist with an opportunity to respond to this allegation.

[19] On October 2, 2015, the lobbyist responded to the October 1, 2015 notice. He indicated the contravention was unintentional and he apologized for the error.

FINDING

[20] I find that the lobbyist failed to notify the ORL within 30 days of the completion of his undertaking, contrary to s. 4(3) of the LRA.

ADMINISTRATIVE PENALTY

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

[22] In assessing the amount of a penalty, I must consider the following:

- the gravity and magnitude of the contravention,
- previous enforcement actions for contraventions by the person,
- whether the contravention was deliberate,
- any economic benefit derived from the contravention,
- the person's efforts to report and/or correct the contravention,
- the need to deter the individual and others from contravening the LRA in the future, and
- other relevant factors.

[23] I have considered these factors and the submissions made by the lobbyist.

[24] When considering the gravity and magnitude of the contravention under investigation, the LRA makes it clear that timeliness and transparency are central objectives of the LRA. Timeliness is undermined when a return is not terminated on time. Transparency is undermined when the public is provided with inaccurate or incomplete information in the Registry. In this case, it appeared that the lobbyist had an undertaking to lobby on behalf of his client until January 2015 when in fact the undertaking had ended in August 2014. Unfortunately, this type of error undermines the purpose of the Lobbyists Registry and misleads the public.

[25] The lobbyist has not received any previous warnings and there have been no previous enforcement actions for contraventions by the lobbyist.

[26] The lobbyist noted that failing to terminate his registration was an administrative error. He explained that when the oversight was discovered in January 2015, he promptly updated the Registry. The lobbyist corrected the error without any prompting from the ORL. The lobbyist indicated that he had reviewed the ORL policy and procedures and modified his office processes to prevent this from reoccurring in the future. Taking this into consideration, I do not believe that the lobbyist deliberately failed to meet his obligations under the LRA. I would like to commend the lobbyist for being forthright in his handling of this matter.

[27] I do not believe the lobbyist gained an economic benefit by failing to terminate his registration within the timeframe set out in the LRA.

[28] 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, not due to any intentional misconduct on the part of the lobbyist, but owing to the fact that incorrect information in a registration undermines the usefulness of the Registry as a record of lobbying activities in the Province of British Columbia. Furthermore, a penalty will remind all

lobbyists of their legal obligations to be diligent in keeping their registrations current and accurate.

[29] The ORL policies and procedures, which are intended only as a guide, suggest a range of penalties for contraventions of the LRA. The suggested range of penalty for late reporting of changes is \$100 to \$5,000. Penalties assessed in past investigations for failing to terminate a registration within the timelines in the LRA ranged from \$350 to \$700.

CONCLUSION

1. Under s. 7.2(2) of the LRA, I find that the lobbyist contravened s. 4(3) of the LRA.
2. The notice of alleged contravention has been substantiated.
3. I impose an administrative penalty of \$500.
4. The lobbyist must pay this penalty no later than November 17, 2015.
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

October 6, 2015

ORIGINAL SIGNED BY

Tim Mots
Investigator and delegate of the Registrar
Office of the Registrar of Lobbyists