

INVESTIGATION REPORT 16-01

LOBBYIST: Hal Danchilla

March 3, 2016

SUMMARY: A consultant lobbyist filed a return to register as a lobbyist on behalf of a client after the deadline required by the *Lobbyists Registration Act* (“LRA”). The lobbyist was found to be in contravention of section 3(1) of the LRA and an administrative penalty of \$700 was imposed. The lobbyist also entered an inaccurate 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. An administrative penalty was not imposed for this contravention.

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

INTRODUCTION

[1] This report concerns an investigation commenced 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 for consideration are:

- (a) whether the lobbyist, who registered an undertaking under Registration ID 23820475 to lobby as a consultant on behalf of Canadian Tire, complied with 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; and
- (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

"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 June 29, 2015, the lobbyist, a consultant with Canadian Strategy Group, registered with the Office of the Registrar of Lobbyists (“ORL”) as a consultant lobbyist for Canadian Tire under Registration ID 23820475. The undertaking start date in the return filed by the lobbyist was June 29, 2015.

[6] On that same date, pursuant to s. 7(4)(a) of the LRA, ORL staff sent Canadian Tire a client verification request asking them to verify their undertaking with consultants of Canadian Strategy Group. Canadian Tire confirmed that the lobbyist provides government relations support to them in British Columbia and they verified that in January 2015 they asked Canadian Strategy Group to arrange some meetings with public office holders in British Columbia.

[7] On July 21, 2015, the lobbyist revised the undertaking start date on his return from June 29, 2015 to January 12, 2015.

INVESTIGATION

[8] The ORL commenced an investigation under s. 7.1 of the LRA to determine whether the lobbyist had complied with s. 3(1) of the LRA.

[9] In a letter to the lobbyist dated August 14, 2015, ORL staff asked the lobbyist to explain in writing the discrepancy between the timelines for registration in the LRA and the date on which he completed and submitted his registration as well as the reasons why an incorrect undertaking start date was reported.

[10] The lobbyist responded on September 10, 2015 to explain that their “lack of BC experience, a lack of jurisdictional differences, and a gap in our internal processes to ensure compliance led to us being non-compliant. In addition, the process we undertook to register once we recognized we were not correctly registered was not handled well.”

[11] The lobbyist further explained that after the August 14, 2015 letter from the ORL, they searched their emails and realized that the February meetings actually began with email inquiries from their client in late October 2014. After discussions with ORL staff, the lobbyist further amended the undertaking start date from January 12, 2015 to October 30, 2014 to reflect the correct start date of the undertaking on behalf of Canadian Tire.

[12] On October 14, 2015 I sent, pursuant to s. 7.2(1) of the LRA, a notice to the lobbyist setting out the basis for the allegation that the lobbyist had not complied with s. 3(1) for failing to file within the timeline as stipulated in the LRA and s. 4(1) for providing an incorrect undertaking start date.

[13] The lobbyist responded to the s. 7.2 notice on November 10, 2015 with an acknowledgement that he had contravened ss. 3(1) and 4(1) of the LRA. The lobbyist pointed out that the contraventions were inadvertent and that he had taken steps to correct any deficiencies in his registration. The lobbyist requested that the penalty for a late filing be close to the low end of the scale for the reasons he outlined in his responses. He also requested that no penalty be levied for providing an incorrect undertaking start date.

DISCUSSION

[14] It was not until the ORL sent an inquiry to the lobbyist’s client that it was discovered the lobbyist had submitted an incorrect undertaking start date and that his registration had been submitted past the timelines in the LRA.

[15] While the lobbyist was part of the undertaking to lobby on behalf of Canadian Tire, he had no part in attempting to arrange meetings between the client and public office holders nor did he attend any meetings. Another consultant in his firm, Canadian Strategy Group, was responsible for making these arrangements.

FINDING

[16] Based on the evidence, I find that the lobbyist did not comply with s. 3(1) of the LRA when he failed to file a return within 10 days after entering into an undertaking to lobby on behalf of a client. The lobbyist was also in contravention of s. 4(1) for filing an incorrect undertaking start date.

ADMINISTRATIVE PENALTY

[17] Section 7.2(2) of the LRA provides that if, after giving a person under investigation a reasonable opportunity to be heard respecting an alleged contravention, the Registrar determines that the person has not complied with a prescribed provision of this Act or the regulations, the Registrar must inform the person of the Registrar's determination that there has been a contravention and may impose an administrative penalty of not more than \$25,000. Such person must be given notice of the contravention determination and, if a penalty is imposed, "the amount, the reason for the amount and the date by which the penalty must be paid" (LRA s. 7.2(2)(c)(ii)).

[18] Section 7.2 of the LRA confers discretion on the Registrar to impose administrative penalties. To provide a measure of structure in the exercise of that discretion, the Office has published "Policies and Procedures" (the "Policy") to advise members of the public and those engaged in lobbying about what will guide the ORL in exercising its duties under the LRA and the regulations. As the Policy document makes clear, its purpose is to structure discretion. It does not fetter discretion. It is not law. I have approached the Policy as a document intended to provide a principled guide to the exercise of my discretion to determine a penalty.

[19] The Policy document seeks to operate in a principled fashion by setting out firstly a general financial range for particular infractions (depending on whether it is a first, second or third infraction of that nature), secondly a list of factors that will be taken into account in determining the amount of administrative penalty, and finally a clear statement that the Policy "does not fetter the ORL's ability to conclude that no administrative penalty is appropriate in the circumstances, or to fashion a remedy on either side of the range set out in the general policy, in special circumstances."

[20] I should state at the outset that I have considered and rejected the view that this might be a case where "no penalty" is appropriate. The current LRA provisions have now been in place for five years. The lobbyist should be aware of his obligations under the LRA. The contraventions in this case are clear. A penalty is necessary for both specific and general deterrence.

[21] In deciding what the appropriate administrative penalty within that range is, I have taken the following factors into account:

- previous enforcement actions for contraventions by this person,
- 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 specific and general deterrence.

[22] There have been no previous enforcement actions for contraventions by the lobbyist. This is the first registration that the lobbyist has submitted to the B.C. Lobbyists Registry.

[23] This brings me then to the gravity and magnitude of the contravention. Once ORL staff had identified that the lobbyist had reported an incorrect undertaking start date, the lobbyist was deemed to have submitted his registration more than seven months past the timelines in the LRA. In my view, this contravention was moderate in nature.

[24] The purpose of the LRA is to promote transparency in lobbying by requiring consultant lobbyists to disclose accurate, current and complete information about their lobbying activities. This is a solemn legal obligation. It reflects the legislative intent that while consultant lobbyists have a right to lobby, the public have a right to know about their intended activities as defined in s. 4 of the LRA, and to have that knowledge in a timely and transparent fashion. The 10 day time limit is not an optional or arbitrary administrative deadline. The failure to comply with the deadline is a contravention. The 10 day deadline is inextricably linked with the obligation to register itself, as it emphasizes the legislature's concern that the public have a right to know not only the substance of the information set out in s. 4, but to have that information provided in a timely manner. Failing to file a return in a timely manner 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.

[25] The next factor I have considered is whether the contravention was deliberate. I accept, on balance, that there were several factors which lead to his registration not being submitted to the Registry within the timelines. When the oversight was discovered, the lobbyist did register and although he reported an incorrect undertaking start date, the lobbyist worked with ORL staff to ensure his registration was accurate. Therefore I accept that the contravention was not deliberate.

[26] The next factor to consider is whether the lobbyist derived any economic benefit from the contravention. I consider this a neutral factor. On one hand, the lobbyist gained an economic benefit when he received payment for lobbying when he had not filed the returns with the ORL. On the other hand, he did not obtain that payment *because* of the contravention.

[27] I have already addressed the next factor – “any effort the registrant made to report or correct the contravention.” It is in the lobbyist's favour that he corrected his undertaking start date after being contacted by the ORL and made a subsequent correction when he realized that the undertaking began even earlier.

[28] As noted above, I have 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 this lobbyist to take his obligations under the LRA with the utmost seriousness, and to remind all lobbyists of their legal obligations to be diligent in keeping their registrations current and accurate.

[29] The lobbyist was also found to be in contravention of s. 4(1) of the LRA as ORL staff had confirmed that the lobbyist had not reported the correct undertaking start date. The lobbyist subsequently corrected the date, which resulted in the return also being filed past the timelines in s. 3(1) of the LRA. In assigning an administrative penalty, I have determined not to impose a penalty for submitting the incorrect undertaking start date.

[30] 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 and \$5,000 for a first instance of non-compliance. The penalty in this case is intended to reflect the lobbyist's delay of more than seven months in filing his return as a consultant lobbyist. The suggested range of 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. As previously stated, due to the circumstances and the fact the lobbyist corrected the undertaking start date in a timely manner, I am not imposing an administrative penalty for this contravention.

[31] To provide additional guidance on the applicable penalty in this instance, I have also reviewed previous ORL Investigation Reports and their associated penalties. I note that this contravention, though not identical, has many similarities to Investigation Reports 15-12 and 15-13. In both instances, the consultant lobbyist was found to be in contravention of s. 3(1) of the LRA and was issued an administrative penalty of \$700. Therefore, due to the similar nature of the offence in this instance, I have determined that an administrative penalty of \$700 is appropriate.

CONCLUSION

1. Under s. 7.2(2) of the LRA, I find that the lobbyist contravened ss. 3(1) and 4(1) of the LRA in respect of registering his undertaking on behalf of Canadian Tire. The notice of alleged contraventions has been substantiated.
2. I impose an administrative penalty of \$700 for the s. 3(1) contravention.
3. The lobbyist must pay this penalty no later than April 14, 2016.

4. 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

March 3, 2016

ORIGINAL SIGNED BY

Trevor Presley, Investigator and
Delegate of the Registrar of Lobbyists