

## **INVESTIGATION REPORT 16-03**

**LOBBYIST: Gordon Quaiattini**

**March 30, 2016**

**SUMMARY:** A consultant lobbyist filed a return 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 for failing to file a return within 10 days after entering into an undertaking. 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 for consideration are:

- (a) whether the lobbyist, who registered an undertaking under Registration ID 23330776 to lobby as a consultant lobbyist on behalf of Woodside Energy, 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 certified under s. 5(1) of the LRA that the information was true; 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,
- 4(2) An individual who files a return must supply the registrar with the following information within the applicable period:
- (a) particulars of any change to the information in the return, within 30 days after the change occurs;

### **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] The consultant lobbyist (“lobbyist”) entered into an undertaking to lobby on behalf of Woodside Energy Ltd. The lobbyist filed a return, Registration ID: 18352509, and certified an undertaking end date of February 28, 2015.

[6] On April 16, 2015, the ORL was contacted by another lobbyist from Maple Leaf Strategies, the lobbyist’s consulting firm, who advised that several of his colleagues had failed to extend a number of their registrations. He advised that the ORL system notifications failed to inform him and his colleagues that the registrations had expired. He inquired on how to proceed as their agreements had been extended by their clients.

[7] Registration ID: 18352509 was one of the registrations referred to in paragraph 6 above. It was terminated by the Lobbyists Registry as the undertaking end date was not extended within the 30-day timeline set out in s. 4(2)(a) of the LRA.

[8] ORL staff advised the lobbyist that he and his colleagues would all be required to complete and submit new returns for their extended undertakings as the timeline provided in s. 4(2)(a) of the LRA had passed and the system had automatically terminated the registrations.

[9] On April 17, 2015, the lobbyist submitted a new return, Registration ID: 23330776, for his undertaking with Woodside Energy and certified that the undertaking start date of March 1, 2015 and the undertaking end date of February 29, 2016 were correct.

## **INVESTIGATION**

[10] 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.

[11] In a letter to the lobbyist dated May 21, 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. The lobbyist was also asked to respond to several questions concerning any lobbying activities on behalf of this client and to provide a copy of any written agreement(s) with this client.

[12] ORL staff confirmed that the system failed to send out reminder notifications on March 1, 2015. However, the lobbyist was reminded that the notices are provided as a courtesy and it is the lobbyist's responsibility to ensure his registrations are current and accurate.

[13] The lobbyist responded via email on June 8, 2015 stating that while he recognized that the ORL is not required to send notifications, he relied on them to make changes to his registrations. He noted that when his office realized its error, it immediately contacted the ORL and he subsequently submitted a new return for his undertaking. The lobbyist noted that he has changed his practice so he no longer relies on the ORL notices.

[14] The lobbyist stated that he did not lobby any public office holders during the period between February 28, 2015 and April 17, 2015. He mentioned that his contract with his client was extended for 12 months ending on February 26, 2016.

[15] ORL staff sent a follow-up email request on June 10, 2015 to remind the lobbyist to provide a copy of the contract he had with his client along with the agreement to extend the contract. ORL staff pointed out that the extension end date (February 26, 2016) the lobbyist mentioned in his June 8, 2015 email did not coincide with the end date (February 29, 2016) he entered into his return Registration ID: 23330776. The lobbyist was informed that the information in the Registry should accurately reflect the information in his agreement. The lobbyist was asked to explain this discrepancy.

[16] On June 10, 2015, the lobbyist provided a copy of his original agreement with his client and a variation to that agreement that extended the undertaking. The original agreement indicated that the undertaking commencement date was February 24, 2014 and the end date was February 23, 2015. However, the undertaking end date in the agreement differed from the February 28, 2015 end date the lobbyist entered into his original return (Registration ID: 18352509).

[17] The lobbyist mentioned that he was aware in January that his undertaking with his client was being extended. The variation to his agreement extended the original undertaking for one year starting on February 24, 2015 and ending on February 23, 2016. This variation was signed by the lobbyist's client on February 3, 2015 and by the lobbyist on February 4, 2015. However, the lobbyist failed to make the necessary changes to his return within 30 days and his return (Registration ID: 18352509) was terminated.

[18] The new return must reflect the start date and end date agreed to in the variation to the original undertaking. In this case, the start date of the variation to the undertaking was February 24, 2015 and the end date was February 23, 2016. The lobbyist submitted his return Registration ID: 23330776 on April 17, 2015 with an undertaking start date of March 1, 2015 and an end date of February 29, 2016. Both of these dates did not reflect the dates noted in the written agreement or the extension to the agreement contrary to s. 4(1)(b)(ii) of the LRA. The lobbyist explained that he enters the month end date in his return for business purposes.

[19] On August 20, 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 ss. 3(1) and 4(1)(b)(ii) of the LRA. I invited the lobbyist to respond in writing to the alleged contraventions and to provide any information or documentation pertinent to the alleged contraventions and any potential penalty.

[20] On October 1, 2015, counsel for the lobbyist responded to the notice. In answer to the allegation that the lobbyist contravened s. 3(1) of the LRA, counsel advised that the lobbyist acknowledged that the return was late, but this resulted from a failure in the ORL's notification system which the lobbyist relied on. Counsel noted that the lobbyist has not missed a filing and is diligent in

registering his undertakings. He reiterated that the lobbyist did not lobby during the period his registration had lapsed.

[21] In answer to the allegation that the lobbyist failed to enter correct start dates and end dates, contrary to s. 4(1)(b)(ii) of the LRA, counsel stated that the lobbyist entered incorrect dates to coincide with his company's billing dates.

[22] Section 5.1 of the LRA requires a lobbyist to certify that the information in the return is accurate. Counsel asserted that the errors in the lobbyist's returns were inadvertent and not meant to deceive or undermine the Registry.

[23] Counsel asked that the Registrar to exercise her discretion under s. 7.1(2)(b) (the matter is minor) and 7.1(2)(d) (any other valid reason for not dealing with the matter) of the LRA to cease this investigation. Counsel noted that the circumstances in this case are of a minor nature. He further asserted that the lobbyist made no attempt to conceal his lobbying activities, nor did he deny making errors in his registration. In fact the lobbyist acknowledged that he had made mistakes. Moreover, he made every attempt to rectify the discrepancies. Counsel proposed that these circumstances weigh in favour of the Registrar terminating this investigation.

[24] Counsel submitted that one of the original goals of the *Lobbyists Registration Act* in 2001 was to promote transparency. Its purpose was not to create an onerous regulatory regime where lobbyists are investigated for minor contraventions. Counsel noted that transparency is not furthered by publicly embarrassing lobbyists who have made unintentional minor errors in their returns.

## **DISCUSSION**

[25] Section 4(2)(a) of the LRA, stipulates that a lobbyist has 30 days to update the changes to his return, which in this case is the end date of the undertaking with his client. Once the 30 days has expired, the Lobbyists Registry will automatically terminate the return. Therefore, if a variation to the undertaking extends the undertaking and the lobbyist misses the deadline, they must complete and submit a new return.

[26] The lobbyist had 10 days to file a return once he had entered into an undertaking. The circumstances of this case automatically placed the lobbyist in contravention of s. 3(1) of the LRA. He entered into an undertaking to lobby on behalf of his client on February 24, 2015. He failed to make changes to his existing return, Registration ID: 18352509, within 30 days leading to the automatic termination of the return. Therefore, he was required to submit a new return, which he did on April 17, 2015 (Registration ID 23330776), more than

10 days after entering into an undertaking with his client. Consequently, the lobbyist contravened s. 3(1) of the LRA.

[27] A return must reflect the start and end date that the lobbyist and his client have agreed to, either in a written or in a verbal undertaking to lobby, as required under s. 4(1)(b)(ii) of the LRA. Lobbyists are not at liberty to enter dates based on some other schedule. With this in mind, I have also taken into consideration the lobbyist's explanation as to why there is a discrepancy in the start and end dates between his returns and his agreements. The lobbyist had offered to correct this error and has done so. Although the lobbyist committed a contravention, I accept that the discrepancies in the start and end dates are of a minor nature. Therefore, I will make no finding in terms of any possible contravention of s. 4(1) of the LRA.

[28] I understand that the lobbyist came to rely on the ORL notices to remind him that he must make changes to his returns. I have taken this into consideration. However, the lobbyist was aware in January that he was renewing his undertaking. He was reminded again when he signed the variation to his undertaking on February 4, 2015. At the time the lobbyist signed the variation, he knew that the variation start date would be February 24, 2015. I am not satisfied that failure of the Lobbyists Registry automatic notification system was a reasonable excuse for failing to extend his return or for filing a late return.

[29] Counsel pointed out the *Lobbyists Registration Act* assented to in 2001 sought to create transparency as its primary goal. He quoted the former Attorney General Geoff Plant who stated the purpose of the Act was to "...give the public a window into how the government works, not to impose a highly technical, onerous regime – to regulate lobbying, not lobbyists."<sup>1</sup> Counsel suggested that the LRA was never intended to investigate minor contraventions.

[30] However, the LRA relied on a self-reporting registry with no mechanism to enforce compliance. It was complaint based and depended on the co-operation of those who were the subject of a complaint. Consequently, the Legislative Assembly amended the LRA in 2010 to give the Registrar investigative powers and the authority to impose administrative monetary penalties.

[31] Counsel also noted that the purpose of the LRA was not to publicly embarrass lobbyists by penalizing them for minor contraventions. I agree. The purpose of the LRA is not to publicly embarrass lobbyists but to set out basic rules that reflect the public's expectation that lobbying will be conducted in an open and transparent manner. Assuring the public that those rules are adhered to is an important element in meeting the public's expectation. Failure to meet

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<sup>1</sup> Plant, G. (2015, September 2). Lobbyists are being punished for all the wrong, insignificant reasons. The Globe and Mail, Retrieved from <http://www.theglobeandmail.com/opinion/lobbyists-are-being-punished-for-all-the-wrong-insignificant-reasons/article26200735/>

those obligations undermines the public's ability to know who is lobbying whom as well as the purpose of the lobbying activity.

[32] Furthermore, the ORL often issues verbal and written warnings for a lobbyist's first contravention or when the contravention is minor in nature. This, however, is not the case here. Counsel noted that the lobbyist had not missed a filing in the past. The lobbyist did, in fact, receive a warning letter on December 11, 2013 for failing to submit a return within the legislated timelines set out in s. 3(1)(b) of the LRA. Since it was the lobbyist's first contravention and the filing was only a few days late, the lobbyist was issued a warning letter. The December 11, 2013 letter warned the lobbyist that future instances of non-compliance would be investigated.

[33] Given these circumstances, I do not consider the lobbyist's failure to meet the timelines set out in s. 3(1) of the LRA a minor contravention.

## **FINDING**

[34] The lobbyist was aware in January 2015 that the client wished to extend the lobbyist's undertaking. In February the lobbyist signed the variation to extend the undertaking with his client. He admitted that he failed to make the necessary changes to his return within 30 days; consequently he was required to file a new return. The lobbyist failed to file his return within 10 days of entering into the undertaking with his client.

[35] Given these circumstances, I find the lobbyist contravened 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 his client.

## **ADMINISTRATIVE PENALTY**

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

[37] The LRA makes clear that transparency includes timeliness. This includes the requirement to file a return within the legislated deadline. 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.

[38] 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.

[39] I have considered these factors and the submissions made by the lobbyist and his counsel.

[40] On the question of the gravity and magnitude of the contravention under investigation, the lobbyist allowed his registration to lapse and did not file a new return for a number of weeks past the date he entered into an agreement to extend his undertaking. The result was that his lobbying activity was not open to public scrutiny. Having registered late in the past and received a warning letter, the lobbyist was aware of his obligation to file a return within the timelines set out in s. 3(1) of the LRA.

[41] I have taken into consideration that the lobbyist relied on the Lobbyists Registry notification system to remind him to update his returns. Since this incident, the lobbyist stated he has developed an in-house notification system.

[42] There have been no previous enforcement actions for contraventions by the lobbyist. However, the lobbyist had received one warning in the past for contravening s. 3(1) of the LRA for his undertaking with Woodside Energy.

[43] The lobbyist stated that he did not undertake any lobbying activities while he was not registered with the ORL. I do not believe the lobbyist derived any economic benefit from the contravention.

[44] Together with the above factors, I have also considered whether an administrative penalty is necessary for specific or general deterrence. In my opinion, the circumstances of this case call for an administrative penalty both to encourage this lobbyist to meet his obligations under the LRA and to remind all lobbyists of their legal obligation to be diligent in keeping their registrations current and accurate.

[45] 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 filing past the timelines is \$100 to \$5,000 for a first contravention. Penalties assessed in recent investigations for contravening s. 3(1) of the LRA ranged from \$500 to \$750. Given the circumstances of this case, I have assessed a penalty on the low end of this range.

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## CONCLUSION

[1] Under s. 7.2(2) of the LRA, I find that the lobbyist contravened s. 3(1) of the LRA for submitting his return past the timelines. The notice of alleged contravention has been substantiated.

[2] I impose an administrative penalty of \$500.

[3] The lobbyist must pay this penalty no later than May 11, 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](mailto:info@bcorl.ca)

Date: March 30, 2016

ORIGINAL SIGNED BY

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Tim Mots, Investigator and  
Delegate of the Registrar of Lobbyists