

INVESTIGATION REPORT 16-04

LOBBYIST: Dimitri Pantazopoulos

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 23288518 to lobby as a consultant lobbyist on behalf of his client, complied with s. 3(1) of the LRA;

- (b) whether the lobbyist entered inaccurate dates into his returns contrary to s. 4(1)(b)(ii) 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 his client NBC Universal Media LLC and the Comcast Corporation (“Comcast”). The lobbyist filed a return, Registration ID: 19977604, and certified an undertaking end date of February 28, 2015.

[6] On April 16, 2015, the lobbyist contacted the ORL to advise that he and his colleagues had failed to extend a number of their registrations within the timelines. He advised that the ORL system notifications failed to inform them that the registrations had expired. He inquired on how to proceed as their agreements had been extended by their clients.

[7] Registration ID: 19977604 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 16, 2015, the lobbyist submitted Registration ID: 23288518 for his undertaking to lobby on behalf of his client. He certified under s. 5(1) of the LRA that the start date of the undertaking was March 1, 2015 and the end date was February 29, 2016.

INVESTIGATION

[10] On May 20, 2015, ORL staff sent the lobbyist a compliance investigation letter requesting the lobbyist explain the discrepancy between the timelines for registration in the LRA and the date on which he completed and submitted his return. 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.

[11] 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.

[12] The lobbyist responded on June 5, 2015 and stated that while he recognized and acknowledged that the ORL was not required to send reminder notifications, he had come to rely upon these notifications to ensure he was in compliance. He informed the ORL that he has since taken measures to ensure future compliance.

[13] I note the lobbyist extended one of his returns which was also end dated February 28, 2015, absent the Registry notification. The change was made within the timelines set out in s. 4(2)(a) of the LRA. The lobbyist acknowledged this and stated that he should have checked all of his returns at that time. I understand that the lobbyist did not consider that other returns may have reached their end date.

[14] The lobbyist provided a copy of his agreement with his client. He noted that he did set up and attend one meeting on behalf of his client on March 2, 2015.

[15] Registration ID 19977604 was end dated February 28, 2015. The lobbyist negotiated an extension to his agreement (undertaking) with his client, which was

signed on February 20, 2015. Under s. 4(2)(a) of the LRA the lobbyist was required to update Registration ID19977604 with the changes contained in the extension agreement within 30 days. However, the lobbyist failed to make the necessary changes within 30 days and the return was terminated by the system.

[16] On April 16, 2015, the lobbyist filed a new return, Registration ID: 23288518, for his undertaking to lobby on behalf of his client. He certified the start date of the undertaking was March 1, 2015 and the end date was February 29, 2016. The lobbyist failed to file his return within 10 days of entering into his undertaking with his client contrary to s. 3(1) of the LRA.

[17] On October 1, 2015, I sent, pursuant to s. 7.2(1) of the LRA, a notice to the lobbyist setting out the basis for the allegations that the lobbyist had not complied s. 3(1) of the LRA and had entered incorrect dates into his returns contrary to s. 4(1)(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.

[18] On November 12, 2015, counsel for the lobbyist responded to the notice. Counsel submitted that the lobbyist acknowledged filing his return late, but the oversight was due to the lobbyist's reliance on the ORL system notifications to remind him of his renewal dates. When he realized his error, he immediately contacted the ORL for advice. Furthermore, counsel pointed out that the lobbyist had never missed a deadline in the past.

[19] Counsel noted that the lobbyist disclosed to the ORL he had lobbied on one occasion, March 2, 2015, during the period he was not registered and that the target contact of the meeting was listed in his end dated registration. Counsel argued that if the lobbyist had changed the end date of Registration ID 19977604 within the time limits set out in the LRA, the March 2, 2015 meeting would not have been an issue since the target was listed in the return. Counsel pointed out that the target of the March 2, 2015 meeting was also listed in the lobbyist's subsequent undertaking with his client, Registration ID 23288518.

[20] Counsel asked that the Registrar 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 return. In fact, the lobbyist acknowledged that he had made mistakes. Moreover, he made every attempt to rectify his errors. Counsel proposed that these circumstances weigh in favour of the Registrar terminating this investigation.

[21] 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.

[22] Counsel provided an explanation related to the discrepancies between the start and end dates in the agreements and what was entered into the lobbyist's returns. For the purpose of this investigation, I accept counsel's explanation regarding the discrepancies in dates and will make no finding in relation to any possible contravention of s. 4(1)(b)(ii) of the LRA for filing incorrect information.

DISCUSSION

[23] I understand that the lobbyist came to rely on the ORL notices to remind him that he must make changes to his returns. However, the lobbyist entered into negotiations to extend his undertaking in January 2015. He knew definitively on February 20, 2015 that his agreement had been extended by the client. The lobbyist failed to change the end date in Registration ID 19977604 within 30 days and the registration was automatically terminated by the Lobbyists Registry.

[24] Section 4(2)(a) of the LRA stipulates 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, a new return must be completed and submitted.

[25] 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 and failed to make changes to his existing return, Registration ID: 19977604, 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 16, 2015 (Registration ID 23288518), more than 10 days after entering into an undertaking with his client. Consequently, the lobbyist contravened s. 3(1) of the LRA. Given all the facts, I am not satisfied that the failure of the Lobbyists Registry automatic notification system is a reasonable excuse for failing to extend his return or for filing a late return.

[26] In his June 5, 2015 letter to the ORL, the lobbyist stated that he lobbied on one occasion during the period he was not registered. He set up and attended one meeting on March 2, 2015. This occurred after the end date of the lobbyist's registration. I accept that this oversight was not meant to conceal the lobbyist's lobbying activities. However, to the public it would appear that the lobbyist was no longer lobbying on behalf of his client. Lobbying while not registered, in this

case past the end date of his undertaking, undermines one of the fundamental purposes of the LRA, which is to promote transparency.

[27] 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."¹ Counsel suggested that the LRA was never intended to investigate minor contraventions.

[28] 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.

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

[30] The ORL often issues warnings for a lobbyist's first contravention or when the contravention is minor in nature. This is not the case here. Counsel submitted 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 returns for two separate clients within the legislated timelines set out in s. 3(1)(b) of the LRA. Since these were the lobbyist's first contraventions and the filings were only a few days past the legislated due date, the lobbyist was issued a warning letter. The December 11, 2013 letter warned the lobbyist that future instances of non-compliance would be pursued further.

FINDING

[31] Given these circumstances, I find that the lobbyist failed to file a return within 10 days after entering into an undertaking to lobby on behalf of his client in contravention of s. 3(1) of the LRA.

¹ 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/>

ADMINISTRATIVE PENALTY

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

[33] 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.

[34] 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.

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

[36] On the question of the gravity and magnitude of the contravention under investigation, the lobbyist allowed his return to lapse and did not file a new return for a number of weeks past the date he entered into an agreement with his client to extend his undertaking. He also set up and attended a meeting while he was not registered with the ORL. 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. Therefore, I do not consider this to be a minor contravention.

[37] I have taken into consideration that the lobbyist relied on the Lobbyists Registry notification system to remind him to update his returns. However as I noted above, the lobbyist did not extend a separate return for a different client within the legislated timelines without the benefit of the notification system. Notices are provided as a courtesy and it is the lobbyist's responsibility to ensure his registrations are current and accurate.

[38] There have been no previous investigations for contraventions by the lobbyist. However, the lobbyist had received a warning letter in the past for contravening s. 3(1) of the LRA on two separate occasions.

[39] I do not believe the lobbyist derived any economic benefit from the contravention.

[40] 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 returns 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 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. I note that this is one of two returns, bearing similar fact patterns, where the lobbyist failed to meet the deadline for registration. I have taken this into consideration in assessing the penalty. Given all the facts of this case, I have assessed a penalty on the low end of the range.

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

Date: March 30, 2016

ORIGINAL SIGNED BY

Tim Mots, Investigator and
Delegate of the Registrar of Lobbyists