

INVESTIGATION REPORT 16-05

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 23288517 to lobby as a consultant on behalf of his client, complied with s. 3(1) of the LRA; and

- (b) 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.
- 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;

BACKGROUND

[5] The consultant lobbyist (“lobbyist”) entered into an undertaking to lobby on behalf of Pacific Newspaper Group, Glacier Newspaper Group and Black Press. The lobbyist filed a return, Registration ID: 19904957, 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: 19904957 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: 23288517 for his undertaking to lobby on behalf of his client. He certified under s. 5(1) of the LRA an undertaking start date of March 1, 2015.

INVESTIGATION

[10] On May 20, 2015, ORL staff sent the lobbyist a compliance investigation letter asking the lobbyist to explain 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 his 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 stating this was an unintentional oversight. When he realized his error he immediately contacted the ORL seeking advice on how to proceed. He noted that while he recognized and acknowledged that the ORL was not required to send reminder notifications, he had come to rely on these notifications as a "fail-safe" system to ensure he was compliant. He informed the ORL that he had 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 further advised that "[t]here is no contract with the client as this arrangement continues on an ad-hoc basis." In addition, the lobbyist confirmed that he did not arrange or attend any meetings on behalf of his client between March 1 and April 16, 2015.

[15] 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 allegation that the lobbyist had not complied with s. 3(1) of the LRA by failing to file a return within the timelines. I invited the lobbyist to respond in writing to the alleged contravention and to provide any information or documentation pertinent to the alleged contravention and any potential penalty.

[16] On November 12, 2015, counsel for the lobbyist responded to the notice. Counsel submitted the lobbyist acknowledged filing his registration 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.

[17] Counsel reiterated that the lobbyist did not lobby during the period he was not registered.

[18] 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 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.

[19] 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

[20] I have taken into consideration the fact that the lobbyist came to rely on the ORL notices to remind him that he must make changes to his returns. However, I am not satisfied that failure of the Lobbyists Registry automatic notification system is a reasonable excuse for failing to extend his return or for filing a late return.

[21] I recognize that he did not attempt to conceal his error; instead he admitted to the ORL that he failed to update his registration within the timelines.

[22] 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.

[23] 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.

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/>

[24] Counsel 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.

[25] Furthermore, 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

[26] 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.

ADMINISTRATIVE PENALTY

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

[28] 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.

[29] 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.

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

[31] 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 weeks past the date he entered into an agreement with his client 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. Therefore, I do not consider this to be a minor contravention.

[32] 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 extend a separate return for a different client within the legislated timelines without the benefit of the notification system. The notices are provided as a courtesy and it is the lobbyist's responsibility to ensure his registrations are current and accurate.

[33] 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.

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

[35] 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.

[36] 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 which were reported to the ORL on the same day, 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 this 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