

INVESTIGATION REPORT 16-11

LOBBYIST: Mark Jiles

October 11, 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*. The lobbyist was found to be in contravention of section 3(1) of the LRA and 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 commenced under s. 7.1 of the *Lobbyists Registration Act* (“LRA”). This section gives the Registrar of Lobbyists (the “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 his 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 him to give notice of the alleged contravention and the reasons for his 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 to lobby as a consultant on behalf of BC Salmon Farmers Association (“BCSFA”), 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

"public office holder" means

- (a) a member of the Legislative Assembly and any person on the member's staff,
- (b) an officer or employee of the government of British Columbia,...

"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.

BACKGROUND

[5] On May 31, 2016, the lobbyist contacted the ORL to advise that he had forgotten to extend the registration for his client (Registration ID 21079351) within 30 days of the end date of March 31, 2016.

[6] On May 31, 2016, the lobbyist submitted Registration ID 27833217 for his undertaking with the BC Salmon Farmers Association and certified an undertaking start date of April 1, 2016. The ORL received an automatic system alert that this registration appeared to contravene the required timeframes under the LRA. The LRA, s. 3(1), requires a consultant lobbyist to submit a registration within 10 days after entering into an undertaking to lobby on behalf of a client.

INVESTIGATION

[5] 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.

[6] On June 13, 2016, ORL staff sent the lobbyist a compliance investigation letter asking the lobbyist to explain the discrepancy between the deadline in the LRA for submitting a registration and the date on which he registered. In addition, the lobbyist was asked to provide a copy of any written agreement to lobby or the date the lobbyist reached a verbal agreement with his client and to provide the details of any meetings arranged and attended with public office holders on behalf of his client.

[7] The lobbyist responded on July 7, 2016 and provided a copy of a Professional Services Agreement he entered with his client effective July 20, 2015. The contract was for the period of August 1, 2015 to July 31, 2016. The lobbyist also detailed a number of meetings that he both arranged and participated in during the period of April 1 to May 31, 2016.

[8] The lobbyist stated that the discrepancy between the time when he was required to register and when he submitted a registration was due to the fact that:

“...while checking the status of my registrations to ensure that they were accurate and up to date, I noticed an administrative error on my registration for the BC Salmon Farmers Association, which had an end-date of March 31, 2016 instead of the proper date of July 31, 2016...”

[9] The lobbyist also indicated that, upon further review, the undertaking end date should have been July 31, 2016. His original return, Registration ID 21079351 was terminated by the system as the undertaking end date had passed so he was not able to make any revisions to that registration. The ORL determined that he should complete a new registration with the correct end date. Due to the fact that the lobbyist promptly completed a new registration with the correct undertaking end date, the ORL did not pursue an apparent contravention of s. 4(1) for submitting information that was not true.

[10] On August 8, 2016, 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. The lobbyist was invited to respond in writing to the alleged contravention and provide any information or documentation pertinent to this contravention and any potential penalty.

[11] On September 6, 2016, the lobbyist responded to the notice and stated:

I want to again apologize for this administrative error and I want to emphasize that I was the one who recognized this error and I immediately reported this mistake to your office and that I had originally registered this client in a timely and proper manner but I made a mistake on the end date of the contract as March 31, 2016 instead of July 2016.

I hope you look also consider that after all these years and all the registrations and updates I have made during this time that this is the only mistake that I have made and at the same time all of my other registrations are accurate and as up to date....

DISCUSSION

[12] The lobbyist admits he contravened s. 3(1) of the LRA. The lobbyist states that it was an oversight and an administrative error on his part.

[13] The meetings the lobbyist arranged and/or attended with public office holders on behalf of his client between April 1, 2016 and May 31, 2016 clearly fall within the definition of lobbying in the LRA. Therefore, the lobbyist engaged in lobbying in advance of registering with the ORL on May 31, 2016. This is taken into consideration in determining any potential administrative penalty.

[14] I cannot stress enough how important it is that all lobbyists must ensure that their registrations are up to date and accurate. Failure to do so defeats the purpose of the LRA and denies citizens timely information about provincial lobbying activities.

FINDING

[15] 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 his client.

ADMINISTRATIVE PENALTY

[16] 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))

[17] 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 ORL 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 makes clear, its purpose is to structure discretion. It does not fetter discretion. I have approached the Policy as intended to provide a principled guide to the exercise of my discretion to determine a penalty.

[18] The Policy seeks to operate in a principled fashion by first setting out a general financial range for particular infractions (depending on whether it is a first, second or third infraction of that nature). The Policy then lists factors that will be taken into account in determining the amount of an administrative penalty. Finally, the Policy states that it “... does not fetter the ORL’s ability to conclude that no administrative penalty is appropriate under the circumstances, or to fashion a remedy on either side of the range set out in the general policy, in special circumstances.”

[19] I should state at the outset that I have considered and rejected the view that this might be a case where “no administrative penalty” is appropriate. The current LRA provisions have now been in place for six years. The lobbyist should be aware of his obligations under the LRA. The contravention in this case is clear and a penalty is necessary for both specific and general deterrence.

[20] 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.

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

[23] There have been no previous investigations for contraventions by the lobbyist. However, the lobbyist had received a warning letter on April 11, 2014 for contravening s. 3(1) of the LRA.

[24] On the question of the gravity and magnitude of the contravention under investigation, the lobbyist entered a lobbying end date of March 31, 2016, rather than the correct date of July 31, 2016 as intended. This error was not recognized until May 31, 2016. This makes the lobbyist nearly two months late in submitting a registration. During this period of time the lobbyist had lobbied on a number of occasions without being registered. Therefore, I consider this to be a moderate contravention.

[25] 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 of the LRA. The 10-day time limit 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 defeats the LRA's goal of transparency because undermines the ability of the public to know who is attempting to influence government at any point in time.

[26] The next factor I have considered is whether the contravention was deliberate. I accept, on balance, that the contravention resulted from an administrative error on the part of the lobbyist. The lobbyist realized he had reported the incorrect undertaking end date, notified the ORL and completed a new registration with the correct end date.

[27] 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 return with the ORL. On the other hand, he did not obtain that payment because of the contravention.

[28] I have already addressed the efforts the lobbyist made to report or correct the contravention. It is in the lobbyist's favour that he notified the ORL of the mistake and subsequently corrected the error.

[29] 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.

[30] The Policy, which is intended only as a guide, suggests a range of penalties for contraventions of the LRA. The penalty for a late filing has a range of \$100 to \$5,000 for a first instance of non-compliance. I have reviewed previous ORL investigation reports and their associated penalties.

[31] In my view, this contravention is similar to Investigation Reports 16-03, 16-04 and 16-05. The consultant lobbyists all received penalties of \$500 respectively. These consultant lobbyists were all seven weeks late in filing their returns and all lobbied during the period they were not registered. As in this case, the respective lobbyists in those matters self-reported corrections prior to receiving the investigators' notice pursuant to s. 7.2(1) of the LRA.

[32] The penalty in this case is intended to reflect the lobbyist's delay of nearly two months, similar to Investigation Reports 16-03, 16-04 and 16-05, in filing his return as a consultant lobbyist and the fact that the lobbyist lobbied for a period of time when there was no return publicly available at the ORL. I have determined that an administrative penalty of \$500 is appropriate.

CONCLUSION

1. Under s. 7.2(2) of the LRA, I find that the lobbyist contravened s. 3(1) of the LRA in respect of registering his undertaking on behalf of the BC Salmon Farmers Association. 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 November 22, 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: October 11, 2016

ORIGINAL SIGNED BY

Trevor Presley, Investigator and
Delegate of the Registrar of Lobbyists