



## INVESTIGATION REPORT 16-09

**LOBBYIST: Cam McAlpine**

**November 10, 2016**

**SUMMARY:** A consultant lobbyist was found to be in contravention of section 3(1) of the *Lobbyist Registration Act* (LRA) for failing to file a return within 10 days after entering into an undertaking to lobby on behalf of his client. 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 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 under Registration ID 26992461 to lobby as a consultant lobbyist on behalf of Atlantic Power Williams Lake, 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.

### **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 March 8, 2016, the consultant lobbyist ("lobbyist") entered into an undertaking to lobby on behalf of his client. The lobbyist filed a return, Registration ID: 26992461 and certified under s. 5(1) of the LRA that the undertaking start date was June 15, 2015 and the end date was July 15, 2016.

[6] The ORL received an automatic system alert that the registration appeared to be in contravention s. 3(1) of the LRA. Section 3(1) of the LRA requires a consultant lobbyist to submit a registration within 10 days after entering into an undertaking to lobby on behalf of a client.

[7] On March 9, 2016, ORL staff sent the lobbyist an email asking him to make unrelated corrections to his registration. In addition the lobbyist was asked to explain the delay in filing his return, Registration ID: 26992461.

[8] On March 9, 2016, the lobbyist responded to the ORL. He stated that his previous work in communications did not include lobbying. He noted that his work with his client focused on "...communications, community and First Nations

engagement.” The lobbyist stated he filed a return because he had “...recently had reason to come into contact with provincial elected officials.”

## **INVESTIGATION**

[9] 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.

[10] On April 22, 2016, ORL staff sent the lobbyist a compliance investigation letter asking him to explain the discrepancy between the deadline 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.

[11] The lobbyist responded on May 3, 2016 advising that he had nothing further to add to his original explanation contained in his March 9, 2016 email.

[12] The lobbyist provided a copy of his Professional Services Agreement with his client which showed a commencement date of March 1, 2015. The descriptions of services in the agreement indicated the lobbyist would be expected to meet with provincial public office holders on behalf of his client. The lobbyist advised that the undertaking start date of June 15, 2015 he originally submitted was incorrect. He subsequently amended the undertaking start date to March 1, 2015 to accurately reflect the effective date of the agreement.

[13] The lobbyist stated that he had set up and attended two meetings with public office holders on behalf of his client, one on January 18, 2016 and the other on March 4, 2016, both prior to the lobbyist filing a return.

[14] On May 17, 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. I invited the lobbyist to respond in writing to the alleged contravention and provide any information or documentation pertinent to this contravention and any potential penalty.

[15] On June 13, 2016, the lobbyist responded to the s 7.2(1) notice. The lobbyist stated that when he entered into his agreement with his client, his role was to provide communications and engagement services at the municipal and First Nations levels. The Ministry of Environment was mentioned in the Service Agreement “...only in its capacity as the regulatory body administering the project...” I understand from the lobbyist’s statement that at the outset of his agreement he had not entered into an undertaking to lobby on behalf of his client.

[16] The lobbyist admitted to be in contravention of s. 3(1) of the LRA. His tardiness in filing resulted in his lack of knowledge of the LRA. The lobbyist submits that once he was aware of his obligations under the LRA he promptly filed his return. The lobbyist points out that he filed his return four days after the March 8, 2016 meeting.

[17] Based on the lobbyist's comments it was not clear when he agreed to lobby. In an email sent on August 9, 2016, I asked the lobbyist to provide the date he entered into an undertaking to lobby on behalf of his client.

[18] On August 13, 2016, the lobbyist responded stating that he had entered into a verbal undertaking to lobby on behalf of his client on December 1, 2015.

[19] On September 12, 2016, I advised the lobbyist that section 7(4)(a) of the LRA authorized the Registrar or his delegate to verify information contained in a return. I asked the lobbyist for his client's contact information so I could verify the start date of his undertaking.

[20] On September 21, 2016, I spoke with the lobbyist's client. He verified that the original Service Agreement did not include lobbying. The client confirmed that it was not until sometime in December 2015, that the lobbyist was asked to set up meetings with public office holders.

## **DISCUSSION**

[21] It is clear from what the lobbyist said and his client confirmed that the lobbyist was not originally contracted to lobby. The lobbyist certified under s. 5(1) of the LRA that the start date of his undertaking was June 15, 2015. He later amended the start date to March 1, 2015. Both these dates are incorrect. In doing so the lobbyist contravened s. 4(1)(b) LRA. I recognize that this error resulted from the lobbyist's inexperience with the LRA. The lobbyist has worked with the ORL to clarify this error. For these reasons the ORL will not pursue a contravention under s. 4(1)(b) of the LRA.

[22] The lobbyist admits that he made an error in failing to file his return within the specified time limits set out in s. 3(1) of the LRA due to his lack of understanding of the LRA, but he states he registered soon after realizing his mistake.

[23] It is important that lobbyists are familiar with the LRA prior to commencing their lobbying activities. Failure to do so increases the likelihood that a lobbyist will run afoul of the LRA and be subject to administrative penalties.

[24] The meetings the lobbyist arranged on January 18, 2016 and March 4, 2016 with public office holders on behalf of his client fall clearly within the LRA

definition of lobbying. Therefore, the lobbyist had actually lobbied in advance of filing a return with the Lobbyists Registry.

[25] Given the information provided by the lobbyist and his client, the lobbyist entered into an undertaking on December 1, 2015. The lobbyist filed a return on March 8, 2016 approximately three months after he was required to do so under s. 3(1) of the LRA.

## **FINDING**

[26] 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**

[27] 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))

[28] 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.

[29] 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."

[30] 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 six 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.

[31] 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.

[32] 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.

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

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

[35] On the question of the gravity and magnitude of the contravention under investigation, the lobbyist was nearly three months late in submitting a registration. During this period of time the lobbyist had lobbied on two occasions without being registered.

[36] 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.

[37] The next factor I have considered is whether the contravention was deliberate. I accept, on balance, that the contravention resulted from the lobbyist's general lack of knowledge of the LRA. The lobbyist's filing was submitted without prompting from the ORL. It is in the lobbyist's favour that he was honest and forthright with the ORL and sought to immediately correct the undertaking start date he initially entered in his registration.

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

[39] 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 made every effort to correct his undertaking when he realized it was incorrect.

[40] 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.

[41] 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 to \$5,000 for a first instance of non-compliance. The penalty in this case is intended to reflect the lobbyist's delay of nearly three months in filing his return as a consultant lobbyist.

[42] To provide additional guidance on the applicable penalty in this instance, I have also reviewed previous ORL Investigation Reports and their associated penalties. I have located two instances which resemble to the circumstances of this case. In Investigation Report 14-14 the lobbyist was four months late in filing a return. The lobbyist had lobbied while unregistered. She had no previous warning letters or contraventions. The lobbyist was fined \$500.00. In Investigation Report 15-10, the lobbyist was approximately 3 months late in filing a return. The lobbyist did not have a strong grasp of the LRA and misunderstood his obligations. The lobbyist had lobbied while unregistered.



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He had no previous warning letters or contraventions. The lobbyist was fined \$500.00.

[43] Given the similarities between these reports, I have determined that an administrative penalty of \$500.00 is appropriate.

## **CONCLUSION**

1. Under s. 7.2(2) of the LRA, I find that the lobbyist contravened s. 3(1) of the LRA. 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 December 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](mailto:info@bcorl.ca)

Date: November 10, 2016

ORIGINAL SIGNED BY

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Tim Mots, Investigator and  
Delegate of the Registrar of Lobbyists