



INVESTIGATION REPORT 17-01

LOBBYIST: Michael Goehring

January 23, 2017

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.

Authorities Considered: Investigation Reports 16-01, 16-02, 16-03, 16-04, 16-05 and 16-06.

INTRODUCTION

[1] This report concerns an investigation under s. 7.1 of the Lobbyists Registration Act (“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 29033650 to lobby as a consultant lobbyist on behalf of Catalyst Paper Corporation (the 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.

Form and content of return

- 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] On July 21, 2016, the lobbyist advised the ORL that he had forgotten to extend his return (Registration ID: 25889857) within 30 days of the June 2, 2016 end date.

[6] Section 4(2)(a) of the LRA, provides a lobbyist with 30 days to update an undertaking end date on a return if there is an extension to that undertaking. If this deadline is missed, the Lobbyists Registry system will automatically terminate the return and the lobbyist is required to complete and submit a new return with a start date that accurately reflects the ongoing undertaking.

[7] On August 4, 2016 and August 10, 2016 the ORL reminded the lobbyist that he had not yet submitted his return for his client. On August 5, 2016, the lobbyist acknowledged receipt of the August 4, 2016 reminder.

[8] On August 16, 2016, the lobbyist submitted a return, Registration ID: 29033650, after entering into an undertaking to lobby on behalf of his client and certified an undertaking start date of June 2, 2016. The ORL received an automatic system alert that this registration appeared to contravene the required timeline set out under the LRA. Section 3(1) of the LRA requires a consultant lobbyist submit a return within 10 days after entering into an undertaking to lobby on behalf of a client.

INVESTIGATION

[9] On August 18, 2016, ORL staff sent a formal compliance investigation letter under s. 7.1 of the LRA to the lobbyist informing him that the ORL had commenced an investigation to determine if he had contravened s. 3(1) of the LRA when he did not submit a registration within 10 days after entering into an undertaking to lobby on behalf of his client. 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 or details of any verbal agreements.

[10] In his response dated September 15, 2016, the lobbyist noted that he had received two notifications from the ORL about two unrelated returns which he subsequently modified on July 21, 2016. While he was making these changes he

noticed a third registration (Registration ID: 25889857) that had passed its end date of June 2, 2016. He mentioned that he did not receive an automatic notification from the ORL that this return was about to end. He realized that the 30-day time limit to extend the return end date had passed.

[11] On July 21, 2016 the lobbyist contacted the ORL. He was advised by the ORL to file a new return. The lobbyist informed the ORL that due to his busy work schedule he did not file a new return until August 16, 2016, despite being reminded by the ORL on August 4 and August 10, 2016 to file a new return.

[12] In response to the ORL questions, the lobbyist stated that he had set up one meeting on June 13, 2016, which took place on July 18, 2016. He did not attend this meeting or any other meeting during the period he was unregistered.

[13] The lobbyist provided a copy of his written Letter of Agreement with his client dated August 17, 2015. The Agreement stipulates the lobbyist would provide government relations services for his client. The lobbyist stated that at the outset of the agreement lobbying was not part of the services the lobbyist would provide his client. It was not until the last week of November 2015, that the lobbyist entered into a verbal undertaking to lobby on behalf of his client. On December 3, 2015 the lobbyist filed a return (Registration ID: 25889857) with the ORL. The start date was December 2, 2015 with an end date June 2, 2016.

[14] On October 19, 2016, I sent a notice, pursuant to s. 7.2(1) of the LRA, 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 contraventions and to provide any information or documentation pertinent to the alleged contraventions and any potential penalty.

[15] The lobbyist responded on November 30, 2016. The lobbyist took full responsibility for failing to renew his return. He agreed with the facts set out in the s. 7.2(1) notice emailed on October 19, 2016. He pointed out, however, that he contacted the ORL on July 21, 2016 to obtain guidance on how to proceed with his expired registration (Registration ID: 25889857). He noticed this registration had ended while extending two unrelated registrations. He mentioned that he had received automatic ORL notifications of the impending expiration of these two unrelated registrations, but he did not receive an automatic notification alerting him that his registration (Registration ID: 25889857) was about to expire.

[16] He further mentioned that when he arranged the meeting on June 13, 2016, he did so believing his registration was still active. The lobbyist did not attend the meeting. He was out of town when the meeting took place.

DISCUSSION

[17] The lobbyist acknowledges that he failed to file his return within the timelines set out in s. 3(1) of the LRA. 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 in the last week of November, 2015. The end date of that agreement was June 2, 2016. The lobbyist failed to make changes to his existing return, Registration ID: 25889857, within 30 days leading to the automatic termination of the return. Therefore, he was required to submit a new return, which he did on August 16, 2016 (Registration ID: 29033650), more than 10 days after entering into an undertaking (June 2, 2016) with his client. Consequently, the lobbyist contravened s. 3(1) of the LRA.

[18] I understand that the lobbyist relied on the ORL notices to remind him that he must make changes to his returns. The ORL is not obligated to notify lobbyists of impending changes to their registrations. These notices are offered as a courtesy only and should not be relied upon. The lobbyist informed me that his office has since improved its internal processes to ensure that it complies with future deadlines.

[19] Setting up a meeting between a public office holder and anyone other individual falls within the definition of lobbying under the LRA. The lobbyist set up this meeting believing his registration was still active, but it was not. This meant the lobbyist was lobbying while not having an active registration.

FINDING

[20] 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

[21] 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))

[22] 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 makes clear, its purpose is to structure discretion. It does not fetter discretion. It is not law. I have applied the Policy as a principled guide to the exercise of my discretion to determine a penalty.

[23] The Policy 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.”

[24] 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 since April 2010. 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.

[25] 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.

[26] In determining the appropriate administrative penalty within that range, 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 efforts made by the registrant to report or correct the contravention, and
- whether a penalty is necessary for specific and general deterrence.

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

[28] There have been no previous enforcement actions for contraventions under the LRA. The lobbyist admits he has received two warning letters in the past for filing late returns. The lobbyist argued that these warnings should not be taken into consideration in arriving at an administrative penalty. However, it is relevant that, having registered late in the past and having received warning letters, the lobbyist clearly was aware of his obligation to file a return within the timelines set out in s. 3(1) of the LRA.

[29] 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 until approximately two months later. The lobbyist was aware his registration was terminated when he contacted the ORL on July 21, 2016 for guidance on how to proceed. He was further reminded that he must file a new return on August 4 and August 10, 2016, yet, he failed to do so until August 16, 2016. During this period of time the lobbyist had set up one meeting, which he did not attend, without being registered. Therefore, I consider this to be a moderate contravention.

[30] I have also taken into consideration that the lobbyist stated he 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.

[31] 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 timelines set out in the LRA are not optional or arbitrary administrative deadlines. The failure to comply with the deadline is a contravention of the LRA. The time limits are inextricably linked with the obligation to register, emphasizing 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.

[32] The next factor I have considered is whether the contravention was deliberate. I do not believe that the failure to register was intentional. I accept, on balance, that the contravention resulted from an unintended error on the part the lobbyist.

[33] I must consider whether the lobbyist derived any economic benefit from the contravention. I consider this a neutral factor. The lobbyist did gain an economic benefit when he received payment for lobbying while unregistered, but he did not obtain that payment because of the contravention.

[34] I have already addressed the efforts the lobbyist made to report or correct the contravention. It is in the lobbyist's favour that he brought his error to the attention of the ORL.

[35] 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.

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

[37] The lobbyist submits that the facts of this case are similar to Investigation Reports (IR) 16-01, 16-02 and 16-06. In IR16-01 and IR 16-02, the lobbyists were 7 months late and both received administrative penalties of \$700. In IR 16-06, the lobbyist was 8 months late and received an administrative penalty of \$800. The lobbyist states

that he was only one and a half months late in registering his return. He asks that there be no penalty, in the alternative if a penalty is to be applied he argues \$300 is appropriate.

[38] After a review of previous Investigation Reports I believe IR 16-03, 16-04 and 16-05 are more relevant to the circumstances of this case than the Investigation Reports submitted by the lobbyist. In IR 16-03 and 16-05 the lobbyists did not receive an automatic notification that their registration was about to end. The lobbyists were approximately 1 month late in filing their returns. The lobbyists reported the error to the ORL. They had both received a previous warning letter. The administrative penalty imposed in these cases was \$500. In IR 16-04, the lobbyist did not receive an automatic notification, was about one month late in filing, notified the ORL of the error, lobbied while unregistered and had received a previous warning. The administrative penalty imposed was \$500. Given the similar circumstances in this case with those of IR 16-03, IR 16-04, IR 16-05, I have assessed a penalty consistent with these past Investigation Reports.

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 March 6, 2017.
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: January 23, 2017

ORIGINAL SIGNED BY

Tim Mots, Investigator and
Delegate of the Registrar of Lobbyists