



INVESTIGATION REPORT 17-04

LOBBYIST: Adrian Pollard

July 10, 2017

SUMMARY: An individual was in contravention of section 4.1 of the *Lobbyist Registration Act* (LRA). The individual was not a lobbyist within the meaning of the LRA. By registering, the individual submitted false information to the registry. The ORL imposed an administrative penalty of \$100.

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 Mr. Pollard entered incorrect information into his return, Registration ID: 29846114, contrary to s. 4(1) of the LRA and certified under s. 5(1) of the LRA that the information was true; and
- (b) if Mr. Pollard 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:
 - (a) the name and business address of the designated filer, and whether he or she is a consultant lobbyist or the designated filer for an in-house lobbyist;
 - (b) if the return is filed by a consultant lobbyist,
 - (i) the name and business address of the firm, if any, where the consultant lobbyist is engaged in business,
 - (ii) the date on which the undertaking with the client was entered into and is scheduled to terminate, and
 - (iii) the name of each individual engaged by the consultant lobbyist to lobby on behalf of the client;
 - (c) if the return is filed in respect of an in-house lobbyist, the name of each in house lobbyist for the organization;
 - (d) the name and business address of the client or organization;
 - (e) a summary of the business or activities of the client or organization;
 - (f) if the client or organization is a corporation, the name and business address of each affiliate of the corporation that, to the designated filer's knowledge after making reasonable inquiries, has a direct interest in the outcome of the activities of each lobbyist named in the return who lobbies on behalf of the client or organization;
 - (g) without limiting paragraph (f), if the client or organization is a corporation that is a subsidiary of another corporation, the name and business address of the other corporation;
 - (h) if the client or organization is a member of a coalition, the name and business address of each member of the coalition;
 - (i) the name of any government or government agency that funds or partly funds the client or organization, and the amount of the funding;
 - (j) particulars to identify the subject matter concerning which a lobbyist named in the return has lobbied or expects to lobby, during the relevant period;

- (k) if a lobbyist named in the return has lobbied or expects to lobby, during the relevant period, a public office holder employed by or serving in a ministry of the government of British Columbia or a Provincial entity, the name of the ministry or Provincial entity;
- (l) if a lobbyist named in the return has lobbied or expects to lobby, during the relevant period,
 - (i) a member of the Legislative Assembly, or
 - (ii) a person on the staff of a member of the Legislative Assembly concerning a matter that involves the member's capacity as a member, the name of that member;
- (m) if a lobbyist named in the return has lobbied or expects to lobby, during the relevant period,
 - (i) a minister, or
 - (ii) a person on the staff of a minister concerning a matter that involves the minister's capacity as a minister, the name of that minister;
- (n) a declaration that no lobbyist named in the return is in violation of section 2.1;
- (o) if any lobbyist named in the return is a former public office holder, the nature of the office formerly held by the lobbyist and the term of office;
- (p) additional prescribed information.

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 September 12, 2016, the President of FSM Management Group Inc. (FSM), filed a return with the registry indicating he was the designated filer and Mr. Pollard was an in-house lobbyist for the Vancouver Airport Fuel Facilities Corporation (VAFFC). VAFFC is operated by FSM. Mr. Pollard's duties do not involve lobbying. This return was rejected by the ORL.

[6] In October of 2016, counsel for the Mr. Pollard discussed this matter with the ORL.

[7] On November 25, 2016, Mr. Pollard submitted a return, Registration ID: 29846114, indicating he was a consultant lobbyist lobbying on behalf of VAFFC. Mr. Pollard certified the undertaking start date was April 13, 2016. The return submission date, November 25, 2016, was more than 10 days after the of the undertaking start date of April 13, 2016.

[8] The ORL received an automatic system notification indicating that there had been a possible 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.

INVESTIGATION

[9] The ORL commenced an investigation under s. 7.1 of the LRA to determine whether there had been a contravention of s. 3(1) of the LRA.

[10] In a letter dated December 2, 2016, the ORL asked for an explanation why the return had not been filed within 10 days of entering into an undertaking. The ORL also asked Mr. Pollard whether he set up or attended any meetings.

[11] On January 5, 2017, counsel for Mr. Pollard responded, explaining that VAFFC is a non-profit company operated by FSM through an administration services agreement and project management agreement between itself and a consortium of airlines. VAFFC is constructing a new fuel pipeline known as the Vancouver Airport Fuel Delivery Project. FSM is managing the fuel delivery project.

[12] Mr. Pollard is the Engineering Director for FSM. His responsibilities at FSM do not include lobbying.

[13] VAFFC through FSM has an agreement with a lobbying firm to provide communications and government relations services.

[14] Counsel indicated that his client did not set up meetings. VAFFC's consultant lobbyist did set up meetings that Mr. Pollard attended and the consultant lobbyist did register these meetings. The purpose of the meetings was only to provide the attendees with project updates and not to influence any decisions. Mr. Pollard was not involved in any activities that met the definition of lobbying under the LRA. Counsel noted that his client did not have a written or verbal agreement to lobby on behalf of VAFFC.

[15] Counsel noted that this misunderstanding arose as a result of VAFFC's consultant lobbyist erroneously advising Mr. Pollard to register. He pointed out that "...there has been no mischief as a result of the failure to register in a timely fashion since there were no lobbying activities carried out at the meetings...the registrations were made out of an abundance of caution only."

[16] On February 3, 2017 the ORL asked counsel why his client filed a return when he stated in his January 5, 2017 letter, they were not lobbying.

[17] In counsel's March 3, 2017 response he mentioned his client was required, as part of the service agreement with VAFFC, "to obtain the relevant regulatory approvals necessary for the Project to proceed. As part of the ... approvals process, our clients met with public officials to provide the public officials with informational updates on the Projects." They were not lobbying within the meaning of the LRA, but providing project updates to public officials. Again counsel noted that his client incorrectly believed that the LRA required him to register, based on the erroneous advice of VAFFC's consultant lobbyist.

[18] Counsel argued that an individual submitting a return must ensure the information contained therein is true to the best of the individual's knowledge and belief. Counsel stated, "[t]his representation does not contain a warrant of absolute truth but rather a warranty that the person is unaware of any information to the contrary." Counsel submitted that his client believed that the information in the return was true to the best of his knowledge. It was not his intention to deliberately contravene the LRA.

[19] On April 10, 2017, pursuant to s. 7.2 of the LRA, I notified counsel that it appeared his client had contravened s. 4(1) of the LRA when he entered incorrect information into his registration and certified this information to be correct under s. 5(1). I set out the basis for my belief and I invited council to respond in writing to the alleged contraventions and provide any information or documentation pertinent to the alleged contraventions and any potential administrative penalty. I included several additional questions related to the arrangement of meetings, attendance at meetings, need for a lobbyist, regulatory requirements for project updates and a request for samples of materials presented at meetings attended by counsel's client.

[20] On May 10, 2017, counsel responded providing the following responses to the questions. His client attended meetings but did not arrange these meetings. His client was required to meet regulatory requirements as the project advanced. I understand that there was no regulatory requirement for project updates, but they provided updates because they represent good corporate practice. VAFFC employed a consultant lobbyist to assist with community relations, communications, media relations and government relations. Counsel provided a power point presentation used at the May 2, 2016 meeting. The presentation material updated meeting attendees on the progress of the project. It does not contain material which would suggest his client was attempting to influence government.

[21] Counsel argued that a contravention under s. 4(1) of the LRA occurs when an individual fails to enter information required under the LRA. He notes that his clients did enter information required under s. 4(1) of the LRA.

[22] Counsel specified that s. 5(1) of the LRA requires an individual to certify that the information in the return is true to the best of their knowledge and belief.

To contravene s. 5(1) an individual must knowingly enter information in his return that he believes is not true. In this case, counsel argues his client believed to the best of his knowledge he entered accurate information into his return.

[23] Counsel restated that the unique relationship between VAFFC and FSM, the scope of the project, information received from his client's lobbyist and the ORL created erroneous but honest belief that his client's activities constituted lobbying. Counsel stated that his client did not deliberately contravene the LRA.

DISCUSSION

[24] I understand that the Mr. Pollard received erroneous advice, which led him to believe he must submit a return. He completed his return providing the information required under s. 4(1) of the LRA with the honest belief that the information was true (section 5(1)). I accept that he did not do this to intentionally mislead the LRA.

[25] Mr. Pollard was not an in-house lobbyist because his responsibilities for VAFFC or FSM did not include lobbying. He was not a consultant lobbyist within the meaning of the LRA because he did not undertake to lobby, for payment, on behalf of VAFFC or FSM. He did not communicate with public office holders for any one of the purposes defined as lobbying. Based on the facts, Mr. Pollard was not required to file a return, yet he did.

[26] I understand that the Mr. Pollard believed he was required to file a return and the information he entered into his return was accurate. However, it is the responsibility of the individual filer to understand the requirements and obligations under the LRA prior to submitting a return. Saying that there is a misunderstanding or that one has received erroneous advice is not justification for filing a return when not required to do so.

FINDING

[27] Based on the evidence Mr. Pollard was not required to file a return since he was not lobbying on behalf of VAFFC. By filing a return when he was not required to do so, he entered inaccurate information into return, Registration ID: 29846114, accordingly, I find that he contravened s. 4(1) of the LRA.

ADMINISTRATIVE PENALTY

[28] 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))

[29] 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.

[30] 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.”

[31] 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 a number of years. Mr. Pollard 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.

[32] The LRA makes clear that transparency includes accuracy. Filing a return when not required, places inaccurate information in the registry which 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.

[33] 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.

[34] I have considered these factors and the submissions made by Mr. Pollard.

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

[36] On the question of the gravity and magnitude of the contravention under investigation, as stated above false information undermines transparency. However, in this case he appears to have been trying to comply with the legislation in good faith, and his mistake may have been the result of having received erroneous advice to register. The severity of this contravention is considered low to medium.

[37] 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. Entering information into a return which is inaccurate misleads the public defeating the goal of transparency.

[38] The next factor I have considered is whether the contravention was deliberate. As I noted above, it appears to have been an unintentional mistake. It is in Mr. Pollard's favour that he was honest and forthright with the ORL and sought to immediately correct the error.

[39] The next factor to consider is whether there was any economic benefit from derived the contravention. In this case there was no economic benefit gained by submitting a return when not required to do so.

[40] I have already addressed the next factor – “any effort the registrant made to report or correct the contravention.” It is in the Mr. Pollard's favour that he made every effort to correct this situation when he realized his error.

[41] 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 the Mr. Pollard 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.

[42] 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 providing information that is not true in a return is \$1,000 to \$7,500 for a first instance of non-compliance. The penalty in this case is intended to reflect Mr. Pollard filing inaccurate information in his return.

[43] This is a unique case unlike any previous investigations. Mr Pollard is not a lobbyist and there is no evidence that he ever engaged in lobbying. He based his decision to register on the mistaken belief that his attendance at a meeting with a public officer holder, which a lobbyist had arranged (and for which that lobbyist had correctly registered), required him to register. He acted erroneously, but in good faith. In taking all the circumstances into consideration I conclude that a small penalty is warranted in this case. I have determined that a \$100 penalty is appropriate.

CONCLUSION

1. Under s. 7.2(2) of the LRA, I find that Mr. Pollard contravened s. 4(1) of the LRA. The notice of alleged contravention has been substantiated.
2. I impose an administrative penalty of \$100.
3. Mr. Pollard must pay this penalty no later than August 21, 2017.
4. If Mr. Pollard 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: July 10, 2017

ORIGINAL SIGNED BY

Tim Mots, Investigator and
Delegate of the Registrar of Lobbyists