

INVESTIGATION REPORT 17-05

Gateway Casinos & Entertainment Limited

DESIGNATED FILER: Tony Santo

July 6, 2017

SUMMARY: Gateway Casinos & Entertainment Limited (Gateway) employs in-house lobbyists. The organization's designated filer failed to file a return within 30 days of the end date of its previous return contrary to s. 3(3)(b) of the *Lobbyists Registration Act* (LRA). The designated filer was fined \$1,500.

Statutes Considered: *Lobbyists Registration Act*, S.BC 2001

Authorities Considered: ORL Investigation Reports, 15-01 and 15-03

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 has been compliance 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 the activities of Gateway, an organization that employs in-house lobbyists. An in-house lobbyist is a paid employee, officer or director of an organization who lobbies on behalf of the organization, alone or with others, for at least 100 hours annually.

[3] The LRA requires that the designated filer of an organization must file a return with the Office of the Registrar of Lobbyists (ORL) if the organization meets the criteria for registration. Under s. 3(3)(b) of the LRA, the designated filer must file a return within 30 days of the end of each 6-month period from the date of the previous filing. In this case, the organization's designated filer is the Chief Executive Officer, Tony Santo.

[4] Under s. 7(4)(d) of the LRA, the Registrar has delegated to me the authority to conduct this investigation.

ISSUES UNDER CONSIDERATION

[5] The questions that must be considered are:

- (a) whether the designated filer of the organization filed a return within the timelines set out in s. 3(3)(b) of the LRA, and
- (b) if the designated filer did not comply with the requirements of the LRA, what, if any, administrative penalty is appropriate in the circumstances?

RELEVANT SECTIONS OF THE LRA

"designated filer" means

- (a) a consultant lobbyist,
- (b) in the case of an organization that has an in-house lobbyist,
 - (i) the most senior officer of the organization who receives payment for performing his or her functions, or
 - (ii) if there is no senior officer who receives payment, the most senior in-house lobbyist;

"in-house lobbyist" means an employee, an officer or a director of an organization

- (a) who receives a payment for the performance of his or her functions, and
- (b) whose lobbying or duty to lobby on behalf of the organization or an affiliate, either alone or together with other individuals in the organization,
 - (i) amounts to at least 100 hours annually, or
 - (ii) otherwise meets criteria established by the regulations;

"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...
 - (c) in relation to an in-house lobbyist only, to arrange a meeting between a public office holder and any other individual for the purposes of attempting to influence any of the matters referred to in paragraph (a) of this definition.

Requirement to file return

- 3(3) The designated filer of an organization must file with the registrar a return in the prescribed form and containing the information required by section 4,
 - (b) if a return has been filed previously, within 30 days of the end of each 6-month period after the date of filing the previous return.

BACKGROUND

[6] Registration ID: 478213 for Gateway was end dated November 7, 2015. The BC Lobbyists Registry system automatically sends an email notice to the designated filer for an organization once the end date of the registration has been reached. On November 16, 2015, the ORL's Registry Manager sent a courtesy email reminder to Gateway advising that its return had expired on November 7, 2015. The notification reminded Gateway that if its in-house lobbyist continued to lobby, and if lobbying activities met the criteria of 100 hours in the previous 12-month period, it was required to file a return within 30 days of the expiration of its current return. Gateway did not file a return. I note that the email reminder sent by the Registry Manager is a courtesy and is not required by the LRA.

[7] On February 21, 2017, Gateway filed a return: Registration ID: 31145357.

INVESTIGATION

[8] The ORL commenced an investigation under s. 7.1 of the LRA to determine whether the designated filer of the organization had complied with s. 3(3)(b) of the LRA.

[9] In an email sent March 1, 2017, the Registry Manager asked the designated filer to explain why he did not file a return within the legislated timelines set out in s. 3(3)(b) of the LRA.

[10] A staff member at Gateway responded on March 8, 2017 and March 14, 2017. In his response he explained that Gateway's lapse in registration was due to oversight resulting from internal miscommunication.

[11] On March 22, 2017, pursuant to s. 7.2 of the LRA, I sent a notice to the designated filer notifying him that I had formed the preliminary belief that he had failed to comply with s. 3(3)(b) of the LRA. In the notice, I set out the basis for my belief and invited the designated filer to respond in writing to the alleged contravention and provide any information or documentation pertinent to the alleged contravention and the potential administrative penalty.

[12] On May 3, 2017, Gateway responded to my letter of March 22, 2017. They confirmed that the mistake was caused by human error. The designated filer received the reminder email from the LRA and assumed the staff member responsible for maintaining Gateway's registration also received the reminder email and would be updating the registration. However, this did not occur, and the deadline for updating the registration passed. Gateway points out that as soon as it discovered the error, it took immediate steps to rectify it.

FINDING

[13] The designated filer confirmed that Gateway did meet the threshold of 100 hours of lobbying within the past 12 months and that he failed to file its return within the legislated time limit. I find that the designated filer contravened s. 3(3)(b) of the LRA when he failed to file a return within 30 days of the expiration of the previous return.

ADMINISTRATIVE PENALTY

[14] I will now address whether there should be an administrative penalty in this case.

[15] The purpose of the LRA is to promote transparency in lobbying by requiring lobbyists to disclose accurate, current and complete information. Failing to keep registration information up to date and accurate 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.

[16] In assessing whether a penalty is necessary in this instance, I must consider, among other things:

- previous enforcement actions for contraventions by this designated filer,
- 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 general and specific deterrence.

[17] Failing to meet deadlines under the LRA frustrates the goal of transparency. The greater the delay in filing a return increases the magnitude of the contravention. In this case, the designated filer needed to file a return by December 7, 2015. He did not file a return until February 21, 2017. The designated filer submits that the reason he missed the registration deadline was human error.

[18] The ORL Registry Manager sent a courtesy email reminder to the designated filer for Gateway on November 16, 2015 advising him of the expiration of Gateway's return. There was no response and the designated filer did not submit a return. On February 21, 2017 Gateway filed Registration ID: 31145357.

[19] I found no evidence that Gateway derived an economic benefit during the period it was unregistered.

[20] In summary, the designated filer was aware he was responsible for filing a return by December 7, 2015 if his organization met the criteria for registration. Also, Gateway's lobbying activities had not changed and remained accurate. This meant that the designated filer could have filed its return within the timelines of the LRA. The designated filer filed Gateway's return on February 21, 2017, well over one year after the termination of its previous return.

[21] Together with the above factors, I have also 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 designated filer not to disregard his obligations under the LRA, and to remind all lobbyists of their legal obligations to be diligent in keeping their registrations current and accurate.

[22] The ORL's 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.

[23] Recent investigations have assessed penalties for late registration between \$500 and \$1,500. In Investigation Report 15-03, the organization was 6 weeks late in filing their return and was fined \$1000. In Investigation report 15-01, the consultant lobbyist was also six weeks late and they were fined \$1,500, although in that case it was the lobbyist's second infraction. In this case, Gateway was 14 months late in filing a return; therefore their actions should attract an appropriate penalty. For failing to file a return within 30 days of the expiration of the previous return, in contravention of s. 3(3)(b) of the LRA, I impose an administrative penalty of \$1,500.

CONCLUSION

1. The notice of alleged contravention has been substantiated. Under s. 7.2(2) of the LRA, I find that the designated filer contravened s. 3(3)(b) of the LRA when he failed to file a return within the legislated timelines.
2. I impose an administrative penalty of \$1,500.
3. The designated filer must pay this penalty no later than August 17, 2017.
4. If the designated filer 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 6, 2017

Trevor Presley, Investigator and
Delegate of the Registrar of Lobbyists