

## EXEMPTION DECISION 18-02

### Alex Shiff (Navigator Ltd.)

July 31, 2018

**SUMMARY:** The applicant worked for 17 months as an executive assistant in a minister's office. His application for an exemption from the two-year cooling-off period under s. 2.2 of the *Lobbyists Registration Act* is denied, as the requested exemption is not in the public interest. The legislative intention of s. 2.3 is to address the fact that a "former public office holder" may use recent information or relationships acquired in government to lobby after leaving government. The nature and length of the applicant's tenure in government are relevant, and there are no other factors supporting the conclusion that it would be in the public interest to grant the exemption.

**Statutes Considered:** *Lobbyists Registration Act*, SBC 2001.

### BACKGROUND

[1] The *Lobbyists Registration Act* (LRA) regulates lobbying of public office holders. The applicant, Alex Shiff, has applied for a public interest exemption, under section 2.3 of the LRA, from the two-year prohibition on lobbying that applies to her under s. 2.2 of the LRA.<sup>1</sup> Section 2.2 prohibits any "former public office holder" from lobbying for two years after they ceased to be a former public office holder. The applicant is a former public office holder under the LRA because he served as an executive assistant in the office of the Minister of Environment from February 15, 2016 to July 14, 2017. His application indicates that he is now a consultant lobbyist with Navigator Ltd. He is the only British Columbia-based lobbyist with that firm.

### DISCUSSION

[2] The general goal of the LRA is to make transparent the long-standing practice in British Columbia of lobbying public office holders. It requires any individual who fits within the definition of "in-house consultant" or of "consultant lobbyist" to register their lobbying activities.

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<sup>1</sup> Sections 2.2 and 2.3 were enacted in 2017 and came into force on May 1, 2018. The amendments were made by the *Lobbyists Registration Amendment Act, 2017*, SBC 2017, c 19.

[3] As I have noted in Exemption Decision 18-01, the legislature has recognized, through the definition of “lobby”, that lobbyists—both in-house and consultant lobbyists—may be selling access to office holders. The Legislature has also recognized, of course, that a lobbyist may be selling expertise on a particular subject, or information, acquired while that individual served in government. Both aspects of what it means to “lobby” must be considered, on the facts of each s. 2.2 application, along with circumstances relevant to other aspects of lobbying, such as whether the applicant possesses or may possess specific government information that may be used in lobbying.<sup>2</sup>

[4] It is useful to set out the sections to the applicant’s request for an exemption. Section 1 of the LRA defines the term “former public office holder” as follows:

“former public office holder” means

- (a) a former member of the Executive Council and any individual formerly employed in the former member's former office, other than administrative support staff,
- (b) a former parliamentary secretary, or
- (c) any individual who formerly occupied
  - (i) a senior executive position in a ministry, whether by the title of deputy minister, chief executive officer or another title,
  - (ii) the position of associate deputy minister, assistant deputy minister or a position of comparable rank in a ministry, or
  - (iii) a prescribed position in a Provincial entity[.]

[5] Sections 2.2 and 2.3 are the operative provisions here:

***Lobbying prohibition***

- 2.2 Subject to section 2.3, a person who is a former public office holder must not lobby, in relation to any matter, for a period of 2 years after the date the person ceased
- (a) to be a member of the Executive Council or an individual employed in the member's office,
  - (b) to be a parliamentary secretary, or
  - (c) to occupy a position referred to in paragraph (c) of the definition of "former public office holder".

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<sup>2</sup> In assessing the applicant’s exemption request, I have applied my analysis of the intent and meaning of the LRA as a whole, and ss. 2.2 and 2.3, specifically, set out in Exemption Decision 18-01, without repeating it here.

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**Exemption from prohibitions**

- 2.3(1) If the registrar is satisfied that it is in the public interest, the registrar may, on request and on any terms or conditions the registrar considers advisable, exempt a person from a prohibition set out in section 2.1(2) or 2.2.<sup>3</sup>
- (2) If the registrar grants an exemption under subsection (1), the registrar must enter the following into the registry:
- (a) the terms or conditions of the exemption;
  - (b) the registrar's reasons for granting the exemption.

[6] The applicant, as explained earlier, falls within the definition of “former public officer holder” because he was employed in the office of someone who is no longer a member of Cabinet. I infer from the applicant’s request, from which the facts underpinning this decision are taken, that his executive assistant position meant that he was not a member of the former minister’s “administrative support staff”. If the applicant fell within that description, he would not be a “former public office holder”.

[7] Keeping in mind that s. 2.2 only prohibits *lobbying* for two years after a former public office holder leaves their position, is it in the “public interest” to grant the applicant the exemption he seeks?

[8] Before May 1, 2018, the date on which s. 2.2 came into force, the applicant had two active registrations in the lobbyist registry. One was to lobby for Ghost Management Group LLC (Weedmaps), which the applicant says is a technology company focused on the legal cannabis industry. That registration was recorded as ending on April 30, 2018. The second registration was for Turo Canada (Turo), which is a peer-to-peer car sharing company, also recorded as ending on April 30, 2018. The applicant says he wishes to register again to lobby for both of these organisations.

[9] The applicant says that he would not lobby anyone at Environment for either of these two clients, arguing that he would thus not be able to take advantage of any previous contacts he made at Environment. He has also committed not to lobby Environment for any other clients, to avoid any conflict or appearance of a conflict.

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<sup>3</sup> Section 2.1(2) prohibits lobbying on a matter in relation to which the person lobbying, or a person associated with that person, holds a “contract for providing paid advice” to the government. It also prohibits such persons from entering into a “contract for providing paid advice” on a matter in relation to which the person, or a person associated with that person, is lobbying. Section 2.1(1) defines the term “contract for providing paid advice” as “an agreement or other arrangement under which a person directly or indirectly receives or is to receive payment for providing advice to the government of British Columbia or a Provincial entity, but does not include reasonable remuneration for serving on a board, commission, council or other body that is established under an enactment and on which there are at least 2 other members who represent other organizations or interests.”

[10] With respect to his work for Weedmaps, the applicant says that over the last decade he has developed a reputation in Canada as a public policy expert in the area of cannabis policy reform. He is lobbying on Weedmaps' behalf to provide advice and support regarding the legalization of cannabis for recreational purposes. He believes he can benefit the public interest by promoting sensible regulations and ensuring good public policy are pursued as British Columbia transitions to a legal cannabis regime.

[11] The applicant says, regarding Turo, that Turo provides a peer-to-peer car sharing platform that allows individuals to gain a modest supplementary income from their personal vehicles. He submits that, in British Columbia, where affordability is a serious concern, ensuring that Turo's platform is accessible to British Columbians is in the public interest. Over the course of his lobbying for Turo, the applicant says, he developed expertise about its platform and has become essential to their ability to communicate their needs to policy makers.

[12] With respect to both clients, the applicant submitted that, as he is the only British Columbia-based consultant for his firm, it will be challenging for another consultant to take up these lobbying assignments.

[13] The applicant says, if he is granted an exemption, he will not lobby Environment, thus preventing him from taking advantage of his previous contacts. He has not addressed how he would handle a situation where one or more of his previous contacts move to a different ministry.

[14] Again, I apply here the same analysis and approach to this application as I applied in Exemption Decision 18-01. In a nutshell, applying the approach there, I must decide whether circumstances surrounding the applicant's request are such that the public interest in relation to lobbying activities favours the exemption.

[15] In Exemption Decision 18-01, I stated that the length of an individual's public service might be a factor in deciding whether an exemption is in the public interest. The applicant's tenure in public office spanned 17 months, a period that, it is reasonable to suggest, would certainly have permitted him to learn about the workings of government and to establish personal working relationships with public servants. Although his knowledge of government, and working relationships, would have been less extensive than those of some others, they cannot be ignored.

[16] I am not prepared to infer that the applicant's dealings with career public servants were so minor or limited in scope that he did not acquire knowledge about the workings of government or working relationships with public servants that could be utilized in the lobbying process.

[17] As for the applicant's stated public policy expertise in the area of cannabis policy reform and regulation, I am sceptical that his expertise is so rare or specialized that he can bring to bear knowledge or expertise that others cannot readily supply on that subject. The same is true for his work with Turo.

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[18] I am also sceptical that, because the applicant is his firm's only British Columbia-based lobbyist, no one else can do the actual lobbying. I note that for both Weedmaps and Turo the applicant was registered along with Sally Houser, who was identified as his co-lobbyist, and who is listed as a principal at Navigator Ltd.

[19] As explained above, an aim of the s. 2.2 cooling-off period is to ensure that a former public office holder cannot sell information acquired inside government, or sell access based on relationships formed there, during the two-year period. On balance, I am not satisfied that the requested exemption is in the public interest.

**CONCLUSION**

[20] For all of the reasons given above, I am not satisfied that it is in the public interest to exempt the applicant from the application of s. 2.2. The applicant's request is denied.

July 31, 2018

**ORIGINAL SIGNED BY**

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Michael McEvoy  
Registrar of Lobbyists for British Columbia