

INVESTIGATION REPORT 18-04

LOBBYIST: Keltie Gale

May 23, 2018

SUMMARY: A consultant lobbyist was found to be in contravention of section 3(1) of the *Lobbyist Registration Act* for failing to file a return within 10 days after entering into an undertaking to lobby on behalf of her 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 *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 36334952 to lobby as a consultant lobbyist on behalf of the Canadian Biosimilars Forum, 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

"public office holder" means

- (a) a member of the Legislative Assembly and any person on the member's staff,
- (b) an officer or employee of the government of British Columbia,...

"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.

BACKGROUND

[5] On January 24, 2018, the lobbyist submitted Registration ID 36334952 for her undertaking with the Canadian Biosimilars Forum and certified an undertaking start date of September 5, 2017. The ORL received an automatic system alert that this registration appeared to contravene the required timeframes under the LRA. Section 3(1) of the LRA requires a consultant lobbyist to submit a registration within 10 days of entering into an undertaking to lobby on behalf of a client.

INVESTIGATION

[6] 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.

[7] On January 24, 2018, ORL staff sent the lobbyist a formal compliance investigation letter under s. 7.1 of the LRA asking the lobbyist to explain the discrepancy between the deadline in the LRA for submitting a registration and the date on which she 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 her client and to provide the details of any meetings arranged and attended with public office holders on behalf of her client.

[8] The lobbyist responded on February 21, 2018 and confirmed that she had set up one meeting with public office holders between September 5, 2017 and January 24, 2018.

[9] The lobbyist also advised that the discrepancy between the time when she was required to register and when she submitted a registration was due to the fact that:

...The date listed as the undertaking start date is September 5, 2017. This date is correct, in that this is the date we, on behalf of the Forum, first reached out to British Columbia (BC) public office holders to coordinate a meeting. At that time, we were acting on the understanding from our client that, in a conversation with her, BC officials had requested a meeting or further information about the Forum. In that context, we had acted on the belief that we were following up on an expression of interest on their part. We did not recognize the possibility that registration might be required with respect to scheduling a meeting that we had understood was initiated or suggested by the public office holder directly to our client...

[10] The lobbyist is referring to section 2(2)(c) of the LRA, which does not require a lobbyist to register if they are responding directly to a written request from a public office holder for advice or comment on a specific matter. However this is not the case here.

[11] The lobbyist also noted that she experienced a delay in registering due to issues acquiring a BCeID, which is required in order to access the Lobbyists Registry.

[12] The lobbyist also explained that the firm she is employed at, Santis Health, has written contracts for the work with each of the Canadian Biosimilars Forum's member companies. She notes that her firm officially began working with the Canadian Biosimilars Forum on May 31, 2016. At that time, there was no intention of lobbying in BC. The lobbyist explained that September 5, 2017 was the first time she was asked to lobby on behalf of the Canadian Biosimilars Forum.

[13] On February 22, 2018, 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. The lobbyist was invited to respond in writing to the alleged contravention and provide any information or documentation pertinent to the alleged contravention and any potential penalty.

[14] On April 5, 2018, the lobbyist responded to the notice and stated:

Santis takes our registration responsibilities very seriously, and as such we deeply regret the fact that our registration was submitted late.

DISCUSSION

[15] The lobbyist admits she contravened s. 3(1) of the LRA. The lobbyist states that it was an oversight and misunderstanding on her part.

[16] The lobbyist notes that she was asked by Canadian Biosimilars Forum to lobby in BC on September 5, 2017. Furthermore, the meeting the lobbyist arranged with public office holders on behalf of her client between September 5, 2017 and January 24, 2018 clearly falls within the definition of lobbying in the LRA. Therefore, the lobbyist engaged in lobbying in advance of registering with the ORL on January 24, 2018.

FINDING

[17] Based on the evidence, I find that the lobbyist did not comply with s. 3(1) of the LRA when she failed to file a return within 10 days after entering into an undertaking to lobby on behalf of his client.

ADMINISTRATIVE PENALTY

[18] 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)).

[19] Section 7.2 of the LRA gives the Registrar discretion to impose administrative penalties. To provide a measure of structure in the exercise of that discretion, the ORL

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 approached the Policy as intended to provide a principled guide to exercise my discretion and determine a penalty.

[20] The Policy first sets 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.”

[21] I should state at the outset that I have considered and rejected the view that this might be a case where “no administrative penalty” is appropriate. The current LRA provisions have now been in place for eight years. The lobbyist should be aware of her obligations under the LRA. The contravention in this case is clear and a penalty is necessary for both specific and general deterrence.

[22] 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.

[21] 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.

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

[23] There have been no previous investigations for contraventions by the lobbyist. On the question of the gravity and magnitude of the contravention under investigation, while the lobbyist began lobbying on September 5, 2017, she did not register until January 24, 2018. This renders the lobbyist four months late in submitting a registration. During this period of time the lobbyist had lobbied on a single occasion without being registered. Therefore, I consider this to be a moderate contravention.

[24] 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 of the LRA. The 10-day time limit 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 defeats the LRA's goal of transparency because it undermines the ability of the public to know who is attempting to influence government at any point in time.

[25] The next factor I have considered is whether the contravention was deliberate. I accept, on balance, that the contravention resulted from a misunderstanding of the LRA on the part of the lobbyist. When the lobbyist realized she needed to register, she completed a registration immediately.

[26] 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 she received payment for lobbying when she had not filed the return with the ORL. On the other hand, she did not obtain that payment because of the contravention.

[27] I have already noted that the lobbyist did register initially of her own accord. Unfortunately, the lobbyist did not proactively notify the ORL of her contravention. It was an ORL staff member who subsequently brought the lateness of her registration to the lobbyist's attention. It is in the lobbyist favour that she promptly worked with ORL staff to identify the correct date she began lobbying.

[28] 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 her 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.

[29] The Policy, which is intended only as a guide, suggests 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. I have reviewed previous ORL investigation reports and their associated penalties.

[30] I have located two instances which resemble 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. 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. He had no previous warning letters or contraventions. The lobbyist was fined \$500.

[31] The penalty in this case is intended to reflect the lobbyist's delay of four months in filing her return as a consultant lobbyist and the fact that the lobbyist lobbied for a period of time when there was no return publicly available at the ORL. I have determined that an administrative penalty of \$500 is appropriate. I would note that it is very much in the lobbyist's favour that she registered of her own accord; otherwise the penalty would have been much higher.

CONCLUSION

1. Under s. 7.2(2) of the LRA, I find that the lobbyist contravened s. 3(1) of the LRA for submitting her 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 July 4, 2018.
4. If the lobbyist requests reconsideration under s. 7.3 of the LRA, she 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: May 23, 2018

ORIGINAL SIGNED BY

Trevor Presley, Investigator and
Delegate of the Registrar of Lobbyists