

INVESTIGATION REPORT 19-01

LOBBYIST: Utilia Amaral

January 24, 2019

SUMMARY: A consultant lobbyist was found to be in contravention of section 3(1) of the *Lobbyists 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 \$700 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: consultant and in-house 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 41978408 to lobby as a consultant lobbyist on behalf of Google LLC, 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.

Power to investigate

7.1 (1) If the registrar considers it necessary to establish whether there is or has been compliance by any person with this Act or the regulations, the registrar may conduct an investigation.

(2) The registrar may refuse to investigate or may cease an investigation with respect to any matter if the registrar believes that

(a) the matter could more appropriately be dealt with under another enactment,

(b) the matter is minor or trivial,

(c) dealing with the matter would serve no useful purpose because of the length of time that has elapsed since the matter arose, or

(d) there is any other valid reason for not dealing with the matter.

(3) If the registrar discovers that

(a) the subject matter of an investigation under this section is also the subject matter of an investigation to determine whether an offence under an enactment of British Columbia or Canada has been committed, or

(b) a charge has been laid with respect to that subject matter,

the registrar must immediately suspend his or her investigation and may not continue until the other investigation has been completed, the charge has been withdrawn or a final verdict has been rendered in respect of the charge.

Hearing and administrative penalty

7.2 (1) If after an investigation under section 7.1 the registrar believes that a person under investigation has not complied with a provision of this Act or the regulations, the registrar must

(a) give notice to the person

(i) of the alleged contravention,

(ii) of the reasons why the registrar believes there has been a contravention, and

(iii) respecting how the person may exercise an opportunity to be heard under paragraph (b) of this subsection, and

(b) give the person a reasonable opportunity to be heard respecting the alleged contravention.

(2) 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

- (a) must inform the person of the registrar's determination that there has been a contravention,
- (b) may impose an administrative penalty of not more than \$25 000, and
- (c) must give to the person notice
 - (i) of the registrar's determination that the person has not complied with a prescribed provision of this Act or the regulations and the reason for the decision,
 - (ii) if a penalty is imposed, of the amount, the reason for the amount and the date by which the penalty must be paid, and
 - (iii) respecting how the person may request reconsideration, under section 7.3, of the determination of non-compliance or the imposition or amount of the penalty.

(3) Despite subsection (2), the registrar must not impose an administrative penalty if more than 2 years have passed since the date of the contravention.

BACKGROUND

[5] On October 9, 2018, the lobbyist submitted Registration ID 41978408 for her undertaking with Google LLC and certified an undertaking start date of February 1, 2018. 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 October 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 November 19, 2018 and confirmed that she had set up a number of meetings with BC public office holders between February 13, 2018 and October 9, 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:

...this was an inadvertent mistake on my part. This is my first time registering to lobby. I was unfamiliar with the definition of lobbying-and unclear about the distinction between in-house lobbyist and consultant lobbyists.

[10] On November 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.

[11] On December 23, 2018, counsel for the lobbyist responded to the notice and stated:

Ms. Amaral and [Associate] understand that their registrations should have been filed within 10 days of their undertaking date, in accordance with subsection 3(1) of the Act. They have both indicated the delay was an inadvertent mistake...

DISCUSSION

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

FINDING

[13] 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 her client.

ADMINISTRATIVE PENALTY

[14] 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)).

[15] 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.

[16] 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.

[17] 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.

[18] 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.

[19] 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.

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

[21] There have been no previous investigations for contraventions by the lobbyist.

[22] On the question of the gravity and magnitude of the contravention under investigation, while the lobbyist began lobbying on February 13, 2018, she did not register until October 9, 2018. This renders the lobbyist seven months late in submitting a registration. During this period of time the lobbyist had lobbied on several occasions without being registered. Therefore, I consider this to be a moderate contravention.

[23] 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.

[24] 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.

[25] 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.

[26] 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's favour that she promptly worked with ORL staff to identify the correct date she began lobbying.

[27] 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.

[28] 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.

[29] I have located two instances which resemble the circumstances of this case. In IR 16-01 and IR 16-02, the lobbyists were seven months late and both received administrative penalties of \$700. In both of the above instances, the lobbyist did not have a strong grasp of the LRA and misunderstood their obligations.

[30] The penalty in this case is intended to reflect the lobbyist's delay of seven 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 \$700 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 \$700.
3. The lobbyist must pay this penalty no later than March 7, 2019.
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: January 24, 2019

ORIGINAL SIGNED BY

Trevor Presley, Investigator and
Delegate of the Registrar of Lobbyists