

**INVESTIGATION REPORT 19-05**

**Canadian Association of Petroleum Producers**

**DESIGNATED FILER: Tim McMillan**

**July 10, 2019**

**SUMMARY:** An in-house lobbyist began lobbying for the Canadian Association of Petroleum Producers (CAPP). The organization failed to update the registration to add the new in-house lobbyist within 30 days of the change contrary to s. 4(2) of the *Lobbyists Registration Act* (LRA). The designated filer received an administrative penalty of \$1,250.

**Statutes Considered:** *Lobbyists Registration Act*, S.B.C. 2001

**INTRODUCTION**

[1] This report concerns an investigation under s. 7.1 of the *Lobbyists Registration Act* (LRA), which 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 the Canadian Association of Petroleum Producers (CAPP), 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 update the organization's registration within 30 days when any change to the registration occurs. This includes when an in-house lobbyist begins lobbying for the organization, as per s. 4(2) of the LRA.

[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 contravened s. 4(2) of the LRA for failing to add the in-house lobbyist within 30 days, 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;

### Form and Content of Return

- 4(2) An individual who files a return must supply the registrar with the following information within the applicable period:
- (a) particulars of any change to the information in the return, within 30 days after the change occurs;

## BACKGROUND

[6] Paul Hartzheim, a CAPP employee, began lobbying BC public office holders in September 2017.

[7] On February 12, 2019, Mr. Hartzheim informed CAPP's Manager of Corporate Compliance, who handles the internal day to day management of CAPP's lobby registrations but is not the organization's designated filer, that he should be registered in BC, and that he should have been registered since September 2017.

[8] On February 12, 2019, Tim McMillan (the designated filer) notified the Office of the Registrar of Lobbyists (ORL), via letter, that he was recently made aware that Mr.

Hartzheim has been lobbying BC public office holders since September 2017 without being listed as an in-house lobbyist in CAPP's registration.

[9] On February 13, 2019, Mr. McMillan added Mr. Hartzheim to CAPP's active registration.

## **INVESTIGATION**

[11] 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. 4(2) of the LRA.

[12] In a letter of February 25, 2019, the Registry and Compliance Manager asked the designated filer to explain why he did not add Mr. Hartzheim to his registration within the legislated timelines set out in s. 4(2) of the LRA.

[13] The designated filer for CAPP responded on March 21, 2019, advising that the registration was not updated within 30 days due to an employee oversight. He further advised that their internal investigation shows that Mr. Hartzheim took on additional responsibilities in 2017 after an employee passed away unexpectedly. Initially, he attended meetings in a learning capacity, and over time he began participating in the meetings. Mr. Hartzheim did not advise CAPP's Manager of Corporate Compliance when he started lobbying.

[14] On April 2, 2019, 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. 4(2) 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.

[15] On May 9, 2019 the designated filer responded to my letter of April 2, 2019. He acknowledged the compliance error and outlined steps CAPP has taken to prevent such an error occurring again in the future. He also advised that although this in-house lobbyist was not registered, the subject matter of the lobbying and the public office holders lobbied was disclosed in the return. Therefore he argues that they were transparent, thus fulfilling the intent of the legislation.

## **FINDING**

[16] I accept that this was an unintentional oversight, still the designated filer did not update CAPP's return when he was required to do so. I find that the designated filer contravened s. 4(2) of the LRA when he failed to enter into CAPP's return, the change in lobbyist, within 30 days of the change.

## ADMINISTRATIVE PENALTY

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

[18] 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.

[19] 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.

[20] There have been no previous enforcement actions for contraventions by CAPP.

[21] On the question of the gravity and magnitude of the contravention under investigation, as stated above, inaccurate information undermines transparency. The length of the delay in updating a registration increases the magnitude of the contravention. In this case, the registration was not properly updated from September 2017 to February 13, 2019, a period of 17 months. It appears this is a case of an employee succession that caused the LRA obligations to be missed. The severity of this contravention is considered medium.

[22] The purpose of the LRA is to promote transparency in lobbying by requiring 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 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. Not updating a return defeats the goal of transparency.

[23] The next factor I have considered is whether the contravention was deliberate. As I noted above, it appears the delay was a result of human error and was not deliberate. It is in CAPP's favour that they were honest and forthright with the ORL and sought to immediately correct the error.

[24] The next factor to consider is whether there was any economic benefit derived from the contravention. In this case there was no economic benefit gained by not updating the return.

[25] I have already addressed the next factor – “any effort the registrant made to report or correct the contravention.” It is in CAPP’s favour that they made every effort to correct this situation when they realized the error.

[26] 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 to meet his obligations under the LRA and to remind all lobbyists of their responsibility to be diligent in keeping their registrations current and accurate.

[27] The goal of transparency is frustrated if a designated filer fails to meet the deadlines required by the LRA. CAPP states that Mr. Hartzheim took on additional responsibilities in 2017 after an employee passed away unexpectedly, but failed to advise their Compliance Manager when he began lobbying as part of those additional responsibilities.

[28] In this case, it appears CAPP overlooked its LRA obligations during the succession process. However, this is a large and sophisticated organization that regularly lobbies government. Therefore, they should have been aware of their obligations under the LRA.

[29] With respect to existing precedents, there has been no other Investigation Report where an organization failed to update the in-house lobbyist field for 17 months. However, Investigation Report IR 17-07 also dealt with an organization that failed to update another field in their registration for a period of four months. In that case the organization received an administrative monetary penalty of \$1,000. Report IR 17-05 also dealt with an organization that failed to update their registration for a period of 14 months and they received an administrative monetary penalty of \$1,500. However Report IR 17-05 was a more serious case, as the entire registration was not updated. That is not the case here; however I am concerned about the length of time that CAPP’s registration was not compliant with the LRA. Therefore, I believe the penalty should fall in between the two examples cited above.

[30] 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 failing to report changes has a range of \$100 to \$5,000 for a first instance of non-compliance. For failing to report changes, in contravention of s. 4(2) of the LRA, I impose an administrative penalty of \$1,250.

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## CONCLUSION

1. The notice of alleged contravention is substantiated. Under s. 7.2(2) of the LRA, I find that the designated filer contravened s. 4(2) of the LRA when he failed to report changes to a return within the legislated timelines.
2. I impose an administrative penalty of \$1,250.
3. The designated filer must pay this penalty no later than August 21, 2019.
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](mailto:info@bcorl.ca)

July 10, 2019

ORIGINAL SIGNED BY

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Trevor Presley  
Senior Investigator  
Office of the Registrar of Lobbyists