

Registrar of Lobbyists: GUIDE TO INVESTIGATIONS

INTRODUCTION

This guide outlines steps that the Office of the Registrar of Lobbyists (ORL)¹ takes under the [Lobbyists Transparency Act](#) (LTA) in conducting investigations of apparent non-compliance with the LTA and the [Lobbyists Transparency Regulation](#).

This document is published online² and accompanies investigation letters to designated filers to advise them of investigations under Part 3 of the LTA.

This document is for information purposes only and does not constitute a decision or finding by the Registrar of Lobbyists for British Columbia or his or her delegates. This guidance does not affect the powers, duties or functions of the Registrar of Lobbyists, or his or her delegates, regarding any particular investigation or other matter under the LTA, respecting which the Registrar and his or her delegates will keep an open mind. Responsibility for compliance with the LTA remains with each client, lobbyist and public office holder.

¹ ORL is the acronym that refers to the Registrar and the Registrar's delegates working through the registry office to administer the LTA.

² See www.lobbyistsregistrar.bc.ca.

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INVESTIGATION PROCESS

Investigations – background

A. INVESTIGATIONS AND NON-COMPLIANCE

The LTA sets out the rules that lobbyists are required to comply with. Failure to do so undermines the purpose of the LTA and the Lobbyists Registry: to provide an accurate and transparent public record of who is lobbying whom, and to what end.

A failure to comply with the rules could result in the Registrar of Lobbyists commencing an investigative process leading to a sanctioning of a non-compliant lobbyist. Non-compliance under the LTA includes:

- failing to submit a Registration Return within the required timelines;
- failing to declare in the Registration Return if a lobbyist is a former public office holder;
- failing to register a lobbying activity (Monthly Return);
- late reporting of a lobbying activity (Monthly Return);
- inaccurate reporting of a lobbying activity (Monthly Return);
- failing to report changes to the information in a Registration Return or late reporting of changes;
- failing to report the termination of an undertaking within the required timelines;
- failing to report the change in undertaking end date within the required timelines;
- failing to report that an in-house lobbyist has ceased to be an in-house lobbyist for the organization by inactivating the in-house lobbyist in the return within the required timelines;
- failing to provide the registrar with requisite information in or related to a return;
- lobbying on a subject matter prohibited by s. 2.1 of the LTA;
- lobbying when prohibited by s. 2.2 of the LTA;
- giving or promising a prohibited gift as per s. 2.4 of the LTA;
- failing to declare a political, sponsorship or recall contribution, as per s. 4.2(2)(f) of the LTA;

- failing to declare a gift given or promised, as per s. 4.2(2)(g) of the LTA; and
- providing information that is not accurate in a return.

Cases of possible non-compliance come to the attention of the ORL in various ways, including in:

- information submitted to the Lobbyists Registry in a Registration Return or Monthly Return;
- automatic system notifications;
- media reports;
- environmental scanning, which is proactive monitoring of publications, websites and other sources of information; or
- information and complaints received from the public or from a person who has been is being lobbied.

B. VERIFYING REGISTRATION OF A PERSON OR ORGANIZATION NOT CURRENTLY REGISTERED

Prior to initiating an investigation, the ORL may verify information provided to the ORL, including information entered into a Registration Return or Monthly Return.³

If the verification of information indicates potential lobbying activity involving a person or organization that is **not currently registered** with the Lobbyists Registry, the ORL will send a letter to the appropriate person:

- outlining the criteria and requirements for registration;
- requesting the person or designated filer of an organization review the criteria to determine if they are required to register;
- instructing that they register promptly if they determine registration is required; and
- requesting an explanation within a specified timeframe, if they determine they are not required to register.

If the person promptly registers as a consultant lobbyist or as the designated filer for an organization or explains why he or she is not required to register at this time, the ORL will determine whether in all the circumstances any further action is necessary.

³ Prior to May 4, 2020 the ORL referred to verifications as “compliance reviews”.

The ORL usually requires a response to the letter within two weeks. The failure to provide a timely or satisfactory response will likely result in an investigation being initiated.

C. VERIFYING A CURRENT REGISTRATION (S. 7(4))

If a verification by ORL staff indicates potential issues with a **current registration on the Lobbyists Registry**, the ORL will take steps to verify the information submitted in a return or document, including:

- sending a letter to the designated filer with a request for information and/or documentation;
- contacting a consultant lobbyist's client to verify information in the lobbyist's return; or
- contacting a consultant lobbyist's client to request supporting documentation, including correspondence, agreements or contracts.

The required timeline for response to the ORL's letter is usually two weeks and may vary depending on the type and extent of the enquiry.

Failure to provide a satisfactory response in the time required by the Registrar will normally result in the ORL commencing an investigation. If verification of information demonstrates that the person has been compliant, the matter will be closed.

Not all cases of suspected non-compliance proceed to investigation. For example, if a new filer submits a registration to the Lobbyists Registry only a few days past the deadline stipulated in the LTA, the filer will likely receive a warning. The ORL determines the appropriate response on a case-by-case basis.

During the verification process, registry staff will only contact designated filers if they need more information directly from them. There may be instances where the registry staff may be able to verify information without the need to speak to the designated filer.

Designated filers should be aware that any information provided in the verification process may be used in any subsequent investigation and Compliance Determination in the matter. A designated filer who declines to provide information in the verification process should also be aware that the decision not provide information may be a factor in the decision to commence an investigation, and that Registrar has legal authority to compel the filer to provide such information if an investigation is commenced: LTA, s. 7.5.

Step One: Investigation

A. CONDUCTING AN INVESTIGATION (S. 7.1(1))

If the ORL decides to conduct an investigation, the ORL will review all relevant information and may, among other things, contact the designated filer, the client of a consultant lobbyist, a public office holder, or any other relevant person to gather information that is material to the question of compliance.

During an investigation, the ORL may or may not require information from the person who is the subject of the investigation.

If the ORL concludes that the investigation does not require information from the person who is the subject of the investigation, the ORL may conclude the investigation based on the other investigative information available.

If the ORL investigation requires information, including records, from the person who is the subject of the investigation, ORL staff will contact the person by letter or email notifying them of the investigation and advising that they will be given a formal opportunity to be heard if the ORL believes after the investigation that there has been non-compliance. The person will be advised that the investigation is currently at the information-gathering stage and that the person is being asked to provide the information or records to the ORL. If the person declines to provide such information voluntarily during the investigation, the ORL may make an order requiring the person to do either or both of the following: (a) attend, in person or by electronic means, before the Registrar to answer questions on oath or affirmation, or in any other manner; (b) produce for the registrar a record in the custody or under the control of the person, including a record containing personal information.

If, after an investigation, the ORL believes there has been non-compliance, the ORL will provide the person with a reasonable opportunity to be heard under s.7.2 of the LTA (see Step Two: Opportunity to be Heard).

If, at any time during an investigation, the ORL determines that the designated filer was in compliance, the ORL will take no further action and will cease the investigation. If the person was notified of the investigation the ORL will notify the person that the investigation has ceased either by letter or email.

It is important that designated filers carefully consider the questions from the ORL during the investigation and ensure they provide an accurate response. Designated filers have caused themselves serious problems in the past by providing one explanation in response to a query from the ORL and then providing contradictory evidence later in the process.

For example, some lobbyists at first acknowledged that they had started to lobby, but later denied lobbying when informed that they had registered after the required timelines had expired. This can lead the ORL to determine that there have been two contraventions of the LTA – submitting inaccurate information to the Lobbyists Registry and filing late – and as a result a larger administrative penalty being imposed than for the singular contravention of filing late.

Designated filers should be aware that a Compliance Determination and subsequent Registrar’s Report may contain reference to all information relevant to the determination, and may become public.⁴ If a designated filer submits that information being provided be received in confidence (for example, to protect innocent third parties), the filer should make an application to do so, and should have regard to s. 7.7 of the LTA:

7.7 The registrar may direct that all or part of the information or a record received under section 7.1, 7.2, 7.3 or 7.5 be received in confidence to the exclusion of any other person, on terms the registrar considers necessary, if the registrar believes that the nature of the information or record requires that direction to ensure the proper administration of this Act.

B. DISCONTINUING AN INVESTIGATION (S. 7.1(2))

Under the LTA, the ORL may refuse to investigate or cease an investigation if:

- the matter could more appropriately be dealt with under another enactment;
- the matter is minor or trivial;
- dealing with the matter would serve no useful purpose because of the length of time that has elapsed since the matter arose; or
- there is any other valid reason for not investigating the matter.

The ORL will notify the person or designated filer in writing if it discontinues an investigation for which notification of the investigation was issued.

C. SUSPENDING AN INVESTIGATION (S. 7.1(3))

⁴ The Registrar referred to Compliance Decisions as “Investigation Reports” previous to May 4, 2020.

If the ORL discovers, with respect to the matter under investigation, that it is the same matter that is under a separate investigation to determine whether an offence has been committed, or a charge has been laid, under the LTA the ORL must suspend its investigation. The ORL investigation 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.

Step Two: Opportunity to be Heard

If an investigation has not been discontinued or suspended, and the ORL believes after the investigation under s. 7.1 that there has been non-compliance with the LTA or regulation, the ORL will provide the person under investigation with notice under section 7.2 (1) of the LTA:

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.

A. NOTICE (S. 7.2(1)(a))

Notice under s. 7.2(1) will be in the form of a letter that will contain the following information:

- the alleged contravention(s) and the relevant section(s) of the LTA at issue;
- the background or fact pattern that is the basis for the alleged contravention(s);
- reason or reasons the ORL believes there has been a contravention of the LTA;
- details on how the person may exercise an opportunity to be heard respecting the alleged contravention(s) and the deadline for a response;
- notice that all relevant arguments will be taken into consideration and may be publicly posted on the ORL website;

- the range of the monetary administrative penalty and/or administrative penalty of prohibition that may be imposed in the event there is a finding of non-compliance;
- confirmation that once their submission is reviewed and a Compliance Determination is made, the person will be informed in writing of the ORL's findings respecting the alleged contravention(s), of any administrative penalty imposed if a finding of non-compliance is made and of the right to seek reconsideration; and
- notification that, under s. 7.8(4) of the LTA, a Registrar's Report of non-compliance must be delivered to the Speaker of the Legislative Assembly.

B. OPPORTUNITY TO BE HEARD (S. 7.2(1)(b))

The opportunity to be heard gives the person under investigation (the respondent) the opportunity to respond to the contravention(s) set out in the Notice. The response should be clear and concise and contain all the evidence and submissions regarding the contravention and administrative penalty that the respondent wishes the ORL to consider in making the Compliance Determination.

The ORL seeks the best evidence, and therefore prefers affidavit evidence on any matter that could be contested or controversial. The ORL reserves the right to require a respondent or witness to appear for questioning, whether or not that person's evidence has been provided by affidavit.

The formal Notice will invite the respondent to provide information and submissions concerning whether a monetary administrative penalty should be imposed if a contravention is found, and what the amount of that penalty should be if a penalty is imposed. If applicable, the formal notice will also invite the respondent to provide information and submissions concerning whether a prohibition on lobbying should be imposed if a contravention is found, and what the length of the prohibition should be if imposed.

The timeline for response to the formal notice under s. 7.2 will normally be four weeks. If the ORL receives no response, or does not extend the deadline in response to an extension request that is granted before the deadline expires, the ORL will proceed to conclude the Compliance Determination..

If a respondent seeks to exercise the opportunity to be heard by way of oral submissions in addition to written submissions, the ORL will consider and rule on any such request on a case by case basis.

Step Three: Notification of Findings

A. DETERMINATION OF COMPLIANCE

If the ORL determines on a balance of probabilities that the person has complied with the LTA, the ORL will inform the person in writing of the finding of compliance.

The ORL may make the Compliance Determination publicly available if the ORL considers it to be in the public interest (s. 7.9). Without limiting the considerations that may be taken into account, a matter may be considered to be in the public interest if, among other things, it involves significant public controversy, government accountability is in question, the matter was published in the media, or inaccurate information is in the public domain and someone's reputation is at risk. An example is the case where the British Columbia Association of Chiefs of Police and British Columbia Association of Municipal Chiefs of Police were found to be in compliance: Investigation Report 13-02.⁵

B. DETERMINATION OF NON-COMPLIANCE

If the ORL determines on a balance of probabilities that the person has not complied with the LTA, the Compliance Determination will contain the following information:

- the findings and conclusions;
- reasons for the findings and conclusions;
- whether a monetary administrative penalty is imposed, the amount of the penalty, the reasons for the amount of the penalty and the date by which the penalty must be paid;
- whether a prohibition on lobbying is imposed, the dates the prohibition starts and ends, and the reasons for the prohibition;
- the person's right to request a reconsideration of the decision, of the imposition or amount of the administrative monetary penalty, and/or of the imposition or duration of the prohibition on lobbying; and
- the timeframe for submitting a reconsideration request.

If the person does not request reconsideration within the 30-day timeframe specified in the LTA⁶, the Compliance Determination must be tabled with the

⁵ Prior to May 4, 2020 the ORL referred to Compliance Decisions as Investigation Reports.

⁶ The calculation of time is in accordance with the *Interpretation Act*. For the purposes of calculating timelines in the LTA, a day is defined as a calendar day, unless it is specifically referenced in the LTA or its regulations as a business day.

Speaker of the Legislative Assembly in a Report of the Registrar Report. The Report will also be publicly available on the ORL website.

C. DETERMINING THE AMOUNT OF A MONETARY ADMINISTRATIVE PENALTY AND/OR PROHIBITION ON LOBBYING AND FILING, OR ON HAVING A REGISTRATION RETURN FILED IN RESPECT OF THE PERSON.

The ORL may issue a maximum monetary administrative penalty for non-compliance of \$25,000.

If the ORL considers it to be in the public interest, taking into account the gravity of the contravention and the number of previous contraventions or administrative penalties imposed, if any, it may impose a prohibition on lobbying and on filing or on having a Registration Return filed in respect of the person, for a period of not more than 2 years.

Administrative penalties will generally be applied in accordance with the following guidelines, though every case is considered on its facts:

Contravention	1st Instance	2nd Instance	3rd Instance	4th Instance
Failing to Register	\$500-\$7,500	\$7,500-\$15,000	\$15,000-\$25,000	Prohibited from lobbying
Registering Late	\$100-\$5,000	\$5,000-\$10,000	\$10,000-\$25,000	Prohibited from lobbying
Failing to Report Changes or Late Reporting of Changes	\$100-\$5,000	\$5,000-\$10,000	\$10,000-\$25,000	Prohibited from lobbying
Lobbying on Prohibited Subject Matter (Contract Prohibition)	\$1,000-\$7,500	\$7,500-\$15,000	\$15,000-\$25,000	Prohibited from lobbying
Providing information that is not accurate in a return	\$1,000-\$7,500	\$7,500-\$15,000	\$15,000-\$25,000	Prohibited from lobbying
Lobbying when prohibited (2 year cooling off period)	\$5,000-\$7,500	\$7,500-\$15,000	\$15,000-\$25,000	Prohibited from lobbying

Failing to register a lobbying activity (Monthly Return)	\$500-\$7,500	\$7,500-\$15,000	\$15,000-\$25,000	Prohibited from lobbying
Late Lobbying Activity Report (Monthly Return)	\$100-\$5,000	\$5,000-\$10,000	\$10,000-\$25,000	Prohibited from lobbying
Inaccurate Lobbying Activity Report (Monthly Return)	\$1,000-\$7,500	\$7,500-\$15,000	\$15,000-\$25,000	Prohibited from lobbying
Giving or promising a prohibited gift	\$1,000-\$7,500	\$7,500-\$15,000	\$15,000-\$25,000	Prohibited from lobbying
Failing to declare a gift given or promised	\$500-\$7,500	\$7,500-\$15,000	\$15,000-\$25,000	Prohibited from lobbying
Failing to declare a political, sponsorship or recall contribution	\$500-\$7,500	\$7,500-\$15,000	\$15,000-\$25,000	Prohibited from lobbying

In determining the amount or length of the administrative penalties, the ORL will consider, among other things:

- the gravity and magnitude of the contravention;
- previous enforcement actions for contraventions of the LTA;
- relevant circumstances relating to the contravention;
- whether the contravention was deliberate;
- whether any economic benefit was derived from the contravention;
- the person's efforts to report and/or correct the contravention;
- whether an administrative penalty is necessary for general and/or specific deterrence; and
- any other factors that, in the opinion of the Registrar or their delegate, are relevant to the administrative penalty.

These guidelines do not bind or fetter the ORL's ability to depart from these guidelines, both in respect of administrative monetary penalties and prohibitions, in appropriate circumstances.

Reconsideration

Under s. 7.3 of the LTA, a person may request that the Registrar reconsider the ORL's findings and/or any administrative penalty. A person may also, if applicable, request that the Registrar stay the prohibition on lobbying:

7.3 (1) Within 30 days after being informed of a contravention in accordance with section 7.2, a person may request the registrar to reconsider a decision under any or all of section 7.2 (2) (a), (b) or (b.1), as applicable.

(2) A request under subsection (1) for a reconsideration of a decision under any or all of section 7.2 (2) (a), (b) or (b.1), as applicable,

(a) must

(i) be in writing, and

(ii) identify the grounds on which a reconsideration is requested, and

(b) in the case of a request for a reconsideration of a decision under section 7.2 (2) (b.1), may include a request for a stay of the prohibition order in respect of which the reconsideration is requested.

(3) On receiving a request under subsection (1), the registrar must do all of the following:

(a) consider the grounds on which the reconsideration is requested;

(b) confirm or rescind the decision referred to in any or all of section 7.2 (2) (a), (b) or (b.1), as applicable, or confirm or vary the monetary amount or the prohibition duration;

(c) if the monetary amount is confirmed or varied, confirm or extend the date by which the amount must be paid;

(d) if the prohibition duration is confirmed or varied, specify the dates that the prohibition starts and ends;

(e) notify the person in writing of the matters under paragraphs (b) to (d) of this subsection, as applicable, and of the reasons for the decision to rescind, confirm or vary under this section.

(4) If a request for reconsideration under this section includes a request for a stay of the prohibition in respect of which the reconsideration is requested, the registrar may

(a) grant or refuse a stay of that prohibition, and

(b) impose conditions on a stay granted under this section.

Normally, the Registrar will personally conduct the reconsideration, and will issue a process letter setting out procedural directions for the reconsideration the Registrar considers just and appropriate in the circumstances.

The Registrar advises that thier approach is to consider new evidence **only if that evidence could not have, with due diligence, been placed before the Registrar during the course of the investigation.**

If the Registrar admits new evidence, or if the person requesting reconsideration advances arguments that do not appear to have been advanced before the ORL during the process leading to the Compliance Determination, the Registrar may seek responsive submissions from the ORL, and will give the person requesting reconsideration the opportunity to reply to those submissions.

On reconsideration, the Registrar's authority includes making an order to confirm or vary the amount or length of administrative penalty. Note that the Registrar understands this to include the authority to increase or decrease the monetary administrative penalty. The Registrar also understands this to include the authority to increase or decrease the length of the prohibition.