



## INVESTIGATION REPORT 20-03

**Consultant Lobbyist: Adrienne S. Smith**

**Date: February 2, 2021**

**SUMMARY:** A consultant lobbyist was found to be in contravention of section 3(1) of the *Lobbyists Registration Act* (LRA) for failing to file a return within 10 days of entering into an undertaking to lobby on behalf of their client. An administrative penalty of \$500 was imposed.

**Statutes Considered:** *Lobbyists Registration Act*, S.B.C. 2001, c.42.

**Authorities Considered:** Investigation Report 19-01 and Investigation Report 18-04.

### INTRODUCTION

[1] This report concerns an investigation under section 7.1 of the 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 section 7.1, the Registrar or their 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 the Registrar to give notice of the alleged contravention and the reasons for their 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.

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## ISSUES UNDER CONSIDERATION

[4] The questions for consideration are:

- (a) whether the lobbyist, who registered an undertaking under Registration ID: 54989465 to lobby as a consultant lobbyist on behalf of BC Centre on Substance Use, complied with section 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 investigate.

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

- (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,

## Hearing and administrative penalty

7.2(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 February 3, 2020, the consultant lobbyist submitted Registration ID: 54989465 for an undertaking with the BC Centre on Substance Use (the client), and certified an undertaking start date of October 1, 2019. 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 after 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 May 20, 2020, I provided the lobbyist with formal notice under s. 7.2(1)(a) outlining the basis for the allegation that they had contravened s. 3(1) of the LRA by filing their registration past the required timeline in the LRA. I invited the lobbyist to respond in writing to the alleged contravention and explain the discrepancy between the deadline for submitting a registration in the LRA and the date on which they registered. In addition, the lobbyist was asked to provide any written agreement to lobby, or the date the lobbyist reached a verbal agreement with their client, and to provide written details of any meetings arranged and attended with public office holders on behalf of their client.

[8] On June 9, 2020, the lobbyist responded and confirmed that they had reached an agreement with the client to conduct lobbying of provincial office holders in October of 2019, but did not register as a paid lobbyist until February 2020.

[9] The lobbyist stated that on October 23, 2019, their client (BC Centre on Substance Abuse), secured an agreement to meet with a named BC public office holder. The lobbyist and their client agreed that the lobbyist “would be lobbying provincial public office holders as a paid consultant lobbyist, and that registration would be required.”

[10] In the June 9, 2020 letter the lobbyist explained that during the approximate four-month time period (October 2019 – February 2020), minimal lobbying activity occurred. The lobbyist also confirmed that no lobbying of any kind has occurred since then, including the time period since the late registration.

## DISCUSSION

[11] The lobbyist admitted they contravened s. 3(1) of the LRA. The lobbyist stated that:

. . . they were “a first-time consultant lobbyist and a first-time registrant; and had difficulty accessing sufficient financial information about their client in order to register . . . there is no excuse for [their] delay in filing . . . [and] admitted the late filing to [ORL] staff . . . at their earliest opportunity.”

## FINDING

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

## ADMINISTRATIVE PENALTY

[13] Section 7.2(2) of the LRA provides that if, after giving a person under investigation a reasonable opportunity to be heard regarding 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.”<sup>2</sup>

[14] Section 7.2 of the LRA confers discretion on the Registrar to impose administrative penalties. To provide a measure of structure in the exercise of that discretion, the Registrar has published “Policies and Procedures” (the Policy) to advise members of the public and those engaged in lobbying about what guides the ORL in exercising its duties under the LRA and the regulations.<sup>3</sup> As the Policy clearly states, its purpose is to structure discretion. It does not fetter discretion. It is not law. I have applied the Policy as a principled guide to the exercise of my delegated discretion to determine a penalty.

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<sup>1</sup> Under the LRA, the requirement to register and the associated 10-day timeline were triggered by a lobbyist entering an undertaking to lobby on behalf of a client. Under the new lobbying legislation, the *Lobbyists Transparency Act* (now in effect), the requirement to register and the associated 10-day timeline are triggered by actual lobbying activities. For further information on the current requirements, see the following guidance document: [10, 15, and 30 Day Requirements](#).

<sup>2</sup> LRA section 7.2(2)(c)(ii)

<sup>3</sup> While these have since been replaced by the “[Registrar of Lobbyists: Guide to Investigations](#),” the guidance for determining an administrative penalty in relation to the subject of this investigation remains the same.

[15] The Policy first sets out a general financial range for particular infractions (depending on whether it is a first, second or third infraction). Second, it provides a list of factors that will be considered in determining the amount of administrative penalty. Finally, it includes a clear statement that the Policy does not fetter the ORL's ability to conclude that no administrative penalty is appropriate in the circumstances, or to fashion a remedy on either side of the range set out in the general policy, in special circumstances."

[16] I would like to state at the outset that I have considered and rejected the view that this might be a case where "no penalty" is appropriate. The LRA provisions were in place from April 2010. In this case, the lobbyist informed me that they and their client were aware that registration as a lobbyist would be required. The lobbyist was aware of their obligations under the LRA. The contravention in this case is clear. A penalty is necessary for both specific and general deterrence.

[17] In their submission, the lobbyist respectfully requested that the ORL consider the lobbyist's specific circumstances when determining an administrative penalty for their non-compliance. The lobbyist mentioned that they are a solo legal practitioner and that the pandemic had significantly impacted their income due to court and jail closures and the cancellation of other public events. They also asked that their efforts to be compliant and their honesty in admitting the delayed registration be considered.

[18] On July 7, 2020, I emailed the lobbyist and asked them to provide any information or documentation pertinent to the specific circumstances they had previously mentioned. In accordance with the principles of procedural fairness and issues raised by the lobbyist, it was important to consider all relevant factors when determining an administrative penalty in this instance.<sup>4</sup>

[19] On July 9, 2020, the lobbyist responded to my request. They provided evidence of the impact of COVID-19 on their business. The lobbyist also asked that their ability to pay an administrative penalty be considered in this case.

[20] The Policy suggests a range of penalties for contraventions of the LRA. The suggested penalty range for registering late is \$100 to \$5,000 for a first contravention.

[21] In determining the appropriate administrative penalty within that range, I have taken the following factors into account:

- Previous enforcement actions for contraventions by this person;
- The gravity and magnitude of the contravention;

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<sup>4</sup> *Rumpel v Alberta (Election Commissioner)*, 2019 ABQB 938.

- Whether the contravention was deliberate;
- Whether the lobbyist derived any economic benefit from the contravention;
- Any efforts made by the lobbyist to report or correct the contravention;
- Whether a penalty is necessary for specific and general deterrence; and
- Any other factors that, in the Registrar's opinion or their delegate, are relevant to the administrative penalty.

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

[23] The lobbyist has no previous investigations for contraventions under the LRA. This was their first contravention, which weighs toward administering a lower penalty. On the question of the gravity and magnitude of the contravention under investigation, while the lobbyist entered into an undertaking to lobby on October 23, 2019, they did not register until February 3, 2020. This renders the lobbyist approximately four months late in submitting a registration. 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 file a return within 10 days after entering into an undertaking to lobby on behalf of their client. This is a solemn legal obligation. It reflects the legislative intent that while consultant lobbyists have a right to lobby, the public has the right to know about the lobbyist's 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 has 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 public's ability to know who is attempting to influence government at any point in time. In this case there was a four-month period where the public was not informed of the lobbyist's activity.

[25] The next factor I have considered is whether the contravention was deliberate. The consultant lobbyist failed to file a return within 10 days after entering into an undertaking to lobby on behalf of their client. I accept that the lobbyist understood their obligations under the LRA. The lobbyist shared that they realized (in October 2019) that registration would be required; yet they did not register until February 2020. I also note that the lobbyist admitted that any difficulty they had accessing sufficient financial information about their client in order to register was no excuse for their late filing. The lobbyist also admitted their late filing and cooperated with ORL staff to make the necessary corrections,

but again, this is not an excuse and does not take away from the fact that the contravention occurred.

[26] I must next consider whether the lobbyist derived any economic benefit from the contravention. While the lobbyist may have received the economic benefit of payment for lobbying, there is no evidence to suggest they obtained any economic benefit because of the contravention. I consider this to be a neutral factor.

[27] The lobbyist registered initially of their own accord. They also admitted the lateness of their registration when the ORL staff contacted them for additional information. It is in the lobbyist's favour that they promptly worked with ORL staff to identify the correct lobbying start date. This is a factor that warrants a penalty in the lower end of the range.

[28] I have identified previous investigation reports that are instructive, and their associated penalties. I have also considered whether any other factors are relevant in determining the appropriate administrative penalty.

[29] I have considered the lobbyist's specific circumstances and the additional information provided. I can appreciate that COVID-19 related court closures, adjournments and event cancellations impacted the lobbyist's ability to earn an income, and as a result, their ability to pay an administrative penalty. I recognize that the ability to pay is a factor to be considered; however, in my view it does not warrant substantial weight. For example, it does not outweigh other relevant factors such as whether an administrative penalty is necessary for specific or general deterrence. In this case, the lobbyist admitted that they knew registration was necessary approximately four months before registering. In addition, the time period relevant to this contravention occurred well before any COVID-19 related restrictions were imposed. Therefore, I do not consider this factor to be largely determinative with regard to the appropriate administrative penalty.

[30] In Investigation Report 19-01 (IR 19-01), the consultant lobbyist failed to file a return within 10 days after entering into an undertaking to lobby on behalf of their client. The registration was seven months late. This was the lobbyist's first contravention and they admitted that it was an oversight and misunderstanding on their part. The contravention of the legislation was not intentional. In IR 19-01, the lobbyist did not proactively notify the ORL of the contravention, but an ORL staff member brought the lateness of the registration to the lobbyist's attention. The lobbyist promptly began working with the ORL to identify the correct lobbying start date. The lobbyist received a \$700 penalty for that contravention.

[31] I have also considered Investigation Report 18-04 (IR 18-04), where the consultant lobbyist failed to file a return within 10 days after entering into an undertaking to lobby on behalf of their client. The registration was four months late. This was the lobbyist's first contravention and it was not intentional. They



stated that they take the registration responsibilities very seriously and that it was an oversight and misunderstanding on their part. Similar to IR 19-01, in IR 18-04 the lobbyist did not proactively notify the ORL of the contravention, but promptly began working with the ORL to identify the correct lobbying start date. The lobbyist received a \$500 penalty for the contravention.

[32] The penalty in this case is intended to reflect the lobbyist's delay of approximately four months in filing their return as a consultant lobbyist, and the fact that the lobbyist lobbied for a period of time without a publicly available return available at the ORL. I would note that it is in the lobbyist's favour that they registered of their own accord and worked cooperatively with ORL staff to correct the registration; otherwise the penalty could have been higher. Given the circumstances of this case and taking into consideration relevant investigation reports, I have assessed a penalty of \$500.

## CONCLUSION

1. Under s. 7.2(2) of the LRA, I find that the lobbyist contravened s. 3(1) of the LRA for submitting their return past 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 March 16, 2021.
4. If the lobbyist requests reconsideration under s. 7.3 of the LRA, they are 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)

Date: February 2, 2021

ORIGINAL SIGNED BY

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Janice Charnstrom, Investigator and  
Delegate of the Registrar of Lobbyists