

DETERMINATION DECISION 23-04

British Columbia Cattlemen's Association

Designated Filer: Kevin Boon

September 21, 2023

SUMMARY: The designated filer for the British Columbia Cattlemen's Association (BCCA) was found to have contravened sections 3(3), 4.1 and 2.4 of the *Lobbyists Transparency Act* (LTA). The designated filer received an administrative penalty totalling \$5,000 for the contraventions.

Statutes considered: *Lobbyists Transparency Act*, S.B.C. 2001, c. 42.

Authorities considered: Investigation Report 15-03, Investigation Report 17-05, and Investigation Report 20-02.

INTRODUCTION

[1] This report concerns an investigation under section 7.1 of the *Lobbyists Transparency Act* (LTA). This section gives the Registrar of Lobbyists (Registrar) the authority to conduct an investigation to determine compliance with the LTA or its regulations. If the Registrar or their delegate believes that the person under investigation has not complied with a provision of the LTA or its regulations, section 7.2 of the LTA requires the Registrar to give a person under investigation notice of the alleged contravention and the reasons why the Registrar believes that the contravention has occurred. Prior to making a determination under section 7.2(2), the Registrar must, under section 7.2(1)(b), give the person under investigation a reasonable opportunity to be heard respecting the alleged contravention.

[2] The LTA recognizes two types of lobbyists: consultant lobbyists and in-house lobbyists. This report focuses on the activities of the British Columbia Cattlemen's Association (BCCA), 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 or affiliate.

[3] Section 3(3) of the LTA sets out the date by which the designated filer of an organization must file a Registration Return (a return) with the Registrar, while section 4(1) outlines the information that must be contained in each return.

[4] Section 4.1 states that a designated filer who has filed a return under section 3, must file a Monthly Return containing the information required under 4.2(2) no later than 15 days after the end of every month, beginning with the month in which the return under section 3 is filed. Section 4.2(2) sets out the information that must be contained in each Monthly Return.

[5] Section 2.4 states that a lobbyist must not give or promise to give, directly or indirectly, any gift or other benefits to the public office holder the lobbyist is lobbying. This does not apply to a gift or other benefit noted at sections 2.4(2)(a) and (b).

[6] Under section 7(4)(d) of the LTA, the Registrar delegated to me the authority to conduct this investigation, make a decision about compliance and determine the appropriate penalties if appropriate.

ISSUES UNDER CONSIDERATION

[7] The issues for consideration are:

- (a) Whether the designated filer contravened section 3(3) of the LTA by filing the BCCA's Registration Return later than the legislated deadline.
- (b) Whether the designated filer contravened section 4.1 of the LTA by filing the BCCA's Monthly Return later than the legislated deadline.
- (c) Whether the designated filer contravened section 2.4 of the LTA when giving gifts to public office holders.
- (d) If the designated filer did not comply with the requirements of the LTA, what, if any, administrative penalty is or penalties are appropriate in the circumstances.

RELEVANT SECTIONS OF THE LTA

[8] **"designated filer"** means

- (a) a consultant lobbyist, or
- (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 the officer's functions, or
 - (ii) if there is no senior officer who receives payment, the most senior in-house lobbyist;

[9] **“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,
- (c) a person who is appointed to any office or body by or with the approval of the Lieutenant Governor in Council, other than a person appointed on the recommendation of the Legislative Assembly,
- (d) a person who is appointed to any office or body by or with the approval of a minister of the government of British Columbia, and
- (e) an officer, director or employee of any government corporation as defined in the [Financial Administration Act](#).

but does not include a judge or a justice of the peace;

[10] **“senior public office holder”** means an individual who

- (a) is a member of the Executive Council,
- (b) is employed, other than as administrative support staff, in the office of a member of the Executive Council,
- (c) is a member of the Legislative Assembly,
- (d) is employed, other than as administrative support staff, in the office of a member of the Legislative Assembly,
- (e) is a parliamentary secretary,
- (f) occupies a senior executive position in a ministry, whether by the title of deputy minister, chief executive officer or another title,
- (g) occupies the position of associate deputy minister, assistant deputy minister or a position of comparable rank in a ministry, or
- (h) occupies a prescribed position in a Provincial entity.

[11] **Requirement to file Registration Return**

3(3) The designated filer of an organization must file with the registrar, within 10 days of the date the organization first has an in-house lobbyist, a Registration Return in the prescribed form and manner and containing the information required by section 4.

[12] **Requirement to file Monthly Return**

4.1 A designated filer who has filed a Registration Return under section 3 must file with the registrar a Monthly Return, in the prescribed form and manner and containing the

information required under section 4.2(2), no later than 15 days after the end of every month, beginning with the month in which the Registration Return under section 3 is filed.

[13] **Form and content of Monthly Returns**

4.2(2) Each Monthly Return filed under section 4.1 must include the following information in relation to each lobbying activity carried on, as applicable:

- 4.2(2)(a) the name and position of the senior public office holder who was the object of the lobbying activity;
- 4.2(2)(b) the date of the lobbying activity;
- 4.2(2)(c) the names of the lobbyists who participated in the lobbying activity;
- 4.2(2)(d) particulars, including any prescribed particulars, to identify the subject matter of the lobbying activity.

[14] **Gift-giving prohibition**

2.4 (1) A lobbyist must not give or promise to give, directly or indirectly, any gift or other benefits to the public office holder the lobbyist is lobbying.

(2) Subsection (1) does not apply to a gift or other benefits if the following apply:

- (a) the gift or benefit is given or promised to be given under the protocol or social obligation that normally accompany the duties or responsibilities of office of the public office holder;
- (b) the total value of gifts or benefits described in paragraph (a) given or promised to be given, directly or indirectly, by the lobbyist to the public office holder in a 12-month period is less than a prescribed amount.

[15] **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,

[16] **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 a monetary administrative penalty of not more than \$25 000, and

(c) must give to the person notice

(i) if the registrar determines that the person has contravened a prescribed provision of this Act or the regulations, and the reason for the determination,

(ii) if a monetary administrative penalty is imposed, of the amount, the reason for the amount and the date by which the penalty must be paid,

...

(iv) respecting how the person may request reconsideration, under section 7.3, of the determination of contravention and, as applicable, the imposition or amount of the monetary administrative penalty or the imposition or duration of the administrative penalty of prohibition.

BACKGROUND

[17] This Determination Decision considers three potential contraventions under the LTA.

Preliminary background

[18] It came to the ORL's attention in November of 2018, that the BCCA may be engaged in lobbying activities. On November 13, 2018, the ORL sent the BCCA a letter and followed up with a call on November 16, 2018, to inform the BCCA of its obligations under the *Lobbyist Registration Act* (LRA), if it met the criteria for Registration. At that time, the BCCA committed to reviewing its lobbying activities and providing a response by January 7, 2019; however, no response was received.

[19] On February 7, 2019, the ORL received correspondence from the BCCA indicating it had spent 52 hours engaging in lobbying activity and therefore fell below the LRA's 100-hour threshold of permissible lobbying before Registration was required by an in-house lobbyist. The BCCA committed to tracking its meetings on an annual basis to determine if it was necessary for it to register.

[20] On May 4, 2020, amendments to the LRA and subsequent title change to the *Lobbyist Transparency Act* (LTA) came into force, including an amendment that removed the 100-hour threshold. In the lead up to May 4, 2020, the ORL contacted the BCCA on February 14, 2019, informing it that changes were coming to the LRA which would remove the 100-hour threshold and introduce a 50-hour threshold for organizations of six or fewer people. The ORL suggested that the BCCA sign up for updates from the ORL that were available to all lobbyists regarding changes to the Registry. On October 19, 2019, the BCCA created an account but did not register.

Transition Period

[21] Due to the COVID-19 pandemic, the Registrar introduced a transition period for lobbyists to meet their new reporting requirements under the amended legislation. The amendments came into force May 4, 2020; however, the transition period gave lobbyists until September 15, 2020, to make any necessary changes to existing Registration Returns or meet any requirements to file new Registration Returns. If these requirements were met, no further action would be taken with any compliance issue that arose between May 4, 2020, to September 15, 2020.¹

[22] If a consultant lobbyist or an organization failed to update their Registration Return, or to file a new Registration Return, on or before September 15, 2020, the ORL would consider whether to initiate a compliance investigation into any compliance issues that may have arisen from May 4, 2020, to September 15, 2020.

Section 3(3)

[23] On July 2021, it again came to the ORL's attention that the BCCA may be engaged in lobbying activities. On October 7, 2021, the ORL emailed a letter to the BCCA. In its October 19,

¹ Office of the Registrar of Lobbyists, April 2020, Volume 10, Issue 2. Influencing BC, Important dates to Remember. <https://www.lobbyistsregistrar.bc.ca/handlers/DocumentHandler.ashx?DocumentID=366>

2021, response, the BCCA acknowledged that it was required to submit a Registration Return and indicated it would finish registering as soon as possible.

[24] On December 9, 2021, the ORL contacted the BCCA to inform it that it had not received a Registration Return and requested an update on the status of its submission. Not receiving a response, the ORL contacted the BCCA again by email on January 25, 2022, following up on its previous correspondence. The ORL provided the BCCA with instructions on how to bring it into compliance with the LTA, including submitting a Registration Return and all outstanding Lobbying Activity Reports. It asked the BCCA to complete its Registration Return no later than February 1, 2022.

[25] On January 26, 2022, the BCCA submitted a Registration Return (8282-4384-1). The ORL informed the BCCA that some information needed correction. During the period between January 26 and February 7, 2022, the BCCA requested and received guidance from the ORL for making the necessary corrections to the Registration Return. On February 8, 2022, the BCCA submitted the Registration Return with the necessary corrections and the ORL activated the Registration Return the same day.

[26] In relation to filing its Registration Return, the BCCA filed its Monthly Return on February 16, 2022, which included details of its lobbying activities. The BCCA lobbied senior public office holders (SPOH) on July 10, 2020, and, in 2021, January 28, March 16, May 18, July 3, August 2, August 16, and three SPOHs on October 28, of 2021. Based on the BCCA's reported lobbying activity of July 10, 2020, it was required to file a Registration Return under section 3(3) of the LTA no later than September 15, 2020, taking the Registrar's transition period into consideration (without the transition period it would have been August 15, 2020).

Section 4.1

[27] After the BCCA submitted its Registration Return on January 26, 2022, it was required to submit its Monthly Return containing its lobbying activities no later than February 15, 2022. On February 16, 2022, the BCCA submitted Monthly Returns for unreported lobbying activity it conducted between July 10, 2020, and October 28, 2021. The Monthly Returns conveyed that the BCCA had lobbied SPOHs on 10 occasions during this period, requiring it to submit seven Monthly Returns (three SPOHs were lobbied on October 28, 2021). All Monthly Returns were filed late.

Section 2.4

[28] The BCCA reported in the Lobbyists Registry that it gave gifts valued at \$59.35 each to six public officer holders on January 18, 2021. The gifts were shirts with the logo of a newly formed company, BC Beef Producers, Inc. The BCCA reported lobbying only one of the recipients, the then Minister of Agriculture, Food and Fisheries (the Minister). That lobbying

occurred on three separate occasions: January 28, 2021, March 16, 2021, and October 28, 2021.

[29] As the Minister is the only public office holder the designated filer reports lobbying, that is the only gift where a potential for contravention exists. Therefore, this is the only one within scope of this investigation.

INVESTIGATION

[30] The ORL commenced an investigation under s. 7.1 of the LTA to determine whether the designated filer had complied with sections 3(3), 4.1 and 2.4 of the LTA.

[31] On June 7, 2022, I provided the designated filer with formal notice under section 7.2(1)(a) of the LTA, outlining the basis for the allegation that the BCCA had contravened sections 3(3), (4.1) and 2.4 of the LTA. I asked the designated filer to respond in writing to the alleged contraventions and to provide any information or documentation pertinent to the contravention and any potential penalties.

[32] On July 7, 2022, the designated filer responded to the section 7.2(1)(a) notice. The designated filer provided the following explanations regarding the alleged contraventions.

Registration Return section 3(3) of the LTA

[33] The designated filer stated that as a small non-profit organization, the BCCA did not consider themselves to be lobbyists and when contacted by the ORL in 2018, it took time to review the activities that took place over the previous 12 months. While they said that the review took longer than expected, the BCCA concluded that it fell well below the 100-hour maximum, barely exceeding 50 hours of lobbying.

[34] The designated filer recalls creating an account in the Registry at that time but is uncertain as to why the Registration Return was not completed. They presume it was largely due to the need to gather more information and not prioritizing it because the BCCA's lobbying hours were estimated to fall below the maximum hours. The designated filer stated that the onset of COVID changed how they did business and, as they did not do a lot of lobbying, they did not understand the importance of completing the Registration Return until they were contacted again by the ORL in the fall of 2021.

[35] The designated filer stated that they take responsibility for not keeping up to date with the amendments to the LTA and explained that there were personal circumstances during the period between the October 7, 2021, (the date the letter was received letter from the ORL) and completing the registration process on February 8, 2022 that impacted their ability to do so. I have taken those circumstances into consideration and, as the time period is short, it is not

significant in relation to the length of contravention. Therefore, it has no impact on my determinations in this matter.

Monthly Returns s. 4.1 of the LTA

[36] The designated filer acknowledged that filing the Registration Return late led to the late filing of the Monthly Returns. They stated that a lack of understanding of the need to be registered made them unaware of the need to file Monthly Returns. They indicated that filing the Monthly Returns late can be attributed to having a small number of staff members representing a large sector of agriculture and always operating in a time deficit. They also indicated that they found the Lobbyists Registry to be confusing to navigate, especially the first time through. They stated that time deficits coupled with complex and confusing processes meant that they often had to put things to the side to deal with when time permitted, which they said was not often.

Gift-giving prohibition section 2.4 of the LTA

[37] The designated filer stated that the BCCA administers programs and funds as a third party for interests that will help to advance or promote the beef industry in BC. They said that in 2010, the BCCA began working with beef producers to help facilitate the development of a branded beef product in BC for British Columbians. The designated filer explained that during the decade between 2010 and 2021, the Ministry of Agriculture and its staff were helpful in providing guidance about available programs and incentives that helped get the brand started.

[38] The designated filer stated that in January 2021, a new company named BC Beef Producers Inc. was formed and the brand “Genuine BC Beef” was created. They stated that the gifts were given to commemorate this milestone and were not connected to lobbying efforts. While unsure if the gifts should be reported, they believed it was best to be transparent. They stated it was not the BCCA giving the gifts, but BC Beef Producers Inc, a company the BCCA helped to develop.

[39] The designated filer stated that they do not believe they are in contravention of the gift-giving prohibition as outlined in section 2.4 of the LTA. They say that the gifts were given mainly to staff and only one public office holder that they lobbied. Additionally, they said the gifts were under the \$100 allowable amount and were not given in relation to any lobbying effort but in recognition of an achievement by the industry that they were proud to celebrate.

[40] With regard to the BCCA’s reference to staff versus public office holders, it is important to note that the definition of a public office holder includes “an officer or employee of the government of British Columbia,” as indicated above. Based on my investigation, each of the recipients the BCCA reported giving gifts to meets the definition of a public office holder.

[41] To clarify the context surrounding the gift giving, I wrote to the designated filer requesting additional information. Specifically, I asked the BCCA to clarify if they lobbied any of the other five gift recipients (other than the Minister) and if the gifts were from the BCCA or the BC Beef Producers Inc., as stated. I also asked if the gifts were given to the public office holders at a scheduled event and, if so, did any of the public officer holders have any official role(s) at the event.

[42] The designated filer informed me that the gifts were given by the BCCA on behalf of the newly formed BC Beef Producers, Inc., and that the gifts were sent through the mail by the BCCA to the public office holders without any public or special event. Additionally, as there was no event, none of the public office holders participated in an event in any official capacity. BCCA also told me that the gifts were given as unique tokens of appreciation and did not represent any requests to change or influence anything that was not already in place. The BCCA indicated that the gifts were not given within the context of any lobbying activity, that they did not lobby any of the other five recipients, and I accept this.

DISCUSSION AND FINDINGS

Registration Return section 3(3) of the LTA

[43] As previously noted, the ORL contacted the BCCA on several occasions between November 2018 and October 2021, when it became aware that the BCCA may be engaged in lobbying activities. The purpose of the ORL's contact was to educate the BCCA about compliance with the LRA, and subsequently, the LTA, as it was referred to after the amendments came into force on May 4, 2020. ORL staff were available to provide the BCCA with assistance, if needed.

[44] As noted, the designated filer recalls creating an account but is uncertain as to why the Registration Return was not completed. They presume it was largely due to the need to gather more information and did not prioritize it because they said their lobbying hours were estimated to fall well below the maximum hours of the LRA. The BCCA stated that it did not realize the importance of completing the Registration Return until they were contacted again by the ORL in the fall of 2021.

[45] I have carefully considered the BCCA's submissions and note that the ORL contacted the BCCA on February 14, 2019, informing them that changes were coming to the LRA which would remove the 100-hour threshold and introduce a 50-hour threshold for organizations of six or fewer people. The ORL even suggested that the BCCA sign up for updates regarding upcoming changes to the Registry so that they would be informed about the reporting requirements. Regardless, it is the BCCA's responsibility to stay up to date with their responsibilities under the legislation. They had every opportunity to do so.

[46] Based on the BCCA's reported July 10, 2020, lobbying activity, the designated filer was required to file a Registration Return by July 20, 2020. As this date falls within the transition period noted previously, the designated filer had until September 15, 2020, at the latest, to file their Registration Return for their July 10, 2020, lobbying. The designated filer submitted the Registration Return on January 26, 2022, approximately 16 months later than required by the LTA. I find that the BCCA contravened section 3(3) of the LTA when they did not submit a Registration Return by the legislated deadline.

Monthly Return section 4.1 of LTA

[47] The requirement to file Monthly Returns and report lobbying activity is central to the transparency in lobbying purpose of the LTA. Section 4.1 of the LTA states that the date of filing a Monthly Return is counted from when a Registration Return is filed:

A designated filer who has filed a Registration Return under section 3 must file with the registrar a Monthly Return, in the prescribed form and manner and containing the information required under section 4.2(2), no later than 15 days after the end of every month, beginning with the month in which the Registration Return under section 3 is filed.

In cases where the Registration Return is filed late, it would offend the purpose of the LTA to say that a lobbyist could be engaged in lobbying activity for an extended period and would not have also been required to file a Monthly Return until they have filed a Registration Return. Any interpretation of the requirement in section 4.1 must be consistent with the overall purpose of the LTA for transparency and timely reporting of lobbying activities.

[48] The designated filer submitted a Monthly Return on February 16, 2022, one day later than the February 15, 2022, due date. The designated filer acknowledged that filing the Registration Return late led to the late filing of the Monthly Returns. As previously stated, the Monthly Returns convey that the BCCA lobbied SPOHs on 10 occasions between July 10, 2020, and October 28, 2021, and all Monthly Returns were filed late. The table below illustrates the lateness of BCCAs reporting.

Lobbying Activity	Late Y = Yes N = No	Lobbying Activity Date	Monthly Return Due Date	Submitted Monthly Return	Months Late
1 ²	Y	2020-07-10	2020-08-15 (2020-09-15 under transition period)	2022-02-16	17
2	Y	2021-01-28	2021-02-15	2022-02-16	12

² Taking the transition period into consideration, the due date for reporting this lobbying activity would have been September 15, 2020, making the reporting of it 17 months late.

3	Y	2021-03-16	2021-04-15	2022-02-16	10
4	Y	2021-05-18	2021-06-15	2022-02-16	8
5	Y	2021-07-03	2021-08-15	2022-02-16	6
6	Y	2021-08-04	2021-09-15	2022-02-16	5
7	Y	2021-08-16	2021-09-15	2022-02-16	5
8	Y	2021-10-28	2021-11-15	2022-02-16	3
9	Y	2021-10-28	2021-11-15	2022-02-16	3
10	Y	2021-10-28	2021-11-15	2022-02-16	3

[49] The BCCA attributes its late filing to a lack of understanding of the need to be registered and operating in a time deficit. They found the Lobbyists Registry to be confusing to navigate, especially the first time through, even though the ORL had made it clear it was available for assistance.

[50] Filing a Monthly Return one day late can be minor or trivial, such that the Registrar would exercise discretion to decline to investigate it as a contravention. However, in this circumstance, one day late is not just one day late when taking the totality of the circumstances into consideration. The BCCA's late filing is not minor and for that reason I find it to be a contravention of section 4.1 of the LTA.

Gift-giving prohibition section. 2.4 of the LTA

[51] The designated filer's submissions state that the gift was given to the public office holder to commemorate a milestone, without any public or special event but sent through the mail, and as the gift was under the \$100 allowable limit, section 2.4 of the LTA was not contravened.

[52] Under the LTA, gifts are considered to be anything of value given or promised for free or at a reduced rate including tangible items such as art and jewelry. The shirt given by the BCCA to the Minister is a gift by definition and this fact is not disputed.

[53] Section 2.4 of the LTA creates a general prohibition of gift-giving by lobbyists to public officer holders they are lobbying. There is an exception to this prohibition and, for it to apply, there are two conditions, both of which must be met. First, the gift must be given under the protocol or social obligations that normally accompany the duties or responsibilities of the office of the public office holder. Second, the total combined value of gifts must be less than \$100 over a 12-month period. As the value the shirt was under \$100, the issue in front of me is whether this gift was given under the protocol or social obligations that normally accompany the duties or responsibilities of the office of the public office holder.

[54] The acceptability of a gift is limited to circumstances where the lobbyist was engaging with the public office holders while they were performing the duties and responsibilities of

their official roles. This would include responsibilities that fall within the office holders job description or those that are understood to be part of their office's role. Gifts must also be given under the protocol or social obligations that normally accompany such duties or responsibilities. For clarity, protocol is defined as a rule or practice of proper diplomatic etiquette that cultural or societal groups observe when engaging with one another. Social obligation is defined as a courtesy or kindness compelled by the unwritten rules of human relationships.³

[55] Gifts should be reasonable and not out of the ordinary or disproportionate to the protocol or social obligation in question. This gets at the essence of what "normally accompany" means. For example, if a public office holder were to be invited to give a short speech at the opening of an event, an appropriate gift may be a beverage and a snack at the event or perhaps a modestly priced notebook. In my view, both examples would likely "normally accompany" the public office holder's duties and be proportional to the protocol or social obligation of such an event.

[56] In this circumstance, the Minister did not attend an event, such as a speaking engagement, conference, reception, or celebratory event that they may be required or invited to attend as part of their duties or responsibilities. At the time the gift was given, the lobbyist was not engaging with the public office holder while they performed the duties and responsibilities of their official role. Rather, the gift was sent through the mail and given to commemorate a milestone. In this case, no protocol or social obligation existed and therefore no gift would be appropriate.

[57] Having considered the requirements of 2.4(2) and all the information before me, I find that the BCCA contravened section 2.4 of the LTA by giving the Minister, a public office holder that they lobby, a gift.

ADMINISTRATIVE PENALTY

[58] Section 7.2(2) of the LTA 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 the Act or the regulation, 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.

[59] 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".

³ See Lobbyist Gifts and Other Benefits, June 14, 2023:

<https://www.lobbyistsregistrar.bc.ca/handlers/DocumentHandler.ashx?DocumentID=345>

[60] Section 7.2 of the LTA confers discretion on the Registrar to impose administrative penalties. To provide a measure of structure in the exercise of that discretion, the ORL has published a guidance document “Registrar of Lobbyists: Guide to Investigations” (guide to investigations) to advise members of the public and those engaged in lobbying about what will guide the ORL in exercising its duties under the LTA and the regulations. As the policy makes clear, its purpose is to structure discretion. It does not fetter discretion; it provides a consistent framework so lobbyists can have some certainty about the exercise of discretion. It is not law. I have considered that guidance in the exercise of my delegated discretion to determine a penalty based on the facts before me.

[61] The guide to investigations 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.”

[62] 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;
- Whether the contravention was deliberate;
- Whether the registrant derived any economic benefit from the contravention;
- Any efforts made by the registrant to report or correct the contravention;
- Whether a penalty is necessary for specific and general deterrence; and
- Any other factors that, in the opinion of the registrar or their delegate, are relevant to the administrative penalty.

[63] I have considered these factors and the submissions made by the designated filer.

Registration Returns s. 3(3) of the LTA

[64] Based on the date of their July 10, 2020, lobbying activity and taking the transition period into consideration, the designated filer was required to file a Registration Return by September 15, 2020. The designated filer filed the Registration Return on January 26, 2022, approximately 16 months late.

[65] The failure to file a Registration Return in a timely manner undermines the LTA's goal of transparency because it prevents the public from knowing who is attempting to influence government at any point in time. The designated filer is required to disclose accurate, current, and complete information about the organization's lobbying activities. The 10-day time limit is not optional or arbitrary, it is connected to the public's right to know the information set out in section 4 of the LTA and to have it in a timely manner. In this case, the public was unaware of information they had a legal right to know for almost 16 months.

[66] In light of the lack of transparency and considering the length of time between the due date and date the Registration Return was filed, I consider this contravention to be serious, weighing in favour of a higher penalty. In my view, the designated filer was provided with ample opportunity and time to review and evaluate the BCCA's need to register and report its lobbying activities. The ORL contacted the BCCA on three separate occasions under the LTA, in an effort to establish whether the BCCA's was engaged in lobbying activities, whether the LTA required those activities to be reported, and to provide any necessary information or assistance to aid registration and reporting, if required. While I understand that there was some initial uncertainty as to whether the BCCA should be registered when the reporting requirements were different under the LRA, the ORL contacted the BCCA to inform it that changes were coming that may affect the reporting requirements. Ultimately, it was the BCCA's responsibility to stay up to date with the LRA and subsequent LTA reporting requirements.

[67] In my view, there was more than sufficient time and opportunity for the BCCA to review its lobbying activities, request assistance or information from the ORL and file a Registration Return on time.

[68] I considered and rejected the idea that this is a circumstance where no penalty is appropriate. The provision on Registration Returns in the LTA and its predecessor the LRA have been in place since April 2010. Designated filers are responsible for their obligations under the statute. A penalty in this circumstance is appropriate for the purpose of encouraging the designated filer to take their obligations under the LTA seriously and to remind all designated filers of their legal obligations in keeping registrations current and accurate.

[69] I am not aware of any previous contraventions or warnings under the LTA or the LRA for the BCCA. I consider this to be a factor that weighs in favour of a lower penalty. However, an additional factor that bears considering here is a knock-on or compounding effect that filing the Registration Return 16 months late has had. It has meant that all lobbying activities of the BCCA were also reported late and therefore kept out of view from the public for a lengthy period of

time. I find this to be very serious and in direct contradiction of the LTA's intention. In my view, this supports a penalty on the higher end of the scale.

[70] I have no information that leads me to believe it derived an economic benefit as a result of the contravention. This is a factor that if there had been evidence that the BCCA had derived an economic benefit, it may also weigh in favour of a higher penalty. As this is not the case, I also find this to be a neutral factor.

[71] In considering whether this contravention was deliberate, I do not have information before me to suggest that the BCCA consciously took calculated steps to avoid filing a Registration Return and thereby avoid reporting its lobbying activity for the public to see. I consider this to be a neutral factor.

[72] The BCCA was not proactive in reporting its lobbying activity and it was not until after repeated contact from ORL staff that it took action, even after being informed about the changes to the legislation effective May 2020. Each instance of lobbying was a reminder to register and report that the designated filer did not act on. It is the BCCA's lack of action to prioritize its responsibility to file a Registration Return that adds to the seriousness of this contravention. As previously noted, it is the responsibility of lobbyists to carry out their responsibilities under the LTA. The fact that the BCCA did not work to correct its registration information even as it received notifications from the ORL to keep its registration up to date, weighs in favour of a higher penalty.

[73] The suggested penalty found in the guide to investigations for registering late is between \$100 and \$5,000 for the first instance of non-compliance. I have considered the following previous decision in assessing an appropriate penalty.

[74] In Investigation Report (IR-15-03), the designated filer was fined \$1,000 for the filing of a Registration Return six weeks late. The designated filer's reason for the late filing is stated as accidental and arose as a result of a "technical misunderstanding." In that case, the ORL had corresponded with the designated filer on several occasions to remind them of their filing obligations. The investigator found the designated filer was aware of their obligations and could have filed the Registration Return on time.

[75] In IR 17-05, the designated filer was fined \$1,500 for filing their Registration Return 14 months late, despite a courtesy email reminder from the ORL. In that case, the designated filer attributed the late filing to human error and oversight.

[76] In IR 20-20, a consultant lobbyist was fined \$3,500 for failing to declare their status as a former public office holder in 13 client registrations over a period of six years. In that case, the lobbyist entered inaccurate information, which did not allow the public to judge whether they were able to exploit insider knowledge or influence government decision-making. The lobbyist admitted the errors, indicating that they mistakenly assumed that the definition of public office holder only applied to elected officials and corrected the errors in the Registry within two days. This contravention was found by the ORL when the lobbyist submitted an update to a registration on behalf of a client.

[77] This case bares some similarity to the first two investigations (IR 15-03 and IR 17-05) in that there is some stated misunderstanding or at least a perceived misunderstanding about the requirement to file a Registration Return. On the other hand, in this case, there is also evidence that the ORL took steps to communicate with and remind the designated filer of their responsibility to file a Registration Return and report their lobbying activity.

[78] There is another important distinction of note. Neither IR 15-03 nor IR 17-05 considered how many lobbying activities were impacted as a result of filing late Registration Returns. This is because lobbying activities were not required to be filed prior to May 4, 2020 (when the LTA came into affect) and those decision preceded that date. In fact, no other previous investigations looked at the impact of filing a late Registration Return on the timing of Lobbying Activity Reports being submitted. This underscores the severity of this issue. In my view, this supports a penalty on the higher side of the scale.

[79] IR 20-20 involves significant reporting inaccuracies which I find to be on a somewhat similar level to this case. However, in that case, when the consultant lobbyist was made aware of the inaccuracies in the Registry, they took steps to correct them within two days. In this case, it took repeated contact with ORL staff to get the designated filer to review the BCCA's lobbying activities and file a Registration Return that in the end was approximately 16 months late.

[80] In considering all of the above factors, I impose a penalty of \$4,000.

Section 4.1 of the LTA

[81] Based on the date of their January 26, 2022, filing of a Registration Return, the designated filer was required to file their monthly return by February 15, 2022. The designated filer filed the Monthly Return on February 16, 2022, one day late in relation to when their Registration Return was actually filed.

[82] This was the BCCA's first contravention, and I do not have evidence before me to suggest that it realized an economic benefit from reporting late.

[83] In considering whether the BCCA acted deliberately, again, I do not have information before me to suggest that it actively took steps to avoid filing its monthly return on time.

[84] The duration of the contravention is minimal and when considered on its own, the gravity of this contravention is not serious and would not necessarily warrant a penalty. As noted, this case presents a unique circumstance in which the late filing of its Registration Return has had a direct impact on the BCCA's lack of timely reporting of its lobbying activities and in my view, this cannot go without comment. I cannot emphasize enough the importance of reporting lobbying activity in accordance with the provisions of the LTA. However, as I have already considered, the knock-on affect this has had under section 3(3), a further penalty here would not be appropriate.

[85] While I have found the BCCA to have contravened section 4.1 of the LTA, I do not impose a financial penalty for this first contravention.

Gift-giving prohibition s. 2.4 of the LTA

[86] The gift given to the public office holder was given in contravention of section 2.4 of the LTA and valued at \$59.35. As previously stated, the designated filer believed that if the gift was under the prescribed \$100, no contravention existed and reported the gift for the sake of transparency. It is important to note that section 4.2(2)(g) makes it clear that reporting gifts, promised or given, is not voluntary, but a mandatory reporting requirement.

[87] I considered and rejected the idea that this is a circumstance where no penalty is appropriate. A penalty in this circumstance is appropriate for the purpose of deterrence and encouraging all designated filers to be aware of the LTA's gift-giving prohibition and the narrow exceptions to the statute.

[88] This is the designated filer's first contravention under section 2.4. The gift was reportedly given to commemorate a milestone achievement several years in the making. While it can be difficult to determine the significance public office holders place on gifts received from lobbyists and the potential favour or influence that could result, to my knowledge the contravention did not result in any economic benefit for the BCCA. Both factors, in my view, support a penalty on the lower end of the scale.

[89] The BCCA reported the gift; however, only after several points of contact with ORL staff over a 16-month period, regarding other reporting requirements under the LTA. The public was unaware that such a gift had been given for more than a year. In my view, this weighs in favour of a more moderate level penalty.

[90] I now consider the gravity and magnitude of this contravention. The presence of a gift prohibition at section 2.4 of the LTA tells us that the Legislature considered the potential for the undue influence gifts and other benefits could have on POHs. Any gifts that do not meet the two-part limited exceptions test set out at section 2.4(2), fall squarely into the area of undue influence. Even if a gift does not result in influencing a POH, the perception that it may do so could undermine the integrity of the government and its POHs. Sending POHs gifts to

commemorate events or to convey appreciation for assistance has the potential to be influential on a large scale, regardless of the type and market value of the gift. In this case, I have not directly considered the \$59.35 value of the gift because the first part of the test at section 2.4(2)(a) was not satisfied; however, I do not consider the type of gift to be particularly influential, but the context in which it was given could be. In my view, this supports a penalty on the low to moderate end of the scale.

[91] When considering whether this contravention was deliberate, I considered the designated filer's belief that section 2.4 of the LTA was not contravened because the gift was under the \$100 allowable limit. In my view, this does not demonstrate a deliberateness or intention to contravene the Act, but rather a circumstance where the designated filer gave the gift without careful consideration and understanding of the LTA. Still, the responsibility rests with the lobbyist and ORL staff are available to assist. All things considered, this weighs in favour of a low to moderate penalty.

[92] The suggested penalty in the guide to investigations for giving or promising a prohibited gift is between \$1,000 and \$ 7,500. I have considered the aforementioned factors and impose a penalty of \$1,000 for contravening section 2.4 of the LTA. This penalty is on the lower end of the scale, and I find it appropriate in these circumstances.

CONCLUSION

1. Under s. 7.2(2) of the LTA, I find that:

- i. The designated filer contravened section 3(3) of the LTA when they failed to submit a Registration Return within 10 days of lobbying conducted by an in-house lobbyist. The notice of allegation has been substantiated.
- ii. The designated filer contravened section 4.1 of the LTA by failing to submit their Monthly Return by the legislated due date. The notice of allegation contravention has been substantiated.
- iii. The designated filer contravened section 2.4 of the LTA by giving prohibited gifts. The notice of allegation is substantiated.

2. I impose the following administrative penalties for the reasons set out above:

- i. \$4,000 for contravening section 3(3) of the LTA;
- ii. \$0 for contravening section 4.1 of the LTA; and
- iii. \$1,000 for contravening section 2.4 of the LTA.

3. The designated filer must pay the \$5,000 amount for the penalties no later than **November 2, 2023**.

4. If the designated filer requests reconsideration under s. 7.3 of the LTA, 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

Date: September 21, 2023

ORIGINAL SIGNED BY

Nanci Bond, Investigator and
Delegate of the Registrar of Lobbyists