

DETERMINATION DECISION 24-01

Canadian Union of Public Employees – British Columbia Division

Designated Filer: Karen Ranalletta

Date: February 14, 2024

SUMMARY: Canadian Union of Public Employees – British Columbia Division (CUPE BC) gave a gift to public office holders (POHs) attending the 2022 BC Annual Convention Welcome Reception. Gifts are prohibited under section 2.4(1) of the *Lobbyists Transparency Act* (LTA), unless the exception under s. 2.4(2) of the LTA applies. A compliance investigation was opened to determine if CUPE BC was in contravention of s. 2.4(1) of the LTA. The outcome of the investigation concluded the gift was not prohibited, since CUPE BC's gift was excepted under s. 2.4(2) of LTA.

Statues considered: *Lobbyists Transparency Act*, S.B.C. 2001, c. 42., *Lobbyists Transparency Regulation*, BC Reg 108/2023.

INTRODUCTION

[1] This report concerns an investigation under s. 7.1 of the LTA. This section gives the Registrar of Lobbyists (the Registrar) the authority to conduct an investigation to determine compliance with the LTA or its regulations. If the Registrar or delegate believes that the person under investigation has not complied with a provision of the LTA or its regulations, s. 7.2 of the LTA requires the Registrar to give a person under investigation notice of the alleged contravention and the reasons for the Registrar's belief that the contravention has occurred. Prior to making a determination under s. 7.2(2) of the LTA, 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 LTA recognizes two types of lobbyists: consultant lobbyists and in-house lobbyists. This report focuses on the activities of CUPE BC, 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] Under s. 7(4)(d) of the LTA, the Registrar has delegated to me the authority to conduct this investigation.

ISSUES UNDER CONSIDERATION

[4] The issues for consideration are:

- (a) Whether the designated filer contravened s. 2.4 of the LTA when they gave a gift directly to POHs CUPE BC was lobbying; and
- (b) 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

[5] **"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;

[6] **"lobby"**, subject to section 2 (2), means

- (a) 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) to arrange a meeting between a public office holder and any other individual for the purpose of attempting to influence any of the matters referred to in paragraph (a) of this definition;

(c) [Repealed 2018-52-2.]

[7] **"lobbying activity"**

means any of the activities described in paragraphs (a) and (b) of the definition of "lobby";

[8] **"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;

[9] **"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;

[10] **Gift-giving prohibition**

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

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

(a) the gift or benefit is given or promised to be given under the protocol or social obligations 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.

[11] **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.

[12] **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:

...

(g) if a lobbyist named in the monthly return gave or promised to give a gift or other benefit to a public office holder, the name of the public office holder, a description of the gift or benefit, the value of the gift or benefit and the circumstances under which the gift or benefit was given and accepted or promised to be given;

[13] **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,

[14] **Hearing and administrative penalty**

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

- (a) give notice to the person
 - (i) of the alleged contravention,
 - (ii) of the reasons why the registrar believes there has been a contravention, and
 - (iii) respecting how the person may exercise an opportunity to be heard under paragraph (b) of this subsection, and
- (b) give the person a reasonable opportunity to be heard respecting the alleged contravention.

(2) If after giving a person under investigation a reasonable opportunity to be heard respecting an alleged contravention the registrar determines that the person has not complied with a prescribed provision of this Act or the regulations, the registrar

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

[15] Other reports of investigations

7.9 (1) This section applies if

(a) the registrar refuses to investigate, ceases an investigation or suspends an investigation under section 7.1, or

(b) after an investigation or a hearing, as applicable, the registrar believes or determines that a person under investigation has complied with this Act and the regulations.

(2) The registrar may

(a) make a report of the registrar's findings and conclusions and reasons for those conclusions in respect of a matter referred to in subsection (1), and

(b) if the register considers it to be in the public interest, make the report publicly available.

Relevant section in the Lobbyists Transparency Regulation**[16] Prescribed amount for gift-giving prohibition**

6 For the purposes of section 2.4(2)(b) [*gift-giving prohibition*] of the Act, the prescribed amount is \$100.

BACKGROUND

[17] On May 4, 2022, CUPE BC contacted the Office of the Registrar of Lobbyists for British Columbia (ORL) with questions pertaining to the gift giving prohibition under s. 2.4 of the LTA.

[18] After CUPE BC's discussion with the ORL Registry Officer on May 5, 2022, CUPE BC submitted an update to its Registration Return on May 9, 2022, identifying POHs it provided a gift to, in the form of modest appetizers and one drink ticket, at its Annual Convention Welcome Reception.

[19] On May 10, 2022, the ORL Registry Officer requested a breakdown of the amount of the gift to determine the value of the gift per person. CUPE BC provided the cost breakdown on May 11, 2022. It divided the costs of the venue, service, food and refreshments by the number of guests who were expected to attend, arriving at a total of \$76.26 per person.

[20] On May 11, 2022, CUPE BC realized it made an error in its calculation, and that the correct cost per person was \$69.97. CUPE BC corrected and resubmitted its Registration Return.

INVESTIGATION

[21] The ORL commenced an investigation under s. 7.1 of the LTA to determine whether the designated filer had contravened s. 2.4 of the LTA.

[22] On July 12, 2022, the designated filer, Karen Ranalletta, was provided formal notice under s. 7.2(1)(a) of the LTA, outlining the basis for the allegations that CUPE BC had contravened s. 2.4 of the LTA. I invited the designated filer to respond in writing with any information or documentation pertinent to the alleged contravention and any potential penalty.

[23] On July 20, 2022, counsel for CUPE BC (Counsel), asked for clarification on the contraventions the ORL was investigating.

[24] On July 25, 2022, I responded to Counsel, informing Counsel that I was not convinced the gifts were given “...under the protocol or social obligations that would normally accompany the duties of the POH.” Furthermore, I informed CUPE BC that I did not have any information that the total amount of the gifts given or promised to each of the POHs CUPE BC was lobbying was below \$100 in a 12-month period. I informed Counsel that, absent proof to the contrary, I believed CUPE BC had contravened s. 2.4(1) of the LTA.

CUPE BC's Response

[25] On August 25, 2022, counsel provided a response. The event was described as the CUPE BC Annual Convention Welcome Reception. Attendees were offered self-serve food and refreshments. One drink ticket was available to attendees.

[26] CUPE BC was required to use the venue's food and beverage services, therefore, the venue set the price for these services.

[27] The value was split amongst the total number of guests expected to attend. Counsel submits “the amount, type and value of food and drink was modest and reasonable in the circumstances.” The price of the gift did not exceed the \$100 limit. Furthermore, counsel notes CUPE BC had not given or promised any other gifts to the POHs attending the reception within the preceding 12 months.

[28] Counsel submits CUPE BC consists of over 100,000 public sector employees, involving more than 160 locals across British Columbia representing a diverse collection of public bodies, organizations and institutions. Counsel points out that “[M]ost of CUPE BC's members work for employers who are either publicly elected or publicly appointed.”

[29] The convention is a democratic forum where union members receive union-wide reports on union affairs, finances and budgets, elect executive officers, debate and vote on

policy and priorities, and where there is generally a “...healthy deliberative exchange of information and ideas.”

[30] The invitation was sent to the NDP Caucus Whip’s office for distribution to MLAs and senior political staffers. The invitation comprised only of an invitation to the convention welcome reception; it did not promise a gift, the modest appetizers and drink, to potential attendees. The invitation included MLAs and POHs who had been lobbied by CUPE BC as well as those who had not been lobbied.

[31] The invitation was distributed widely, to approximately 1000 individuals. Other individuals invited included: “CUPE staff, honorary life members, non-affiliated locals, Convention guest speakers, guest executives and representatives from other unions not constitutionally affiliated with CUPE BC, and special VIPs like legacy members.”

[32] The convention welcome reception was an opportunity for union members, constituents, from across the province to interact with POHs to engage in a free-flowing dialogue on priority issues and matters of concern. Counsel points out that:

There is immense value in providing public representatives with information on labour and working conditions, so that they may engage with these issues and act upon them in an informed manner. This information-deliberation-action cycle is precisely the type of social process which underlies a healthy and thriving democracy. It would be illogical to hold that it is improper for MLAs to participate in this process or that it is outside the scope of their duties.

[33] Counsel points out that creating an understanding of labour issues assists POHs in public policy endeavours.

[34] Counsel draws on extracts from both the Office of the Conflict of Interest Commissioner’s (OCIC) *Guide to Gifts and Personal Benefits*¹ and the ORL’s *Guide to Gifts* under the section “Hospitality,”² which speak to the protocol or social obligations that normally accompany the duties or responsibilities of the office of a POH.

[35] Counsel directed me to an example in the OCIC’s *Guide to Gifts and Personal Benefits* where a trade union invites MLAs to a reception where refreshments and alcohol are served.³ Counsel points to an excerpt from the guide where it states:

¹ Office of the Conflict of Interest Commissioner, “*Guide to Gifts and Personal Benefits*,” June 2020. <https://coibc.ca/wp-content/uploads/2020/06/Gift-Guide-June-for-website.pdf>

² This guide has been revised by the *Lobbyist Gifts and Other Benefits*, June 14, 2023. <https://www.lobbyistsregistrar.bc.ca/handlers/DocumentHandler.ashx?DocumentID=345>.

³ *Supra*, note 1.

Members' duties include meeting with constituents and stakeholder groups to better understand their concerns. Invitations to events intended to raise awareness of issues where standard hospitality is provided and are widely attended are generally acceptable (pg. 9).

Counsel provided an excerpt from the ORL guidance on *Guide to Gifts*, under the section "Hospitality," noting that:

Widely-issued invitations to receptions or luncheons intended to raise awareness of issues are generally acceptable because the duties of public office holders include communicating with stakeholder groups to understand their concerns (pg. 3).

[36] Counsel submits that the context of the CUPE BC Annual Convention Welcome Convention is similar to that in the examples above. Therefore, counsel argues "[t]hese factors place the reception within the acceptable exception contemplated by the LTA."

[37] Counsel notes that although the guidelines are not binding, they are here to provide guidance to POHs to ensure they comply with the legislation. Counsel argues, to come to an alternative conclusion would bring the LTA into conflict with the *Conflict of Interest Act* (CIA). In other words, the circumstances would be acceptable under the CIA, but not the LTA. Counsel states:

In accordance with the generally accepted rules of statutory interpretation, statutes should be interpreted in a way that intertwines legislation as opposed to creating conflicting interpretation. The starting presumption in statutory interpretation is that the Legislature strives for its legislation to speak with one consistent, harmonious voice.

The purpose of both the *LTA* and the *Members' Conflict of Interest Act* is to ensure a transparent and fair political landscape that serves the interests of British Columbians, and which is deserving of their trust. It would be neither transparent nor fair for these two pieces of legislation, which have the same intention, and which use identical language in prohibiting gifts, to be construed as meaning different things.

[38] Counsel concludes "...that there is no factual or legal basis for a finding that the CUPE BC Annual Convention Welcome Reception contravened the LTA."

[39] During this investigation, the ORL *Guide to Gifts* was amended and replaced by the *Lobbyist Gifts and Other Benefits*. The updated guidance eliminated the venue cost from the gift calculation if the venue did not provide its own benefit to the POH. Counsel was given an opportunity to make additional submissions. On March 7, 2023, counsel provided additional information to the ORL.

[40] Counsel submits that the gift was based on the number of guests CUPE BC expected to attend the event. Given the size of the event, travel, and accommodation needs, CUPE BC was limited in its choice of event venues. CUPE BC was required to use the food and beverage services provided by the venue, the Victoria Convention Centre. With the updated guidance on *Lobbyist Gifts and Other Benefits*, CUPE BC eliminated the venue cost from the calculation. The gift was calculated by dividing the expected number of guests by the total food and beverage costs, arriving at a figure of \$65.14 per person. Counsel points out that there had been a surge in inflation driving up the cost of goods and services. Counsel argues, given these circumstances, "...the amount that CUPE BC spent on each invitee was reasonable and modest in the circumstances."

DISCUSSION AND FINDINGS

[41] This Determination Decision is examining whether the gift given to the POHs, the appetizers and drink ticket, at the CUPE BC Annual Convention Welcome Reception, was prohibited.

[42] At the time of the investigation, CUPE BC had reported in their Registration Return that 23 POHs were given a gift (modest appetizers and a drink ticket) when they attended the CUPE BC Annual Convention Welcome Reception. This does not mean that only 23 POHs attended CUPE BC's Annual Convention Welcome Reception rather that CUPE BC at some point, before, at, or after the Annual Convention Welcome Reception, lobbied the POHs it entered into its Registration Return. Other POHs may have attended but were not the subject of CUPE BC's lobbying activity.

[43] The object of the LTA is to create rules and obligations in British Columbia for the purpose of ensuring the lobbying of POHs is transparent and fair. A POH is defined very broadly under the LTA to include most public servants. There is always a concern that a lobbyist giving or promising a gift will gain some kind of favour with the POH. The purpose of the gift giving prohibition is to prevent undue influence on POHs' decision making.

[44] A lobbyist must submit a monthly return under s. 4.1 of the LTA if any of the circumstances in s. 4.2(2) of the LTA arise in relation to the lobbyist's lobbying activity. Section 4.2(2)(g) of the LTA obliges a lobbyist to submit a monthly return if they gave or promised to give a gift to a POH they lobbied. It reads:

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:

(g) if a lobbyist named in the monthly return gave or promised to give a gift or other benefit to a public office holder, the name of the public office holder, a description of the gift or benefit, the value of the gift or benefit and the circumstances under which the gift or benefit was given and accepted or promised to be given.

[45] Lobbying activity is defined as “...activities described in paragraphs (a) and (b) of the definition of “lobby”.” To lobby is defined as “to communicate with a public office holder in an attempt to influence” any one of the elements listed in (a)(i) to (vii), or to arrange a meeting described in (b).

[46] This means that a lobbyist who lobbies a POH must submit a monthly return reporting any gift or benefit that was given and accepted or promised to be given to the POH. This is not limited to a gift or benefit given or promised to be given at the time the lobbyist actually lobbies the POH; it includes any previously unreported gift or benefit that was given and accepted or promised to be given prior to the lobbyist lobbying the POH.

Was the gift prohibited?

Section 2.4 stipulates that a gift is prohibited under s. 2.4(1) of the LTA unless it is excepted under s. 2.4(2) of the LTA. Section 2.4 reads:

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

[47] There are exceptions to the gift giving prohibition set out in s. 2.4(2) of the LTA. It reads:

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

(a) the gift or benefit is given or promised to be given under the protocol or social obligations 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.

[48] In determining whether a gift is prohibited, one must establish whether there was a gift or benefit, that the gift or benefit was given or promised directly or indirectly by a lobbyist to a POH and that the lobbyist is lobbying the POH.

[49] In this case there was a gift of appetizers and a drink ticket. No gift was promised to POHs; the gift was given directly to POHs who attended the CUPE BC Annual Convention Welcome Reception. None of the POHs who received the gift were being lobbied at the time they were given the gift. However, seven of the POHs were lobbied prior to the CUPE BC Annual Convention Welcome Reception. The remainder were lobbied within a period of 10 months after the event.

[50] Although CUPE BC was not lobbying POHs at the time the gift was given and accepted, it did submit monthly returns under s. 4.1 of the LTA with the information required under s. 4.2(2)(g) of the LTA, reporting the gift given and accepted by POHs it had lobbied prior to the CUPE BC Annual Convention Welcome Reception. It continues to submit monthly returns for

POHs it has lobbied since the gift was given and accepted, as required under s. 4.1 and 4.2(2) of the LTA.

[51] Since CUPE BC gave a gift to POHs who attended the CUPE BC Annual Convention Welcome Reception and lobbied those POHs either before or after, one must determine whether the exception in s. 2.4(2)(a) and (b) of the LTA exempt the gift from the prohibition.

Is the gift exempted under s. 2.4(2) of the LTA?

[52] Subsection 2.4(1) of the LTA does not apply to a gift or other benefit if the exception in s. 2.4(2)(a) and (b) of the LTA are present. One must first determine whether the gift given meets the criteria set out in 2.4(2)(a) of the LTA, “the gift or benefit is given or promised to be given under the protocol or social obligations that normally accompany the duties or responsibilities of office of the public office holder.” If it does, then one must establish that the value of all gifts given or promised to be given within a 12-month period does not exceed the prescribe amount set out in s. 2.4(2)(b) of the LTA.

[53] For the exception to apply, the gift must be given under the protocol or social obligations that normally accompany the duties or responsibilities of the office of the POH.

[54] Protocol is defined as “a system of rules and acceptable behaviour used at official ceremonies and occasions.”⁴ Black’s Law Dictionary defines protocol as “the rules of diplomatic etiquette; the practices that nations observe in the course of their contacts with one another.”⁵ Diplomatic is defined as “...the management of relationships between countries,”⁶ usually involving diplomats.

[55] Social is defined as “a social gathering or party, especially of or as given by an organized group.”⁷ Black’s Law Dictionary defines “obligation” as “legal or moral duty to do or not do something [...] whether imposed by law, contract, promise, social relations, courtesy, kindness, or morality.”⁸ A social obligation implies something mandatory or at least strongly encouraged by the mostly unwritten rules of human relationships. “Normally” is defined as “conforming to a type, standard, or regular pattern characterised by that which is considered usual, typical or routine.”⁹ The word “accompany” is defined in Black’s Law Dictionary as “to go along with.”¹⁰ Put together, the terms “normally accompany” creates an objective standard of what social obligations are expected for a PHO.

⁴ Cambridge Dictionary, sub verbo “protocol.” <<https://dictionary.cambridge.org/dictionary/english/protocol>>

⁵ Black’s Law Dictionary, 8th ed, sub verbo “obligation.”

⁶ Cambridge Dictionary, sub verbo “diplomatic.” <<https://dictionary.cambridge.org/dictionary/english/diplomatic>>

⁷ Dictionary.com, sub verbo “social.” <<https://www.dictionary.com/browse/social>>

⁸ Black’s Law Dictionary, 8th ed, sub verbo “normal.”

⁹ Merriam-Webster.com, sub verbo “normal.” <<https://www.merriam-webster.com/dictionary/normal>>

¹⁰ Black’s Law Dictionary, 8th ed, sub verbo “accompany.”

[56] I accept these definitions and will use them to determine if the gift was given under either a protocol or social obligation, which would normally accompany the duties or responsibilities of the office of the POHs who attended the CUPE BC Annual Convention Welcome Reception.

Does the exception in s. 2.4(2)(a) of the LTA apply to MLAs?

[57] The CUPE BC Annual Convention Welcome Reception was not a diplomatic event, it was not an official ceremony or occasion between nations, or governments, for the purpose of managing relationships. I am of the view that the gift given at the CUPE BC Annual Convention Welcome Reception was not given under a protocol.

[58] Counsel for CUPE BC referred to the OCIC's *Guide to Gifts and Personal Benefits*. Although it is not binding on me, it offers a description of what "social obligation" means:

A gift or benefit offered as a matter of gratitude or courtesy appropriate to the occasion, most usually where a Member attends an event and does not have a role but the attendance of the Member is normally expected (e.g. charity fundraisers, opening ceremonies, etc.).¹¹

[59] A similar example in the ORL's *Lobbyist Gifts and Other Benefits* guidance defines social obligation as "...a courtesy or kindness that is compelled by the unwritten rules of human relationships."¹² The guide provides an example of "...a dinner reception [held] to raise awareness and understanding about issues of public concern." The OCIC and ORL examples closely resemble the circumstances of the CUPE BC Annual Convention Welcome Reception. These guidelines are published to provide guidance to lobbyists in their interactions with POHs. As I said above, these examples are not binding, but they provide reasonable examples of the meaning of social obligation.

[60] Counsel for CUPE BC stated that the welcome reception was an opportunity for union members and constituents from across the province to interact with MLAs and engage in a free-flowing dialogue on priority issues and matters of concern. This is consistent with MLAs' responsibilities to meet with constituents to hear "...questions and concerns about provincial programs, policies, and benefits..." to "...raise awareness and understanding about issues of public concern" and to answer their questions.

[61] The definitions above and the information from the guidance documents, while not binding, are helpful in assessing what is meant by social obligations that would normally accompany the duties or responsibilities of an MLA's office. Therefore, it is reasonable to apply them to the circumstances of this case. They add weight to the contention that the gift was

¹¹ Supra, Note 1, p 3

¹² Supra, Note 2, p 4

given under a social obligation that normally accompanies the duties or responsibilities of the MLA's office and conform to the circumstances of this case.

[62] The Legislative Assembly of British Columbia's Members' Guide to Policy and Resources, describe three key roles of an MLA. One role is defined as:

Members meet regularly with constituents and attend community meetings and events. Constituency offices assist British Columbians who have questions or concerns about provincial programs, policies, and benefits. Members may also contact ministers or ministry officials about policies and programs affecting individual British Columbians. There are also opportunities for Members to raise constituent perspectives and concerns in the Legislative Assembly during debates and by making statements or presenting petitions, and by asking government to act on issues affecting their residents of their electoral district or the province.¹³

[63] There is an obligation, a duty imposed by the members' guide, that MLAs meet with constituents or attend community meetings, or social gatherings or events, organized by groups and listen to questions and concerns. These are actions that conform to standards, or regular patterns of activity, which are typical or routine, in other words, activities that normally accompany the duties or responsibilities of the office of an MLA. In my view, the gift was given under a social obligation that normally accompanies the duties or responsibilities of an MLA's office.

[64] I accept the gift given to the attending MLAs was provided as a courtesy encouraged by the unwritten rules of human or social relationships, and consider it was a gift given under a social obligation that normally accompanies the duties or responsibilities of an MLA's office, therefore, s. 2.4(2)(a) applies here.

Does the exception in s. 2.4(2)(a) of the LTA apply to public employees and political staff?

[65] Not all the attendees were MLAs. The individuals who were given a gift included the Director of budgets and financial services (public sector employee), the Ministerial Advisor (Order In Council [OIC] appointment) and the Chief of Staff to the Minister (OIC appointment). I have reviewed and confirmed the Director of budgets and financial services position and both OIC appointments for these individuals.

[66] Are the gifts given to the Director of budgets and financial services, the Ministerial Advisor and the Chief of Staff to the Minister exempt under s. 2.4(2)(a) of the LTA from the prohibition in 2.4(1) of the LTA?

¹³ Legislative Assembly of British Columbia. "Role of an MLA". <https://members.leg.bc.ca/home/work-of-an-mla/role-of-an-mla/>

[67] In my view, attendance by a POH at the CUPE BC Annual Convention Welcome Reception would not fall under the definition of protocol.

[68] Generally, the Standards of Conduct for BC Public Service and employees appointed by Order In Council, require them to “...be sensitive and responsive to the changing needs, expectations, and rights of a diverse public in the proper performance of their duties.”¹⁴ I understand this to mean employees have a duty or responsibility to interact with the public, at some level, to recognize what their concerns are.

[69] I have reviewed the specific job profiles for the three POHs who were lobbied. There was Director of budgets and financial services (public sector employee), the Ministerial Advisor (Order In Council (OIC) appointment) and the Chief of Staff to the Minister (OIC appointment). Individuals occupying these positions were lobbied by CUPE BC. These offices are responsible for and have a duty to develop stakeholder relationships. The Director develops budgets and financial forecasts by interacting with ministry stakeholders. The Chief of Staff’s interaction with stakeholders provides the Minister with essential information to enable the Minister to make informed decisions. The Ministerial Advisor is obliged to establish, support, and maintain relationships on behalf of the Minister with key stakeholders.

[70] I would consider CUPE BC to be a stakeholder. The purpose of the CUPE BC Annual Convention Welcome Reception was to raise awareness. It was an opportunity for CUPE members to raise concerns about provincial programs, policies, and benefits. This would be commensurate with the role of the Director, Ministerial Advisor, and the Chief of Staff to interact with ministry stakeholders to better understand their concerns to inform the ministers and Ministerial decision making.

[71] I accept that the gift was given to these attendees at a social gathering hosted by an organized group (CUPE BC), provided as a courtesy encouraged by the unwritten rules of human or social relationships. I am satisfied that the normal duties and responsibilities of the offices of these positions are to interact and seek input from stakeholders such that it was a gift given under a social obligation that normally accompanies the duties of the office of the PHO within the meaning of the LTA, therefore, s. 2.4(2)(a) applies here.

¹⁴ Government of British Columbia. Standards of Conduct for BC Public Service Employees. <https://www2.gov.bc.ca/gov/content/careers-myhr/about-the-bc-public-service/ethics-standards-of-conduct/standards-of-conduct#conflicts>

Amount of Gift

[72] If the gift satisfies the requirements under s. 2.4(2)(a) of the LTA, the next step is to determine if the value of the gift meets the criteria set out in s. 2.4(2)(b) of the LTA. Section 2.4(2)(b) states:

(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.

[73] Section 6 of the Lobbyists Transparency Regulation limits the prescribed amount of a gift to \$100, therefore a gift must be less than \$100 within a 12-month period. In this case the gift was \$65.14, which is less than the \$100 limit.

[74] Gifts are calculated taking into consideration all venue-related expenses. This would include venue costs, service costs and food costs. If the venue costs do not offer any benefit to the POH, then they may be excluded from the gift calculation. The total cost is divided by the number of individuals that are expected to attend the event.¹⁵

[75] The choice of venue for the event by CUPE BC was limited given the number of attendees. CUPE BC was further constrained on price since it was required to use the services provided by the venue it selected. I understand the gift calculation was based on the number of guests CUPE BC reasonably anticipated to attend the event. This included CUPE BC affiliates and POHs, totaling 992 individuals.

[76] The venue is a large convention centre providing services for conferences. In this case, the venue costs were excluded since the event location did not offer any benefit to the POHs. In other words, there were no special events or attractions that would normally attract a fee from the public.

[77] The food cost totaled \$50,238.54. Dividing this by the anticipated attendees (992) equaled \$50.64. CUPE BC provided each attendee with one drink ticket at a value of \$14.50. Adding the per person service cost to the drink ticket equaled \$65.14 per person. The gift given

¹⁵ *Supra*, Note 2, p 16

to each POH was \$65.14. Designated filers and lobbyists must monitor the total amount of gifts given or promised so they do not exceed the gift limit within a calendar year.

[78] Taking all the circumstances into consideration, I find the value of the gift falls within the requirements set out in s. 2.4(2)(b) of the LTA.

CONCLUSION

[79] Given the circumstances of this investigation, I find that CUPE BC did not contravene s. 2.4(1) of the LTA.

[80] The gift prohibition was part of amendments to the LTA that came into force on May 4, 2020. In accordance with s. 7.9, it is my opinion publication of the findings, conclusions and reasons in this report will be helpful to organizations in their gift-giving decisions, particularly as they relate to receptions.

Date: February 14, 2024

ORIGINAL SIGNED BY

Tim Mots, Investigator and
Delegate of the Registrar of Lobbyists