

DETERMINATION DECISION 24-04

BC Chamber of Commerce

Designated Filer: Fiona Famulak

December 11, 2024

SUMMARY: BC Chamber of Commerce contravened section 2.4 of the *Lobbyists Transparency Act* (LTA) when it promised and/or gave gifts that exceeded the \$100 limit set out in section 6 of the LTA Regulations within the 12-month period identified in section 2.4(2)(b) of the LTA. BC Chamber of Commerce was issued a penalty of \$4,000.

Statues considered: *Lobbyists Transparency Act*, SBC 2001, c. 42, *Lobbyists Transparency Regulation*, BC Reg 235/2019

Authorities considered: Determination Decision 23-02; Determination Decision 23-03.

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 and 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, 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 BC Chamber of Commerce (BCCC), 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 for BCCC contravened s. 2.4 of the LTA by promising or giving a gift to a public officer holder that the lobbyist is lobbying; and
- (b) If the designated filer did not comply with the requirements of the LTA, what, if any, administrative penalty is 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;

[7] **“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;

[8] **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.

[9] 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,

[10] 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.

RELEVANT SECTION OF THE LOBBYISTS TRANSPARENCY REGULATION

[11] 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

[12] Section 2.4 of the LTA prohibits a lobbyist from promising or giving, directly or indirectly, a prohibited gift or benefit to a public office holder (POH). The gift prohibition does not apply if both circumstances described in s. 2.4(2)(a) (Protocol and social obligations) and (b) (less than the prescribed amount within 12-months) of the LTA are satisfied.

[13] BCCC's Registration Return 1353-410 showed that on February 11, 2023, they invited 28 POHs, the Premier and members of Cabinet, to a luncheon scheduled for March 28, 2023. The invitation for February 11, 2023, is considered a promised gift. At the time the invitations were distributed to POHs, the estimated cost of the luncheon was \$40 per person. BCCC entered the cost of \$40 into its Registration Return.

[14] Prior to the luncheon, BCCC changed the menu, increasing the cost of the luncheon. The luncheon took place on March 28, 2023, with 23 of the 28 invited POHs attending the event. The actual cost of the luncheon (gift) provided was \$54. BCCC entered the cost of the gift given into its Registration Return.

[15] On October 2, 2023, BCCC invited 28 POHs, the Premier and members of Cabinet, to another luncheon, to be held on December 7, 2023. The estimated cost of the lunch was \$73.

[16] The combined estimated value of the gifts promised in the February 11 and October 2, 2023, invitations entered into the Lobbyists Registry was \$113. If correct, this would exceed the prescribed amount specified in s. 6 of the LTA Regulations, within the 12-month period set out in s. 2.4(2)(b) of the LTA.

[17] BCCC was required to submit a Monthly Return on or before November 15, 2023, to report the gift promised to the 28 POHs on October 2, 2023.

[18] On November 8, 2023, BCCC's designated filer contacted the ORL seeking assistance with the submission of their Monthly Return.

[19] On November 9, 2023, the designated filer had a conversation with ORL staff to discuss this matter. BCCC expressed its desire to be proactive and transparent in their reporting. There was a discussion on what costs should be included in the gift calculation. BCCC expressed difficulty getting the cost of the gift (luncheon) within the prescribed limits. Usually, the luncheon occurs in December, however it was rescheduled to March 28, 2023, due to the governing party's leadership race during December 2022. BCCC then sought to re-establish the practice of hosting a luncheon in December. To do this, they scheduled a luncheon for December 7, 2023. This date coincided with a cabinet meeting bringing the Premier and 16 cabinet ministers together. The difficulty arose when the value of the combined gifts promised/given over a 12-month period exceeded the prescribed limit. The LTA restricts the value of gifts promised/given within a 12-month period (s. 2.4(2)(b) of the LTA) to less than \$100 (s. 6 of the LTA Regulations).

[20] BCCC sought information about and discussed the investigation process with the ORL. Two options were considered by BCCC: reducing the gift amount to bring it within the limits prescribed in the LTA prior to submitting its Monthly Return or moving the event to March 2024. The ORL explained how to interpret the 12-month period. The ORL provided BCCC with the *Lobbyist Gifts and Other Benefits Gift Guidance Document* and *Registrar of Lobbyists: Guide to Investigations*.

[21] BCCC submitted a Monthly Return on or about November 15, 2023, reporting the gift promised on October 2, 2023 (the luncheon). The amount of the gift promised was \$73.

[22] BCCC went ahead with the December 7, 2023, luncheon, with 18 of the original POHs invited on October 2, 2023, attending the event. The actual cost of the gift (luncheon) provided was \$69.75.

[23] BCCC had submitted Monthly Returns indicating that it had lobbied all the POHs it invited within the previous 12 months.

[24] The combined value of the gifts given at the luncheons on March 28 and December 7, 2023, was \$123.75, which exceeded the prescribed amount specified in s. 6 of the LTA Regulations, within the 12-month period set out in s. 2.4(2)(b) of the LTA.

[25] Based on these facts, it appeared that BCCC contravened s. 2.4 of the LTA when it promised and gave gifts that exceeded the \$100 limit set out in s. 6 of the LTA Regulations within the 12-month period identified in s. 2.4(2)(b) of the LTA.

INVESTIGATION

[26] The ORL commenced an investigation under sections 7.1 and 7.2 of the LTA to determine whether the designated filer promised or gave a gift to a POH that was prohibited under section 2.4 of the LTA.

[27] On April 22, 2024, I provided BCCC’s designated filer with formal notice under section 7.2(1)(a) of the LTA that given the circumstances, it appeared that they had promised and/or given prohibited gifts, the two luncheons, to POHs BCCC had lobbied. The value of the gifts exceeded the \$100 limit set out in s. 6 of the LTA Regulations within the 12-month period specified in s. 2.4(2)(b) of the LTA.

[28] The notice presented an opportunity to be heard on the allegations. I asked the designated filer to make their submissions in writing, by June 3, 2024, and to attach any information or documentation they believed was pertinent to whether there had been a contravention and as to the potential penalty that should follow if a finding of contravention is made.

[29] In the notice, I asked the BCCC to provide me with a copy of the February 11, 2023, invitation to the luncheon held on March 28, 2023, and the October 2, 2023, invitation to the luncheon held on December 7, 2023. I requested the invoices and cost breakdowns for both luncheons. I asked for an explanation of the differences between the value declared in their Registration Return of the luncheon (gift) promised and the actual value of the luncheon the POHs received.

[30] On June 3, 2024, the designated filer responded, providing a description of the costs along with copies of both invoices and invitations to POHs.

[31] The designated filer provided four letters. The first letter, dated February 11, 2023, was addressed to the Premier, thanking him for accepting the invitation to the Premier and Cabinet luncheon to take place on March 28, 2023, in Victoria. The letter invited all Cabinet members to the lunch. The purpose of the meeting was to enable BCCC members “...to connect with members of the Executive Council of the provincial government.”¹ The Premier was expected to provide an address to the luncheon guests.

[32] A second letter dated February 11, 2023, was addressed to the Attorney General (AG) with an invitation to the luncheon on March 28, 2023. It informs the AG that the Premier “...will be attending and providing brief remarks from the podium and engage in one-on-one questions and answers segment...”² The letter indicated that other cabinet ministers would be in attendance.

[33] The third letter, dated June 15, 2023, addressed to the Premier, thanks the Premier and Cabinet for their attendance at the luncheon on March 28, 2023. The BCCC explained that the December 2022 luncheon was postponed until March 2023, due to the swearing in of the Premier. The letter points out that the luncheons are usually held in December, in Vancouver,

¹ BC Chamber of Commerce submission, June 3, 2024. Page 4.

² Ibid.

due to the ease of access for the BCCC members and local businesses allowing for increased time to interact with cabinet. BCCC wished to return to that schedule and was in the process of setting a date somewhere between December 4-8, 2023.³

[34] A fourth and final letter, dated October 2, 2023, invites the AG to an annual Premier and Cabinet luncheon on December 7, 2023. The letter informs the AG that the Premier has accepted the invitation to the luncheon. The letter explains the purpose of the luncheon, which was to provide an "...opportunity to connect with members of the Executive Council and to learn more about government's vision for the economy and Executive Council members' priorities. It's also an opportunity for business leaders to share their communities' priorities directly with Executive Council members."⁴ Although the letter was not addressed to all members of Cabinet, the designated filer states the invitation was extended to all members of Cabinet.

[35] The designated filer explained that the difference in pricing between the gift promised on February 11, 2023, priced at \$40 and that given on March 28, 2023, priced at \$54, was due to time constraints necessitating a change of meal plan.

[36] BCCC was cognizant that the combined total value of the gifts promised/given exceeded the limit allowed under the LTA within a 12-month period. BCCC attempted to reduce the cost of the luncheon on December 7, 2023. Through negotiation with the service provider, BCCC managed to reduce the cost of luncheon on December 7, 2023, from \$73 per person to \$69.75.

[37] BCCC states that they "...understand the gift-giving guidelines in place and like many associations, are finding our way in a post-COVID era where they are once again able to host in-person events."⁵ The designated filer submits, "[a]s noted above, the extenuating circumstances that gave rise to the luncheon on December 7, 2023, are one-of [sic] circumstances that accommodated the schedule of the new Premier and Cabinet and will not be repeated."⁶ The designated filer submits the Premier and cabinet's schedule was a factor in deciding to host the second luncheon on December 7, 2023.

[38] The designated filer states, "we have not contravened the Act in any other way – to the contrary, we have proactively facilitated education sessions, delivered by staff at the office of the Registrar of Lobbyists, for our Network..."⁷ The designated filer asked that this be taken into consideration in the findings.

[39] I reviewed BCCC's lobbying activity in the Lobbyists Registry. I noticed BCCC had entries posted on:

³ BC Chamber of Commerce submission, June 3, 2024. Page 5.

⁴ BC Chamber of Commerce submission, June 3, 2024. Page 7.

⁵ BC Chamber of Commerce submission, June 3, 2024, Page 2.

⁶ Ibid.

⁷ Ibid.

- March 15, 2023, for lobbying on February 11, 2023;
- April 15, 2023, for lobbying on March 28, 2023;
- November 15, 2023, for lobbying on October 2, 2023; and
- January 15, 2024, for lobbying on December 7, 2023.

On August 28, 2024, I sent a second notice under sections 7.1 and 7.2 to clarify whether one of the purposes of the luncheons was to lobby POHs who were invited and who actually attended. I asked the following questions:

BCCC submitted a Monthly Return with Lobbying Activity Reports on or about March 15, 2023, and November 15, 2023, listing 27 POHs it invited to the luncheon on February 11, 2023,⁸ and 28 POHs it invited to the luncheon on December 7, 2023.

Did you submit the Monthly Return with the Lobbying Activity Reports because you were arranging a meeting, described in paragraph (b) of the definition to “lobby” between POHs and any other individual for the purpose of attempting to influence any of the matters described in paragraph (a) of the definition to “lobby”?

BCCC submitted a Monthly Return with Lobbying Activity Reports on or about April 15, 2023, and January 15, 2024, listing 23 POHs who attended the luncheon on March 28, 2023, and 18 POHs who attended the luncheon on December 7, 2023.

Did you submit the Monthly Return with the Lobbying Activity Reports because one or more of the POHs in attendance were lobbied?⁹

[40] The designated filer responded on September 12, 2024, stating, “both events were designed specifically to facilitate lobbying of the Premier and his Cabinet.”¹⁰ At the luncheons, the designated filer stated that “One or more of the POHs in attendance on March 28, 2023, and December 7, 2023, were lobbied.”¹¹ In other words, the designated filer arranged the luncheons (meetings) so that BCCC and its members could lobby POHs. It stated it did lobby POHs who attended the luncheons.

⁸ Note: This date should read March 28, 2023.

⁹ Mots, T. (2024), Email August 28.

¹⁰ Famulak, F. (2024), Email September 12.

¹¹ Ibid.

DISCUSSION AND FINDINGS

[41] Section 2.4 specifies that a gift is prohibited under s. 2.4(1) of the LTA if it is promised and/or given to a POH the designated filer is lobbying. Section 2.4(1) 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.

[42] For s. 2.4(1) to apply, an organization must be lobbying the POH who it promises to give a gift to or gives a gift.

Did the designated filer arrange a meeting (luncheons) for the purpose of lobbying (section (b) of “lobby”)?

[43] For this section to apply, the designated filer must arrange a meeting between a POH and any other individual for the purpose of attempting to influence POHs on any of the matters referred to in section (a) of “lobby”.

[44] There must be more than an invitation sent to a POH. ORL guidance stipulates that a meeting, for the purposes of lobbying, is not arranged until the request is accepted and some of the details of the meeting are confirmed.¹² Once the POH has accepted and confirmed some of the details of the meeting, the designated filer is required to submit a Lobbying Activity Report reporting the arranged meeting.¹³

[45] BCCC’s designated filer arranged a meeting on behalf of BCCC members, including herself, to lobby POHs. This was confirmed in the designated filer’s September 12, 2024, email where she stated that the purpose of both invitations to the luncheons, was “...designed specifically to facilitate lobbying of the Premier and Cabinet.”¹⁴

[46] The designated filer submitted Lobbying Activity Reports on March 15, 2023, for arranging the meeting on February 11, 2023, and on November 15, 2023, for arranging the meeting on October 2, 2023. The subject matter of the meetings was to influence POHs on items mentioned in s. (a)(iii) and (iv) of “lobby”. I understand by submitting the Lobbying Activity Reports, the designated filer confirmed the attendance of the POHs and some of the details of the luncheons. Based on the information before me, all 28 POHs were lobbied.

¹² GETTING STARTED - REFERENCE GUIDE, Revised: October 27, 2022

<https://www.lobbyistsregistrar.bc.ca/handlers/DocumentHandler.ashx?DocumentID=417>

¹³ Ibid.

¹⁴ Ibid.

Did the designated filer and/or BCCC members lobby POHs at the luncheons?

[47] In the email of September 12, 2024, the designated filer indicated that POHs who attended the luncheon were lobbied. She stated "...[o]ne of (sic) more of the POHs in attendance on March 28, 2023, and December 7, 2023, were lobbied."¹⁵

[48] Given the information provided by the designated filer, one or more of the POHs who attended the luncheons were lobbied. Additionally, the designated filer submitted Monthly Returns with Lobbying Activity Reports, one on April 15, 2023, for the March 28, 2023, luncheon. The subject matter of the luncheon was to influence POHs on items mentioned in s. (a)(iii) and (iv) of "lobby". A second Lobbying Activity Report was submitted on January 15, 2024, for the luncheon on December 15, 2023. The subject matter of the luncheon was to influence POHs on items mentioned in s. (a)(i), (ii), (iii) and (iv) of "lobby". The Lobbying Activity Reports indicate that all POHs listed in the reports were lobbied. This means that all 25 POHs who attended either one or both of the luncheons were lobbied.

[49] I conclude that the designated filer promised gifts and gave gifts directly to POHs they were lobbying.

Were the gifts excepted under s. 2.4(2)(a) and (b) of the LTA?

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

2.4 (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.

[51] Section 6 of the LTA Regulations stipulates the maximum gift amount. It reads:

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

[52] Since BCCC promised or gave a gift to POHs it was lobbying, I must determine whether the exceptions in s. 2.4(2) of the LTA exempt the gift from the gift-giving prohibition. For the

¹⁵ Ibid.

exception in s. 2.4(2) of the LTA to apply, both (a) and (b) must be satisfied before a gift is exempt from the prohibition.¹⁶

[53] In this case, gifts totaling \$113 were promised within a 12-month period to 28 POHs who BCCC lobbied. The total value of these gifts promised exceeds the prescribed limit of less than \$100 within a 12-month period.

[54] Additionally, gifts totaling \$123.75 were given within a 12-month period to 16 POHs who BCCC lobbied. The total value of these gifts given exceeds the prescribed limit of less than \$100 within a 12-month period.

[55] As I mentioned above, for the exception in 2.4(2) to apply, both s. 2.4(2)(a) and (b) must be satisfied. Since s. 2.4(b) is not fulfilled, there is no need for me to determine whether s. 2.4(a) excepts the gift from the prohibition.

Finding

[56] I find that the gifts promised, and the gifts given by BCCC to POHs were prohibited under s. 2.4(1) of the LTA.

[57] This means that there are 28 instances where a gift was promised to a POH and of those POHs who were promised a gift, 16 POHs were actually given a gift that, in total, exceeded the prescribed amount (less than \$100) within a 12-month period.

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. If a monetary administrative penalty is imposed, the notice must include "the amount, the reason for the amount, and the date by which the penalty must be paid."

[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 *Registrar of Lobbyists: Guide to Investigations* guidance document (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 its Regulation. As the guide to

¹⁶ Judas (Re), 2023 BCORL 7 (CanLII), <<https://canlii.ca/t/k25hr>>, retrieved on 2024-11-18. paragraph 37.

investigations makes clear, its purpose is to structure discretion. It does not restrict 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 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 the administrative penalty. Finally, the guidelines do not bind or fetter the ORL's ability to depart from these guidelines, both in respect of administrative monetary penalties and prohibitions, in appropriate circumstances.

[62] While penalties for contraventions under the LTA can go up to \$25,000, the guide to investigations states that the penalty range for giving or promising a prohibited gift is \$1,000 to \$7,500 if it is a first-time contravention.

[63] 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.

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

[65] Lobbying is a legitimate activity, regulated by the LTA in a way to provide access to decision-makers, while at the same time creating an environment where the public is aware of lobbyists' efforts to influence government decision making. "Transparency in lobbying supports the legitimate, necessary participation of different voices, views and expertise in a democracy while preventing actual or perceptions of undue influence, unfair competition and regulatory capture."¹⁷ In essence, providing access to POHs in a manner open to the public is to preserve the integrity of POH decision-making.

[66] It is not difficult to imagine that a gift promised or given could influence a POH on how they decide a matter before them or possibly encourage the POH to influence other decision

¹⁷ British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, 41st Parl, 3rd Sess, No 185 (19 November 2018) at 6545 (Hon. D. Eby).

makers on the same matter. The LTA gift prohibition was established to prevent lobbyists from providing or promising gifts or benefits to POHs that could be a means or perceived as a means of gaining favour over those POHs they aim to influence.

Previous enforcement actions for contraventions

[67] The BCCC states this is their first contravention. I am not aware of any previous warnings given to BCCC for not meeting its obligations under the LTA. I have searched CanLII and the ORL list of decisions for any prior contraventions. I did not find any previous contraventions of the LTA or the LRA by BCCC. This weighs in favour of a penalty at the lower end of scale.

Economic benefit

[68] I have no information that would lead me to believe that the BCCC derived an economic benefit from the contravention. This is a neutral factor in weighing an appropriate penalty.

Any efforts made by the registrant to report or correct the contravention

[69] A factor I have taken into consideration is BCCC's effort to cooperate with the ORL throughout the course of this investigation. It was BCCC who brought the contravention to the attention of the ORL. They submitted all relevant information into their Registration Return, within the timelines set out in the LTA. This is a circumstance that normally would weigh in favour of a lower penalty, however, for reasons discussed below its influence is diminished by other factors.

The gravity and magnitude of the contravention

[70] The prohibited gifts were promised to 28 POHs. Of the 28 POHs who were promised gifts, 16 POHs received gifts. The fact that there were 28 prohibited gifts promised and 16 given is an aggravating factor which elevates the gravity of the contravention warranting a steeper penalty.

Whether the contravention was deliberate

[71] I understand the luncheon is an annual event usually scheduled for December. However, due to the leadership contest, the Premier's swearing in, and Cabinets' schedules, the luncheon was postponed and rescheduled for March 2023. BCCC wanted to return to the December schedule.

[72] BCCC did bring this matter to the attention of the ORL. After discussing the matter with the ORL, BCCC knew that it was in contravention of the gift giving prohibition when it promised the gift on October 2, 2023. BCCC knew that if it went ahead with the luncheon, it would

further compound the fact that it was already in contravention of the gift prohibition. Instead of canceling the luncheon, BCCC deliberately went ahead with the luncheon, knowing that the gift given (the luncheon) was prohibited. The fact that the BCCC knew they already exceeded the prescribed limit for gifts but deliberately went ahead with the luncheon is a factor that increases the magnitude of the contravention and weighs in favour of a higher penalty.

Any other factors

[73] BCCC states that it has helped coordinate training sessions with the ORL on the LTA for its staff and BCCC members. It has tried to ensure that its staff and members are aware of their obligations under the LTA. This is a factor that weighs in favour of lower penalty.

[74] Another circumstance to consider is the amount of the gift promised and received. The culminative total of the gifts promised to POHs, \$113, exceeded the prescribed limit by a minimal amount. Similarly, the gifts given to POHs, \$123.75, again exceeded the prescribed limit by only a small amount. The prescribed limit for a gift given or promised is less than \$100 within a 12-month period. Given that the gifts only exceeded the \$100 limit by a small amount would normally moderate the magnitude of the contravention. However, there are a total of 28 instances where prohibited gifts were promised to 28 POHs and prohibited gifts were given to 16 POHs. The gifts may only exceed the 12-month limitation by a small amount, but it is the sheer number of gifts given that dwarfs the value of the gifts, thus intensifying the gravity of the contravention. This is a factor that warrants a penalty in the mid range.

[75] The minimum penalty for a first contravention is \$1,000. This would mean that the minimum penalty for all 28 contraventions of promising or giving a gift would be \$28,000. In my view this is unreasonable and punitive. This is not consistent with the purpose of the ORL, which is to promote compliance. The ORL leads its compliance activity with education, including through online resources, speaking engagements, and staff who are available to answer questions by phone or email. A penalty ought to encourage the lobbyist in question, and all lobbyists, to comply with the rules of lobbying that have been passed by the BC Legislative Assembly in BC rather than punish. I will discuss this further below.

Whether a penalty is necessary for specific and general deterrence

[76] As mentioned above, BCCC was aware that its actions would result in a contravention. The contravention in this case is clear. A penalty is necessary for both specific and general deterrence. In terms of specific deterrence, this investigation, the ensuing administrative penalty, and the publication of the outcome of this investigation will encourage the designated filer to meet their obligations under the LTA. In considering general deterrence, the publication of this report and recognition that the ORL will issue administrative penalties to those who contravene the LTA will remind all lobbyists of their legal obligations to be diligent in meeting their obligations under the LTA.

Decisions considered

[77] I have examined other past Determination Decisions and Investigation Reports in considering a reasonable penalty for this contravention.

[78] In Determination Decision 23-02 (DD 23-02), the designated filer submitted 15 late Monthly Returns with previously unreported lobbying activity. I recognized in that case, that treating each late Monthly Return as an individual contravention would lead to an exorbitant and punitive penalty. The organization did not have any previous contraventions, so the 15 contraventions were combined into one first contravention for the purpose of issuing a penalty. This meant that the penalty would not exceed the maximum penalty for filing a single late Monthly Return. However, the number of contraventions were taken into consideration in determining the amount of the penalty for the first contravention.¹⁸

[79] As I mentioned above it appears that BCCC has not received any previous warnings or been found to have contravened the LTA or its predecessor, the *Lobbyists Registration Act* (LRA). Taking this into consideration, I have decided to treat the 28 contraventions as a first contravention with a penalty that will not exceed the maximum \$7,500 for a first contravention.

[80] However, as in DD 23-02, the number of contraventions of 28 will be considered in determining a suitable penalty. It is reasonable to take the number of gifts given or promised into consideration in arriving at a penalty. It would be unacceptable to apply the same weight to cases where there is only one or two gifts versus 28 in arriving at a penalty. For this reason, the number of gifts given or promised is a factor that I have decided to take into consideration in determining an appropriate penalty.

[81] In Determination Decision 23-03 (DD 23-03), the Deputy Registrar took into consideration the amount of the gift. A gift promised received less weight than a gift given. The penalties for the gift promised were \$500 for each contravention versus \$1,200 for the gift given. The Deputy Registrar stated:

I also acknowledge that there is a higher potential for a gift to have a real or perceived impact on the integrity of decision-making when it is given rather than when it is simply promised. This consideration, in this case, weighs towards a lower penalty for the gifts promised and a higher penalty for the gift given. Accordingly, I determine the penalty for the gift given to the one public office holder separately from the penalty for the gift promised to the two other public office holders.

¹⁸ See also Investigation Report 20-02 for similar treatment of multiple contraventions.

The gifts promised were deemed to have less impact on POH decision making than the gifts given. The amount by which the gift exceeded the prescribed limit was another factor taken into consideration, which led to a penalty higher than the minimum for the gift given. The designated filer cooperated throughout the investigation and the contravention was not deliberate. The designated filer received a penalty of \$1,200 for the one gift given and \$500 for each of the two gifts promised. The total penalty was \$2,200.

[82] There are a higher number of instances in this case than the number in DD 23-02, 15 late Monthly Returns versus 28 gifts promised and 16 gifts given. In DD 23-02, the designated filer received a penalty of \$3,000. I have considered that the value of the gifts promised and/or given only marginally exceeded the prescribed limit well under the gift amounts found in DD 23-03.

[83] In DD 23-03, there were only two gifts promised, and one gift given leading to a penalty of \$2,200. In this case, as mentioned above, there were 28 gifts promised and 16 given, albeit lower in value than in DD 23-03.

[84] Like the other Decisions, BCCC has no previous contraventions. The designated filer did bring this contravention to the attention of the ORL and sought information about the process. It has tried to assist in educating its members. Another mitigating factor, as mentioned above, is the value of the gifts only slightly exceeded the prescribed amount.

[85] What sets this contravention apart from the others is the value of the gifts is dwarfed by the number of gifts promised, 28, and the number of gifts given, 16. BCCC did approach the ORL. However, this factor is significantly weakened because they went forward with the luncheon knowing they were already in contravention of the LTA. This is a serious matter, elevating the gravity of the contravention. Designated filers must understand that they have an obligation to comply with the LTA. Ignoring these obligations, particularly when those obligations are known, is unacceptable.

[86] Taking all the circumstances into consideration, I believe a reasonable penalty in this case is \$4,000.

CONCLUSION

1. Under s. 7.2(2) of the LTA, I find that BCCC contravened s. 2.4(1) of the LTA, when it gave or promised to give gifts that exceed the prescribed amount of less than \$100 within a 12-month period.
2. I impose an administrative penalty of \$4,000 for the reasons set out above.
3. The designated filer must pay the amount for the penalty no later than

January 22, 2025.

4. If the designated filer requests a 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: December 11, 2024

ORIGINAL SIGNED BY

Tim Mots, Investigator and
Delegate of the Registrar of Lobbyists