

## DETERMINATION DECISION 24-03

Paul Rasmussen

November 20, 2024

**SUMMARY:** The designated filer lobbied while prohibited to do so contrary to section 2.2 of the *Lobbyists Transparency Act*. He argued the lobbying was exempt pursuant to ss. 2(2)(b) and 2(2)(c) but the lobbying activity was found not to be exempt. The designated filer also failed to file a Monthly Return by the required date, contravening s. 4.1. The designated filer received an administrative penalty totalling \$7,000 for the contraventions.

**Statutes considered:** *Lobbyists Transparency Act*, SBC. 2001, c. 42.

**Authorities considered:** Investigation Report 20-02, Investigation Report 15-03, Investigation Report 17-05, Investigation Report 18-01, Determination Decision 23-01 and Determination Decision 23-04.

### INTRODUCTION

[1] This report concerns an investigation under s. 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 Registrar's 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), 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 the designated filer, Paul Rasmussen, President of the Interior Lumber Manufacturers' Association, 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 questions for consideration are:

- (a) whether the designated filer contravened s. 2.2 by lobbying while prohibited;
- (b) whether the designated filer contravened s. 4.1 of the LTA by failing to report changes to the Registration Return; and
- (c) 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] "former public office holder" means

- (a) a former member of the Executive Council and any individual, other than administrative support staff, formerly employed in the former member's former office,
  - (a.1) any individual, other than administrative support staff, formerly employed in a current or former office of a current member of the Executive Council,
- (b) a former parliamentary secretary, or
- (c) any individual who formerly occupied
  - (i) a senior executive position in a ministry, whether by the title of deputy minister, chief executive officer or another title,
  - (ii) the position of associate deputy minister, assistant deputy minister or a position of comparable rank in a ministry, or

(iii) a prescribed position in a Provincial entity;

**[7] Restrictions on application of Act**

2(2) This Act does not apply in respect of an oral or written submission made as follows:

...

(b) made to a public office holder by an individual on behalf of a person or organization concerning

(i) the enforcement, interpretation or application of any Act or regulation by the public office holder with respect to the person or organization, or

(ii) the implementation or administration of any program, policy, directive or guideline by the public office holder with respect to the person or organization;

(c) made to a public office holder by an individual on behalf of a person or organization in direct response to a written request from a public office holder for advice or comment on any matter referred to in paragraph (a) of the definition of "lobby" in section 1 (1);

...

**[8] Lobbying prohibition**

2.2 Subject to section 2.3, a person who is a former public office holder must not lobby, in relation to any matter, for a period of 2 years after the date the person ceased

(a) to be a member of the Executive Council,

(a.1) to be an individual employed in a current or former office of a current member or former office of a former member of the Executive Council,

(b) to be a parliamentary secretary, or

(c) to occupy a position referred to in paragraph (c) of the definition of "former public office holder".

**[9] Exemption from prohibitions**

2.3 (1) If the registrar is satisfied that it is in the public interest, the registrar may, on request and on any terms or conditions the registrar considers advisable, exempt a person from a prohibition set out in section 2.1 (2) or 2.2.

(2) If the registrar grants an exemption under subsection (1), the registrar must enter the following into the registry:

- (a) the terms or conditions of the exemption;
- (b) the registrar's reasons for granting the exemption.

**[10] Requirement to File a Monthly Return**

4.1 A designated filer who has filed a registration return under s. 3 must file with the registrar a monthly return, in the prescribed form and manner and containing the information required under s. 4.2, no later than 15 days after the end of every month, beginning with the month in which the registration return under s. 3 is filed.

**[11] 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 conduct an investigation.

(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,

**[12] 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.

[13] The ORL commenced an investigation under s. 7.1 of the LTA to determine whether the designated filer had complied with s. 2.2 of the LTA.

[14] On August 17, 2023, the designated filer was provided with formal notice under s. 7.2(1)(a) outlining the basis for the allegation that he had contravened ss. 2.2 and 4.1 of the LTA. I invited 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 penalty.

[15] On September 5, 2023, the designated filer submitted his response to the s. 7.2(1)(a) notice.

## **BACKGROUND**

[16] On January 20, 2023, the designated filer submitted a Request for Exemption Form on the ORL website, seeking an exemption from the two-year cooling off period for former public office holders.

[17] The designated filer specified in his Exemption Request form that the “End Date” for his position as an Assistant Deputy Minister (ADM) was November 17, 2021. Prior to withdrawing

his Request for Exemption on January 23, 2023, he spoke on the phone with the ORL on January 20, 2023.

[18] The designated filer stated that he had additional information relevant to his exemption request. He advised that, in November 2021, he took leave from his position as ADM of Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD) up until March 2, 2022. He then confirmed that his last day in which he was still considered to be employed by the Ministry was March 2, 2022.

[19] In November 2022, the designated filer became the President of the Interior Lumber Manufacturers' Association (ILMA), an organization registered as lobbying in the BC Lobbyists Registry.

[20] In conversations with the ORL, the designated filer said that he did not fully understand the exemption process and believed that he only needed his former supervisors' permission/approval to lobby. He claimed to have communicated with his ADM and Deputy Minister and received their approval to take the position of President with ILMA.

[21] The designated filer attempted to update the Registration Return for ILMA to add himself as an in-house lobbyist; however, the Lobbyists Registry requires a former public office holder to enter their Exemption Number to register, and he did not have one. He realized that he would need to make a formal request with the Registrar for an exemption.

[22] In the designated filer's Request for Exemption Form, he copied/pasted an email he sent to a Deputy Minister and his previous supervisor, an ADM. In it, he demonstrated an understanding of the meaning of "former public office holder" and specifically quoted LTA sections 2.2 (Lobbying prohibition), 2.3 (Exemption from prohibitions) and 7 (Designation and functions of registrar).

[23] During the January 20, 2023, phone call with the ORL, the designated filer admitted that, in his role as President of ILMA, he believed that he had already performed lobbying activities. Specifically, he had reached out to public office holders to request meetings for the purpose of lobbying, he had attended "Truck Loggers" meetings, and he arranged and attended an event on January 9, 2023 where he lobbied public office holders.

[24] The designated filer then emailed the ORL on January 23, 2023 with a written request to withdraw his Request for Exemption. In this email, he wrote, "I recognize that I will have to review the work that I've carried out, since beginning my contract (as President) with the ILMA, to determine whether any of that work meets the definition of lobbying. That said, I would not have accepted the President position with the ILMA if I did not believe I was able to lobby (as per communications with DM Manwaring, and his reply)."

[25] That same day, the ORL confirmed his Request for Exemption had been withdrawn and noted that, as a former Assistant Deputy Minister of a BC ministry, it appeared that he met the LTA definition of “former public office holder.”

[26] Consequently, it appeared that the designated filer was prohibited from lobbying for a period of two years, starting from the date that he no longer held his position as ADM in the Ministry of FLNRORD, March 2, 2022, to March 2, 2024.

[27] On January 23, 2023, the ORL stated in an email reply: “You will recall that we discussed whether you will need to add yourself as an ‘in-house lobbyist’ to this Registration Return Update. When we spoke on Friday (Jan 20<sup>th</sup>), you stated that you believed you had already performed lobbying activities on behalf of ILMA. However, in our conversation earlier today, you stated a belief that you may not have lobbied, and that you intend to review all of the activities you have performed on behalf of ILMA to determine if your activities meet the definition of ‘lobby.’”

[28] The ORL reminded the designated filer that if he had lobbied on behalf of ILMA, he would need to add himself to the list of in-house lobbyists in the Registration Return update that is generated through the senior officer change process.

[29] Finally, the ORL requested that “if you conclude that you have not lobbied on behalf of ILMA and do not meet the LTA’s definition of ‘in-house lobbyist,’ I would ask that you reply to this email with an explanation on how you have come to this conclusion.”

[30] On January 24, 2023, the designated filer replied to the ORL, stating that he created an account in his name, and would work on the senior officer change request. The designated filer also stated that he will review the details of his interactions with the province thus far to determine if they could be defined as lobbying.

[31] On the same day, the designated filer sought guidance from the ORL on whether two signed letters to the Premier and a Minister fell within the definition of lobbying.

[32] The ORL provided the designated filer with various guidance documents and a request for him to confirm that his Registration Return update is accurate.

[33] On January 25, 2023, the designated filer re-submitted the Registration Return to update the Registry. He did not include himself as an “In-house Lobbyist”, nor did he explain how he concluded he did not meet the definition of “in-house Lobbyist”. On the same day, the ORL emailed the designated filer again requesting him to explain how he concluded that he was not required to be listed as an “In-house Lobbyist” for the ILMA.

[34] That same day, the designated filer replied to the ORL stating he was “going to review his activities against definitions of ‘lobby’” and against some of the info the ORL shared with

him. He stated: “I’m reluctant to identify myself as an in-house lobbyist (for the period where I misunderstood exemption requirements), before I do that review work (which will help me identify the extent of my mistake, if any). As well, I have no intention of proceeding to lobby without an exemption, which means I should not identify myself as a lobbyist.”

[35] On February 8, 2023, the ORL reiterated in an email that ILMA had not yet filed a Lobbying Activity Report. To further assist the designated filer, the ORL provided additional guidance regarding the LTA’s filing obligations.

[36] On February 10, 2023, the ORL emailed the designated filer again, querying whether he met the LTA’s definition of “in-house lobbyist.” It reminded him that if he had lobbied on behalf of the ILMA from November 1, 2022, to the present, he would have to submit a Monthly Return to update ILMA’s Registration listing himself as an in-house lobbyist. Finally, The ORL asked the designated filer if he concluded that his activities were not “lobbying” or that he was not prohibited from lobbying under section 2 of the LTA, to provide an explanation on how he came to this conclusion. The ORL asked the designated filer to respond by March 10, 2023.

[37] On February 14, 2023, the designated filer responded to the ORL’s request for information and stated: “Upon further review of my activities ... since commencing my role as President (senior officer) with the ILMA, I note that all of the activities ILMA has performed are “excluded” (not considered “lobbying”) under Section 2(2)(b) and Section 2(2)(c)” of the LTA.

[38] The designated filer went on to provide reasons and explanations to back up his conclusion that his communications were exempt from the LTA. He also provided a detailed list of meetings and communications he was concerned about. He wrote:

- 1) “Deputy Minister (DM) Rick Manwaring, Assistant Deputy Minister Jamie Jeffries and Regional Executive Director Russ Laroche attended a meeting with ILMA members on January 9, 2023. The meeting concept was discussed and agreed to with the ILMA prior to my time as President of ILMA. DMs often travel the province to meet with companies that do business and interact with applicable ministry programs. 4 separate meetings occurred during this visit:
  - a) A tour of the Kalesnikoff Mass Timber Facility (Kalesnikoff is one of ILMA’s members)
  - b) A meeting with 5 member mills to discuss the Province’s perspectives and expectations regarding the implementation of the “Ktunaxa Nation Forestry Standards”, as it pertains to the 5 companies’ forestry operations on Crown land (Forest Act, Forest and Range Practices Act related), located in core Ktunaxa Nation Territory.
  - c) A general meeting with ILMA Board members, to introduce ADM Jeffries, hear a presentation from DM Manwaring on current Provincial Government



mandates and priorities (as it pertains to forestry / environment business), and a “roundtable” discussion with each of the ILMA members to express their current operating status, including concerns about Provincial program delivery that pertain to their businesses.

- d) A meeting between the ILMA (me), Provincial staff and Vaagen Fibre Canada (one of ILMA’s members) regarding a status update on their intended mill shut down (which has now been announced)

Please note: Follow up to these meetings has been requested by Ministry staff, Russ Laroche (in writing), and ILMA plans on continuing dialogue, as it pertains to our members’ business and the ILMA organization.

- 2) Letter of congratulations and invitation to meet, addressed to Premier David Eby (dated Nov 21, 2022). Please see attached for your reference; note I have not received a response as of today’s date. Upon further review of this letter, the submitted topics pertain to the Province’s delivery of programs (Legislation, policy, programs, etc) that are directly related to ILMA and ILMA member business. That said, if I were to write this letter today (based on a clearer understanding of the Lobbyist Transparency Act), I would be clear about how the submission relates to provincial programs and ILMA, to avoid any perception of “lobbying”.
- 3) Letter of congratulations and invitation to meet, addressed to Minister of Forests, Bruce Ralston (dated January 5, 2023). Please see attached for your reference, as well as Minister Ralston’s response. Note that he has not agreed to meet as a result of this invitation. Again, the topics submitted pertain to the Ministry and programs that Minister Ralston is responsible for, and that are directly related to ILMA and ILMA Business.”

## **INVESTIGATION**

[39] The ORL commenced an investigation under s. 7.1 of the LTA to determine whether the designated filer had contravened ss. 2.2 and 4.1 of the LTA.

[40] On August 17, 2023, the designated filer was provided formal notice under s. 7.2(1)(a) of the LTA, outlining the basis for the allegations that he had contravened ss. 2.2 and 4.1 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.

[41] During conversations with the ORL, the designated filer states that “Although my last date as an employee of the Province was March 2, 2022, I was on leave from November 19, 2021, to March 2, 2022, during which time I was not privy to any executive council information or meetings. Therefore, as explained in my response to the ORL Registry Officer below, I may

decide to apply for an exemption to become ILMA's Inhouse Lobbyist as of Nov 19, 2023. I do not plan on lobbying, either now, or between Nov 19, 2023, and March 3, 2024, without an approved exemption from the ORL. I have not applied for an exemption yet (and am considering simply waiting for Mar 3, 2024, at which time I will register as ILMA's in house lobbyist)."

[42] Initially in conversations with the ORL staff, the designated filer stated that "any admissions were based on my erroneous understanding of the Act at the time." Due to the personal information contained in his exemption application, he subsequently withdrew his exemption request and proceeded to learn about the LTA.

### ***Designated Filer's Submission***

[43] On December 12, 2023, I requested that the designated filer detail for me how the letter dated November 21, 2022, to the Premier is exempt from lobbying pursuant to ss. 2(2)(b) and 2(2)(c) of the LTA.

[44] On December 27, 2023, the designated filer responded, arguing the letter dated November 21, 2022 to Premier David Eby was not lobbying. He stated:

"... Inviting a government official to meet is not considered "lobbying" until the meeting is "arranged". Or, in other words, the public office holder attends the meeting... In this case, the letter to Premier David Eby included congratulatory messages, and an invite that did not result in an actual meeting with Premier Eby. Therefore, the congratulations and invitation portions of the letter are not lobbying. "

[45] The designated filer continues: "Some of the content within the letter contains commentary and/or suggestions on how the Province could perform it's stated mandates for forestry, in delivering existing programs that impact the small and medium sized companies that ILMA works for."

[46] Moreover, the designated filer states, "the LTA and Regulations are not intended to be an impediment for companies to exercise their rights to interact, do business and expect a level of service from the Province, nor is the Lobbyist legislation intended to be an impediment for companies to fully exercise legally acquired permits and tenures (related to fibre supply) that they hold with the Province." Finally, he points out the following:

- a. None of the points in the letter reference legislative proposals.
- b. None of the points in the letter reference passage or defeat of a bill in the Legislative Assembly.
- c. None of the points in the letter reference development or enactment of regulation.

- d. Some of the points in the letter refer to how existing programs, policies, directives or guidelines are being delivered (or not). However, as previously stated to your office, the points raised in the letter are excluded, under Section 2(2)(b), as previously rationalized to you and [ORL staff].”

[47] In his submission, the designated filer stated the ILMA is an organization that represents the interests of its members pertaining to interactions with the provincial government, and members also have tenures and permissions that enable use of the crown’s natural resources therefore, interaction with the province (in this case Premier David Eby, who is ultimately accountable) on programs that impact those tenures and rights are necessary and not lobbying. He wrote: “Furthermore, ILMA members (as individual companies) cannot keep abreast of the many complex programs delivered by Ministries that impact their business, nor can they afford to do this. Therefore, they belong collectively to ILMA (and provide Board direction to me); ILMA often represents them at multiple venues, and (where appropriate) they also represent their own interests to the Provincial government. One of ILMA’s primary roles is to keep abreast of pertinent legislation and programs that relate to their businesses, understand the impact to our members from communications with government on that, as well as bring that information back to ILMA members, so they may make business decisions accordingly.”

[48] The designated filer also states in the letter:

- e. None of the points in the letter reference the awarding or termination of any contract, grant of financial benefit.
- f. None of the points in the letter reference a decision to transfer any interest or assets that provide goods or services to the Province or the public.
- g. None of the points in the letter reference a decision by the Province to have a private sector entity, instead of the Crown, deliver goods or services to the Province.

## **DISCUSSION AND FINDINGS**

### ***Did the designated filer lobby?***

[49] The letter dated November 21, 2023, to the Premier is a request for a meeting to discuss changes government needs to make. For example, the designated filer specifically requested the Premier to:

- Implement the new BC Timber Sales (BCTS) Category Value-Added with an allocation equal to or greater than the original 3 million originally allocated to Category 2.
- Negotiate BCTS purchase of developed licensee tenures (Cutting Permits), for immediate sale on the open market.

- Temporarily divert provincial staffing and resources to BCTS to accelerate timber development and sales.
- Immediately tenure and market, all available undercut timber volumes, in all Timber Supply Areas.
- Prioritize and accelerate Timber Supply Reviews and Apportionment decision making, with an emphasis on value added and community-oriented tenures.
- Supply increased tenure volume to indigenous governments that own, or support BC based forest companies.

[50] The designated filer argues that none of these items are lobbying if they are exempt under section 2(2)(b) of the LTA.

[51] In my opinion the letter to the Premier is lobbying because it meets the criteria of "lobby" as defined in the Act. In the letter, the designated filer lobbies as defined in s.1 of the LTA, paragraphs (a)(iv) of the definition of lobby, when he asks the Premier for changes to programs. For example, the letter requests "Implement the new BC Timber Sales (BCTS) Category Value-Added with an allocation equal to or greater than the original 3 million m3 originally allocated to Category 2". Meanwhile, the BC Government's website shows BCTS is the BC Timber Sales - Category 4 - Value -added Program.<sup>1</sup> This is clearly lobbying under (a)(iv) of the definition of "lobby."

[52] I am satisfied that on that content alone, asking the Premier for changes to programs, the letter meets the definition of lobbying. I will not analyze whether other points raised in the letter were also lobbying as it is not necessary and turn to the question of whether the exemptions apply.

***Does 2(2)(b) of the LTA apply?***

[53] The definition of "lobby" in the LTA captures a broad range of communications for the purpose of influencing a wide variety of government decision-making. Section 2(2)(b) restricts the application of the Act—and therefore the requirement for lobbyists to register their lobbying—to certain communications in certain circumstances from that broad definition.

[54] The first required element for s.2(2)(b) to apply is that a communication must be in the form of an oral or written submission. This is much more limited than the catchall term "communicates" found in the definition of "lobby."

[55] A key element in what separates a "submission" from the broader term "communicates" is the nature of the relationship between the public office holder and the

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<sup>1</sup> BC Government. "BC Timber Sales" <https://www2.gov.bc.ca/gov/content/industry/forestry/bc-timber-sales>

person making submissions. In the context of the LTA, submissions are primarily one-way communications to a decision-maker on a narrow topic. Like a judge in a courtroom, the decision-maker has sole discretion to accept or reject the position of a party. The nature of this type of communication is closer to a request or a consultation than a discussion or dialogue, such as, for example, a letter directed to a public office holder, or a comment made during a briefing or at a conference.

[56] The second required element for s.2(2)(b) to apply is that the submission is made to a public office holder regarding the effect or impact of a decision made by *that* public office holder on *that* organization or person. This distinction is made in the section's use of the phrase "... by the public office holder with respect to the person or organization." In other words, the exclusion requires the submissions relate to an individual interaction between one organization or person and one public office holder. Put another way, this exclusion is concerned with specific operational decisions by individual public office holders compared to larger policy or legislative decisions captured by the definition of "lobby."

[57] The above requirements apply to both s.2(2)(b)(i) and (ii), with the former relating to specific operational decisions regarding legislative enforcement, interpretation or application and the latter relating to specific operational decisions regarding policy implementation or administration. In both cases, the exclusions also only apply in circumstances that arise after an enactment is in force or a program has been established. Any communications on changing an act or regulation (in the case of s.2(2)(b)(i)) or program, policy, directive or guideline (in the case of s.2(2)(b)(ii)) would fall outside of the scope of the exclusion and require registration.

[58] On the other hand, the definition of lobbying is much broader. It requires a communication between a lobbyist and a public office holder in an attempt to influence a wide variety of government decision-making outlined in paragraph (a) of the definition of "lobby" in the LTA. Black's Law Dictionary defines "communication" as "the expression or exchange of information by speech, writing, gestures, or conduct."<sup>2</sup> Consistent with the modern approach, a broad, liberal interpretation of "communicate" aligns with the transparency and fairness objectives of the LTA and includes written, oral, electronic, and, in some cases, other forms of communication, such as gestures or conduct.

[59] Further support for this interpretation is found in the differences in who the decision-maker is in each situation. Lobbying is concerned with any government decision, be it policy or legislative, whereas the s. 2(2)(b) exclusions are limited to what can be characterized as operational decisions by an individual public office holder.

[60] Section 2(2)(b) carves out a very narrow range of communications that allow operational level interactions to occur without the regulatory burden of registration under the

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<sup>2</sup> 8<sup>th</sup> ed.

LTA. Given the individualized impacts of such decisions, the objective of the LTA is not served by including them in the requirement to register.

[61] Any communications that touch on changing the Act or regulation (in the case of s. 2(2)(b)(i)) or program, policy, directive or guideline (in the case of s. 2(2)(b)(ii)) would fall outside of the scope of the exclusion and require registration.

[62] Based on the information before me, the November 21, 2022, letter to the Premier from the designated filer constitutes lobbying, as it is a communication with a public office holder in an attempt to influence one of the enumerated items in the definition of “lobby” in s.1 of the LTA, specifically paragraph (a)(iv), which includes communications in a attempt to influence the development, establishment, amendment or termination of any program of the government of BC.

[63] The letter does not meet the definition of submission. The nature of the relationship between the Premier and the ILMA is not a one-way communication regarding a narrow topic. The Premier doesn’t have the sole discretion to accept or reject a position of a party (the ILMA’s requests). Or put another way, this letter is not a submission that relates to an individual interaction between the ILMA and the Premier regarding the effect or impact of a decision made by the Premier about a program. Rather the purpose of the letter is to attempt to influence the Premier, as mentioned in paragraph 51, the letter clearly meets the definition of lobbying.

[64] I find the November 21, 2022, letter was not an oral or written submission within the meaning of s.2(2)(b) of the LTA. Instead, I find that the letter falls within the definition of lobby under (a)(iv) (development, establishment, amendment or termination of any program).

***Does 2(2)(c) of the LTA apply?***

[65] Section 2(2)(c) restricts the application of the Act—and therefore registration requirements— to certain communications under certain circumstances.

[66] Section 2(2)(c) of the LTA restricts the application of the Act by stating that the LTA does not apply to an oral or written submission made to “a public office holder by an individual on behalf of a person or organization in direct response to a written request from a public office holder for advice or comment on any matter referred to in paragraph (a) of the definition of ‘lobby’ in section 1 (1).”

[67] The designated filer provided no evidence in his submission that the letter of November 21, 2022, was a direct response to a written request from the Premier for advice or comment on any matter referred to in paragraph (a) of the definition of “lobby” in section 1 (1). Such a written request is required for the exception to apply. Without any evidence of a written request from the Premier for advice or comment that the letter clearly and directly responded

to, I find that the letter falls within the definition of lobby under (a)(iv) (development, establishment, amendment or termination of any program).

### ***Lobbying while prohibited***

[68] The designated filer states his employment with the BC government as an Assistant Deputy Minister (ADM) in the Ministry of FLNRORD ended on March 2, 2022. The designated filer was appointed to his position on August 9, 2018, by an Order in Council. This position meets the LTA definition of a former public office holder as a “a person who is appointed to any office or body by or with the approval of the Lieutenant Governor in Council.”

[69] In Investigation Report 20-02 the investigator pointed out why it was important for former public office holders turned lobbyists to report their previous role in government under s.4(1)(o) of the then *Lobbyist Registration Act*:

The purpose of this provision is to increase public confidence in government decision-making by reducing the scope for the exercise of undue influence. It is to address the public concern that certain former public office holders, at least for a time, can have more “insider knowledge” and influence over former colleagues than lobbyists who did not formerly work as public office holders in similar positions. There is the perception of the existence of a revolving door of public office holders and lobbyists developing greater influence by moving freely between the public service and lobbying the public service.<sup>3</sup>

[70] The two-year prohibition on lobbying for former public office holders in s.2.2 of the LTA was created for these reasons. The prohibition prevents individuals from taking advantage of information they acquired and relationships they formed during their time in government for a period of at least two years.

[71] The Legislature has determined that these senior officials are most likely to possess top-level, specific, and valuable information, or to have positive working or personal relationships with elected officials and high-level public servants.

[72] In this case, the designated filer was an Assistant Deputy Minister with the Ministry of Forests, Lands, Natural Resource Operations and Rural Development. This is a position listed in paragraph (c)(ii) of the definition of former public office holder. Section 2.2(c) of the LTA prohibits an individual listed in the definition of “former public office holder” from lobbying for a period of two years after leaving their position.

[73] The designated filer left his position as ADM on March 2, 2022. As I have found above, the designated filer lobbied on November 21, 2023, and that lobbying was not subject to an

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<sup>3</sup> Fraser (Re), 2020 BCORL 1 (CanLII), <<https://canlii.ca/t/jbwp8>>.

exclusion under the LTA. This means the designated filer lobbied prior to the end of the 2-year prohibition. I find the designated filer contravened section 2.2 when he lobbied while prohibited.

### ***Requirement to file a Monthly Return***

[74] If an in-house lobbyist lobbies a senior public office holder, the designated filer is required to submit a Lobbying Activity Report as part of the Monthly Return requirement set out under s. 4.1 of the LTA, with details set out in s. 4.2(a) to (d) of the LTA about their lobbying activity.

[75] The designated filer lobbied the Premier on November 21, 2022. Therefore, he was required to file a Lobbying Activity Report identifying the lobbying activity no later than 15 days after the end of the month in which he lobbied senior public office holders. As a result, the Report was due December 15, 2022.

[76] I find the designated filer contravened s. 4.1 of the LTA when he failed to submit a Lobbying Activity Report (part of the Monthly Return Requirement) by the deadline to report the lobbying activity that took place on November 21, 2022.

### **ADMINISTRATIVE PENALTY**

[77] 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 and may impose a prohibition on lobbying if it is in the public interest.

[78] Such person must be given notice of the contravention determination. If a monetary administrative penalty is imposed, the notice must include "the reason for the prohibition and the start date and end date of the prohibition".

[79] 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 Guide makes clear, its purpose is to structure discretion. It does not fetter discretion. It is not law. I have followed that guidance in the exercise of my delegated discretion to determine a penalty based on the facts before me.



[80] The guide to investigations first sets out a general financial range for a particular contravention of the LTA (depending on whether it is a first, second or third contravention). Second, it provides a list of factors that will be considered in determining the amount of administrative penalty.

[81] 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.

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

[83] The penalty for lobbying while prohibited during the cooling off period in the guidance is in the range of \$5,000 and \$7,500 and failing to register a lobby activity has a range of \$500 to \$7,500 for the first instance of non-compliance.

## **Section 2.2 Lobbying While Prohibited**

[84] Under section 2.2 of the LTA, a person who is a former public office holder must not lobby, in relation to any matter, for a period of two years after the date they ceased their employment as a public office holder.

[85] The designated filer left his position as ADM on March 2, 2022. As I have found above, the designated filer lobbied on November 21, 2022. This means the designated filer lobbied during the two-year prohibition on lobbying that applied.

[86] I am not aware of any previous contraventions or warnings under the LTA for the designated filer. I consider this to be the designated filer's first contravention which weighs towards a lower penalty.

[87] However, on January 20, 2023, the designated filer applied for an exemption request from the two-year cooling-off period that applied to him as a "former public office holder," which he later withdrew on January 23, 2023. In my view, this action demonstrates he was

somewhat aware of the legislation surrounding the prohibition on lobbying as a former public office holder during the cooling-off period, which weighs towards a higher penalty.

[88] As mentioned above, the Legislature has determined that these senior officials are most likely to possess top-level, specific, and valuable inside information, or to have positive working or personal relationships with elected officials and public servants, especially those at the senior levels of government. Similar considerations clearly apply to political staff, other than administrative support staff, who work in ministers' offices.

[89] In this case, within two years of being a former public office holder, an ADM with the Ministry of FLNRORD, the designated filer became the President of ILMA. As such, he had the ability to take advantage of information he acquired and relationships he formed, resulting in the ILMA benefitting from this contravention. I note that I do not have specific evidence that the designated filer did benefit from this contravention; therefore, it is a neutral factor.

[90] When considering whether this contravention was deliberate, I considered the designated filer's belief that he had not contravened section 2.2 of the LTA because the lobbying was exempt, pursuant to sections 2(2)(b) and 2(2)(c). In my view, this does not demonstrate a deliberateness or intention to contravene the Act, but rather a circumstance where the designated filer acted in a careless manner, lobbying without careful consideration of the LTA. Still, the responsibility of understanding the LTA reporting obligations rests with the lobbyist, and ORL staff are available to assist.

[91] I have considered and rejected the view that this might be a case where "no penalty" is appropriate. The provisions of the LTA and that of its predecessor the LRA have been in place since April of 2010. Recent amendments under the LTA did not change the lobbyist's responsibilities in this case. The designated filer should have been aware of his obligations under the LTA, including the obligations to adhere to the two-year cooling-off period required under section 2.2 of the LTA.

[92] 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 this lobbyist to check that he has met his 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 act as a reminder to lobbyists of the two-year prohibition on lobbying for former public office holders.

[93] The ORL contacted the designated filer on various occasions in an effort to establish whether the designated filer was engaged in lobbying activities and whether the LTA required those activities to be reported and offered to assist the designated filer in meeting his obligations under the LTA. While I understand that the designated filer claims there was initial

uncertainty as to whether he was engaging in lobbying activity, ultimately, it was the designated filer's responsibility to stay up to date with LTA reporting requirements.

[94] Although this office has not previously written a determination decision resulting in a finding of a contravention of section 2.2, in arriving at an appropriate penalty, I have examined past Investigation Reports for similar contraventions as relevant factors in determining a reasonable penalty for this contravention.

[95] In IR 20-02, 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 know 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 former 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.

[96] In Determination Decision 23-04 a designated filer for the organization was found to have contravened sections 3(3), 4.1 and 2.4 of the LTA. The designated filer received an administrative penalty totalling \$5,000 for the contraventions. In this decision, the organization filed 10 Monthly Returns late. Similar to this case, there was a lack of transparency between the lobbying activity and when the public ought to have known who was attempting to influence government. Finally, the designated filer was given sufficient time and opportunity for the organization to review its lobbying activities, request assistance or information from the ORL and file the Monthly Returns on time.

[97] In light of the lack of transparency and considering the designated filer lobbied when expressly prohibited, I consider this contravention to be serious, weighing in favour of a higher penalty.

[98] As noted in Exemption Decision 18-01, Registrar McEvoy stated,

"It is apparent from this kind of provision that the Legislature recognized that lobbyists may be selling access to office holders in addition to any subject-matter expertise or inside information they may possess. The Legislature has recognized, in other words, that a lobbyist may be of value because of who, not what, the lobbyist knows. A client might retain a lobbyist because she or he knows people in government, and thus can arrange a meeting for the client, with any actual lobbying about the meeting's subject being left to the client or to other lobbyists. Public servants "have access to this inside information" and "they should not be permitted to sell that information when they leave the public service in terms of leaving a minister's office, leaving the board chair of a Crown corporation and then going into the private sector. " Nothing in the [LTA](#) prevents former office holders from leveraging the knowledge, expertise, and

relationships they acquired, at public expense, over the years. What is prohibited, for a period at least, is lobbying. The rationale of this rule is to prevent organizations from purchasing influence by hiring former office holders for their connections and access to government decision-makers. This is why the act of setting up a meeting is captured by the definition of “lobbying activity” in the LTA: opening doors to senior decision-makers is valuable”.

[99] Considering all of the relevant factors in this case and similar penalties imposed in past investigations, I find that the appropriate administrative penalty for contravening s. 2.2 in this case is \$6,000.

#### **Section 4.1 Requirement to file a Monthly Return**

[100] The designated filer lobbied the Premier on November 21, 2022; therefore, he was required to file a Lobbying Activity Report (LAR) identifying the lobbying activity no later than 15 days after the end of the month in which he lobbied senior public office holders (SPOHs). As a result, the LAR was due December 15, 2022.

[101] As mentioned above, failure to register this lobby activity undermines the LTA’s goal of transparency because it prevents the public from knowing who is attempting to influence government at any given time. In this case, the public was unaware of information they had a legal right to know until the date of this report.

[102] I am not aware of any previous contravention or warning under the LTA for the designated filer. I am considering this to be the designated filer’s first contravention which weighs towards a lower penalty.

[103] 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 reporting requirements of monthly lobbying activities.

[104] In considering whether the designated filer acted deliberately, again, I do not have information before me to suggest that he actively took steps to avoid filing the Monthly Return on time which weighs towards a lower penalty.

[105] In IR-15-03, the designated filer was fined \$1,000 for filing a Registration Return six weeks late. Although, IR 15-03 addresses Registration Returns, not a Monthly Return, as is the case here, it resembles the circumstances in this decision because it deals with the late submission of Registration Returns. Failing to register on time or failing to submit a Monthly Return deprives the public of timely information about an organization’s lobbying intentions or activity. It undermines the purpose of the LTA, which is to promote transparency, to understand who is lobbying public office holders at any given time and for what reasons.

[106] 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.

[107] IR 18-01, the consultant lobbyist failed to enter accurate information into their Registration Return when they did not declare their previous occupation as a former public office holder. It was the lobbyist's first contravention, and it was accepted to be an unintentional misunderstanding of the legislation. The lobbyist did not benefit economically and quickly corrected the error after being alerted to it. The lobbyist received a \$1,000 administrative penalty.

[108] In DD 23-01, the organization was one month late in registering and had lobbied once, receiving a penalty of \$1,000. In DD 23-02, the designated filer had submitted 15 Monthly Returns late over a two-year period, with unreported lobbying of senior public office holders on 29 separate occasions, receiving a penalty of \$3,000. In DD 23-04, the designated filer filed their Registration Return 16 months late, lobbying on 10 different occasions while not registered. The designated filer received a penalty of \$4,000.

[109] I now consider the gravity and magnitude of this contravention. Section 4.1 of the LTA requires a designated filer to submit Lobbying Activity Reports, as part of their Monthly Return obligations, containing information found in s. 4.2(2)(a) to (d) of the LTA about the organization's lobbying activities no later than 15 days after the end of the month in which the lobbying occurred. Failing to submit Monthly Returns with information about an organization's lobbying activities undermines one of the fundamental tenets of the LTA, which is to promote transparency. The public's ability to know who is lobbying who as well as the purpose of the lobbying activity is an important element in meeting the public's expectation of transparency.

[110] The designated filer lobbied the Premier on November 21, 2022, and failed to submit a Monthly Return for this lobbying activity. The fact that he failed to submit the Monthly Return at all for this lobbying activity is a serious contravention. Failing to file a Monthly Return in a timely manner defeats the LTA's goal of transparency because it undermines the ability of the public to know who is attempting to influence government at any point in time. During this period the public was unaware of the November 21, 2022, lobbying of a senior public office holder.

[111] The guide to investigations suggests a penalty in the range of \$100 to \$5,000 for a first instance of a late Monthly Return.

[112] However, a compounding factor that bears considering here is that the designated filer's failure to file a Monthly Return meant that the lobbying activity of November 21, 2022, was kept from the public's view. 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.

[113] I have considered the previous decisions identified above in assessing an appropriate penalty and imposed a penalty of \$1,000 for contravening section 4.1 of the LTA.

## **CONCLUSION**

1. The notice of alleged contraventions has been substantiated.

Under section 7.2(2) of the LTA, I find that:

- i. The designated filer contravened s. 2.2 when he lobbied while prohibited. The notice of allegation has been substantiated.
- ii. The designated filer contravened s. 4.1 of the LTA by failing to submit his Monthly Return by the legislated due date. The notice of allegation has been substantiated.

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

- iii. \$6,000 for contravening s. 2.2 of the LTA
- iv. \$1,000 for contravening s. 4.1 of the LTA.

3. The designated filer must pay this penalty no later than January 2, 2025.

4. If the designated filer requests reconsideration under s. 7.3 of the LTA, they are to do so within 30 days (December 20, 2024) of receiving this decision by providing a letter in writing directed to the Registrar of Lobbyists at the following address, setting out the grounds on which reconsideration is requested:

Office of the Registrar of Lobbyists for British Columbia  
PO Box 9038, Stn. Prov. Govt.  
Victoria, BC V8W 9A4  
Email: [info@bcorl.ca](mailto:info@bcorl.ca)

Date: November 20, 2024

ORIGINAL SIGNED BY

Laine Coopsie, Investigator and  
Delegate of the Registrar of Lobbyists