

DETERMINATION DECISION 25-05

Intuitive Surgical Canada, Inc.

Designated Filer: Eric Dastmalchian

Date: April 10, 2025

SUMMARY: The designated filer for Intuitive Surgical Canada, Inc. (ISC), was found to have contravened section 3(3) of the *Lobbyists Transparency Act* (LTA). The designated filer received an administrative penalty of \$1,500.

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

Authorities considered: Investigation Report 15-03, Investigation Report 17-05, and Determination Decision 23-01.

INTRODUCTION

[1] This report concerns an investigation under section 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, section 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 section 7.2(2) of the LTA, the Registrar must, under section 7.2(1)(b), give the person under investigation a reasonable opportunity to be heard respecting the alleged contravention.

[2] The LTA recognizes two types of lobbyists: consultant lobbyists and in-house lobbyists. This report focuses on the activities of Intuitive Surgical Canada, Inc., (ISC), 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 section 7(4)(d) of the LTA, the Registrar has delegated to me the authority to conduct this investigation, make a decision about compliance and determine the appropriate penalties if appropriate.

ISSUES UNDER CONSIDERATION

[4] The issues for consideration are:

- (a) Whether the designated filer contravened section 3(3) of the LTA by filing ISC's Registration Return later than the legislated deadline; 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,

(c) 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] **"lobbying activity"**

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

[8] **"public office holder"** means

(a) a member of the Legislative Assembly and any person on the member's staff,

(b) an officer or employee of the government of British Columbia,

(c) a person who is appointed to any office or body by or with the approval of the Lieutenant Governor in Council, other than a person appointed on the recommendation of the Legislative Assembly,

(d) a person who is appointed to any office or body by or with the approval of a minister of the government of British Columbia, and

(e) an officer, director or employee of any government corporation as defined in the [Financial Administration Act](#).

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

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

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

[10] **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,

[11] 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.

BACKGROUND

[12] On April 13, 2023, counsel acting on behalf of ISC informed the Office of the Registrar of Lobbyists (ORL) that its client began an expansion into Canada in 2022, creating a Canadian entity to take on the responsibility for all marketing and sales activities. As part of the

expansion, ISC reviewed its legal obligations respecting lobbying registration in BC. Counsel identified two instances of communication with public office holders that likely met the LTA's definition of lobbying and stated that ISC was unaware, at the time, of the changes made to the LTA (formerly the *Lobbyist Registration Act*), "[including the] new 10-day registration obligation for organizations. Consequently, ISC did not register with the ORL within the required period." Counsel advised that ISC would take immediate steps to register with the ORL.

[13] On the same day, ORL staff acknowledged the letter and asked ISC to submit its Registration Return by the end of the day on April 19, 2023. ORL staff subsequently provided additional information, including the definition of lobbying and the requirement to complete Monthly Returns.

[14] On April 14, 2023, ISC submitted a new Registration Return, #9142-4858-1, noting the registration's effective start date as January 3, 2022. On April 21, 2023, ORL staff identified issues with the Registration Return that required correction and provided guidance to resolve them. ISC made the necessary corrections and on April 27, 2023, ORL staff notified ISC that its Registration Return had been activated. As January 3, 2022, was the date when the ISC first had an in-house lobbyist, it was required to file a Registration Return no later than January 13, 2022.

INVESTIGATION

[15] The ORL commenced an investigation under section 7.1 of the LTA to determine whether the designated filer had complied with section 3(3) of the LTA.

[16] On May 14, 2024, I provided the designated filer with formal notice under section 7.2(1)(a) of the LTA that, given the circumstances, it appeared that ISC had contravened section 3(3) of the LTA. I asked the designated filer to respond in writing to the alleged contravention and to provide any information or documentation pertinent to the alleged contravention and any potential penalty.

[17] On June 12, 2024, counsel for ISC responded to the section 7.2(1)(a) notice, agreeing that they were in contravention of section 3(3) of the LTA, and pointing out that they proactively brought this non-compliance matter to the attention of the ORL. They said they failed to register on time because they were not aware of the changes to the LTA and its regulations. Counsel noted that after reporting ISC's noncompliance, they took immediate steps to register and worked with ORL staff to ensure the Registration Return was fully compliant.

[18] Counsel for ISC asked that the investigation be discontinued given the time passed since the filing and its self-reporting and cooperation throughout the process. If the investigation was not discontinued, counsel requested that I consider the following with respect to any penalty:

- ISC has not been the subject of a previous warning letter, administrative penalty, or prosecution relating to the Act;
- The contravention was not deliberate;
- ISC proactively reported and corrected its contravention;
- The noncompliance arose from a comparatively recent amendment to the Act. This was a factor in the length of time between the commencement of lobbying and the self-reporting of noncompliance; and
- Nothing was gained by failing to register. There is no reason why registration would impede or affect ISC's efforts to promote its advanced medical products.

[19] Based on these factors, ISC submits that a penalty at the lower end of the guidelines would be appropriate.

DISCUSSION AND FINDINGS

[20] As noted, counsel for ISC submitted that their non-compliance with the LTA arose from a lack of awareness of the changes to the LTA, formerly titled the *Lobbyists Registration Act* (LRA), and its regulations.

[21] I acknowledge ISC's position regarding the changes to the LTA. However, the changes came into force approximately 19 months (more than a year and a half) prior to ISC's expansion into Canada and its Registration Return's effective start date of January 3, 2022. An organization's lack of awareness of the requirements under the LTA is not an excuse for failing to meet their obligations under the legislation. ISC was required to file its Registration Return no later than January 13, 2022. It did not submit a Registration Return until April 14, 2023, approximately 15 months late.

[22] I find that ISC contravened section 3(3) of the LTA when it failed to submit a Registration Return within 10 days of having its first in-house lobbyist.

ADMINISTRATIVE PENALTY

[23] 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.

[24] Such person must be given notice of the contravention determination and, if a penalty is imposed, "the amount, the reason for the amount, and the date by which the penalty must be paid."

[25] 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*”¹ (guide to investigations) to advise members of the public and those engaged in lobbying about what will guide the ORL in exercising its duties under the LTA and the regulations. As the policy makes clear, its purpose is to structure discretion. It does not fetter discretion; it provides a consistent framework so lobbyists can have some certainty about the exercise of discretion. It is not law. I have considered that guidance in the exercise of my delegated discretion to determine a penalty based on the facts before me.

[26] The guide to investigations first sets out a general financial range for particular contraventions, depending on whether they are first, second or third instance, or whether there is a public interest reason to consider a prohibition from lobbying. Second, it provides a list of factors that will be considered in determining the amount of an administrative penalty. Finally, it includes a clear statement that 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.”

[27] The penalty range for registering late is between \$100-\$5,000 for a first contravention.

[28] 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.

[29] I have considered these factors and the submissions made by ISC’s counsel in making my determination.

[30] ISC’s Counsel asked that the investigation be discontinued due to the “passage of time since the filing and its self-reporting...” and that the contravention was due to “...comparatively

¹ Registrar of Lobbyists: Guide to Investigations, Revised: May 27, 2020.

<https://www.lobbyistsregistrar.bc.ca/handlers/DocumentHandler.ashx?DocumentID=391>

recent amendment to the Act.” As the LTA authorizes investigations into contraventions, I do not accept this rationale for discontinuing the investigation. The amendments to the LRA were in effect 19 months prior to ISC’s expansion into Canada and its requirement to register. The ORL published several guidance documents on its website to educate lobbyists and the public about these changes. ISC could have reviewed the ORL website or contacted the ORL when it was considering lobbying. The fact remains that ISC was required to submit a Registration Return no later than January 13, 2022.

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

[32] The goal of the LTA is to promote transparency, to provide the public with accurate and timely information about who is lobbying government and the purpose of the lobbying. The failure to file a Registration Return in a timely manner undermines the LTA’s goal of transparency because it prevents the public from knowing who is attempting to influence government at any point in time. The 10-day time limit is not optional or arbitrary: it is connected to the public’s right to know the information set out in section 4 of the LTA and to have it in a timely manner.

[33] In terms of the gravity and magnitude of this contravention, ISC’s delay in filing its Registration Return undermines the public’s right to know who is lobbying government and the details of the lobbying. In this case, the public was unaware of information they had a right to know under the LTA for approximately 15 months. This a serious oversight on the part of ISC, which elevates the magnitude of the contravention, warranting a penalty in the middle of the range.

[34] It is commendable that ISC came forward on its own accord to report its contraventions and I acknowledge its efforts to work with the ORL to address them in a timely manner. This weighs in favour of a lower penalty.

[35] I have reviewed previous investigations and decisions and do not see any prior contraventions for ISC. I am also not aware of any warnings under the LTA or the LRA for the ISC. I consider this to be a factor that also weighs in favour of a lower penalty.

[36] I have no information that leads me to believe ISC derived an economic benefit as a result of this contravention. I find this to be a neutral factor.

[37] I do not have information before me to suggest that the contravention was deliberate. I consider this to be a neutral factor.

[38] I have considered the following previous decisions in assessing an appropriate penalty.

[39] In Investigation Report (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.

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

[41] In Determination Decision (DD) 23-01, the organization had an existing registration under the LRA, and, following the May 4, 2020, amendments to the *Act*, their representative contacted the ORL to inquire if there were any steps they needed to take to meet the LTA's requirements. ORL staff informed the representative that they needed to update their registration with information required under the new legislation. The organization did not update their registration with the required information at the time because they believed the changes to the LTA did not apply to them. They were late making the necessary changes and took the position that they "misunderstood" the requirements; however, the investigator was not persuaded this was the case. The organization filed its Registration Return one month late, the investigator found them to contravene section 3(3) and a penalty of \$1,000 was levied.

[42] In each of these cases, the designated filers were reminded of their obligations to either file their Registration Returns on time or update their Registration Return with information required by the LTA. The effort made by each to report or correct the contravention was not expeditious. By contrast, ISC's counsel contacted the ORL about ISC's non-compliance with the LTA without a reminder and took steps to file its Registration Return within days of its initial contact. However, as previously noted the public was unaware of information they had a right to know under the LTA for approximately 15 months, which is longer than the comparative cases.

[43] Considering the previous decisions and all of the above factors, I find a reasonable penalty in this case is \$1,500 as it serves as a reminder of the importance of transparency for

the public and to reinforce the designated filer's responsibility to adhere to the LTA's reporting requirements.

CONCLUSION

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

- i. The designated filer contravened section 3(3) of the LTA when they failed to submit a Registration Return within 10 days of having its first in-house lobbyist. The notice of allegation has been substantiated.

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

- i. \$1,500 for contravening section 3(3) of the LTA.

The total amount of administrative penalty is \$1,500.

3. The designated filer must pay the amount for the penalty no later than **May 22, 2025**.

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

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

Date: April 10, 2025

ORIGINAL SIGNED BY

Nanci Bond, Investigator and
Delegate of the Registrar of Lobbyists