

INVESTIGATION REPORT 14-09

LOBBYIST: WILLIAM BELSEY

June 4, 2014

SUMMARY: A consultant lobbyist filed a registration to undertake lobbying on behalf of a client. The investigation revealed that the lobbyist failed to meet his obligations under ss. 3(1) and 4(3) of the *Lobbyists Registration Act* (LRA) when he did not file a return within 10 days of entering into an undertaking to lobby on behalf of his client and did not update his registration's end-date within 30 days. The lobbyist was assessed a combined administrative monetary penalty of \$1,200.

Statutes Considered: *Lobbyists Registration Act*, S.B.C. 2001, c. 42.

INTRODUCTION

[1] This report concerns an investigation under section 7.1 of the *Lobbyists Registration Act* (LRA). This section gives the Registrar of Lobbyists (Registrar) the authority to conduct an investigation to determine whether there has been compliance with the LRA or its regulations. If, after an investigation under s. 7.1, the Registrar or her delegate believes that the person under investigation has not complied with a provision of the LRA or its regulations, s. 7.2 of the LRA requires her to give notice of the alleged contravention and the reasons for her 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 LRA recognizes two types of lobbyists. Relevant to this report are "consultant lobbyists," individuals who undertake to lobby for payment on behalf of a client. The LRA requires that, within 10 days of entering into an agreement to lobby, consultant lobbyists register the fact that they have entered into such an undertaking. The LRA, s. 4(3) also requires consultant lobbyists to inform the Registrar of the completion or termination of an undertaking, and indicate the date on which the completion or termination occurred, within 30 days of the completion or termination of the undertaking.

[3] This investigation, conducted under the authority delegated by the Registrar under s. 7(4)(d) of the LRA, commenced when the lobbyist submitted a registration that appeared to be late.

[4] Under the LRA, registrations must be filed within specific time frames. The electronic Lobbyists Registry automatically checks the dates of registrations, and alerts ORL staff if the date of a registration appears to be at odds with the required time frames.

ISSUES UNDER CONSIDERATION

[5] The questions I must consider are:

1. Whether the lobbyist filed a return within the time lines set out in s. 3(1);
2. Whether the lobbyist end-dated a return as required by s. 4(3) of the LRA; and
3. If he did not do so, what, if any, administrative penalty is appropriate in the circumstances?

RELEVANT SECTIONS OF THE LRA

“**client**” means a person or organization on whose behalf a consultant lobbyist undertakes to lobby;

“**consultant lobbyist**” means an individual who, for payment, undertakes to lobby on behalf of a client;

“**lobby**” subject to section 2(2), means,

- (a) in relation to a lobbyist, 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) in relation to a consultant lobbyist only, to arrange a meeting between a public office holder and any other individual...

"undertaking" means an undertaking by a consultant lobbyist to lobby on behalf of a client, but does not include an undertaking by an employee to do anything...

Requirement to file return

3(1) Within 10 days after entering into an undertaking to lobby on behalf of a client, a consultant lobbyist must file with the registrar a return in the prescribed form and containing the information required by section 4.

Form and Content of Return

4(3) Within 30 days after the completion or termination of an undertaking for which a return was filed, the consultant lobbyist who filed the return must inform the registrar of the completion or termination of the undertaking and indicate the date on which the completion or termination occurred.

BACKGROUND

[6] On November 7, 2012, an ORL staff member identified a news story published that day in which the lobbyist was quoted as saying he was a registered lobbyist. The staff member reviewed the Registry the same day and found that the lobbyist was not in fact registered.

[7] On November 20, 2012, the lobbyist registered with the ORL for an undertaking to lobby as a consultant lobbyist on behalf of the Gitxaala Nation. This is Registration ID 12891338.

[8] The LRA requires a consultant lobbyist to indicate the start date and scheduled end date of any undertaking to lobby. In his registration, the lobbyist provided an undertaking start date of November 1, 2012, and an end date of November 19, 2013.

[9] ORL staff received an automatic system alert that the lobbyist's registration appeared to be non-compliant. This alert prompted the investigation.

INVESTIGATION

[10] On November 27, 2012, ORL staff wrote to the client contact person named on the lobbyist's registration, requesting that the client verify the start and end dates listed on the lobbyist's registration.

[11] On December 17, 2012, and February 6, 2013, ORL staff wrote to the lobbyist requesting that he provide details of any lobbying he might have conducted on behalf of his client, and a copy of any written agreement he might have with his client.

[12] On February 6, 2013, the lobbyist provided a copy of a document dated March 9, 2012, which outlined services to be provided to the client. The description of services included arranging meetings with government officials, an activity that falls within the LRA's definition of lobbying. In a cover email, the lobbyist also provided details concerning one meeting with public office holders, which took place on November 15, 2012.

[13] In February 2013, ORL staff contacted several public office holders named as lobbying targets in the lobbyist's registration. Two indicated that they had met with the lobbyist in relation to the subject matter of the registration in November 2012. A third indicated that the lobbyist had attempted to arrange a meeting with him in December 2012, but that the meeting did not take place due to scheduling difficulties.

[14] On February 19, 2013, former Deputy Registrar of Lobbyists Mary Carlson sent a formal notice to the lobbyist setting out the basis for the allegation that the lobbyist had not complied with s. 3(1) of the LRA. She invited the lobbyist to respond in writing to the alleged contravention and provide any information or documentation pertinent to the alleged contravention and any potential penalty.

[15] On February 25, 2013, the lobbyist responded to the letter of notice, stating, "The offer to perform various types of services was never agreed to by both parties and there was never any undertaking as defined in the Act. Parts of the offer were undertaken, but at no time did I Lobby any government official and there was no communication with any public office on behalf of the Gitxaala Band." He stated further that his offer of services expired in August 2012, and that in November 2012, the client asked him to lobby on their behalf, whereupon he registered.

[16] On February 14, 2014,¹ in response to queries from the ORL, a representative of the client organization indicated that the lobbyist had entered into an undertaking to lobby on behalf of the client during the week prior to October 1, 2012. The client's representative reported further that the lobbyist communicated with him on October 5, 2012, regarding steps he had taken to arrange a meeting with a public office holder.

DISCUSSION

[17] On the issue of whether the lobbyist contravened s. 3(1):

1. The lobbyist certified in his November 20, 2012 registration that his undertaking start date was November 1, 2012. A representative of the client organization indicated that the client and the lobbyist entered into an undertaking to lobby by October 1, 2012. Even if the lobbyist was correct that the undertaking was entered into on November 1, 2012, the lobbyist still failed to register the undertaking within 10 days of that date, as required by the LRA.

[18] On the issue of whether the lobbyist contravened s. 4(3):

2. The lobbyist also certified in his registration that his undertaking end date was November 19, 2013. The lobbyist indicates that all of the lobbying activities relating to that undertaking were completed by the end of 2012. The lobbyist asserts that he did not conduct any further lobbying activities after that time, and there is no indication that the lobbyist conducted any lobbying on behalf of the client after December 2012. The undertaking remained on the Lobbyists Registry in an active status until November 19, 2013, the end date initially entered by the lobbyist. The lobbyist did not report the termination of the undertaking within 30 days, as required by the LRA. The notification under s. 7.2 of the LRA raised this as an issue of compliance, but the lobbyist did not refute this presentation of the facts in his response.

FINDING

[19] Based on the evidence, I make the following findings:

1. I find that the lobbyist contravened s. 3(1) of the LRA when he failed to file a return with the Registrar within 10 days of entering into an undertaking to lobby.

¹ The delay in completing this investigation was owing to difficulties in obtaining the necessary information from the representative of the client organization. The ORL had to resort to its powers under s. 7.5 and 7.6 of the LRA to make application to the Supreme Court to compel them to answer certain questions.

2. I also find that the lobbyist contravened s. 4(3) when he failed to inform the Registrar of the completion or termination of the undertaking within 30 days of its termination, which I have determined occurred by the end of 2012.

ADMINISTRATIVE PENALTY

[20] The purpose of the LRA is to promote transparency in lobbying by requiring lobbyists to register in a timely fashion and to disclose accurate, current and complete information. Failing to keep information in the Lobbyists Registry current and accurate undermines the ability of the public to know who is actually attempting to influence government at any point in time, thereby defeating the LRA's goal of transparency.

[21] The LRA makes clear that transparency includes timeliness. Timeliness includes the requirements to file a return and update an existing registration within the legislated time limits.

[22] In assessing whether a penalty is necessary in this instance, I must consider relevant factors, including:

- Any effort the registrant made to report or correct the contravention,
- The gravity and magnitude of the contravention, and
- Whether a penalty is necessary for general and specific deterrence.

[23] I have considered these matters.

[24] On the question of the lobbyist's attempt to report or correct the contravention, the lobbyist did not register on the Lobbyists Registry until after a media report identified him as a lobbyist. Later, he did not update his registration with a correct end-date, but instead allowed it to terminate automatically approximately one year later.

[25] On the question of the gravity and magnitude of the contravention, the lobbyist was quoted in a media report published on November 7, 2012 as stating that he was a registered lobbyist. In his communications with this office, he has not denied making the statement to the journalist that he was a registered lobbyist, suggesting that he was aware of both the Lobbyists Registry and the requirement that lobbyists register. Almost two weeks after the statement was published, the lobbyist registered the undertaking concerned in this investigation. The lobbyist dated the start of this undertaking as November 1, 2012, whereas the client identified the start date of the undertaking as no later than October 1, 2012. Being aware of the legal obligation to register yet failing to do so in a timely manner is a serious omission.

[26] I now turn to the question of specific deterrence. This investigation, hearing process, the ensuing administrative penalty and the publication of the outcome of this investigation will encourage the lobbyist to ensure that he has met his obligations under the LRA prior to submitting any future returns.

[27] Regarding general deterrence, the publication of this report and recognition that the ORL will issue administrative penalties to lobbyists for contraventions of the LRA will remind all lobbyists to be diligent in complying with their legal obligations to register when required and update their registrations as required in a timely fashion.

[28] ORL policies and procedures, which are intended to act only as a guide, suggest a range of penalties for contraventions of the LRA. The penalty for a late filing ranges from \$100 to \$5,000 for a first contravention. The penalty for failing to report changes also ranges from \$100 to \$5,000 for a first contravention. For the reasons outlined above, I impose an administrative penalty of \$600 for the contravention of s. 3(1) of the LRA and \$600 for the contravention of s. 4(1) of the LRA. The combined penalty is \$1,200.

CONCLUSION

1. Under s. 7.2(2) of the LRA, I find that the lobbyist contravened ss. 3(1) and 4(3) of the LRA in respect of Registration ID 12891308. The lobbyist contravened s. 3(1) when he failed to register an undertaking to lobby within ten days of entering into the undertaking, as required by s. 3(1). The lobbyist contravened s. 4(3) when he failed to inform the Registrar of the completion or termination of the undertaking and indicate the date on which the completion or termination occurred, as required by s. 4(3). The notice of alleged contravention has been substantiated.
2. I impose an administrative penalty of \$1,200.
3. The lobbyist must pay this penalty no later than July 16, 2014.

4. If the lobbyist requests reconsideration under s. 7.3 of the LRA, he is 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

June 4, 2014

ORIGINAL SIGNED BY

Jay Fedorak, Deputy Registrar/Assistant Commissioner
Office of the Registrar of Lobbyists
Office of the Information and Privacy Commissioner