

INFLUENCING B.C.

An e-zine on lobbying, lobbyists, and transparency in public influence

O.R.L. office of the registrar of lobbyists BRITISH COLUMBIA

Transparent Lobbying.
Accountable Government.

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REGISTRAR'S MESSAGE

Over the past few years we have seen an increased interest in establishing lobbyist registries at the local government level.

In this issue our feature story presents the case for the establishment of municipal lobbyist registries in B.C. with the goal of promoting transparency at all levels of government. At this time, Surrey is the only municipality in B.C. to have a municipal lobbyist registry.

We have also included updates on the progress of lobbyist registries across Canada. Saskatchewan is in the planning stages of their registry with an anticipated implementation of Spring 2016, while the City of Ottawa has been up and running since 2012.

I am encouraged by the increase in transparency these new registries will bring, and look forward to providing you with future updates as they occur.

In the Fall 2014 issue of *Influencing B.C.* we took a step back and looked at the basic components of lobbying in B.C. We did this after finding that there was confusion when it came to what constituted lobbying, as well as when registration was required with the Office of the Registrar of Lobbyists (ORL).

Based on the positive feedback received from this approach we have included two new graphics in this issue that lay out the five things you need to know about

lobbying in B.C. as well as information about the 100 hour threshold for organizations with in-house lobbyists.

It is important for lobbyists to know and understand their obligations under the *Lobbyists Registration Act*. If you are unsure as to whether your actions constitute lobbying or if you have questions about the registration process, do not hesitate to contact the ORL and the registry manager will be happy to help.

As always we welcome your comments, questions and suggestions for topics and authors for future issues.



Elizabeth Denham
Registrar of Lobbyists for B.C.

TIME FOR A ONE SIZE FITS ALL APPROACH TO LOBBYISTS IN B.C.

BY DERMOD TRAVIS



Dermod Travis is Executive Director at IntegrityBC. Mr. Travis served as the Executive Director of the Canada Tibet Committee from 2007 to 2011, and is the founder of PIRA Communications.

He is a former member of Quebec's Estates General on the Situation and the Future of the French Language and its Comité d'examen sur la langue d'enseignement.

At IntegrityBC, he is responsible for managing the office and the organization's strategic direction.

In February, Elections BC – in its new role overseeing candidate financial disclosure statements for local elections – released approximately 3,200 reports from candidates who sought office in last November's civic elections.

They confirmed what many suspected: a few corporations and unions had a pretty keen interest in seeing who got elected to city halls across the province, if their chequebooks are any indication.

In Vancouver, 67.4 per cent of Vision Vancouver's \$2.845 million haul came from corporations and 12.7 per cent from unions, including some that represent city workers. For the Non-Partisan Association (NPA), 72.4 per cent of their \$2.42 million raised came from corporations and \$3,000 from unions (tough to put that in a meaningful percentage).

And Vancouver isn't the exception that most people think. Big money gets raised and spent on local campaigns across B.C. and it's not purely out of the goodness of donors' hearts that those cheques get cut.

So if B.C. has transparency when it comes to campaign donations, why not the same level of transparency when it comes to the tête-à-têtes that invariably take place between local office holders and those trying to influence their decisions?

It's likely the interest of most donors doesn't wane in civic affairs once the ballots are counted; in fact, it's somewhat obvious when you look at the list of donors that it doesn't diminish. At all.

Municipal lobbyist registries already exist in Ottawa, Toronto and Surrey. In March, the City of Hamilton appointed its first integrity commissioner who will oversee that city's new lobbyist registry. Quebec's Lobbying Transparency and Ethics Act encompasses all local governments across that province.

B.C. is at a crossroads. Local councils could act on an ad hoc basis – as Surrey has commendably done – or opt for a more comprehensive approach where there's one set of rules and one registry across B.C. for all local governments.

And it may not be the great leap that some might fear.

There's likely a great deal of overlap between major donors at the local level that have lobbyists or consultant lobbyists already registered at the provincial level (or should).

In November's election, Great Canadian Gaming Corporation donated to Vision Vancouver's campaign and the company has a consultant lobbyist registered with the Office of the Registrar of

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TIME FOR A ONE SIZE FITS ALL APPROACH (CONT'D.)

Lobbyists for B.C. The B.C. Maritime Employers Association donated to the NPA and has a consultant lobbyist on record. The B.C. Federation of Labour donated to the Burnaby Citizens Association and has a designated filer on record.

Undoubtedly it's the same as well for those who didn't donate to a local campaign, but have issues to pursue with local governments.

To do as Surrey has done is one approach.

But if there's one lesson coming out of the Auditor General for Local Government debacle, perhaps relying instead on an existing structure with the Office of the Registrar of Lobbyists and the experience the office already has under its belt is a better, more efficient approach to take.

It's time to look at the Quebec model and best practices elsewhere and develop a B.C. solution for a lobbyist registry at the local level.

Think of it as a visit to the dentist: the anticipation of discomfort is always worse than the reality.

LOBBYING ACROSS CANADA

Lobbyist registries at the municipal level

- City of Surrey, BC
- City of Toronto, ON
- City of Hamilton, ON
- City of Ottawa, ON

Lobbyist registries at the provincial level:

- British Columbia
- Alberta
- Saskatchewan *
- Manitoba
- Ontario
- Quebec
- Newfoundland
- New Brunswick *
- Nova Scotia

* lobbying laws enacted but not in effect

LOBBYIST REGULATORS MEET IN VICTORIA

Every year, lobbyist regulators from across Canada meet to discuss common issues between jurisdictions. In 2014, the B.C. Registrar of Lobbyist Elizabeth Denham was honoured to host the September 7-9 meetings in Victoria, B.C..

Sessions included a presentation on the need for municipal lobbyists registries, a panel discussion on lobbying regulation as a contribution to public confidence, and several roundtable discussions exploring the sharing of information between offices.



The B.C. ORL looks forward to future meetings, and the opportunity to learn from other Canadian regulators.

Five things you need to know about lobbying

1 Lobbying is a legitimate, democratic right

The purpose of the Lobbyist Registration Act (LRA) is to support greater transparency and accountability in the lobbying of provincial public office holders.

2 The key elements of lobbying

To communicate for payment with a public office holder in an attempt to influence specific outcomes

3 Lobbyists in BC who meet the criteria must register online

The online public registry is maintained by the Office of the Registrar of Lobbyists. The public can view the registry at www.lobbyistsregistrar.bc.ca to learn who is attempting to influence government decisions, and on which issue.

4 There are 2 types of lobbyists in BC

Consultant lobbyist are individuals who, for payment, undertake to lobby on behalf of a client. In-house lobbyists are employees, officers, or directors of an organization who are paid and whose collective lobbying amounts to at least 100 hours annually.

5 The LRA is enforced by the Registrar of Lobbyists

The LRA was amended in 2010, granting Registrar Denham increased powers to enforce the requirement that all lobbyists who meet the criteria register. Under the LRA, the Registrar has the responsibility to report non-compliance and can issue administrative penalties of up to \$25,000 .

LOBBYISTS REGISTRY UNDERGOES SYSTEM ENHANCEMENTS

The B.C. Lobbyists Registry recently underwent system improvements:

- The Lobbyists Registry was migrated to a new platform and new server. This has led to much quicker data retrieval for public searches and the entry screens for registration are much more responsive
- The simple search functionality has been improved and now retrieves results in seconds

We appreciate any ongoing comments and suggestions you have and will continue to look for ways to improve the registration process and search functions as our budget permits.



SASKATCHEWAN REGISTRY ON ITS WAY BY RON BARCLAY



With the passing of Bill 120 in April 2014, Saskatchewan joins a growing group of provinces and cities who have already adopted similar legislation. *The Lobbyists Act*, as it will be called, requires all individuals who are paid, and employees whose work includes lobbying functions, to register their lobbying activities on the Saskatchewan Lobbyist Registry. *The Lobbyists Act* is not yet in force pending the establishment of an office and implementation of a lobbyist registry.

In accordance with the legislation, Ronald L. Barclay Q.C, who is the current Conflict of Interest Commissioner, also oversees the *Lobbyists Act* as an independent officer of the Legislative Assembly. Sandra Arberry was appointed as Deputy Registrar in January. Since her appointment Ms. Arberry has established an office and began the task of design and implementation of an online registry. It is expected the registry will be launched in early spring 2016 and that the legislation will be proclaimed in force at the same time.

Ron Barclay is the Conflict of Interest Commissioner for Saskatchewan.

The Conflict of Interest Commissioner oversees the Lobbyists Act as an independent officer of the Legislative Assembly.

In addition to implementation of a registry, education and communication are key areas of focus for the Saskatchewan Registrar of Lobbyists. Educational seminars will begin a few months prior to the launch date of the registry and continue after the Act is in force. These seminars will be delivered across the province for the general public, stakeholders and the lobbyist community. Informational materials and a registry website are in development and will be available and widely distributed in conjunction with the educational seminars. Outreach efforts will continue once the registry is officially launched and the Act proclaimed.

Stay tuned for updates on the progress of the legislation, as Influencing B.C. will provide further updates on the implementation of the Saskatchewan *Lobbyists Act* in the fall 2015 issue.

CITY OF OTTAWA'S LOBBYIST REGISTRY UP AND RUNNING IN RECORD TIME

BY ROBERT MARLEAU



Robert Marleau is the Integrity Commissioner for the City of Ottawa.

He has 32 years of parliamentary service, 13 of which were spent as Clerk of the House of Commons. He left a rich legacy of achievement, including the authoritative procedural manual House of Commons Procedure and Practice, now in use in most Canadian legislatures.

The Integrity Commissioner is an independent and impartial position that reports directly to City Council and whose powers and duties are set out in the Municipal Act, 2001.

Implementing a Lobbyist Registry for the City of Ottawa was one of the key components of the Accountability Framework for Members of Council, an initiative led by Mayor Jim Watson and supported by the 2010-2014 City Council. It is important to note that Council opted not only to proactively invoke discretionary tools regarding accountability and transparency set out in the *Municipal Act, 2001*, but it did so in a timely manner and in the absence of a scandal.

The Lobbyist Registry and Lobbyist Code of Conduct were approved by Council on July 11, 2012. On August 29, 2012, by-law 2012-309 was enacted and passed by Council, establishing both the Registry and the position and duties of the Lobbyist Registrar.

Upon the September 1, 2012 official launch of the Lobbyist Registry, Ottawa became the second Canadian municipality to establish a formal Lobbyist Registry and the first to do so voluntarily (the City of Toronto was the first, and following a lengthy and expensive judicial inquiry, are mandated to have a Lobbyist Registry under the *City of Toronto Act, 2006*). As a result, Ottawa citizens and interested stakeholders now have access to information regarding interactions between those who lobby and Members of City Council or City staff.

The City's Lobbyist Registry was developed in record time. Guy Giorno, a leading expert on lobbying legislation and lobbyist registration law, acknowledged this achievement: "Civic officials made history by achieving successful implementation – including a functioning registry – within only nine weeks. Canadian governments (e.g. City of Toronto) typically take a full year to launch lobbyist registries. Of 10 broad-based lobbying laws in the country, only one was implemented more swiftly than Ottawa's."

Several features of the City of Ottawa's Lobbyist Registry set it apart from other municipal, provincial, and federal registries. First, unlike the Canadian federal law in which the CEO files one lobbying report for all employees who undertake lobbying activity, Ottawa's Registry requires that every individual employee of a company file his or her own reports of lobbying activity.

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CITY OF OTTAWA'S LOBBYIST REGISTRY UP AND RUNNING IN RECORD TIME (Cont'd)

Second, a lobbyist must report any and all activity, as the City of Ottawa's legislation contains no minimum threshold for lobbying disclosure. This is different than some Canadian jurisdictions, where lobbying is only reported when the combined volume of employees' lobbying exceeds a certain number of hours per year, or a percentage of the employment time of one individual.

Finally, in recognition that not all lobbying communication is planned, the City's Lobbyist Registry does not require pre-registration. Lobbying communication must simply be registered and become transparent within 15 business days of occurring, regardless of how, when or where lobbying occurs.

The City of Ottawa's Lobbyist Registry is designed to require as little administrative oversight as possible. The application is designed to allow users to create a profile and begin entering lobbying activity immediately. The only administrative oversight applied at this stage is a quick verification of each profile before the information is pushed to the live site.

While this process has led to some challenges in terms of the quality of some entries, it has been successful in mitigating the resources required to support the Lobbyist Registry. The City's Lobbyist Registry is designed to place the onus of transparency on the individual seeking to influence, while conferring to the public office holders the duty and responsibility to report noncompliance.

In its first year of implementation, I focused on the education and promotion of the Lobbyist Registry. It was a time in which Members of Council, City staff, affected stakeholders and individuals conducting business with the City underwent a significant culture

change. It was important to promote the fact that the Registry was not designed to regulate lobbying activity, but rather as a means of adding a layer of transparency to conversations and interactions that occur outside of the public domain.

Over the course of the first year, I observed an overall desire to comply with the by-law despite the added responsibility it placed on both those who lobby and those who are lobbied. I further observed evidence that the information disclosed in the Lobbyist Registry had been useful for various stakeholders including the media and the public.



In its second year, my office expanded its goals to encapsulate another important facet of the Lobbyist Registry by-law: compliance. As part of my commitment for 2014, my primary goals were to continue my mandate of education and to promote and encourage greater

compliance and understanding of the Lobbyist Registry by-law, including the Lobbyist Code of Conduct, amongst all stakeholders.

To this end, I launched a compliance audit of the Lobbyist Registry. The aim of the audit was to ensure every Lobbyist Registry entry was a complete and accurate record of the lobbying activities taking place at the City of Ottawa.

Out of 1,046 audited profiles, 362 were found to be in contravention of the Lobbyist by-law or Code of Conduct. These were minor contraventions, as the majority of the profiles found to be non-compliant were genuine user mistakes and/or misunderstandings of the tool. We have found a willingness to learn and comply with the by-law on the part of all Lobbyist Registry stakeholders.

The hope for 2015 is to continue to build on these efforts to regularly review new and updated lobbying files to

CITY OF OTTAWA'S LOBBYIST REGISTRY UP AND RUNNING IN RECORD TIME

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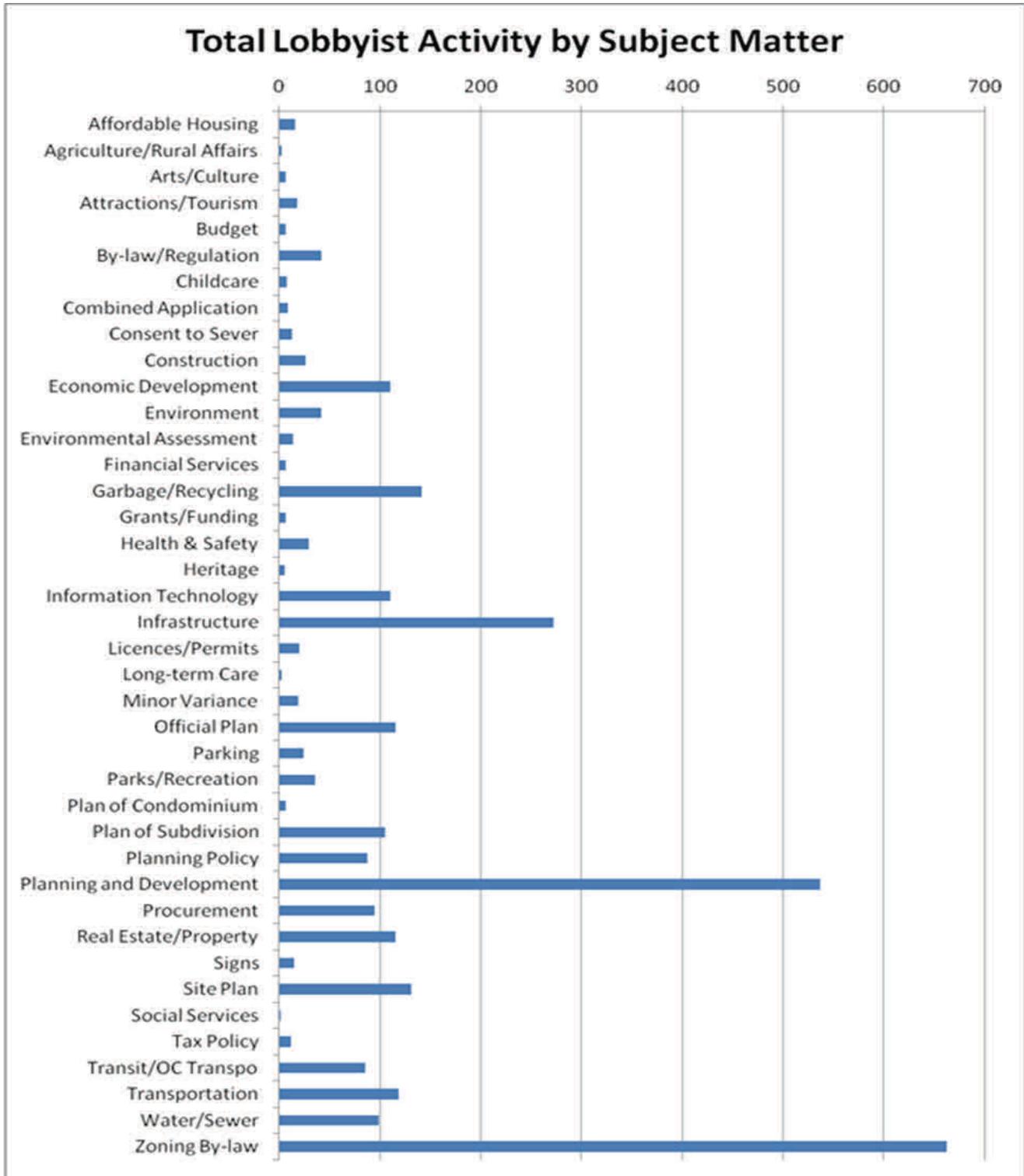


Image courtesy of City of Ottawa's Lobbyist Registry

LESSONS LEARNED

ADMINISTRATIVE PENALITIES ISSUED BY THE BC ORL

The purpose of the B.C. LRA is to promote transparency in lobbying by requiring lobbyists to register. However, the Registry will only provide transparency if the information it records is accurate. Neglecting to register, entering incorrect information, or not maintaining registrations with accurate timelines undermines the integrity of the Registry and clouds the transparency it is supposed to provide. If the public cannot trust the information in the Registry is accurate, then the registry will cease to fulfill the function legislators intended.

This is why the ORL takes investigating alleged contraventions so seriously. In assessing each alleged infraction, investigators review the circumstances of the case, examine the evidence, and if the contravention is substantiated, issue an investigation report and levy an appropriate penalty. Penalties are determined by the severity of the contravention, previous enforcement actions, whether the contravention was deliberate, if the contravention resulted in economic gain, if the registrant sought to report or correct the contravention, and whether a penalty is needed for general or specific deterrence.

The full version of all reports can be found at www.lobbyistsregistrar.bc.ca/

Patrick Kinsella, Consultant Lobbyist

On October 2, 2013 a partner in the firm The Progressive Group filed a return listing Mr. Kinsella as another consultant lobbyist working on the undertaking of a client. The contract with the client indicated a start date of September 1, 2013.

On October 28, 2013 Mr. Kinsella was contacted by ORL staff to determine whether he was in fact working on the undertaking for this client. Mr. Kinsella confirmed the undertaking and filed a return on October 29, 2013, with a start date of September 23, 2013.

The client confirmed that the contract had a start date of September 1, 2013. The investigator concluded that the start date for the undertaking was September 1, 2013; therefore Mr. Kinsella contravened s. 3(1) of the LRA by failing to register an undertaking within 10 days of entering into an agreement to lobby. The investigator also found that Mr. Kinsella contravened s. 4(1)(b) of the LRA when he entered the incorrect undertaking start

date on his return. The lobbyist was fined \$500 for failing to file a return within the timelines. Mr. Kinsella was fined \$1,000 for entering incorrect information into his return, with consideration to the fact that Mr. Kinsella had previously received a warning for a previous apparent contravention.

Laura Fitzgerald, Consultant Lobbyist

On May 1, 2014, Ms. Fitzgerald filed a return for an undertaking that began on January 1, 2014. The registry action was incomplete, and the ORL Registry Manager contacted Ms. Fitzgerald to notify her that her return required additional information before it would be processed. Ms. Fitzgerald did not update the return within 30 days, and the return was automatically rejected by the Lobbyists Registry system.

Ms. Fitzgerald confirmed the January 1, 2014 start date but did not feel registration was necessary until she had received a signed contract from her client. As to why she did not update her registration, Ms. Fitzgerald cited access issues with her email during the months of April and May.

The investigator found that Ms. Fitzgerald did not comply with s. 3(1) of the LRA by failing to register the undertaking within 10 days. The lobbyist was fined \$500.

Did you Know?

The ORL has several Guides,
Quick Tips and FAQs
available at

www.lobbyistsregistrar.bc.ca

What do I need to know about the 100 hour threshold?

1 The threshold applies to in-house lobbyists only

An in-house lobbyist is a paid employee, officer or director of an organization who lobbies on behalf of the organization, alone or with others, for at least 100 hours annually.

2 When 100 hours is met, the designated filer must register all in-house lobbyists

The 100 hours relates to the hours spent collectively within the organization on lobbying, which includes all work involved in the lobbying effort. 100 hours roughly equals 12.5 eight hour days.

3 The calculation of 100 hours includes time spent by all employees preparing to or performing the act of lobbying

However, only those chiefly responsible for lobbying must be listed as in-house lobbyists, as long as all targeted public office holders and lobbying activities are captured in the organization's registration.

4 Organizations will need to evaluate their 100 hour threshold every 6 months

When the time comes to re-register, the organization will have to look at the past 12 month period to determine whether the 100 hour threshold was met. If so, the designated filer will need to re-register all in-house lobbyists.