

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

In the Spring 2014 issue of *Influencing B.C.*, I signalled my intention to step up enforcement activity to ensure lobbyists are complying with the *Lobbyists Registration Act* in the interests of transparency and accountability.

Our office has made good on that promise. Since the last issue of *Influencing B.C.* was published, my Office has initiated 10 investigations, completed 82 compliance reviews, and tabled 9 investigation reports and 5 reconsiderations in the B.C. Legislature.

While each of these reviews and investigations deals with a specific case, we tend to see the same mistakes over and over again. These errors include a misunderstanding of what activities constitute lobbying, a failure to identify the correct date of an agreement to lobby on behalf of a client, and a lack of attention to updating and correcting returns as required by law.

These persistent compliance issues have prompted us to go back to basics. In this issue we provide plain-language information about some of the common errors and pitfalls.

We've also introduced a new feature called "Lessons Learned" that provides

a case summary of the recent investigation reports and reconsiderations of this Office. These summaries provide yet another opportunity for lobbyists to learn from their peers and ensure they are working in compliance with these important aspects of the *Lobbyists Registration Act*.

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



Elizabeth Denham
Registrar of Lobbyists for B.C.

SASKATCHEWAN PASSES LOBBYISTS ACT

The Saskatchewan government passed legislation this spring requiring paid lobbyists to register their activities online. The *Lobbyists Act* was passed by the government in April 2014 after being first introduced in November 2013.

The Act will require individuals who are paid to lobby elected officials on behalf of organizations or groups to register their lobbying activities online. Unpaid individuals, such as volunteers or members of the public pursuing personal interests with their MLAs, are not required to register.



The Conflict of Interest Commissioner of Saskatchewan will oversee the Act as an independent officer of the Legislative Assembly. A competition to fill the Deputy Registrar, Lobbyists position was posted in September by the newly formed Office of the Registrar of Lobbyists. Once filled, the Deputy Registrar will be responsible for designing, implementing and operating the province's lobbyist registry; promoting and educating the general public, stakeholders, and the lobbyist community about the Act; and ensuring compliance and conformity to the Act.

At this time there is no timeline as to when the legislation will come into force.

PAAC CREATES A CHAPTER IN B.C.

BY SERGE CORBEIL



Serge Corbeil

Government relations and public affairs professionals are no strangers to advocating on behalf of clients or their employers. It is one of the many facets of our work. But when it comes to representing our own collective interests, who can we turn to? While there isn't an app for that, as the now oft-used saying goes, there is, however, a PAAC for that.

The Public Affairs Association of Canada (PAAC) has been representing the interests of public affairs professionals since 1984. Its principal objective is to help public affairs professionals succeed in their work by providing them with forums for professional development, the exchange of new ideas and networking. PAAC's growing membership represents a cross-section of the many disciplines involved in public affairs including policy development, government relations, lobbying, communications, opinion research and public relations. PAAC's members come from the private, non-profit and public sectors, in areas such as industrial and financial companies, crown corporations, consulting

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PAAC CREATES A CHAPTER IN B.C. (CONT'D.)

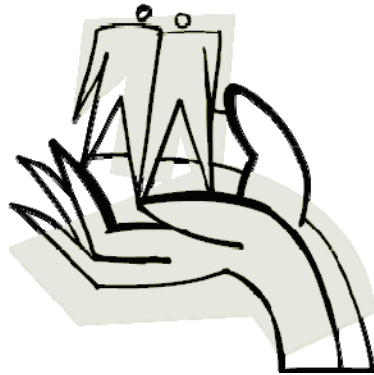
firms, small business, ministries and municipalities, PR organizations, trade associations, educational institutions, law and accounting firms.

The need for an association looking after the interests of the profession is probably more essential than ever before. While lobbying has long been recognized as a legitimate activity in a free and democratic society, we cannot ignore the reality that governments in Canada, and indeed around the world, have become much more engaged on issues related to lobbying. We believe that the voice of the profession needs to be represented when governments and regulators are debating policies that could impact the work of government relations and public affairs practitioners.

As is the case in other jurisdictions, in British Columbia the Office of the Registrar of Lobbyists has been proactive in reaching out to our community to get a better understanding of our professions and inform some of the work of the office. For example, when the amended *Lobbyists Registration Act* came into force in 2010, a Lobbyists Advisory Committee was established to provide access to the Registrar. However, it was never empowered by the professionals to whom the Act applies. With no

formal structure to seek the views of the community of lobbyists, it could not in clear conscience pretend to "speak" for them. As a result, members of the Advisory Committee decided to explore ways to remedy this situation. It quickly became clear that there was a need to more formally bring together the government relations and public affairs professionals.

Subsequently, we found a committed partner in PAAC. It very quickly jumped at the opportunity and agreed to create a provincial chapter. That is why earlier this year it amended its by-laws to accommodate such chapters.



I am happy to report that the first chapter is right here in British Columbia. We want to ensure we hear from you and that

you participate in shaping the work of the Chapter. That is why I encourage you to join with us and inform our discussions and help grow our network so we can speak with a broad and representative voice.

An easy way to do so is by joining PAAC. Details can be found at www.publicaffairs.ca. In the meantime, I am happy to provide you with more information. Email me at serge.corbeil@diabetes.ca or call me at 604-732-1331, Ext. 252.

Serge Corbeil is the Director of Government Relations and Advocacy for B.C. and Alberta at the Canadian Diabetes Association. Serge holds a Diploma of College Studies in Arts & Media Technology, a bachelor's degree in liberal and business studies from Simon Fraser University and has completed a number of communications and public relations courses.

The Public Affairs Association of Canada recently formed a B.C. Chapter (PAAC-BC) of which Serge is the current President.

BACK TO BASICS: WHAT IS LOBBYING?

As we get back to the basics in this issue, it seems there is no better place to start than looking at the basics of lobbying. The key elements of lobbying are to communicate for payment with a public office holder in an attempt to influence certain outcomes, as defined in the *Lobbyists Registration Act*.

HOW IS LOBBYING REGULATED IN B.C.?

The *Lobbyists Registration Act* ("LRA") regulates lobbying in British Columbia. The LRA promotes transparency in the lobbying process by requiring lobbyists who receive payment for their work to declare details of their lobbying effort, including on whose behalf they are lobbying, who they are targeting, on what subject matter and toward what outcome. All of this information is available for the public to view, free, at any time. Although the LRA ensures transparency, it does not govern the conduct of lobbyists: as long as a lobbyist is registered, how they lobby is outside the purview of the LRA.

WHAT IS NOT CONSIDERED LOBBYING?

It is also important to know when you *don't* need to register with the B.C. Lobbyists Registry. The following are examples of situations that do not classify as lobbying in B.C.

If you are communicating with a public office holder as a private citizen, or in a volunteer capacity, you are not required to register with the B.C. Lobbyists Registry; an individual has to be paid for their lobbying activities for them to fit

the legal definition of lobbying in B.C..

If a public office holder requests the communication in writing, that isn't lobbying; the lobbyist has to initiate the communication for it to fit the definition.

If communication is about how something is being interpreted and implemented, that isn't lobbying; the person has to try to influence change in the status quo for it to be lobbying.

If you go through established channels – an RFP or an established application process – to obtain a contract or grant, that isn't lobbying; but if you set up a meeting outside that process to influence the awarding of a contract or grant, that is lobbying.

If an organization communicates with a public office holder only to introduce your organization, with no "ask," that isn't lobbying. However, if a consultant lobbyist sets up the meeting, even if it is not for the purposes of lobbying, then the consultant lobbyist meets the definition of lobbying and must register their undertaking with their client on the registry.

It is important for lobbyists to understand the legislation in B.C. and how it affects the work they do. If you are a lobbyist and you find you have questions, don't hesitate to call the Lobbyists Registry at 250-387-2686, they are always happy to help!



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Did you Know?

The ORL has several Guides, Quick Tips and FAQs available at www.lobbyistsregistrar.bc.ca

STAYING UP TO DATE WITH YOUR REGISTRATION

Staying on top of your registration dates can sometimes seem like a daunting task. To help you meet the deadlines set out in the *Lobbyist Registration Act* ("LRA"), we have answered some questions about some basic (but important!) registration dates. Keep in mind that unless indicated otherwise, 'days' represents calendar days, not business days.

WHEN DO I NEED TO REGISTER?

Consultant Lobbyists: You have **10 days** from entering into an undertaking to lobby on behalf of a client to register with the LRA.

Organizations' Designated Filers: As soon as the combined hours of all staff members contributing to the lobbying reach 100 hours in a 12-month period, the designated filer has **60 days** to register. An organization's registration is valid for six months. After the end date, if the organization still meets the criteria for registration, the designated file has **30 days** to register.

WHEN SHOULD I UPDATE MY REGISTRATION?

Whether you are a consultant lobbyist or an organization's designated filer, you have **30 days** to update your registration with any changes. Changes may include contact information for your client, additional lobbying activities, inactivation of an in-house lobbyist, and a change in undertaking end date. The latter is an important one that is often overlooked; if you finish your work early you must update your registration with the accurate end date.



Integrating your lobbyists registration timelines into your time management processes can help you avoid missing an importation deadline for your registration. If you have any questions or are unsure about which timeline pertains to you, contact the Lobbyists Registry at 250-387-2686.

WHEN DOES AN UNDERTAKING BEGIN?

It's October 2, and you are a consultant lobbyist who has just met with your client for the first time. Your firm entered into a general agreement with the client months ago, which did not include any intention to lobby. You and the client discussed their specific needs and the services you can offer them. At this time you came to a "meeting of the minds" with your client that the services you would provide could include setting up meetings with public office holders.

So what comes next? At this point you need to register the undertaking with the ORL by October 12. Why so soon? Section 3 of the *Lobbyists Registration Act* states that a return must be filed by a consultant lobbyist within **10 days** from the consultant lobbyist entering into an agreement to lobby on behalf of a client. In other words, you now have **10 days** (remember, this means calendar, not business days!) from that "meeting of the minds" to register the undertaking.

So, despite the fact that the original service agreement is between the client and the firm and that you don't plan to work on the file for months, it is the legal obligation of you, the employee assigned to lobby on behalf of the client, to register that undertaking to lobby. This may still be a fairly casual agreement, perhaps made only verbally. No matter what form it takes, the law says you must register it within **10 days**.

Here's another example. It's October 15

and you are a consultant lobbyist who has just met with a new client who wants to contract for your services. You discuss the services and there is a general agreement that doesn't expressly name (but does include) lobbying. You agree to draft up a contract with a start date of October 14. You know a business analysis still needs to be conducted before any work can begin, and you are unsure whether the business relationship with the client will pan out.



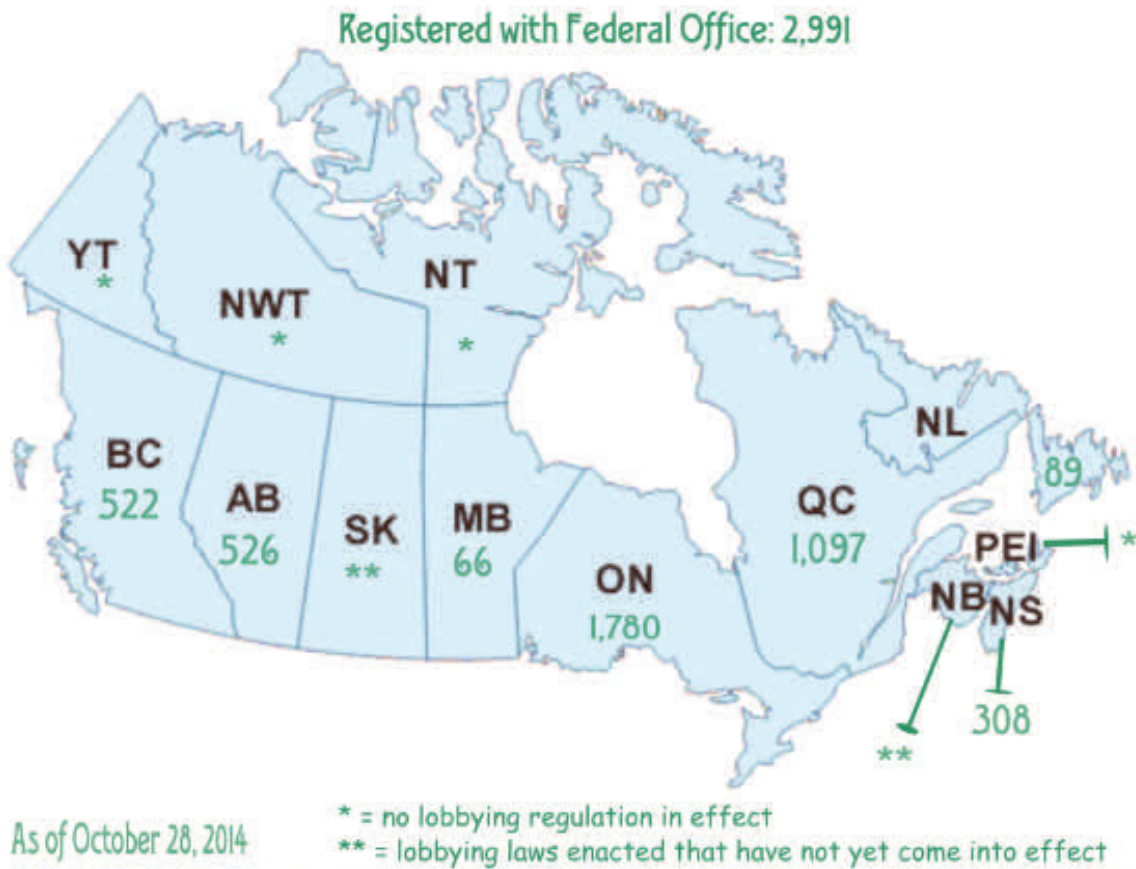
So what comes next? Even though you are unsure of the result, if the intention to lobby is implied in the agreement then you must register the undertaking by October 25. If the business agreement is terminated make sure you also terminate the undertaking with the ORL within **30 days**. Otherwise you risk contravening the LRA and may face a fine.

An important point to keep in mind is that the act of arranging a meeting with any individual and a public office holder constitutes lobbying. If you are acting on behalf of a client, are being paid and come to a "meeting of the minds", you **must** register the undertaking, even if you don't end up lobbying for the client in the long run.

If in doubt, contact the Lobbyist Registry for clarification. We are always happy to clear up any confusion to help you meet your obligation to register.

*"Section 3 of the LRA states that a return must be filed by a consultant lobbyist within **10 days** from the consultant lobbyist entering into an agreement to lobby on behalf of a client."*

ACTIVE LOBBYIST REGISTRATIONS ACROSS CANADA



LESSONS LEARNED

This new Lessons Learned column will be a recurring component of Influencing B.C. and will include summaries of all new public investigation reports and reconsideration decisions that have been tabled in the B.C. Legislature since the previous issue. The full version of all reports can be found on the [ORL website](#).

The purpose of the 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, it will cease to fulfill the function legislators

intended.

For example, if inaccurate information is entered into the registry, members of the public and other lobbyists and organizations might rely on the information in the Registry to their detriment. A lobbyist might not pursue a potential client if they believe another lobbyist is already providing them with services. Organizations might engage lobbyists based on their perceived level of success in representing other clients. And if lobbying activity is not registered at all, the public cannot know who is lobbying whom.

This is why the ORL takes investigating alleged contraventions so seriously. In assessing each

LESSONS LEARNED (CONT'D)

alleged infraction, investigators review the circumstances of the case, examine the evidence, and if the contravention is substantiated, 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.

Brad Zubyk

Consultant Lobbyist

On June 18, 2012 Mr. Zubyk filed a return indicating he entered into an undertaking to lobby on behalf of his client, Scientific Games Int. The registration had an undertaking end date of June 18, 2013. On August 8, 2013 the lobbyist filed a return with the ORL indicating he had entered into a new undertaking to lobby on behalf of the same client with a start date of June 18, 2013. ORL staff followed up with the lobbyist to confirm the start date. The consulting company, of which Mr. Zubyk is a principal, informed the ORL that the correct start date was August 8, 2013 and that the June 18, 2013 start date was entered in error. ORL staff followed up with the client, who confirmed that the undertaking was an extension of the June 18, 2012 agreement and that the June 18, 2013 start date was correct.

The investigator concluded that the start date for the undertaking was June 18, 2013; therefore Mr. Zubyk contravened s. 3(1) of the LRA by failing to register an undertaking within 10 days of entering into an agreement to lobby. The lobbyist was fined \$600.

Reconsideration: Mr. Zubyk requested a

reconsideration of the investigator's decision. The Registrar upheld the findings and the administrative penalty; the lobbyist did not provide compelling grounds that the investigator's findings should be varied.

William Belsey

Consultant Lobbyist

Mr. Belsey was quoted in a November 7, 2012 news story as saying he was a registered lobbyist. An ORL staff member reviewed the Registry and found that the lobbyist was not in fact registered. ORL staff later received a registration from Mr. Belsey on November 20, 2012 for an undertaking to lobby on behalf of the Gitxaala Nation.



ORL staff asked Mr. Belsey for documents relating to any lobbying conducted on behalf of his client. Mr. Belsey provided ORL staff with a document dated March 9, 2012 which outlined services that fell within the LRA's definition of lobbying. He stated that he did not conduct any lobbying during this time and that his offer of services expired in August 2012. Mr. Belsey also noted that the client asked him to lobby on their behalf in November 2012, whereupon he registered. When contacted by ORL staff, the client indicated that Mr. Belsey had entered into an undertaking to lobby on their behalf during the week prior to October 1, 2012.

The investigator concluded that the start date for the undertaking was no later than October 1, 2012; therefore Mr. Belsey 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.

LESSONS LEARNED (CONT'D)

Belsey contravened s. 4(3) of the LRA when he failed to inform the Registrar of the completion or termination of the undertaking. The lobbyist was fined \$1,200.

Reconsideration: Mr. Belsey requested a reconsideration of the investigator's decision. The Registrar upheld the findings and the administrative penalty; the lobbyist did not provide compelling grounds that the investigator's findings should be varied.

Benjamin Chin

Consultant Lobbyist

On November 13, 2012 Mr. Chin registered with the ORL as a consultant lobbyist for his client LoyaltyOne/Air Miles for Social Change with an undertaking start date of November 12, 2012 and an end date of November 12, 2013. On August 20, 2013 Mr. Chin changed the end date to November 30, 2012. Mr. Chin stated that he had overlooked the need to de-register and eventually recalled that he should take action to correct it.

The investigator concluded that Mr. Chin did not update his registration within 30 days after the termination of his undertaking and therefore contravened s. 4(3) of the LRA. The lobbyist was fined \$500.

Brenda Swick

Consultant Lobbyist

On January 22, 2014 Ms. Swick filed a return with the ORL with an end date of November 30 2014. Ms. Swick entered the name of a colleague as another consultant lobbyist engaged by her to

lobby on behalf of the client. ORL staff contacted Ms. Swick on January 23, 2014 questioning the start date of the return and when she expected her colleague to register. Ms. Swick confirmed the January 22, 2014 start date and implied that the second lobbyist was part of the undertaking. The second lobbyist confirmed that he was not lobbying on behalf of the client, and it was uncertain whether the work would proceed.

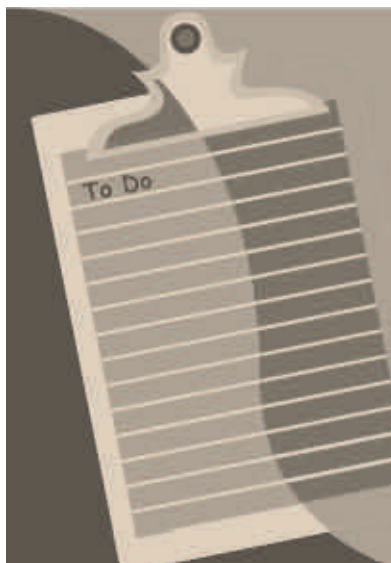
On February 4, 2014 Ms. Swick notified the ORL that the undertaking to lobby was no longer active and that no lobbying took place. ORL staff responded informing the lobbyist that no action was required by the lobbyist's colleague, but that Ms. Swick would have to remove her colleague's name from the return and terminate the return. Ms. Swick removed her colleague from the return on April 16, 2014 and updated the undertaking end date.

The investigator concluded that Ms. Swick did not remove her colleague from the return prior to the legislated deadline and therefore contravened s. 4(2)(a) of the LRA. In addition, Ms. Swick failed to terminate the registration within the timelines set out in s. 4(3) of the LRA. The lobbyist was fined \$700.

James Sinclair

Designated Filer

The B.C. Federation of Labour's registration expired on January 8, 2013. Mr. Sinclair submitted a return to the ORL on January 22, 2013. On February 7, 2013 the registry manager notified Mr. Sinclair that the return contained incorrect information pertaining to Cabinet ministers and ministries. The Lobbyists Registration ("LRR") notes that if



LESSONS LEARNED (CONT'D)

corrections are requested by the Registrar, the return is deemed not to have been received. The LRR also notes that required corrections must be received within 10 days of the request from the Registrar or the registration is deemed to be received on the date in which the last correction was made. Corrections were never made and the system rejected the registration.

On April 19, 2013 the organization filed a new return. After repeated attempts at contact to determine why the organization did not re-register within the required 30 days, the organization claimed that it was unaware that the ORL had alerted it to the errors in its registration.

The investigator concluded that the designated filer contravened s. 3(3)(b) of the LRA by failing to file a return within 30 days of the end of the previous registration. The designated filer was fined \$1,000.

Reconsideration: Mr. Sinclair requested a reconsideration of the investigator's decision. The Registrar upheld the findings and the administrative penalty; the designated filer did not provide compelling grounds that the investigator's findings should be varied.

Cynthia (Burton) Shore

Consultant Lobbyist

On June 25, 2013 Ms. Shore filed a return with the ORL with a start date for the undertaking of May 1, 2013. Ms. Shore stated that she was added to the file after a previous lobbyist had withdrawn from the undertaking, and that she had no intention to lobby at that time. Ms. Shore did confirm the May 1, 2013 date as the initial start of the undertaking.

The investigator concluded that Ms. Shore contravened s. 3(1) of the LRA by failing to register the undertaking within 10 days. The lobbyist was fined \$700.

Reconsideration: Ms. Shore requested a reconsideration of the investigator's decision. The Registrar upheld the findings and the administrative penalty; the lobbyist did not provide compelling grounds that the investigator's findings should be varied.

Michael Klassen

Consultant Lobbyist

On October 25, 2012 Mr. Klassen registered with the ORL an undertaking to lobby for the British Columbia Care Providers Association (BCCPA) with the ORL with an October 1, 2012 start date and a May 3, 2013 end date. On April 25, 2013 the ORL discovered a news release dated February 6, 2013 announcing that Mr. Klassen had a new position as an in-house lobbyist for another organization.

The ORL contacted Mr. Klassen to verify whether he was still lobbying on behalf of the BCCPA. Mr. Klassen updated the registration on April 30, 2014 to reflect a January 1, 2013 end date.

The investigator concluded that Mr. Klassen did not comply with s. 4(3) of the LRA when he failed to inform the Registrar of the termination of his undertaking within 30 days. The lobbyist was fined \$500.

Reconsideration: Mr. Klassen requested a reconsideration of the investigator's decision. The Registrar upheld the findings and the administrative penalty; the lobbyist did not provide compelling grounds that the investigator's findings should be varied.