

INFLUENCING B.C.

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

O.R.L.
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registrar
of lobbyists
BRITISH COLUMBIA

Transparent Lobbying.
Accountable Government.

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REGISTRAR'S MESSAGE

Transparency in lobbying is critical to a well-functioning democracy. As the Organization for Economic Co-operation and Development noted in its 2009 [report on lobbying](#), *Lobbyists, Government and Public Trust*, "Private interests seeking to influence government decisions, legislation or the award of contracts is part of the policy-making process in modern democracies. Lobbying can improve government decisions by providing valuable insights and data, but it can also lead to unfair advantages for vocal vested interests if the process is opaque and standards are lax."

Strong legislation, with independent oversight and enforcement, is therefore critical to achieving transparency in lobbying. The *Lobbyists Registration Act* sets out the rules that lobbyists in B.C. must follow in order to ensure there is transparency and accountability for government decision-making.

In the four years since I became Registrar, I have had the pleasure of meeting many lobbyists who are actively engaged in legal and ethical lobbying. They fulfill their legal obligations, contact our Office proactively for advice, and engage in discussions about how to make the law better. I believe that they represent the majority of lobbyists, who support transparency in lobbying and abide by the law.

I have also seen a small, but in my view significant, number of lobbyists who do not exercise due diligence to ensure that they follow the law. Complying with the law is not voluntary; designated filers are legally required to fulfill their obligations,

which are laid out clearly in the LRA. Individuals who are required to register must do so punctually, keep their registrations current by updating them as required, and respond promptly to questions and communications from ORL staff.

I have been very clear, in public presentations and in prior publications of this Office, that I intend to step up enforcement activity in order to ensure that lobbyists comply with the legislation. I intend to use all the resources available to me, including administrative monetary penalties in cases of non-compliance.

My office will also continue to provide education opportunities and compliance tips to help lobbyists understand their obligations and comply with the Act. In this issue of *Influencing BC*, you will find more content focused on common pitfalls for non-compliance, as well as some good advice for how to lobby effectively and legally.



Elizabeth Denham
Registrar of Lobbyists for B.C.

LOBBYING: SOMEWHAT LIKE A SNAKES AND LADDERS GAME

BY ELIZABETH CULL



Elizabeth Cull

Elizabeth Cull was elected to the Legislature in 1989 for the riding of Oak Bay-Gordon Head. Re-elected in 1991, she served as Minister of Health, Deputy Premier and Minister of Finance and Corporate Relations. In 2002, Ms. Cull opened a retail gardening business, which has since expanded to five stores.

I was talking to my husband about the dos and don'ts of successful lobbying, and he observed, "Sounds like a snakes and ladders game. Make the wrong move and you're quickly slithering to the bottom. Make the right move, and you've put another rung in your ladder to a successful outcome." He always did know how to cut through to the heart of any issue I faced as a politician.

So how do you know which is the "right" move and which is the "wrong" one? After five years as a Cabinet minister in the BC government of the early 1990's, I've seen enough of both kinds of moves to shed a little light on how to avoid those "snakes." Here are my tips.

1. Don't waste my time if someone else can make the decision.

Everyone thinks they need to see the Minister to get what they want – whether it is funding or a policy change. More frequently, such decisions are made by staff within the Ministry. Going

over their head directly to the Minister doesn't endear you to them or get key public servants on your side. Furthermore, if it's not a ministerial decision, your request will just be passed on to the appropriate public servant right after the meeting. You might as well have met with those individuals in the first place, and saved meetings with elected officials for issues only they can decide.

This, of course, means taking the time to find out how the public service works. Are the decisions you need made entirely within one ministry, or is an inter-ministry committee involved? Is it a director-level decision, or something that can be decided at the assistant deputy or deputy minister level? Find out who can make the decision and spend the time to develop relationships with key individuals. Don't wait until an issue is urgent: build relationships with key public servants before you need their help.

If you do need to meet with the Minister, remember she's probably had ten similar meetings already that day – every 20 minutes or so! State what you want right up front – don't build your case and finish with your ask. Tell me what you want me to do right after the introductions are done. That way, I know what to focus on in your presentation and am already thinking about what I'm going to do. Be short, clear, and concise, and leave time for questions. If you are part of a group, select a spokesperson and let her do the

LOBBYING: SOMEWHAT LIKE A SNAKES AND LADDERS GAME

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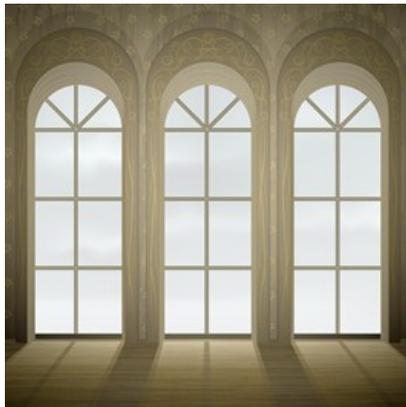
CULL

presentation. This is no time for democracy!

2. Don't forget to do your homework.

Before you meet with a Minister or any decision-maker, make sure you've done your due diligence. What do ministry staff think of your proposal? Who will be helped by it and who might be harmed? What do other MLAs think? Who are your allies on this matter and who are your foes? What will it cost and how will it be paid for?

On the matter of what will it cost, I would be a rich woman if I had a dollar for every time someone said to me "This will actually save you money." Telling me that spending money today (usually called an "investment") will save me money in the future (reduced crime, higher graduation rates, etc.) is generally not an effective argument. That's not because politicians and other decision-makers don't get it, or aren't interested in reducing crime rates or increasing graduation rates of future generations. We are, but money saved five, ten or 20 years into the future doesn't help the fact that I have to live within an annual budget this year. While it may be true that there will be future cost savings, it is generally not a winning argument in the here and now.



3. Don't lie.

This includes omitting facts that don't support your case. Don't assume the Minister will not know about things you don't include in your presentation. Instead, assume she has been fully briefed by her staff and has at least some understanding of all sides of the issue. If there is something – a report, a study, the opinions of another group – that does not support your case, mention it, explain why it is incorrect or not relevant, and carry on with your argument.

The worst lobbying presentation I ever received was by a group that told me only half the story. I was incredulous, when they left the room, that they didn't think I might know the other half. Since they didn't bring it up, I didn't question them about it, and they didn't get the chance to explain why their proposal was the way to go. I dismissed them from consideration almost instantly.

4. Remember I Have Problems Too.

Too many lobbyists bring problems to Ministers. We already have enough of our own, thank you. What I wanted to hear from people making presentations to me was that they had an idea that would help me solve my problems.

If there is something – a report, a study, the opinions of another group – that does not support your case, mention it, explain why it is incorrect or not relevant, and carry on with your argument.

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Recast your ask into a solution and present yourselves as being there to help the Minister solve her problems.

That means figuring out what problems the Minister has. This isn't that difficult. Start with the government's publicly stated priorities. These can be found in the Throne and Budget speeches and in other speeches given by the Minister and other Cabinet ministers. If the government's stated number one priority is job creation, think about how your proposal will assist in job creation. If it's poverty reduction, look at your proposal from that perspective. Be skilful about this: telling the Minister that your daycare proposal somehow links to plans to expand LNG might be stretching it.

A truly effective presentation will ...give me a reason to care.

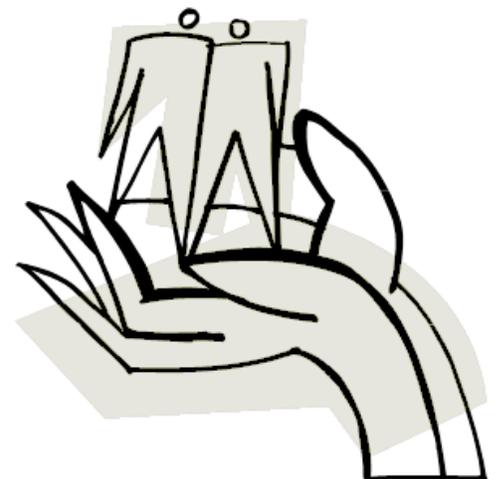
5. Don't Tell Me How to be a Politician.

The phrase I most hated to hear when I was a Cabinet minister was "This will help get you re-elected." At the end of the day, I am going to be the one seeking re-election and I probably have the best idea of what my constituents will support. Leave the politics to the politicians.

6. Give Me a Reason to Care.

A professional presentation will contain all the facts, budgetary figures and other rationale to support it. A truly effective presentation will contain all that and also give me a reason to care, a

reason to take up your cause. Put a face on your proposal. If I support it, what will the benefits look like? The most effective presentation I ever received came from a mother who brought me a photo of her beautiful teenage daughter who had died from a preventable disease. She had lots of solid medical research to back up her proposal, but it was the face of her daughter that stayed with me and made me resolve to do something about it. This doesn't need to take much time, but it does create an important connection that can lift your proposal above dozens of others of equal worth.



REGISTRAR OF LOBBYISTS STEPS UP COMPLIANCE MEASURES

The ORL seeks province-wide compliance with the LRA through a series of interrelated compliance strategies, including public education, reviewing and verifying registration details, conducting compliance reviews and investigations and, when there is a finding of non-compliance, issuing investigation reports and administrative monetary penalties. Whenever it is practical, the ORL uses cost-effective and non-punitive means to resolve minor matters of non-compliance, including education and warnings.

Although the ORL will continue to rely on non-punitive compliance measures when they are appropriate, the Registrar intends to issue further administrative monetary penalties when circumstances warrant them.

The Registrar intends that administrative monetary penalties for infractions of the LRA will be assessed in light of their circumstances, and will draw nearer to the range set out in the *Lobbyists Registration Act Policies and Procedures*. Guidelines in that document for penalties involving first

infractions range from \$100 to \$7,500, depending on the type of infraction.



“Lobbyists have had several years to become familiar with the rules,” said Registrar Denham. “People who are subject to the law need to understand that registering and keeping their registrations compliant with the law is more than just ‘paperwork’; it’s a legal obligation.”

Registrar Denham expects to begin issuing administrative monetary penalties more frequently for findings of non-compliance in the spring of 2014.

“Registering and keeping registrations compliant with the law is more than just ‘paperwork’; it’s a legal obligation.”

WEBSITES OF INTEREST

B.C. Registrar of Lobbyists
www.lobbyistsregistrar.bc.ca

Ontario Office of the Integrity Commissioner and Lobbyist Registration
<http://www.oico.on.ca/oic/OICweb2.nsf/MainPage?OpenPage>

Nova Scotia Registry of Lobbyists
<http://www.novascotia.ca/snsmr/lobbyist/>

BF THAT! IMPORTANT DATES FOR COMPLIANT REGISTRATIONS

Keeping on top of all the details of many work duties, or many client files, can be a juggling act. To avoid possible damage to your reputation and business interests, it's a good idea to make sure you don't drop the ball on important timelines for staying on the right side of the lobbyist registration law.

1. When do I need to register?

A. Consultant Lobbyists

You've met with the potential client, discussed their needs and the services you can realistically offer them, and agreed that you'll work out the details electronically and meet again in a few weeks to finalize the agreement. Now all you have to do is clink glasses with your new



client... and probably draft a service agreement when you get back to the office and certainly follow up with them in a few days to remind them about those details. You take out your phone and BF the follow-up. Now you can get to the glass-clinking.

Before you put your phone away, it's a good idea to BF another date, too. If you are a consultant lobbyist who is paid to lobby for a client in B.C., you now have **10 days** to register on the B.C. Lobbyists Registry.

"What?" you might say. "But I haven't even worked out the details with my client, and I won't do any actual lobbying for a couple of months."

Even if those things are true, you still have a legal obligation to register within 10 days. The B.C. *Lobbyists Registration Act* says that you must register "[w]ithin 10 days after entering into an undertaking to lobby on behalf of a client."

The "undertaking to lobby" may still be a fairly casual agreement, perhaps made only verbally, but the law says that you must register it within 10 days.

B. Organizations' Designated Filers

Your organization has been researching an issue important to your business line. After reviewing the research, your CEO has decided to advocate for changes to a government regulation. Your CEO says, "Find out how I register us as lobbyists. I don't want to get into trouble." But your legal counsel says, "We don't have to register yet, because we haven't actually met with any politicians." Which one is right?

Actually, neither one of them. Once your organization makes the decision to lobby, you have to start tracking the time all staff members spend on any activities that are directly related to and necessary for the lobbying effort. When the combined activities of all staff members contributing to the lobbying reaches **100 hours** in a 12-month period, your organization is legally required to register.

The "undertaking to lobby" may still be a fairly casual agreement, perhaps made only verbally, but the law says that you must register it within 10 days.

BF THAT! IMPORTANT DATES FOR COMPLIANT REGISTRATIONS (CONT'D.)

If your organization has never registered before, it now has **60 days** to do so, once you meet the 100 hours threshold.

If your organization has already gone through the tracking and first-time registration process, and has a current registration, it has **30 days** from the end of that registration to re-register, if it continues to meet the threshold.

2. If I submitted my registration, and it was accepted, I'm done, right?

Consultant Lobbyists & Organizations' Designated Filers

It's been an uphill trek for a few months, but it looks like you're gaining some momentum. In a meeting, a staff member from Ministry X says she's working on this issue with Such-and-Such from Ministry Y. You note his name and call him later that day. Yes, he says, he and some colleagues in Ministry X are working on that issue together, and yes, he can spare some time for you/your client, as long as you can come that afternoon. You have just enough time to gather some briefing materials before the meeting. It's busy, but the hard work is paying off in getting the message heard. You've had a productive week, and are looking forward to some R&R on the weekend.

Before it slips your mind completely, make a note to update your registration when you get back to your desk, because you now have **30 days** to add

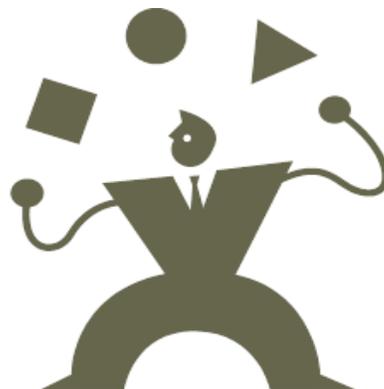
the new "lobbying target" you just met to your registration.

In fact, the law gives you 30 days to supply several kinds of required information. It gives you 30 days to update your registrations to report any changes to:

- ◆ Your organization's or your client's business activities or address
- ◆ Your lobbying activities, including subject matters, lobbying targets and desired outcomes
- ◆ The inactivation date for in-house lobbyists (if you're the designated filer for an organization)
- ◆ The end date of your undertaking for a client (if you're a consultant), or
- ◆ Any other of the details you entered when you first registered.

You also have **30 days** to respond to requests from the Office of the Registrar of Lobbyists for information in connection to your registration.

Integrating your lobbyist registration timelines into your time management processes can help you avoid missing an important deadline for *your* registration.



To avoid possible damage to your reputation and business interests, it's a good idea to make sure you don't drop the ball on important timelines for staying on the right side of the law.

AVOID DELEGATING YOURSELF INTO TROUBLE

As an executive or a consultant with many responsibilities, you often need to manage a multitude of tasks in the course of a week, and knowing how to delegate effectively is a vital survival skill for busy professionals.

The art of delegation is learning to focus your personal attention on those tasks that only you can do. Isn't paperwork a natural for delegation?



Although it may seem natural to delegate your lobbyist registration, you might want to think twice about delegating your legal obligations under the LRA. If you are a consultant lobbyist or the most senior person in your organization who is paid for your work, you are a "designated filer," the person who is **legally responsible** for your or your organization's lobbyist registration.

The B.C. *Lobbyists Registration Act* (LRA) defines designated filer this way:

"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 his or her functions, or

(ii) if there is no senior officer who receives payment, the most senior in-house lobbyist...

The Office of the Registrar of Lobbyists is also prepared to accept that the obligations of the senior officer for an organization can be met by the most senior officer of the organization in British Columbia, if the organization's head office is elsewhere.

The LRA makes it clear that one individual – the designated filer – is responsible for the registration. The law requires that, at the end of the registration process, the person submitting the registration encounter the following statement: "I certify, to



the best of my knowledge and belief, that the information contained in this document is true, and that neither I nor any other lobbyist named in this return is in violation of section 2.1 of the Lobbyists Registration Act."¹

¹Section 2.1 requires that a person must not hold a contract to give the government paid advice on a matter for which that person is also lobbying.

If you are the designated filer, you bear legal responsibility for the registration, even if you assign the task of registering to someone else.

AVOID DELEGATING YOURSELF INTO TROUBLE (CONT'D.)

The person is then required to check a box to agree with this statement before submitting the registration.

If you are the designated filer, you bear legal responsibility for the registration, even if you assign the task of registering to someone else. A 2012 investigation [report](#) posted on the ORL's website found a designated filer to be legally responsible for filing a late registration, despite the individual's statement that the legal firm he had hired to file his registration on his behalf had chosen the start date for the registration. This report demonstrates that designated filers may not claim ignorance of actions regarding their registrations that are performed by others on their behalf.

What does this mean for your registration process? What if your organization has 10 or 20 in-house lobbyists? Does this mean that you must personally supervise the lobbying effort of each in-house lobbyist, in order to stay on the safe side of the law? As a consultant, must you physically enter all data for each of your client files? Can anything about the task of registering be legally delegated to someone else?

There are certain things you can delegate, and other things you should not. The part of your registration process that qualifies as paperwork can be delegated. You can choose to delegate the "leg-work" for your registration: someone else can compile and periodically update the data about what you or each in-house lobbyist is actually doing, and enter the data in your registration.

However, there are three actions that are not part of the paperwork, which you as designated filer are wise to perform yourself. When your assistant has entered and saved – but not submitted – the new data, your part is to: 1) review the information in the registration; 2) confirm to *your own satisfaction* that the information is accurate; and 3) certify the information as true to the best of your knowledge and submit the registration.

Smart delegators know not to delegate tasks that require their personal attention. Requesting help from assistants or hired help to prepare your registration can save you valuable time. But bear in mind that designated filers are personally responsible for certifying that the information registrations contain is true. If you're a designated filer, when it comes to your lobbyist registration, legally, the buck stops with you.



Can anything about the task of registering be legally delegated to someone else?



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THANKS FOR READING THIS ISSUE OF INFLUENCING B.C.

To learn more about the Office of the Registrar of Lobbyists for British Columbia, or to comment on any of the information contained in this e-zine, please visit our website or contact our office.

The views expressed in this issue by guest authors are their own, and are not necessarily those of the Office of the Registrar of Lobbyists for British Columbia.

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