

Office of the Registrar of Lobbyists: A GUIDE TO INVESTIGATIONS

INTRODUCTION

This guide outlines the steps that the Office of the Registrar of Lobbyists (“ORL”) takes under the *Lobbyists Registration Act* (“LRA”) in conducting investigations of apparent non-compliance with the LRA and its regulations.

This document is published online (www.lobbyistsregistrar.bc.ca) and accompanies compliance investigation letters to designated filers to advise them of investigations under s. 7.1 of the LRA.

This document is intended as general information to provide filers with a better understanding of the steps the ORL typically follows in dealing with possible non-compliance and in conducting investigations. It is not intended to be, and cannot be relied upon, as legal advice. This document does not bind or fetter the ORL’s ability to depart from the documented processes based on considerations of law or jurisdiction, or in special circumstances.

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DEFINITIONS

The definitions of the following terms are important to understand in the context of ORL investigations.

The following definitions are found in s. 1(1) of the LRA.

“**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, and

(c) in relation to an in-house lobbyist only, to arrange a meeting between a public office holder and any other individual for the purposes of attempting to influence any of the matters referred to in paragraph (a) of this definition.

“Consultant Lobbyist” means an individual who, for payment, undertakes to lobby on behalf of a client.

“In-House Lobbyist” means an employee, an officer or a director of an organization

- (a) who receives a payment for the performance of his or her functions, and
- (b) whose lobbying or duty to lobby on behalf of the organization or an affiliate, either alone or together with other individuals in the organization,
 - (i) amounts to at least 100 hours annually, or
 - (ii) otherwise meets criteria established by the regulations.

“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.

“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

- (a) on the sole behalf of the employer, or
- (b) if the employer is a corporation, at the direction of the employer on behalf of a subsidiary of the employer or any corporation of which the employer is a subsidiary.

“Registrar” means the person designated as registrar under section 7(1) or their delegate.

WHAT IS NON-COMPLIANCE?

Non-compliance with the LRA undermines the purpose of the Lobbyists Registry, which is to provide an accurate and transparent public record of who is lobbying whom, and to what end.

Non-compliance under the LRA includes:

- failing to register lobbying activities;
- failing to register within the required timelines;
- failing to report changes to the information in a return or late reporting of changes;
- failing to report the completion or termination of an undertaking;
- failing to report the change in undertaking end date within the required timelines;
- failing to report that an in-house lobbyist has ceased to be an in-house lobbyist for the organization by inactivating the in-house lobbyist in the return within the required timelines;
- failing to provide the registrar with requisite information in or related to a return;
- lobbying on a subject matter prohibited by s. 2.1(2) of the LRA; and
- providing information that is not true in a return.

CALCULATION OF TIME

Day

The calculation of time is in accordance with s. 25 of the *Interpretation Act*. For the purposes of calculating timelines in the LRA, a day is defined as a calendar day, unless it is specifically referenced in the LRA or its regulations as a business day.

COMPLIANCE REVIEWS

Cases of possible non-compliance come to the attention of the ORL in various ways, including:

- information submitted to the Registry in a return;
- automatic system notifications;
- media reports;
- environmental scanning, which is proactive monitoring of publications, websites and other sources of information; or
- information received from the public.

As a first step, the ORL will conduct an initial compliance review of all available and relevant information. The ORL will then either (A) inquire if the person or organization should be registered or (B) verify an existing registration.

A. DETERMINING IF REGISTRATION IS REQUIRED

If a compliance review indicates potential lobbying activity involving a person or organization that is **not currently registered** with the Lobbyists Registry, the ORL will send a letter to the appropriate person:

- outlining the criteria and requirements for registration;
- requesting the person or senior officer of an organization review the criteria to determine if they are required to register;
- instructing that they register promptly if they determine registration is required; and
- requesting an explanation within a specified timeframe, if they determine they are not required to register.

If the person promptly registers as a consultant lobbyist or as the designated filer for an organization or explains why he or she is not required to register at this time, the ORL will determine if any further action is necessary. If there appears to be compliance, the matter will be closed. If the ORL considers it necessary to establish whether there has been compliance, the matter will proceed to an investigation.

The ORL usually requires a response to the letter within three weeks. The failure to provide a timely or satisfactory response will likely result in an investigation being commenced.

B. VERIFYING A CURRENT REGISTRATION

If a compliance review indicates potential issues with a **current registration on the Lobbyists Registry**, the ORL will take steps to verify the information submitted in a return or document, including:

- sending a letter to the designated filer with a request for information and/or documentation;
- contacting a consultant lobbyist's client to verify information in the lobbyist's return; or
- contacting a consultant lobbyist's client to request supporting documentation, including correspondence, agreements or contracts.

The required timeline for response to the ORL's letter will vary depending on the type and extent of the inquiry. Failure to provide a timely or satisfactory response will normally result in the ORL commencing an investigation.

If a compliance review or client verification determines that the person has been compliant, the matter will be closed.

Not all cases of suspected non-compliance proceed to a full investigation. For example, if a new filer submits a registration to the Lobbyists Registry only a few days past the deadline stipulated in the LRA, the filer will likely receive a warning. The ORL determines the appropriate response on a case-by-case basis.

Note: Designated filers should be aware that investigation reports will usually contain reference to all information relevant to the determination. This means that any information that a designated filer provides as part of an investigation could appear in the report, and could be made public. If a designated filer wishes to provide information that they would prefer remain confidential, they should request that the ORL receive the information on an *in camera* basis. The investigator will determine if the information is appropriate for them to consider *in camera*.

INVESTIGATION PROCESS

Step One: Commencing an Investigation

A. COMPLIANCE INVESTIGATION (S. 7.1)

The ORL may initiate an investigation to establish whether there is or has been compliance, by any person, with the LRA or its regulations. Investigations are conducted by the Registrar or her delegate (s. 7(4)(d),(e)).

The ORL will normally send a person subject to investigation a letter advising them that it is conducting a compliance investigation under s. 7.1 of the LRA (the “investigation letter”). The investigation letter typically includes:

- notice of apparent non-compliance;
- legal authority for the ORL to conduct an investigation;
- the relevant section(s) of the LRA for reference;
- background information about the apparent contravention of the LRA;
- a request to explain the discrepancy between the LRA requirements and the fact pattern detailed by the ORL;
- a time limit for response; and
- a copy of this guidance document.

The ORL will determine the timing of the investigation letter in accordance with the nature and requirements of the investigation.

The usual timeframe for an initial response to the investigation letter is four weeks. If a person fails to provide a timely and satisfactory response, the ORL will consider whether to issue an order compelling the production of documents and/or records (s. 7.5). The failure or refusal of a person to comply with an order to appear or produce records makes them liable to be committed for contempt (s. 7.6).

It is important that designated filers consider the questions in the letter seriously and provide an accurate response. Designated filers have caused themselves serious problems by providing one explanation in response to a s. 7.1 letter and providing contradictory evidence later in the process. For example, some lobbyists have responded to the s. 7.1 letter that they had an undertaking to lobby, but later denied the undertaking when informed that they registered the undertaking after the required timelines had expired. This led to them being found to have contravened the LRA by submitting inaccurate information into the

Lobbyists Registry and receiving a larger administrative penalty than they would have for filing late. Some designated filers have withheld key information until after they requested a reconsideration of the finding of an investigation report. It is important to note that the Registrar will not consider any new information, as part of an application for reconsideration, if the designated filer could reasonably have submitted that information to the investigator in the first instance. Therefore, it is essential for designated filers to provide full and consistent information at every stage of the process.

When conducting an investigation, the ORL will review all relevant information and may make inquiries to verify information contained in a return or other submitted documentation. This could include contacting the designated filer, the client of a consultant lobbyist, a public office holder or any other relevant person. The ORL may also obtain relevant information and/or records from any other appropriate sources.

If the ORL determines that the designated filer was in compliance, the ORL will take no further action and will notify the person either by letter or email.

If the ORL finds, based on all the relevant information at hand, reasonable grounds to believe that there has been non-compliance, it will decide how to proceed. It may decide to issue a formal notice and opportunity to be heard under s. 7.2(1) of the LRA:

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.

B. DISCONTINUING AN INVESTIGATION (S. 7.1(2))

The ORL may refuse to investigate or cease an investigation if:

- the matter could more appropriately be dealt with under another enactment;
- the matter is minor or trivial;

- dealing with the matter would serve no useful purpose because of the length of time that has elapsed since the matter arose; or
- there is any other valid reason for not investigating the matter.

The ORL will notify the designated filer in writing if it discontinues an investigation.

C. SUSPENDING AN INVESTIGATION (S. 7.1(3))

If the ORL discovers, with respect to the matter under investigation, that it is the same matter that is under a separate investigation to determine whether an offence has been committed, or a charge has been laid, the ORL must suspend its investigation. The ORL investigation may not continue until the other investigation has been completed, the charge has been withdrawn, or a final verdict has been rendered in respect of the charge.

Step Two: Opportunity to be Heard

If, after commencing an investigation under s. 7.1, the ORL still has reason to believe that a person has not complied with a provision of the LRA or its regulations and the ORL is not discontinuing the investigation, it must provide the person with formal notice and an opportunity to be heard.

Formal notice will be provided to the person by the Registrar or her delegate.

A. NOTICE (S. 7.2(1)(A))

Formal notice will contain the following information:

- the alleged contravention(s) and the relevant section(s) of the LRA at issue;
- the background or fact pattern that is the basis for the alleged contravention(s);
- the reasons why the ORL believes there has been a contravention of the LRA;
- details on how the person may exercise an opportunity to be heard respecting the alleged contravention(s) and the deadline for a response;
- notice that all relevant arguments will be taken into consideration and be publicly posted on the ORL website if an investigation report has a finding of non-compliance;

- the range of the administrative penalty that might be imposed in the event there is a finding of non-compliance;
- confirmation that once their submission is reviewed and a determination made, the person will be informed in writing of the ORL's findings respecting the alleged contravention(s) and of any administrative penalty levied if a finding of non-compliance is made; and
- notification that the ORL is required, under s. 7.8 of the LRA, to deliver any report of non-compliance to the Speaker of the Legislative Assembly.

B. OPPORTUNITY TO BE HEARD (S. 7.2(1)(B))

The opportunity to be heard gives the person under investigation (the respondent) the chance to respond in writing to the alleged contravention(s) and to provide any and all information or documentation that the respondent believes is pertinent. The response to a formal notice should be clear and concise and contain all the evidence and submissions regarding the contravention and penalty that the respondent wishes the ORL to consider in making their determination. The ORL seeks the best evidence, and to this end, prefers affidavit evidence on any matter that could be contested or controversial. The ORL reserves the right to require a respondent or witness to appear for questioning, whether or not that person's evidence has been provided by affidavit.

The LRA requires the Registrar or her delegate, if a finding of contravention is made, to "make a report of the registrar's findings and conclusions and reasons for those conclusions, and the amount of any administrative penalty imposed and whether, at the time of making the report, the amount has been paid" (LRA, s. 7.8(1)). As a result of these provisions, the formal notice will also invite the respondent to provide information and submissions concerning whether an administrative penalty should be imposed if a contravention is found and what the amount of that penalty should be if a penalty is imposed.

The timeline for response to the formal notice under s. 7.2(1)(a) will normally be six weeks. Submission of a response is not mandatory. If the ORL receives no response, or does not extend the deadline in response to an extension request that is granted before the deadline expires, the ORL will proceed to decision.

Once it receives the response to a formal notice, the ORL will review all the information and/or documentation available and make a determination of compliance and any administrative penalty, if appropriate.

Step Three: Notification of Findings

A. DETERMINATION: COMPLIANCE

If the ORL determines, on a balance of probabilities, that the person has complied with the LRA, the ORL will inform the person in writing of their findings. The findings may be in the form of a letter or a formal investigation report.

If the ORL issues an investigation report with a finding of compliance, it may be made public, if it is considered to be in the public interest (s. 7.9). A matter may be considered to be in the public interest if, among other things, it involves significant public controversy, government accountability is in question, the matter was published in the media, or inaccurate information is in the public domain and someone's reputation is at risk. An example is the case where the British Columbia Association of Chiefs of Police and British Columbia Association of Municipal Chiefs of Police were found to be in compliance: Investigation Report 13-02.¹

B. DETERMINATION: NON-COMPLIANCE

If the ORL determines, on a balance of probabilities, that the person has not complied with the LRA, the written decision will be in the form of an investigation report. The investigation report will contain the following information:

- the findings and conclusions;
- reasons for the investigator's findings;
- whether a penalty is imposed, the amount of the penalty, the reasons for the amount of the penalty and the date by which the penalty must be paid; and
- the person's right to request a reconsideration of both the decision and the penalty and the timeframe for submitting a reconsideration request.

If the person does not request a reconsideration within the 30-day timeframe specified in the LRA, the investigation report must be tabled with the Speaker of the Legislative Assembly. The report will also be publicly available on the ORL website.

¹ (<http://www.lobbyistsregistrar.bc.ca/index.php/decisions-of-the-registrar>).

C. DETERMINING THE AMOUNT OF AN ADMINISTRATIVE PENALTY

The ORL may issue an administrative penalty for non-compliance. The maximum penalty is \$25,000.

Administrative penalties will generally be applied in accordance with the following guidelines, keeping in mind that every case is considered on its facts:

Contravention	First Instance	Second Instance	Third Instance
Failing to Register	\$500-\$7,500	\$7,500-\$15,000	\$15,000-\$25,000
Registering Late	\$100-\$5,000	\$5,000-\$10,000	\$10,000-\$25,000
Failing to Report Changes or Late Reporting of Changes	\$100-\$5,000	\$5,000-\$10,000	\$10,000-\$25,000
Lobbying on Prohibited Subject Matter (Contract Prohibition)	\$1,000-\$7,500	\$7,500-\$15,000	\$15,000-\$25,000
Providing information that is not true in a return	\$1,000-\$7,500	\$7,500-\$15,000	\$15,000-\$25,000

In determining the amount of the administrative penalty, the ORL will consider, among other things:

- the gravity and magnitude of the contravention;
- previous enforcement actions for contraventions of the LRA;
- relevant circumstances relating to the contravention;
- whether the contravention was deliberate;
- whether any economic benefit was derived from the contravention;
- the person's efforts to report and/or correct the contravention;
- any other factors that, in the opinion of the Registrar or their delegate, are relevant to the administrative penalty; and
- whether a penalty is necessary for general and/or specific deterrence.

These guidelines do not bind or fetter the ORL's ability to conclude that an administrative penalty is not appropriate under the circumstances, or to fashion a remedy on either side of the range set out in the above guidelines, in appropriate circumstances.

Step Four: Reconsideration

A person may request that the Registrar reconsider the ORL's findings and/or any administrative penalty. Reconsideration is governed by s. 7.3 of the LRA:

7.3(1) Within 30 days after being informed of a contravention in accordance with section 7.2, a person may request the registrar to reconsider a decision under section 7.2 (2) (a) or (b), or both.

(2) A request under subsection (1) must be in writing and must identify the grounds on which a reconsideration is requested.

(3) On receiving a request for a reconsideration under subsection (1), the registrar must do all of the following:

(a) consider the grounds on which the reconsideration is requested;

(b) rescind the decision under section 7.2 (2) (a) or (b), or both, or confirm or vary the amount of the penalty;

(c) if the amount of an administrative penalty is confirmed or varied, extend the date by which the penalty must be paid;

(d) notify the person in writing of the matters under paragraphs (b) and (c) of this subsection, as applicable, and of the reasons for the decision to confirm, vary or rescind under paragraph (b) of this section.

Normally, the Registrar will personally conduct the reconsideration.

Section 7.3 of the LRA is silent as to the standard of review the Registrar that applies on reconsideration, and is silent as to the reconsideration process itself.

With respect to the standard of review, the Registrar will not approach reconsideration as a hearing "de novo", or a complete re-hearing of the original facts of the case, just because the respondent disagrees with the original finding. Rather, a respondent seeking to have a finding or administrative penalty altered on reconsideration bears the onus of satisfying the Registrar that the first determination contained a significant error of fact or law, or a breach of administrative fairness.

A reconsideration could also consider relevant new evidence, but only if that evidence could not have, with due diligence, been placed before the Registrar during the course of the original investigation and formal notice.

With respect to procedure, the Registrar will provide any new evidence and submissions provided by the respondent before the investigator who made the first instance determination for written comment on the record. The Registrar will share that comment with the respondent for reply before she begins deliberating on the reconsideration.

On reconsideration, the Registrar's authority includes making an order that may either confirm or vary the amount of administrative penalty. Note that the Registrar understands this to include the authority not only to decrease but also to increase the penalty on reconsideration.

Appendix 1: LRA Authorities and Powers

Section 7 of the LRA outlines the authorities and powers of the Registrar with respect to conducting investigations to determine whether or not there has been compliance with the LRA.

Under section 7(4)(d) of the LRA, the Registrar may delegate her authority to ORL staff to conduct investigations.

Investigation and Hearing Stages

The Registrar or her delegate (referred to as “ORL”) has specific responsibility for:

- investigating to determine whether a person has complied with the LRA or the regulations, in accordance with section 7.1;
- refusing to investigate or ceasing an investigation if the situation warrants, in accordance with section 7.1(2);
- giving the person notice of the allegations, the reasons why the ORL believes there has been a contravention, and how the person may exercise an opportunity to be heard, in accordance with section 7.2(1)(a); and
- giving the person the opportunity to be heard, in accordance with section 7.2(1)(b).

Verification of Information

In the process of carrying out an investigation, the Registrar or her delegate may exercise their powers to:

- verify the information contained in any return or other document submitted under the LRA, in accordance with section 7(4)(a);
- compel the attendance of a person before the registrar or her delegate to answer questions on oath or affirmation; in accordance with section 7.5(1)(a); or
- compel a person to produce a record in the custody or under the control of the person, in accordance with section 7.5(1)(b).

Finding of Non-Compliance

If, after an investigation is completed, the ORL believes the person has not complied with a provision of the LRA or the regulations, the ORL has further responsibility for:

- informing the person of the determination that there has been a contravention, in accordance with section 7.2(2)(a);
- issuing an administrative penalty of no more than \$25,000, if appropriate, in accordance with section 7.2(2)(b);
- giving the person notice of the determination and any penalty issued, in accordance with section 7.2(2)(c);
- providing details on how the person may request reconsideration of the determination of non-compliance or the imposition or amount of any penalty, in accordance with section 7.2(2)(c)(iii);
- submitting reports of non-compliance to the Speaker of the Legislative Assembly, in accordance with section 7.8;.and
- making reports publicly available, at their discretion, in accordance with section 7.91.

Reconsideration Requests

If the person receiving an investigation report with a finding of non-compliance requests a reconsideration of the finding and/or any administrative penalty levied, the Registrar is, in accordance with section 7.3(3) of the LRA, responsible for:

- considering the grounds on which the reconsideration was requested;
- confirming or rescinding the finding;
- confirming, rescinding or varying any administrative penalty levied;
- extending the date by which any penalty must be paid; and
- notifying the person who requested the reconsideration, in writing, of the reconsideration decision and the reasons why the initial finding was either confirmed, varied or rescinded.