

INVESTIGATION REPORT 17-07

Independent Contractors and Businesses Association of BC

DESIGNATED FILER: Chris Gardner

September 13, 2017

SUMMARY: The Independent Contractors and Businesses Association of BC (ICBA) had a change to the designated filer. The organization failed to update the registration to reflect the new designated filer within 30 days of the change contrary to s. 4(2) of the *Lobbyists Registration Act* (LRA). The designated filer received an administrative penalty of \$1000.

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

INTRODUCTION

[1] This report concerns an investigation under s. 7.1 of the *Lobbyists Registration Act* (LRA), which gives the Registrar of Lobbyists (Registrar) the authority to conduct an investigation to determine whether there has been compliance with the LRA or its regulations. If, after an investigation under s. 7.1, the Registrar or his delegate believes that the person under investigation has not complied with a provision of the LRA or its regulations, s. 7.2 of the LRA requires him to give notice of the alleged contravention and the reasons for his belief that the contravention has occurred. Prior to making a determination under s. 7.2(2), the Registrar must, under s. 7.2(1)(b), give the person under investigation a reasonable opportunity to be heard respecting the alleged contravention.

[2] The LRA recognizes two types of lobbyists. This report focuses on the activities of ICBA, an organization that employs in-house lobbyists. 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.

[3] The LRA requires that the designated filer of an organization must update the organization's registration within 30 days of a change in designated filer, as per s. 4(2) of the LRA. In this case, the organization's designated filer is the President, Chris Gardner.

[4] Under s. 7(4)(d) of the LRA, the Registrar has delegated to me the authority to conduct this investigation.

ISSUES UNDER CONSIDERATION

[5] The questions that must be considered are:

- (a) whether the designated filer of the organization contravened s. 4(2) of the LRA for failing to update the designated filer within 30 days, and
- (b) if the designated filer did not comply with the requirements of the LRA, what, if any, administrative penalty is appropriate in the circumstances?

RELEVANT SECTIONS OF THE LRA

"designated filer" means

- (a) a consultant lobbyist,
- (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;

Form and Content of Return

- 4(2) An individual who files a return must supply the registrar with the following information within the applicable period:
- (a) particulars of any change to the information in the return, within 30 days after the change occurs;

BACKGROUND

[6] The former President of ICBA submitted Registration ID 29868314 for ICBA on December 9, 2016 and listed himself as the designated filer in the registration. On February 7, 2017, a new President replaced the former President.

[7] On May 3, 2017, ORL staff sent an email to the former President, asking him to change the designated filer in the registration to the new President. The former President did not respond and did not update the designated filer.

[8] On May 8, 2017, ORL staff sent an email to the new President, asking him to change the designated filer. The new President did not respond and did not update the designated filer.

[9] On May 19, 2017, the designated filer for ICBA advised that he does not have the BCeID password for Registration ID 29868314 and could not update the registration.

[10] The end date for Registration ID 29868314 was reached on June 7, 2017. The designated filer did not update the registration.

INVESTIGATION

[11] The ORL commenced an investigation under s. 7.1 of the LRA to determine whether the designated filer of the organization had complied with s. 4(2) of the LRA.

[12] In a letter of May 17, 2017, the Registry Manager asked the designated filer to explain why he did not update information about the designated filer within the legislated timelines set out in s. 4(2) of the LRA.

[13] The designated filer for ICBA responded on June 6, 2017, advising that ICBA failed to update the registration within 30 days owing to the transition that occurred following his appointment as President of ICBA on February 7, 2017.

[14] On June 8, 2017, pursuant to s. 7.2 of the LRA, I sent a notice to the designated filer notifying him that I had formed the preliminary belief that he had failed to comply with s. 4(2) of the LRA. In the notice, I set out the basis for my belief and invited the designated filer to respond in writing to the alleged contravention and provide any information or documentation pertinent to the alleged contravention and the potential administrative penalty.

[15] On June 28, 2017, the designated filer of ICBA responded to my letter of June 8, 2017. He advised:

...Prior to my current role, I have had no occasion to file a registration under the *Lobbyists Registration Act* and was unaware of the requirement to amend ICBA's existing registration. I say that not as an excuse but as a candid explanation for the cause of the delay that you are reviewing...

The designated filer also outlined delays he experienced when trying to use the BCeID system to update the ICBA registration. This culminated in the designated filer of ICBA having to create a new BCeID account, which explained some of the delay.

FINDING

[16] I find that the designated filer contravened s. 4(2) of the LRA when he failed to update information about the designated filer within 30 days of the change of the designated filer.

ADMINISTRATIVE PENALTY

[17] I will now address whether there should be an administrative penalty in this case.

[18] The purpose of the LRA is to promote transparency in lobbying by requiring lobbyists to disclose accurate, current and complete information. Failing to keep registration information up to date and accurate undermines the ability of the public to know who is attempting to influence government at any point in time, thereby defeating the LRA's goal of transparency.

[19] In assessing whether a penalty is necessary in this instance, I must consider, among other things:

- previous enforcement actions for contraventions by this designated filer,
- the gravity and magnitude of the contravention,
- whether the contravention was deliberate,
- whether the registrant derived any economic benefit from the contravention,
- any effort the registrant made to report or correct the contravention, and
- whether a penalty is necessary for general and specific deterrence.

[20] There have been no previous enforcement actions for contraventions by the ICBA. This is the first registration that the designated filer has submitted to the Lobbyists Registry.

[21] On the question of the gravity and magnitude of the contravention under investigation, as stated above, inaccurate information undermines transparency. The severity of this contravention is considered low to medium.

[22] The purpose of the LRA is to promote transparency in lobbying by requiring lobbyists to disclose accurate, current and complete information about their lobbying activities. This is a solemn legal obligation. It reflects the legislative intent that while lobbyists have a right to lobby, the public have a right to know about their intended activities as defined in s. 4 of the LRA, and to have that knowledge in a timely and transparent fashion. Not updating a return defeats the goal of transparency.

[23] The next factor I have considered is whether the contravention was deliberate. As I noted above, it appears the delay was a result of human error and not deliberate. It is in the designated filer's favour that he was honest and forthright with the ORL and sought to immediately correct the error.

[24] The next factor to consider is whether there was any economic benefit derived from the contravention. In this case there was no economic benefit gained by not updating the return.

[25] I have already addressed the next factor – “any effort the registrant made to report or correct the contravention.” It is in the designate filer’s favour that he made every effort to correct this situation when he realized his error.

[26] Together with the above factors, I have also considered whether an administrative penalty is necessary for specific or general deterrence. In my view, the circumstances of this case call for an administrative penalty both to encourage the designated filer not to disregard his obligations under the LRA, and to remind all lobbyists of their legal obligations to be diligent in keeping their registrations current and accurate.

[27] The goal of transparency is frustrated if designated filer fail to meet the deadlines the LRA requires. The length of the delay in updating a registration increases the magnitude of the contravention. In this case, the designated filer field in the registration was out of date from February 7, 2017 to June 7, 2017. It appears this is a case of a leadership succession that caused the LRA obligations to be missed. This is an excellent example of why organizations must clearly communicate the need to address the duties and obligations under the LRA when replacing senior leadership in an organization. It is also a good example of why organizations should ensure more than one person in an organization is aware of the obligations under the LRA, so staff changes do not result in important deadlines being missed.

[28] In this case, it appears the ICBA overlooked its LRA obligations during the succession process. However, this is a large and sophisticated organization that regularly lobbies government. Therefore, they should have been aware of their obligations under the LRA.

[29] With respect to existing precedents, there has been no other Investigation Report where an organization failed to update the designated filer as the LRA requires. However, Investigation Report IR 15-03 also dealt with an organization that failed to update another field in their registration for a period of 40 days. In that case the organization received an administrative monetary penalty of \$1000. Therefore, I am assessing a moderate penalty consistent with IR 15-03.

[30] The ORL’s policies and procedures, which are intended only as a guide, suggest a range of penalties for contraventions of the LRA. The penalty for failing to report changes has a range of \$100 to \$5,000 for a first instance of non-compliance. For failing to report changes, in contravention of s. 4(2) of the LRA, I impose an administrative penalty of \$1,000.

CONCLUSION

1. The notice of alleged contravention is substantiated. Under s. 7.2(2) of the LRA, I find that the designated filer contravened s. 4(2) of the LRA when he failed to report changes to a return within the legislated timelines.
2. I impose an administrative penalty of \$1,000.

3. The designated filer must pay this penalty no later than October 25, 2017.
4. If the designated filer requests reconsideration under s. 7.3 of the LRA, he is to do so within 30 days of receiving this decision by providing a letter in writing directed to the Registrar of Lobbyists at the following address, setting out the grounds on which reconsideration is requested:

Office of the Registrar of Lobbyists for British Columbia
PO Box 9038, Str. Prov. Govt.
Victoria, BC V8W 9A4

Email: info@bcorl.ca

September 13, 2017

ORIGINAL SIGNED BY

Trevor Presley
Investigator
Office of the Registrar of Lobbyists