

RECONSIDERATION 13-01

(INVESTIGATION REPORT 13-01)

LOBBYIST: JOE FIEDER

Summary: A consultant lobbyist requested reconsideration of a \$500 administrative penalty imposed as a result of a contravention of the *Lobbyists Registration Act*. Only the amount of the fine was at issue on reconsideration. The administrative penalty of \$500 imposed on the lobbyist is upheld as the consultant lobbyist did not offer compelling grounds to vary the finding of the Acting Deputy Registrar of Lobbyists.

Statutes Considered: *Lobbyists Registration Act*, S.B.C. 2001, c. 42.

INTRODUCTION

[1] The Acting Deputy Registrar of Lobbyists, Jay Fedorak, issued Investigation Report 13-01 ("IR13-01") on May 2, 2013. The factual circumstances surrounding IR13-01 are straightforward.

[2] Consultant lobbyist Joe Fieder registered an undertaking to lobby with the Office of the Registrar for Lobbyists for British Columbia ("ORL") on April 27, 2011. Mr. Fieder provided an undertaking start date of March 14, 2011, and an end date of December 31, 2011, as is required by section 4(1)(b)(ii) of the *Lobbyists Registration Act* ("LRA"). Mr. Fieder listed 3M Canada as his client.

[3] On December 31, 2011, the ORL sent Mr. Fieder an automatic, system-generated email stating that his undertaking had expired and that he had 30 days to extend the end date of the undertaking. The email also stated that if he did not extend the end date, the system would automatically terminate his registration 30 days after the notification.

[4] Mr. Fieder did not extend the end date of the registration and on February 3, 2012, the ORL's system terminated Mr. Fieder's registration.

[5] On June 21, 2012, Mr. Fieder registered another undertaking to lobby on behalf of 3M Canada, and provided a back-dated undertaking start date of January 1, 2012, with an undertaking end date of December 31, 2013.

[6] Because the details of Mr. Fieder's two registrations were the same, the ORL Registry Manager asked him whether the undertaking in the second registration was the same as in the earlier one, and if so, why he had allowed the first registration to lapse. Mr. Fieder explained that "he did not realise the original one expired."

[7] In IR13-01, the Acting Deputy Registrar determined, under s. 7.2(2) of the LRA, that by continuing to lobby on behalf of 3M Canada and not reporting to the ORL this activity within 30 days of the expiration of his first undertaking to lobby, Mr. Fieder had contravened s. 4(2)(a) of the LRA. The Acting Deputy Registrar imposed an administrative penalty of \$500.

[8] In a May 15, 2013 letter to this Office, Mr. Fieder accepted the Acting Deputy Registrar's finding that he had not complied with the LRA. However, under s. 7.3 of the LRA, Mr. Fieder requested a reconsideration of the amount of the administrative penalty.

[9] For the reasons given below, I have decided to uphold the administrative penalty of \$500. I have also decided to publish this decision and IR13-01.

[10] In accordance with s. 7.3(3), in making this decision I have considered Mr. Fieder's reconsideration request as well as his submissions in this reconsideration, and the evidence and argument in the hearing process that led to IR13-01.

ISSUES

[11] The first issue in this reconsideration is whether I should confirm or vary the \$500 administrative penalty imposed by the Acting Deputy Registrar in IR13-01.

[12] The second issue is whether IR13-01 and this decision should be published.

DISCUSSION

Should I confirm or vary the \$500 administrative penalty imposed by the Acting Deputy Registrar?

The Decision of the Acting Deputy Registrar

[13] The Acting Deputy Registrar stated in IR13-01 that the "purpose of the LRA is to promote transparency in lobbying by requiring lobbyists to disclose accurate, current and complete information." As he also noted, "[f]ailing to keep

information in registrations up to date and accurate undermines the ability of the public to understand who is actually attempting to influence government at any point in time, thereby defeating the LRA's goal of transparency.”

[14] The Acting Deputy Registrar identified various factors this Office considers in determining the amount of an administrative penalty. These factors are set out in the ORL's Policies and Procedures:¹

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

- 12.3.1 Previous enforcement actions for contraventions of a similar nature by the person;
- 12.3.2 The gravity and magnitude of the contravention;
- 12.3.3 Whether the contravention was deliberate;
- 12.3.4 Any economic benefit derived from the contravention; and
- 12.3.5 The person's efforts to report and/or correct the contravention.
- 12.3.6 The need to deter the individual and others from contravening the Act in the future.

[15] Policy 12.4 provides that these factors do not fetter the Office's discretion in setting an administrative penalty and in particular that it “does not fetter the ORL's ability to conclude that no administrative penalty is appropriate in the circumstances.”

[16] The Acting Deputy Registrar stated that he must consider “whether a penalty is necessary for general and specific deterrence.” He said that in the case before him that he was satisfied the investigation and hearing process was sufficient to ensure Mr. Fieder would keep future registrations up to date.

[17] The Acting Deputy Registrar went on to say however, that he must take into consideration the issue of general deterrence and that “[i]t is important for all lobbyists to understand that keeping registrations current is not simply ‘paperwork’. It is a serious obligation that they must meet if the objectives of the LRA are to be achieved.”

[18] Finally, the Acting Deputy Registrar also considered the gravity and magnitude of the contravention of Mr. Fieder allowing his registration to lapse and not re-registering for nearly six months. During this time, Mr. Fieder lobbied without being registered or having his lobbying activities open to public scrutiny. As Mr. Fieder had previously registered, he was aware of the obligation on

¹ http://www.lobbyistsregistrar.bc.ca/images/pdfs/2011-09-30_Policies_and_Procedures.pdf.

lobbyists to register. The Acting Deputy Registrar found Mr. Fieder “made no effort to correct his transgression until he was prompted to do so by a business associate at his client organization, 3M Canada.”

Arguments

[19] The sole issue in dispute by Mr. Fieder in this reconsideration is the \$500 administrative penalty imposed by the Acting Deputy Registrar in IR13-01. Mr. Fieder submits “that any fine is excessive” in this case.

[20] Mr. Fieder submits that he did not receive an email from the ORL alerting him that his registration was expiring or, alternatively, his computer system may have treated any such email as “spam” and he did not see it. First, the ORL’s system automatically generates emails that a registration is expiring and I have no reason to believe it did not generate an email to Mr. Fieder in this instance. In any event, there is no requirement under the LRA for the ORL to inform a lobbyist that his or her registration is expiring. It was Mr. Fieder’s sole responsibility to ensure that he renewed his expiring registration if he was continuing to lobby his client. Mr. Fieder knew of this requirement because he had previously registered with the ORL.

[21] Mr. Fieder also argues that once he was aware his registration had expired he immediately re-registered an undertaking to lobby and admitted to the ORL he had meetings after the expiry of his original registration. Mr. Fieder also submits that by pre-dating his start date to January 1, 2012, he was being open and honest and not trying to mislead the ORL.

Reasons

[22] I appreciate that Mr. Fieder was open and honest with respect to his communication with the ORL. However, this is the expectation of my Office, not a mitigating circumstance. Further, it does not alter the fact that Mr. Fieder allowed his registration to lapse and did not re-register for nearly six months, until his client prompted him to do so. I agree with the Acting Deputy Registrar that Mr. Fieder continuing to lobby for six months without his activities being registered or having his lobbying activities open to public scrutiny is not a trivial matter.

[23] I also agree with the Acting Deputy Registrar of the importance of providing a general deterrent to other lobbyists. Lobbyists cannot allow their registration to lapse and continue to lobby without my office imposing consequences.

[24] I agree with the reasoning of the Acting Deputy Registrar and find no compelling reason to vary the \$500 administrative penalty.

Should IR13-01 and this decision be published?

The Acting Deputy Registrar's decision

[25] The Acting Deputy Registrar found that IR13-01 should be made public “to remind all designated filers of their legal obligation to be diligent in keeping their registrations current and to report changes within 30 days as required by the law.” Mr. Fieder did not dispute this finding in his request for reconsideration, nor did he take any position on the publishing of this decision. Nonetheless, I will consider this matter.

Reasons

[26] Under s. 7.91 of the LRA, I have the authority to publicly disclose reports. The issue is whether I should exercise the discretion conferred by this section in favour of disclosure. I find that the publication of IR13-01 is desirable in view of the need to educate lobbyists, clients and the public, and also to provide general deterrence for those who are subject to the LRA. The same reasoning applies to the publication of this decision. If I chose not to publish this decision and IR13-01, I would not be advancing these important objectives.

CONCLUSION

[27] For the above reasons, under s. 7.3(3)(b) of the LRA, I confirm the Acting Deputy Registrar's determination in IR13-01 that Mr. Fieder pay an administrative penalty of \$500. I have also decided to publicly disclose this decision and IR13-01.

[28] As required by s. 7.3(3)(c), I extend the date by which the varied penalty of \$500 must be paid to 30 days after the publication of this decision, that is on or before August 16, 2013.

July 4, 2013



Elizabeth Denham
Registrar of Lobbyists

