

RECONSIDERATION 14-03

(INVESTIGATION REPORT 14-01)

LOBBYIST: MICHAEL KLASSEN

Summary: The finding in Investigation Report 14-01 that the consultant lobbyist contravened the *Lobbyists Registration Act* is upheld. The administrative penalty of \$500 imposed on the lobbyist is also upheld. The lobbyist did not provide compelling grounds that the Investigator's findings should be varied.

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

INTRODUCTION

[1] Investigator, Darrel Woods, issued Investigation Report 14-01 ("IR14-01") on March 14, 2014. The circumstances surrounding IR14-01 relate to the responsibility of the consultant lobbyist to update his registration within 30 days of the completion or termination of an undertaking as described in s. 4(3) of the *Lobbyists Registration Act* ("LRA").

[2] In IR14-01, the Investigator determined under s. 7.2(2) of the LRA that Michael Klassen had contravened s. 4(3) of the LRA and imposed an administrative penalty of \$500. On April 6, 2014, Mr. Klassen requested a reconsideration under s. 7.3 of the LRA of both the finding that he had not complied with the LRA and the administrative penalty amount.

BACKGROUND

[3] On October 25, 2012, the consultant lobbyist registered with the Office of the Registrar of Lobbyists ("ORL") as a consultant lobbyist for the British Columbia Care Providers Association ("BCCPA") under Registration ID 12891308. The undertaking in the return the lobbyist filed had a start date of October 1, 2012, and an end date of May 3, 2013.

[4] On April 25, 2013 the ORL conducted an environmental scan of news media. The scan located a news release dated February 6, 2013, announcing that the lobbyist had been hired by a different organization to work as an in-house lobbyist. The lobbyist had not amended the end date of his undertaking with the BCCPA.

[5] On April 25, 2013 the ORL wrote to the lobbyist and asked him if he was still lobbying on behalf of the BCCPA. If he was not, the ORL advised him he was required to update his registration to reflect this.

[6] The lobbyist responded on April 30, 2013, by confirming that his undertaking with the BCCPA was no longer active. On April 30, 2013, the lobbyist updated the undertaking end date to January 1, 2013.

[7] Section 4(3) of the LRA requires consultant lobbyists, within 30 days of the completion or termination of an undertaking for which a return was filed, to inform the Registrar of the completion or termination of the undertaking and indicate the date on which the completion or termination occurred.

[8] The ORL commenced an investigation under s. 7.1 of the LRA to determine if the lobbyist had complied with the LRA. On June 6, 2013 the ORL wrote to the lobbyist asking him to explain the discrepancy between the legislated deadline for reporting the termination of the undertaking and the date on which the lobbyist submitted his updated registration.

[9] The lobbyist responded on June 6, 2013, and explained that in December 2012, there had been some uncertainty as to when his undertaking would end. When it became clear that the undertaking had ended, he overlooked the matter of updating his registration. On November 4, 2013 he provided additional information about his contractual relationship with BCCPA. He explained that his contract effectively ended on December 14, 2012, with the retirement of the CEO who had contracted his services. The new CEO, who took over on January 7, 2013, was to decide whether the lobbyist would continue to work for the BCCPA. The lobbyist and the new CEO ultimately did not communicate about this matter. As of the end of January 2013, the lobbyist had a position with a new organization and was no longer lobbying on behalf of the BCCPA.

[10] In IR14-01, the Investigator found that the lobbyist did not comply with s. 4(3) of the LRA when he failed to inform the Registrar of the termination of his undertaking with BCCPA within 30 days after the termination. The Investigator imposed an administrative penalty of \$500.

[11] In an April 6, 2013 letter to this office, Mr. Klassen requested a reconsideration under s. 7.3 of the LRA. In accordance with section 7.3(3), in making this decision I have considered Mr. Klassen's reconsideration request as well as his submission and the evidence and arguments in the hearing process that led to IR14-01.

ISSUES

[12] The first issue in this reconsideration is whether I should confirm or rescind Investigator Woods' finding of non-compliance with s. 4(3) reached in IR14-01.

[13] The second issue is whether I should confirm or vary the \$500 administrative penalty imposed by Investigator Woods in IR14-01.

[14] The third issue is whether IR14-01 and this reconsideration should be published.

DISCUSSION

Should I confirm or rescind the finding of non-compliance reached by the Investigator?

[15] In IR14-01, the Investigator found that the lobbyist failed to inform the Registrar of the completion or termination of his undertaking within 30 days of the undertaken being completed or terminated. As a result, the Investigator found that the lobbyist failed to meet his obligation under s. 4(3) of the LRA to update his registration as required.

[16] The lobbyist admits in his April 6, 2014 reconsideration request that he was overly optimistic about his chances to lobby for BCCPA after the previous CEO retired on December 14, 2012. However, he felt that being registered would ensure he was not in breach of the LRA, should he be called upon to lobby again by the new CEO. In his defense, he cited the Frequently Asked Questions on the ORL website that states:

20. If I have completed my current undertaking as a consultant lobbyist, am I required to update my registration?

Yes. Consultant lobbyists have 30 days from the date the undertaking is completed or terminated to revise the completion date. *If you do not update the information in your registration, the online registry will automatically terminate your registration 30 days after the date you indicated your undertaking would expire.* [emphasis added]

[17] The lobbyist interpreted the last sentence as suggesting no further action was required with respect to his registration. The lobbyist assumed he could just let the registration lapse without contravening the LRA. I do not agree with this point. The answer to this frequently asked question makes it clear that consultant lobbyists have 30 days from the date the undertaking is completed or terminated to revise the completion date. The last sentence simply confirms those consultant lobbyists are given a 30 day “grace period” to update their registration.

[18] The lobbyist is ultimately responsible for knowing and fulfilling his legal requirements under the LRA. Section 4(3) of the LRA is very clear in this matter and states the following:

4(3) Within 30 days after the completion or termination of an undertaking for which a return was filed, the consultant lobbyist who filed the return must inform the registrar of the completion or termination of the undertaking and indicate the date on which the completion or termination occurred.

[19] It appears from the evidence before me that the lobbyist simply took no action to update the registry until an ORL staff member contacted him and sought clarification about his status.

[20] The submission of the lobbyist does not provide adequate evidence to justify rescinding the original finding of contravention by the Investigator. Based on the information before me, I am satisfied that the lobbyist did not inform the Registrar of the termination of his undertaking with BCCPA within the 30 days as required by the LRA. As a result, I confirm the Investigator’s finding that the lobbyist failed to meet his obligation under s. 4(3) of the LRA to file an accurate return within 30 days of the termination of his undertaking.

Should I confirm or vary the \$500 administrative penalty imposed by the Investigator?

[21] The purpose of the LRA is to promote transparency in lobbying by requiring lobbyists to disclose accurate, current and complete information. Failing 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.

[22] The Investigator identified various factors the ORL considers in determining the amount of an administrative penalty. There have been no previous enforcement actions for contraventions of a similar nature by the

lobbyist. However, the lobbyist's file history indicates that he received a letter from the ORL in 2012 regarding possible non-compliance for a late filing for registration as a consultant lobbyist for BCCPA, and a warning that further instances of possible non-compliance would result in the ORL taking further action. This letter offered an educational opportunity and alerted the lobbyist to his responsibilities under the LRA. Therefore, the lobbyist was aware of his responsibility to comply with the LRA.

[23] The Investigator also considered the gravity and magnitude of the contravention of the lobbyist in discussing the effect of his not updating his registration. In this case the undertaking ended on January 1, 2013, but the lobbyist did not update his registration until April 30, 2013. This was three months beyond the deadline to update his registration as required by s. 4(3) of the LRA.

[24] While I do not believe the lobbyist deliberately contravened the LRA, it appears from the evidence before me that he either overlooked or took no action in relation to the requirement to update his registration after the termination of his undertaking.

[25] There is no evidence that the lobbyist benefited from this contravention.

[26] I am satisfied that this investigation, reconsideration and ensuing administrative penalty will be sufficient to ensure the lobbyist meets his obligations under the LRA in the future. In arriving at the amount of the administrative penalty, it is important for all lobbyists to understand that keeping registrations current is not simply 'paperwork'. It is a serious legal obligation that they must meet if the objectives of the LRA are to be achieved.

[27] I agree with the reasoning of the Investigator as set out above and find that an administrative penalty in the amount of \$500 is appropriate to meet the objectives of specific and general deterrence, in relation to a contravention of the LRA. As I set out in Reconsideration 12-01, I believe penalties which are higher than the ORL have traditionally imposed, are necessary even in instances of an organization or individual's first contravention. As a result, I am confirming the \$500 administrative penalty the Investigator imposed in IR14-01.

Should IR14-01 and this reconsideration be published?

[28] The publication of this report and recognition that the ORL will issue administrative penalties to those who contravene the LRA, will remind all

lobbyists of their legal obligations to be diligent in keeping their registrations current and making the required corrections within the legislated timeframes. The lobbyist did not take any position on the publishing of this decision in his request for reconsideration. Nonetheless, I will consider this matter.

[29] I have the authority to publicly disclose reports under s. 7.91 of the LRA. I believe publication of IR14-01 and this decision is desirable as a reminder to lobbyists and the public of the need to keep registrations current and to make required the corrections within legislated timeframes. If I chose not to publish this decision and IR14-01, I would not be advancing these important objectives.

CONCLUSION

[30] For the above reasons, under s. 7.3(3)(b) of the LRA, I confirm the Investigator's determination in IR14-01 that the lobbyist pay an administrative penalty of \$500. I have also decided to publicly disclose this decision and IR14-01.

[31] As required by s. 7.3(3)(c) of the LRA, I extend the date by which the confirmed administrative penalty of \$500 must be paid to 30 days after the publication of this decision, that is on or before **July 21, 2014**.

June 6, 2014



Elizabeth Denham
Registrar of Lobbyists