



RECONSIDERATION 14-07

(INVESTIGATION REPORT 14-07)

LOBBYIST: Brad Zubyk

October 1, 2014

Summary: The finding in Investigation Report 14-07 that the consultant lobbyist contravened the *Lobbyists Registration Act* is upheld. The administrative penalty of \$600 imposed on the lobbyist is 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 Tim Mots issued Investigation Report 14-07 ("IR14-07") on June 5, 2014. The circumstances surrounding IR 14-07 relate to the responsibility of Brad Zubyk (a consultant lobbyist) to file a return within 10 days of entering into an undertaking to lobby on behalf of a client (Scientific Games Int.) as provided in section 3(1) of the *Lobbyists Registration Act* ("LRA").

[2] In IR 14-07, the Investigator determined under s. 7.2(2) of the LRA that Brad Zubyk ("lobbyist") had contravened s. 3(1) of the LRA and imposed an administrative penalty of \$600. On July 3, 2014, the lobbyist 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 FOR INVESTIGATION REPORT 14-07

[3] The LRA, s. 4(1)(b)(ii), requires a consultant lobbyist to submit both a start date and the scheduled end date of the undertaking.

[4] On June 18, 2012, the lobbyist filed a return, registration ID 10972030, indicating he entered into an undertaking to lobby on behalf of Scientific Games Int. ("client"). The registration had an undertaking end date of June 18, 2013.

[5] On August 8, 2013, the lobbyist filed a return with the ORL, registration ID 17159305, indicating he had entered into a new undertaking to lobby on behalf of the client and that the start date for the undertaking was June 18, 2013. ORL staff received an automatic system alert that the lobbyist's registration was possibly non-compliant. On August 8, 2013, ORL staff asked the lobbyist to confirm that the start date of the return was June 18, 2013.

[6] On August 8, 2013, an employee of Wazuku Advisory Group, the consulting company in which the lobbyist is a principal, informed the ORL that the correct start date for the undertaking was August 8, 2013. The employee stated that the June 18, 2013 start date was entered in error.

[7] Section 7(4)(a) of the LRA authorizes the Registrar of Lobbyists or her delegate to verify information contained in a return. On August 29, 2013, ORL staff wrote to the client requesting confirmation of the undertaking start date and inquiring whether this was a new undertaking or an extension of the preceding June 18, 2012 agreement (registration ID 10972030).

[8] On September 4, 2013, the client verified that the start date for the undertaking was June 18, 2013. On September 9, 2013, the client confirmed that this undertaking was an extension of the June 18, 2012 agreement.

[9] On October 7, 2013, pursuant to s. 7.2 of the LRA, the Deputy Registrar sent a notice to the lobbyist setting out the basis for his belief that the lobbyist had not complied with s. 3(1) of the LRA. He invited the lobbyist to respond in writing to the alleged contravention and provide any information or documentation pertinent to the alleged contravention and any potential penalty. On October 8, 2013, the lobbyist maintained that the undertaking start date was the same date as the filing of his return, which was August 8, 2013.

[10] In IR 14-07, the Investigator found that the lobbyist did not comply with s. 3(1) of the LRA when he failed to file a return within 10 days of entering into an undertaking to lobby on behalf of the client. The Investigator imposed an administrative penalty of \$600.

[11] In a July 3, 2014 letter to this Office, the lobbyist, through his lawyer, requested a reconsideration under s. 7.3 of the LRA. In accordance with s. 7.3(3), in making this decision I have considered the lobbyist's reconsideration request as well as his submission and the evidence and arguments in the hearing process that led to IR 14-07.

ISSUES

[12] The first issue in this reconsideration is whether I should confirm or rescind the Investigator's finding of non-compliance with s. 3(1) reached in IR 14-07.

[13] The second issue is whether I should confirm or vary the \$600 administrative penalty imposed by the Investigator in IR 14-07.

[14] The third issue is whether IR 14-07 and this reconsideration should be published.

DISCUSSION

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

[15] In IR 14-07, the Investigator found that the lobbyist failed to file a return within 10 days of entering into an undertaking to lobby on behalf of the client. As a result, the Investigator found that the lobbyist failed to meet his obligation under s. 3(1) of the LRA.

[16] The lobbyist states in his July 3, 2014 reconsideration request that he was first engaged by the client on June 18, 2012. In October of 2012, the lobbyist confirmed the client asked him to suspend lobbying on their behalf. The lobbyist then discussed recommencing work for the client on July 12, 2013. He states that there was "confusion" at his office, which resulted in the June 18, 2013 start date being initially entered. The lobbyist says that the arrangement to recommence work was formalized on August 8, 2013 and he then registered with the ORL. However, the client, when contacted by the Investigator, verified that they had extended their undertaking with the lobbyist on June 18, 2013.

[17] The lobbyist says he regrets the confusion he has caused with the different dates, but does not believe he should have been found to have filed late under s. 3(1). However, the client was very clear about what date the undertaking began (June 18, 2013) and this date matches the date the lobbyist initially entered. The Investigator found that an undertaking to lobby begins once a lobbyist agrees with a client to lobby on behalf of that client, whether that agreement results in a written contract or not. In addition, one would expect that, if the lobbyist terminated his undertaking in October 2012, that he would have updated his registration to reflect this fact as required by s. 4(3) of the LRA. He did not. These facts align themselves more closely with the explanation of events provided by the client. Ultimately, compliance with the LRA is the responsibility of the lobbyist. If he or his staff were confused with the registration process, they should have sought clarification of the obligations under s. 3(1) of the LRA. It is the responsibility of the lobbyist to ensure that the correct dates are entered with the ORL.

[18] Based on the information before me, I am satisfied that the lobbyist failed to file a return with the ORL within 10 days of entering into an undertaking to lobby with the client. As a result, I confirm the Investigator's finding that the lobbyist failed to meet his obligation under s. 3(1) of the LRA.

Should I confirm or vary the \$600 administrative penalty imposed by the Investigator?

[19] 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.

[20] 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 this lobbyist. However, the lobbyist's file history shows that on January 10, 2012, ORL staff notified the lobbyist that he had apparently contravened the LRA on two separate occasions when he failed to file returns within the legislated time lines. ORL staff warned the lobbyist that further instances of possible non-compliance would result in the ORL taking further action. The warning letter offered an educational opportunity and alerted the lobbyist to his responsibilities under the LRA. Therefore, the lobbyist was aware of his responsibility to register within 10 days after entering into an undertaking to lobby on behalf of a client. He failed to do so in this case.

[21] It is also important that lobbyists ensure their registrations are accurate and up to date. The conflicting evidence between the lobbyist and his client regarding the dates is troubling. In arriving at the amount of the administrative penalty, it is important for all lobbyists to understand that keeping registrations accurate and up to date is not simply 'paperwork'. It is a serious legal obligation that they must meet if the objectives of the LRA are to be achieved.

[22] I am hopeful that this investigation, reconsideration and the resulting administrative penalty will be sufficient to encourage the lobbyist to meet his obligations under the LRA in the future. I am in agreement with the Investigator regarding the importance of general deterrence and to remind all lobbyists to be diligent in complying with their legal obligations to register when required.

[23] I also agree with the reasoning of the Investigator as set out above and find that the \$600 administrative penalty for the contravention of the LRA is appropriate to meet the objectives of specific and general deterrence in relation to contravention of the LRA. Given the nature of the lobbyist's contravention of s. 3(1), if I were deciding this matter at first instance, I might have imposed a larger penalty. The amount set by the Investigator is, however, consistent with previous administrative penalties imposed by

my Office since this power was brought into force in 2010. In the circumstances, I do not consider it necessary or desirable to vary the penalty by increasing or decreasing it. As a result, I confirm the \$600 administrative penalty the Investigator imposed in IR 14-07.

Should IR 14-07 and this reconsideration be published?

[24] I am authorized under s. 7.91 of the LRA to publicly disclose reports. Further, since I am hereby confirming the finding and penalty in IR 14-07, s. 7.8 of the LRA requires me to deliver IR 14-07 to the Speaker of the Legislative Assembly, who must then lay the report before the Legislative Assembly, or file it with the Clerk of the Legislative Assembly. It will then become public. In my view, in order to ensure complete transparency regarding the proceedings in this matter, the public interest favours publication of this decision.

[25] Further, in previous investigation reports and reconsiderations, the public interest in reminding lobbyists and the public of the need to keep registrations current and to make required corrections within legislated timeframes has favoured publication. That important message has recently been sent publicly, in Reconsideration 14-04, and will again be sent by publication of Investigation Report 14-07 and this reconsideration decision.

CONCLUSION

[26] For the above reasons, under s. 7.3(3)(b) of the LRA, I confirm the Investigator's determination in IR 14-07 that the lobbyist pay an administrative penalty of \$600. I have also decided to publicly disclose this decision and IR14-07.

[27] As required by s. 7.3(3)(c) of the LRA, I extend the date by which the confirmed administrative penalty of \$600 must be paid to 30 days after the publication of this decision, that is on or before November 16, 2014.

October 1, 2014



Elizabeth Denham
Registrar of Lobbyists

