RECONSIDERATION REPORT 19-04

(INVESTIGATION REPORT 19-04)

LOBBYIST: Dimitri Pantazopoulos

September 27, 2019

Summary: An undertaking to lobby arose through an exchange of emails between the consultant lobbyist and his firm's existing client. The undertaking arose when the client's representative emailed the lobbyist and asked if there was anyone he should meet about an issue and the lobbyist responded with suggestions for possible meetings. The lobbyist's argument that the undertaking did not come into existence until the date on which the client representative confirmed his specific availability for possible meetings is rejected. The determination that the lobbyist failed to register within the time required by section 3(1) of the *Lobbyists Registration Act* (LRA) is confirmed.

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

Authorities Considered: *Black's Law Dictionary*, 6th ed., Henry Black, ed., Springer, New Ed Edition, 1994; *Black's Law Dictionary*, 10th ed., by Brian A. Garner, ed. St. Paul., Minn.: Thomson Reuters, 2014; G.H.L. Fridman, *The Law of Contract in Canada,* (6th ed), Thompson Reuters (Toronto: Ontario, 2011); *Ron Ghitter Property Consultants Ltd. v. Beaver Lumber Co.* (2003), 17 Atla LR (4th) 243, 2003 ABCA 221; *Richter v. McKeachie*, 2009 BCSC 288; Investigation Report 16-04.

INTRODUCTION

[1] In Investigation Report 19-04, Tim Mots, an Investigator with this Office, determined that Dimitri Pantazopoulos ("lobbyist") did not comply with section 3(1) of the *Lobbyists Registration Act* (LRA) when he failed to file a return within 10 days after entering into an undertaking to lobby on behalf of his client, as required by s. 3(1) of the LRA.[1] Investigator Mots imposed an administrative penalty of $5,000. On March 14, 2019, the lobbyist requested a review of Investigation Report 19-04.

[2] My task is to decide whether to confirm Investigator Mots' finding that the lobbyist entered into an undertaking to lobby on March 20, 2018, as opposed to, as the lobbyist now contends, March 27, 2018. For the reasons given below, I confirm the finding under review.

BACKGROUND

Summary of the Evidence

[3] It is useful to summarize in some detail the evidence that was before Investigator Mots,

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[1] At paragraph 22. In light of the lobbyist's request for reconsideration, Investigation Report 19-04 will be published at the same time as this reconsideration report.

which is also before me for the purposes of this reconsideration.[2]

[4] The lobbyist is a partner with Maple Leaf Strategies, which the lobbyist deposed "has had an ongoing arrangement to provide services nationally to Comcast NBC Universal (Comcast)."[3] The lobbyist deposed that, although there was no "specific mandate to lobby" for Comcast in March 2018, he was, "[o]n or about March 20, 2018," "contacted by Comcast to arrange meetings in British Columbia on its behalf."[4] On the same day, the lobbyist replied and suggested some potential meetings, including a meeting with a public office holder, and asked Comcast "for some potential meeting dates."[5] Having had no reply from Comcast, the lobbyist followed up with Comcast on March 26,[6] "requesting their representative's availability for meeting dates."[7] According to the lobbyist, Comcast responded the next day "and provided its availability, but did not confirm which meetings it wanted to attend."[8]

[5] The lobbyist's emails with Comcast are found in exhibit A to his affidavit. The text of the March 20 email to the lobbyist from Richard Smotkin, Comcast's representative ("client"), is as follows:

> Hey
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> I will be in Vancouver for some mtgs w Barinder on April 3-4. Anyone I should meet re film issues?

[6] Here is the email text of the lobbyist's March 20 reply:

> Yup.
>
> We should get a list of meetings. Thinking of the new Minister of Culture. Brandon can register and try to make that happen.
>
> Also, revisit BC films and Vancouver Economic Development.
>
> Thoughts?
>
> DP

[7] The text of the lobbyist's March 26 follow-up email to his client is:

> Rick. What is your current schedule. We will fill in as possible.
>
> DP

[8] On March 27, the client responded, saying:

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[2] The materials before me include the July 20, 2018, affidavit sworn by the lobbyist, the July 20, 2018, submissions to Investigator Mots by the lobbyist's legal counsel, as well as the March 14, 2019, submissions to me by the lobbyist's legal counsel.

[3] Affidavit of Dimitri Pantazopoulos, sworn July 20, 2018, paragraph 2.

[4] *Ibid.*, paragraphs 2 and 3.

[5] *Ibid.*

[6] For convenience, other than in quoted text, the relevant dates are given only by month and day. They are, of course, all within 2018 (unless otherwise stated).

[7] *Ibid.*, paragraph 4.

[8] *Ibid.*

> I will land next Tuesday at 9:44 am and free till around 4.

[9] The next email is dated March 29 from the lobbyist to his client:

> Meeting with Creative BC 3-4pm. They are going to fill us in on what's going on in BC now.
>
> The recent budget had a minor enhancement for scriptwriting.
>
> Was challenging to get people during Easter week.
>
> We can grab lunch or a coffee before?

[10] The client responded that same day, saying:

> Ok. Good to do a breakfast the next morning as well.

[11] On March 29, the lobbyist requested a meeting with the Assistant Deputy Minister of Tourism, Arts and Culture on Comcast's behalf, but the meeting never took place due to a scheduling conflict.[9]

[12] On April 3, the lobbyist filed a return under the LRA, citing Comcast as the client and describing the "lobbying activities" under the heading "Arts and Culture" as follows:

> Arranging meeting between an individual and a public office holder.
>
> Introduction to the activities of Comcast and its related companies in Canada and BC. Open a dialogue with respect to enhancing the development of film and television production and related cultural benefits in British Columbia.

[13] The lobbyist's evidence is that, when he filed the return on April 3, he "could not recall the precise date" he had "requested meetings on Comcast's behalf," so he "[o]ut of an abundance of caution…chose the start date of the undertaking as March 1, 2018."[10] The filing date was three clear days after the lobbyist had, on March 29 requested a meeting with the Assistant Deputy Minister of Tourism, Arts and Culture on Comcast's behalf. It was approximately two weeks after his client first reached out and asked about meetings "re film issues."

[14] Section 3(1) of the LRA requires a "consultant lobbyist" to file a return with the Registrar of Lobbyists in the prescribed form "within 10 days of entering into an undertaking to lobby on behalf of a client." On May 24, this Office sent the lobbyist a compliance investigation letter. On June 20, the lobbyist emailed this Office to say, (relevant part):

> By way of explanation, I cannot offer much more than the fact that I was late in compliance.
>
> My intent was not to circumvent the process or in any way obfuscate my activities. It was an honest error. At the time I filed it did not occur to me that I was noncompliant.
>
> Please accept my apology and I accept responsibility for this oversight. I will endeavour to

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[9] Pantazopoulos affidavit, paragraph 5.

[10] *Ibid.*, paragraph 6.

be more rigorous in the future.[11]

Summary of the Decision Being Reconsidered

[15] On June 25, having heard from the lobbyist, Investigator Mots gave notice to him under s. 7.2(1) of the LRA, setting out the basis for the belief that the lobbyist had not complied with s. 3(1) of the LRA. The lobbyist responded to Investigator Mots through his legal counsel. The response now contended, not that he had been "late in compliance" but that "the undertaking to lobby actually crystallized on or about March 27, 2018," when Comcast instructed Mr. Pantazopoulos to schedule meetings on its behalf."[12] The lobbyist argued that, when he filed the return on April 3—just three clear days after the contended March 27 start date for the undertaking—he nonetheless "did not recall the precise date that he decided to request meetings on Comcast's behalf and therefore chose March 1 out of an abundance of caution."[13]

[16] The lobbyist's counsel also submitted as follows to Investigator Mots:

> Had Mr. Pantazopoulos entered the actual undertaking start date of March 27, 2018, he would have met the requirement to file the return within 10 days. The error on Mr. Pantazopoulos' part was not a failure to meet the 10-day deadline, but in reporting March 1 as the undertaking start date.
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> Mr. Pantazopoulos acknowledges that the March 1st date submitted was in error, but has explained that the date was used as he could not recall the exact date at the time of submitting the Registration and therefore selected an earlier date out of an abundance of caution.

[17] Investigator Mots was not persuaded. He observed that the client's March 20 email to the lobbyist asked if there was anyone the client should meet "re film issues" when he was in Vancouver, and that the lobbyist replied the same day that they "should get a list of meetings."[14] Investigator Mots concluded that "[b]y agreeing to set up meetings for his client, the lobbyist entered into an undertaking to lobby on behalf of his client on March 20," not, as the lobbyist argued, March 27.[15] He concluded that, by filing his return on April 3, more than 10 days after March 20, the lobbyist had contravened s. 3(1).[16]

[18] The lobbyist made submissions on penalty, and Investigator Mots imposed an administrative penalty of $5,000. In reaching this conclusion, he noted, among other factors, that this was the lobbyist's second contravention of s. 3(1).[17]

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[11] A copy of this email is exhibited to the Pantazopoulos affidavit.
[12] July 20, 2018, submissions, page 2.
[13] *Ibid.*
[14] Investigation Report, paragraph 19.
[15] *Ibid.*
[16] *Ibid.*, paragraph 20.
[17] At paragraph 46 of the Investigation Report, Investigator Mots referred, regarding the lobbyist's two previous contraventions, to Investigation Report 16-04 and Investigation Report 16-05, found, respectively, at https://www.lobbyistsregistrar.bc.ca/handlers/DocumentHandler.ashx?DocumentID=192 and https://www.lobbyistsregistrar.bc.ca/handlers/DocumentHandler.ashx?DocumentID=193.

ISSUE

[19] The only issue for me to decide is whether I should confirm or rescind Investigator Mots' determination in Investigation Report 19-04 that the lobbyist did not comply with section 3(1) of the LRA. I note here that in a February 12, 2019, letter to the lobbyist, enclosing the report, Investigator Mots told the lobbyist that he had the right, under s. 7.3 of the LRA, to request a reconsideration. Under s. 7.3(1), a lobbyist can request a reconsideration of either or both of a determination of a decision or an administrative penalty. The request must be in writing and must identify the grounds on which a reconsideration is requested. The lobbyist's March 14, 2019, reconsideration request only mentioned Investigator Mots' determination of non-compliance with s. 3(1). It did not seek a reconsideration of the administrative penalty he imposed.

DISCUSSION

Lobbyist's Submissions

[20] The lobbyist now argues that Investigator Mots "erred in concluding that on March 20, 2018, Comcast and Mr. Pantazopoulos entered into an agreement to 'set up meetings,' and therefore entered into an undertaking to lobby."[18] The error, he submits, lies in a failure to recognize that, before there can be an "undertaking" to lobby, there must be an "agreement" between the lobbyist and the client. In the absence of an offer and acceptance, of a meeting of the minds, there could be no "undertaking." He submits that there was no meeting of the minds, no offer and acceptance, until March 27, not March 20, as Investigator Mots found.

[21] The lobbyist argues that although an undertaking to lobby "may not necessarily require consideration, it still requires an agreement," while acknowledging that "agreement is a broader term than "contract."[19] His argument begins by citing portions of two *Black's Law Dictionary* definitions of the word "undertaking," quoting the portions that define it as a "promise, pledge, or engagement" and "an engagement by one of the parties to a contract to the other," while indicating that the term "does not necessarily imply a consideration."[20] He also cites parts of two *Black's Law Dictionary* definitions for the term "agreement," which refer to, among other things, a "meeting of two or more minds," an "act of two or more persons, who unite in expressing a mutual and common purpose with the view of altering their rights and obligations," or a "manifestation of mutual assent by two or more parties."[21]

[22] Another source on which the lobbyist relies is *Common Misconceptions*, an online guidance document from this Office, quoting a passage that refers to an "undertaking to lobby" as an "agreement between a consultant lobbyist and a client (whether written or verbal) where the services the lobbyist will perform on behalf of the client may include lobbying."[22] He also quotes a passage in *Common Misconceptions* referring to an "agreement" and a "meeting of the

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[18] March 14, 2019, submissions on behalf of the lobbyist.
[19] *Ibid.*, page 3.
[20] The portions of the definition of "undertaking" cited by the lobbyist are a combination of definitions found in *Black's Law Dictionary* (6th ed. 1994) and *Black's Law Dictionary* (10th ed. 2014).
[21] *Black's Law Dictionary* (10th ed. 2014).
[22] The 2017 "Common Misconceptions" document is found at: https://www.lobbyistsregistrar.bc.ca/handlers/DocumentHandler.ashx?DocumentID=55.

minds."

[23] The lobbyist argues that an "undertaking" within the meaning of the LRA requires a "meeting of the minds" with the test being "whether parties have indicated to the outside world, in the form of an objective reasonable bystander, their intention to contract and the terms of such contract."[23] In support, he quotes from a decision of the Alberta Court of Appeal, in which it was said that it must be clear to "the objective reasonable bystander, in light of all the material facts, that the parties intended to contract and the essential terms of that contract can be determined with a reasonable degree of certainty."[24] According to the lobbyist, if either or both of an "offer and acceptance" are missing, "there is no evidence that the parties ever had a meeting of the minds, and therefore no manifestation of agreement."[25]

[24] Elaborating on the theme of offer and acceptance, the lobbyist contends there was no "agreement" to lobby on March 20. The client's March 20 email to him—asking "Anyone I should meet re film issues?"—was "not an offer to enter into an undertaking" that was "open for acceptance."[26] He cites a Supreme Court of British Columbia decision, which dealt with an alleged contract for the sale of land, in which the Court said this:

> An offer is a complete statement of the terms on which one party is prepared to deal, made with the intention that it be open for acceptance by the person to whom it is addressed … The offeror's intention is not assessed with reference to the subjective intention of the offeror but to the reasonable understanding of the offeree. "The court's task is to decide what each party to an alleged contract would reasonably conclude from the utterances, writings or conduct of the other." … [27]

[25] Building on this, the lobbyist submits:

> It cannot be said that a reasonable person, after reading the Inquiry email, would conclude that an offer to enter into an undertaking was open for acceptance. The wording of the Inquiry email does not include a request for Mr. Pantazopoulos to do anything. It simply asks whether there is anyone that Richard Smotkin [the client] *should meet.* The Inquiry Email does not ask Mr. Pantazopoulos to set up any meetings generally, or with any specific government officials or groups.
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> The wording of the Inquiry email clearly does not demonstrate an intention, on the part of Comcast, to be bound by an undertaking. At the very most, it was an invitation to treat, which implied a desire to enter into an undertaking, and was designed to *elicit an offer* from the Mr. Pantazopoulos.[28] [original italics]

[26] The lobbyist says that no "offer to enter into an undertaking" arose until he emailed his client on March 20, and that offer was not accepted until the client responded on March 27. He

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[23] The quote is from G.H.L. Fridman, *The Law of Contract in Canada,* (6th ed), Thompson Reuters (Toronto: Ontario, 2011), as cited by the lobbyist.
[24] *Ron Ghitter Property Consultants Ltd. v Beaver Lumber Co.* (2003), 17 Atla LR (4th) 243 at 249 [*Ron Ghitter*]. (The CanLII cite for *Ron Ghitter* is 2003 ABCA 221.)
[25] March 14, 2019, submissions, page 4.
[26] *Ibid.*, page 4.
[27] *Richter v. McKeachie*, 2009 BCSC 288, at paragraph 30, with citations omitted.
[28] March 14, 2019, submissions, pages 4-5.

says that a "reasonable person" would—having read the lobbyist's March 26, 2018, email—conclude that his intention was to provide an offer to enter into an undertaking, which was open for Comcast's acceptance, noting that his email proposed to set up meetings with specified individuals and groups.[29] Until Comcast accepted the terms of that email on March 27, and "instructed him" to schedule meetings on its behalf, there was no "agreement to lobby."[30] According to the lobbyist, if Comcast had not accepted his March 20 "offer," instead replying that it was "not interested in" the meetings he had suggested in his "offer," it "cannot be the case that in those circumstances Mr. Pantazopoulos would have been required to register, since he would not have any agreement from Comcast that he should lobby anyone at all."[31]

[27] For these reasons, the lobbyist contends, "the agreement to enter into an undertaking crystallized on March 27, 2018," which means his April 3 filing was within the 10 days required under s. 3(1) of the LRA.

The Undertaking Arose on March 20, not March 27

[28] It is useful to first set out relevant LRA definitions. Section 1 of the LRA defines the term "undertaking" as "an undertaking by a consultant lobbyist to lobby on behalf of a client." It defines "consultant lobbyist" as an "individual who, for payment, undertakes to lobby on behalf of a client." The term "lobby" is defined to include, in relation to a "consultant lobbyist," "to arrange a meeting between a public office holder and any other individual." Accordingly, if a consultant lobbyist undertakes on behalf of a client to arrange a meeting between a public office holder and any other individual, the consultant lobbyist has—whether or not the lobbyist actually arranges a meeting with anyone—undertaken to "lobby" and must register under the LRA. The undertaking to arrange a meeting suffices to trigger the registration requirement.

[29] As the above summary indicates, the lobbyist relies on contract law principles, *i.e.*, the legal principles used to decide a contract has been formed at law. He argues that an "undertaking" requires parties to have "indicated to the outside world … their intention to contract and the terms of such contract."[32] He says it must be possible to determine "the essential terms of that contract … with a reasonable degree of certainty."[33] He concedes that he entered into an "undertaking" to "lobby," but says this only happened on March 27, when there was certainty and completeness of terms, after a process in which one party made an invitation to treat, an offer to contract was made and that offer was accepted.

[30] In an effort to bolster his position, the lobbyist cites selected passages from dictionary definitions of "undertaking" and "agreement." Drawing on these definitions and other sources, the lobbyist asserts that there must be "an agreement" before an "undertaking" can be formed within the meaning of the LRA. He says the term "agreement"—which does not appear in the definition of "undertaking"—is broader than "contract," yet his arguments essentially equate

[29] *Ibid.*, page 5.
[30] *Ibid.* He suggests, also at page 5, this is further supported by the fact that "it was only after Mr. Pantazopoulos received Comcast's acceptance that he undertook to request a meeting with the Assistant Deputy Minister of Tourism, Arts and Culture on March 29, 2018."
[31] *Ibid.*
[32] March 14, 2019, submissions, page 4, quoting from *Ron Ghitter*, page 249.
[33] This is clear from his reliance on the statement to this effect in *Ron Ghitter*, page 249.

those two terms.[34] Moreover, the same dictionary definitions, in passages he does not quote, also define "undertaking" as including a "promise, pledge, or engagement," and further indicate that an undertaking "does not necessarily imply a consideration."[35] The lobbyist, nonetheless, suggests that there can be no "undertaking" unless there is an "agreement" or "contract" between a consultant lobbyist and a client. Read as a whole, these definitions do not support his position on the proper interpretation of the LRA terms "lobby" and "undertaking."[36]

[31] An "undertaking" under the LRA is "an undertaking by a consultant lobbyist to lobby on behalf of a client." The lobbyist does not dispute that he entered into an "undertaking" to "lobby." The statutory definitions of "undertaking" and "lobby" do not refer to terms such as "invitation to treat," "offer and acceptance" or "meeting of the minds." In any case, the lobbyist's close focus on these concepts atomises the sequence of events into a contractual invitation to treat, an offer and an acceptance in a way that obscures what actually happened, and when.[37] Objectively and reasonably viewed, the totality of the evidence that was before Investigator Mots, and is before me, leads to the conclusion that the undertaking arose on March 20, not March 27, as the lobbyist contends.

[32] Again, the lobbyist argues that his client's March 20 email was merely an "inquiry." He contends that a reasonable person would not, after reading the "inquiry" email, "conclude that

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[34] The LRA definition mentions neither the term "agreement" nor the term "contract." The definition provides that an "undertaking" must be between a client and a "consultant lobbyist," with a "consultant lobbyist" being defined as an individual who undertakes to lobby "for payment."

[35] *Black's Law Dictionary*, as cited earlier.

[36] In arguing that there must be an agreement, a meeting of the minds, the lobbyist relies on this Office's *Common Misconceptions* guidance to the LRA. He notes that *Common Misconceptions* uses the term "agreement" and refers to an "understanding" or "meeting of the minds." He suggests this language supports his contention that, unless there is a "meeting of the minds"—or, as he elsewhere frames it, a *consensus ad idem*—there is no agreement to lobby and thus no undertaking within the meaning of the LRA. Setting aside the fact that *Common Misconceptions* is a guidance document it does not, in its own terms, support the lobbyist. It does refer, at page 5, to an undertaking as "an agreement between a consultant lobbyist and a client… where the services the lobbyist will perform on behalf of the client may include lobbying." The lobbyist does not, however, quote another passage, again on page 5, stating that "[a]s soon as the lobbyist and client have agreed that the services provided *may* include lobbying, the lobbyist has 10 days to register the undertaking" (italics added). Consistent with this, while the case example in *Common Misconceptions* refers to a "meeting of the minds," it also states that the undertaking to lobby was entered into on the date the lobbyist and "potential client" first met. The guidance makes it clear that this is when the lobbyist and client reached "an understanding or 'meeting of the minds' that [the lobbyist] will provide services to them and that those services *may* include the requirement to set up or attend meetings with public office holders" (added italics). In other words, the guidance suggests it is enough that a client and lobbyist have an "understanding" that the lobbyist's services "may include" a requirement to set up or attend meetings. It is not necessary, the guidance suggests, to have greater particularity or completeness of terms, or an unequivocal offer and acceptance, in a contract-like manner, for there to be an undertaking under the LRA.

[37] This is underscored, I note in passing, by the lobbyist's reliance on the concept of an "invitation to treat." In contract law, an invitation to treat is an expression of a willingness to enter into negotiations, as opposed to the making of an offer that if accepted by another would form a binding contract. Many of the cases involving mere invitations to treat relate to the advertisement of goods for purchase. Here, the lobbyist asks me to accept that his client's March 20 email was merely the expression of a willingness to enter into negotiations with the lobbyist. Even setting aside the fact that the client and lobbyist were already in a service arrangement, or had been in the past, his attempt to apply this concept here injects an air of artificiality that does not, in any case, reasonably account for the actual communications between the client and the lobbyist.

an offer to enter into an undertaking was open for acceptance."[38] He says the email did not ask the lobbyist "to do anything"—it merely asked the lobbyist if there was anyone the client "*should* meet" (original italics). The client did not ask the lobbyist to "set up any meetings generally, or with any specific government officials or groups."[39] The email demonstrated no intention by Comcast "to be bound by an undertaking." It was at most an "invitation to treat," implying a "desire to enter into an undertaking and "designed to *elicit an offer*" from the lobbyist (original italics).[40] According to the lobbyist, there was no offer by either side to enter into an undertaking until the lobbyist "made an offer," in response to Comcast's invitation to treat on March 20. Comcast did not "accept" this "offer" until the client responded, after the lobbyist's March 26 prompt about his schedule, with "I will land next Tuesday at 944 am and free till around 4."[41]

[33] In approaching the matter, it is important to recall that the client's March 20 email to the lobbyist was not a cold call. As the lobbyist deposed, "Maple Leaf [his firm] has had an ongoing arrangement to provide services nationally to Comcast NBC Universal ('Comcast'),"though there was no "specific" mandate to lobby any public office holder in British Columbia in March of 2018. This evidence establishes, as a matter of general context, that there was a relationship between the lobbyist's firm and Comcast. Moreover, the lobbyist himself had, in 2015, registered an undertaking to lobby for Comcast, a matter of which I take official notice.[42] To be clear, I make no finding that a business relationship was or was not in place between the two organizations at the relevant time. Neither a current or past relationship nor the lobbyist's earlier registration permit any relevant inference about this case, and I make none. Rather, as a matter of context, these background factors suggest that the client's March 20 email was not sent to the lobbyist personally out of the blue.[43]

[34] That email, asking if there was anyone with whom he should meet in Vancouver "re-film issues," quite clearly invited a response, i.e., invited advice on possible film-related meetings. The lobbyist's same-day response indicates that this is what he understood the client intended, i.e., that the client had sought his advice and recommendations for meetings "re film." His response to "[a]nyone I should see re film issues," was a prompt "Yup," an answer he supplemented with specific recommendations for meetings (e.g., "revisit BC films and Vancouver Economic Development").[44] The lobbyist acknowledged the import of his response in his affidavit, deposing that, in responding to the client's first email, he had "suggested some

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[38] March 14, 2019, submissions, pages 4-5.
[39] *Ibid.*
[40] *Ibid.*
[41] The lobbyist in several places characterizes this response as the client having "instructed" the lobbyist to arrange meetings, arguing that only when these instructions were given did an undertaking arise. Of course, the client's March 27 email did not explicitly instruct anything: it merely provided the client's arrival time and availability that day. This was in response to the lobbyist's efforts to work out that aspect of the details. It does not change the substance of the March 20 exchange, which resulted in the lobbyist's undertaking.
[42] Investigation Report 16-04, to which Investigator Mots referred at paragraph 46, arose out of the lobbyist's registration to lobby for Comcast: see paragraph 5 of Investigation Report 16-04.
[43] I also note in passing only that the casual and familiar tone and content of the emails—including the lobbyist's response to the client's first email—suggest that the lobbyist and his contact at Comcast were, at the least, known to each other before the email exchange.
[44] I note in passing that the reference to a "revisit" may indicate that someone representing Comcast—whether the client, the lobbyist or a Maple Leaf Strategies colleague—had already met with one or both of the agencies mentioned or had attempted to do so.

potential meetings, including a meeting with a public officer holder" and "asked Comcast for some potential meeting dates."[45] In substance, the lobbyist provided the client with a proposal that could be put into action and solicited his client's "thoughts," which can reasonably be seen as a shorthand way of inviting feedback or instructions, or both.

[35] This initial email exchange discloses that the client asked the lobbyist if the client should meet with anyone, and the lobbyist agreed that there were people the client should meet. The lobbyist suggested specific meetings and, as he deposed, this included suggesting a meeting with a public office holder (which is a defined term under the LRA). The lobbyist's response to the client's initial email also stated, in the context of discussing possible meetings with a public office holder and perhaps others, that an individual named Brandon "can register." The lobbyist's contention here that the client's email was merely an invitation to treat, with the lobbyist's response being an offer that was open for acceptance, overlooks both the context in which the exchange occurred and its substance. The essence of the exchange on March 20 was that the client asked the lobbyist if he should set up meetings and the lobbyist agreed there were meetings to be had. He offered specific meetings to the client.

[36] This lobbyist's March 26 follow-up email built on his March 20 request for the client's "thoughts" about what the lobbyist had suggested in terms of meetings. Not having received the client's "thoughts" or directions, the lobbyist prompted the client for his "current schedule," adding "[w]e will fill in as possible." Reasonably viewed, this follow-up discloses that the lobbyist, who had suggested specific possible meetings—including one with a public office holder—was trying to firm up instructions, i.e., nail down the specifics of which meetings the client wanted and when he might be available for meetings.

[37] The lobbyist nonetheless argues that there is no undertaking because there is no certainty of the terms of any agreement to lobby until March 27, when the client responded. It is difficult to see how the client's March 27 response completed the terms of the undertaking, providing certainty of terms and evincing an intention to contract. The client's March 27 response simply stated that the client would "land next Tuesday at 9:44 am and free till around 4." All this response did was to provide the client's availability—it merely nailed down a window during which he could attend meetings that were arranged on his behalf. The client did not specify which of the lobbyist's meeting suggestions were accepted or rejected. Yet the lobbyist's March 29 response to the client advised him of a specific meeting and a time for that meeting, even though the client's March 27 response, again, gave no explicit direction about which of the meetings suggested by the lobbyist were to be arranged or when. In other words, the undertaking to set up the meetings was already in place at the time of the March 27 communication.

[38] It does not matter that the details of which meetings were to be arranged and when were only worked out after the March 20 exchange.[46] Reasonably and objectively viewed, the

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[45] Pantazopoulos affidavit, paragraph 3.

[46] As noted earlier, the lobbyist argues, at page 5, that March 27 is the relevant date because "it was only after he received his client's acceptance that he undertook to request a meeting with the Assistant Deputy Minister of Tourism, Arts and Culture on March 29, 2018." The timing of that request is equally consistent with the fact that, according to the emails, the lobbyist did not know his client's schedule until March 27, leaving requests for meetings and their timing, up in the air until then but without affecting the fact that the lobbyist's undertaking had come into

outcome of the March 20 email exchange was that the lobbyist in substance undertook to arrange one or more meetings, subject only to further instructions about the specifics of which meetings to arrange and when. Those details undoubtedly remained open on March 20 but the undertaking arose at that time.[47] It was not necessary for the client to respond on March 20 with specific instructions for the lobbyist to have undertaken on that date to arrange meetings for the client.[48] It is reasonable to conclude that both parties knew on March 20 that the lobbyist had undertaken to arrange one or more meetings, at least one of which was—as he has acknowledged—with a public office holder. To borrow the lobbyist's language, there was a meeting of the minds on March 20 as to the substance, which was that the lobbyist on March 20 undertook to arrange a meeting for the client.

CONCLUSION

[39] For the above reasons, under s. 7.3(3)(b) of the LRA, I confirm the determination in the Investigation Report that the lobbyist contravened s. 3(1) of the *Lobbyists Registration Act*.

September 27, 2019

ORIGINAL SIGNED BY

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Michael McEvoy
Registrar of Lobbyists

existence by then.

[47] Nor, it should be added, does it matter which meetings were or were not ultimately arranged, or when (or that the client did not provide a specific window of availability for meetings until March 27, after the lobbyist prompted him on March 26).

[48] It should be noted that the lobbyist's subsequent emails confirm, after the fact, that only details needed to be worked out, notably around the client's schedule. The later emails do not cast doubt on what the March 20 exchange accomplished, which was an "undertaking" by the lobbyist.