

## RECONSIDERATION DECISION 24-03

### (DETERMINATION DECISION 24-03)

**DESIGNATED FILER: Paul Rasmussen**

**April 15, 2025**

**SUMMARY:** In Determination Decision 24-03, an Investigator found that the designated filer<sup>1</sup>, then President of the Interior Lumber Manufacturers' Association, contravened section 2.2 of the Lobbyists Transparency Act by lobbying while prohibited and failed to file a Monthly Return by the required date, contravening section 4.1. An administrative penalty of \$7,000 was assessed. The designated filer requested a reconsideration focused on the administrative penalty though not the findings. The Registrar of Lobbyists varied the administrative penalty by reducing it by \$1,000, confirming a penalty of \$6,000.

**Statutes Considered:** *Lobbyists Transparency Act*, SBC, 2001, c. 42

**Authorities Considered:** Determination Decision 24-03

### INTRODUCTION

[1] On November 20, 2024, a delegate (the Delegate) of the Registrar of Lobbyists (Registrar) determined that the designated filer, Paul Rasmussen, then President of the Interior Lumber Manufacturers' Association, had lobbied while prohibited to do so contrary to section 2.2 of the *Lobbyists Transparency Act* (LTA). He was further found to have failed to file a Monthly Return by the required date, contravening s. 4.1. The Delegate assessed a penalty totalling \$7,000 for these contraventions.

[2] The designated filer requested a reconsideration on January 7, 2025, raising a number of factors that he argued mitigate against the "intent, severity and impact" of his actions.<sup>2</sup> He also notes that the penalty is the highest penalty that the Office of the Registrar of Lobbyists (ORL)

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<sup>1</sup> The designated filer is to be interpreted as the designated filer at the time of the contraventions.

<sup>2</sup> Email of December 18, 2024 from the designated filer [Reconsideration Submissions].

has levied, that this is the first instance of his non-compliance with the Act, and that the fundings of the determination alone have served as sufficient deterrence. He is therefore requesting a lower penalty amount.

## **RELEVANT SECTIONS OF THE LTA**

### **[3] "designated filer" means**

- (a) a consultant lobbyist, or
- (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 the officer's functions, or
  - (ii) if there is no senior officer who receives payment, the most senior in-house lobbyist;

### **[4] "former public office holder" means**

- (a) a former member of the Executive Council and any individual, other than administrative support staff, formerly employed in the former member's former office,
  - (a.1) any individual, other than administrative support staff, formerly employed in a current or former office of a current member of the Executive Council,
  - (b) a former parliamentary secretary, or
  - (c) any individual who formerly occupied
    - (i) a senior executive position in a ministry, whether by the title of deputy minister, chief executive officer or another title,
    - (ii) the position of associate deputy minister, assistant deputy minister or a position of comparable rank in a ministry, or
    - (iii) a prescribed position in a Provincial entity;

### **[5] Restrictions on application of Act**

(2) This Act does not apply in respect of an oral or written submission made as follows:

...

- (b) made to a public office holder by an individual on behalf of a person or organization concerning

(i) the enforcement, interpretation or application of any Act or regulation by the public office holder with respect to the person or organization, or

(ii) the implementation or administration of any program, policy, directive or guideline by the public office holder with respect to the person or organization;

(c) made to a public office holder by an individual on behalf of a person or organization in direct response to a written request from a public office holder for advice or comment on any matter referred to in paragraph (a) of the definition of "lobby" in section 1 (1);

...

**[6] Lobbying prohibition**

2.2 Subject to section 2.3, a person who is a former public office holder must not lobby, in relation to any matter, for a period of 2 years after the date the person ceased

(a) to be a member of the Executive Council,

(a.1) to be an individual employed in a current or former office of a current member or former office of a former member of the Executive Council,

(b) to be a parliamentary secretary, or

(c) to occupy a position referred to in paragraph (c) of the definition of "former public office holder".

**[7] Exemption from prohibitions**

2.3 (1) If the registrar is satisfied that it is in the public interest, the registrar may, on request and on any terms or conditions the registrar considers advisable, exempt a person from a prohibition set out in section 2.1 (2) or 2.2.

(2) If the registrar grants an exemption under subsection (1), the registrar must enter the following into the registry:

(a) the terms or conditions of the exemption;

(b) the registrar's reasons for granting the exemption.

**[8] Requirement to File a Monthly Return**

4.1 A designated filer who has filed a registration return under s. 3 must file with the registrar a monthly return, in the prescribed form and manner and containing the

information required under s. 4.2, no later than 15 days after the end of every month, beginning with the month in which the registration return under s. 3 is filed.

[9] **Power to Investigate**

7.1(1) If the registrar considers it necessary to establish whether there is or has been compliance by any person with this Act or the regulations, the registrar may conduct an investigation.

(2) The registrar may refuse to investigate or may cease an investigation with respect to any matter if the registrar believes that

(b) the matter is minor or trivial,

(c) dealing with the matter would serve no useful purpose because of the length of time that has elapsed since the matter arose,

[10] **Hearing and Administrative Penalty**

7.2(1) If after an investigation under section 7.1 the registrar believes that a person under investigation has not complied with a provision of this Act or the regulations, the registrar must

(a) give notice to the person

(i) of the alleged contravention,

(ii) of the reasons why the registrar believes there has been a contravention, and

(iii) respecting how the person may exercise an opportunity to be heard under paragraph (b) of this subsection, and

(b) give the person a reasonable opportunity to be heard respecting the alleged contravention.

(2) If after giving a person under investigation a reasonable opportunity to be heard respecting an alleged contravention the registrar determines that the person has not complied with a prescribed provision of this Act or the regulations, the registrar

(a) must inform the person of the registrar's determination that there has been a contravention,

(b) may impose a monetary administrative penalty of not more than \$25 000, and

(c) must give to the person notice

- (i) if the registrar determines that the person has contravened a prescribed provision of this Act or the regulations, and the reason for the determination,
- (ii) if a monetary administrative penalty is imposed, of the amount, the reason for the amount and the date by which the penalty must be paid,
- ...
- (iv) respecting how the person may request reconsideration, under section 7.3, of the determination of contravention and, as applicable, the imposition or amount of the monetary administrative penalty or the imposition or duration of the administrative penalty of prohibition.

**[11] Reconsideration of a Decision**

A person who has been informed of a contravention in accordance with s. 7.2 may, within 30 days, request the Registrar reconsider a decision. On receiving a request, the Registrar must do all of the following (7.3[3]):

- (a) Consider the grounds on which the reconsideration is requested;
- (b) Confirm or rescind the decision deferred to in any or all of section 7.2 (2) (a), (b) or (b.1), as applicable, or confirm or vary the monetary amount or the prohibition duration;
- (c) If the monetary amount is confirmed or varied, confirm or extend the date by which the amount must be paid;
- (d) If the prohibition duration is confirmed or varied, specify the dates that the prohibition starts and ends;
- (e) Notify the person in writing of the matters under paragraphs (b) to (d) of this subsection, as applicable, and of the reasons for the decision to rescind, confirm or vary under this section.

**BACKGROUND**

- [12] The facts referenced below are adopted from Determination Decision 24-03, which have not been challenged or contradicted by the designated filer in his submissions.
- [13] The designated filer had been Assistant Deputy Minister (ADM) in the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD), and thus a public office holder, until March 2, 2022. At that point he became a “former public office holder” as defined in the LTA. In November 2022, he became the President of the Interior Lumber Manufacturers’ Association (ILMA), an organization registered as lobbying in the BC Lobbyists Registry.

- [14] On January 20, 2023, the designated filer submitted a Request for Exemption form indicating the “End Date” for his position of ADM was November 27, 2021.<sup>3</sup> He also indicated an understanding of the LTA provisions of former public office holder, citing a number of provisions of the LTA.<sup>4</sup> [para. 22].
- [15] On the same day, the designated filer spoke with the ORL and stated:
- while he was on leave from FLNRORD as of November 2021, his official last day as ADM was not until March 2, 2023;<sup>5</sup>
  - that he did not understand the exemption process and believed that he had only to receive approval to lobby from the ADM and Deputy Minister of his former Ministry;<sup>6</sup>
  - that he learned that he needed to make a formal exemption request to the Registrar only when seeking to amend the ILMA Registration Return to add himself as an in-house lobbyist;<sup>7</sup> and
  - that he believed that prior to January 20, 2023 he had performed lobbying activities.<sup>8</sup>
- [16] On January 23, 2023, the designated filer withdrew his Request for Exemption Form. The ORL, in an email response, said “you will recall that we discussed whether you will need to add yourself as an ‘in-house lobbyist’ to this Registration Return Update. When we spoke on Friday (Jan 20<sup>th</sup>), you stated that you believed you had already performed lobbying activities on behalf of ILMA. However, in our conversation earlier today, you stated a belief that you may not have lobbied, and that you intend to review all of the activities you have performed on behalf of ILMA to determine if your activities meet the definition of lobby.”<sup>9</sup>
- [17] Over the course of the next two days, the designated filer and the ORL discussed the amendment of the ILMA’s Registration Return and the designated filer’s potential inclusion as an in-house lobbyist. The Registration Return form submitted on January 25 did not include the designated filer as an in-house lobbyist and, when queried on this point by the ORL, he did not explain how he had come to the conclusion that he was not an in-house lobbyist. Instead, in a January 25 email, he indicated that he was planning to review all of the activities he had conducted to determine if they met the definition of

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<sup>3</sup> Determination Decision 24-03, para 17 [Determination].

<sup>4</sup> *Ibid*, para 22.

<sup>5</sup> *Ibid*, para 18.

<sup>6</sup> *Ibid*, para 20.

<sup>7</sup> *Ibid*, para 21.

<sup>8</sup> *Ibid*, para 23.

<sup>9</sup> *Ibid*, para 23.

lobbying but until that time, he would not identify himself as an in-house lobbyist because he had “no intention of proceeding to lobby without an exemption.”<sup>10</sup>

- [18] The ORL emailed the designated filer on February 8 noting that a Lobbying Activity Report had not been filed. The ORL emailed him again on February 10, again seeking to know if he had decided that he met the definition of an “in-house lobbyist”. The designated filer responded on February 14, 2023 indicating that he had concluded that all of the ILMA’s activities were not considered lobbying, and proceeded to outline a series of activities. For each of these activities he presented an argument about why they should not be considered lobbying. The designated filer indicated that he did not plan on lobbying and had not submitted an application for an exemption. Finally, he indicated that any admissions that he had made previously were based on “my erroneous understanding of the Act at the time.”<sup>11</sup>
- [19] The ORL commenced an investigation under s. 7.1 of the LTA.
- [20] The investigation focused on a November 21, 2022 letter the designated filer had written to the Premier. As part of the investigation, the Delegate sought and received submissions from the designated filer about why this letter should not be considered lobbying.<sup>12</sup> The Delegate concluded that the letter did constitute lobbying, and thus that the designated filer did indeed lobby. The designated filer, in his submission for this Reconsideration, did not contest this finding and so it is not necessary to go into further detail about this finding.
- [21] The Delegate also found that the lobbying activity amounted to lobbying while prohibited. Section 2.2 provides that a former public officer holder is prohibited from lobbying for two years following the date by which they ceased to be a public office holder. The Delegate found that the designated filer met the definition of a public office holder, and that notwithstanding that he was on leave from November 2021, his final official day as ADM was March 2, 2022. The above-noted lobbying activity occurred well before the two-year period would have expired in March 2024.
- [22] The overall conclusion was that the designated filer contravened s. 2.2 of the LTA when he lobbied while prohibited.<sup>13</sup> The designated filer did not contest this finding in the submission that he made for this Reconsideration and so it is not necessary to go into further detail about this finding.
- [23] The Delegate further found that, because the designated filer lobbied when he wrote the Premier on November 21, 2022, and thus a Lobbying Activity Report was due on

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<sup>10</sup> *Ibid*, paras. 27-32.

<sup>11</sup> *Ibid*, paras. 35-38.

<sup>12</sup> *Ibid*, paras. 43-48

<sup>13</sup> *Ibid*, para. 73.

December 15, 2022, per s. 4.1 of the LTA, that the designated filer was in contravention of the Act when he failed to submit such a report.<sup>14</sup> Again, this finding was not contested by the designated filer in his submission for this Reconsideration.

- [24] The Delegate assessed an administrative penalty associated with these two contraventions of the Act per s. 7.2(2) of the Act. The amounts were determined based on the specific facts of the matter as well as in consideration of the ORL's guidance document titled *Registrar of Lobbyists: Guide to Investigations* (the Guide).
- [25] The penalty assessed for the contravention of s. 2.2 (lobbying while prohibited) was \$6,000 and the penalty assessed for the contravention of s. 4.1 (failing to submit a Monthly Return) was \$1,000. In total the assessed penalty was \$7,000.

## DISCUSSION AND FINDINGS

- [26] The designated filer has limited his submissions to the amount of the administrative penalty issued by the Delegate. Therefore, the only issue for me to decide is whether monetary penalty should be confirmed or varied.
- [27] In determining the appropriate administrative penalties, the Delegate considered the financial ranges specified in the Guide for each particular contravention, along with the following factors:
- Previous enforcement actions for contraventions by this person;
  - The gravity and magnitude of the contravention;
  - Whether the contravention was deliberate;
  - Whether the registrant derived any economic benefit from the contravention;
  - Any efforts made by the registrant to report or correct the contravention;
  - Whether a penalty is necessary for specific and general deterrence; and
  - Any other factors that ... are relevant.<sup>15</sup> [para 81].
- [28] The designated filer challenges the Delegate's assessment of the appropriate penalty as follows:
- That, other than "being paid by the ILMA (similar to a wage)" there were "no financial or other gains" associated with the contraventions.
  - There was "no intent to be subversive in my activities, nor intent to carry out any of my duties... without integrity or without the public interest in mind."; he had

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<sup>14</sup> *Ibid*, paras. 75-76.

<sup>15</sup> *Ibid*, para. 81.



not been educated about his post-employment obligations and restrictions under the LTA during his time with the BC Public Service; and his departure from the BC Public Service was sudden and occurred during the challenging time of the pandemic and this environment undermined proper education and planning for post-employment obligations.

- The designated filer’s withdrawal of the exemption request was motivated by the desire to maintain the privacy of certain personal information that had been contained in the exemption request, once it became apparent that the exemption request would be made public.
- As the overall penalty is the highest ever assessed by the ORL, it seems particularly severe and suggests that implies that he is the “worst offender ever”. He counters this by observing that the letter that the designated filer sent to the Premier, which was the focus of the determination that he lobbied, had no effect. Its consequence was “minimal, if anything at all”, observing that “none of the points suggested in the letter were implemented”.
- The designated filer also expressed concern that, prior to the commencement of the investigation, he had told an ORL Registry and Compliance Officer that, following his withdrawal of his exemption request, it was his revised view that none of his lobbying activities constituted lobbying under the LTA after all and was surprised when the next he heard about it was when he heard from the Delegate. This is suggested as a reason that he had failed to file.
- Speaking to the deterrence effect; the designated filer is no longer employed by the ILMA and thus is no longer conducting lobbying activities on their behalf; moreover, any penalty confirmed upon reconsideration would be paid personally by the designated filer.<sup>16</sup>

[29] I will address each of the designated filer’s grounds for reconsideration in turn.

***Did the designated filer benefit from the contravention?***

[30] The Delegate examined whether the designated filer benefitted economically from the contravention. She observed that his employment as an ADM meant that “he had the ability to take advantage of information he acquired and relationships he formed, resulting in the ILMA benefitting from this contravention.”<sup>17</sup>

[31] I agree. Being able to leverage his experience, knowledge and relationship as an ADM to increase his attractiveness to be hired by the ILMA because of the influence he could potentially offer is precisely the sort of economic benefit that the LTA is intended to

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<sup>16</sup> Reconsideration Submissions.

<sup>17</sup> Determination, para. 89.

guard against. That, other than the compensation he was paid, there is no evidence he was paid a further marginal benefit is treated as a neutral factor by the Delegate and I find no reason that it should be treated as anything but a neutral factor as well.

***Was there malicious intent? Was ignorance of the LTA a mitigating factor?***

- [32] The designated filer argues that he had no malicious intent. The Delegate recognized this in her determination by characterizing the contraventions as “careless”. The designated filer argued that this should be more properly characterized as “unaware or ignorant” and that instead “when I first spoke with [the ORL Registry and Compliance Officer] I ... just began to learn”<sup>18</sup>. The Delegate noted that “the responsibility of understanding the LTA reporting obligations rests with the lobbyist”<sup>19</sup> and further that the “provisions of the LTA and that of its predecessor the LRA have been in place since April of 2010... [the] designated filer should have been aware of his obligations under the LTA.”<sup>20</sup>
- [33] The designated filer was an ADM and long-tenured public servant. Provincial government officials, particularly those at the management level and above, *must* know that the authorities they exercise that ground the decisions they make and the financial, human and information resources they manage, all flow from and are bounded by laws. It is no less acceptable that a provincial government official be oblivious of the LTA than the *Financial Administration Act*. ADMs are a small fraction of the BC Public Service, appointed by law with specific authorities to interact with the public and interested stakeholders and must function in a manner compliant with the law. They exercise authorities either on behalf of their Minister or that directly flow from statute. Ignorance of laws which govern the behaviour of government executive is, in my view, not merely “careless,” as characterized by the Delegate, but a significant failure in the core responsibility of a senior public servant. Compliance with the law cannot be an afterthought for a senior public official; it must be the starting point.
- [34] There is also inconsistency between the facts of the designated filer’s interactions with the Registry and ORL staff and his submissions that call into question the degree of his knowledge about the provisions of the LTA. As noted in the Determination Decision, the original Request for Exemption Form did indicate an understanding of the meaning of “former public office holder” and awareness of LTA ss. 2.2, 2.3 and 7.<sup>21</sup>

***Was the withdrawal of the Request for Exemption a privacy-protective measure and should it be a mitigating factor?***

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<sup>18</sup> Reconsideration Submissions.

<sup>19</sup> *Ibid*, para 90.

<sup>20</sup> *Ibid*, para 91.

<sup>21</sup> Determination, para 22.

- [35] In his submissions, the designated filer explained the withdrawal of his Request for Exemption Form as motivated by his desire to keep personal information private. The sequence of his events suggests a different dynamic. The designated filer submitted his Request for Exemption and had a telephone conversation with the ORL in January 2023, at which time he stated he may have been lobbying while prohibited. Efforts to report or correct a contravention is a factor the ORL will take into account in assessment of a penalty under the Act.<sup>22</sup> Instead of taking corrective action, the designated filer withdrew his Request for Exemption and reinterpreted—incorrectly—his activities to not be considered lobbying under the Act.
- [36] In any case, the motivation for the withdrawal of the Request for Exemption is not relevant. As discussed above, the submission provided the novel suggestion that the withdrawal of the request had to do with privacy concerns, as if to suggest that, were the Request for Exemption Form in some sense not so privacy-invasive, then the contravention would not have occurred. In this case, however, the lobbying activity took place prior to the designated filer submitting the Request for Exemption. Its contents or withdrawal have no bearing whatsoever to whether or not the contravention occurred.

***Was the amount of the penalty proportionate to the gravity of the offence?***

- [37] The designated filer observes that he is a “first timer.” It is correct that he had not previously been involved in any ORL investigations or enforcement actions, a fact the Delegate weighed against a lower penalty<sup>23</sup>. The penalty established in the Guide for lobbying while prohibited, in the first instance, is established at \$5,000 - \$7,500. The penalty established in the Guide for failing to register a lobby activity, in the first instance, is established at \$500 - \$7,500.
- [38] In his submission, the designated filer notes that the penalty, at a total of \$7,000, would be the most significant that the ORL has ever assessed. This is true; however in both cases the fine assessed is at the lower end of the established range (\$6,000 is lower than the midpoint of the range for lobbying while prohibited; and \$1,000 is well below the mid-point for failing to register a lobby activity).
- [39] The designated filer’s only submission regarding the gravity of the contravention is that the lobbying was not effective at all. This is not compelling evidence, and I consider it a neutral factor.

***Does the penalty achieve deterrence?***

- [40] The designated filer is of the view that the determination alone, as a mark on a proud career, is sufficient deterrence. Moreover, he notes that, because he is no longer the

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<sup>22</sup> Guide, p. 11.

<sup>23</sup> Determination, para 86.

President of the ILMA, that he would have to pay the fine out of his personal funds, with the implication that the penalty is more punitive given that it is on a natural person than a corporate entity. He further observes that he needs no deterrence not to lobby on behalf of the ILMA given that he does not work for them.

- [41] I do find that these arguments have some merit. I accept that a fine of multiple thousands of dollars on a private person is significantly harsher than had a corporation that stood to benefit from the lobbying borne the fine and thus would have a greater deterrence effect, both on the individual themselves and as general deterrence.
- [42] The Delegate did consider whether “no penalty” would be justified in this instance and determined that it would not.<sup>24</sup> I agree. The argument that the determination alone is sufficient deterrence may hold true for the designated filer himself, but it does not provide sufficient general deterrence. This situation emerged because a long-tenured provincial government executive did not take their legal obligations seriously. The main public policy purpose of an administrative monetary penalty is not to raise revenue for the ORL or to be punitive on individual natural persons or corporations, but rather to serve as a deterrent so that future penalties, ideally, do not need to be applied at all. If current public office holders learn that they may face similar penalties if they lobby during the “cooling off period” then they may take their statutory responsibilities more seriously.
- [43] Considering the imperative for general deterrence alongside the above-noted mitigating factors newly raised in the designated filer’s submission, I am therefore of the view that an appropriate penalty for lobbying while prohibited should be set at the low end of the range found in the Guide: \$5,000.
- [44] As it relates to the penalty for failing to report a lobbying activity, I have considered the argument that the designated filer made in his submission that he did not hear back from the ORL Registry and Compliance Officer about his revised claim that his activities were not actually lobbying after all. I do not find this argument particularly compelling, as I agree with the Delegate that instead it fits with a pattern of carelessness about the statutory obligations of the LTA.
- [45] I considered whether “no penalty” would be appropriate in this circumstance; however, one core fact speaks to the heart of this matter. On November 21, 2022, in his capacity as President of ILMA, the designated filer, who at that point was less than a year removed from being a provincial government executive, wrote to the most senior public office holder in the province, and attempted to influence his decisions. It is hard to accept how anyone could maintain this was not lobbying, regardless of whether or not it was successful. The main purpose of the LTA is to make such lobbying transparent. It is

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<sup>24</sup> Determination, para 91.

only now, years later, with the publication of this reconsideration, that this information is now entering the public domain. Therefore, through the choices of the designated filer, the central purpose of the LTA has been frustrated. The LTA contains the provisions for penalties for precisely this purpose.

[46] In her determination, the Delegate conducts a careful analysis of comparable contraventions and fines levied in those circumstances.<sup>25</sup> I agree with these conclusions and confirm the penalty of \$1,000.

## **CONCLUSION**

For the above reasons:

1. I confirm the findings of Determination Decision 24-03 of contraventions of the LTA sections 2.2 and 4.1.
2. I confirm the administrative penalty of \$1,000 for contravening s. 4.1 of the LTA.
3. I vary the administrative penalty of \$6,000 for contravening s. 2.2 of the LTA to be \$5,000.
4. I extend the date by which the total of \$6,000 must be paid to no later than **June 16, 2025**.

Pursuant to s. 7.3(3)(c) of the Act, I extend the date by which the administrative penalty must be paid to no later than **June 16, 2025**

Date: April 15, 2025

ORIGINAL SIGNED BY

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Michael Harvey

Registrar of Lobbyists for British Columbia

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<sup>25</sup> *Ibid*, paras 105-109.