

INVESTIGATION REPORT 16-02

LOBBYIST: Courtney Mosentine

March 3, 2016

SUMMARY: A consultant lobbyist filed a return to register as a lobbyist on behalf of a client after the deadline required by the *Lobbyists Registration Act* (“LRA”). The lobbyist was found to be in contravention of section 3(1) of the LRA and an administrative penalty of \$700 was imposed.

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

INTRODUCTION

[1] This report concerns an investigation commenced under s. 7.1 of the LRA. This section gives the Registrar of Lobbyists (“Registrar”) the authority to conduct an investigation to determine whether there is or has been compliance by any person with the LRA or its regulations. If, after an investigation under s. 7.1, the Registrar or her delegate believes that the person under investigation has not complied with a provision of the LRA or its regulations, s. 7.2 of the LRA requires her to give notice of the alleged contravention and the reasons for her belief that the contravention has occurred. Prior to making a determination under s. 7.2(2), the Registrar must, under s. 7.2(1)(b), give the person under investigation a reasonable opportunity to be heard respecting the alleged contravention.

[2] The LRA recognizes two types of lobbyists. This report focuses on “consultant lobbyists,” individuals who undertake to lobby for payment on behalf of a client.

[3] This report and determination are issued under the authority delegated to me by the Registrar under s. 7(4)(d) of the LRA.

ISSUES UNDER CONSIDERATION

[4] The questions for consideration are:

- (a) whether the lobbyist, who registered an undertaking under Registration ID 24506901 to lobby as a consultant on behalf of Canadian Tire, complied with s. 3(1) of the LRA; and

- (b) if the lobbyist did not comply with the requirements of the LRA, what, if any, administrative penalty is appropriate in the circumstances?

RELEVANT SECTIONS OF THE LRA

"client" means a person or organization on whose behalf a consultant lobbyist undertakes to lobby;

"consultant lobbyist" means an individual who, for payment, undertakes to lobby on behalf of a client;

"lobby", subject to section 2 (2), means,

- (a) in relation to a lobbyist, to communicate with a public office holder in an attempt to influence
 - (i) the development of any legislative proposal by the government of British Columbia, a Provincial entity or a member of the Legislative Assembly,
 - (ii) the introduction, amendment, passage or defeat of any Bill or resolution in or before the Legislative Assembly,
 - (iii) the development or enactment of any regulation, including the enactment of a regulation for the purposes of amending or repealing a regulation,
 - (iv) the development, establishment, amendment or termination of any program, policy, directive or guideline of the government of British Columbia or a Provincial entity,
 - (v) the awarding, amendment or termination of any contract, grant or financial benefit by or on behalf of the government of British Columbia or a Provincial entity,
 - (vi) a decision by the Executive Council or a member of the Executive Council to transfer from the Crown for consideration all or part of, or any interest in or asset of, any business, enterprise or institution that provides goods or services to the Crown, a Provincial entity or the public, or
 - (vii) a decision by the Executive Council or a member of the Executive Council to have the private sector instead of the Crown provide goods or services to the government of British Columbia or a Provincial entity,
- (b) in relation to a consultant lobbyist only, to arrange a meeting between a public office holder and any other individual

"undertaking" means an undertaking by a consultant lobbyist to lobby on behalf of a client, but does not include an undertaking by an employee to do anything...

Requirement to file return

- 3(1) Within 10 days after entering into an undertaking to lobby on behalf of a client, a consultant lobbyist must file with the registrar a return in the prescribed form and containing the information required by section 4.

BACKGROUND

[5] On June 29, 2015, a consultant with Canadian Strategy Group, registered with the Office of the Registrar of Lobbyists (“ORL”) as a consultant lobbyist for Canadian Tire with an undertaking start date of June 29, 2015. Ms. Mosentine was listed on that registration as a consultant lobbyist working with him on the Canadian Tire undertaking.

[6] On that same date, pursuant to s. 7(4)(a) of the LRA, ORL staff sent Canadian Tire a client verification request and asked them to verify their undertaking with consultants of Canadian Strategy Group. Canadian Tire confirmed that both lobbyists with Canadian Strategy Group provide government relations support to them in British Columbia and they verified that in January 2015 they asked Canadian Strategy Group to arrange some meetings with public office holders in British Columbia.

[7] On July 3, 2015, ORL staff sent an inquiry to the lobbyist as she had not submitted a new registration to the Lobbyists Registry for the undertaking on behalf of Canadian Tire.

[8] On July 7, 2015, the lobbyist submitted Registration ID: 24506901 and certified an undertaking start date of January 12, 2015. The ORL received an automatic system alert that this registration appeared to contravene the required timeframes under the LRA. Section 3(1) of the LRA requires a consultant lobbyist to submit a registration within 10 days after entering into an undertaking to lobby on behalf of a client.

INVESTIGATION

[9] The ORL commenced an investigation under s. 7.1 of the LRA to determine whether the lobbyist had complied with s. 3(1) of the LRA.

[10] In a letter to the lobbyist dated August 14, 2015, ORL staff asked the lobbyist to explain in writing the discrepancy between the timelines for registration in the LRA and the date on which she completed and submitted her registration. In addition, the lobbyist was asked to confirm the undertaking with the client, as it appeared there was no written agreement, and to provide the details of any meetings arranged and attended with public office holders on behalf of the client.

[11] The lobbyist responded on September 10, 2015 to explain that on January 12, 2015 her company’s client, Canadian Tire, made a request to arrange meetings on their behalf with public office holders. The lobbyist stated that she proceeded with the client’s request, and asked their staff member to complete a registration for the Canadian Tire undertaking. The lobbyist was not aware that a registration was never completed. In June 2015, discussions between Canadian Strategy Group and Canadian Tire led the former to believe that they would soon be asked to arrange some further meetings in B.C. At this time, it became apparent there was no filing for this undertaking.

[12] The lobbyist further explained that their firm did not understand the jurisdictional differences between Alberta and B.C. In Alberta, the most senior officer of the firm submits a registration as the designated filer and lists all consultant lobbyists who will be engaged in lobbying. As such, when registering with the B.C. Lobbyists Registry, the lobbyist's employer filed a return and listed Ms. Mosentine as an additional person on his registration. The lobbyist stated that she was not aware, until contacted by ORL staff, that she was required to file a separate registration.

[13] The lobbyist further explained that after the August 14, 2015 letter from the ORL, they searched their emails and realized that the February meetings actually began with email inquiries from the client in late October 2014. After discussions with ORL staff, the lobbyist further amended the undertaking start date from January 12, 2015 to October 30, 2014 to reflect the correct start date of the undertaking on behalf of Canadian Tire.

[14] The lobbyist also provided the details of a number of meeting requests made to public office holders between October 2014 and the end of February 2015. Five meetings were confirmed and held with the client during that timeframe.

[15] On October 14, 2015 I sent, pursuant to s. 7.2(1) of the LRA, a notice to the lobbyist setting out the basis for the allegation that the lobbyist had not complied with s. 3(1) for failing to file within the timeline as stipulated in the LRA.

[16] The lobbyist responded to the s. 7.2(1) LRA notice on November 10, 2015 with an acknowledgement that she had contravened s. 3(1) of the LRA. The lobbyist pointed out that the contravention was inadvertent and that she had taken the steps to correct any deficiencies in her registration. The lobbyist requested that the penalty for a late filing be close to the low end of the scale for the reasons she outlined in her responses.

DISCUSSION

[17] Some lobbyists rely on other staff members to keep their LRA registrations up to date and complete. However, under the LRA, lobbyists are accountable for their own registrations. Lobbyists who assign this function to their employees or colleagues should ensure these individuals have sufficient training on the specific requirements of the LRA and how to complete a registration.

[18] It was not until after the ORL sent an inquiry to the lobbyist on July 3, 2015 that the lobbyist realized that she was required to submit a registration in addition to the one submitted by her employer. The lobbyist, not her employer, attempted to arrange a number of meetings with public office holders, some of which were confirmed and took place. Therefore, the lobbyist was lobbying on behalf of her client with no return publicly available on the Lobbyists Registry.

FINDING

[19] Based on the evidence, I find that the lobbyist did not comply with s. 3(1) of the LRA when she failed to file a return within 10 days after entering into an undertaking to lobby on behalf of a client.

ADMINISTRATIVE PENALTY

[20] Section 7.2(2) of the LRA provides that 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 must inform the person of the Registrar's determination that there has been a contravention and may impose an administrative penalty of not more than \$25,000. Such person must be given notice of the contravention determination and, if a penalty is imposed, "the amount, the reason for the amount and the date by which the penalty must be paid" (LRA s. 7.2(2)(c)(ii)).

[21] Section 7.2 of the LRA confers discretion on the Registrar to impose administrative penalties. To provide a measure of structure in the exercise of that discretion, the Office has published "Policies and Procedures" (the "Policy") to advise members of the public and those engaged in lobbying about what will guide the ORL in exercising its duties under the LRA and the regulations. As the Policy document makes clear, its purpose is to structure discretion. It does not fetter discretion. It is not law. I have approached the Policy as a document intended to provide a principled guide to the exercise of my discretion to determine a penalty.

[22] The Policy document seeks to operate in a principled fashion by setting out firstly a general financial range for particular infractions (depending on whether it is a first, second or third infraction of that nature), secondly a list of factors that will be taken into account in determining the amount of administrative penalty, and finally a clear statement that the Policy "does not fetter the ORL's ability to conclude that no administrative penalty is appropriate in the circumstances, or to fashion a remedy on either side of the range set out in the general policy, in special circumstances."

[23] I should state at the outset that I have considered and rejected the view that this might be a case where "no penalty" is appropriate. The current LRA provisions have now been in place for five years. The lobbyist should be aware of her obligations under the LRA. The contraventions in this case are clear. A penalty is necessary for both specific and general deterrence.

[24] In deciding what the appropriate administrative penalty within that range is, I have taken the following factors into account:

- 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 effort the registrant made to report or correct the contravention, and
- whether a penalty is necessary for specific and general deterrence.

[25] There have been no previous enforcement actions for contraventions by the lobbyist. This is the first registration that the lobbyist has submitted to the B.C. Lobbyists Registry.

[26] This brings me then to the gravity and magnitude of the contravention. When the lobbyist registered with the Lobbyists Registry, her registration was submitted more than seven months past the timelines in the LRA. In my view, this contravention was moderate in nature.

[27] The purpose of the LRA is to promote transparency in lobbying by requiring consultant lobbyists to disclose accurate, current and complete information about their lobbying activities. This is a solemn legal obligation. It reflects the legislative intent that while consultant lobbyists have a right to lobby, the public have a right to know about their intended activities as defined in s. 4 of the LRA, and to have that knowledge in a timely and transparent fashion. The 10 day time limit is not an optional or arbitrary administrative deadline. The failure to comply with the deadline is a contravention. The 10 day deadline is inextricably linked with the obligation to register itself, as it emphasizes the legislature's concern that the public have a right to know not only the substance of the information set out in s. 4, but to have that information provided in a timely manner. Failing to file a return in a timely manner undermines the ability of the public to know who is attempting to influence government at any point in time, thereby defeating the LRA's goal of transparency.

[28] The next factor I have considered is whether the contravention was deliberate. I accept, on balance, that there were several factors which lead to the lobbyist's registration not being submitted to the Registry within the required timelines.

[29] The next factor to consider is whether the lobbyist derived any economic benefit from the contravention. I consider this a neutral factor. On one hand, the lobbyist gained an economic benefit when she received payment for lobbying when she had not filed the returns with the ORL. On the other hand, she did not obtain that payment *because* of the contravention.

[30] I have already addressed the next factor – “any effort the registrant made to report or correct the contravention.” It is in the lobbyist's favour that she registered promptly once the ORL sent her an inquiry about registration. In addition, the lobbyist corrected her undertaking start date after she realized that the undertaking began even earlier than reported.

[31] As noted above, I have considered whether an administrative penalty is necessary for specific or general deterrence. In my view, the circumstances of this case call for an administrative penalty both to encourage this lobbyist to take her obligations

under the LRA with the utmost seriousness, and to remind all lobbyists of their legal obligations to be diligent in keeping their registrations current and accurate.

[32] The ORL policies and procedures, which are intended only as a guide, suggest a range of penalties for contraventions of the LRA. The penalty for a late filing has a range of \$100 and \$5,000 for a first instance of non-compliance. The penalty in this case is intended to reflect the lobbyist's delay of more than seven months in filing her return as a consultant lobbyist.

[33] To provide additional guidance on the applicable penalty in this instance, I have also reviewed previous ORL Investigation Reports and their associated penalties. I note that this contravention, although not identical, has many similarities to Investigation Reports 15-12 and 15-13. In both instances, the consultant lobbyist was found to be in contravention of section 3(1) of the LRA and was issued an administrative penalty of \$700. Therefore, due to the similar nature of the offence in this instance, I have decided an administrative penalty of \$700 is appropriate.

CONCLUSION

1. Under s. 7.2(2) of the LRA, I find that the lobbyist contravened s. 3(1) of the LRA in respect of registering her undertaking on behalf of Canadian Tire. The notice of alleged contravention has been substantiated.
2. I impose an administrative penalty of \$700 for the s. 3(1) contravention.
3. The lobbyist must pay this penalty no later than April 14, 2016.
4. If the lobbyist requests reconsideration under s. 7.3 of the LRA, she is to do so within 30 days of receiving this decision by providing a letter in writing directed to the Registrar of Lobbyists at the following address, setting out the grounds on which reconsideration is requested:

Office of the Registrar of Lobbyists for British Columbia
PO Box 9038, Stn. Prov. Govt.
Victoria, BC V8W 9A4

Email: info@bcorl.ca

March 3, 2016



Trevor Presley, Investigator and
Delegate of the Registrar of Lobbyists