

INVESTIGATION REPORT 17-02

LOBBYIST: Greg Feltmate

March 22, 2017

SUMMARY: A consultant lobbyist was found to be in contravention of section 3(1) of the *Lobbyist Registration Act* for failing to file a return within 10 days after entering into an undertaking to lobby on behalf of his client. An administrative penalty of \$800 was imposed.

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

INTRODUCTION

[1] This report concerns an investigation under s. 7.1 of the *Lobbyists Registration Act* (“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 his 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 him to give notice of the alleged contravention and the reasons for his 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 29641852 to lobby as a consultant on behalf of Hewlett-Packard (Canada) Co., 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

"public office holder" means

- (a) a member of the Legislative Assembly and any person on the member's staff,
- (b) an officer or employee of the government of British Columbia,...

"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 October 21, 2016, the lobbyist submitted Registration ID 29641852 for his undertaking with Hewlett Packard (Canada) Co. and certified an undertaking start date of December 1, 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 of entering into an undertaking to lobby on behalf of a client.

INVESTIGATION

[6] 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.

[7] On October 25, 2016, ORL staff sent the lobbyist a formal compliance investigation letter under s. 7.1 of the LRA asking the lobbyist to explain the discrepancy between the deadline in the LRA for submitting a registration and the date on which he registered. In addition, the lobbyist was asked to provide a copy of any written agreement to lobby or the date the lobbyist reached a verbal agreement with his client and to provide the details of any meetings arranged and attended with public office holders on behalf of his client.

[8] Counsel for the lobbyist responded on November 22, 2016 and confirmed his client had set up and attended meetings with public office holders between December 1, 2015 and October 25, 2016.

[9] Counsel also advised that the discrepancy between the time when his client was required to register and when he submitted a registration was due to the fact that:

...On October 21, 2016 Mr. Feltmate learned, for the first time through discussion with his client that he may be required to register as a lobbyist as a result of setting up and attending these meetings. Up until that time he had been under the mistaken belief that arranging meetings would only constitute lobbying when the meeting is with an elected public official. As soon as he became aware of this requirement, Mr. Feltmate called the ORL and spoke with you and was advised about the registration requirements....

[10] Counsel for the lobbyist provided a copy of the contracts between his client and Hewlett-Packard (Canada) Co., spanning from April 28, 2014 to March 31, 2017. Counsel advised that around December 2015 his client was asked by Hewlett-Packard (Canada) Co. to set up meetings with various Health Authorities and BC Hydro. Counsel for the lobbyist also indicated this was the first time his client was asked to lobby on behalf of Hewlett-Packard (Canada) Co. He also detailed 20 meetings that his client set up and participated in during the period of December 3, 2015 to October 21, 2016.

[11] On November 29, 2016, I sent a notice, pursuant to s. 7.2(1) of the LRA, to the lobbyist setting out the basis for the allegation that the lobbyist had not complied with s. 3(1) of the LRA. The lobbyist was invited to respond in writing to the alleged contravention and provide any information or documentation pertinent to the alleged contravention and any potential penalty.

[12] On January 9, 2017, counsel for the lobbyist responded to the notice on his client's behalf and stated:

Mr. Feltmate acknowledges that his registration was late and that this oversight was due to the fact that he was under the mistaken belief that he was not lobbying by arranging meetings with public officials who were not elected....

DISCUSSION

[13] The lobbyist admits he contravened s. 3(1) of the LRA. The lobbyist states that it was an oversight and misunderstanding on his part.

[14] The meetings the lobbyist arranged and/or attended with public office holders on behalf of his client between December 3, 2015 and October 21, 2016 clearly fall within the definition of lobbying in the LRA. Therefore, the lobbyist engaged in lobbying in advance of registering with the ORL on October 21, 2016. This is taken into consideration in determining any potential administrative penalty.

FINDING

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

ADMINISTRATIVE PENALTY

[16] 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)).

[17] Section 7.2 of the LRA gives the Registrar discretion to impose administrative penalties. To provide a measure of structure in the exercise of that discretion, the ORL 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 makes clear, its purpose is to structure discretion. It does not fetter discretion. It is not law. I have approached the Policy as intended to provide a principled guide to the exercise of my discretion to determine a penalty.

[18] The Policy seeks to operate in a principled fashion by first setting out a general financial range for particular infractions (depending on whether it is a first, second or third infraction of that nature). The Policy then lists factors that will be taken into account in determining the amount of an administrative penalty. Finally, the Policy states that it

“... does not fetter the ORL’s ability to conclude that no administrative penalty is appropriate under the circumstances, or to fashion a remedy on either side of the range set out in the general policy, in special circumstances.”

[19] I should state at the outset that I have considered and rejected the view that this might be a case where “no administrative penalty” is appropriate. The current LRA provisions have now been in place for six years. The lobbyist should be aware of his obligations under the LRA. The contravention in this case is clear and a penalty is necessary for both specific and general deterrence.

[20] The LRA makes clear that transparency includes timeliness. This includes the requirement to file a return within the legislated deadline. 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.

[21] 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.

[22] I have considered these factors and the submissions made by the lobbyist.

[23] There have been no previous investigations for contraventions by the lobbyist. On the question of the gravity and magnitude of the contravention under investigation, the lobbyist began lobbying on December 3, 2015; however he did not register until October 21, 2016. This makes the lobbyist ten months late in submitting a registration. During this period of time the lobbyist had lobbied on a number of occasions without being registered. Therefore, I consider this to be a serious contravention.

[24] 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 of the LRA. The 10-day time limit 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 defeats the LRA’s goal of transparency because it undermines the ability of the public to know who is attempting to influence government at any point in time.

[25] The next factor I have considered is whether the contravention was deliberate. I accept, on balance, that the contravention resulted from a misunderstanding of the LRA on the part of the lobbyist. When the lobbyist realized he needed to register, he completed a registration immediately.

[26] 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 he received payment for lobbying when he had not filed the return with the ORL. On the other hand, he did not obtain that payment because of the contravention.

[27] I have already noted that the lobbyist did register initially of his own accord. It is important to note, however, that the lobbyist did not proactively notify the ORL of his contravention. It was an ORL staff member who subsequently brought the lateness of his registration to the lobbyist's attention. It is in the lobbyist favour that he promptly worked with ORL staff to identify the correct date he began lobbying.

[28] 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 his 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.

[29] The Policy, which is intended only as a guide, suggests a range of penalties for contraventions of the LRA. The penalty for a late filing has a range of \$100 to \$5,000 for a first instance of non-compliance. I have reviewed previous ORL investigation reports and their associated penalties.

[30] In my view, this contravention is similar to Investigation Report 16-06, where the consultant lobbyist received a penalty of \$800. She had lobbied for nearly nine months, had no previous warnings and had lobbied prior to filing a return with the ORL.

[31] The penalty in this case is intended to reflect the lobbyist's delay of ten months in filing his return as a consultant lobbyist and the fact that the lobbyist lobbied for a period of time when there was no return publicly available at the ORL. I have determined that an administrative penalty of \$800 is appropriate. I would note that it is very much in the lobbyist's favour that he registered of his own accord; otherwise the penalty would have been much higher.

CONCLUSION

1. Under s. 7.2(2) of the LRA, I find that the lobbyist contravened s. 3(1) of the LRA for submitting his return past the timelines. The notice of alleged contravention has been substantiated.
2. I impose an administrative penalty of \$800.
3. The lobbyist must pay this penalty no later than May 3, 2017.

4. If the lobbyist requests reconsideration under s. 7.3 of the LRA, he 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

Date: March 22, 2017

ORIGINAL SIGNED BY

Trevor Presley, Investigator and
Delegate of the Registrar of Lobbyists