

## EXEMPTION DECISION 18-04

### Matthew Holme (Tourism Victoria)

July 31, 2018

**SUMMARY:** For almost a decade the applicant served as an executive assistant, ministerial assistant and chief of staff for several provincial government ministers. He was chief of staff to the former minister of tourism from December 2013 to July 2017. He is now an in-house lobbyist for Tourism Victoria, a not-for-profit organization. The applicant argued that, because of the 2017 change in government, he does not have relationships with ministers or their staff, thus addressing concern his being able to exploit relationships. He also argued that he does not possess information that could be used to lobby for Tourism Victoria. Given the length, seniority and recent nature of the applicant's government experience, as a senior political staffer across several ministries, including tourism, it is not in the public interest to exempt him from the two-year cooling-off period under section 2.3.

**Statutes Considered:** *Lobbyists Registration Act*, SBC 2001.

#### BACKGROUND

[1] The *Lobbyists Registration Act* (LRA) regulates lobbying of public office holders. The applicant, Matthew Holme, has applied for a public interest exemption, under section 2.3 of the LRA, from the two-year prohibition on lobbying that applies to him under s. 2.2 of the LRA.<sup>1</sup> Section 2.2 prohibits any "former public office holder" from lobbying for two years after they ceased to be a former public office holder.<sup>2</sup>

[2] The applicant is a former public office holder under the LRA because he served, over almost a decade, in a series of increasingly senior roles in several ministers' offices. He is now the Manager of Corporate Communications and Destination Management for Tourism Victoria, the not-for-profit destination marketing organisation for the Victoria area. Until s. 2.2 came into force on May 1, 2018, he was registered as an in-house lobbyist. He was registered to lobby the Minister of Tourism, Culture and the Arts, Minister of Transportation and Infrastructure and Minister of Finance.<sup>3</sup>

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<sup>1</sup> Sections 2.2 and 2.3 were enacted in 2017 and came into force on May 1, 2018. The amendments were made by the *Lobbyists Registration Amendment Act, 2017*, SBC 2017, c 19.

<sup>2</sup> The applicant is a former public office holder as defined in s. 1 of the LRA because he is an "individual formerly employed in" the office of a "former member of the Executive Council", and not as "administrative support staff".

<sup>3</sup> The applicant terminated his registration on April 27, 2018.

[3] Between September 2008 and July 2017, the applicant held positions in many ministries, which he describes as including time as an executive assistant, ministerial assistant and chief of staff. From December 2013 to July 2015, he was chief of staff to the Minister of State for Tourism and Small Business. He says that in the past two years the only position he held that would make him a former public office holder was as the chief of staff to the Minister of Education.

## DISCUSSION

[4] The LRA requires any individual who fits within the definition of “in-house consultant” or “consultant lobbyist” to register their lobbying activities. The goal is to promote transparency regarding lobbying of elected officials and other public office holders. The LRA defines the term “lobby”, in relation to any lobbyist, as “to communicate with a public office holder in an attempt to influence” a range of activities, such as the development or enactment of legislation, establishment of programs or policies, the awarding of contracts, outsourcing of services, and sale of assets.

[5] As noted in Exemption Decision 18-01, the Legislature has recognized, through the definition of “lobby”, that lobbyists—both in-house and consultant lobbyists—may be selling access to office holders, not access to expertise on a particular subject or to information acquired when in government. The Legislature has also recognized, of course, that a lobbyist may be selling expertise on a particular subject, or information, acquired while that individual served in government. Both aspects of what it means to “lobby” must be considered on the facts of each s. 2.2 application.<sup>4</sup>

[6] Sections 2.2 and 2.3 of the LRA read as follows:

### ***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 or an individual employed in the member's office,
- (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”.

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<sup>4</sup> In assessing the applicant’s exemption request, I have applied my analysis of the intent and meaning of the LRA as a whole, and ss. 2.2 and 2.3, specifically, set out in Exemption Decision 18-01, without repeating it here.

**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.<sup>5</sup>
- (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.

[7] Is it “in the public interest” to exempt the applicant from the two-year lobbying restriction imposed by s. 2.2?

[8] The applicant says that, as chief of staff for the Minister of Education after 2015, he had minimal to no interaction with the Ministry of Tourism, or its employees and its stakeholders, and played no role in policy development relating to tourism. He says that he has no relationships in government that he has acquired in the last two years that could be used to lobby for Tourism Victoria. He adds that last summer’s change in government has “further eroded my personal and professional relationships with ministers, MLAs and other decision-makers working for the Province of BC.”<sup>6</sup>

[9] He notes that, since the change in government, he no longer has personal or professional relationships with political staff, Ministers or the bureaucracy. His relationships were with the elected officials, political staff and bureaucracy under the previous government. He therefore does not have relationships or possess information that would give him an advantage in lobbying the current Ministry of Tourism, Arts and Culture.

[10] The applicant says he wishes to lobby the Ministry of Tourism, Arts and Culture, the Ministry of Transportation and Infrastructure and the Ministry of Finance. He says the topics for lobbying range from the BC Ferries review, Belleville Terminal, Provincial taxation on short-term vacation rentals and proposed changes to the municipal and regional district tax.<sup>7</sup> The applicant

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<sup>5</sup> Section 2.1(2) prohibits lobbying on a matter in relation to which the person lobbying, or a person associated with that person, holds a “contract for providing paid advice” to the government. It also prohibits such persons from entering into a “contract for providing paid advice” on a matter in relation to which the person, or a person associated with that person, is lobbying. Section 2.1(1) defines the term “contract for providing paid advice” as “an agreement or other arrangement under which a person directly or indirectly receives or is to receive payment for providing advice to the government of British Columbia or a Provincial entity, but does not include reasonable remuneration for serving on a board, commission, council or other body that is established under an enactment and on which there are at least 2 other members who represent other organizations or interests.”

<sup>6</sup> Application, p. 4.

<sup>7</sup> Application, p. 3.

argues that these represent issues of concern for Tourism Victoria's broad consortium of organizations, not a single company or a special interest group. These efforts would not only benefit its membership, but a large component of the South Vancouver Island economy. This in turn benefits local communities, he argues.<sup>8</sup>

[11] Applying the approach to ss. 2.2 and 2.3 that I took in Exemption Decision 18-01, I must decide whether circumstances surrounding the applicant's request are such that the public interest favours an exemption from s. 2.2.

[12] In Exemption Decision 18-01, I stated that the length and nature of an individual's public service might be a factor in deciding whether an exemption is in the public interest.

[13] The applicant's experience in various ministers' office was quite lengthy, spanning close to a decade. It is reasonable to suggest this enabled him to learn a great deal about the workings of government, and to establish personal working relationships with career public servants, including executive-level public servants. The applicant argues, however, that his relationships were with elected officials, political staff and the bureaucracy under the previous government. He says he has no "personal or professional" relationships with the "NDP cabinet and NDP political staff".<sup>9</sup> The applicant may have started as a relatively junior ministerial staffer, but he progressed over the decade through increasingly senior roles in various minister's offices. As a political staffer to ministers, the applicant would have interacted frequently over the years with executive-level public servants. That is the nature of such positions, especially a chief of staff position. The fact that the applicant may have no connections to members of the present Cabinet, or "NDP political staff" does not get around this point.

[14] It is reasonable to infer, therefore, that the applicant has recent and long-standing knowledge about the workings of government, if not fully-current information specific to tourism-related matters, noting that his knowledge of how government works will have been acquired across a number of ministerial portfolios.

[15] As explained above, the aim of the s. 2.2 prohibition is to ensure that a former public office holder cannot sell information acquired inside government (including knowledge of how government works), or sell access based on relationships formed in government, during the two-year cooling-off period the section establishes. Given the nature and length of the appellant's work in government, and the other factors discussed above, it would not be in the public interest to grant the requested exemption.

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<sup>8</sup> *Ibid.*

<sup>9</sup> Application, p. 4.

**CONCLUSION**

[16] For all of the reasons given above, I am not satisfied that it is in the public interest to exempt the applicant from the application of section 2.2. The applicant's request is denied.

July 31, 2018

ORIGINAL SIGNED BY

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Michael McEvoy  
Registrar of Lobbyists for British Columbia