



INVESTIGATION REPORT 18-06

Greater Victoria Chamber of Commerce

DESIGNATED FILER: Catherine Holt

September 18, 2018

SUMMARY: The Greater Victoria Chamber of Commerce (GVCC) employs in-house lobbyists. The organization was found to be in contravention of section 4(1)(o) of the *Lobbyists Registration Act* (LRA) for failing to declare that one of the in-house lobbyists was a former public office holder. An administrative penalty of \$500 was imposed.

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

Authorities Considered: Investigation Report 14-12 and Investigation Report 15-11.

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 compliance with the LRA or its regulations. If 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: consultant lobbyists and in-house lobbyists. This report focuses on the activities of GVCC, an organization that employs in-house lobbyists. An in-house lobbyist is a paid employee, officer or director of an organization who lobbies on behalf of the organization, alone or with others, for at least 100 hours annually.

[3] This report and its 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 Catherine Holt, the designated filer of the organization, contravened s. 4(1)(o) of the LRA for failing to declare that one of the in-house lobbyists was a former public office holder; and
- (b) if the designated filer did not comply with the requirements of the LRA, what, if any, administrative penalty is appropriate in the circumstances?

RELEVANT SECTIONS OF THE LRA

"designated filer" means

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

"in-house lobbyist" means an employee, an officer or a director of an organization

- (a) who receives a payment for the performance of his or her functions, and
- (b) whose lobbying or duty to lobby on behalf of the organization or an affiliate, either alone or together with other individuals in the organization,
 - (i) amounts to at least 100 hours annually, or
 - (ii) otherwise meets criteria established by the regulations;

"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,
- (c) in relation to an in-house lobbyist only, to arrange a meeting between a public office holder and any other individual for the purposes of attempting to influence any of the matters referred to in paragraph (a) of this definition;

"lobbyist" means a consultant lobbyist or an in-house lobbyist;

Form and Content of Return

4(1) Each return filed under section 3 must include the following information, as applicable:

- (o) If any lobbyist named in the return is a former public office holder, the nature of the office formerly held by the lobbyist and the term of the office;

(1.1) For the purposes of subsection (1)(o), **"former public office holder"** means

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

Certification of documents and date of receipt

5(1) An individual who submits a document, including a return, to the registrar under this Act must certify,

- (a) on the document, or
- (b) in the manner specified by the registrar, if the document is submitted in electronic or other form under section 6, that, to the best of the individual's knowledge and belief, the information contained in the document is true.

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,

Hearing and administrative penalty

7.2(3) Despite subsection (2), the registrar must not impose an administrative penalty if more than 2 years have passed since the date of the contravention.

BACKGROUND

[5] On January 29, 2018, the designated filer filed a return with the Office of the Registrar of Lobbyists (ORL), Registration ID 731712. This registration had an undertaking start date of January 29, 2018, and an undertaking end date of July 29, 2018. In this registration the designated filer declared that the in-house lobbyist was not a former public office holder. The designated filer certified that the information in the return was true.

[6] On January 30, 2018, ORL staff received a report that the designated filer had failed to declare in the return that the organization's in-house lobbyist was a former public office holder.

[7] On January 31, 2018, the ORL asked the designated filer to look at the definition for former public office holder and to correct the registration if necessary. The designated filer corrected the registration and listed the in-house lobbyist's former public office holder position.

[8] ORL staff did a public search for other registrations submitted to the Lobbyists Registry and discovered Registration ID 661916. Registration ID 661916 had an

undertaking start date of July 27, 2017 and an undertaking end date of January 27, 2018. In this registration the designated filer did not declare that the in-house lobbyist was a former public office holder. The designated filer certified that the information in the return was true.

[7] Once a registration reaches its end date its status changes from “Active” to “Terminated,” and the registration cannot be updated. Consequently, the designated filer could not correct Registration ID 661916.

INVESTIGATION

[8] On January 31, 2018, ORL staff sent a formal compliance investigation letter under s. 7.1 of the LRA to the designated filer informing her that the ORL was investigating whether she had contravened s. 4(1)(o) of the LRA (public office holder declaration) when she failed to identify the in-house lobbyist was a former public office holder. The letter asked the designated filer to explain why she did not declare that the in-house lobbyist was a former public office holder in Registrations 731712 and 661916.

[9] In her response dated January 31, 2018, the designated filer noted that she recognizes that she made an error. She mentioned that she believed the term former public office holder referred to elected officials.

[10] On March 7, 2018, the ORL provided the designated filer with formal notice under s. 7.2(1)(a) outlining the basis for the allegation that she had contravened s. 4(1)(o) of the LRA. I invited the designated filer to respond in writing to the alleged contravention and to provide any information or documentation pertinent to the contravention and any potential penalty.

[11] On March 22, 2018, Counsel for the designated filer responded to the s. 7.2(1)(a) notice. Counsel stated that the designated filer erred in her interpretation of the meaning of “former public officer holder.” When the ORL contacted the designated filer, pointing out the error, she corrected Registration ID 731712 the same day. Since Registration ID 661916 was terminated, the designated filer could not correct the “former public office holder” status in the registration.

[12] Counsel noted that previous registrations were prepared by a former staff member who correctly identified the in-house lobbyist as a former public office holder. The designated filer was not aware of this detail.

[13] Counsel notes that circumstances warrant a discontinuation of the investigation. In the alternative, she suggests that the investigator should exercise discretion and not impose a penalty.

DISCUSSION

[14] Section 4(1)(o) of the LRA requires a designated filer to declare in the registration if an in-house lobbyist is a former public office holder, and to provide the

nature of the office formerly held by the lobbyist and the term of the office. The designated filer did not declare the organization's in-house lobbyist was a former public office holder and therefore contravened s. 4(1)(o) of the LRA.

[15] Information about the in-house lobbyist's positions (as defined in the LRA) in public office is very important. The purpose of this provision is to increase public confidence in government decision-making by reducing the scope for the exercise of undue influence. It is to address the public concern that certain former public office holders, at least for a time, can have more "insider knowledge" and influence over former colleagues than lobbyists who did not formerly work as public office holders in similar positions. There is the perception of the existence of a revolving door of public office holders and lobbyists developing greater influence by moving freely between the public service and lobbying the public service.

[16] Failure to provide this information undermines transparency and the public's confidence in the registry.

[17] The designated filer did correct the current registration the same day the ORL notified her, but she could not make the necessary changes to Registration ID 661916. As I have noted above Registration ID 661916 was terminated and the designated filer cannot correct it.

[18] The designated filer notes that past returns were completed by a staff member. The designated filer was unaware that the in-house lobbyist's past position as Assistant Deputy Minister meant she was a "former public office holder". This is not an excuse for not understanding one's obligations under the LRA.

[19] The in-house lobbyist left her position as Assistant Deputy Minister (ADM) in 1998. A lengthy period of time had elapsed, approximately 19 years, before Registration ID 661916 was filed and 20 years before Registration ID 731712 was submitted. The elapsed time diminishes the potential for undue influence and eliminates any concern that the designated filer may have insider knowledge. It reduces any advantage the in-house lobbyist may have over other lobbyists who have not held positions defined as public office holders.

FINDING

[20] Based on the evidence, I find that the designated filer did not comply with s. 4(1)(o) of the LRA when she failed to declare that the in-house lobbyist was a former public office holder.

ADMINISTRATIVE PENALTY

[21] 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))

[22] 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 makes clear, its purpose is to structure discretion. It does not fetter discretion. It is not law. I have applied the Policy as a principled guide to the exercise of my delegated discretion to determine a penalty.

[23] The Policy first sets out a general financial range for particular infractions (depending on whether it is a first, second or third infraction of that nature). Second, it provides a list of factors that will be taken into account in determining the amount of administrative penalty. Finally, it includes 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.”

[24] 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 since April 2010. The designated filer 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.

[25] The LRA makes clear that transparency includes identifying whether the lobbyist is a former public office holder. Failing to provide this information undermines the ability of the public to know whether certain lobbyists might have a heightened level of influence owing to their former position. This omission undermines the LRA’s goals of transparency and public confidence in government decision-making.

[26] In determining the appropriate administrative penalty within that range, 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 efforts made by the registrant to report or correct the contravention, and
- whether a penalty is necessary for specific and general deterrence.

[27] I have considered these factors and the submissions made by the designated filer.

[28] Counsel argues that the error was of a short duration. However, Registration ID 661916 was active for approximately six months before it was terminated. Because it was terminated the designated filer was not able to correct the incorrect entry in the return.

[29] Counsel points out that there have been no previous enforcement actions for contraventions under the LRA. ORL records confirm this.

[30] I now turn to the question of the gravity and magnitude of the contravention under investigation. The purpose of the LRA is to promote transparency in lobbying by requiring designated filers to disclose accurate, current and complete information about their organization's lobbying activities. This is a solemn legal obligation. It reflects the legislative intent that while organizations have a right to lobby, the public also has a right to know that the information in the return is accurate. The designated filer has no previous contraventions. She left her position as ADM in 1998, approximately 19 years from the date of her filing Registration ID 661916. The designated filer corrected return Registration ID 731712 the same day she was notified of the error. The second return, Registration ID 661916, which was active for approximately 6 months, was inactivated January 29, 2018. It could not be corrected because it was terminated.

[31] The years that have passed since the in-house lobbyist left her position as ADM effectively eliminates the potential for undue influence and removes any concern that the in-house lobbyist may have insider knowledge. It is highly unlikely that the in-house lobbyist would still have close personal relationships with current public office holders. Finally, the passage of time reduces any advantage the in-house lobbyist may have over other lobbyists who have not held positions as public office holders. Given these circumstances, it is my opinion that this is a minor contravention.

[32] The next factor I have considered is whether the contravention was deliberate. I do not believe that the designated filer's intent was to deceive the ORL. I accept, on balance, that the contravention resulted from an unintended error.

[33] I next must consider whether the GVCC derived any economic benefit from the contravention. I found no evidence that would lead me to believe that the GVCC benefitted monetarily from this contravention.

[34] 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 the designated filer to take her obligations under the LRA with the utmost seriousness, and to remind all designated filers of their legal obligations to be diligent in keeping registrations current and accurate.

[35] The Policy suggests a range of penalties for contraventions of the LRA. The suggested range of penalty for entering incorrect information is \$1,000 to \$7,500 for a first contravention. The penalty in this case is intended to reflect the designated filer's filing incorrect information, that the in-house lobbyist was not a former public office holder, in her return.

[36] The designated filer did contravene s. 4(1)(o) of the LRA, however, as I have noted above, the designated filer corrected the organization's current return Registration ID 731712 the same day she was notified of the error. Registration ID 661916 had been terminated in January of 2018 so it could not be corrected, however, only 6 months had transpired since the start date of the return.

[37] This is a unique case which bears little resemblance to other investigations. As I stated above the purpose s. 4(1)(o) is to reduce the scope for the exercise of undue influence over former colleagues. It ensures that organizations do not have "insider knowledge" not available to other lobbyists.

[38] The in-house lobbyist has not been a public office holder for 19 years. It is highly unlikely she had undue influence over current public office holders. It is unlikely that she has any remaining insider knowledge. There is no perception here that the in-house lobbyist moved freely between government and lobbying enhancing her influence over the public service.

[39] Given the span of time, I do not believe the designated filer's failure to identify the in-house lobbyist as a former public office holder denigrated public confidence in government decision making. Nor do I believe that it undermined the public confidence in the registry. Given the circumstances of this investigation, I believe this is a case where a minimal fine is warranted.

CONCLUSION

1. Under s. 7.2(2) of the LRA, I find that the designated filer contravened s. 4(1)(o) of the LRA for failing to declare that one of the in-house lobbyists was a former public office holder. The notice of alleged contravention has been substantiated.
2. I impose an administrative penalty of \$500.
3. The designated filer must pay this penalty no later than October 30, 2018.
4. If the designated filer 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

Date: September 18, 2018

ORIGINAL SIGNED BY

Tim Mots, Investigator and
Delegate of the Registrar of Lobbyists