

## DETERMINATION DECISION 24-02

**AbCellera Biologics Inc.**

**Designated Filer: Carl Hansen**

**June 27, 2024**

**SUMMARY:** The designated filer failed to submit AbCellera Biologics Inc.'s (ABI) Registration Return within 10 days of the date the organization first has an in-house lobbyist, contrary to section 3(3) of the *Lobbyists Transparency Act* (LTA). The designated filer was issued an administrative penalty of \$3,500 for the contravention.

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

**Authorities considered:** Determination Decisions 23-01, 23-02 and 23-04.

### INTRODUCTION

[1] This report concerns an investigation under s. 7.1 of the LTA. This section gives the Registrar of Lobbyists (the Registrar) the authority to conduct an investigation to determine compliance with the LTA and its regulations. If the Registrar or their delegate believes that the person under investigation has not complied with a provision of the LTA or its regulations, s. 7.2 of the LTA requires the Registrar to give a person under investigation notice of the alleged contravention and the reasons for the Registrar's belief that the contravention has occurred. Prior to making a determination under s. 7.2(2) of the LTA, 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 LTA recognizes two types of lobbyists: consultant lobbyists and in-house lobbyists. This report focuses on the activities of AbCellera Biologics Inc. (ABI), 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 or affiliate.

[3] Under s. 7(4)(d) of the LTA, the Registrar has delegated to me the authority to conduct this investigation.

**ISSUES UNDER CONSIDERATION**

- [4] The issues for consideration are:
- (a) whether the designated filer contravened s. 3(3) of the LTA by filing ABI's Registration Return later than the legislated deadline; and
  - (b) if the designated filer did not comply with the requirements of the LTA, what, if any, administrative penalty is appropriate in the circumstances?

**RELEVANT SECTIONS OF THE LTA**

- [5] **"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;
- [6] **"in-house lobbyist"** means, subject to subsection (4), a person who
- (a) is an employee, officer or director of an organization,
  - (b) receives a payment for the performance of the person's functions, and
  - (c) lobbies on behalf of the organization or an affiliate;
- [7] **"lobby"**, subject to section 2 (2), means
- (a) 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) to arrange a meeting between a public office holder and any other individual for the purpose of attempting to influence any of the matters referred to in paragraph (a) of this definition.

[8] **"lobbying activity"**

means any of the activities described in paragraphs (a) and (b) of the definition of "lobby";

[9] **"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,

(c) a person who is appointed to any office or body by or with the approval of the Lieutenant Governor in Council, other than a person appointed on the recommendation of the Legislative Assembly,

(d) a person who is appointed to any office or body by or with the approval of a minister of the government of British Columbia, and

(e) an officer, director or employee of any government corporation as defined in the [Financial Administration Act](#).

but does not include a judge or a justice of the peace;

[10] **Requirement to file a Registration Return**

3(3) The designated filer of an organization must file with the registrar, within 10 days of the date the organization first has an in-house lobbyist, a Registration Return in the prescribed form and manner and containing the information required by section 4.

**[11] 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.

**[12] 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 investigate.

(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,

**[13] 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 an administrative penalty of not more than \$25 000, and
- (c) must give to the person notice
  - (i) of the registrar's determination that the person has not complied with a prescribed provision of this Act or the regulations and the reason for the decision,
  - (ii) if a penalty is imposed, of the amount, the reason for the amount and the date by which the penalty must be paid, and
  - (iii) respecting how the person may request reconsideration, under section 7.3, of the determination of non-compliance or the imposition or amount of the penalty.

## **BACKGROUND**

[16] On November 21, 2022, counsel acting on behalf of ABI informed the Office of the Registrar of Lobbyists (ORL) that its client had lobbied BC government officials. Counsel stated "... ABI has determined that it is prudent to register them in the interests of transparency, especially given the wide-ranging nature of the discussion." Counsel provided a list of 37 separate occasions ABI lobbied public officer holders (POHs).

[17] On November 22, 2022, ORL staff informed counsel that filing of a late registration was a compliance issue and ABI was required to file a Registration Return immediately. ABI was provided with the definition of lobby, information on and the requirement to complete Monthly Returns, and links to ORL guidance documents.

[18] ABI submitted its Registration Return on December 19, 2022. On the same day, ORL staff pointed out that ABI did not complete the affiliates portion of the return, consequently, ABI's Registration Return was not activated. On December 21, 2022, ABI completed the affiliates section of their Registration Return. On the same date, the ORL staff activated ABI's Registration Return #8803-4838 and reminded ABI to complete Monthly Returns for any senior public office holders (SPOH) they lobbied from June 2020 to present. Subsequently, ABI completed this and notified the ORL that its Monthly Returns were up to date.

## **INVESTIGATION**

[19] The ORL commenced an investigation under s. 7.1 of the LTA to determine whether the designated filer had contravened s. 3(3) of the LTA.

[20] On January 18, 2024, I provided the designated filer with formal notice under s. 7.2(1)(a) of the LTA outlining the basis for the allegation that ABI did not file a Registration Return within 10 days of it having its first in-house lobbyist, contrary to s. 3(3) of the LTA.

[21] On February 7, 2024, counsel for ABI responded. I understood from its response that ABI was not aware that its communications with POHs came within the LTA's definition of lobbying, thus requiring it to register its lobbying activities. When it suspected that its activities might fall within the definition, it contacted the ORL.

[22] Counsel submitted that a number of the communications with POHs did not meet the definition of lobbying. Counsel stated:

“Many of ABI's communications with public office holders in British Columbia were not lobbying, but in fact communications relating to the application of existing law. However, in the interests of transparency, and given the wide-ranging nature of the discussions, ABI determined it was prudent to register these communications.”

Counsel noted that ABI knew that it was registering late, and that the contravention was not intentional but inadvertent.

ABI said it recognized its obligations under the LTA and would pay strict attention to its reporting responsibilities in the future.

[23] On the topic of an administrative monetary penalty, counsel pointed out that ABI has not been the subject of a previous investigation and there was no economic benefit gained from the contravention. Counsel argued that this was not a case where a penalty would be warranted for the purpose of specific or general deterrence. ABI voluntarily reported the contravention to the ORL and took immediate action to rectify its mistake. Counsel stated: “The purpose of the LTA is to promote transparency and compliance through education, not to punish.” They submit penalizing ABI may discourage others from coming forward to self report potential contraventions to the ORL.

## **DISCUSSION AND FINDINGS**

[24] Counsel points out that several communications with POHs did not meet the definition of lobbying. However, in the interests of transparency, ABI also reported these communications to the ORL.

The LTA definition of lobbying includes the following:

**“lobby,” subject to section 2 (2), means**

- (a) to communicate with a public office holder in an attempt to influence
  - (iii) the development or enactment of any regulation, including the enactment of a regulation for the purposes of amending or repealing a regulation,

(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.

[25] I have reviewed ABI's Monthly Returns and see that they met with POHs and SPOHs to obtain a permit, seek funding and use of the organization's product. In each case, ABI has communicated with a POH for the purpose of influencing them; for example, to amend a regulation (to permit the use of its product) and award a benefit (obtaining a permit and seeking funding). Based on the descriptions provided by ABI, these activities would meet s. 1 (a)(iii) and (a)(v) of the LTA's definition of lobby.

[26] S. 3(3) of the LTA requires the designated filer of an organization to submit a Registration Return within 10 days of the organization having its first in-house lobbyist.

### **Requirement to file Registration Return**

3(3) The designated filer of an organization must file with the Registrar, within 10 days of the date the organization first has an in-house lobbyist, a Registration Return in the prescribed form and manner and containing the information required by section 4.

ABI reported it had an in-house lobbyist who lobbied a SPOH on June 22, 2020. It did not submit its Registration Return until December 19, 2022. This is clearly past the 10-day deadline to submit its Registration Return under s. 3(3) of the LTA.

### **Transition period**

[27] The *Lobbyists Registration Act* (LRA) was amended by the *Lobbyists Registration Amendment Act*, effective May 4, 2020. Along with several changes to the Act itself, the title of the Act was changed to the *Lobbyists Transparency Act*.

[28] Given the challenges presented by the onset of the pandemic, the ORL extended the period to bring organizations and consultant lobbyists into compliance with the LTA. The ORL introduced a "transition period" from May 4, 2020 – September 15, 2020. Any changes to an existing Registration Return, or any requirement to file a new Registration Return under the LTA, were due no later than September 15, 2020. If an organization or a consultant lobbyist met this requirement, no further action would be taken with any compliance issues that arose between May 4, 2020 – September 15, 2020.<sup>1</sup>

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<sup>1</sup> Office of the Registrar of Lobbyists, "Important Dates to Remember," April 2020, Volume 10, Issue 2. Influencing BC, Important dates to Remember, page 1.

<https://www.lobbyistsregistrar.bc.ca/handlers/DocumentHandler.ashx?DocumentID=366>

[29] On the other hand, if an organization or a consultant lobbyist failed to update their Registration Return, or to file an initial Registration Return on or before September 15, 2020, the ORL would consider whether to initiate a compliance investigation for any compliance issues that may have arisen from May 4, 2020 – September 15, 2020.

[30] Taking into consideration the transition period, ABI was required to file its Registration Return no later than September 15, 2020. It did not submit a Registration Return until December 21, 2022, approximately two years, four months late. ABI lobbied on 43 occasions during this period (see Table 1).

**Table 1. ABI lobbying activity**

Lobbying Activity	Lobbying Activity Number	Lobbying Activity Date
1	4838-22819	2020-06-22
2	4838-22820	2020-12-04
3	4838-22821	2021-01-20
4	4838-22822	2021-02-19
5	4838-22823	2021-03-19
6 <sup>2</sup>	4838-23211 (amended from 4838-22824)	2021-04-13
7	4838-22825	2021-08-11
8	4838-22826	2021-10-05
9	4838-22827	2021-10-20
10	4838-22828	2021-12-09
11	838-22829	2021-12-10
12 <sup>3</sup>	4838-23210 (amended from 4838-22830)	2021-12-15
13	4838-22831	2022-01-20
14	4838-22832	2022-02-04
15	4838-22833	2022-03-03
16	4838-22834	2022-03-03
17	4838-22835	2022-03-03
18	4838-22836	2022-03-16
19	4838-22837	2022-03-18
20	4838-22838	2022-03-23
21	4838-22839	2022-04-05

<sup>2</sup> It appears this Monthly Return was originally entered on 2022-12-21 and amended on 2023-01-20.

<sup>3</sup> See above.



22	4838-22840	2022-04-05
23	4838-22841	2022-05-05
24	4838-22842	2022-05-06
25	4838-22843	2022-05-25
26	4838-22844	2022-06-08
27	4838-22845	2022-06-20
28	4838-22846	2022-06-24
29	4838-22847	2022-08-22
30	4838-22855	2022-09-20
31	4838-22848	2022-09-28
32	4838-22849	2022-10-04
33	4838-22850	2022-10-07
34	4838-22851	2022-10-11
35	4838-22852	2022-10-19
36	4838-22853	2022-10-21
37	4838-22854	2022-10-28
38	4838-22856	2022-11-28
39	4838-22857	2022-11-28
40	4838-23178	2022-11-28
41	4838-23179	2022-11-28
42	4838-23180	2022-11-28
43	4838-23181	2022-11-28

[31] I find that ABI contravened s. 3(3) of the LTA when it failed to submit a Registration Return within 10 days of having its first in-house lobbyist who lobbied POHs.

#### **ADMINISTRATIVE PENALTY**

[32] S. 7.2(2) of the LTA 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 the Act or the regulation, 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.

[33] 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.”

[34] S. 7.2 of the LTA confers discretion on the Registrar to impose administrative penalties. To provide a measure of structure in the exercise of that discretion, the ORL has published a guidance document “Registrar of Lobbyists: Guide to Investigations” (guide to investigations) to advise members of the public and those engaged in lobbying about what will guide the ORL in

exercising its duties under the LTA and the regulations. As the policy makes clear, its purpose is to structure discretion. It does not fetter discretion; it provides a consistent framework so lobbyists can have some certainty about the exercise of discretion. It is not law. I have considered that guidance in the exercise of my delegated discretion to determine a penalty based on the facts before me.

[35] The guide to investigations first sets out a general financial range for particular infractions, depending on whether they are first, second or third infractions. Second, it provides a list of factors that will be considered in determining the amount of an 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.”

[36] The penalty range for Registering Late is between \$100-\$5,000 for a first contravention.

[37] 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;
- Whether a penalty is necessary for specific and general deterrence; and
- Any other factors that, in the opinion of the Registrar or their delegate, are relevant to the administrative penalty.

[38] I have considered these factors and the submissions made by counsel.

[39] The goal of the LTA is to promote transparency, to provide the public with accurate and timely information about who is lobbying government and the purpose of the lobbying.

[40] Based on the date of their June 22, 2020, start of its lobbying activity and taking into consideration the transition period, the designated filer was required to file a Registration Return no later than September 15, 2020. The Registration Return was submitted on December 21, 2022, approximately two years, four months late. During this period, ABI lobbied on 43 separate occasions.

[41] Prior to ABI approaching the ORL, the ORL had no prior knowledge of this activity. It is commendable that ABI came forward to report its contraventions. I acknowledge that the designated filer worked with the ORL in a timely manner to address these contraventions. This task was completed in approximately one month. This favours a mid to lower penalty.

[42] I am not aware of any previous contraventions or warnings for late filing under the LTA by the ABI. This weighs in favour of a lower penalty.

[43] There is no information before me which would indicate that this contravention was deliberate, nor is there evidence that would suggest ABI obtained any economic benefit for failing to file their Registration Return on time. This weighs in favour of a lower penalty.

[44] In terms of the gravity and magnitude of the contravention, the failure to file a Registration Return in a timely manner undermines the LTA's goal of transparency because it prevents the public from knowing who is attempting to influence government at any point in time. The designated filer is required to disclose accurate, current, and complete information about the organization's lobbying activities. The 10-day time limit is not optional or arbitrary, it is connected to the public's right to know the information set out in s. 4 of the LTA and to have it in a timely manner. A serious consequence of registering late here is the public was unaware of ABI's lobbying activities for two years and four months. The magnitude of this contravention is heightened by the fact that the public was left in the dark about the volume of ABI's lobbying activities during this period. Given the lack of transparency and length of time, I consider this contravention to be serious, warranting a higher penalty.

[45] The contravention in this case is clear. A penalty is necessary for both specific and general deterrence. In terms of specific deterrence, this investigation, the ensuing administrative penalty, and the publication of the outcome of this investigation will encourage this lobbyist to meet their obligations under the LTA.

[46] In considering general deterrence, the publication of this report and recognition that the ORL will issue administrative penalties to those who contravene the LTA will remind all individuals of their legal obligations to be diligent in filing Registration Returns. It is not uncommon for designated filers to approach the ORL when they realize they have missed dates to file a Registration Return. In past decisions, approaching the ORL with errors tends to weigh in favour of a reduced penalty. I do not accept that a penalty in this case will discourage lobbyists from reporting errors or omissions going forward.

[47] I have examined past Investigation Reports in considering a reasonable penalty for this contravention. A number of Determination Decisions (DD) have been decided since the amendments to the legislation. I have found three with similar circumstances to this decision.

[48] In (DD) 23-01, the organization had an existing registration with the ORL under the LRA. Following the May 4, 2020 amendments, a representative from the organization contacted the ORL asking if they were required to take action to meet the LTA's requirements. The ORL informed the representative that they would need to update their registration with information required under the new legislation. Later in the year, the representative inquired about how to submit a Monthly Return for lobbying it conducted several months prior. The ORL noticed that the organization had not submitted a new Registration Return with information required under the LTA. The ORL had previously reminded the organization to update its registration. The organization was one month late in submitting its Registration Return. The organization had no previous contraventions and asked the ORL about its obligations under the LTA. The contravention was not deliberate and did not result in an economic benefit. It lobbied on one occasion while not being registered. The designated filer received a penalty of \$1,000 for contravening s. 3(3) of the LTA

[49] In DD 23-02, the organization failed to submit Monthly Returns within the legislated timeline. Although DD 23-02 addressed Monthly Returns, not a Registration Return, as is the case here, it resembles the circumstances in this decision because it deals with the late submission of Monthly Returns. Failing to register on time or failing to submit a Monthly Return deprives the public of timely information about an organization's lobbying intentions or activity. It undermines the purpose of the LTA, which is to promote transparency, to understand who is lobbying POHs at any given time and for what reasons.

[50] The organization did have an active Registration Return. During a communication over a separate matter, it came to the attention of the ORL that the organization had lobbied SPOHs. The pandemic had caused disruptions in the organizations, roles had changed, and the designated filer was new in their role. The designated filer indicated that there was confusion about what constituted lobbying. The ORL provided information to assist the designated filer in meeting the organization's obligations under the LTA. The designated filer worked with the ORL to quickly correct the error. The investigation found no evidence that the contravention was deliberate, nor was there an economic benefit resulting from the contravention. The designated filer submitted 15 late Monthly Returns for lobbying on 29 separate occasions over a period of two years. The designated filer received a penalty of \$3,000 for contravening s. 4.1 of the LTA.

[51] In DD 23-04, the ORL contacted the designated filer questioning them about possible lobbying activity they may have conducted while not registered. The designated filer acknowledged that the organization had lobbied and would quickly submit its Registration Return. The designated filer corresponded with the ORL for several months. The ORL provided guidance to assist the designated filer complete their registration. The ORL had to continually remind the designated filer of their obligations under the LTA. The designated filer finally submitted the organization's Registration Return 16 months late. The contravention was not

deliberate. There was no economic benefit derived from the contravention. The organization lobbied on 10 different occasions during this period. Given the circumstances, the designated filer received a penalty of \$4,000 for contravening s. 3(3) of the LTA.

[52] In DD 23-01 and DD 23-02 the organizations contacted the ORL to inquire about their registrations. Both had failed to submit returns on time: in DD 23-01, its Registration Return; in DD 23-02, its Monthly Returns. In both DD 23-01 and DD 23-02, the designated filers worked with the ORL in completing and submitting their Registration Returns in a timely manner.

[53] All designated filers expressed a misunderstanding in interpreting the LTA. However, the investigators pointed out that there were sources available to answer questions, that these misunderstandings did not outweigh their obligations under the LTA. The investigators did not find that the contraventions were deliberate, all organizations did not have previous contraventions, nor did they benefit from the contraventions.

[54] In DD 23-01, the organization was one month late in registering and had lobbied once, receiving a penalty of \$1,000. In DD 23-02, the designated filer had submitted 15 Monthly Returns late over a two-year period, with unreported lobbying of SPOHs on 29 separate occasions, receiving a penalty of \$3,000. In DD 23-04, the designated filer filed their Registration Return 16 months late, lobbying on 10 different occasions while not registered. The designated filer received a penalty of \$4,000.

[55] In this case, the organization filed their Registration Return approximately two years, four months late, lobbying on 43 separate occasions while unregistered. The period over which the organization lobbied while unregistered is longer than in the previous decisions, and the number of occasions on which lobbying took place is higher. This is a significant amount of unreported lobbying. However, the designated filer did report the contravention to the ORL and worked quickly to meet their obligations under the LTA. This is commendable and mitigates, to some extent, the gravity of the contravention. I have taken this and the other facts into consideration in arriving at a penalty for this contravention.

[56] Given all of the circumstances outlined above, it is my view that a reasonable penalty would be \$3,500.

## **CONCLUSION**

1. Under s. 7.2(2) of the LTA, I find that the designated filer contravened s. 3(3) of the LTA when they failed to submit an initial Registration Return within 10 days of lobbying conducted by its in-house lobbyists. The notice of allegation has been substantiated.
2. I impose an administrative penalty of \$3,500.

3. The designated filer must pay the amount for the penalty no later than **August 8, 2024.**
4. If the designated filer requests reconsideration under s. 7.3 of the LTA, they are 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: June 27, 2024

ORIGINAL SIGNED BY

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Tim Mots, Investigator and  
Delegate of the Registrar of Lobbyists