

RECONSIDERATION 14-01

(INVESTIGATION REPORT 14-03)

BC FEDERATION OF LABOUR

DESIGNATED FILER: JAMES SINCLAIR

Summary: The finding in Investigation Report 14-03 that the designated filer contravened the *Lobbyists Registration Act* is upheld. The administrative penalty of \$1,000 imposed on the designated filer is also upheld. The designated filer did not provide compelling grounds that the Investigator's findings should be varied.

Statutes Considered: *Lobbyists Registration Act*, S.B.C. 2001, c. 42; Lobbyists Registration Regulation, B.C. Reg. 284/2002.

INTRODUCTION

[1] Investigator, Tim Mots, issued Investigation Report 14-03 ("IR14-03") on March 14, 2014. The circumstances surrounding IR14-03 relate to the responsibility of BC Federation of Labour's designated filer to file a return in the prescribed form containing information described in s. 4 of the *Lobbyists Registration Act* ("LRA"). In this instance, BC Federation of Labour's designated filer as determined by the definition set out in the LRA is the President, James Sinclair.

[2] In IR14-03, Investigator Mots determined under s. 7.2(2) of the LRA that Mr. Sinclair had contravened s. 3(3)(b) of the LRA and imposed an administrative penalty of \$1,000. On April 4, 2014, the BC Federation of Labour requested a reconsideration under s. 7.3 of the LRA of both the finding that Mr. Sinclair had not complied with the LRA and the administrative penalty amount.

BACKGROUND

[3] A designated filer is required under s. 3(3)(b) of the LRA to file a return that sets out their lobbying activities with the Registrar of Lobbyists within 30 days of the end of each 6-month period after the date of filing the previous return. The return is what keeps the designated filer registered as a lobbyist under the LRA. On January 8, 2013, BC Federation of Labour's registration expired.

[4] On January 22, 2013, the designated filer submitted a return to the Office of the Registrar for Lobbyists for British Columbia (“ORL”), generating a new registration. In this return, the designated filer included an email address at which the ORL could contact him.

[5] Section 4(1) of the LRA sets out the information required to complete a return. Section 4(1)(k) of the LRA obliges the designated filer to provide the name of the ministry which the designated filer has lobbied or intends to lobby. Section 4(1)(m) of the LRA sets out a similar obligation regarding the name of the minister.

[6] On February 7, 2013, the ORL’s registry manager notified the designated filer by email that the return he filed on January 22, 2013 contained incorrect information pertaining to the names of ministers and their ministries. The registry manager set out the corrections that the designated filer needed to make.

[7] Section 2(2) of the Lobbyists Registration Regulation (“LRR”) notes that if the Registrar requests corrections to a return, the return is deemed to not have been received by the Registrar. Section 2(3) of the LRR provides 10 days for the designated filer to make the required corrections. If corrections are requested and received within 10 days of the return being submitted, the return is deemed to have been received on the day it was originally submitted. Section 2(4) of the LRR stipulates if the corrections are made after 10 days of the original submission, the return is deemed to be received on the date the last correction was submitted to the ORL.

[8] On February 28, 2013, the ORL’s registry manager notified the designated filer by email that he had missed the deadline for submitting corrections and he would now have to file a new return that, upon receipt, the ORL would consider late.

[9] On April 19, 2013, a staff member from the BC Federation of Labour attempted to update its January 22, 2013 return and discovered it was not accessible. The staff member then contacted the ORL and learned that the organization would have to file a new return. The ORL accepted the new return, but did consider it to be filed late in contravention of s. 3(3)(b) of the LRA.

[10] On April 25, 2013, the registry manager emailed the BC Federation of Labour and asked for an explanation as to why it did not re-register within the 30 days required under s. 3(3)(b) of the LRA. The organization did not respond.

[11] On May 3, 2013, the registry manager emailed the designated filer and asked why the organization did not re-register within the 30 days required under s. 3(3)(b) of the LRA. The designated filer was asked to respond by May 7, 2013. The designated filer did not respond.

[12] On June 6, 2013, the registry manager emailed the designated filer a letter stating that the ORL was commencing an investigation under s. 7.1 of the LRA to determine if the designated filer had complied with the LRA.

[13] In its June 7, 2013 response, the organization stated that it believed its January 22, 2013 return had been accepted and claimed that it was originally unaware that the ORL had alerted it to the errors in registration. It was not until April 19, 2013 when the organization attempted to update its registration that it discovered this return was not accessible. The organization contacted the ORL and submitted a new return.

[14] On September 26, 2013, the Acting Deputy Registrar notified the designated filer that the ORL was providing formal notice under s. 7.2(1)(a) of the LRA that it formed the belief, subject to submissions from the designated filer, that he had not met his obligations under s. 3(3)(b) of the LRA when he failed to file a return within 30 days of the expiration of his previous return.

ISSUES

[15] The first issue in this reconsideration is whether I should confirm or rescind Investigator Mots' finding of non-compliance with s. 3(3)(b) reached in IR14-03.

[16] The second issue is whether I should confirm or vary the \$1,000 administrative penalty imposed by Investigator Mots in IR14-03.

[17] The third issue is whether IR14-03 and this reconsideration should be published.

DISCUSSION

Should I confirm or rescind the finding of non-compliance reached by the Investigator?

[18] In IR14-03, the Investigator found that the designated filer failed to make corrections within 10 days of being notified that the return he had filed on January 22, 2013 was not accepted and that corrections were required. As a result, the Investigator found that the designated filer failed to meet his obligation under s. 3(3)(b) of the LRA to file an accurate return within 30 days of the expiration of the BC Federation of Labour's previous return.

[19] The designated filer submits in his April 4, 2014 reconsideration request, that email is not an appropriate method of correspondence from the ORL for

matters of such importance. I do not agree with this submission. Email is a common means for communication and is acknowledged as an acceptable communication method in such legislation as the *Electronic Transactions Act*. Further, BC Federation of Labour provided the ORL with this email address as part of its business contact information in the return it filed on April 19, 2013. After supplying the ORL with this email address, it is not then reasonable for the designated filer and the BC Federation of Labour to suggest that the ORL should not use this email address for communication.

[20] The BC Federation of Labour also submits that the February 7, 2013 and February 28, 2013 emails from the ORL registry manager do not contain language that explicitly sets out a deadline before which the organization needed to make corrections to the return in order for the ORL to accept them. This does not alter the fact that the designated filer failed to make corrections to the return within 10 days as is required by s. 2(3) of the LRR. The designated filer is ultimately responsible for knowing and fulfilling his legal requirements under the LRA and the LRR. The February 7, 2013 email from the registry manager clearly set out the changes that the designated filer needed to make to the return submitted on January 22, 2013. However, it was not until April 19, 2013, when the BC Federation of Labour attempted to update its registration that a staff member discovered the January 22, 2013 return was not accessible. It appears from the evidence before me that the designated filer either overlooked emails from the ORL's registry manager clearly stating that he needed to make corrections or he saw the emails but took no action to make the required corrections.

[21] BC Federation of Labour also argues that its lobbying intentions did not change and that it was a Cabinet change that created errors in its return. However, as was stated by the Investigator in IR14-03, the fact that government makes changes to ministerial positions does not excuse designated filers from their requirement to comply with the LRA. Section 3(3)(b) of the LRA requires an organization's designated filer to file a return containing the information set out in s. 4(1) of the LRA. Sections 4(1)(k) and 4(1)(m) require the designated filer to name the ministries and ministers who the designated filer has lobbied or intends to lobby. This means that a designated filer has an obligation under the LRA to correctly record the ministries and ministers that he or she has lobbied or intends to lobby. This obligation is not altered by cabinet changes.

[22] Neither the submissions of the designated filer nor the BC Federation of Labour provide adequate evidence to justify rescinding the original finding of contravention by the Investigator. Based on the information before me, I am

satisfied that the designated filer failed to make corrections within 10 days of being notified that the return he had filed on January 22, 2013 was not accepted and that corrections were required. As a result, I confirm the Investigator's finding that the designated filer failed to meet his obligation under s. 3(3)(b) of the LRA to file an accurate return within 30 days of the expiration of the BC Federation of Labour's previous return.

Should I confirm or vary the \$1,000 administrative penalty imposed by the Investigator?

[23] The Investigator stated in IR14-03 that the "purpose of the LRA is to promote transparency in lobbying by requiring lobbyists to disclose accurate, current and complete information." As he also noted, "[f]ailing to keep information in registrations up to date and accurate undermines the ability of the public to understand who is actually attempting to influence government at any point in time, thereby defeating the LRA's goal of transparency."

[24] The Investigator identified various factors this Office considers in determining the amount of an administrative penalty. While the designated filer does not have any previous violations of the LRA, the Investigator did note that the BC Federation of Labour received a letter in 2012 regarding apparent non-compliance with a warning that further instances would result in the ORL taking action.

[25] The Investigator also considered the gravity and magnitude of the contravention of the designated filer in discussing the effect of his not making the required corrections. The end result was that the BC Federation of Labour lobbied from January 8, 2013 without being registered or having its lobbying activities open to the public until it filed its corrected return on April 19, 2013.

[26] While I do not believe the designated filer deliberately contravened the LRA, I do find it to be a substantial oversight on his behalf that he did not take action to make the required corrections. The designated filer provided the ORL with the email address as part of the business contact information of the BC Federation of Labour. The ORL's registry manager subsequently reasonably used this email address to communicate with the designated filer. It was therefore incumbent on the designated filer to monitor this email address for correspondence from this Office. In this instance, it appears from the evidence before me that he either overlooked or took no action in relation to two emails from the ORL's registry manager regarding the need to correct the return he filed on January 22, 2013. There is no suggestion that the designated filer did not receive the emails. Eventually, nearly three months later, another staff member of the BC Federation of Labour noticed that its return was not accessible and contacted our office.

[27] There is no evidence that the designated filer or the BC Federation of Labour benefited from this contravention.

[28] I am satisfied that this investigation, reconsideration and ensuing administrative penalty will be sufficient to ensure the designated filer ensures that he has met his obligations under the LRA in the future.

[29] In arriving at the amount of the administrative penalty, the Investigator also considered the issue of general deterrence and that “[i]t is important for all designated filers to understand that keeping registrations current is not simply ‘paperwork’. It is a serious legal obligation that they must meet if the objectives of the LRA are to be achieved.”

[30] I agree with the Investigator about the importance of providing a general deterrent to other lobbyists. Lobbyists cannot allow their registration to lapse and continue to lobby without my office imposing consequences.

[31] I agree with the reasoning of the Investigator as set out above and find that an administrative penalty in the amount of \$1,000 is appropriate to meet the objectives of specific and general deterrence in relation to contravention of the LRA. As I set out in Reconsideration 12-01, I believe penalties starting at \$1,000, which are higher than this Office has imposed to date, are necessary even in instances of an organization or individual’s first contravention. I note that this is consistent with the gradual escalation in administrative penalties imposed by my Office since this power was brought into force in 2010. As a result, I am confirming the \$1,000 administrative penalty the Investigator imposed in IR14-03.

Should IR14-03 and this reconsideration be published?

[32] Investigator Mots found that IR14-03 should be made public as “the publication of this report and recognition that the ORL will issue administrative penalties to those who contravene the LRA, will remind all designated filers of their legal obligations to be diligent in keeping their registrations current and making required corrections within the legislated timeframes.” Mr. Sinclair did not dispute this finding in his request for reconsideration, nor did he take any position on the publishing of this decision. Nonetheless, I will consider this matter.

[33] I have the authority to publicly disclose reports under s. 7.91 of the LRA. I agree with the reasoning of Investigator Mots that the publication of IR14-03 is desirable as a reminder to designated filers as well as other lobbyists and the public of the need to keep registrations current and to make required corrections

within legislated timeframes. It is also of importance that this is the first ORL investigation regarding a designated filer from an organization rather than a consultant lobbyist and this decision can provide guidance to all other designated filers as to their obligations under the LRA. If I chose not to publish this decision and IR14-03, I would not be advancing these important objectives.

CONCLUSION

[34] For the above reasons, under s. 7.3(3)(b) of the LRA, I confirm the Investigator's determination in IR14-03 that Mr. Sinclair pay an administrative penalty of \$1,000. I have also decided to publicly disclose this decision and IR14-03.

[35] As required by s. 7.3(3)(c) of the LRA, I extend the date by which the confirmed administrative penalty of \$1,000 must be paid to 30 days after the publication of this decision, that is on or before **July 21, 2014**.

June 6, 2014



Elizabeth Denham
Registrar of Lobbyists

