O.R.L.
office of the registrar of lobbyists
BRITISH COLUMBIA

RECONSIDERATION 14-02

(INVESTIGATION REPORT 14-05)

LOBBYIST: Cynthia (Burton) Shore

Summary: The finding in Investigation Report 14-05 that the consultant lobbyist contravened s. 3(1) of the *Lobbyists Registration Act* is upheld. The administrative penalty of $700 imposed on the lobbyist is also upheld. The lobbyist did not provide compelling grounds that the Investigator's findings should be varied.

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

INTRODUCTION

[1] Investigator, Tim Mots, issued Investigation Report 14-05 ("IR14-05") on March 14, 2014. The circumstances surrounding IR14-05 relate to the responsibility under the *Lobbyists Registration Act* ("LRA") of consultant lobbyist Cynthia (Burton) Shore to file a return in a timely manner that sets out her lobbying responsibilities.

[2] In IR14-05, Investigator Mots determined under s. 7.2(2) of the LRA that Ms. Shore had contravened s. 3(1) of the LRA and imposed an administrative penalty of $700. On April 9, 2014, Ms. Shore requested a reconsideration under s. 7.3 of the LRA of both the finding that she had not complied with the LRA and the administrative penalty amount.

BACKGROUND

[3] This reconsideration focuses on "consultant lobbyists", *i.e.,* individuals who undertake to lobby for payment on behalf of a client. A consultant lobbyist is required under s. 3(1) of the LRA to file a return that sets out their lobbying activities with the Office of the Registrar of Lobbyists for British Columbia ("ORL") within 10 days of entering into an undertaking to lobby on behalf of a client. The return is what ensures the individual is registered as a consultant lobbyist under the LRA.

[4] On June 25, 2013, Ms. Shore filed a return with the ORL. Section 4(1)(b)(ii) of the LRA requires a consultant lobbyist to submit the start date and the scheduled end date of any undertaking to lobby. In this instance, Ms. Shore entered May 1, 2013 as the start date of her undertaking to lobby on behalf of MWH Business Solutions.

[5] Upon Ms. Shore's filing of her return on June 25, 2013, ORL staff received an automated system alert that her registration appeared to be non-compliant because more than 10 days had passed from the May 1, 2013 start date of her undertaking to lobby.

[6] On July 12, 2013, the ORL commenced an investigation under s. 7.1 of the LRA to determine whether the consultant lobbyist's registration was compliant. In the ORL Registry Manager's letter to the consultant lobbyist, she asked for Ms. Shore to explain why she had filed her return past the deadline set out in s. 3(1) of the LRA.

[7] On July 16, 2013, Ms. Shore responded to the ORL's letter and did not dispute the fact that she entered into a lobbying undertaking on May 1, 2013 and did not register with the ORL until June 25, 2013. Ms. Shore did, however, offer an explanation for doing so that I will refer to later in this reconsideration.

[8] On September 26, 2013, the Acting Deputy Registrar informed the consultant lobbyist that he was providing formal notice under s. 7.2(1)(a) of the LRA that he had formed the belief, subject to submissions from the consultant lobbyist, that she had not met her obligations under s. 3(1) of the LRA when she failed to file a return within 10 days of entering into an undertaking to lobby on behalf of MWH Business Solutions.

ISSUES

[9] The first issue in this reconsideration is whether I should confirm or rescind Investigator Mots' finding of non-compliance with s. 3(1) of the LRA reached in IR14-05.

[10] The second issue is whether I should confirm or vary the $700 administrative penalty imposed by Investigator Mots.

[11] The third issue is whether IR14-05 and this reconsideration should be published.

DISCUSSION

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

[12] In IR14-05, the Investigator found that the consultant lobbyist failed to file a return with the ORL within 10 days of entering into an undertaking to lobby on behalf of a client. As a result, the Investigator found that the consultant lobbyist failed to meet her obligation under s. 3(1) of the LRA. While Ms. Shore does not dispute that she filed her return on June 25, 2013 or that she entered into an undertaking on May 1, 2013, she says she was not actually lobbying on behalf of MWH Business Solutions on May 1, 2013.

[13] I accept Ms. Shore's assertion she was not actually lobbying on May 1, 2013. However, this does not relieve her from her obligations under s. 3(1) of the LRA. That section is not focussed on actual lobbying but rather on the need to file a return "[w]ithin 10 days after entering into an undertaking to lobby on behalf of a client…". Ms. Shore failed to do this and therefore failed to comply with the LRA.

[14] Ms. Shore also submits that the LRA should acknowledge that during a time of election, lobbying targets are unidentifiable until a new Cabinet is named. However, no such acknowledgement exists under the LRA. Instead, the LRA requires consultant lobbyists to ensure they keep a current record of the public office holders they have or expect to lobby.

[15] Ms. Shore also notes that there is a conflict between how the LRA defines "undertaking" and the dictionary definition. I note that the Legislature has defined that "undertaking" in the LRA "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 …". The definition provided by the Legislature in the LRA is the definition that is relevant to my interpretation of that Act, regardless of any possible conflict with a dictionary definition.

[16] Based on the information before me, I am satisfied that the consultant lobbyist failed to file a return with the ORL within 10 days of entering into an undertaking to lobby with MWH Business Solutions. As a result, I confirm the Investigator's finding that Ms. Shore failed to meet her obligation under s. 3(1) of the LRA.

Should I confirm or vary the $700 administrative penalty imposed by the Investigator?

[17] The Investigator stated in IR14-05 that the "purpose of the LRA is to promote transparency in lobbying by requiring lobbyists to disclose accurate, current and complete information." He also noted that "[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."

[18] The Investigator identified various factors this Office considers in determining the amount of an administrative penalty. While the consultant lobbyist does not have any previous violations of the LRA, the Investigator did note that she received an email in 2010 regarding apparent non-compliance with s. 3(1) of the LRA. After Ms. Shore responded to this email, the ORL did not pursue the matter further. Nonetheless, as a result of this previous interaction with the ORL, Ms. Shore should be aware of her responsibility to register within 10 days of entering into an undertaking to lobby on behalf of a client.

[19] The Investigator also considered the gravity and magnitude of the contravention of the consultant lobbyist. When Ms. Shore submitted her June 25, 2013 return to the ORL, she certified May 1, 2013 as the start date of her undertaking to lobby on behalf of her client. It is fundamentally important that lobbyists both ensure the accuracy of information they register with the ORL and that they subsequently ensure they meet their obligations under the LRA.

[20] I agree with the Investigator that there is no evidence that this contravention was deliberate.

[21] There is also no evidence that the consultant lobbyist benefited from this contravention.

[22] I am satisfied that this investigation, reconsideration and the resulting administrative penalty will be sufficient to ensure that Ms. Shore meets her obligations under the LRA in the future.

[23] 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 lobbyists 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."

[24] I agree with the reasoning of the Investigator as set out above and find that the $700 administrative penalty is appropriate to meet the objectives of specific and general deterrence in relation to contravention of the LRA. I note that this amount 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 $700 administrative penalty the Investigator imposed in IR14-05.

Should IR14-05 and this reconsideration be published?

[25] Investigator Mots found that IR14-05 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 lobbyists of their legal obligations …". Ms. Shore submits that publication of this decision would be punitive.

[26] I have the authority to publicly disclose reports under s. 7.91 of the LRA. I agree with Investigator Mots that the publication of IR14-05 is desirable as a reminder to all lobbyists and the public of the need to file accurate returns within legislated timeframes. If I chose not to publish this decision and IR14-05, I would not be advancing those important objectives.

CONCLUSION

[27] For the above reasons, under s. 7.3(3)(b) of the LRA, I confirm the Investigator's determination in IR14-05 that Ms. Shore pay an administrative penalty of $700. I have also decided to publicly disclose this decision and IR14-05.

[28] As required by s. 7.3(3)(c) of the LRA, I extend the date by which the confirmed administrative penalty of $700 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