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

RECONSIDERATION REPORT 22-01

(DETERMINATION DECISION 22-01)

DESIGNATED FILER: Shannon Leininger

December 1, 2022

SUMMARY: In Determination Decision 22-01, an Investigator found that designated filer for Cisco Canada Co. contravened ss. 4(1)(g) and 4(1)(k) and issued administrative penalties of $1,500 and $3,000, respectively. The designated filer requested reconsideration of the finding of contravention of s. 4(1)(k) and corresponding penalty on the basis that the interpretation of the words "expects to lobby" were interpreted too narrowly by the Investigator. The Registrar confirmed the findings and penalty of the Investigator. The words "expects to lobby" must be interpreted in light of the purpose of the Act and an interpretation that allows designated filers to list any ministry or Provincial entity or public office holder the designated filer might lobby is inconsistent with that purpose.

Statutes Considered: *Lobbyists Transparency Act,* S.B.C. 2001

Authorities Considered: Determination Decision 22-01; *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27; *British Columbia v. Philip Morris Internationa*l, Inc., 2018 SCC 36; *Placer Dome Canada Ltd. v. Ontario (Minister of Finance),* 2006 SCC 20.

INTRODUCTION

[1] In Determination Decision 22-01, Tim Mots, an Investigator with this Office, determined that the designated filer for Cisco Systems Canada Co. (Cisco) failed to list the name and address of its parent company contrary to s. 4(1)(g) of the *Lobbyists Transparency Act* (LTA) and issued an administrative penalty of $1,500. Investigator Mots also found that the filer listed Ministries and Provincial entities in its Registration Return that it did not lobby or expect to lobby contrary to s. 4(1)(k) of the LTA and issued an administrative penalty of $3,000.

[2] In a letter dated October 3, 2022, the designated filer accepts the finding and corresponding penalty of Investigator Mots under s. 4(1)(g), but requests reconsideration pursuant s. 7.3 of the LTA of the finding of contravention and penalty made under s. 4(1)(k) of the LTA based on a "breach of administrative fairness."[1]

[3] In this reconsideration I will only be reviewing the decision made by Investigator Mots under s. 4(1)(k) of the LTA. In accordance with s. 7.3(3), in making this decision, I have considered the designated filer's reconsideration request as well as their submission, the evidence, their arguments, and the law in the hearing process that led to Determination Decision 22-01.

[4] For the reasons that follow, I confirm the finding and penalty under review.

RELEVANT SECTIONS OF THE LTA

[5] Section 4(1)(K of the LTA states:

> **Form and Content of registration return**
>
> **4** (1) Each registration return filed under section 3 must include the following information, as applicable:
>
> …
>
> (k) if a lobbyist named in the registration return has lobbied or expects to lobby a public office holder employed by or serving in a ministry of the government of British Columbia or a Provincial entity, the name of the ministry or Provincial entity and any prescribed information respecting the ministry or 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.

[1] Reconsideration Request, p. 1.

[6] Section 7.3 for its part states:

Reconsideration

7.3 (1) Within 30 days after being informed of a contravention in accordance with section 7.2, a person may request the registrar to reconsider a decision under any or all of section 7.2 (2) (a), (b) or (b.1), as applicable.

(2) A request under subsection (1) for a reconsideration of a decision under any or all of section 7.2 (2) (a), (b) or (b.1), as applicable,

(a) must

(i) be in writing, and

(ii) identify the grounds on which a reconsideration is requested, and

(b) in the case of a request for a reconsideration of a decision under section 7.2 (2) (b.1), may include a request for a stay of the prohibition order in respect of which the reconsideration is requested.

(3) On receiving a request under subsection (1), the registrar must do all of the following:

(a) consider the grounds on which the reconsideration is requested;

(b) confirm or rescind the decision referred to in any or all of section 7.2 (2) (a), (b) or (b.1), as applicable, or confirm or vary the monetary amount or the prohibition duration;

(c) if the monetary amount is confirmed or varied, confirm or extend the date by which the amount must be paid;

(d) if the prohibition duration is confirmed or varied, specify the dates that the prohibition starts and ends;

(e) notify the person in writing of the matters under paragraphs (b) to (d) of this subsection, as applicable, and of the reasons for the decision to rescind, confirm or vary under this section.

(4) If a request for reconsideration under this section includes a request for a stay of the prohibition in respect of which the reconsideration is requested, the registrar may

(a) grant or refuse a stay of that prohibition, and

(b) impose conditions on a stay granted under this section.

BACKGROUND

[7] On October 27, 2021 the designated filer submitted a Monthly Return under Registration Return number 7328-994, and certified the information in the return to be true under s. 5(1) of the LTA. The Registration Return included 127 entries, being every possible ministry or Provincial entity, in addition to any Member(s) of the Legislative Assembly.

[8] On October 27, 2021 ORL staff emailed the designated filer to confirm whether they had lobbied or expected to lobby each of the ministries and Provincial entities listed in the Registration Return.

[9] In an exchange that followed, a representative of the designated filer stated that "Cisco adds all of the listed Ministries and Provincial Entities to all its registrations across the Country." ORL staff then requested that Cisco resubmit its Registration Return to update the list of ministries and Provincial entities to only reflect those recently lobbied or with plans to lobby.

[10] On December 3, 2021, the Director, Government Affairs for Cisco acting on behalf of the designated filer, confirmed in a telephone conversation with ORL staff that the inclusion of all ministries and Provincial entities was done to err on the side of over-reporting, and the actual range the should be between 12-18 ministries and Provincial entities. An updated Registration Return was submitted on that same day, and activated after corrections requested by ORL staff on December 13, 2021. The total number of entries was 27 (a reduction of 96).

Decision of Investigator Mots

[11] In their submissions before Investigator Mots, the designated filer argued the phrase "expects to lobby" was vague, with no guidance on how to interpret the phrase and that the designated filer therefore took a broad interpretation of its meaning.

[12] In considering this position, Investigator Mots reviewed the requirements of a filing a Registration Return in light of the purpose of the LTA, which he concluded broadly is transparency. He stated that "the public should be able to discern, at first read of a registration return, a general overview of lobbying activities that includes the topics of lobbying and the entities being lobbied."[2] Drawing on a dictionary definition and viewed in light of the stated purpose, Investigator Mots concluded the term "expects" from an ORL perspective means that

[2] Determination Decision 22-01 at para 24.

"either a communication will take place (i.e. a meeting is scheduled, a letter will be sent) or there is a strong likelihood that a communication will take place."[3]

[13] The Investigator further concluded that the term "expect" should not be confused with "might" and if a designated filer is unsure of whether they will lobby a particular entity in the future, they should not enter it into their Registration Return but instead update their Registration Returns as other meetings take place during the timeframe of a registration.

[14] Based on his understanding of "expects to lobby," Investigator Mots then found that the designated filer never intended to lobby all 127 ministries or Provincial entities it had listed in its return, contrary to s. 4(1)(k).

[15] Having found the designated filer contravened the LTA, Investigator Mots then considered what, if any, penalty may be appropriate in the circumstances and in particular reviewed the following factors:

- 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.[4]

[16] In considering the above factors, Investigator Mots noted that Cisco had no previous contraventions or warnings and the case before him was the designated filer's first contravention, which all weight towards a lower penalty.

[17] In regards to gravity and magnitude of the contravention, Investigator Mots found that the designated filer's overreporting of their intended lobbying efforts demonstrated that the designated filer recognized that it hadn't lobbied or didn't expect to lobby all of the ministries and Provincial entities listed in their Registration Return:

> It follows that erring on the side of overreporting means one is listing more ministries of the government of British Columbia and Provincial entities than is necessary. In

[3] *Ibid,* para 24.

[4] *Ibid,* para 36.

> other words, it recognizes it has not or does not expect to lobby all of the ministries of the government of British Columbia or Provincial entities it has included in its registration return. Consequently, the designated filer entered information into the registration return that, given their knowledge of the information entered, had reason to believe was not true.[5]

[18] Investigator Mots rejected the argument made by Cisco that the term "expects to lobby" was vague and stated that ORL staff were available to clear up ambiguity in language. The Investigator weighed the above factors in favor of a higher penalty, in particular the fact that inaccurate information was included in Registration Returns for a period of several years.

[19] Investigator Mots concluded that while the organization was "thoughtless, disorganized, or careless in fulfilling its obligations under the LTA," the contravention in issue was not deliberate.[6] The Investigator also found no evidence Cisco derived any economic benefit from the contravention, and found that the designated filer and Cisco eventually corrected the error.[7]

[20] Investigator Mots determined that this was not a case where "no penalty" is appropriate and found that the circumstances called for an administrative penalty both to encourage the designated filer to take their obligations under the LTA with the utmost seriousness, and to remind all designated filers of their legal obligations in keeping registrations current and accurate.[8]

[21] After reviewing similar cases and stating the range for failing to enter accurate information into a registration return, Investigator Mots imposed a penalty of $3,000.00.

Position of the Designated Filer on Reconsideration

[22] The designated filer takes the position that Investigator Mots' Determination Decision made "several suggestions that are unjustified or based on false assumptions, therefore not meeting the standard of administrative fairness."[9] In support of this position, the designated filer advances three lines of argumentation which are reproduced below.

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[5] Ibid, para 40.

[6] *Ibid,* para 44

[7] *Ibid*, paras 44-46.

[8] *Ibid*, para 48.

[9] Reconsideration Request, p. 1.

[23] First, the designated filer takes issue with the statement by Investigator Mots that Cisco was "thoughtless, disorganized, or careless in fulfilling its obligations under the LTA."[10] Instead, the designated filer points to the fact that different, reasonable interpretations of the phrase "expects to lobby" exist, and it was unreasonable for Investigator Mots to "penalize Cisco for its initial interpretation of the expression prior to any guidance provided, and that an official and consistent interpretation of the expression should be added to the OLR's published guidance documents."[11] The designated filer interpreted the phrase more broadly, to mean "a ministry of the government of British Columbia or a Provincial entity that [the designated filer] intended to lobby in the future"[12] (the designated filer's emphasis).

[24] Second, the designated filer challenges the conclusion by Investigator Mots that Cisco's practice of over-reporting was indicative of an intention by Cisco to purposefully file inaccurate information. Instead, Cisco argues that "in an assessment of risk, Cisco considered that a more narrow reporting of lobbying activities would cause more harm than reporting ministries and Provincial entities that we expect to lobby but do not end up lobbying."

[25] The third and final grounds advanced by the designated filer is that Investigator Mots "erroneously assumes that Cisco knew or should have known that its registration was incorrect." The designated filer goes on to argue that the fact that no guidance has been published on the meaning of the phrase "expects to lobby," in particular in "environment where all other key terms are defined, leads designated filers to assume no rigid definition exists."[13] A finding of contravention on that basis, says the designated filer, is "unjustified and based on false assumptions,"[14] and does not meet the standard of administrative fairness, which must be "considered in the context within which the information that was available at the time the designated filer signed the Registration Return."[15]

[26] The designated filer requests the finding of contravention under s. 4(1)(k) and the corresponding administrative penalty be reconsidered.

[10] *Ibid*, p. 1.
[11] *Ibid*, p. 2.
[12] Reconsideration Request, p. 1.
[13] Reconsideration Request, p. 3.
[14] *Ibid*, p. 3.
[15] *Ibid,* p. 3.

ISSUES UNDER CONSIDERATION

[27] The issues before me on this reconsideration are as follows:

1. Should I confirm or rescind Investigator Mots' finding of non-compliance with s. 4(1)(k) of the LTA reached in Determination Decision 22-01; and
2. If necessary, should I confirm or vary the $3,000.00 administrative penalty imposed.

DISCUSSION

Finding of non-compliance with s. 4(1)(k)

[28] The designated filer has asked me to interpret the term "expects to lobby" broadly enough such that no breach of s. 4(1)(k) occurred.

[29] The approach to statutory interpretation adopted by the SCC has long been to discern legislative intent by examining the words of a statute in their entire context and in their grammatical and ordinary sense, in harmony with the statute's scheme and object.[16] The *Interpretation Act* also requires that "[e]very enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects."[17]

[30] The object of the LTA is to create rules and obligations in British Columbia for the purpose of ensuring the lobbying of public office holders transparent and fair. The requirements under s. 4 for what must be included in a Registration Return must be interpreted with that purpose in mind.

[31] Investigator Mots interpreted the phrase "expects to lobby," in light of the purpose of the LTA, to mean "either a communication will take place (i.e. a meeting is scheduled, a letter will be sent) or there is a strong likelihood that a communication will take place".[18] I agree with this interpretation.

[32] The designated filer says that "expects to lobby," should be read as any time "in the future" – as undefined as that might be. On its own that interpretation undermines

[16] *British Columbia v. Philip Morris Internationa*l, Inc., 2018 SCC 36 at 17 citing *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27, at para. 21.
[17] *Interpretation Act,* RSBC 1996, c 238.
[18] Determination Decision 22-01, para 24.

legislation's purpose of allowing the public to understand the true picture of an organization's actual efforts to influence government, but the designated filer's submission goes further. The designated filer says it considered that a narrower reporting of lobbying activities would "cause more harm than reporting ministries and Provincial entities that we expect to lobby but do not end up lobbying." This is a clear acknowledgement that some of their identified targets might *never* actually be lobbied. This approach, if adopted, would surely erode the LTA's purpose. A designated filer could simply list every possible ministry or Provincial entity and public office holder they *might* seek to influence. The result would be little useful information for the public about what actual lobbying activity is occurring.

[33] Further, I do not find the designated filer's argument to be compelling that because no guidance was available and because a different interpretation was given by an ORL staff member,[19] a finding of contravention is unjustified. Organizations are responsible for compliance with the Act, and even where interpretive guidance may be issued, a final determination on the interpretation of a statute must rest with the administrative decision-maker. While an administrative practice can be an "important factor" in case of doubt about the meaning of legislation, it is not determinative.[20]

[34] In summary I agree with Investigator Mots interpretation of "expects to lobby" and further that the designated filer's act of including each of the 127 ministries and Provincial entities in Registration Returns was a violation of s. 4(1)(k). However, I do not share the Investigator's view that the designated filer's actions were "thoughtless, disorganized, or careless". While the designated filer's approach to its statutory obligations was legally incorrect, I am satisfied that its actions were the result of views genuinely held in good faith. In all other respects I confirm the findings of Investigator Mots.

Administrative Penalty

[35] There is no evidence to support the designated filer was deliberate or intentional in its contravention of s. 4(1)(k). While a deliberate contravention is one of the factors considered in determining a penalty, Investigator Mots did not appear to accord any weight to it.

[36] I understand the designated filer's chief concern to be that Investigator Mots appears to have drawn inferences about the intent of Cisco or the designated filer. I find there was no intention to mislead or supply information to the ORL that was not true.

[19] I note that the definition provided by ORL staff was consistent with Investigator Mots' interpretation.

[20] *Placer Dome Canada Ltd. v. Ontario (Minister of Finance),* 2006 SCC 20 at para 40.

[37] Nonetheless, the designated filer takes the position they made a calculated decision about the interpretation of the phrase "expects to lobby," and opted to over-include information in reliance on that interpretation. As discussed earlier, that interpretation was not correct and frustrates the purpose of the LTA generally and that of the Lobbyists Registry in particular. The gravity and magnitude of the contravention is still a relevant consideration. In this case the designated filer was in breach of their requirements for a number of years without actually lobbying. In my view this has the same effect as not submitting a Registration Return or not listing ministries or Provincial entities a designated filer does actually expect to lobby, which weighs in favor of a relatively high penalty being imposed.

[38] Furthermore, awarding a penalty serves the purposes of both specific and general deterrence for other designated filers.

[39] I am of the view the penalty imposed was appropriate. The administrative penalty of $3,000.00 is confirmed.

CONCLUSION

[40] For the above reasons, under s. 7.3(3)(b) of the LTA, I confirm the finding in the Determination Report that the designated filer contravened s. 4(1)(k) of the *Lobbyists Transparency Act* and the administrative penalty of $3,000.00.

[41] I understand that on the instruction of ORL staff, the designated filer has not yet made payment for the $1,500.00 penalty issued for the contravention of s. 4(1)(g) pending the outcome of this decision.

[42] Accordingly, and as required by s. 7.3(3)(c) of the LRA, I extend the date by which the total administrative penalty of $4,500 (being the confirmed amount of $3,000 and $1,500 outstanding from the contravention of s. 4(1)(g)) must be paid to 30 business days after the publication of this decision, that is on or before **January 17, 2023**.

Date: December 1, 2022

ORIGINAL SIGNED BY

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Michael McEvoy
Registrar of Lobbyists for British Columbia