

INVESTIGATION REPORT 15-04

LOBBYIST: Leslie Hrushowy

October 2, 2015

SUMMARY: A consultant lobbyist filed a return to register as a lobbyist on behalf of a client after the deadline required by the *Lobbyists Registration Act*. The lobbyist was found to be in contravention of section 3(1) of the LRA and an administrative penalty of \$750 was imposed.

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

INTRODUCTION

[1] This report concerns an investigation commenced 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 whether there is or has been compliance by any person with the LRA or its regulations. If, after an investigation under s. 7.1, the Registrar or her 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 her to give notice of the alleged contravention and the reasons for her 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. This report focuses on “consultant lobbyists”, individuals who undertake to lobby for payment on behalf of a client.

[3] This report and 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 lobbyist, who registered an undertaking under Registration ID 22625856 to lobby as a consultant on behalf of the Construction Labour Relations Association complied with s. 3(1) of the LRA, and
- (b) if the lobbyist did not comply with the requirements of the LRA, what, if any, administrative penalty is appropriate in the circumstances?

RELEVANT SECTIONS OF THE LRA

"client" means a person or organization on whose behalf a consultant lobbyist undertakes to lobby;

"consultant lobbyist" means an individual who, for payment, undertakes to lobby on behalf of a client;

"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,
- (b) in relation to a consultant lobbyist only, to arrange a meeting between a public office holder and any other individual

"undertaking" 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...

Requirement to file return

- 3(1) Within 10 days after entering into an undertaking to lobby on behalf of a client, a consultant lobbyist must file with the registrar a return in the prescribed form and containing the information required by section 4.

BACKGROUND

[5] On January 15, 2015, the lobbyist registered with the Office of the Registrar of Lobbyists (“ORL”) as a consultant lobbyist for the Construction Labour Relations Association (“CLRA”) under Registration ID 22625856. The undertaking in the return filed by the lobbyist had a start date of January 1, 2015, and an end date of December 31, 2015.

[6] ORL staff noted that the lobbyist’s previous registration for this same client had an undertaking end date of July 31, 2014, which gave rise to the question as to whether the lobbyist had an extension to his undertaking with this client (the lobbyist’s new registration did not reflect this), or whether the lobbyist actually had a new undertaking with the client starting January 1, 2015.

INVESTIGATION

[7] The ORL commenced an investigation under s. 7.1 of the LRA to determine whether the lobbyist had complied with s. 3(1) of the LRA.

[8] In a letter to the lobbyist dated January 15, 2015, ORL staff asked the lobbyist to explain why he had submitted another registration for the CLRA. He was asked to indicate, whether (a) he had an ongoing agreement with the client or (b) his agreement with this client had actually terminated on July 31, 2014 and he had entered into a new agreement starting January 1, 2015. The lobbyist was also asked to explain the discrepancy between the timelines in s. 3(1) of the LRA and when he actually registered. The lobbyist was also asked to provide any written agreement he had with his client.

[9] The lobbyist responded by email on January 15, 2015, indicating that he had forgotten and let his registration for the CLRA lapse.

[10] As per s. 4(2)(a) of the LRA, a lobbyist has 30 days to update the undertaking end date on a registration if there is an extension to the undertaking with their client. Once the 30 days has expired, the Lobbyists Registry system will automatically terminate the registration. Therefore, if an undertaking has been extended and the lobbyist misses the deadline, they must complete and submit a new registration. The undertaking start date must accurately reflect that the lobbyist had an undertaking after the expiry of the previous registration. Therefore, in this case, ORL staff responded to the lobbyist and recommended that he amend his registration to accurately reflect that he had an ongoing agreement with his client, if this was the case. This meant amending the start date to the day after the end date of the previous undertaking.

[11] On January 16, 2015, the lobbyist amended the undertaking start date on Registration ID: 22625856 from January 1, 2015 to August 1, 2014, and the undertaking end date from December 31, 2015, to July 31, 2015. The lobbyist corrected his registration immediately after the inquiry from the ORL. I note that the ORL could have investigated a possible contravention by the lobbyist of s. 4(1) of the LRA for entering

information into his registration that was not accurate, because the start and end dates for the undertaking that he originally provided were incorrect. As the lobbyist made every reasonable effort to correct his registration once he became aware of the discrepancies, the ORL decided not to pursue an investigation into this additional issue.

[12] On February 18, 2015, I sent, pursuant to s. 7.2(1) of the LRA, a notice to the lobbyist setting out the basis for the allegation that the lobbyist had not complied with s. 3(1) of the LRA. I invited the lobbyist to respond in writing to the alleged contravention and provide any information or documentation pertinent to the alleged contravention and any potential penalty.

[13] The notice articulated that Registration ID: 12891316 for an undertaking with the CLRA was end dated July 31, 2014 and it appeared that the lobbyist had not updated this registration's undertaking end date within the timelines in the LRA to reflect the fact that his agreement with this client had been extended.

[14] Therefore, the registration was terminated by the system and the lobbyist was required to submit a new return. This return (Registration ID: 22625856) was deemed to be submitted late as the undertaking start date was August 1, 2014 and was submitted on January 15, 2015. During this timeframe, the lobbyist had an undertaking to lobby on behalf of his client but there was no registration publicly available on the Registry.

[15] The lobbyist responded on March 23, 2015. He stated that the facts in the notice "are accurate" and that he was unable to explain his failure to renew the registration when it became due. He acknowledged that he did receive notice of the pending expiry from the ORL, however "forgot to take appropriate action."

FINDING

[16] Based on the evidence, I find that the lobbyist failed to update the undertaking end date on his return within the timelines in the LRA and was required to submit a new registration for the extension of his undertaking. This registration was in contravention of s. 3(1) of the LRA as the lobbyist failed to file a return within 10 days after entering into an undertaking to lobby on behalf of a client.

ADMINISTRATIVE PENALTY

[17] The purpose of the LRA is to promote transparency in lobbying by requiring lobbyists to disclose accurate, current and complete information.

[18] The LRA makes clear that transparency includes timeliness. This includes the requirement to file a return within the legislated deadline. Failing to file a return in a timely manner undermines the ability of the public to know who is attempting to influence government at any point in time, thereby defeating the LRA's goal of transparency.

[19] In assessing the amount of a penalty, I must consider the following:

- the gravity and magnitude of the contravention,
- previous enforcement actions for contraventions by the person,
- whether the contravention was deliberate,
- any economic benefit derived from the contravention,
- the person's efforts to report and/or correct the contravention,
- the need to deter the individual and others from contravening the LRA in the future, and
- other relevant factors.

[20] I have considered these factors and the submissions made by the lobbyist.

[21] On the question of the gravity and magnitude of the contravention under investigation, the lobbyist allowed his registration to lapse and did not register again for more than five months. The result was that his lobbying activities were not open to public scrutiny. Having registered in the past, the lobbyist was aware of his obligation to file a return within the timelines in the LRA. When the lobbyist realized that he did not have an active return for his undertaking with this client, he registered. However, the lobbyist did not report the correct undertaking start date until he received an investigation letter from the ORL.

[22] There have been no previous enforcement actions for contraventions by the lobbyist.

[23] The lobbyist described the contravention as resulting from inadvertence. I accept this is the case.

[24] There is no evidence that the lobbyist derived any economic benefit from the contravention.

[25] The lobbyist submitted his filing on January 15, 2015 without prompting from the ORL. However after the ORL commenced an investigation, it learned that the correct start date was several months earlier than that declared in this filing.

[26] Together with the above factors, I have also considered whether an administrative penalty is necessary for specific or general deterrence. In my opinion, the circumstances of this case call for an administrative penalty both to encourage this lobbyist to meet his obligations under the LRA and to remind all lobbyists of their legal obligation to be diligent in keeping their registrations current and accurate.

[27] The ORL policies and procedures, which are intended only as a guide, suggest that a penalty between \$100 and \$5,000 be levied for a first contravention of the LRA of registering late.

CONCLUSION

1. Under s. 7.2(2) of the LRA, I find that the lobbyist contravened s. 3(1) of the LRA in respect of registering his undertaking on behalf of the Construction Labour Relations Association. The notice of alleged contravention has been substantiated.
2. I impose an administrative penalty of \$750.
3. The lobbyist must pay this penalty no later than November 13, 2015.
4. If the lobbyist requests reconsideration under s. 7.3 of the LRA, he 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

October 2, 2015

ORIGINAL SIGNED BY

Darrel Woods, Investigator and delegate of the Registrar
Office of the Registrar of Lobbyists