

O.R.L.
office of the
registrar
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Drew McArthur

Acting Registrar of Lobbyists
for British Columbia

REGISTRAR'S MESSAGE

In June 2016, I was honoured to assume the role of Acting Registrar of Lobbyists. During the first few months of my appointment, I turned my attention to administrative matters. In September, we launched a newly designed website and in October, we introduced several improvements to the Lobbyists Registry. I hope that these enhancements will clarify the registration process for new lobbyists and make registration more transparent for returning registrants.

While my time in this Office is limited, I share former Registrar Elizabeth Denham's desire for lobbying reform in British Columbia. The change we wish for is simple: that lobbyists are required to register actual rather than prospective lobbying. This would streamline registration and provide a more accurate record of lobbying activity.

In reviewing the compliance statistics over the past two quarters, I am encouraged to see that more lobbyists are abiding by their obligations under the law. We hope that our public education efforts are playing a part in the evolution of lobbying in British Columbia. Stay tuned: we plan to continue a number of these activities in coming months.

As always, we welcome your comments, questions and suggestions for topics and authors for future issues of this e-newsletter.

NEWS

New ORL website launched

In 2015, a survey of more than 350 lobbyists as well as the public identified a need for website improvements. The new website, which launched in September, provides greater clarity and better functionality to lobbyists, organizations, and the public who visit the site for detailed information about lobbying in British Columbia.

Visit lobbyistsregistrar.bc.ca to view the new website.



Lobbyists Registry upgrades completed

The ORL recently implemented two upgrades to the Lobbyists Registry. The first corrects an issue some lobbyists experienced when they end-dated their registrations. Now, when an organization registration reaches its end date, until the organization re-registers, or until 30 days from the end date, a "termination pending" notification will be displayed. This status will also appear when a consultant lobbyist registration has reached its end date. Thirty days after the end date, the registration will change to terminated status.

The registry now also provides a re-registration message when an organization loads their registration within one month of the end date. Some designated filers in organizations know that their registrations are coming to the end date, and so they log on to access their return a week or two before it expires with the intention of re-registering.

But because re-registration is not available until after the end date of the registration, sometimes they certify and re-submit their return, thinking they are re-registered. To support these users who are being proactive, we will place a notification message at the top of the registration review screen to remind them when their registration is ending, and inform them of when they can re-register. This re-registration message will also remind users who may not be aware that their organization registration is about to end.

KEY SKILLS OF A LOBBYIST

Insight, not access and meeting set-up, is the lobbyist's true value

by Tamara Little & Norma Miller

"Can you get us a meeting with the Premier?"

This is a request all lobbyists will likely hear at some point in their careers — and it is the request that often gives us the most pause.

Why? Because it hits at the heart of the greatest misconception public affairs professionals face: that successful government relations and lobbying is only about access, that it's about being able to make a call, get a meeting, and magically all your problems are solved. That it's about who you know, not what you know.

If only it were that easy.

Not-for-profits, organizations, and businesses achieve their goals through deep understanding of the issue and the policy environment. Meeting with the right people at the right time is definitely part of it. But because it's government's job to understand what stakeholders want and need, getting a meeting is not normally the barrier to success.

Understanding government is the

more important step. What are their current economic goals? What are the competing pressures on government regarding your issue? What has their history on the issue been?

What are other stakeholders saying?

What are the legislative and regulatory requirements?

To answer these questions, a lobbyist must do a lot of homework.

That's why understanding government policy is the lobbyist's real value.

A good lobbyist is a good reader. What do we read? Hansard transcripts, legislation, media coverage, policy documents, service plans. Good strategic advisors, in-house or consultant, read it all.

Of course relationships are also key — and that means meetings, but not usually with the Premier, or even a Minister; at least not right away.

It means doing your research

first and looking at it through a political lens. Then talking to well-informed, insightful, and experienced stakeholders and officials at all levels within government.

Equally important is listening to them (not telling, by the way), then, likely, talking to the Minister responsible, if you haven't been able to find a resolution along the way.

Understanding government is the most important step

At the end of the day, knowing the policies, regulations, context, and potential consequences for your organization (or your client) and government are what's fundamental to effective public affairs. After that, the meeting set up looks easy.

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ONE FOR ALL, OR ONE FOR EACH?

Finding sustainable institutional reform for municipal lobbyist registration in Canada

by Patrick J. Smith

Democratic transparency has moved to a new waterfront over the past few decades. The public's right to know — and accountability to that public — has become a broader expectation. It has expanded to the regulation of lobbying of those involved in more senior levels of governing, and this wave of reform continues, increasingly, into local governing. This article offers some lessons

from Canadian provinces on how to set up a municipal lobbying regulation regime.

What are the alternatives? Five options stand out:

Option One:

None for all – aka, do nothing

There appears no easier response than doing nothing.

Upsides: It is the cheapest, with no immediate financial implications, and it appears the easiest; it is often the governmental default. Changing the public agenda requires overcoming systemic inertia and in-built supports and biases for the status quo.¹

Downsides: Cheapest is not always best; easiest is often much harder in the long run. The status quo may also miss significant emerging trend lines, such as on public expectations on transparency and trust. Doing nothing may have substantial longer term political costs.

Option Two:

One for all – aka, the Quebec Option

Confronted with the prospect of its 1,111 local governments needing local lobbyist regulation legislation, Quebec opted for a one-size-fit-all model: its provincial lobbyist code would apply to all of its municipalities. Other provinces have not followed suit.

Upsides: The major advantage of the Quebec approach is administrative simplicity and sustainability. Local government lobbyists are required to abide by the same set of registration and reporting transparency rules. The rules have been in place now for almost 15 years; their “policing” is done by one office — ensuring consistency in local governments, from major metropolitan centres to townships and villages.²

Downsides: One disadvantage is that province-wide legislation may not reflect real differences and challenges, such as small population, large geographic mass, and isolated communities. For many small communities, with “buy local” policies, this can create ethical conundrums for local councils and local business interests in small communities with such “buy local” policies, requiring a more nuanced approach on lobbying. The more important consideration may be actual differences between lobbying — and lobbyists — at the local vs provincial/state and national levels. Robert Wechsler, of City Ethics, in *The Regulation of Local Lobbying*, reminds us that “lobbying at the local level (except in the largest municipalities) is mostly done by business owners and organization officers, not by professional lobbyists....; (thus) local lobbying codes should not follow federal or state (provincial) codes... (or) most lobbying will remain secret.” This then would defeat aspirations for transparency.



Option Three:

All for all – aka, the Ontario Option

Ontario started down an altogether different path than Quebec, providing for individual municipal lobbyist regulation regimes — at least for its largest municipalities. At the end of the 1990s, as part of Toronto’s response to the provincially mandated amalgamation of Metro Toronto’s six municipalities, changes were made to local procurement and city computer systems and there were issues with several of the City’s major computer

acquisitions and contractual transactions. Toronto's situation required senior (provincial) governmental action ahead of consideration of a province-wide solution. The result was a series of new accountability offices for amalgamated Toronto, including a Lobbyist Registrar.

Upsides: The initial upside in the Toronto case was that action was taken in the case of a major urban ethical crisis. There was strong public support for such action. Another upside was that Toronto (2016 population: 2,652,000) had the administrative and fiscal capacity to undertake such accountability reforms. That would not be the case in most of Ontario's over 400 communities. Ontario has almost half of Canada's 50 cities with over 100,000 residents. It has granted the largest of these communities permission to establish their own registration/ethics regimes — with little provincial guidance.

Downsides: Allowing each municipality to develop their own lobbying and lobbyist registration rules represents administrative overload for many smaller local governments. Equally importantly, if lobbying is recognized as legitimate, having 444 lobbyist regimes, each with its own rules and regulations

would hamstring all but the most sophisticated lobbyist firms or those with only one municipality to lobby. Each of Ontario's larger local governments — Ottawa, Hamilton, and Brampton, so far — has a distinct lobbying regulation regime.³ The question is, will the model of One for Each further extend itself, or will it leave most of Ontario's local governments bereft of lobbyist regulations?

Option Four:

Squaring the circle? One for some, and one for the rest?

– aka, a possible British Columbia hybrid option

Given that Ontario has already created four different large city-based lobby regimes — with several others pending — what might it do with the remaining 400+ local governments? Administrative fairness and efficiency requirements would suggest some form of over-arching model; 83% of Ontario is unincorporated territory. A majority of local authorities are under 25,000 in population.

This might mean that under permissive legislation (except for Toronto), more big cities, (e.g. over 100,000) with more capacity, develop their own lobbying regimes and the province has the rest fall under no form of province-wide terms and conditions.

Upsides: There might be comparative lessons for matters around local governmental lobbying across Canada. Hybrid modeling might work. Perhaps as few as 10-12 big city regions in Canada might avail themselves of such a regime. The rest might then reside under no provincial lobbyist rules.

Downsides: Hybrids by their very nature can add confusion to any regulatory mix. Who would pay for local or for provincial oversight? Who might resolve disputes? What would the increasingly professional lobbyist industry do in response in such a mixed system? And what about public confidence in varied performances?

Option Five:

A dual system, a possible B.C./Canadian model

A variant of Ontario and Quebec models might be administratively instructive – not least for lobbyists – and ensure consistency in regulation by registrars: this would be a dual system of (i) province-wide lobbyist regulation AND a locally-nuanced Municipal code for all local governments – with a separate Deputy Registrar of Lobbyists for Local Government.

Upsides: If there were a separate province-wide template for local governmental lobbying, many of the concerns regularly posed by municipal councillors would be

subsumed under such a dual legislative regime, but one designed specifically for local governments in B.C. and Canada.

Downsides: B.C. has had difficulty devising singular legislative answers for matters such as local government election financing. With municipalities ranging from single digits to over 600,000 in population this can be a challenge, but it does seem administratively possible.

Recommendations

Option Five: In my opinion, having one regime for senior/provincial lobbyists and another, covering differences in local lobbying, would assist regulation going forward.

Local government lobbyist registration in Canada is an idea whose time has come. How it rolls out will determine its impact on transparency reform.

Patrick J. Smith is Director of the Institute of Governance Studies and Professor, Graduate Urban Studies, at Simon Fraser University.

¹ Roger Cobb and Charles Elder, "The Politics of Agenda Setting," *Journal of Politics*, vol.73, no.4, 1971. Inherent biases in favour of doing nothing include the fact that issues and policy alternatives tend to represent the interests and most salient concerns of previously legitimized political forces (aka a community of unregulated municipal lobbyists)... There is a strong bias in favour of existing arrangements and agenda questions.

² Éditeur officiel du Québec, chapter C-27.1 MUNICIPAL CODE OF QUÉBEC, Updated to 1 April 2016

³ Author is grateful for information from Linda Gerkhe, Toronto's Registrar of Lobbyists, March and April, 2016.





ASK THE REGISTRAR

If I am lobbying municipal government, e.g. the City of Vancouver, do I have to register this activity with the Office of the Registrar of Lobbyists for British Columbia?

No, you don't. The Lobbyist Registration Act (LRA) requires individuals and organizations that lobby public office holders and meet specific criteria to register their lobbying activities in an online public registry. Municipal governments, such as the City of Vancouver, do not fall within the definition of "public office holder" in the LRA. As such, you would not need to register any lobbying of municipal governments with the Office of the Registrar of Lobbyists.

I have an active registration with my client, but am not doing any more lobbying for this client. Do I need to actively de-register? And if so, how do I do that?

Yes, you do need to "de-register." The way to do so if you are no longer lobbying on behalf of your client is to end date your registration for the date your undertaking with your client ended. The status of your registration then changes from "Active" to "Termination Pending" for 30 days, and after 30 days it changes to "Terminated."

If I am working on contract for an organization as a lobbyist, should I register as an in-house lobbyist for that organization, or as a consultant lobbyist with that organization as my client?

This will depend on what your contract says. You would need to look at your contract and determine if the description of duties listed in your contract falls within the definition in the Lobbyist Registration Act of consultant lobbyist or in-house lobbyist.

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

"in-house lobbyist" means an employee, an officer or a director of an organization

(a) who receives a payment for the performance of his or her functions, and

(b) whose lobbying or duty to lobby on behalf of the organization or an affiliate, either alone or together with other individuals in the organization,

- i. amounts to at least 100 hours annually, or
- ii. otherwise meets criteria established by the regulations

Do you have a question for the Registrar? Send it to info@bcorl.ca

LESSONS LEARNED



The purpose of the LRA is to promote transparency in lobbying by requiring lobbyists to register. However, the Registry only provides transparency if the information is accurate. Neglecting to register, entering incorrect information, or not maintaining registrations with accurate timelines undermines the integrity of the Registry and clouds the transparency it is supposed to provide. If the Registry is inaccurate, it will cease to fulfill the function legislators intended.

This is why the ORL investigates alleged contraventions. In assessing each alleged infraction, investigators review the circumstances of the case, examine the evidence, and if the contravention is substantiated, levy an appropriate penalty. Penalties are determined by the severity of the contravention, previous enforcement actions, whether the contravention was deliberate, if the contravention resulted in economic gain, if the registrant sought to report or correct the contravention, and whether a penalty is needed for general or specific deterrence.

Here are some recent enforcement actions with a common thread — all related to consultant lobbyists failing to file a return or to register. The full version of all reports are available on the ORL website.

Consultant lobbyist fails to file a return within 10 days

On June 29, 2015, Mr Danchilla, a consultant lobbyist with Canadian Strategy Group, registered an undertaking for Canadian Tire with a start date of June 29, 2015.

On that same date, ORL staff sent Canadian Tire a client verification request asking them to verify their undertaking with consultants of Canadian Strategy Group. Canadian Tire confirmed that the lobbyist provides government relations support to them in British Columbia and they verified that in January 2015 they asked Canadian Strategy Group to arrange some meetings with public office holders in British Columbia. On July 21, 2015, the lobbyist revised the undertaking start date on his return from June 29, 2015 to January 12, 2015.

The investigator found that Mr Danchilla did not comply with s. 3(1) of the LRA when he failed to file a return within 10 days after entering into an undertaking to lobby on behalf of a client. He was also in contravention of s. 4(1) for filing an incorrect undertaking start date. An administrative penalty of \$700 was imposed.

Consultant lobbyist fails to register undertaking within 10 days

On June 29, 2015, Ms Mosentine, a consultant lobbyist with Canadian Strategy Group, registered as a consultant lobbyist for Canadian Tire with an undertaking start date of June 29, 2015. Ms Mosentine was listed on the registration as a consultant lobbyist working with Mr Danchilla on the Canadian Tire undertaking.

On that same date, ORL staff sent Canadian Tire a client verification request and asked them to verify their undertaking with consultants of Canadian Strategy Group. Canadian Tire confirmed that both lobbyists with Canadian Strategy Group provide government relations support to them in British Columbia and they verified that in January 2015 they asked Canadian Strategy Group to arrange some meetings with public office holders in British Columbia. On July 3, 2015, ORL staff sent an inquiry to the lobbyist as she had not submitted a new registration to the Lobbyists Registry for the undertaking on behalf of Canadian Tire. On July 7, 2015, Ms Mosentine submitted a registration and certified an undertaking start date of January 12, 2015.

The investigator found that Ms Mosentine did not comply with s. 3(1) of the LRA by failing to file a return within 10 days after entering into an undertaking to lobby on behalf of a client. An administrative penalty of \$700 was imposed.

Consultant lobbyist fails to register undertaking within 10 days

Mr Quaiattini, a consultant lobbyist, entered into an undertaking to lobby on behalf of Woodside Energy Ltd. The lobbyist filed a return with an undertaking end date of February 28, 2015.

On April 16, 2015, the ORL was contacted by another lobbyist from Maple Leaf Strategies, Mr Quaiattini's consulting firm, who advised that several of his colleagues had failed to extend a number of their registrations. He said that the ORL system notifications failed to inform him and his colleagues that the registrations had expired. He inquired on how to proceed as their agreements had been extended by their clients.

Registration 18352509 was terminated by the Lobbyists Registry as the undertaking end date was not extended within the 30-day timeline set out in s. 4(2)(a) of the LRA. ORL staff advised Mr Quaiattini that he and his colleagues would all be required to complete and submit new returns for their extended undertakings as the timeline provided in s. 4(2)(a) of the LRA had passed and the system had automatically terminated the registrations. On April 17, 2015, the lobbyist submitted a new return for his undertaking with Woodside Energy and certified that the undertaking start date of March 1, 2015 and the end date was February 29, 2016.

The investigator found that Mr Quaiattini contravened s. 3(1) of the LRA when he failed to file a return within 10 days after entering into an undertaking to lobby on behalf of his client. An administrative penalty of \$500 was imposed.

Consultant lobbyist fails to register undertaking within 10 days

Mr Pantazopoulos, a consultant lobbyist, entered into an undertaking to lobby on behalf of Pacific Newspaper Group, Glacier Newspaper Group, and Black Press and certified an undertaking end date of February 28, 2015. On April 16, 2015, he contacted the ORL to advise that he and his colleagues had failed to extend a number of their registrations within the timelines. He advised that the ORL system notifications failed to inform them that the registrations had expired. He inquired on how to proceed as their agreements had been extended by their clients. Registration 19904957 was terminated by the Lobbyists Registry as the undertaking end date was not extended within the 30-day timeline set out in s. 4(2)(a) of the LRA. ORL staff advised the lobbyist that he and his colleagues would all be required to complete and submit new returns for their extended undertakings as the timeline provided in s. 4(2)(a) of the LRA had passed and the system had automatically terminated the registrations. On April 16, 2015, the lobbyist submitted a registration for his undertaking to lobby on behalf of his client with an undertaking start date of March 1, 2015.

The investigator found that Mr Pantazopoulos was in contravention of section 3(1) of the LRA for failing to file a return within 10 days after entering into an undertaking. An administrative penalty of \$500 was imposed.



Consultant lobbyist fails to register undertaking within 10 days

Mr Pantazopoulos, a consultant lobbyist, entered into an undertaking to lobby on behalf of his client NBC Universal Media LLC and the Comcast Corporation with an undertaking end date of February 28, 2015.

On April 16, 2015, Mr Pantazopoulos contacted the ORL to advise that he and his colleagues had failed to extend a number of their registrations within the timelines. He advised that the ORL system notifications failed to inform them that the registrations had expired. He inquired on how to proceed as their agreements had been extended by their clients. Registration 19977604 was terminated by the Lobbyists Registry as the undertaking end date was not extended within the 30-day timeline set out in s. 4(2)(a) of the LRA. On April 16, 2015, Mr Pantazopoulos submitted a registration for his undertaking to lobby on behalf of his client. He certified under s. 5(1) of the LRA that the start date of the undertaking was March 1, 2015 and the end date was February 29, 2016.

The investigator found that Mr Pantazopoulos failed to file a return within 10 days after entering into an undertaking to lobby on behalf of his client in contravention of s. 3(1) of the LRA. An administrative penalty of \$500 was imposed.

Consultant lobbyist fails to register undertaking within 10 days

On July 22, 2015, Ms Hayden, a consultant lobbyist, submitted a return for Oka Holdings with an undertaking start date of July 22, 2015. On September 10, 2015, ORL staff sent the lobbyist an email inquiry to determine whether or not she was a former public office holder and should have reported this on her return. Ms Hayden requested information and realized that she should have registered with the Lobbyists Registry within 10 days of October 14, 2014, as she had requested and attended meetings with public servants.

Ms Hayden added her former positions to her return that met the definition of “former public office holder” according to s. 1.4 of the Lobbyists Registration Regulation. In addition, on September 16, 2015, she updated the undertaking start date from July 22, 2015 to October 14, 2014. ORL staff received an automatic system alert that the consultant lobbyist registration filed by the lobbyist appeared to contravene the required timelines stipulated in the LRA. Section 3(1) of the LRA requires a consultant lobbyist to file a return within 10 days after entering into an undertaking to lobby on behalf of a client.

The investigator found that Ms Hayden was in contravention of section 3(1) of the LRA for filing a return on behalf of a client after the deadline required by the LRA. An administrative penalty of \$800 was imposed.



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