EXEMPTION DECISION 18-01

Lindsay Kislock (Mining Association of British Columbia)

July 31, 2018

SUMMARY: The applicant, a former long-time assistant deputy minister in the provincial government, is subject to a two-year lobbying prohibition under section 2.2 of the *Lobbyists Registration Act*. Her application for an exemption under s. 2.3 is denied as it is not in the public interest. The authority to waive the exemption and impose conditions can only be exercised when it is in the public interest to do so. The legislative intention of s. 2.3 is to ensure that the narrow class of former public office holders, who, by definition, have worked at or very close to the heart of executive government, cannot use inside information or relationships to lobby immediately after leaving government. The authority to impose exemption conditions does not undercut the need for such an application to reach the public interest threshold. An exemption is not in the public interest in this case.

Statutes Considered: *Lobbyists Registration Act,* SBC 2001.

BACKGROUND

[1] The *Lobbyists Registration Act* (LRA) regulates the lobbying of public office holders. The applicant, Lindsay Kislock, has applied for a public interest exemption, under s. 2.3 of the LRA, from the two-year prohibition on lobbying that applies to her under s. 2.2 of the LRA.[1]

[2] The applicant is a former employee of the provincial government. Between 2006 and her departure from the provincial public service in June 2017, she served as an assistant deputy minister in provincial government ministries. Since June of 2017 she has been employed by the Mining Association of British Columbia (Mining Association), an industry association that represents the mining industry's interests.[2] The applicant terminated her registration as an "in-house lobbyist" under the LRA on May 1, 2018, and "is no longer undertaking any lobbying activity and has deregistered as a lobbyist pending the outcome" of this application.

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[1] Sections 2.2 and 2.3 were enacted in 2017 and came into force this year. The amendments were made by the *Lobbyists Registration Amendment Act, 2017*, SBC 2017, c 19.

[2] The facts on which this decision is based are taken from the application filed in support of the applicant's request for a public interest waiver under s. 2.3. That brief was submitted on her behalf by her legal counsel, in the applicant's "capacity as an employee" of the Mining Association.

DISCUSSION

Overview of the LRA's scheme

[3] In general terms, the goal of the LRA is to make transparent the long standing practice in BC of lobbying public office holders.

[4] The LRA defines the term "public office holder" quite broadly. It covers any officer or employee of the provincial government, a member of the Legislative Assembly (and anyone on a member's staff), anyone appointed to an office or body by or with the approval of Cabinet or a minister, and an officer, director or employee of any government corporation as defined in the *Financial Administration Act*.[3]

[5] As for activities that qualify as lobbying, the LRA defines the term "lobby", in relation to any lobbyist, as "to communicate with a public office holder in an attempt to influence" a range of government activities. These include the development or enactment of legislation, the establishment of programs or policies, the awarding of contracts, the outsourcing of services, and the sale of assets.

[6] The LRA regulates two types of individuals who undertake the work just described – consultant lobbyists and in-house lobbyists.

[7] It should be noted that when either type of lobbyist arranges a meeting for a purpose described in paragraph 5 between a public office holder and any other individual, this is considered to be a lobbying activity.[4]

[8] It is apparent from this kind of provision that the Legislature recognized that lobbyists may be selling access to office holders in addition to any subject-matter expertise or inside information they may possess. The Legislature has recognized, in other words, that a lobbyist may be of value because of who, not what, the lobbyist knows. A client might retain a lobbyist because she or he knows people in government, and thus can arrange a meeting for the client, with any actual lobbying about the meeting's subject being left to the client or to other lobbyists. The LRA does not suggest there is anything wrong with an individual using his or her relationships with public office holders to get the proverbial foot in the door. It merely regulates that activity through registration.

[3] Section 2(1) exempts certain actors from the LRA's rules, and s. 2(2) exempts certain activities, such as making submissions on legislative proposals in direct response to a request from a member of the Legislative Assembly for comment.

[4] I also note that for consultant lobbyists, the mere act of arranging a meeting between a public office holder and any other individual constitutes lobbying. It does not matter whether there is any attempt to influence any matter. I will have more to say about this further on in my reasons.

[9] This aspect, in addition to other aspects of what it means to "lobby," must be considered in relation to the facts of each s. 2.3 application.

Overview of the two-year rule

[10] The recent amendments to the LRA have expanded the LRA's reach by imposing a two-year lobbying prohibition. Section 2.2 reads as follows:

> 2.2 Subject to section 2.3, a person who is a former public office holder must not lobby, in relation to any matter, for a period of 2 years after the date the person ceased
> (a) to be a member of the Executive Council or an individual employed in the member's office,
> (b) to be a parliamentary secretary, or
> (c) to occupy a position referred to in paragraph (c) of the definition of "former public office holder".

[11] It is this prohibition from which the applicant seeks an exemption. She does so because she is captured by the definition of former public office holder found in s. 1 of the LRA:

> **"**former public office holder" means
> (a) a former member of the Executive Council and any individual formerly employed in the former member's former office, other than administrative support staff,
> (b) a former parliamentary secretary, or
> (c) any individual who formerly occupied
> (i) a senior executive position in a ministry, whether by the title of deputy minister, chief executive officer or another title,
> (ii) the position of associate deputy minister, assistant deputy minister or a position of comparable rank in a ministry, or
> (iii) a prescribed position in a Provincial entity[.]

[12] The s. 2.2 prohibition encompasses only former public office holders, a smaller class than public office holders. The narrower definition applies only to very senior elected or appointed public officials. It includes, notably, former ministers, individuals who were employed in a minister's office (though not administrative staff), and very senior, executive-level public servants. The Legislature has determined that these senior officials are most likely to possess top-level, specific, and valuable inside information, or to have positive working or personal relationships with elected officials and public servants, especially those at the top. Similar considerations clearly apply to political staff, other than administrative support staff, who work in ministers' offices.

[13] I observe at the outset that advancing a private interest through lobbying does not mean the lobbying's ultimate outcome cannot be good public policy. However, the Legislature has decided to temporarily restrict the ability of certain individuals to contribute to at least one aspect of the public policy process after they leave government, i.e. lobbying. The Legislature has determined that the public interest is best served by requiring that senior insiders not be able to use information they acquired at public expense for a period of two years after they leave government. It has also provided that senior insiders not be able to exploit their personal relationships with elected officials or government employees for two years after they leave government.

[14] That this was the Legislature's intent is underlined by what ministers said during legislative debate. When he called second reading debate, the responsible minister, Attorney General David Eby, Q.C., observed that the amendments would "balance the interests of having well-informed policy-makers who contribute to the democratic process and ensure a level playing field for all lobbyists. They will eliminate the potential for undue influence and the improper use of insider knowledge in lobbying."[5]

[15] During second reading debate he referred to "the vital and important role of public servants in discharging the duties of government and the knowledge that people obtain through those roles," adding that "the intent of the legislation is to protect the public interest."[6] He said that public servants "have access to this inside information" and "they should not be permitted to sell that information when they leave the public service in terms of leaving a minister's office, leaving the board chair of a Crown corporation and then going into the private sector."[7] The Attorney General also stated that the intent of s. 2.2 "was to recognize that probably within two years that knowledge is sufficiently dated that the person could then engage in lobbying quite easily," with any period shorter than two years meaning "you still have that concern about the relevance and the currency of the information that that person has access to."[8] He concluded by saying this:

> We tried to strike a balance with this legislation, but the intent of it is clear. It's to restrict and prohibit this type of activity. Yes, it will prevent people from engaging in that kind of activity. Certainly, there are lots of opportunities for former public servants, with the skills that they develop in government, to serve in any number of public or private sector entities. But this very specific activity of selling for money, representing private individuals to government, is being restricted for a period of two years.[9]

[16] As this passage suggests, the two-year rule prevents individuals from marketing information they acquired and relationships they formed at public expense for private

[5] British Columbia Legislative Assembly, *Hansard*, No. 38 at 3:30 P.M., (Hon. D. Eby).
[6] British Columbia Legislative Assembly, *Hansard,* No. 58 at 11:10 A.M., (Hon. D. Eby).
[7] *Ibid.*
[8] *Ibid.*
[9] *Ibid*.

advantage.[10] The rule's latter aim furthers the policy reflected in the LRA's definition of "lobby." As noted earlier, the LRA defines "lobby" to include merely arranging a meeting between a public office holder and another individual.[11] By including the arranging of a meeting as a kind of lobbying, the Legislature has acknowledged that this marketable service may well depend on the fact that the lobbyist knows people, without necessarily knowing anything about the meeting's subject. This kind of lobbying is, again, about who the lobbyist knows, not what the lobbyist knows. The Attorney General addressed this in debate, referring to the "activity of selling for money, representing private interests to government," and noting that the two-year rule was about "undue influence," not just use of insider knowledge in lobbying:

> These reforms will balance the interests of having well-informed policy-makers who contribute to the democratic process and ensure a level playing field for all lobbyists. They will eliminate the potential for undue influence and the improper use of insider knowledge in lobbying.[12]

[17] Other ministers echoed the Attorney General's observation about the scope of s. 2.2, about its goal being to address undue influence and level the playing field. The Minister of Mines, Energy and Petroleum Resources, for example, said this about the amendment:

> I think that British Columbians around the province want to be reassured that how decisions are being made, who is advocating for what and who is influencing any potential decisions are all done in a very transparent manner and in a way that doesn't use privileged access to information and relationships that could be seen as unfair.[13]

[18] To recap, the intention underlying the two-year rule is to address lobbying as it involves use or disclosure of information acquired during public service, but also as it involves the selling of access, or relationships. This is based on the LRA's definition of "lobby," as just discussed, but also on the basis that, had the Legislature wanted to restrict the two-year rule to use or disclosure of information alone, it could have said so, but it did not. This suggests a broader ambit to s. 2.2. This view is bolstered by the fact that the public service oath of employment already covers, for individuals in the applicant's situation, disclosure of "confidential information." Section 21 of the *Public Service Act* requires all public servants to swear or affirm a prescribed oath of employment. The prescribed oath prohibits public servants from divulging confidential information unless authorized to do so or required to do so by law.[14] Nothing in

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[10] I note in passing that this rule may to a degree also level the playing field between former public office holders and lobbyists who either have never been in government in any capacity, or who left government more than two years ago. The Attorney General expressly referred in debate, as quoted above, to the goal of levelling the playing field, as noted below.

[11] See footnote 4, where I note that the LRA treats the arranging of meetings by in-house and consultant lobbyists differently. The distinction is irrelevant to the point made here.

[12] British Columbia Legislative Assembly, *Hansard*, No. 38 at 3:30 P.M., (Hon. D. Eby).

[13] British Columbia Legislative Assembly, *Hansard*, No. 38 at 3:55 P.M., (Hon. M. Mungall). She also stated that "we want to ensure that there is a level playing field" and "that there's no undue influence" (at 4:00 P.M.). Similar observations were made during second reading debate by other ministers (Hon. Bruce Ralston and Hon. Jinni Sims).

[14] British Columbia Public Service Oath of Employment, as prescribed by the *Public Service Oath Regulation,* BC Reg 228/2007, under the *Public Service Act*. I also note that the Public Service Agency's Human Resources Policy 13, entitled "Post-Employment Restrictions for Senior Management in the BC Public Service," states that, as

the oath suggests that the duty of confidentiality implicitly falls away after an individual's public service ends. The Legislature must be taken to have been aware of this existing enactment, which already regulates the exploitation of information. This suggests that the Legislature was aware that use or disclosure of information was already covered, and thus intended s. 2.2 to go beyond use or disclosure of confidential information alone.[15]

[19] It is worth underscoring again that, even if no exemption is granted under s. 2.3, the rule does not prevent a "former public office holder" from finding employment or pursuing business opportunities. It means only that they cannot, for two years, "lobby". A former public office holder can still exploit the knowledge, expertise, and relationships that she or he has acquired, at public expense, over the years. As an example, someone who has served as a deputy minister of Mines will have acquired some expertise, about the mining industry and will be known in the industry to a degree. Section 2.2 does not prevent that person from finding a job or a consulting opportunity in the mining industry the moment they leave government. Only lobbying is off limits, and only for two years. Nor would a former deputy attorney general be prevented from joining a law firm to practice administrative or constitutional law. Only lobbying is off limits, and only for two years. In each case, the former senior public servant can earn a living. They are only prevented, for two years, from doing anything that falls within the definition of "lobby."[16]

[20] My role is to decide whether the applicant should be exempted from the two-year rule, under s. 2.3:

> 2.3(1) If the registrar is satisfied that it is in the public interest, the registrar may, on request and on any terms or conditions the registrar considers advisable, exempt a person from a prohibition set out in section 2.1(2) or 2.2.[17]

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a condition of employment, a covered employee "must not disclose confidential information that … [he or she] obtained through employment" (s. 2(1)). The policy expressly states that this condition applies after the employee's employment ends. It defines "confidential information" as information that is unavailable to the public." (I also note here that the policy imposes restrictions on lobbying after employment, although the one-year restriction the policy imposes is only to "not lobby government except as permitted under the *Lobbyists Registration Act*" (s. 2(1)(d)). The policy is found here on this date: https://www2.gov.bc.ca/assets/gov/careers/managers-supervisors/managing-employee-labour-relations/hr-policy-pdf-documents/13_post_employment_restrictions_for_senior_management_in_the_bc_public_service_policy.pdf.

[15] I recognize that this oath does not cover elected officials, but a comparable obligation applies to members of the Legislative Assembly under s. 4 of the *Members' Conflict of Interest Act*, which provides that a "member must not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest." In my view, this provision also suggests that the Legislature meant to cover more ground in s. 2.2 that simply address use or disclosure of information acquired during public office.

[16] I observe that a five-year prohibition applies in relation to the federal government.

[17] Section 2.1(2) prohibits lobbying on a matter in relation to which the person lobbying, or a person associated with that person, holds a "contract for providing paid advice" to the government. It also prohibits such persons from entering into a "contract for providing paid advice" on a matter in relation to which the person, or a person associated with that person, is lobbying. Section 2.1(1) defines the term "contract for providing paid advice" as "an agreement or other arrangement under which a person directly or indirectly receives or is to receive payment for

(2) If the registrar grants an exemption under subsection (1), the registrar must enter the following into the registry:

(a) the terms or conditions of the exemption;
(b) the registrar's reasons for granting the exemption.

Basis for the applicant's request

[21] The applicant describes her employer, the Mining Association, as representing the "collective needs and interests of the operating coal, metal, smelters and industrial mineral mining companies in British Columbia," a mandate that "requires frequent communication and engagement with the Government of British Columbia on matters relating to mining policy and law."[18] She says the Mining Association "is regarded by the government as the principal representative of the mining industry in British Columbia" and that it "is consistently relied and called upon by the provincial government to provide input into events, programs, policies, regulatory reform, and taskforces that relate to mineral operations in British Columbia."[19]

[22] The applicant says she has, since joining the Mining Association in June 2017, "played a key role" in helping the Mining Association "formulate, review, and provide input into matters related to the mining industry." This has involved "developing a unique and valuable skill set and knowledge base in anticipation of the regulatory reforms" the government has "foreshadowed" since it took office (in, I note, July of 2017). The applicant says she is "one of two full time Mining Association employees,"[20] and that "there is significant reliance on her to fulfill [the Mining Association's] core priorities." She describes herself as playing an "integral role" in "helping" the Mining Association "fulfill its mandate," "participating in government led public and industry-specific consultations," and "fostering industry and government dialogue on the importance of the mining sector while identifying responsible opportunities for growth."[21]

[23] The applicant is also required to "engage with mining companies" to prepare for the government's consultation on mining, which the Mining Association has anticipated based on information the government released.[22] This has involved "considerable time", so she can "adequately represent" the interests of the Mining Association's members.[23] The applicant adds that she has communicated with individuals at all levels of government and the public to provide information about mining's role in the province.

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providing advice to the government of British Columbia or a Provincial entity, but does not include reasonable remuneration for serving on a board, commission, council or other body that is established under an enactment and on which there are at least 2 other members who represent other organizations or interests."

[18] Application, p. 3.

[19] Application, p. 3. Her application provides details about the importance of mining to the British Columbia economy and cites the mandate of the Minister of Energy, Mines and Petroleum Resources to make progress on a range of priorities. These include establishing the BC Mining Jobs Task Force, which is discussed below.

[20] She does not say whether the Mining Association has any part-time employees, or contractors, who perform the same activities as the applicant, or who assist with them.

[21] Application, p. 2.

[22] Application, p. 4.

[23] *Ibid.*

[24] The applicant has provided extracts from the lobbying registry illustrating how she has focused her lobbying activities on Indigenous affairs, the environment, the regulatory framework and maintaining the industry's competitiveness.[24] She has engaged with government to better understand how government policies may affect the mining industry and to "provide the collective opinion of the industry to the government as it relates to the government's current or proposed policies and legislation."

[25] The applicant says she is critically important to the Mining Association's efforts to inform government about the needs of the mining industry and the effect that the government's current and proposed policies and actions have on the industry. The applicant is currently involved in the BC Mining Jobs Task Force, where she has been providing industry advice to the task force.

[26] As noted earlier, the applicant served as an assistant deputy minister in a number of provincial government ministries. She served as an assistant deputy minister in the Ministry of Small Business and Revenue, the Ministry of Agriculture and in the Ministry of Health. Her last position, which she held from September 1, 2015 to June 9, 2017, was as an assistant deputy minister in the Ministry of Transportation and Infrastructure. In this last role, the applicant managed the relationship between the provincial government and ICBC, PavCo, and BC Transit. She also provided leadership for the Pacific Gateway initiative and for Property and Land Management.

[27] In her Mining Association role, the applicant has targeted seven ministries for lobbying: Ministry of Energy, Mines, and Petroleum Resources (Mines), Ministry of Environment (Environment), Ministry of Forests, Lands and Natural Resources (Forests), Ministry of Education, Ministry of Indigenous Relations and Reconciliation, Ministry of Advanced Education, Skills and Training, and the Ministry of Jobs, Trade and Technology.[25]

[28] The extract of her lobbying activities appended to her application displays an impressive array of lobbying activities across the spectrum of provincial government ministries just listed. Her registration also refers to contact, not only with ministries she has identified as her targets, but also the Office of the Premier, the Ministry of Finance, the Parliamentary Secretary for Technology, and BC Hydro.

[29] The applicant fairly acknowledges that, as discussed above, the policy underlying s. 2.2 of the LRA includes eliminating "the risk of undue influence and the improper use of information by lobbyists who were former public office holders," but says these risks do not arise in her case. She recognizes that the purposes of the two-year rule include increasing transparency, although she does not elaborate. The applicant argues that there is no connection between her current and likely Mining Association activities and her past roles or activities in government. She says she will not be communicating with her past government

[24] Appendix A to her application contains extracts from her registration.

[25] This represents about one third of all current ministries in the provincial government. Since leaving government, the applicant says she has not lobbied the Ministry of Transportation and Infrastructure.

contacts, where she acknowledges she may have influence. The applicant says she did not "regularly interact with the mining industry" or her "counterparts" at Mines when she was employed in her last two assistant deputy minister roles in the provincial government.[26] She says that, in those last two government roles, she did not have "any input or receive any sensitive information on the mining industry."[27]

[30] She also states, however, that she has been "frequently requested by government ministries for meetings to update and provide input into government priorities" (which, presumably, means priorities related to mining, although she does not expressly state this).[28] The applicant states that she has engaged with Mines, Environment and Forests to identify and implement policies related to the policy priorities of the government.[29] She states that, while serving in her last two assistant deputy minister roles, she did not "regularly interact" with colleagues at Mines or receive "sensitive" information on the mining industry. This does not mean she is not personally acquainted with anyone at Mines with whom she has dealt or may deal with for the Mining Association. Nor has the applicant said anything about her interactions or relationships, with former colleagues who are now serving at any of the other several ministries she has identified for possible future lobbying, including Environment and Forests.

Is the requested exemption in the "public interest"?

[31] The LRA does not define the phrase "in the public interest" and it does not state specific factors to consider in deciding whether an exemption would be in the public interest. The public interest may be defined as an interest shared by the entire public (or a significant segment of the public); as that which reflects broad areas of public concern; or that which provides benefit or advantage to the whole community (or some combination of these things). By contrast, a private interest may be defined as that which relates to an individual interest, or the interest of a small or narrowly defined group of people, *i.e.*, that which benefits particular individuals or groups, rather than the entire community.

[32] Definitions of this kind are of some assistance, but the objective and language of the statutory scheme at hand, including the amendments dealt with here, must be kept front of mind. As a majority of the Supreme Court of Canada recently observed, in assessing the "public interest" regulatory mandate of the Law Society of British Columbia, the public interest "is a broad concept and what it requires will depend on the particular context."[30]

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[26] Application, p. 4.

[27] *Ibid.* The applicant does not say she had no interaction with counterparts at Mines, just that she did not "regularly" do so. Similarly, she says she did not receive any "sensitive" information on the mining industry, not that she received *no* information on the mining industry. She does not elaborate on what she means by "sensitive" information.

[28] Application, p. 5.

[29] Application, p. 5.

[30] *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32 at 34. For this reason, I do not consider the tests developed for public interest provisions found in the *Freedom of Information and Protection of Privacy Act* to be of assistance here.

[33] Regarding the LRA's objective and scheme, again, the LRA does not prohibit lobbying. The Legislature has recognized that the ability of citizens, advocacy groups, businesses, industry associations, and others to communicate with public officials about policy and legislation, for example, is a legitimate and normal part of our democracy. The LRA regulates lobbying, mainly through making the practice transparent. By requiring lobbyists to register, thus publicly disclosing their clients, targets, and activities, the Legislature has brought lobbying activities into the open, where the public can scrutinize them.[31]

[34] The amendments in issue limit what would otherwise be permitted lobbying activities. For reasons given earlier, I conclude—with support from what was said during legislative debate—that s. 2.2 is intended to prevent former (recent) senior insiders from using information not available to others, or relationships with those who remain inside government, from exploiting these things to the advantage of clients or employers.

[35] In light of the statutory objectives, is it in the interest of the public, whether as a whole or a sufficient segment of it, to grant the exemption in this case? In considering this, the fact that advantages could reasonably accrue to an applicant's clients, or a lesser segment of the community, if the exemption is given is not necessarily fatal.

[36] I say this because applicants, of course, will almost always derive a personal, and thus private, advantage from being able to lobby during the two-year period. That fact alone does not preclude the possibility that it might otherwise serve a public interest to grant the exemption.

[37] I should also say that the existence of other kinds of private advantage would not automatically result in the denial of an exemption request. For example, a specific legislative change proposed by a particular industry, or group, through its lobbyist might also be good public policy. Public and private interests may, in other words, co-exist, and the prospect of a lobbied advantage for an industry or group, should not, on its own, result in denial of an exemption. [32] In short, the Legislature must be taken to have known that virtually any lobbying would result in a private advantage to an individual or group and, despite that fact, left open the possibility it, nonetheless, could be in the public interest to grant an exemption.

[38] Having set out the context in which the public interest in the LRA must be considered, does the applicant satisfy the exemption requirement? In assessing this, it is important to examine the nature and extent of the applicant's experience in government, including the following:

- the types of positions held (including whether they were executive roles or less senior roles);

[31] The LRA imposes few substantive limitations on the nature of lobbying, where it occurs or how it is done. As noted earlier, s. 2.1(2) does prohibit a person from lobbying on a matter in relation to which either that person, or an associate, has a contract for providing paid advice to the provincial government or a "Provincial entity." Section 2.3 authorizes me to grant an exemption from this prohibition, but that is not, of course, in issue here.

[32] Assessment of an exemption application should certainly not involve my assessing whether a public policy proposal is good or bad, but whether it is in the public interest or not.

- the number and nature of ministries or agencies served;
- the length of service overall and length of service in each role;
- whether any of the roles relate to issues on which the applicant intends to lobby;
- whether the applicant has, or could reasonably be expected to have, relatively recent and specific information that might be exploited through lobbying;
- the nature and extent of the appellant's actual or reasonably likely relationships with current public office holders (notably elected officials and senior public servants, especially those in any ministry the applicant intends to lobby).[33]

[39] An example of circumstances in which an exemption might be appropriate is where a former public office holder was only briefly in government and did not acquire any information to speak of, or did not develop meaningful working relationships with other public office holders (especially senior public office holders). For example, someone who was appointed to the staff of a single minister just weeks or months before a change of government, and whose employment ended with the government's defeat, might plausibly argue that they learned nothing and knew no one, and that this, combined with other factors, means the public interest favours an exemption.

[40] In light of these considerations, is it in the public interest that the applicant, in this case, be exempted from s. 2.2?

[41] As noted earlier, she argues that replacing her will be difficult—indeed, "nearly impossible"—for the Mining Association, and will disrupt, perhaps harm, ongoing communications with the BC Mining Jobs Task Force and the government in general. She submits that her activities benefit the public, because they involve providing recommendations for "best practices in public policy development."

[42] Regarding the latter point, it is reasonable to assume that government has employees with the experience and capacity to create and implement, as the applicant put it, "best practices in public policy development."

[43] The application to a notable degree speaks to what the Mining Association brings to the table, not what the applicant does. It says government has acknowledged the Mining Association's role in informing government of the industry's value. It refers to a government press release about a recent "Mining Day", which recognized the Mining Association's contributions.[34] Regarding the BC Mining Jobs Task Force, the application cites the task force terms of reference and says recommendations emerging from that process "are critical to the public interest," and that the Mining Association's "input will be critical to the Task Force."[35] The applicant acknowledges that the Mining Association's chief executive officer is a member of

[33] These are examples, not a closed list—the circumstances of future cases may raise other appropriate factors in assessing the public interest.
[34] Application, p. 6.
[35] Application, p. 7.

the task force, and says she has "been undertaking much of the work to coordinate the mining industry's input" to it, as well as "lobbying on related matters."[36]

[44] The applicant contends that, given the mining industry expertise she had acquired at the time of her application, after only some 11 months in the area, if she "cannot resume lobbying, not only will it be nearly impossible" for the Mining Association to replace her, "but the engagements will be severely disrupted, and any knowledge transfer will not occur promptly to avoid any harm to the engagements."[37]

[45] The applicant does not explain why she cannot continue to do substantive work for the Mining Association—including to develop policy positions for submission to government—in support of any lobbying it wishes to pursue. She does not elaborate on why the Mining Association could not rely on her to do such work, while leaving the communication with public office holders, and the arranging of meetings, to someone who is not subject to the two-year rule. This is consistent with the applicant's statement that the Association has two full-time employees, the other being its chief executive officer who could do the actual lobbying during the applicant's cooling-off period. The applicant has not, simply put, given a sound basis to support her assertions that only she is in a position to lobby effectively for the Mining Association or the industry, that there will be "disruption," that it will be "nearly impossible" to replace her, that the transfer of "knowledge" will not occur promptly, or that "the engagements" may be harmed.[38]

[46] It bears remembering that the applicant was, at the time of her application, involved in the mining area for less than a year. She says she has acquired considerable expertise, and established good relationships in the area. But without knowing more, it is reasonable to note of the fact that her relatively recently-acquired "expertise" is neither unusual nor rare in British Columbia or Canada. Her argument that it will be "nearly impossible" to replace her is on this basis alone not persuasive. In any case, I note again that, the Mining Association's chief executive officer being a member of the task force, it is reasonable to think the applicant could support his participation, and advance the mining industry's interests as the Mining Association sees fit, even if she cannot "lobby."

[47] There is a sense in the applicant's request that the present government's regulatory initiatives are significant and that the BC Mining Jobs Task Force has a significant mandate. If the applicant means to suggest that, on this basis, her lobbying relates to a matter of public interest, it strikes me that the public policy activities of governments are always in the public interest, regardless of whether a particular initiative is agreed to be significant (or ultimately sound). The applicant is, really, merely stating that she wishes to lobby on public policy matters

[36] *Ibid.*

[37] Application, p. 6.

[38] An applicant who seeks an exemption bears no formal legal burden of proof, but assessment of whether the exemption is in the public interest must, of course, have regard to the circumstances brought forward. In practical terms, it is in the interests of an applicant who contends that an exemption would be in the public interest to bring forward information in support of the request.

of some importance, but this is not a sufficient basis for concluding that it is in the public interest that the applicant be exempted from the two-year prohibition.

[48] Last, it is desirable to address the applicant's argument that the restrictions she proposes under s. 2.3(1) will sufficiently answer any possible concerns. She proposes that she be prohibited from lobbying any of the ministries in which she was employed as a "former public office holder," and also that she be prohibited from lobbying on any matter of which she has "intimate knowledge" resulting from her employment in government.[39]

[49] These suggestions lead to two observations.

[50] First, it is evident from her submission that the applicant proposes to lobby seven ministries, representing roughly one-third of all ministries across government. She confirms that she has already engaged with at least three of them. The applicant has recently finished a long public service career, with roughly a decade served at a very senior executive level, and across a range of ministries. It is reasonable to infer that she will have worked with, and alongside, a wide range of public servants at all levels, notably at the executive level, as well as with elected officials, including ministers. The fact that she says she did not "regularly" interact with counterparts at Mines in her last two assistant deputy minister roles does not diminish the fact that she has long experience at very high executive levels across a number of ministries.[40] It is also reasonable to infer that, as an assistant deputy minister across several portfolios over more than a decade, she would be familiar to, and have some degree of relationship with senior public servants across government. Interpreting the public interest in a manner that would permit an exemption because the applicant did not "regularly" interact with counterparts in Mines would fail to give appropriate scope to the Legislature's objective of limiting the ability of former public office holders to sell access based on their personal relationships, or knowledge of the how and why of government's functioning.

[51] Second, accepting the appellant's assurance that she did not have any "input" or receive "sensitive" information in interactions with Mines and is prepared to not lobby on any matter about which she has "intimate knowledge," it is nonetheless reasonable to suggest that, given her broad experience at the senior levels of government, she will possess knowledge of how government works, if not knowledge of specific files or portfolios within the target ministries. This submission again, in my view, fails to give appropriate scope to the Legislature's objective.

[52] There is no apparent basis for supposing that the applicant acquired any specialized or file-specific information about files within Mines during her last two assistant deputy minister postings. She says she did not acquire any "sensitive" information, certainly. However, in view of the goal of s. 2.2 to guard against the exploitation of knowledge of how government works, and the marketing of relationships for lobbying purposes, I conclude that the appellant's executive experience in government falls squarely within the provision's ambit. I conclude that

[39] Application, p. 7.

[40] She has not said whether she regularly interacted with Mines counterparts while in her previous assistant deputy minister positions.

the length and breadth of her senior executive service is such that, unless other factors favour a public interest exemption, the potential for her to use her knowledge and relationships for lobbying purposes weighs against a public interest exemption being granted.

[53] Finally, the applicant asserts that her technical expertise in mining is extensive. However, I find that it is newly acquired and not especially unique. As for her new relationships, even accepting that she has established working relationships within the industry, with Mines and in other relevant places, those are recent and there is no reasonable basis for concluding that only the applicant is able to form, and only the applicant has formed, such relationships. For example, one would expect the Mining Association's chief executive officer, who is after all a task force member, has been doing the same thing, or is able to do so, and one would expect other mining industry representatives to be in the same position as well.

[54] While there might be some challenges for the Mining Association in transitioning away from lobbying by the applicant to lobbying by others, I do not accept that these are unique, or so significant, that the public interest in an exemption is engaged.

CONCLUSION

[56] For all of the reasons given above, I am not satisfied that it is in the public interest to exempt the applicant from the application of s. 2.2. The applicant's request is denied.

July 31, 2018

ORIGINAL SIGNED BY

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Michael McEvoy
Registrar of Lobbyists for British Columbia