

EXEMPTION DECISION 18-03

Martyn Lafrance

July 31, 2018

SUMMARY: The applicant served as chief of staff to two ministers. It is not in the public interest to exempt him from the two-year cooling-off period under s. 2.2 of the *Lobbyists Registration Act*. The nature and length of his work, and other factors, do not support his request.

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

BACKGROUND

[1] The appellant has applied for an exemption, in the public interest, from the two-year cooling-off period that applies to him, as a “former public office holder”, under s. 2.2 of the *Lobbyists Registration Act* (LRA). He characterizes this as a “limited exemption”, as he seeks to lobby “exclusively” for Woodside Energy International (Canada) Limited (Woodside).¹

[2] The applicant was chief of staff to the Minister of Health from February 2016 to October 2016, and chief of staff to the Attorney General from October 2016 to April 2017. He left his employment with the provincial government on July 15, 2017. He is at present a consultant lobbyist for Woodside and his one active registration in the Lobbyists Registry, which ended on April 29, 2018, was for Woodside.

DISCUSSION

[3] The general goal of the LRA is to bring transparency to the long-time practice in British Columbia of lobbying elected officials and other public office holders.

[4] 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 activities such as the establishment of programs or policies, development or enactment of legislation, awarding of contracts, outsourcing of services, and sale of assets. For a consultant lobbyist such as the applicant, even merely arranging a meeting between a public office holder and another individual is defined as lobbying.

¹ Application, p. 1.

[5] In assessing the applicant's exemption request, I have applied my analysis of the intent and meaning of the LRA as a whole, and ss. 2.2 and 2.3, specifically, set out in Exemption Decision 18-01, without repeating it here.

[6] It is useful to set out the sections relevant to the applicant's request. Section 1 of the LRA defines the term "former public office holder" as follows:

"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[.]

[7] Sections 2.2 and 2.3 are the operative provisions here:

Lobbying prohibition

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".

Exemption from prohibitions

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.

- (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.

[8] The applicant is a “former public officer holder” because he was employed in the office of someone who is no longer a member of Cabinet.

[9] Keeping in mind that s. 2.2 only prohibits *lobbying* for two years after a former public officer holder leaves her or his position, is it in the “public interest” to grant the applicant the exemption he seeks?

[10] The applicant advances a number of grounds that he says support an exemption. He says that he conducts no lobbying based on individual relationships or information acquired in his previous positions. He says that, by comparing a list of contacts with whom he was involved in government with a list of those he currently lobbies, the public could be assured that his lobbying does not use information or exploit relationships acquired in his two chief of staff positions.

[11] He also argues that a condition prohibiting him from lobbying people he dealt with in government, and from sharing information obtained in his previous positions, would ensure that no information or relationships that he acquired will be used. For this reason, he is also willing to be subject to a prohibition against lobbying for anyone other than Woodside, and refrain from marketing to or being retained by any new clients.

[12] Woodside is a major project proponent of a liquefied natural gas project. The applicant points out that, according to the Conference Board of Canada, it is estimated that between 2016 and 2045 the positive economic impacts of LNG include \$5.3 billion in growth in British Columbia and over 40,000 jobs in the province. The applicant says his work is central to delivering a globally-competitive liquefied natural gas industry in the province and to advance the public interest of British Columbians, together with his client’s interests.

[13] Using the analytical approach that I applied in Exemption Decision 18-01, I must decide whether circumstances surrounding the applicant’s request are such that the public interest in relation to lobbying activities favours the exemption.

[14] In Exemption Decision 18-01, I suggested that the length of an individual’s public service might be a factor in deciding whether an exemption is in the public interest. The applicant’s tenure in public office spanned 17 months, similar to the applicant in Exemption Decision 18-02. During that time, he held the most senior staff position available in a minister’s office, that of chief of staff. His positions would have certainly have allowed him, it is reasonable to suggest, to develop a material degree of knowledge about government and to have developed working relationships (as his request for related conditions confirms). All of this would certainly be exploitable for the purposes of lobbying, something which the legislature was intent on precluding for a two-year period.

[15] I do not find the applicant's arguments about the public interest nature of his lobbying for Woodside to be persuasive. Even though a liquefied natural gas industry may offer significant economic benefits to the province, this does not mean that the applicant should be exempted from lobbying. For one thing, he argues that his work is "central" to Woodside's aims, but does not explain how this might be so, or how his involvement is such that the requested exemption is in the public interest.

[16] As explained above, the aim of s. 2.2 is to ensure that a former public office holder cannot sell information acquired inside government, or sell access based on relationships formed there, during the two-year cooling-off period. On balance, I am not satisfied that the requested exemption is in the public interest.

CONCLUSION

[17] 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 and the applicant's request is denied.

July 31, 2018

Michael McEvoy
Registrar of Lobbyists for British Columbia