



INVESTIGATION REPORT 17-08

LOBBYIST: Hector Bremner

February 13, 2018

SUMMARY: A consultant lobbyist was found to be in contravention of section 4(1)(o) of the *Lobbyists Registration Act* (LRA) for failing to declare that he was a former public office holder in his registration. An administrative penalty of \$2,000 was imposed.

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

Authorities Considered: Investigation Report 14-12 and Investigation Report 15-11.

INTRODUCTION

[1] This report concerns an investigation 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 compliance with the LRA or its regulations. If the Registrar or his 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 him to give notice of the alleged contravention and the reasons for his 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,” which are individuals who undertake to lobby for payment on behalf of a client.

[3] This report and its 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 23049206 to lobby as a consultant lobbyist on behalf of Steelhead LNG (the Client), complied with s. 4(1)(o) 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...

Form and Content of Return

4(1) Each return filed under section 3 must include the following information, as applicable:

(o) If any lobbyist named in the return is a former public office holder, the nature of the office formerly held by the lobbyist and the term of the office;

(1.1) For the purposes of subsection (1)(o), "**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,

(b) any individual who

(i) formerly occupied a senior executive position in a ministry, whether by the title of deputy minister, chief executive officer or another title, or

(ii) formerly occupied the position of associate deputy minister, assistant deputy minister of a position of comparable rank in a ministry, or

(c) any individual who formerly occupied a prescribed position in a 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.

Power to investigate

7.1(1) If the registrar considers it necessary to establish whether there is or has been compliance by any person with this Act or the regulations, the registrar may conduct an investigation.

(2) The registrar may refuse to investigate or may cease an investigation with respect to any matter if the registrar believes that

(b) the matter is minor or trivial,

(c) dealing with the matter would serve no useful purpose because of the length of time that has elapsed since the matter arose,

Hearing and administrative penalty

7.2(3) Despite subsection (2), the registrar must not impose an administrative penalty if more than 2 years have passed since the date of the contravention.

Offences and penalty

10 (3) A person does not commit an offence under subsection (2) if, at the time the information was supplied, the person did not know that it was false or misleading and, with the exercise of reasonable diligence, could not have known that it was false or misleading.

BACKGROUND

[5] The consultant lobbyist had entered into an undertaking to lobby on behalf of his client. On February 19, 2015, the consultant lobbyist filed a return with the Office of the Registrar of Lobbyists (ORL), Registration ID 23049206. The registration had an undertaking start date of February 9, 2015, and an undertaking end date of February 1, 2017. In his registration the lobbyist declared that he was not a former public office holder. The lobbyist certified that the information in the return was true.

[6] Once a registration reaches its end date, and the status changes from “Active” to “Terminated,” and the registration cannot be updated.

[7] On September 1, 2017, ORL staff received a report that the lobbyist had failed to declare in his return that he was a former public officer holder.

[8] The lobbyist had served as the Executive Assistant to the Minister of Natural Gas, and Minister Responsible for Housing and Deputy Premier. He served as Executive Assistant to the Minister of International Trade, Responsible for the Asia Pacific Strategy and Multiculturalism and he had served as Executive Assistant to the Minister of State for Tourism and Small Business.

[9] On September 5, 2017, the lobbyist contacted the ORL. He had learned that the ORL had received a complaint related to his registration. He realized he had misunderstood the meaning of former public office holder and asked if he could correct the error.

INVESTIGATION

[10] On September 8, 2017, ORL staff sent a formal compliance investigation letter under s. 7.1 of the LRA to the lobbyist informing him that the ORL was investigating whether he had contravened s. 4(1)(o) of the LRA (public office holder declaration). The letter asked the lobbyist to explain why he did not declare that he was a former public office holder in his registration.

[11] In his response dated September 29, 2017, the lobbyist noted that he recognizes that he made an error. He mentioned that he had not reviewed the definition of public office holder in the LRA prior to filing his return. At the time he filed his return he believed the term “public office holder” referred to an “elected person.” The lobbyist further commented that when he was made aware of the error he immediately contacted the ORL to inquire how to correct his return. He noted that his actions were not intended to mislead the ORL.

[12] On October 31, 2017, the lobbyist was provided with formal notice under s. 7.2(1)(a) outlining the basis for the allegation that he had contravened s. 4(1)(o) of the LRA. I invited the lobbyist to respond in writing to the alleged contravention and to provide any information or documentation pertinent to the contravention and any potential penalty.

[13] On December 11, 2017, the lobbyist responded to the s. 7.2(1)(a) notice. The lobbyist admitted he made a mistake. He pointed out that “former public office holder” is not defined on the registration form, nor does it explain the consequences for an incorrect response. He stated that he received no training related to the LRA and its definitions. He submits that his employment history, which mentions his positions in public office, is published on his company website and through other social media profiles. He stated, “[T]here was no motive, benefit or advantage...to have been untruthful, nor was there any conflict of interests or other harm caused by [his] mistake.” His actions were not “...an intentional act to deceive the ORL or the public...”

[14] He raised for consideration s. 7.1(2)(b) and (c) where the Registrar may cease an investigation if he believes the matter is minor or trivial or pursuing the matter would serve no useful purpose given the elapsed time since the contravention arose.

[15] It has been more than two (2) years since the lobbyist filed his return. The lobbyist noted that s. 7.2(3) bars the ORL from imposing an administrative penalty more than two years after the contravention has occurred.

[16] The lobbyist raised s. 10(3) where it states that a person does not commit an offence under s. 10(2) if at the time the information was provided they did not know or with the exercise of reasonable diligence could not have known that the information was false or misleading. He believed he was “...answering all questions correctly...”. While he admits he did not exercise due diligence when he failed to familiarize himself with the definitions in the LRA, he believes this was not an unreasonable error.

DISCUSSION

[17] Section 4(1)(o) of the LRA requires a lobbyist to declare in the registration if they are a former public office holder, and to provide the nature of the office formerly held by the lobbyist and the term of the office. The lobbyist did not declare he was a former public office holder and therefore contravened s. 4(1)(o) of the LRA.

[18] The lobbyist did not make the necessary changes to his return during the two years he was registered with the ORL. Information about a lobbyist's positions (as defined in the LRA) in public office, is very important. The purpose of this provision is to increase public confidence in government decision-making by reducing the scope for the exercise of undue influence. It is to address the public concern that certain former public office holders, at least for a time, can have more "insider knowledge" and influence over former colleagues than lobbyists who did not formerly work as public office holders in similar positions. There is the perception of the existence of a revolving door of public office holders and lobbyists developing greater influence by moving freely between the public service and lobbying the public service.

[19] Failure to provide this information undermines transparency and the public's confidence in the registry. I do not agree that this is a minor or trivial contravention (s. 7.1(2)(b) of the LRA), or that due to elapsed time it is not in the public interest to pursue this matter (s. 7.1(2)(c) of the LRA).

[20] Section 7.2(3) of the LRA requires the ORL not impose a penalty more than two (2) years after the contravention has occurred.

[21] The lobbyist submits that the ORL is not in a position to impose a monetary penalty because the two year limitation had expired. The lobbyist registered his return on February 19, 2015 and it was end dated for February 1, 2017. The ORL was notified of the contravention on September 1, 2017.

[22] If the contravention was a single event starting the day after the lobbyist registered his return the ORL would not be able to impose a monetary penalty. Two years had passed from the date the lobbyist registered his return and the date the ORL became aware of the contravention.

[23] However, the obligation to identify his status as a public office holder did not end on the day after he filed his return. It was an obligation that continued throughout the course of his registration. The lobbyist continued to contravene the LRA by neglecting to meet his lawful obligations under s. 4(1)(o) of the LRA for the period he was registered. Once the return was terminated after February 1, 2017, the lobbyist could no longer make the changes required under the LRA. A continuing contravention would only be complete once the lobbyist meets his obligations under the LRA or in this case when he was no longer able to make the necessary changes to his return.

[24] The contravention would have been complete when the registration was terminated. Therefore, the two year period to impose a penalty started on the date the

registration was terminated. The ORL is still within the timeframe to impose a monetary penalty.

[25] The lobbyist raised s. 10(3) of the LRA, arguing that he did not commit an offence because at the time of the contravention he did not know that the information he was entering was false or misleading. The ORL is not proceeding under the offence provision of the LRA. However, I will address his point that he did not know at the time the information entered was false or misleading.

[26] Section 10(3) requires the lobbyist exercise reasonable due diligence to determine whether the information is false or misleading. The definition of public office holder is set out in the LRA. The lobbyist failed to exercise due diligence when he did not refer to the definition of public office holder prior to registering his return.

FINDING

[27] Based on the evidence, I find that the lobbyist did not comply with s. 4(1)(o) of the LRA when he failed to declare that he was a former public office holder.

ADMINISTRATIVE PENALTY

[28] Section 7.2(2) of the LRA provides that if, after giving a person under investigation a reasonable opportunity to be heard respecting an alleged contravention, the Registrar determines that the person has not complied with a prescribed provision of this Act or the regulations, the Registrar must inform the person of the Registrar's determination that there has been a contravention and may impose an administrative penalty of not more than \$25,000. Such person must be given notice of the contravention determination and, if a penalty is imposed, "the amount, the reason for the amount, and the date by which the penalty must be paid." (LRA s. 7.2(2)(c)(ii))

[29] Section 7.2 of the LRA confers discretion on the Registrar to impose administrative penalties. To provide a measure of structure in the exercise of that discretion, the Office has published "Policies and Procedures" (the Policy) to advise members of the public and those engaged in lobbying about what will guide the ORL in exercising its duties under the LRA and the regulations. As the Policy makes clear, its purpose is to structure discretion. It does not fetter discretion. It is not law. I have applied the Policy as a principled guide to the exercise of my discretion to determine a penalty.

[30] The Policy operates in a principled fashion by setting out, firstly, a general financial range for particular infractions (depending on whether it is a first, second or third infraction of that nature). Secondly, it provides a list of factors that will be taken into account in determining the amount of administrative penalty. Finally, it includes a clear statement that the Policy "does not fetter the ORL's ability to conclude that no administrative penalty is appropriate in the circumstances, or to fashion a remedy on either side of the range set out in the general policy, in special circumstances."

[31] I should state at the outset that I have considered and rejected the view that this might be a case where “no penalty” is appropriate. The current LRA provisions have now been in place since April 2010. The lobbyist should be aware of his obligations under the LRA. The contraventions in this case are clear. A penalty is necessary for both specific and general deterrence.

[32] The LRA makes clear that transparency includes identifying whether the lobbyist is a former public office holder. Failing to provide this information undermines the ability of the public to know whether certain lobbyists might have a heightened level of influence owing to their former position. This omission undermines the LRA’s goals of transparency and public confidence in government decision-making.

[33] In determining the appropriate administrative penalty within that range, I have taken the following factors into account:

- 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, and
- whether a penalty is necessary for specific and general deterrence.

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

[35] There have been no previous enforcement actions for contraventions under the LRA.

[36] I now turn to the question of the gravity and magnitude of the contravention under investigation. The purpose of the LRA is to promote transparency in lobbying by requiring consultant lobbyists to disclose accurate, current and complete information about their lobbying activities. This is a solemn legal obligation. It reflects the legislative intent that while consultant lobbyists have a right to lobby, the public also has a right to know that the information in the return is accurate. In this case, the lobbyist’s return contained inaccurate information for the two (2) year period he was registered. The return was never corrected in that period.

[37] The next factor I have considered is whether the contravention was deliberate. I do not believe that the lobbyist’s intent was to deceive the ORL. I accept, on balance, that the contravention resulted from an unintended error on the part of the lobbyist.

[38] I next must consider whether the lobbyist derived any economic benefit from the contravention. In this case, I consider this a neutral factor. While the lobbyist did gain an economic benefit when he received payment for lobbying unregistered, but he did not obtain that payment because of the contravention.

[39] Once the lobbyist learned of the complaint he immediately contacted the ORL to see how he could correct the error in his return. This occurred before the lobbyist was contacted by the ORL. It is in the lobbyist's favour that he brought his error to the attention of the ORL prior to being notified by the ORL.

[40] As noted above, I have considered whether an administrative penalty is necessary for specific or general deterrence. In my view, the circumstances of this case call for an administrative penalty both to encourage this lobbyist to take his obligations under the LRA with the utmost seriousness, and to remind all lobbyists of their legal obligations to be diligent in keeping their registrations current and accurate.

[41] The Policy suggests a range of penalties for contraventions of the LRA. The suggested range of penalty for entering incorrect information is \$1,000 to \$7,500 for a first contravention. I have reviewed previous ORL investigation reports and their associated penalties.

[42] Investigation Reports IR 14-12 and IR 15-11 are similar to this case. In both these cases the lobbyists registered inaccurate start dates contrary to s. 4(1)(b) of the LRA. The administrative penalty imposed in these cases was \$1,000. Both these cases are examples where a lobbyist has registered incorrect information into their returns. Both these lobbyists corrected their inaccurate information.

[43] In this case, the lobbyist never amended the incorrect information. The public was never aware of the fact that the lobbyist was previously a public office holder. They were not aware of the special relationships he enjoyed because of his former positions in public office. I have assessed a penalty consistent with past Investigation Reports taking into consideration these key differences.

CONCLUSION

1. Under s. 7.2(2) of the LRA, I find that the lobbyist contravened s. 4(1)(o) of the LRA for submitting his return past the timelines. The notice of alleged contravention has been substantiated.
2. I impose an administrative penalty of \$2,000.
3. The lobbyist must pay this penalty no later than March 27, 2018.
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

Date: February 13, 2018

ORIGINAL SIGNED BY

Tim Mots, Investigator and
Delegate of the Registrar of Lobbyists