



## INVESTIGATION REPORT 18-01

**LOBBYIST: John Heaney**

**October 10, 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 \$1,000 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 them to give notice of the alleged contravention and the reasons for their 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 35701461 to lobby as a consultant lobbyist on behalf of Nuuvera Corp., and who registered an undertaking under Registration 2234272 to lobby as a consultant lobbyist on behalf of the Canadian Generic Pharmaceutical Association, 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 Nuuvera Corp. On January 5, 2018, the consultant lobbyist filed a return with the Office of the Registrar of Lobbyists (ORL), Registration ID 35701461. The registration has an undertaking start date of December 20, 2017, and an undertaking end date of May 18, 2018. 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] On January 8, 2018, ORL staff received a report that the lobbyist had failed to declare in his return that he was a former public office holder. The ORL asked the lobbyist to look at the definition for former public office holder and to correct his registration if necessary.

[7] On January 9, 2018, the lobbyist corrected his registration and listed his former public office holder roles.

[8] ORL staff did a public search for any other registrations the lobbyist may have submitted and discovered Registration ID 2234272. This registration has an undertaking start date of November 3, 2010 and an undertaking end date of June 3, 2011. In this registration the lobbyist declared that he was not a former public office holder. The lobbyist certified that the information in the return was true.

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

[10] The lobbyist had previously served as an Assistant Deputy Minister and as a Deputy Minister. Therefore, pursuant to section 4(1)(1.1)(b), he was a former public office holder.

## **INVESTIGATION**

[11] On January 10, 2018, 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.

[12] In his response dated February 7, 2018, the lobbyist noted that he recognizes that he made an error. He mentioned that he had not reviewed the definition of former public office holder in the LRA prior to filing his return. At the time he filed his return he believed the term “former public office holder” referred to a “former holder of an elected public office.”

[13] On February 19, 2018, 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.

[14] On April 4, 2018, the lobbyist responded to the s. 7.2(1)(a) notice. The lobbyist admitted he made a mistake. He stated, “I believe it bears repeating that this was an inadvertent and hastily corrected error that I could not have possibly benefitted from, financially or otherwise. And it bears underlining that, as was the case in 2010, I was not a practicing lobbyist making my living from that activity or experienced with the registry.”

[15] 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.

[16] It has been more than two (2) years since the lobbyist filed his first 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.

## **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 position formerly held by the lobbyist and the term of 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 first return during the time he was previously 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 working in the public service and lobbying the public service.

[19] Failure to provide accurate information undermines transparency and public confidence in the registry. As a result, I do not agree that these circumstances merit ending an investigation because it is a minor or trivial contravention under s. 7.1(2)(b) of the LRA or because, due to elapsed time, it is not in the public interest to pursue this matter under s. 7.1(2)(c) of the LRA.

[20] Section 7.2(3) of the LRA prohibits the Registrar from imposing 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 in the first instance because the two-year limitation had expired. The lobbyist registered his first return on November 3, 2010 and it was end-dated for June 3, 2011. The ORL discovered the contravention on January 9, 2018.

[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. More than six 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 first 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 first return was terminated on June 3, 2011, 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 first 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 first registration was terminated. In this case, the ORL is beyond the timeframe to impose a monetary penalty.

[25] However, in regards to the second registration, the ORL is well within its timelines to impose a monetary penalty.

[26] Section 10(3) requires the lobbyist to exercise reasonable due diligence to determine whether the information is false or misleading. The definition of former 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 former 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 for both returns.

## **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 their 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.

[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, first, a general financial range for particular infractions (depending on whether it is a first, second or third infraction of that nature). Second, 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 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

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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 limits 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] The lobbyist has no previous enforcement actions for contraventions under the LRA.

[36] I now turn to the question of the gravity and magnitude of the contraventions 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, for his second return, the lobbyist entered inaccurate information when he failed to indicate he was a former public office holder.

[37] The next factor I must consider 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 contraventions resulted from the lobbyist's lack of understanding of his responsibilities under the LRA.

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



[39] Once the lobbyist was contacted by the ORL about the second return, he quickly corrected his error in the return. It is in the lobbyist's favour that he corrected the error on his second return so quickly.

[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 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 of these reports the lobbyists registered inaccurate start dates contrary to s. 4(1)(b) of the LRA. The administrative penalty imposed in each of these reports was \$1,000. Both lobbyists registered incorrect information into their returns, and both lobbyists corrected their inaccurate information.

[43] In this case, the lobbyist was not able to amend the incorrect information for his first return. The public was never aware of the fact that the lobbyist was a former public office holder. They were not aware of the special relationships he enjoyed because of his former positions in public office. However, as stated above, the ORL is well beyond the time when it can impose a penalty for this first contravention.

[44] In regards to the second return, I have assessed a penalty consistent with past Investigation Reports. This lobbyist has held some very senior government roles. This includes not only senior roles with the BC Government, but recent experience with the Government of Alberta, including a period as the Chief of Staff for the Alberta Premier. I am troubled by the pattern displayed by the lobbyist of not declaring himself as a former public office holder. However when issuing this penalty, I can only consider the most recent contravention in the context of the British Columbia's legislation. Therefore I consider a penalty of \$1,000 to be appropriate in this instance.

## **CONCLUSION**

1. Under s. 7.2(2) of the LRA, I find that the lobbyist contravened s. 4(1)(o) of the LRA when he failed to enter into his return that he was a former public office holder, the nature of the position he formerly held and the term of office. The notice of alleged contravention has been substantiated.
2. I impose an administrative penalty of \$1,000.
3. The lobbyist must pay this penalty no later than November 21, 2018.

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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](mailto:info@bcorl.ca)

Date: October 10, 2018

ORIGINAL SIGNED BY

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Trevor Presley, Investigator and  
Delegate of the Registrar of Lobbyists