



INVESTIGATION REPORT 13-02
BRITISH COLUMBIA ASSOCIATION OF CHIEFS OF POLICE
AND
BRITISH COLUMBIA ASSOCIATION OF MUNICIPAL CHIEFS OF POLICE

SUMMARY

The Office of the Registrar of Lobbyists conducted an investigation to determine whether the British Columbia Association of Chiefs of Police and the British Columbia Association of Municipal Chiefs of Police were required to register under the LRA. The Acting Deputy Registrar found that the police associations are not required to register as lobbyists under the LRA, because their members communicate with public office holders in their official capacity as employees of a local government authority or the government of Canada and are exempt from the requirement to register.

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

INTRODUCTION

[1] This report concerns an investigation conducted under section 7.1 of the *Lobbyists Registration Act* ("LRA").

[2] Section 7.1(1) of the LRA gives the Registrar of Lobbyists ("Registrar") authority to conduct an investigation to determine whether there is or has been compliance by any person with the LRA or its regulations. If, after the investigation, the Registrar believes that a person has not complied with the LRA or its Regulations, the Registrar must provide the person statutory notice and an opportunity to be heard before making a final determination and imposing an administrative penalty.

[3] This investigation, conducted under the authority delegated to the Acting Deputy Registrar by the Registrar under s. 7(4)(d) of the LRA, commenced when the Office of the Registrar of Lobbyists ("ORL") received a complaint in September 2012 concerning two organizations: the British Columbia Association

of Chiefs of Police ("BCACP") and the British Columbia Association of Municipal Chiefs of Police ("BCAMCP"). The complainant alleged that the members of these associations had been lobbying without registering. The complainant also made a complaint to the Office of the Information and Privacy Commissioner ("OIPC"), after the associations refused to provide him with access to the records of these associations that he had requested under the *Freedom of Information and Protection of Privacy Act* ("FIPPA").

[4] For the reasons set out below, I have determined that there has been no breach of the LRA by the organizations or their members.

PROCEDURAL OBSERVATIONS

[5] There are two features of this LRA investigation that warrant preliminary discussion.

[6] The first is that information from a member of the public caused this office to initiate this investigation. It is important to note that the LRA does not contain a formal public complaint process. It does not recognize "complainants" or grant to anyone legal status, the right to require an investigation or other process rights. However, nothing prevents a member of the public from writing to the Registrar requesting an investigation. The decision as to whether and how to investigate is at the sole discretion of the Registrar. In this case the Registrar decided that the complaint warranted investigation.

[7] The second procedural feature of this case to be noted is that the ORL granted the BCACP and the BCAMCP notice and an opportunity to make submissions at an earlier stage in the process than the LRA requires. There is a statutory requirement in s. 7.2(1) of the LRA that the ORL give a person being investigated formal notice and an opportunity to be heard *after* the investigation is complete, if the Registrar believes the person has not complied with the LRA or its regulations. The statutory duties in s. 7.2 arise after an investigation. However, the Registrar maintains discretion to manage the investigation process itself. This may include giving the person notice and an opportunity to make a submission during the investigation, if the Registrar believes such submissions would facilitate the appropriate and orderly resolution of the complaint.

[8] The Deputy Registrar, with the delegated authority of the Registrar, considered notice and an opportunity to make submissions during the investigation appropriate here, particularly as the issue raised questions of law regarding the exemptions set out in the LRA. Following my investigation, I have decided that the LRA has not been breached. Therefore, I am issuing this decision without the need to provide any of the additional further and formal notifications set out in s. 7.2.

ISSUE UNDER CONSIDERATION

[9] The issue under consideration is whether representatives of the BCACP and the BCAMCP are required by s. 3 of the LRA to register and identify their respective in-house lobbyists.

RELEVANT SECTIONS OF THE LRA

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

- (a) who receives a payment for the performance of his or her functions, and
- (b) whose lobbying or duty to lobby on behalf of the organization or an affiliate, either alone or together with other individuals in the organization,
 - (i) amounts to at least 100 hours annually, or
 - (ii) otherwise meets criteria established by the regulations;

"designated filer" means

- (b) in the case of an organization that has an in-house lobbyist,
 - (i) the most senior officer of the organization who receives payment for performing his or her functions, or
 - (ii) if there is no senior officer who receives payment, the most senior in-house lobbyist;

"lobby" 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,
- (c) in relation to an in-house lobbyist only, to arrange a meeting between a public office holder and any other individual for the purposes of attempting to influence any of the matters referred to in paragraph (a) of this definition;

Restrictions on application of Act

- 2(1) This Act does not apply to any of the following persons when acting in their official capacity:
- (c) employees of the government of Canada or of the government of another province or territory;
 - (d) members of a municipal council, regional district board, improvement district board, school district board or other local government authority, persons on the staff of those members, or employees of a municipality, regional district, improvement district, school district or other local government authority;

Requirement to file return

- 3(3) The designated filer of an organization must file with the registrar a return in the prescribed form and containing the information required by section 4,
- (a) if no return has been filed previously, within 60 days of the date the organization first has an in-house lobbyist, or
 - (b) if a return has been filed previously, within 30 days of the end of each 6 month period after the date of filing the previous return.

BACKGROUND

[10] On September 14, 2012, a member of the public filed a complaint with the ORL regarding the BCACP and the BCAMCP.

[11] The member of the public alleged that the BCACP and the BCAMCP had engaged in lobbying, as defined in the LRA, and that they undertook this lobbying without the required registration on the BC Lobbyists Registry (“Registry”). The member of the public requested that the ORL determine whether the BCACP and BCAMCP are organizations subject to the LRA that are required to register and identify their in-house lobbyists.

INVESTIGATION

[12] On September 14, 2012, the ORL commenced an investigation under s. 7.1 of the LRA to determine whether the BCAMCP had complied with the LRA. On October 25, 2012, the ORL commenced an investigation under s. 7.1 to determine whether the BCACP had complied with the LRA.

[13] In letters dated October 25, 2012, the Deputy Registrar of Lobbyists requested that the Presidents of the BCAMCP and BCACP (the Chief Constables of the Victoria and West Vancouver Police Departments, respectively) review the associations' activities and provide the Deputy Registrar with their positions and views as to whether those organizations met the definition of lobbying in the LRA, and whether they, as the organizations' designated filers, were required to register the associations on the BC Lobbyists Registry.

[14] In his November 2, 2012, response to the Deputy Registrar's questions, the BCACP President expressed his view that neither the BCACP nor its members were required to register, for two reasons.

[15] First, he referenced s. 1(a) of the LRA, which defines an organization's "in-house lobbyists" in part as persons who receive payment for the performance of their functions. The BCACP President wrote that, "Executive Officers and regular members of the BCACP do not receive remuneration from the BCACP, its individual police officer members, or affiliated police departments, for their activities within or on behalf of the BCACP."

[16] Second, he referenced ss. 2(1)(c) and (d) of the LRA (reproduced above), which state that the LRA does not apply to, respectively, employees of the government of Canada and employees of a local government authority when each is acting in an official capacity. The membership of the BCACP includes employees of the Royal Canadian Mounted Police and employees of independent municipal police departments.

[17] In response to the Deputy Registrar's question about the association's charter or other documents outlining its structure and purpose, the BCACP President supported his claim that he acted in an official capacity through the association by quoting from the association's constitution:

The Association has as its objectives:

- a. Encouraging and developing co-operation among all its members in the pursuit of and attainment of their goals.
- b. Promoting a high standard of ethics, integrity, honour and conduct.
- c. Fostering uniformity of police practices.

- d. Encouraging the development and implementation of efficient and effective practices in the prevention and detection of crime.
- e. Effectively communicating problems and concerns to the appropriate levels of authority.

[18] In a further letter of March 28, 2013, the BCACP President wrote: “The duties of chief constables of the independent municipal police departments include a vast range of assigned activities, including participation in professional organizations such as the BCACP”. He cited clauses from his employment contract with the West Vancouver Police Department relating to time release for him to attend meetings associated with his membership in professional organizations and reimbursement for reasonable associated expenses, such as membership fees or travel and accommodation expenses, to attend meetings.

[19] The response received from the BCAMCP relied on the same provisions and rationale.

DISCUSSION

[20] The purpose of the LRA is to provide the public with a significant degree of transparency regarding who is seeking to influence public policy in British Columbia. To this end, the LRA creates a very broad definition of the word “lobby” and prescribes several detailed and carefully crafted registration requirements to ensure that lobbyists engage in complete, timely and public registration regarding who they are seeking to influence and on what subjects and public policy.

[21] While the LRA applies widely to individuals whose activities meet the definition of lobbying, it also incorporates certain exemptions from the obligation to register. These exemptions include different levels of government (for example, the federal government, municipal governments or independent governmental agencies), when their employees seek to influence a provincial public office holder.

[22] The LRA stipulates that certain public employees and officials are not subject to the LRA’s registration requirements:

- 2(1) This Act does not apply to any of the following persons when acting in their official capacity:
 - (c) employees of the government of Canada or of the government of another province or territory;
 - (d) members of a municipal council, regional district board, improvement district board, school district board or other local government authority, persons on the staff of those members, or employees of a municipality, regional district, improvement district, school district or other local government authority;

[23] The two police chiefs in question have made several arguments in support of the position that they are exempt. The one I find most convincing is their assertion, which I find to be supported by the evidence, that when police chiefs are participating in their umbrella organizations, they are not ceasing to act as federal and local government employees or police chiefs. When they participate in their organizations, the police chiefs are doing so fundamentally and precisely because they are police chiefs, and because they recognize that cooperation between police chiefs is one key aspect of their work as police chiefs employed and paid by the federal and local governments in question. In this regard, I can take notice of the reality that British Columbia is, for historical and other reasons, characterized by numerous large and small police departments.

[24] In this organizational context, it is reasonable to conclude that there would be several issues of common concern to police chiefs that cross the boundaries of individual departments, and in respect of which communication and cooperation is not only useful but necessary. The two organizations at issue here clearly exist in order to provide a forum in which these issues and concerns can be communicated by police chiefs on behalf of their respective local governments or the RCMP. It seems clear that, if an individual police chief, as a local government or federal employee, is exempt from the LRA when he or she communicates with public office holders, the situation does not change because police chiefs are speaking together on issues of concern that relate to legitimate questions of policing and on which an individual police chief could otherwise “lobby” without being required to register.

[25] Having made these points, I recognize that one of the legitimate concerns expressed by the member of the public who requested this investigation was that the organizations had initially claimed exemptions under both the LRA and FIPPA. If the organizations do not have to register under the LRA because the police chiefs are municipal employees, they should not be able to claim that the records of the organization that are in their possession as the chiefs of their individual police departments, by virtue of the chiefs’ participation within the organizations, are not subject to access under FIPPA.

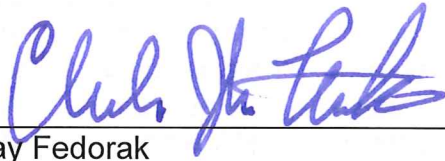
[26] Although I am not adjudicating FIPPA in this case, I do consider it appropriate to note that my findings are consistent with the position that the various police departments ultimately took with respect to the requests under FIPPA for access to records of the BCACP and the BCAMCP in their custody. These departments have since agreed to process the complainant’s requests for access to the records that he had originally requested from the associations. In so doing, they affirm that the records relating to the two associations, which are held in the offices of their respective chiefs of police, are in the custody and under the control of the police departments for the purposes of FIPPA.

[27] I wish to make it clear before concluding that I might well have taken a different view regarding this matter, if I had been provided with evidence that the organizations in question here had essentially taken on a life of their own and had engaged in lobbying public office holders on questions with little or no connection to federal and provincial policing. In that case, one might well question whether the participants were acting “in their official capacity”. However, I have received no such evidence in this matter.

FINDING

[28] I find that the BCACP and the BCAMCP have not contravened s. 3 of the LRA. As a result of this finding, no further action is necessary under the LRA.

June 6, 2013



Jay Fedorak
Acting Deputy Registrar of Lobbyists