

INVESTIGATION REPORT 20-02

Consultant Lobbyist: Dave Cyr

Date: January 19, 2021

SUMMARY: A consultant lobbyist failed to declare his status as a former public office holder in 13 client registrations contrary to s. 4(1)(o) of the *Lobbyist Registrations Act*. The lobbyist received an administrative penalty of \$3,500.

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

Authorities Considered: Investigation Report 18-01 and Investigation Report 18-06

INTRODUCTION

[1] This report concerns an investigation under s. 7.1 of the *Lobbyist Registration Act* (LRA)¹. 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 lobbying law in BC 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.

¹ This matter precedes the coming into force of the *Lobbyists Transparency Act* on May 4, 2020

ISSUES UNDER CONSIDERATION

[4] The questions for consideration are:

(a) Whether Dave Cyr, a consultant lobbyist, who entered into undertakings to lobby on behalf of his clients, failed to declare his former public officer holder positions contrary to s. 4(1)(o) of the LRA in the following Registration IDs:

- 46592566 (Client: Canadian Consumer Finance Association);
- 26992455 (Client: Clean Energy BC);
- 19158457 (Client: ESIT Advanced Solutions Inc.);
- 7746300 (Client: JUUL Labs Inc.);
- 41301698 (Client: North Coal Ltd.);
- 46579214 (Client: Painted Pony Energy Ltd.);
- 29504404 (Client: Yorkville Education Company ULC);
- 19158458 (Client: Automotive Retailers Association);
- 19158453 (Client: Domtar Inc.);
- 22999251 (Client: Pacific Northern Gas Ltd);
- 19158454 (Client: Private Forests Landowners Association);
- 19158450 (Client: Tides Canada Initiatives Society, Organizing for Change Project), and
- 18987703 (Client: Waste Management Inc.)

(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, other than administrative support staff, formerly employed in the former member's former office,
- (a.1) any individual, other than administrative support staff, formerly employed in a current or former office of a current member of the Executive Council,
- (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 ministry, 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

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.

BACKGROUND

[5] On February 24, 2020, the lobbyist submitted an update to the Office of the Registrar of Lobbyists (ORL) to Registration ID 29504404 on behalf of his client, Yorkville Education Company ULC. This registration has an undertaking start date of October 5, 2016 and an undertaking end date of October 11, 2020. In this registration, the lobbyist did not declare that he was a former public office holder.

[6] On February 24, 2020, the ORL contacted the lobbyist and advised him that it had noticed several Orders in Council indicating he was a former public office holder. The ORL asked the lobbyist to log into his active registrations and enter the required information regarding all of the lobbyist's former public office holder positions.

[7] Between February 24 and February 27, 2020, the lobbyist corresponded with the ORL regarding updates to his active registrations. By February 26, 2020, the lobbyist had updated all of the active registrations to reflect the fact that he is a former public office holder.

[8] Based on the above facts, it appeared the lobbyist failed to declare that he is a former public office holder in the above-referenced registrations contrary to s. 4(1)(o) of the LRA.

INVESTIGATION

[9] On April 27, 2020, 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 him to respond in writing to the alleged contravention and to provide any information or documentation pertinent to the contravention and any potential penalty.

[10] On April 30, 2020, the lobbyist responded to the 7.2(1)(a) notice. He admitted the errors. He stated, "I mistakenly assumed that the definition of public office holder only applied to elected officials and as such never filled out the registration correctly". The lobbyist stated it was not his intention to mislead anyone and that he fully accepts responsibility for the error. Once the error was brought to his attention, he updated all thirteen of his active registrations to reflect his former public office holder status.

DISCUSSION

[11] Section 4(1)(o) of the LRA requires a lobbyist to declare in their registration if they are a former public office holder, and to provide the nature of the office formerly held by them 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.

[12] Information about the 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.

[13] Failure to provide this information undermines transparency and the public's confidence in the registry.

[14] The lobbyist has not been a public office holder since January 2008 at which time he left his position as a Ministerial Assistant to the Minister of Aboriginal Relations and Reconciliation. Prior to that, he held public office holder positions as a Ministerial Assistant to the Minister of Labour and Citizen Services (2005-2006), Ministerial Assistant to the Minister of Transportation (2004-2005) and Executive Assistant to the Minister of Agriculture, Food and Fisheries and to the Minister of Transportation (2002-2004). His first registration was submitted in 2014. This means six years elapsed between the time the lobbyist left government and the time he first began lobbying.

[15] The lobbyist stated that he did not realize the definition of former public office holder included his past positions. The definition of former public office holder is set out in section 4(1.1) of the LRA. It includes the positions formerly held by the lobbyist. Not understanding one's obligations under the LRA is not an excuse.

FINDING

[16] 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 he was a former public office holder in 13 separate registrations. The lobbyist admits he failed to declare his former public office holder status on all of the registrations.

ADMINISTRATIVE PENALTY

[17] 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 the Act or the regulation, 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".²

[18] 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.³ 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 delegated discretion to determine a penalty based on the facts before me.

[19] The Policy sets out a general financial range for particular infractions (depending on whether it is a first, second or third infraction of that nature). It provides a list of factors that will be considered in determining the amount of the 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."

[20] I have considered and rejected the view that this might be a case where "no penalty" is appropriate. The LRA provisions have been in place since April 2010. Recent amendments under the *Lobbyist Registration Amendment Act* did not change the lobbyist's responsibilities in this case. The lobbyist should have been aware of the definition of former public office holder and as such, his obligations under the LRA with respect to his registrations. The contravention in this case is clear. A penalty is necessary for both specific and general deterrence.

² LRA s. 7.2(2)(c)(ii)

³ These have recently been replaced by the "[Registrar of Lobbyists: Guide to Investigation](#)." However, the guidance for determining an administrative penalty in relation to the subject of this investigation remains the same.

[21] The Policy suggests a range of penalties for contraventions of the LRA. The suggested range of penalty for entering inaccurate information or failing to include information in a registration is \$1000 to \$7500 for a first contravention, \$7,500 to \$15,000 for a second and up to \$25,000 for a third. After that the lobbyist can be prohibited from further lobbying.

[22] In determining the appropriate administrative penalty within the range outlined, 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,
- whether a penalty is necessary for specific and general deterrence, and
- any other factors that, in the opinion of the Registrar or their delegate, are relevant to the administrative penalty.

[23] I have considered these factors and the submission made by the lobbyist.

[24] The lobbyist has no previous enforcement actions for contraventions under the LRA. This is in the lobbyist's favour.

[25] The next factor to consider is 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 registration is accurate.

[26] The LRA makes clear that transparency includes a responsibility that lobbyists identify whether they are a former public office holder. This requirement has been in place since 2010. 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(s). An omission of this kind undermines the LRA's goals of transparency and public confidence in government decision-making.

[27] In this case, the lobbyist entered inaccurate information in 13 registrations over approximately a six-year period. During this time, the public was not aware of the

lobbyist's former public office holder positions. The public could not judge whether the lobbyist was able to exploit insider knowledge or influence government decision making.

[28] Information about a lobbyist's positions in public office is very important. The purpose of s. 4(1)(o) 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.

[29] In this case, for a three-year period, the lobbyist was lobbying the same government in which he was formerly employed as a public office holder. At minimum there is a perception here that that his knowledge and relationships could have assisted him in influencing government decision making. This is a circumstance which supports a penalty in the higher range.

[30] The number of inaccurate registrations (13) is another factor that moves the penalty towards the higher end of the range for a first contravention.

[31] I also must consider whether the contravention was deliberate. I have no evidence to suggest that the lobbyist intended to deceive the public when he omitted his former public office holder positions from the Registry. While ignorance of his obligations is no excuse, I accept, on balance, that the contraventions resulted from the lobbyist's lack of understanding of his responsibilities under the LRA. I consider this a factor that warrants a penalty in the lower end of the range.

[32] I then considered whether the lobbyist derived any economic benefit from the contraventions. While the lobbyist did gain an economic benefit when he received payment for lobbying, there is no evidence before me that suggests he obtained that payment because of the contravention. This is a factor that weighs in favor of a penalty in the lower end of the spectrum.

[33] Once the ORL contacted the lobbyist about the errors on his registrations, he was cooperative and corrected all of his active registrations within a two-day time period. Correcting errors expeditiously weighs in the lobbyist's favour and supports a penalty in the lower end of the range.

[34] I have considered whether any other factors are relevant in determining the appropriate penalty and have identified investigation reports that are relevant.

[35] Investigation Report 18-01 (IR 18-01) has similar circumstances to this case. In IR 18-01, the consultant lobbyist failed to enter accurate information into one active registration when he did not declare his former public office holder positions. Similar to this case, it was the lobbyist's first contravention and it was accepted to be an unintentional misunderstanding of the legislation. The lobbyist did not benefit economically and quickly corrected the error after being alerted to it. The lobbyist received a \$1000 penalty for that contravention.

[36] In Investigation Report 18-06 (IR 18-06), the designated filer neglected to enter the in-house lobbyist's former public office holder positions. That investigation focused on the potential influence wielded by the in-house lobbyist over former colleagues and government decision making. Because it had been 20 years since the lobbyist was a public office holder, potential influence in that case was deemed to be minimal. In addition, previous registrations had correctly disclosed the lobbyist's former public office holder positions so that the public had some awareness of the lobbyist's previous positions. This was the designated filer's first contravention and the corrections were made promptly, as is the case in this investigation. In IR 18-06, based the factors outlined above, the investigator exercised his discretion and imposed a penalty of \$500.

[37] This case can be distinguished from other Investigation Reports out of this office mainly by the large number of inaccurate registrations at issue. To my knowledge, the ORL has never had to investigate a contravention with this number of inaccurate registrations in one report.

[38] Because all of the contraventions came to light at the same time and the lobbyist corrected them all at essentially the same time, it is appropriate, in my view, to treat them as a first contravention rather than successive or recurring contraventions. Treating each registration as a separate contravention would lead to what I believe would be an excessive or punitive penalty rather than one that promotes compliance and transparency.

[39] In summary, the lobbyist did not provide accurate, current and complete information, undermining the LRA's purpose of promoting transparency. He failed to declare his former public office holder status in 13 registrations, therefore the public was not able to establish whether the lobbyist exerted undue influence over previous colleagues or government decision making.

[40] However, I also recognize that this is the lobbyist's first contravention, I accept the fact that he was not intentionally deceiving the LRA, he did not benefit from his contraventions and when he became aware of them, he corrected them in a timely manner. If these factors did not exist, I would be inclined to levy a penalty in the high

range due to the number of inaccurate registrations and the potential for government influence.

[41] In balancing these factors, taking into consideration those that weigh in favour of a higher penalty with those which favour a penalty in the lower or middle range, it is my view a reasonable administrative penalty is \$3,500.

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 registrations (13) that he was a former public office holder, the nature of the positions he formerly held and the term of office. The notice of alleged contravention has been substantiated.
2. I impose an administrative penalty of \$3,500.
3. The lobbyist must pay no later than March 2, 2021
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 ground 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: January 19, 2021

ORIGINAL SIGNED BY

Shannon Hodge
Investigator and Delegate of the
Registrar of Lobbyists