

## EXEMPTION DECISION 23-01

**Nicolas Jimenez (British Columbia Ferry Services Inc.)**

**May 10, 2023**

**SUMMARY:** Since late 2017, the applicant served as the President and Chief Executive Officer of the Insurance Corporation of British Columbia and was appointed President and Chief Executive Officer of British Columbia Ferry Services Inc (BC Ferries). The Registrar considered the preliminary question of whether the *Lobbyists Transparency Act* applied to BC Ferries such that it was required to report its lobbying of government. The Registrar determined that the Act did apply to the lobbying activities of BC Ferries. Cabinet had the power to exempt BC Ferries from these requirements but had chosen not to. The applicant’s request to be exempted from the two-year prohibition on lobbying under s. 2.3 of the *Lobbyists Transparency Act* is granted. The prohibition’s purpose is preventing individuals from marketing information and relationships gained at public expense for private advantage. While the structure of BC Ferries is complex, its ultimate ownership rests with the Province. This means the applicant is moving from one government-owned entity to another, distinguishing this matter from past cases where exemption seekers moved from governmental bodies to private organizations ranging from industry associations to non-profit charities. To the extent BC Ferries might be said to gain advantage from the proposed lobbying activity, the public should be the ultimate beneficiary. In these circumstances, the Registrar found it in the public interest to grant the applicant an exemption from the two-year prohibition on lobbying, though BC Ferries must continue to report all lobbying activity.

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

**Authorities Considered:** Exemption Decision 22-01, Exemption Decision 18-01

### BACKGROUND

[1] The applicant has applied for an exemption, in the public interest, from the two-year cooling-off period that applies to them as a “former public office holder” under s. 2.2 of the *Lobbyists Transparency Act* (LTA).

[2] From late 2017 until February 3, 2023, the applicant served as the President and Chief Executive Officer of the Insurance Corporation of British Columbia (ICBC).<sup>1</sup> In March 2023, the applicant was appointed as President and Chief Executive Officer of British Columbia Ferry Services Inc. (BC Ferries).

[3] The submissions I have received are from the Vice President, General Counsel & Corporate Secretary of BC Ferries and are written in the third person. For the purposes of this decision, references I make to the “applicant” will include the submissions made by the Vice President on behalf of the individual applicant.

## DISCUSSION

### ***Overview of the LTA’s scheme***

[4] The overarching purpose of the LTA is to ensure the lobbying of public office holders in British Columbia is transparent.

[5] The LTA regulates two kinds of individuals who undertake the work of lobbying activity: in-house lobbyists and consultant lobbyists.

[6] The LTA 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. These include the establishment of programs or policies, development or enactment of legislation, awarding of contracts, outsourcing of services, and sale of assets. Also included is the act of “arranging a meeting between a public office holder and any other individual for the purpose of attempting to influence” any of the matters described above. The above activities in the definition of “lobby” are themselves defined as “lobbying activity.”

[7] The term “public office holder” is defined broadly under the LTA, covering any officer or employee of the provincial government, elected members of the Legislative Assembly (and anyone on their staff), anyone appointed to an office or body by or with the approval of Cabinet or a minister, and an officer, director or employee of any government corporation as defined in the *Financial Administration Act*.

### ***Overview of the two-year rule***

[8] Since 2018, the LTA has contained a two-year prohibition on lobbying activity by certain former public office holders (referred to below as the “two-year rule”).

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<sup>1</sup> Insurance Corporation of British Columbia, News Release, “President and CEO of ICBC departs for BC Ferries” (January 17, 2023), online <https://www.icbc.com/about-icbc/newsroom/Pages/2023-jan17.aspx>.

[9] Section 1 of the LTA defines the term “former public office holder”. The part relevant to this Decision reads as follows:

**“former public office holder”** means

...

(c) any individual who formerly occupied

...

(iii) a prescribed position in a Provincial entity;

[10] The Lobbyists Transparency Regulation (Regulation) in turn states:

2 (1) For the purposes of paragraph (c) (iii) of the definition of “former public office holder” in section 1 (1) [interpretation] of the Act, the following positions in a Provincial entity are prescribed:

(a) the most senior or next most senior ranking executive position of a Provincial entity listed in the Appendix of this regulation;

[11] ICBC is a listed in the Appendix to the Regulation.

[12] Sections 2.2 and 2.3 of the LTA set out, respectively, the two-year rule and the authority for the Registrar to grant exemptions from that rule:

**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,
- (a.1) to be an individual employed in a current or former office of a current member or former office of a former member of the Executive Council,
- (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”.

**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 to the registry:

- (a) the terms or conditions of the exemption;
- (b) the registrar's reasons for granting the exemption.

[13] What the provision discloses is that while former office holders are not prevented from leveraging the knowledge, expertise, and relationships acquired over the years at public expense, they are, for a period at least, prohibited from using them for the purpose of lobbying.<sup>2</sup>

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<sup>2</sup> ED 18-01, para 19.

[14] The Attorney General, responsible for the two-year prohibition’s introduction, explained in debate that this was meant to prevent “undue influence” by certain lobbyists with insider knowledge, connections or both:

These reforms will balance the interests of having well-informed policy-makers who contribute to the democratic process and ensure a level playing field for all lobbyists. They will eliminate the potential for undue influence and the improper use of insider knowledge in lobbying.<sup>3</sup>

[15] The Attorney General then identifies the particular form of undue influence the prohibition means to prevent – that of individuals marketing information and relationships formed at public expense for private advantage.

[16] I have held previously that a private interest is one that relates to an individual interest, or the interests of a small or narrowly defined group of people. Put another way, a private interest benefits individuals or groups, rather than the entire community.<sup>4</sup>

***Preliminary Issue: Applicability of the LTA to the activities of BC Ferries***

[17] The letter containing the exemption application includes a “Request for Guidance” about the applicability of the LTA to BC Ferries generally, and asks the following question:

Because there is no specific exemption for BC Ferries under the LTA and the Lobbyists Registration Act before it, the organization is registered under the LTA and we report communication with senior public office holders as required under the Act. A purpose of this letter is to ask whether our assumption has been correct?<sup>5</sup>

[18] Section 1(3) of the LTA exempts “persons employed by, or officers or directors of, Provincial entities.” Section 3(b)(ii) of the Regulation prescribes the meaning of “Provincial entities” as it relates to section 1(3) of the LTA to be a Provincial entity listed in the Appendix. Effectively, this means that employees of Provincial entities listed in the Appendix are not lobbying under the LTA when acting in their official capacity.

[19] I agree there is no specific exemption under the LTA that applies to BC Ferries. There is no doubt this is due in part to its arms length relationship from government implemented in 2003 through the establishment of a complex governance structure (though, as the applicant correctly points out, the Province of British Columbia remains the ultimate owner of BC Ferries).<sup>6</sup>

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<sup>3</sup> British Columbia Legislative Assembly, *Hansard*, No. 38 at 3:30 P.M., (Hon. D. Eby).

<sup>4</sup> ED 18-01, para 32.

<sup>5</sup> Application, p. 3.

<sup>6</sup> Application, p. 1.

[20] Government has made a choice not to include BC Ferries in the Appendix of the Regulation. The resulting practical effect is that persons employed by, or officers or directors of, BC Ferries are considered “in-house lobbyists” when carrying out any of the activities listed in the LTA definition of “lobby.” They are thus required to report these activities under the LTA. If the government wants to exempt them from these responsibilities, cabinet would have to do so by amending the LTA or the Lobbyist Transparency Regulation.

### ***Basis for the applicant’s request***

[21] The applicant makes two arguments for why they should be exempt from the two-year rule: that s. 2.2 was never intended to apply to individuals who stay within the public sector, and that even if it did apply, regular communication between the applicant and the government is in the public interest.

[22] On the first point, the applicant submits that “[t]he purpose of section 2.2 was not to prevent public servants from transitioning from one government-owned corporation, namely, ICBC, to another government-owned corporation, namely, BC Ferries.”<sup>7</sup> The applicant goes on to point out that the underlying purpose of the two-year rule is to prevent inside information from being sold for profit, and that because of the public nature of BC Ferries, the applicant does not “realistically stand to personally profit from his experience as a former public office holder at ICBC.”<sup>8</sup>

[23] On the second point, the applicant simply states that the close relationship between the Province and BC Ferries means that regular communication between the applicant and the Province are in the public interest.<sup>9</sup> The applicant relies on the structure of BC Ferries, including that the Province is the sole voting shareholder of BC Ferries, public reporting requirements, subsidies received from the Province, and limits on executive remuneration.<sup>10</sup>

### ***Application***

[24] What I must determine is whether I am satisfied it is in the public interest to grant the requested exemption from the two-year lobbying prohibition, and if so whether conditions should be attached to such approval.

[25] In previous decisions, I have identified several factors to consider in determining whether an exemption from the lobbying prohibition should or should not be granted. These include whether:

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<sup>7</sup> Application, p. 6.

<sup>8</sup> *Ibid*, p. 6.

<sup>9</sup> *Ibid*, p. 6.

<sup>10</sup> *Ibid*, p. 2-3.

- the type and duration of the position the applicant previously held under s. 2.2 of the LTA;
- the length of time since that position concluded;
- the nature of the proposed undertaking to lobby, including the client and the target(s) of lobbying;
- how the public can be assured that no information or relationships acquired in the previous position will be used in the proposed lobbying;
- why the particular lobbyist, as distinct from some other lobbyist, is proposing to carry out the lobbying;
- how the public will benefit from lobbying activity by the applicant;
- any terms and conditions that might be proposed that would satisfy the Registrar that an exemption would be in the public interest.<sup>11</sup>

[26] The factors are closely linked with the premise I observed above – that the Legislature wanted to prevent individuals from marketing information and relationships gained at public expense for private advantage. As the Attorney General put it during debate on the two-year prohibition, public servants having “access to this inside information... should not be permitted to sell that information when they leave the public service in terms of leaving a minister’s office, leaving the board chair of a Crown corporation and then going into the private sector.”<sup>12</sup>

[27] The facts of this application are unique because the individual seeking an exemption is not moving from a government body to the private sector but rather from one government-owned body to another. This renders it unnecessary to assess the factors set out in paragraph 25 because the premise underlying them is not present here. Whatever its elaborate structure, any attempt by the applicant to influence government on BC Ferries’ behalf could not be characterized as seeking a “private advantage.” The applicant’s circumstances can be clearly differentiated from past exemption seekers who have moved from governmental bodies to private organizations ranging from industry associations to non-profit charities. BC Ferries, for which the applicant is now CEO, is fundamentally different because it is run for the benefit of, and, ultimately owned by, the people of the province through its share structure.<sup>13</sup> To the

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<sup>11</sup> ED 18-01, para 38; ED 22-01, para 24.

<sup>12</sup> ED 18-01, para 15 citing British Columbia Legislative Assembly, *Hansard*, No. 58 at 11:10 A.M., (Hon. D. Eby).

<sup>13</sup> Other indicia of the public nature of its operations provided by the applicant include the fact that BC Ferries does not pay dividends except to the province, is required to publicly disclose detailed financial and operational information, and does not set remuneration for its executives or directors above limits established by the BC Ferry Authority: Application, pp. 2-3.

extent BC Ferries might be said to gain advantage from the proposed lobbying activity, the public should be the ultimate beneficiary.

### **CONCLUSION**

[28] For the reasons set out above, I am satisfied that it is in the public interest to exempt the applicant from the two-year prohibition in s. 2.2.

[29] As a condition for granting this exemption under s. 2.3 of the LTA, the applicant must ensure that Exemption Decision Number ED 23-01 is included, in all Registration Returns in which the applicant is registered as a lobbyist, until February 4, 2025. Failure to comply with this condition renders this Exemption Decision null and void.

Date: May 10, 2023

### **ORIGINAL SIGNED BY**

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Michael McEvoy  
Registrar of Lobbyists for British Columbia