

DETERMINATION DECISION 23-06

Canadian Vaping Association

Designated Filer: Samuel Tam

Date: September 26, 2023

SUMMARY: The designated filer of the Canadian Vaping Association (CVA) submitted a Registration Return 3 months late, contrary to section 3(3) of the *Lobbyists Transparency Act* (LTA). The designated filer argued he was a volunteer, so he was not required to submit a Registration Return. It was determined the designated filer is not a volunteer; therefore, he was required to submit a Registration Return for his lobbying activity. He received an administrative penalty of \$650 for contravening s. 3(3) of the LTA.

Statutes considered: *Lobbyists Transparency Act*, S.B.C. 2001, c. 42.

Authorities considered: Investigation Reports: 17-01 and 17-02 and 19-01.

INTRODUCTION

[1] This report concerns an investigation under s. 7.1 of the (LTA). This section gives the Registrar of Lobbyists (the Registrar) the authority to conduct an investigation to determine compliance with the LTA or its regulations. If the Registrar or delegate believes that the person under investigation has not complied with a provision of the LTA or its regulations, s. 7.2 of the LTA requires the Registrar to give a person under investigation notice of the alleged contravention and the reasons for the Registrar's belief that the contravention has occurred. Prior to making a determination under s. 7.2(2) of the LTA, 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 LTA recognizes two types of lobbyists: consultant lobbyists and in-house lobbyists. This report focuses on the activities of the Canadian Vaping Association (CVA), an organization with an in-house lobbyist. An in-house lobbyist is a paid employee, officer or director of an organization who lobbies on behalf of the organization or affiliate. Samuel Tam, President of

the CVA, is the designated filer for the CVA, the most senior officer of the organization who receives payment for performing the officer's functions.

[3] Under s. 7(4)(d) of the LTA, the Registrar has delegated to me the authority to conduct this investigation.

ISSUES UNDER CONSIDERATION

[4] The issues for consideration are:

- (a) Whether Samuel Tam, President of the CVA, who is the most senior officer of the organization, and the designated filer, is a volunteer because he does not receive payment from the CVA for performing the officer's functions.
- (b) If the designated filer is not a volunteer, whether the designated filer contravened s. 3(3) of the LTA when he failed to submit a Registration Return within 10 days after the CVA first had an in-house lobbyist (the designated filer in this case) who lobbied on behalf of the CVA.
- (c) If the designated filer did not comply with the requirements of the LTA, what, if any, administrative penalty is appropriate in the circumstances.

RELEVANT SECTIONS OF THE LTA

[5] "**designated filer**" means

- (a) a consultant lobbyist, or
- (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 the officer's functions, or
 - (ii) if there is no senior officer who receives payment, the most senior in-house lobbyist;

[6] "**in-house lobbyist**" means, subject to subsection (4), a person who

- (a) is an employee, officer or director of an organization,
- (b) receives a payment for the performance of the person's functions, and
- (c) lobbies on behalf of the organization or an affiliate;

[7] "**lobby**", subject to section 2 (2), means

- (a) 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) to arrange a meeting between a public office holder and any other individual for the purpose of attempting to influence any of the matters referred to in paragraph (a) of this definition;

...

[8] "**payment**", subject to section 2.1, means money or anything of value and includes a contract, a promise or an agreement to pay money or anything of value, but does not include a reimbursement of expenses;

[9] "**public office holder**" means

- (a) a member of the Legislative Assembly and any person on the member's staff,

- (b) an officer or employee of the government of British Columbia,
- (c) a person who is appointed to any office or body by or with the approval of the Lieutenant Governor in Council, other than a person appointed on the recommendation of the Legislative Assembly,
- (d) a person who is appointed to any office or body by or with the approval of a minister of the government of British Columbia, and
- (e) an officer, director or employee of any government corporation as defined in the [Financial Administration Act](#),

[10] **Requirement to file Registration Return**

3(3) The designated filer of an organization must file with the registrar, within 10 days of the date the organization first has an in-house lobbyist, a Registration Return in the prescribed manner and containing the information required by section 4.

[11] **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 investigate.

(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,

...

[12] **Hearing and administrative penalty**

7.2 (1) If after an investigation under section 7.1 the registrar believes that a person under investigation has not complied with a provision of this Act or the regulations, the registrar must

- (a) give notice to the person
 - (i) of the alleged contravention,
 - (ii) of the reasons why the registrar believes there has been a contravention, and
 - (iii) respecting how the person may exercise an opportunity to be heard under paragraph (b) of this subsection, and

(b) give the person a reasonable opportunity to be heard respecting the alleged contravention.

(2) 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

(a) must inform the person of the registrar's determination that there has been a contravention,

(b) may impose an administrative penalty of not more than \$25 000, and

(c) must give to the person notice

(i) of the registrar's determination that the person has not complied with a prescribed provision of this Act or the regulations and the reason for the decision,

(ii) if a penalty is imposed, of the amount, the reason for the amount and the date by which the penalty must be paid, and

(iii) respecting how the person may request reconsideration, under section 7.3, of the determination of non-compliance or the imposition or amount of the penalty.

BACKGROUND

[13] This Determination Decision examines whether Samuel Tam, President of the CVA, was required to file a Registration Return, and, if so, whether the Registration was submitted late, contrary to s. 3(3) of the LTA.

[14] A related decision about Daryl Tempest, a consultant lobbyist with an undertaking to lobby on behalf to the CVA, is addressed in Determination Decision 23-05.

[15] On November 22, 2021, the ORL learned of potential lobbying on behalf of the CVA by Samuel Tam and Daryl Tempest, a consultant lobbyist, from a posting on the Ministry of Health Tobacco and Vapour Products Control Program website.¹ Both attended a meeting held on September 23, 2021, between the Tobacco and Vapour Products Control Program (TBPCP) and the CVA. The meeting was attended by the director and a senior policy analyst at the TBPCP, both public office holders (POH), and Samuel Tam (designated filer), the President of the CVA, and Darryl Tempest a lobbyist who has an undertaking to lobby on behalf of the CVA. The subject of the meeting was to discuss retailer compliance with the E-Substances Regulation (ESR)², specifically:

¹ Tobacco and Vapour Products Control Program Meeting with the Canadian Vaping Association: September 23, 2021.

<https://www2.gov.bc.ca/assets/gov/health/keeping-bc-healthy-safe/tobacco-regulation/meeting-summary-cva-2021-09-23.pdf>

² E-Substances Regulation, BC Reg 186/2020.

Packaging Compliance:

- (a) CVA indicated retailers require greater clarity on B.C.'s packaging requirements under section 8 of the ESR.
- (b) CVA highlighted requirement for retailers to also comply with federal packaging restrictions under the *Vaping Products Labelling and Packaging Regulations* (VPLPR).
- (c) CVA requested that the Ministry publish guidance for retailers on the plain manner requirements.

Online Sales:

- (d) CVA explained their concern with limited enforcement of the online market.
- (e) CVA notes that customers can purchase larger bottles/tanks of e-liquid from online retailers and have been able to purchase high nicotine concentrations from manufacturers that are located outside of Canada.
- (f) CVA is concerned about the impact to British Columbia (B.C.) small business.
- (g) CVA recommends the Ministry and Health Canada consider requiring “age-gating” for online sales, in which customers must produce identification before they purchase products online and again when the product is delivered to the customer.³

[16] The participants discussed packaging compliance and the overlap between federal legislation and the ESR and the publication of guidance for retailers. There was a discussion about the limited enforcement of online sales. The CVA recommended that the POH consider “age-gating” for online sales.

[17] On November 24, 2021, the ORL provided the designated filer with a brief description of lobbying. He was advised that the LTA came into effect on May 4, 2020, with changes that affected organizations. The ORL asked the designated filer:

1. In the period since May 4, 2020, has your organization communicated with a public office holder in an attempt to influence any of the matters set out in the definition of “lobby” in the LTA?
2. If the answer to the previous question is yes, please review the exclusions listed in section 2(2) of the LTA and advise us whether any of the exclusions apply to your communications with public office holders.

³ Ibid.

[18] On December 7, 2021, the designated filer responded to the ORL. He identified himself as the President of the CVA. He described the CVA as a “not-for-profit organization whose board, including [the designated filer], is comprised of volunteers.” The designated filer pointed out that he is not paid and receives no financial compensation for the work he does for the CVA.

[19] The designated filer stated he did not lobby elected officials. He questioned whether he was required to report meetings with non-elected bodies. I understand this to mean he was questioning whether he was required to report meetings with a POH. He also inquired whether the LTA exempted the CVA from registering its lobbying activities since he was not compensated for his position.

[20] On December 9, 2021, the ORL responded to the designated filer. In reply to his questions, the ORL quoted the LTA’s definition of a POH. The ORL briefly described under what circumstances a member of an organization is required to register as an in-house lobbyist and explained that an in-house lobbyist is required to submit a Lobbying Activity Report (Monthly Return) when they lobby a senior public office holder.

[21] The ORL Registry Officer briefly discussed the difference between an employee who is paid to lobby and a volunteer who lobbies. The Registry Officer informed the designated filer that:

A person does **not** need to receive payment directly from the organization they are lobbying on behalf of to be seen as receiving payment. If this is the case, the person would consequently meet the definition of “in-house lobbyist,” and therefore would not be seen as a “volunteer.”

...

I strongly suspect that many members of your organization, due to their employment with organizations directly related to and potentially benefitting from any lobbying activities performed by the CVA, would **NOT** be seen as **true** “volunteers” for the purposes of excluding them from the lobbying requirements of the LTA.

[22] The ORL described the circumstances when the CVA would have to submit a Registration Return and asked the following questions:

1. Has anyone from (or on behalf of) the Canadian Vaping Association performed any lobbying activities with a public office holder in British Columbia since on or after May 04, 2020?
2. If the answer to the above question is “yes”, provide details of any such lobbying activities, including:
 - The name of the person who performed the lobbying activity or activities;

- The date(s) of the lobbying activity or activities;
- Details identifying the public office holder(s) lobbied:
 - The name of the public office holder(s)
 - The title of the public office holder(s)
 - The Ministry or Provincial Entity of the public office holder(s);
- The topic(s) of the lobbying activity or activities;
- The intended outcome of the lobbying activity or activities.

[23] The ORL provided links to guidance documents and asked the designated filer to respond by December 20, 2021.

[24] On December 20, 2021, the designated filer responded. He advised that federal and other provincial registries have considered him to be a volunteer; however, after reading the ORL guidance document, he realized he should register as an in-house lobbyist. The designated filer indicated he has only attended one or two meetings a year. He stated he would not be lobbying in BC in the future. Given the attendance at these two meetings, the designated filer asked the ORL if he should "...register these meetings retroactively."

[25] The designated filer stated that he attended two meetings with public office holders: one on August 12, 2020, and the second on September 23, 2021. He described the meeting details below:

- The August 12, 2020 meeting was to discuss labelling requirements per E-Substances Regulation (ESR).
 - Met with the Executive Director Public Health, Prevention and Planning Branch, Population and Public Health Division
 - Attended by Sam Tam and Darryl Tempest
- The September 23, 2021 meeting was to discuss ESR compliance.
 - Met with the Ministry of Public Health Director and Senior Policy Analyst
 - Attended by Sam Tam and Darryl Tempest

[26] On December 21, 2021, the ORL informed the designated filer that the CVA was required to register the lobbying it conducted on August 12, 2020, no later than August 22, 2020. It pointed out that the CVA's Registration Return was now 16 months overdue.

[27] The ORL discussed whether the designated filer was the most senior paid officer at the CVA. It informed the designated filer that because of his "...position [as] Chief Legal and

Compliance Officer at Pacific Smoke International, it is unlikely that the BC Lobbyists Registry would accept him as a true volunteer for the Canadian Vaping Association and would therefore likely be seen as a ‘paid’ officer, employee or director of the Canadian Vaping Association under the [Lobbyists Transparency Act](#) (LTA).” Therefore, the designated filer, in his role as president of the CVA, compensated by Pacific Smoke International, would likely be viewed as the most senior paid officer, hence, the designated filer for the CVA.

[28] The ORL instructed the designated filer to submit a Registration Return for any lobbying of POHs conducted by CVA’s in-house lobbyists or, in this case, the designated filer himself. The ORL informed the designated filer that the start date of the Registration Return would be the date of his first lobbying activity.

[29] The ORL directed the designated filer to ORL guidance documents. It provided information on when a Monthly Return is required to report lobbying of senior public officer holders. The ORL pointed out that the two meetings described above were not attended by senior public office holders; therefore, he was not required to submit any Lobbying Activity Reports for those two meetings. The ORL asked the designated filer to submit a Registration Return for the CVA by January 5, 2022.

[30] In a subsequent email dated December 23, 2021, the ORL reiterated that the designated filer was most likely the paid President of the CVA, thus, the designated filer for the CVA, even though he was not paid directly by the CVA, but indirectly through his employment with Pacific Smoke International. The designated filer was asked to submit a Registration Return by January 10, 2022.

[31] On January 10, 2022, the designated filer submitted a Registration Return.

INVESTIGATION

[32] The ORL commenced an investigation under s. 7.1 of the LTA to determine whether the designated filer had contravened s. 3(3) of the LTA.

[33] On June 7, 2022, the designated filer was provided formal notice under s. 7.2(1)(a) of the LTA outlining the basis for the allegations that the CVA had contravened s. 3(3) of the LTA. The designated filer was asked to respond in writing to the alleged contraventions and to provide any information pertinent to the contraventions and any potential penalties.

[34] The designated filer did not respond to the June 7, 2022, notice.

[35] Originally, the compliance investigation was assigned to a different ORL investigator. On January 24, 2023, the investigation was assigned to me.

[36] On February 3, 2023, I informed the designated filer that the compliance investigation had been reassigned.

[37] On February 9, 2023, the designated filer responded to my email. He stated that he had withdrawn from all lobbying activity in British Columbia.

[38] On the same date, I asked the designated filer if he would be making a submission in response to the notification letter of June 7, 2022, outlining the alleged contravention of s. 3(3) of the LTA.

[39] On February 27, 2023, I asked the designated filer several questions regarding his attendance at the meetings, his employment, and his relationship with the CVA.

[40] The designated filer responded on March 6, 2023. He acknowledged that he attended the two meetings with POHs.

[41] The designated filer stated further that the CVA is registered as a Canadian not-for-profit organization. The designated filer is the elected President of the CVA. He stated he is a full-time employee of Pacific Smoke International. He donates time to the CVA and does not receive financial or material gain for this service. He went on to say:

Time spent volunteering for the Canadian Vaping Associations is conducted both outside and inside my regular employment hours. I (sic) understanding the needs of the industry during working hours is part of our weekday meetings with other stakeholders. I officially represents (sic) the CVA during government meetings, industry meetings, and through board votes, representing 1 of 10. No board members have unequal decision-making power. I was selected as the president of the CVA by our Board.

[42] The designated filer stated that the CVA board members are unpaid volunteers; however, they are paid for reasonable expenses for travel or meetings arranged by the CVA.

[43] On March 17, 2023, I asked the designated filer to clarify whether Pacific Smoke compensates him for any of the work he performs for the CVA.

[44] On March 21, 2023, the designated filer stated that the CVA pays reasonable expenses, for travel or meetings arranged through the CVA. He went on to say that he is not compensated by Pacific Smoke International for work he does for the CVA. He reiterated that he and the other board members are volunteers, who represent the membership and the association.

[45] On March 23, 2023, I pointed out to the designated filer that it appeared based on his responses that he was a volunteer and asked why he registered. He informed me that the ORL instructed him to register because he "...might somehow benefit indirectly in his capacity with

Pacific Smoke, from advocacy that I carry out on behalf of the CVA...”. He believed this was contrary to the LTA, but he registered given the advice he received from the ORL.

[46] On April 17, 2023, I asked the following:

When you attended the meetings on August 12, 2020 and September 23, 2021 did you receive payment from Pacific Smoke International while attending these two meetings, in other words were you receiving a salary or income from Pacific Smoke International while attending these meetings? If you did not, can you provide proof that Pacific Smoke International deducted the time you spent at these meetings from your salary?

[47] On April 24, 2023, the designated filer responded to my question. He stated:

I am a salaried employee of Pacific Smoke. I [am] expected to complete the work that is asked of [me]...Pacific Smoke does not expect that the work must be completed during a particular time of day, as long as the work gets done within its timelines to be completed.

Because I am a salaried employee, Pacific Smoke does not track my work hours using time cards or any such mechanism...Pacific Smoke pays me a salary solely as compensation for the work I do specifically for Pacific Smoke. The unpaid advocacy work I do for the CVA is for the CVA as a volunteer...

Pacific Smoke does not track my time via time sheets or time stamps, and it is impossible for me to produce the evidence you are requesting to the effect that Pacific Smoke deducted an amount from my pay corresponding to the time I spent at, for example, the August 12, 2020 meeting.

Your suggestion that I produce such evidence — and your question regarding whether I was “receiving a salary or income from Pacific Smoke while attending these meetings” — reveals an incorrect assumption that everything I do during business hours (or potentially everything I do during waking hours) is being done on behalf of Pacific Smoke merely because I am a salaried employee of Pacific Smoke. This assumption is incorrect, and inconsistent with the nature of salaried employment. For example, if I...step out at 10 AM on a weekday to do some personal banking, it would be wrong to conclude that I — merely by virtue of being a salaried employee of Pacific Smoke — am being paid a salary by Pacific Smoke to do those things. My Pacific Smoke salary is compensation solely for the work I do for Pacific Smoke. My unpaid advocacy work for the CVA is done solely for the CVA.

[48] I understand that the designated filer is saying that his employment does not have structured hours and he is paid a salary by Pacific Smoke International to complete his assigned work. His time is his own as long as he completes his assignments. Time spent at the meetings

with POHs occurred on a volunteer basis, outside of his employment. He did not receive payment by Pacific Smoke International for attending these meetings since it was not part of his assigned role.

[49] On April 25, 2023, I asked the designated filer additional questions related to compensation by the CVA for expenses, expense reports for the two meetings which are the subject of this investigation, if board members are salaried employees of their base companies, how board members are selected and who votes to elect board members.

[50] On May 1, 2023, the designated filer responded to my questions. He stated the CVA pays for travel expenses, flights, rental cars, food and hotels. He noted he is "...not compensated for the time or any other non-monetary contributions." The August 12, 2020, and September 23, 2001, meetings were video linked meetings; therefore, he did not receive any compensation for expenses from the CVA.

[51] The designated filer stated no board member is compensated by the CVA. Board members' personal income varies since most are owners or founders of their individual companies. The designated filer noted that board members' only obligation to the CVA is to attend board or committee meetings.

[52] When a board position is vacated at the end of a board member's term, the CVA's membership elects a replacement through a vote. If a position is vacated mid-term, the board can appoint a replacement.

DISCUSSION AND FINDINGS

[53] The CVA is registered under the *Canada Not-for-profit Corporations Act*, Corporation number: 913192-2, business number: 819332388RC0001. It falls within the definition of "organization," under paragraph (e) of the LTA, a "non-profit organization." Organizations have a responsibility to register lobbying activities as required under the LTA.

[54] The CVA's webpage titled "Membership Benefits" points out that the CVA board members have "...decades of combined industry experience." The purpose of the CVA is to protect "...the future of independent specialty retail vapour business...by advocating on behalf of its membership with...Health Canada and regional health authorities...using constitutional legal representation and government relations specialists."⁴

[55] The CVA is a registered not-for-profit corporation; however, one of its purposes is to lobby on behalf of its membership. The CVA board is elected by its membership companies, who are involved in the vaping industry. Its board consists of members either paid by or who own companies affiliated to and benefit from the CVA's lobbying. The CVA board members,

⁴ The Canadian Vaping Association. Membership Benefits. <https://thecva.org/membership-benefits/>

their companies and the general membership companies have a direct interest in the CVA's advocacy work.

Was the designated filer a volunteer?

[56] If an organization has an in-house lobbyist, the individual who is the most senior paid officer is considered the designated filer. If no such officer exists, then the designated filer responsible for filing lobbying activities is the most senior paid in-house lobbyist.⁵ A designated filer or an in-house lobbyist must receive payment for their roles.⁶ Payment includes money or anything of value but excludes reimbursement for expenses.

[57] The designated filer stated that he only attended one or two meetings a year, that he is a volunteer for the CVA and receives no pay or compensation for performing his functions at the CVA, other than reasonable expenses for travel and meetings such as reimbursement of expenses. The designated filer further states that Pacific Smoke International does not pay him for performing his duties at the CVA. The designated filer says the work done at the CVA is purely on a volunteer basis.

[58] The Cambridge Dictionary defines a volunteer as:

a person who does something, especially helping other people, willingly and without being forced or paid to do it...⁷

Collins Dictionary defines volunteer as:

A volunteer is someone who does work without being paid for it, because they want to do it.⁸

Based on general definitions of a volunteer, it is clear that a volunteer performs a service, undertaking or something willingly, while not receiving compensation or pay.

[59] I do not agree that the designated filer is a volunteer. Yes, he is not paid directly by the CVA for the work he does on behalf of the CVA. However, while he works for the CVA, he is still receiving a salary (payment) from Pacific Smoke International. Based on what the designated filer stated, work done on behalf of the CVA is at times done while the designated filer is working for Pacific Smoke International.

⁵ Lobbyists Transparency Act, SBC 2001, c 42, Interpretation s. 1(1), designated filer.

⁶ Ibid, Interpretation, s. 1(1), payment.

⁷ <https://dictionary.cambridge.org/dictionary/english/volunteer>

⁸ <https://www.collinsdictionary.com/dictionary/english/volunteer>

[60] The designated filer’s example of banking is flawed, as this example describes a personal errand, which is clearly separated from his professional activities and provides no benefit to his employer. To the contrary, Pacific Smoke International, a CVA member organization, does directly benefit from the lobbying activity conducted by the CVA. Based on what the designated filer stated, I see no clear separation between work that benefits Pacific Smoke International and that done on behalf of the CVA. This is not a situation, for example, where an individual volunteers to canvass on behalf of, for example, the Cancer Society, which would likely be a service that his employer does not benefit from, is carried out on his own time, and without pay.

[61] I note that the ORL has published a similar example to this in the “Volunteer Example” provided in its guidance document for not-for-profit organizations.⁹ While it is not an authority on the Act’s requirements, the example stands to provide information to lobbyists that will guide them on the question of whether they are required to register lobbying. The designated filer was referred to this guidance document.

Volunteer example

The CEO of Organization A sits on the board of directors of an umbrella association. The umbrella association does not pay them, but they are paid by Organization A. They are a member of the umbrella association’s board of directors because of their position at Organization A.

Because they are being paid by Organization A and are a member of the umbrella association’s board of directors because of their position at Organization A, they are not considered a *true* volunteer with the umbrella association. Therefore, the volunteer exclusion does not apply to them. If this individual lobbies on behalf of the umbrella association, that association would need to report the activity.

[62] Consequently, it is my opinion that the designated filer is not a volunteer, since he receives payment from Pacific Smoke International, which receives a direct, or at least an indirect, benefit from the designated filer’s work for the CVA. Conducting industry lobbying through a non-profit society cannot be used as a shield to refrain from registering industry lobbying activities.

[63] In my view, the President is paid for his lobbying functions, albeit indirectly by Pacific Smoke International, while he performs his duty as President of the CVA (the most senior officer of the CVA). The President is therefore the designated filer for the CVA.

⁹ Office of the Registrar for Lobbyists. Guidance for not-for-profit organizations on the Lobbyists Transparency Act. 2023. Page 7 <https://www.lobbyistsregistrar.bc.ca/handlers/DocumentHandler.ashx?DocumentID=397>.

Did the designated filer lobby?***August 12, 2020, meeting***

[64] At this meeting, the lobbyist and the designated filer did make an oral submission to a POH executive director (ED) Public Health, Prevention and Planning Branch, Population and Public Health Division] on behalf of the CVA.

[65] The lobbyist notes that the regulations were approved and ordered on July 20, 2020, by Order in Council 426/2020.¹⁰ The regulations were less than a month old when the August 12, 2020, meeting took place. The lobbyist had been in communication with the ED, prior to the meeting, articulating issues arising from the introduction of the regulations.

[66] The August 12, 2020, meeting was requested by the CVA to discuss the ESR, specifically the labelling requirements. The lobbyist categorized this as a discussion about the interpretation, application and enforcement of the ESR. The lobbyist and the designated filer were seeking clarity on this new regulation. The lobbyist contends that the LTA did not apply to this activity.

[67] The ED described the meeting as an opportunity for the lobbyist to expand on issues raised by the introduction of the ESR, discussed in previous correspondence. It was a short informal meeting where the lobbyist provided context and elaborated on specific aspects of the ESR, focusing on the labelling and packaging, volume of e-liquid substances, 2ml capacity of tank containers, cartridge/pod capacity, atomizers and concerns related to existing stock. The lobbyist and the designated filer explained what each item meant, creating an understanding on each of the topics. The ED was clear he was present to listen to their concerns, not to discuss policy alternatives or changes to the ESR. The ED made it clear that the lobbyist and the designated filer did not request changes. The ED informed the two that he would raise their presentation internally for applicable assessment, consideration and response.

[68] Based on the information before me, there was an oral submission presented to the ED, a POH. It focused on how the lobbyist and the designated filer interpreted the ESR and how the ESR would be applied to the vaping industry. In other words, how the ESR, a pre-existing regulation, would be put into action. The lobbyist did not communicate with the ED for the purpose of influencing him into amending or repealing the ESR, nor did he ask for the development, establishment, amendment or termination of any program, policy, directive or guideline within the ESR. The lobbyist and the designated filer were seeking clarity on the interpretation, application, or the administration of the ESR. This activity falls outside the scope of the LTA under s. 2(2)(b) of the LTA.

¹⁰ https://www.bclaws.gov.bc.ca/civix/document/id/oic/arc_oic/0426_2020

[69] I find that the August 12, 2020, meeting does not fall within the definition of lobbying as it related to the interpretation, application, or the administration of the ESR. The designated filer was not required to submit a Registration Return for this meeting since this activity is excluded from registering under 2(2)(b)(i)(ii) of the LTA.

September 23, 2021, meeting

[70] On June 28, 2023, I spoke with the director who attended the September 23, 2021, meeting. The director stated that the CVA outlined the difficulties retailers were having with labelling requirements. Retailers were obligated to comply with both BC and federal packaging and labeling requirements. Producers were required to change packaging for products sold in BC. The director stated, given the jurisdictional differences in the packaging requirements, the lobbyist requested changes to the packaging sections of the ESR. This is supported by the meeting minutes where it states, “CVA requested greater clarity...with packaging requirements...that the Ministry publish guidance for retailers on the plain manner requirements.”

[71] The director stated that the CVA also asked for an amendment to the regulations limiting online sales. The meeting summary supports this where it states:

CVA recommends the Ministry and Health Canada consider requiring “age-gating” for online sales, in which customers must produce identification before they purchase products online and again when the product is delivered to the customer.¹¹

[72] The meeting summary indicated that the meeting concluded with the Ministry agreeing to continue to provide guidance to the retail industry on packaging and that it would collaborate with Health Canada on the cross-jurisdictional issue of online sale of vapour products that are non-compliant with provincial and federal legislation.

[73] Asking for clear guidelines is about the development of guidelines, which falls within the definition of lobby.¹²

[74] Recommending an amendment to the regulations to include an online age verification system also constitutes lobbying under the LTA, as it aims to influence a public office holder about an amendment to a regulation.¹³

¹¹ Ministry of Health. 2021. Ministry of Health Tobacco and Vapour Products Control Program – Meetings with tobacco and vapour industry. <https://www2.gov.bc.ca/gov/content/health/keeping-bc-healthy-safe/tobacco-vapour/meetings-with-tobacco-vapour-industry>

¹² Lobbyists Transparency Act, SBC 2001, c 42, Interpretation, s. 1(1), lobby (1)(iv).

¹³ Ibid, lobby (1)(iii).

[75] I find that the designated filer engaged in lobbying in the September 23, 2021, meeting under paragraph (a)(iii) and (iv) of the LTA.

Requirement to file a Registration Return under s. 3(3) of the LTA

[76] I have found that the President of the CVA is the designated filer. The designated filer is not a volunteer and he participated in lobbying on September 23, 2021. He was required to submit a Registration Return under s. 3(3) of the LTA no later than 10 days after CVA first had an in-house lobbyist (the designated filer in this case) who lobbied on behalf of the CVA.

[77] The designated filer did not submit a Registration Return by October 4, 2021, for lobbying he participated in on September 23, 2021. The Registration Return was submitted January 10, 2022. This was a contravention that continued for more than three months after the required submission date. I find that the designated filer contravened s. 3(3) of the LTA when he failed to submit a Registration Return.

ADMINISTRATIVE PENALTY

[78] Section 7.2(2) of the LTA 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. If the ORL considers it to be in the public interest, considering the gravity of the contravention and the number of previous contraventions or administrative penalties imposed, if any, it may impose a prohibition on lobbying and on filing or on having a Registration Return filed in respect of the person, for a period of not more than two years. Such person must be given notice of the contravention determination. If a monetary administrative penalty is imposed, the notice must include "the amount, the reason for the amount, and the date by which the penalty must be paid" and if an administrative penalty of prohibition is imposed, the notice must include "the reason for the prohibition and the start date and end date of the prohibition."

[79] Section 7.2 of the LTA confers discretion on the Registrar to impose administrative penalties. To provide a measure of structure in the exercise of that discretion, the ORL has published a *Registrar of Lobbyists: Guide to Investigations* guidance document (guide to investigations) to advise members of the public and those engaged in lobbying about what will guide the ORL in exercising its duties under the LTA and its Regulation. As the guide to investigations makes clear, its purpose is to structure discretion. It does not restrict discretion. It is not law. I have considered that guidance in the exercise of my delegated discretion to determine a penalty based on the facts before me.

[80] 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 LTA and its predecessors have been in place from April of 2010. The lobbyist should be aware of their obligations under the LTA.

[81] The guide to investigations first sets out a general financial range for infractions (depending on whether it is a first, second or third infraction). Second, 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 guide “...guidelines do not bind or fetter the ORL’s ability to depart from these guidelines, both in respect of administrative monetary penalties and prohibitions, in appropriate circumstances.”

[82] The penalty range for failing to submit a Registration Return is between \$500-\$7,500 for a first contravention.

[83] 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;
- 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.

[84] The designated filer has no previous contraventions or warnings. This is his first contravention, which weighs in favour of a lower penalty.

[85] I acknowledge that the designated filer worked with the ORL in a timely manner to address these contraventions. But it must be remembered, it was the ORL who contacted the designated filer when it learned about his September 23, 2021, meeting. If the ORL had not learned of this meeting, the public would have remained unaware of the designated filer’s lobbying activity. This is a circumstance that weighs in favour of a penalty higher than the minimum.

[86] I do not believe that the designated filer’s actions were deliberate. From what I see, he honestly believed he was a volunteer and understood he was not required to submit a

Registration Return. This is consistent with what he had experienced in other jurisdictions in Canada. I have no evidence which would lead me to believe the designated filer derived an economic benefit from this contravention. These are factors that weigh in favour of a penalty in the lower range.

[87] I now turn to the question of the gravity and magnitude of the contravention under investigation. The purpose of the LTA is to promote transparency in lobbying by requiring those submitting a Registration Return to disclose accurate, current and complete information about their organization's lobbying activities. This is a solemn legal obligation.

[88] The designated filer mistakenly believed that he was a volunteer; however, this is not an excuse. It is up to all designated filers to understand their obligations under the LTA.

[89] The designated filer had an obligation to submit a Registration Return no later than October 4, 2021. The ORL became aware of the designated filer's lobbying on November 22, 2021, approximately two months later. This is a not a trivial contravention. First it was the ORL that discovered the contravention and second it took the designated filer three months before his Registration Return was finally submitted and accepted by the ORL. The LTA makes clear that transparency includes timeliness. This includes the obligation to file a Registration Return within the legislated deadline. Failing to meet this requirement frustrates the public's ability to know who is attempting to influence government, thus defeating the LTA's goal of transparency. This weighs in favour of a moderate penalty.

[90] I have examined past Investigation Reports to determine a reasonable penalty for this contravention.

[91] In Investigation Report (IR) 17-01, the lobbyist was late in submitting his Registration Return by two months. He had received warning letters in the past. He did not derive an economic benefit, nor was the contravention deliberate. The lobbyist did bring this error to the attention of the ORL. He received an administrative penalty of \$500.

[92] In IR 17-02, the lobbyist had no previous contraventions. The lobbyist was 10 months late in submitting his Registration Return. The lobbyist lobbied while he was not registered. The contravention was not deliberate. There did not appear to be an economic benefit resulting from the contravention. The lobbyist received an administrative penalty of \$800.

[93] In IR 19-01, the lobbyist had lobbied but failed to submit a Registration Return until seven months after lobbying. The ORL discovered the discrepancy in the dates the lobbyist

lobbied and the date the Registration was submitted. The ORL brought this to the attention of the lobbyist. The lobbyist worked with the ORL to remedy this discrepancy. This was the lobbyist's first contravention. There was no indication that the contravention was deliberate, nor was there evidence of an economic benefit. Given the circumstances, the lobbyist was issued an administrative penalty of \$700.

[94] The contravention in this case is clear. A penalty is necessary for both specific and general deterrence. In terms of specific deterrence, this investigation, the ensuing administrative penalty and the publication of the outcome of this investigation will encourage this lobbyist to meet their obligations under the LTA. In considering general deterrence, the publication of this report and recognition that the ORL will issue administrative penalties to those who contravene the LTA will remind all individuals of their legal obligations to be diligent in filing Registration Returns.

[95] It would appear the designated filer mistakenly believed he was a volunteer and was not required to register. The lobbyist had no prior contraventions. I do not believe the contravention was deliberate, nor did he receive an economic benefit. The one difference in the above-referenced investigations is the fact that all the lobbyists submitted a Registration Return, albeit late. In this case, the ORL discovered the contravention. If it had not approached the lobbyist, it is unlikely he would have registered. The designated filer, working with the ORL, did remedy this contravention by ultimately submitting a Registration Return for his lobbying activity. The lobbyist was approximately three months late in submitting his Registration Return.

[96] Taking all the circumstances into consideration, and after reviewing similar facts and penalties in past investigations, a reasonable administrative penalty for this contravention is \$650.

CONCLUSION

1. Under s. 7.2(2) of the LTA, I find that the designated filer was required to submit a Registration Return for the September 23, 2021, meeting no later than October 4, 2021. He did not submit a Registration Return for this meeting until January 10, 2022. The lobbyist was three months late in submitting his Registration Return, contravening s. 3(3) of the LTA. The notice of this alleged contravention has been substantiated.
2. I impose an administrative penalty of **\$650**.
3. The designated filer must pay the amount for the penalties no later than

November 8, 2023.

4. If the designated filer requests reconsideration under s. 7.3 of the LTA, they are 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: September 26, 2023

ORIGINAL SIGNED BY

Tim Mots, Investigator and
Delegate of the Registrar of Lobbyists