

## DETERMINATION DECISION 23-07

Uber Canada Inc.

DESIGNATED FILER: Brian Kuntz

November 15, 2023

**SUMMARY:** The designated filer<sup>1</sup> contravened ss. 4(1)(f), 4(1)(g), 4.1, and 5(1) of the *Lobbyists Transparency Act* (LTA). The designated filer failed to list the name and address of its affiliates contrary to ss. 4(1)(f) and 4(1)(g), and received an administrative penalty of \$2,500 for these contraventions. The designated filer also failed to file Monthly Returns by the required dates, contravening s. 4.1, which resulted in an administrative penalty of \$1,500. Finally, the designated filer entered inaccurate information into the Lobbyists Registry and certified the information was true under s. 5(1), resulting in an administrative penalty of \$500. The total amount of administrative penalties is \$4,500.

**Statutes considered:** *Lobbyists Transparency Act*, SBC. 2001, c. 42.

**Authorities considered:** Investigation Report 15-02, Investigation Report 15-11, Investigation Report 17-02, Investigation Report 17-05, Investigation Report 17-08, Investigation Report 18-01, Investigation Report 20-02, Determination Decision 22-01.

### INTRODUCTION

[1] This report concerns an investigation under s. 7.1 of the *Lobbyists Transparency Act* (LTA). This section gives the Registrar of Lobbyists (Registrar) the authority to conduct an investigation to determine compliance with the LTA or its regulations. If the Registrar or Registrar's 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), the Registrar must, under s. 7.2(1)(b), give the person under investigation a reasonable opportunity to be heard respecting the alleged contravention.

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<sup>1</sup> The designated filer is to be interpreted as the designated filer at the time of the contravention.

[2] The LTA recognizes two types of lobbyists: consultant lobbyists and in-house lobbyists. This report focuses on the activities of Uber Canada Inc. (Uber), an organization that employs in-house lobbyists. An in-house lobbyist is a paid employee, officer or director of an organization who lobbies on behalf of the organization or affiliate.

[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 questions for consideration are:

- (a) whether the designated filer contravened s. 3(3) when they failed to file a Registration Return within the timelines set out in the LTA;
- (b) whether the designated filer contravened s. 4(1)(f) of the LTA by failing to identify Uber's affiliates;
- (c) whether the designated filer contravened s. 4(1)(g) of the LTA by failing to identify Uber's parent company;
- (d) whether the designated filer contravened s. 4.1 of the LTA when they failed to submit Monthly Returns no later than 15 days after the end of each month;
- (e) whether the designated filer entered inaccurate information when they submitted a Monthly Return under s. 5(1) of the LTA; and
- (f) 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] **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 form and manner and containing the information required by s. 4.

**[7] Form and Content of Registration Return**

4 (1) Each registration return filed under s. 3 must include the following information, as applicable:

(f) if the client or organization is a corporation, the name and business address of each affiliate of the corporation that, to the designated filer's knowledge after making reasonable inquiries, has a direct interest in the outcome of the activities of each lobbyist named in the registration return who lobbies on behalf of the client or organization;

(g) without limiting paragraph (f), if the client or organization is a corporation that is a subsidiary of another corporation, the name and business address of the other corporation

**[8] Requirement to File a Monthly Return**

4.1 A designated filer who has filed a registration return under s. 3 must file with the registrar a monthly return, in the prescribed form and manner and containing the information required under s. 4.2, no later than 15 days after the end of every month, beginning with the month in which the registration return under s. 3 is filed.

**[9] Form and Content of Monthly Returns**

4.2(2) Each monthly return filed under s. 4.1 must include the following information in relation to each lobbying activity carried on, as applicable:

(a) the name and position title of the senior public office holder who was the object of the lobbying activity;

(b) the date of the lobbying activity;

(c) the names of the lobbyists who participated in the lobbying activity;

(d) particulars, including any prescribed particulars, to identify the subject matter of the lobbying activity;

(e) the following information about a registration return filed under section 4<sup>2</sup>:

(i) particulars of any change to the information in the registration return;

(ii) any information required under section 4 (1) that the designated filer acquired only after the return was filed;

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<sup>2</sup> LTA amendment effective March 31, 2022 for s. 4.2(2)(e) reads “the following information about registration return filed under section 3” and 4.2(2)(e)(iii) has been repealed. Neither amended effects findings of this Determination Decision.

(iii) any information requested by the registrar to clarify information supplied by the designated filer under section 4;

[10] **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.

[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 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,

[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 a monetary administrative penalty of not more than \$25 000, and
  - (c) must give to the person notice
    - (i) if the registrar determines that the person has contravened a prescribed provision of this Act or the regulations, and the reason for the determination,
    - (ii) if a monetary administrative penalty is imposed, of the amount, the reason for the amount and the date by which the penalty must be paid,
    - ...
    - (iv) respecting how the person may request reconsideration, under section 7.3, of the determination of contravention and, as applicable, the imposition or amount of the monetary administrative penalty or the imposition or duration of the administrative penalty of prohibition.

[13] The ORL commenced an investigation under s. 7.1 of the LTA to determine whether the designated filer had complied with ss. 3(3), 4(1)(f), 4(1)(g) and 4.1 of the LTA.

[14] On May 30, 2022, the designated filer was provided with formal notice under s. 7.2(1)(a) outlining the basis for the allegation that Uber had contravened ss. 3(3), 4(1)(f), 4(1)(g) and 4.1 of the LTA. I invited the designated filer to respond in writing to the alleged contraventions and to provide any information or documentation pertinent to the contravention and any potential penalty.

[15] Throughout the investigation, this office corresponded with Uber's legal counsel (Counsel) and Yanique Williams, an in-house lobbyist with Uber, who is a Representative for the designated filer David Wu<sup>3</sup>. I will refer to Yanique Williams as the Representative throughout this decision.

[16] On May 30, 2022, Uber Canada's Counsel submitted Uber's response to the s. 7.2(1)(a) notice. The Representative's Affidavit was attached to Uber's submission.

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<sup>3</sup> It was established that David Wu was the designated filer at the time of the contraventions. Since then a new designated filer was appointed by Uber, Brian Kuntz.

## PRELIMINARY MATTER

### Transition period

[17] The *Lobbyists Registration Act* (LRA) was amended by the *Lobbyists Registration Amendment Act* effective May 4, 2020. Along with several changes to the Act itself, the title of the Act was changed to the *Lobbyists Transparency Act* (LTA). The Lobbyists Registry was modified to reflect the changes to the LTA.

[18] The ORL introduced a transition period from May 4, 2020 – September 15, 2020, to assist lobbyists affected by the COVID-19 pandemic. Any changes to an existing Registration Return, or any requirement to file a new Registration Return, that occurred between May 4, 2020 and September 15, 2020 were due to be entered into the Lobbyists Registry no later than September 15, 2020. If an organization or a consultant lobbyist met this requirement, no further action would be taken with any compliance issues that arose between **May 4, 2020 – September 15, 2020**.<sup>4</sup>

[19] On the other hand, if an organization or a consultant lobbyist failed to update their Registration Return, or to file a new Registration Return on or before September 15, 2020, the ORL could initiate a compliance investigation for any compliance issues that may have arisen from **May 4, 2020 – September 15, 2020** just as it could for any other period.

## INVESTIGATION

### Late Registration Return: s. 3(3) of the LTA

#### *Background*

[20] Uber had an active registration under the *Lobbyists Registration Act* (LRA), filed under s. 3 of the LRA, with an end date of September 16, 2020.

[21] On August 18, 2020, ORL Staff notified Uber that its registration would auto-terminate on September 16, 2020 because they had not updated their registration since May 4, 2020. Uber discussed this with ORL Staff to determine what steps they needed to take to activate their registration in the new Registry.

[22] Uber did not submit its Registration Return until **January 8, 2021**. Uber submitted a Monthly Return declaring two lobbying activities, one declaring lobbying that occurred on **December 18, 2020** (Lobbying Activity Report **#2985-4919**) and another declaring lobbying that

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<sup>4</sup> Office of the Registrar of Lobbyists, April 2020, Volume 10, Issue 2. Influencing BC, Important dates to Remember. <https://www.lobbyistsregistrar.bc.ca/handlers/DocumentHandler.ashx?DocumentID=366>

occurred on **December 21, 2020** (Lobbying Activity Report **#2985-15558**). Based on this information, Uber should have submitted its Registration Return no later than December 28, 2020, 10 days after lobbying on December 18, 2020. It appeared that Uber had submitted its Registration Return late, contravening s. 3(3) of the LTA.

### *Investigation*

[23] In Uber's response, Counsel stated "the obligation to file a Registration Return was not triggered by the December 18, 2020 and December 21, 2020 meetings because they were not lobbying under the LTA".

[24] Counsel stated the December 18, 2020 (**Lobbying Activity Report #2985-4919**) meeting was at the direct request of the Office of the Minister of Public Safety and Solicitor General having received an unsolicited email request for stakeholder input regarding commission caps on food delivery service fees. The Representative states "out of an abundance of caution, for this meeting I did later file Lobbying Activity Report #2985-4919, certified on January 8, 2021 and posted on January 15, 2021". They provided a copy of the email dated December 16, 2020 from the Minister of Public Safety and Solicitor General for reference.

[25] Counsel stated "the December 21, 2020 (**Lobbying Activity Report #2985-15558**) meeting with representatives from the Ministry of Labour was also not lobbying. At this meeting, Uber's purpose was to get to know the key points of contact and introduce the Representative as the new public affairs contact on the BC file, as well as to learn about the Ministry's plan for developing standards and strategy". It was characterized by Counsel as "an introduction and listening session but no attempt to influence the Ministry of Labour". Counsel also pointed out they did not have an "in-house lobbyist". The Representative states, "in an abundance of caution, for this meeting I did later file Lobbying Activity Report #2985-15558, certified and posted on January 13, 2022".

### *Discussion and Findings*

[26] I have reviewed the evidence and I find these meetings are not considered lobbying for the following reasons. The December 18, 2020 communications would be out of scope of the LTA under s. 2(2)(c), as they were in direct response to a written request from a public office holder for advice and comment. The December 21, 2020 meeting did not meet the LTA's definition of lobby since there was no attempt to influence the public office holder to do one or more of the items listed in (a)(i) to (vii).

[27] Section 3(3) of the LTA requires the designated filer of Uber to file a Registration Return, containing information found in s. 4 of the LTA. Although Uber entered inaccurate information in its Monthly Return that will be discussed below, I accept the December 18 and December 21, 2020 meetings were not lobbying. Therefore, I find the designated filer did not contravene s. 3(3) of the LTA by failing to submit a Registration Return within the timelines set out in the LTA.

**Registration Return: s. 4(1)(f) of the LTA - Affiliates and s. 4(1)(g) of the LTA – Parent Company***Background*

[28] On November 2, 2021, consultant lobbyist Cheryl Oates, lobbying on behalf of Uber, submitted a Registration Return. The ORL noticed that there were no affiliates and/or parent company listed for Uber in the Registration Return. The ORL sent the Registration Return back to the consultant lobbyist for review.

[29] Each Registration Return filed under s. 3, must include information set out in s. 4 of the LTA. Section 4(1)(f) of the LTA requires a designated filer to enter affiliate names and business addresses into their Registration Return that have an interest in the organization's lobbying activity. Section 4(1)(g) of the LTA requires an organization, if it is the subsidiary of a parent corporation, to provide the name and the business address of the parent corporation.

[30] ORL Staff noted that Uber first submitted a Registration Return in October of 2018. Uber did not list any affiliates or parent companies in any of its past Registration Returns. The ORL sent a subsequent email to the designated filer Matthew Price requesting Uber review their Registration Return and advise whether Uber had any affiliates.

[31] On November 5, 2021, the Representative informed the ORL that the following entities were affiliates of Uber: Uber Technologies, Inc. (direct parent of Uber Holdings), Uber Holdings Canada Inc. (direct parent of Rasier, UCI, Portier & Castor), Uber Rasier Canada Inc., Uber Portier Canada Inc., Uber Castor Canada Inc., and Uber Canada Inc.

[32] Through subsequent communications, the Representative added three additional affiliates: Uber B.V., Rasier Operations B.V., and Uber Portier B.V. that they confirmed were affiliates of Uber Canada.

[33] On November 10, 2021, the Representative stated Uber Technologies, Inc. was Uber Canada's parent company.

[34] In an email sent to the Representative on November 10, 2021, ORL Staff reminded the Representative of the requirement to update the Registration Return to add all of the affiliates and parent company they recently identified.

[35] On November 15, 2021, the designated filer submitted an updated Registration Return with its affiliates and parent company. The designated filer did not include all of the affiliates and parent company identified by the Representative. On November 16, 2021, the ORL requested Uber revisit its Registration Return and add any additional affiliates and parent company. The Representative immediately updated the Registration Return to include all of Uber's affiliates and parent company.



*Investigation*

[36] Counsel states that it is a globally recognized brand and mark and Uber Canada Inc. has always been the entity that conducts lobbying and employs lobbyists in Canada, and that since July 1, 2021, a trio of Uber Canada Inc. entities carry on business in Canada under the name Uber or the derivative Uber Eats, “Everyone knew it was Uber lobbying— there was no hidden affiliate with some other agenda that was not common to Uber”<sup>5</sup>.

[37] In its submissions, Uber did not clarify if any parent companies had a direct interest in the outcome of its lobbying activities. However, s. 4(1)(g) requires corporations that are lobbying to declare parent corporations, and there is no requirement that the parent corporation benefit from the subsidiary’s lobbying.

*Discussion and Findings*

[38] Uber had submitted 5 Registration Returns dating back three years from October 2018 to November 2, 2021. Uber did not list any affiliates or its parent corporation until ORL Staff emailed Uber to verify whether they have any “Affiliates”.

[39] While I understand Uber’s position, that “it’s a globally recognized brand and mark” as noted above, some of the affiliates disclosed by Uber do not necessarily identify with the brand and mark of Uber. The public should not be expected to guess or know which companies have a direct interest in Uber’s lobbying activities. That is why organizations are required to list affiliates in their Registration Returns.

[40] Given the size of Uber, it is reasonable to assume that it would have affiliates. Furthermore, it is reasonable to assume that Uber would be a subsidiary of Uber Technologies, Inc. The LTA is clear: Uber should have verified or confirmed whether it had affiliates or a parent company and submitted that information in its Registration Return.

[41] To support lobbyists in entering this information, it is also clear in the Registry that an organization must list its affiliates who benefit from its lobbying, along with its parent corporation. If there was any doubt, ORL Staff are available for questions or to direct organizations to guidance documents to answer questions.

[42] Section 5(1) of the LTA requires lobbyists to certify that the information they have submitted is true “to the best of the individual’s knowledge and belief.” This is to encourage a review of the Registration Return to consider what has been entered into the return and to make required corrections to any errors that may exist, before submitting the Registration Return to the ORL.

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<sup>5</sup> Uber Submission dated July 18, 2022, page 11

[43] Recent amendments under the *Lobbyists Registration Amendment Act* did not change an organization's responsibilities regarding affiliates and parent corporation. The designated filer should be aware of their obligations under the LTA, including the obligations to enter information required under ss. 4(1)(f) and 4(1)(g) of the LTA.

[44] Based on the evidence and reasons provided above, I find Uber contravened ss. 4(1)(f) and 4(1)(g) of the LTA when it failed to enter affiliates and its parent corporation in its Registration Returns prior to November 15, 2021. Furthermore, it entered inaccurate information into its Registration Return and certified that information was true under s. 5(1) of the LTA.

### **Section 4.1 of the LTA Monthly Returns – Lobbying Activity Reports - SPOH**

#### *Background*

[45] If an in-house lobbyist lobbies a senior public office holder (SPOH), the designated filer is required to submit a Lobbying Activity Report, as part of the Monthly Return requirement set out under s. 4.1 of the LTA, with details set out in s. 4.2(a) to (d) of the LTA about their lobbying activity.

[46] The Registry records details submitted in a Monthly Return, about the organization's lobbying activity, in a Lobbying Activity Report (LAR). LARs consists of the dates of the lobbying activity, what was discussed and who was involved in the lobbying activity.

[47] Uber was required to file a LAR identifying their lobbying activity no later than 15 days after the end of the month in which it lobbied SPOHs.

#### *Investigation*

Uber submitted the following LARs on January 13, 2022.

Lobbying Activity number **2985-15559**, was submitted on January 13, 2022. Uber certified the lobbying activity took place on **January 12, 2021**. Uber was required to file a LAR no later than February 15, 2021.

Lobbying Activity number **2985-15562**, was submitted on January 13, 2022. Uber certified the lobbying activity took place on **March 24, 2021**. Uber was required to file a LAR no later than April 15, 2021.

Lobbying Activity number **2985-15566**, was submitted on January 13, 2022. Uber certified that the lobbying activity took place on **November 21, 2021**. Uber was required to file a LAR no later than December 15, 2021.

Lobbying Activity number **2985-15568**, was submitted on January 13, 2022. Uber certified that the lobbying activity took place on **November 22, 2021**. Uber was required to file a LAR no later than December 15, 2021.

[48] Given the changes to the legislation, Counsel stated the ORL had granted them an enforcement grace period to July 2021. They go on to state it was reasonable for the ORL to give organizations and consultant lobbyists a grace period even after September 15, 2020 to build out fully compliant processes. Through all of 2021 and into 2022, the ORL itself was still improving its practices, publishing the ORL newsletter and documenting improvements and tweaks to the filing portal. To that effect, Uber understood an ORL representative gave them until January 14, 2022 to get any outstanding reports filed and that it is unfair and prejudicial that the ORL would give Uber a deadline to get caught up on filing, only to turn around and prosecute Uber for non-compliance after Uber followed that direction.

[49] Counsel stated that on March 10, 2021, it publicly announced to the world that it was going to start lobbying governments for improvements to labour standards. Uber then submits that it had already informed the public about its' lobbying intentions and position, noting "The Flexible Work+" announcement received coverage in major BC news publications. Uber's Counsel is mindful that the public could not determine which government official it was lobbying, however, it pointed out that its publication of its activity is evidence that its conduct was never intended to be hidden from the public view.

#### **LAR #2985-15559 (January 12, 2021 meeting)**

##### *Investigation*

[50] Counsel explained that the **January 12, 2021** meeting with a government official was not lobbying but rather a discussion on how the province planned to distribute vaccines to rideshare drivers and delivery people using the Uber Apps, therefore, the LTA does not apply in respect of an oral or written submission made to a public office holder concerning the implementation or administration of any program, policy, directive or guideline by the public office holder.

[51] Initially, Uber declared it lobbied the Senior Ministerial Advisor to the Minister of Health on **January 12, 2021 (LAR # 2985-15559)** regarding the province's plan to distribute vaccines to rideshare drivers and delivery people using the Uber Apps. Then in response to the ORL's notice of the alleged contravention, Uber states this meeting was not lobbying activity and falls under the exemption in subsection 2(2)(b)(ii). After I invited Uber to elaborate on this point, Uber provided me with a letter and emails in the lead up to the January 12, 2021 meeting that Uber says corroborates the Representative's description of the meeting in that the communications were informational and not an "attempt to influence."<sup>6</sup>

##### *Discussion and Findings*

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<sup>6</sup> Uber's May 17, 2023 submission

[52] I have carefully reviewed Uber's submissions and the communications between Uber and SPOHs and public office holders (POHs). I also contacted the SPOH who was a party to the January 12, 2021 telephone meeting. The SPOH described the telephone meeting of January 12, 2021 as Uber's opportunity to remind him that it was willing to voluntarily offer assistance to the province to aid in the population getting vaccinated.

[53] Based on Uber submissions and the SPOHs statement that the meeting was regarding an offer to assist with the province's vaccine efforts, it is not clear if the meeting of January 12, 2021 was lobbying. Therefore, I make no finding as to whether s. 2(2)(b)(ii) applies in this case.

[54] However, I find Uber submitted inaccurate information into the Lobbyists Registry when it submitted this Lobbying Activity Report on January 13, 2022. This finding is expanded on later in the decision in paragraphs 79 to 88.

#### **LAR # 2985-15562**

[55] In its response, Uber believed the ORL provided them with an enforcement grace period up until July 2021. Uber's Registration Return was flagged for termination on July 16, 2021 since no Monthly Returns had been submitted for 5 consecutive months (s. 4.2 (6) and (7) of the LTA). Accordingly, the ORL wrote to Uber on July 1, 2021 to remind them its Registration Return was approaching termination. On July 2, 2021 the ORL Staff confirmed by email, that they received Uber's updated Registration Return with an effective date of March 10, 2021. The start date was based on its March 10, 2021 lobbying activity. The ORL provided Uber with a link to a guidance document with instructions on how to report its lobbying activity.

[56] While I am not privy to the details of the phone call that occurred between ORL Staff and the Representative, I note follow up emails were sent to the Representative from July 12, 2021 to July 21, 2021 regarding requested corrections to its Registration Return. I do not see anywhere in the emails where the ORL offers Uber a grace period. Furthermore, Uber has provided no evidence to support its claim that the ORL provided Uber with an enforcement grace period up until July 2021.

[57] The ORL Staff have been forthcoming with all "the major LTA amendments and transitioning to the new monthly reporting regime" through public education, providing organizations and lobbyists with guidance documents, presentations, webinars, and news releases.

[58] I find the designated filer contravened s. 4.1 of the LTA when they failed to submit a LAR (part of the Monthly Return Requirement) by the deadline to report its lobbying activity that took place on March 24, 2021 (LAR # 2985-15562).

**LAR #2985-15566 (November 21,2021 meeting) and #2985-15568 (November 22, 2021 meeting)**

[59] Due to the floods in November of 2021, the government introduced a state of emergency and imposed fuel rationing. Counsel states the **November 21 and 22, 2021** meetings were not lobbying but rather meetings the Representative attended with senior public office holders to clarify if rideshare drivers were exempt from the fuel rationing restrictions.

[60] The Representative attests that “... on **November 21 and 22, 2021**, I met with an Assistant Deputy Minister in the Ministry of Jobs, Economic Recovery and Innovation to discuss the flooding situation and the provincial state of emergency. In particular, I was seeking clarification about the application of Ministerial Order 451/2021—a fuel rationing order made on November 19, 2021—as it related to rideshare and delivery vehicles”. From Uber’s perspective, the order lacked clarity on this point.

[61] I invited the designated filer to respond in writing with any information or documentation pertinent to support Uber’s declaration that the **November 21, 2021 (LAR # 2985-15566)**, and **November 22, 2021 (LAR #2985-15568)** meetings were not lobbying since they were exempt under s. 2(2)(b)(ii).

[62] Uber explained that the **November 21, 2021 (LAR # 2985-15566)**, and **November 22, 2021 (LAR #2985-15568)** meetings with a government official were not lobbying but rather Uber was urgently seeking clarity regarding the scope of Ministerial Order 451/2021<sup>7</sup> (the Order), issued on November 19, 2021, which rationed non-essential fuel purchases in the wake of severe flooding in the province.

[63] Uber explains on November 18, 2021, several Ministers invited stakeholders, including Uber, to a roundtable discussion. Uber states this meeting was then cut short before stakeholders could ask questions.

[64] Given the sudden termination of the meeting, Uber states it was not clear if rideshare drivers on the Uber App and delivery people on the Uber Eats App would be excepted from the Order. Therefore, Uber reached out to SPOHs to schedule calls and seek clarification on the scope of the Order. Uber goes on to explain that in its communications to SPOHs, the Representative included a link to a press release that listed “taxis” as “essential vehicles” exempt from the fuel rationing. The Representative noted that under the *Motor Vehicle Act* the definition of “taxi” is broad enough to include rideshare vehicles.

[65] Uber provided me with email threads and text messages to SPOHs dated November 18, 2021 to November 22, 2021. The information involved text messages between an Uber representative and a SPOH regarding the fuel rationing order. At one point, the Representative

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<sup>7</sup> An Order in Council is a directive issued by the Lieutenant Governor of the advice of Cabinet authorizing certain actions. <https://www.google.com/search?client=firefox-b-e&q=ls+an+order+in+council+a+directive>

forwards their interpretation of "taxi" to a SPOH arguing that "taxi" includes Uber vehicles. In a text message to the SPOH on November 20, 2021, the Uber Representative states:

"Looking forward to chatting. I trust the government will correct the oversight as the ride sharing is included in the definition of "taxi". Also hoping to provide clarity to drivers on the platform especially as this article has gone live. Thanks again".

[66] The meeting on November 21, 2021, occurs and then Uber sends a follow up text message on November 21, 2021, "One follow up question. Will the update to the Order be shared today or tomorrow".

Uber states these communications were about seeking clarity.

[67] The Representative stated "In an abundance of caution, I did later file Lobbying Activity Reports #2985-15566 (**November 21, 2021 meeting**) and #2985-15568 (**November 22, 2021 meeting**), certified and posted on January 13, 2022".<sup>8</sup>

#### *Discussion and Findings*

[68] On the face of it, Uber's drivers were not excluded from the Order; in other words they were captured by the fuel restriction. I don't accept that Uber's activity was not about making an oral or written submission to a POH concerning the implementation of the directive (s. 2(2)(b)(ii) of the LTA). Uber attempted to have that Order changed through texts and a meeting to ensure Uber rideshares were included in the definition of taxi. By asking a SPOH to correct the Order it was attempting to influence a SPOH to amend a directive (Ministerial Order 451/2021), which is clearly lobbying under paragraph (a)(iv) of the definition.

[69] I find the designated filer contravened s. 4.1 of the LTA when they failed to submit a LAR within the timelines set out in s. 4.1 of the LTA, to report its lobbying activity that took place on November 21, 2021 and November 22, 2021 (LARs # 2985-15566 and LARs #2985-15568).

#### **Monthly Return: s. 4.1 of the LTA - Change of Designated Filer**

##### *Background*

Section 4.2(2)(e)(i) of the LTA requires a designated filer to submit a Monthly Return under s. 4.1 if there are changes to the information in the Registration Return.

##### *Discussion and Findings*

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<sup>8</sup> the Representative Affidavit paragraph 56

[70] Counsel requests that I consider the communications exchanged between the ORL and Uber on the meaning of “designated filer” as they state it is confusing and subject to inconsistent and contradictory explanations from the ORL. Uber goes on to explain that nuances between the statutory definition of a “designated filer” and two definitions of a “designated filer” provided by the ORL Staff in November 2019 and January 13, 2022 caused confusion. Guidance documents were not published until after the matters at issue arose. Regardless they consistently listed an executive in a leadership position as the designated filer.

[71] I disagree, the definition of designated filer is clear. A designated filer is defined as the most senior officer of the organization who receives payment for performing the officer's functions, or if there is no senior officer who receives payment, the most senior in-house lobbyist. Uber Canada’s leadership structure is easily accessible online. It is clear the CEO is the most senior officer who receives payment for performing the CEO function for Uber.

[72] I appreciate that on January 13, 2022, the Representative proactively inquired with the ORL to seek instructions on how to update the designated filer to Ms. Lola Kassim. ORL Staff then requested Uber confirm Ms. Kassim was the most senior paid officer at Uber Canada Inc. On January 18, 2022, the Representative replied “Yes, Lola's the most senior officer at Uber Canada”. The Representative did not seek guidance as to the definition of a designated filer.

[73] ORL Staff then replied that same day with instructions on how to change the Senior Officer information in Uber’s Registration Return. On February 3, 2022, after still not receiving an update, ORL Staff again emailed the Representative with a reminder that if the most senior paid officer of Uber had changed, they must submit a Monthly Return under s. 4.1 of the LTA, with the information about the new Senior Officer no later than the 15<sup>th</sup> of the month following the change.

[74] On February 11, 2022, the Representative sought information on what constituted a Senior Officer. ORL Staff replied on the same day with clarification on this matter.

[75] On February 22, 2022, Uber submitted a change to its Registration Return, identifying Robert Wu as the most Senior Officer for Uber Canada Inc. On February 24, 2022, the Representative confirmed Robert Wu became the senior most paid officer of Uber Canada on or about January 1, 2022.

[76] The ORL Staff did request confirmation that Uber’s designated filer was correct on two occasions, January 17, 2022 and February 24, 2022, noting on both those occasions the Representative confirmed Uber’s designated filer was correct. I also acknowledge that Uber states in their submission they listed an executive in a leadership position as the designated filer, but this was not the most senior officer. An organization with in-house lobbyists is responsible for entering information in the Registry that is error free.

[77] Mr. Wu became the most senior officer (designated filer) receiving pay for this position on or about January 1, 2022. Uber was required to submit a Monthly Return with a change to its designated filer no later than February 15, 2022. Uber did not submit a Monthly Return with the change to its designated filer until February 22, 2022.

[78] I find the designated filer contravened s. 4.1 of the LTA when they failed to file a Monthly Return, on or before February 15, 2022, with information required under s. 4.2(2)(e)(i) of the LTA, about the change to its designated filer.

### **Monthly Return: s. 4.1 of the LTA Lobbying Activity - Inaccurate Information**

#### *Background*

[79] Section 5(1) of the LTA requires lobbyists to certify that the information they have submitted is true “to the best of the individual’s knowledge and belief.” This is to encourage a review of the submission to consider what has been entered into the return and to make required corrections to any errors that may exist before submitting to the Registry.

#### *Finding*

[80] In its initial submissions, Uber states that four of the five Monthly Returns were not lobbying within the scope of the LTA. As mentioned above, Uber was under the impression they were provided with a grace period to at least July 2021 and January 14, 2022 to catch up on its filings. Uber goes on to state that, “if the ORL was intending to prosecute Uber for late filing of activity reports, the ORL should have told Uber about this in advance so that Uber could conduct itself accordingly, including evaluating Uber’s rights to avoid potentially incrementing itself”.

[81] I invited the designated filer to respond in writing with any information or documentation pertinent to the alleged contravention regarding s. 5(1) of the LTA by entering inaccurate information into the Lobbyists Registry when it submitted Monthly Returns with information on lobbying activities that did not actually occur.

[82] Uber responded in writing on February 28, 2023 and stated that they do not agree with the characterization of s. 5(1) of the LTA. Uber goes on to state they do not agree that an honest but ultimately mistaken certification may be the basis for a contravention under s. 5(1). Individuals may be deterred from reporting interactions that are close to the line as lobbying, for fear of prosecution by the ORL. The legislation “intended to create latitude for an honest mistake”. Section 5(1) only requires knowledge and belief the information contained in the document is true, which is more lenient than a bare statement that the information is true. Section 5(1) applies to the individual who submits a document, not the organization or person who actually did the lobbying, reinforcing that the provision is not intended to bind lobbyists to an unattainable standard of perfection.



[83] Uber mentions a BC Legislature debate of the Act's provisions in 2001, where two parliamentary members converse about a concern that during busy practice of an in-house lobbyist, errors in the registration could occur. Summarizing that "all that is required by s. 5(1) is for the individual to make the certification that the report is true to the best of their knowledge and belief".

[84] The Representative explains in her Supplementary Affidavit how she did in fact certify that the contents of the Lobbying Activity Reports were true to the best of her knowledge and belief and the information contained in the returns was true.

[85] The purpose of the Lobbyists Registry is to provide transparency about lobbying activities in British Columbia – past and present. Accordingly, the ORL was requesting that Uber submit Monthly Returns with information on lobbying activities in accordance with LTA requirements so that the public has the ability to know who is attempting to influence government at any point in time.

[86] I am troubled by Uber's view that the ORL should have told Uber about its regulatory responsibilities in advance so that Uber could conduct itself accordingly, including evaluating Uber's rights to avoid a potentially incriminating itself. I am reminding Uber that the LTA requires information about lobbying entered into the Registry be error free.

[87] By submitting Monthly Returns with information on lobbying activities that did not actually occur, Uber created confusion and undermined one of the fundamental tenants of the LTA, which is to promote transparency in lobbying communications. The public's ability to know who is lobbying whom as well as the purpose of the lobbying activity is an important element in meeting the public's expectation of transparency under the LTA.

[88] I find the designated filer entered inaccurate information in their Monthly Returns by submitting LARs for #2985-15558 (December 21, 2020 meeting), and #2985-15559 (January 12, 2021 meeting), and certified them to be true under s. 5(1) of the LTA. Although #2985-15558 (December 21, 2020 meeting) and #2985-15559 (January 12, 2021) meetings were not considered lobbying for the reasons explained above, Uber did file certified Lobbying Activity Reports and posted them on January 13, 2022. I would also like to clarify that #2985-15559 (January 12, 2021) meeting did not result in a financial penalty for the inaccurate information entered in Monthly Returns.

#### **ADMINISTRATIVE PENALTY**

[89] 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 and may impose a prohibition on lobbying if it is in the public interest.

[90] Such person must be given notice of the contravention determination. If a monetary administrative penalty is imposed, the notice must include “the reason for the prohibition and the start date and end date of the prohibition”.

[91] 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 guidance document *Registrar of Lobbyists: Guide to Investigations* (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 the regulations. As the Policy makes clear, its purpose is to structure discretion. It does not fetter discretion. It is not law. I have followed that guidance in the exercise of my delegated discretion to determine a penalty based on the facts before me.

[92] The guide to investigations first sets out a general financial range for particular 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 administrative penalty.

[93] 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.

[94] I have considered these factors and the submissions made by the designated filer.

**Registration Return: ss. 4(1)(f) Affiliate and 4(1)(g) Parent Company**

[95] Section 4.1 of the LTA requires a designated filer to enter into its Registration Return the name and address of its affiliates. The fact that the designated filer failed to enter information

about its parent company and/or affiliates into its Registration Return from 2018 onwards is in contravention of the LTA.

[96] As stated above, I am not aware of any previous contraventions or warnings under the LTA or LRA for Uber. I am considering these contraventions together and these are the designated filer's first contraventions which weighs towards a lower penalty.

[97] Again, I do not believe this was a deliberate contravention. I believe, based on the evidence, the organization was careless in fulfilling its obligations under the LTA. I do not have any evidence in front of me that Uber benefited monetarily from this contravention. This also weighs in favour of a lower penalty.

[98] I have considered and rejected the view that this might be a case where "no penalty" is appropriate. The provisions of the LTA and that of its predecessor the LRA were in place from April of 2010. Recent amendments under the LTA did not change the lobbyist's responsibilities in this case. The designated filer should be aware of their obligations under the LTA, including the obligations to enter accurate information required under s. 4(1) of the LTA. The contravention in this case is clear.

[99] The penalty for failing to enter accurate information into a Registration Return has a range of \$1,000 to \$7,500 for the first instance of non-compliance.

[100] In arriving at an appropriate penalty, I have also reviewed Investigation Report (IR) IR 20-02, where a consultant lobbyist failed to enter information, that they were a former public office holder, into 13 of their Registration Returns. This error was brought to the attention of the lobbyist, who quickly corrected the errors. The lobbyist did not have any previous contraventions. Based on the evidence, the lobbyist did not receive an economic benefit, nor was there evidence the contravention was deliberate. However, the lobbyist had submitted 13 registrations missing the fact that they were a former POH. Since all 13 contraventions came to the attention of the investigator at the same time, it was treated as a first contravention. Taking these circumstances into consideration the investigator imposed a penalty of \$3,000.

[101] I also reviewed Determination Decision (DD) DD 22-01, where a designated filer for the organization failed to list the name and address of its parent company contrary to s. 4(1)(g) of the LTA. In its Registration Returns filed between February 2013 and September 2017, it lists its parent company, but from April 2018 to August 2022, but it did not identify its parent company in its Registration Return. The designed filer received a penalty of \$1,500 after explaining it was an oversight that was corrected proactively without intervention by the ORL.

[102] Uber's designated filer knew or ought to have known that it had affiliates and that it was a subsidiary of its parent company. This is compounded by the fact it took roughly three years before the designated filer realized they were not meeting their obligations under ss. 4(1)(f) and 4(1)(g) of the LTA before it corrected its Registration Return. Furthermore, it was not until

the ORL requested from Uber if it had any affiliates, that Uber provided this information. The facts warrant a greater penalty than the minimum stipulated in the Guide to Investigations. I am imposing a penalty of \$2,500 for failing to enter the required information about any of its affiliates and parent company contrary to ss. 4(1)(f) (affiliates) and 4(1)(g) (parent company) of the LTA.

#### **Monthly Return: Section 4.1 of the LTA – Lobbying Activity - SPOH**

[103] Section 4.1 of the LTA requires a designated filer to submit Lobbying Activity Reports, as part of their Monthly Return obligations, containing information found in s. 4.2(2)(a) to (d) of the LTA about the organization's lobbying activities no later than 15 days after the end of the month in which the lobbying occurred. Failing to submit Monthly Returns with information about an organization's lobbying activities, undermines one of the fundamental tenants of the LTA, which is to promote transparency. The public's ability to know who is lobbying whom as well as the purpose of the lobbying activity is an important element in meeting the public's expectation.

[104] Uber lobbied SPOH(s) on March 24, 2021 and failed to submit a Monthly Return for this lobbying activity until January 13, 2022, some nine months later. Again, Uber lobbied SPOH(s) on November 21, 2021 and November 22, 2021 and failed to submit a Monthly Return for these lobbying activities until January 13, 2022, a month past the deadline. The fact that it failed to submit the Monthly Returns on time for these lobbying activities is a serious contravention.

[105] Failing to file a Monthly Return in a timely manner defeats the LTA's goal of transparency because it undermines the ability of the public to know who is attempting to influence government at any point in time. During this period the public was unaware of the March 24, 2021 lobbying of a senior public office holder for some nine months, and also whom the correct designated filer was.

[106] I am not aware of any previous contraventions or warnings under the LTA or the LRA for Uber. These are the designated filer's first contraventions which weighs towards a lower penalty.

[107] There is no information before me that would indicate that these contraventions were deliberate. Uber's action to correct the matter would suggest it was simply careless in fulfilling its obligations under the LTA.

[108] I recognize that when ORL Staff intervened to question Uber, they immediately corrected the missing information. This weighs in favour of a penalty in the low range for this contravention.

[109] The penalty range for late filing of a Monthly Return containing an organization's lobbying activities is between \$100 - \$5,000 for a first contravention, noting that I have discretion to stay within or deviate from the range.

[110] I have also reviewed previous decisions to seek guidance on an appropriate penalty.

[111] In Investigation Report 15-02, a consultant lobbyist filed his Registration Return 10 months late. He lobbied on one occasion during this period. The lobbyist had no previous contraventions. There was no evidence that the lobbyist gained an economic benefit from late filing, or that the contravention was deliberate. The lobbyist received an administrative penalty of \$1,200.

[112] In Investigation Report 17-05, the designated filer failed to file their Registration Return within 30 days of the expiration of their previous return, contrary to s. 3(3)(b) of the LRA. The designated filer was 14 months late submitting their Registration Return. There was no evidence that the organization received an economic benefit from late filing or that the contravention was deliberate. No lobbying activity occurred during this period. The designated filer was assessed an administrative penalty of \$1,500.

[113] In this case, Uber was required to file Monthly Returns no later than 15 days after the month in which the lobbying activity occurred. It lobbied SPOHs on three separate occasions, March 24, 2021, November 21, 2021 and November 22, 2021 but it failed to submit the Monthly Returns by the required dates.

[114] During these periods, the public was not aware Uber was lobbying SPOHs. The magnitude of the contraventions here is similar as those in Investigation Reports 15-02 and 17-05, given the time period for the late filings and frequency of late filings. The penalty for these contraventions is detailed in paragraph 116.

#### **Monthly Return: s. 4.1 of the LTA - Change of Designated Filer**

[115] Section 4.2(2) of the LTA requires a designated filer to submit a Monthly Return under s. 4.1 if there are changes to the information in the Registration Return. Uber was required to file a Monthly Return no later than February 15, 2022 when it changed its designated filer effective January 1, 2022. Uber contravened s. 4.2(2)(e) when it failed submit a Monthly Return by February 15, 2022 with the changes to its Registration Return.

[116] I recognized that Uber worked diligently with the ORL to correct these contraventions. I acknowledge that Uber failed to understand its obligations under the LTA. Taking all these circumstances into consideration, I impose an administrative penalty of \$1,500 for Uber failing to file Monthly Returns on time when it filed late and changed its designated filer in contravention of s. 4.1 of the LTA.

**Monthly Return: s. 5(1) of the LTA - Lobbying Activity – Inaccurate Information**

[117] Uber declares that for the other 4 of the 5 late Lobbying Activity Reports (2985-15558, 2985-15559, 2985-15566, 2985-15568) filed by Uber on January 13, 2022, Uber is of the view that these meetings were not actually lobbying activities. Uber did not make this comment for #2985-15562. Thus, Uber entered inaccurate information into the Lobbyists Registry to which transparency is undermined or obscured when the public is provided with inaccurate or incomplete information in a Registration Return or Lobbying Activity Report. Again, I wish to clarify that the fine imposed for inaccurate information relates to LAR 2985-15558.

[118] In assessing the administrative penalty, I note that this contravention involves unusual circumstances that warrant leniency. Monthly Return requirements are a relatively recent requirement. This is a first offence. While the effect of the designated filer's actions had the negative effects pointed out above, there is no evidence that the designated filer submitted the improper Lobbying Activity Report with the intent to deceive and no evidence that it obtained financial benefit from doing so. It is also worth noting the ORL has taken the view that administrative penalties should primarily be used as a means of deterring the behaviour of the designated filer and other lobbyists.

[119] The evidence before me leads me to believe the organization was inattentive, in fulfilling its obligations under the LTA, but not deliberate.

[120] The penalty range set out in the Guide to Investigations for entering information into a Registration Return that is not accurate is \$1,000 to \$7,500 for a first contravention, but that is a guide that does not fetter my discretion to assess amounts either above or below these amounts depending on the circumstances.

[121] I recognize that when ORL Staff intervened to question Uber, they immediately corrected the missing information. This goes to the efforts and weighs in favour of a penalty in the low range for this contravention.

[122] I do take into consideration that Uber did try to rectify its errors. It tried to voluntarily catch up on filing and by doing so, erred on the side of overreporting, thus entering inaccurate information into its Monthly Returns (Lobbying Activity Reports). Uber's attempts to comply with the LTA, weigh in favour of a lower penalty for this contravention.

[123] I am still of the opinion, that the circumstances here call for an administrative penalty.

[124] I have also reviewed previous decisions to seek guidance on an appropriate penalty. Two Investigation Reports, IR 15-11 and IR 18-01 deal with entering of inaccurate information into a Registration Return.

[125] In IR 15-11, a consultant lobbyist failed to enter the correct information, in this case the start date, into their Registration Return. The lobbyist did not have any previous contraventions. They did not receive an economic benefit from this error, nor was the contravention deliberate. Aggravating circumstances included the fact that the registration was deemed to be almost four months late. Furthermore, the lobbyist lobbied when they did not have an active registration with the ORL. The investigator assessed a penalty of \$1,000 for entering inaccurate information into the lobbyist's Registration Return contrary to s. 4(1)(b)(ii) of the LRA.

[126] In IR 18-01, the consultant lobbyist failed to enter accurate information into their Registration Return when they did not declare their previous occupation as a former public office holder. 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 \$1,000 administrative penalty.

[127] An aggravating circumstance is the fact that the designated filer entered information into Uber's Monthly Returns that the designated filer should have known or ought to have known was incorrect. They certified under s. 5(1) of the LTA that this information was true to the best of their knowledge. I am mindful Uber entered the inaccurate Lobbying Activity Reports on 1 day, January 13, 2021.

[128] Considering all of the relevant factors, I find that assessing a penalty for providing inaccurate information within the standard range that the ORL has established would be excessive. In the circumstances, I find that the appropriate administrative penalty for the contravening s. 5(1) in this case is \$500 for the inaccurate information entered for LAR 2985-15558.

## **Conclusion**

1. The notice of alleged contraventions have been substantiated.
2. I have imposed an administrative penalty of **\$2,500** for contravening ss. 4(1)(f) and 4(1)(g) of the LTA, a penalty of **\$1,500** for contravening s. 4.1 of the LTA, and **\$500** for entering inaccurate information into its Registration Return and certifying it to be true under s. 5(1) of the LTA. The total amount of administrative penalties is **\$4,500**.
3. The designated filer must pay this penalty no later than **December 27, 2023**.
4. If the designated filer requests reconsideration under s. 7.3 of the LTA, they are to do so within 30 days (**December 15, 2023**) of receiving this decision by providing a letter in writing directed to the Registrar of Lobbyists at the following address, setting out the grounds on which reconsideration is requested:

Office of the Registrar of Lobbyists for British Columbia  
PO Box 9038, Stn. Prov. Govt.  
Victoria, BC V8W 9A4  
Email: [info@bcorl.ca](mailto:info@bcorl.ca)

Date: November 15, 2023

ORIGINAL SIGNED BY

Laine Coopsie, Investigator and  
Delegate of the Registrar of Lobbyists