

EXEMPTION DECISION 24-01

Jeff Groot (British Columbia Ferry Services Inc.)

June 20, 2024

SUMMARY: From late 2022 to late 2023, the applicant served as Assistant Deputy Minister, Government Digital Experience, in the Ministry of Citizens' Services. Prior to this, the applicant was an executive lead in the Ministry of Agriculture and Food. In November 2023, the applicant started working for British Columbia Ferry Services Inc. (BC Ferries) on a secondment from the provincial government as Executive Director of Communications. He became a full-time employee of BC Ferries on April 8, 2024. The applicant's request to be exempted from the two-year prohibition on lobbying under s. 2.3 of the *Lobbyists Transparency Act* is granted. The prohibition's purpose is to prevent individuals from marketing information and relationships gained at public expense for private advantage. The ultimate ownership of BC Ferries rests with the province, which means the applicant is moving from a government body to a government-owned body. To the extent BC Ferries might be said to gain advantage from the proposed lobbying activity, the public should be the ultimate beneficiary. In these circumstances, the Registrar found it in the public interest to grant the applicant an exemption from the two-year prohibition on lobbying.

Statutes Considered: *Lobbyists Transparency Act*, SBC 2001

Authorities Considered: Exemption Decision 23-01, Exemption Decision 18-01

BACKGROUND

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

[2] The applicant was the Assistant Deputy Minister, Government Digital Experience in the Ministry of Citizens' Services from late 2022 to November 2023. Prior to this, the applicant was an executive lead in the Ministry of Agriculture and Food for four months. In November 2023, the applicant started working for British Columbia Ferry Services Inc. (BC Ferries) on a secondment from the provincial government as Executive Director of Communications. The applicant became a full-time employee at BC Ferries on April 8, 2024.

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

DISCUSSION

Overview of the LTA’s scheme

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

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

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

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

[8] The Registrar previously held in Exemption Decision ED 23-01 that the LTA applies to the activities of BC Ferries.¹

Overview of the two-year rule

[9] The LTA contains a two-year prohibition on lobbying activity by certain former public office holders (referred to below as the “two-year rule”).

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

"former public office holder" means

...

¹ ED 23-01, paras 17-20.

(c) any individual who formerly occupied

(i) a senior executive position in a ministry, whether by the title of deputy minister, chief executive officer or another title,

(ii) the position of associate deputy minister, assistant deputy minister or a position of comparable rank in a ministry, or

...

[11] The applicant is a “former public office holder” because of his previous positions as Assistant Deputy Minister, Government Digital Experience in the Ministry of Citizen’s Services and as executive lead in the Ministry of Agriculture and Food.

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

2.2 Subject to section 2.3, a person who is a former public office holder must not lobby, in relation to any matter, for a period of 2 years after the date the person ceased

(a) to be a member of the Executive Council,

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

(b) to be a parliamentary secretary, or

(c) to occupy a position referred to in paragraph (c) of the definition of “former public office holder”.

2.3 (1) If the registrar is satisfied that it is in the public interest, the registrar may, on request and on any terms or conditions the registrar considers advisable, exempt a person from a prohibition set out in section 2.1 (2) or 2.2.

(2) If the registrar grants an exemption under subsection (1), the registrar must enter the following into the registry:

(a) the terms or conditions of the exemption;

(b) the registrar's reasons for granting the exemption.

[13] These provisions disclose that while former public office holders are not prevented from leveraging their acquired knowledge, expertise, and relationships at the public’s expense, they are prohibited from using them for the purpose of lobbying for a period of two years.²

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

² ED 18-01, para 19.

knowledge, connections, or both.³ Particularly, it is meant to prevent individuals from marketing information and relationships formed at public expense for their own private advantage.⁴

[15] The Registrar has previously held that a private interest is one that relates to an individual interest, or the interests of a small or narrowly defined group of people.⁵ Conversely, the public interest is an interest shared by the entire public which reflects broad areas of public concern or provides a benefit or advantage to the whole community.⁶

Basis of the applicant's request

[16] The applicant submits that the reasons underpinning Exemption Decision ED 23-01 are applicable here, and that the public stands to benefit from any proposed lobbying activity.

[17] In ED 23-01, the Registrar granted an exemption from the LTA's two-year rule because the individual seeking the exemption was moving from one government-owned body to another.⁷ The individual worked for the Insurance Corporation of British Columbia (ICBC) before being appointed as President and Chief Executive Officer of BC Ferries.⁸ The Registrar found that any attempt by the individual to influence government on BC Ferries' behalf could not be characterized as seeking "private advantage" because the ultimate beneficiary of any advantage would be the public.⁹ The applicant submits that this same reasoning is applicable here, as he would similarly be lobbying on behalf of BC Ferries.¹⁰

[18] As Executive Director of Communications, the applicant provides guidance and strategic advice to BC Ferries on its various interactions with the provincial government.¹¹ The applicant submits that the public stands to benefit from any proposed lobbying activity, as BC Ferries is run for the benefit of, and ultimately owned by, the province, meaning the public is the ultimate beneficiary.¹²

Application

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

³ British Columbia, Legislative Assembly, *Hansard*, 41st Parl, 2nd Sess, No 38 (19 October 2017) at 1170 (Hon D Eby).

⁴ *Ibid.*

⁵ ED 18-01, para 31.

⁶ *Ibid.*

⁷ ED 23-01, para 27.

⁸ *Ibid.*, para 2.

⁹ *Ibid.*, para 27.

¹⁰ Application, p. 3.

¹¹ *Ibid.*

¹² *Ibid.*

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

- the type and duration of the position the applicant previously held under s. 2.2 of the LTA;
- the length of time since that position concluded;
- the nature of the proposed undertaking to lobby, including the client and the target(s) of lobbying;
- how the public can be assured that no information or relationships acquired in the previous position will be used in the proposed lobbying;
- why the particular lobbyist, as distinct from some other lobbyist, is proposing to carry out the lobbying;
- how the public will benefit from lobbying activity by the applicant; and
- any terms and conditions that might be proposed that would satisfy the Registrar that an exemption would be in the public interest.¹³

[21] The factors are closely linked with the overarching purpose of the two-year rule explained above – that the Legislature wanted to prevent individuals from marketing information and relationships they formed at public expense for private advantage.¹⁴

[22] The facts of this application are analogous to ED 23-01 as the applicant is not moving from a government body to the private sector, but rather from a government body to a government-owned body. This renders it unnecessary to assess the factors set out in paragraph 21 because the premise underlying them is not present.

[23] As in ED 23-01, the applicant’s circumstances can be differentiated from past exemption seekers who have moved from governmental bodies to private organizations. Despite its complex governance and share structure, the Province of British Columbia remains the ultimate owner of BC Ferries and any attempt by the applicant to influence government on their behalf could not be characterized as seeking a “private advantage”.¹⁵ BC Ferries is run for the benefit of the public and, therefore, the public should be the ultimate beneficiary of any advantage from proposed lobbying activity by the applicant.

¹³ ED 18-01, para 38.

¹⁴ British Columbia, Legislative Assembly, *Hansard*, 41st Parl, 2nd Sess, No 38 (19 October 2017) at 1170 (Hon D Eby).

¹⁵ ED 23-01, para 27.

CONCLUSION

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

[25] As a condition for granting this exemption under s. 2.3 of the LTA, the applicant must ensure that Exemption Decision Number ED 24-01 is included, in all Registration Returns in which the applicant is registered as a lobbyist, until April 8th, 2026. Failure to comply with this condition renders this Exemption Decision null and void.

Date: June 20, 2024

ORIGINAL SIGNED BY

Michael Harvey
Registrar of Lobbyists for British Columbia