



INVESTIGATION REPORT 13-01

LOBBYIST: JOE FIEDER

May 2, 2013

SUMMARY: A consultant lobbyist filed a registration, which was allowed to lapse when it expired. Nearly six months later, the same consultant lobbyist filed a new registration, which comprised the same undertaking to lobby for the same client as the registration that had been allowed to lapse. The consultant lobbyist admits that he had lobbied during the period during which his registration had lapsed, and was found to have contravened section 4(2)(a) of the LRA. He was fined \$500.

Statutes Considered: *Lobbyists Registration Act*, S.B.C. 2001, c. 42.

INTRODUCTION

[1] This report concerns an investigation under s. 7.1 of the *Lobbyists Registration Act* ("LRA"). This section gives the Registrar of Lobbyists ("Registrar") the authority to conduct an investigation to determine whether there has been compliance with the LRA or its regulations. If, after an investigation under s. 7.1, the Registrar or her delegate believes that the person under investigation has not complied with a provision of the LRA or its regulations, s. 7.2 of the LRA requires her to give notice of the alleged contravention and the reasons for her belief that the contravention has occurred. Prior to making a determination under s. 7.2(2), the Registrar must under s. 7.2(1)(b) give the person under investigation a reasonable opportunity to be heard respecting the alleged contravention.

[2] The LRA recognizes two types of lobbyists. Relevant to this report are "consultant lobbyists", individuals who undertake to lobby for payment on behalf of a client. The LRA requires that, within 10 days of entering into an agreement to lobby, consultant lobbyists register the fact that they have entered into such an undertaking. The LRA, s. 4(2)(a), also requires consultant lobbyists to keep their registration current by updating it within 30 days of any change to the information contained in the registration.

[3] This investigation, conducted under the authority delegated to the Deputy Registrar by the Registrar under s. 7(4)(d) of the LRA, commenced when the lobbyist registered an undertaking to lobby on behalf of 3M Canada. This undertaking appeared to be identical to his previous undertaking to lobby on behalf of the same client, which had been allowed to lapse six months earlier. The new undertaking was submitted on June 21, 2012, but listed a start date of the undertaking to lobby as occurring six months earlier, on January 1, 2012.

ISSUES UNDER CONSIDERATION

[4] The questions that must be considered are:

- (a) whether the lobbyist, who registered an undertaking to lobby on behalf of 3M Canada, complied with s. 4(2)(a) of the LRA, and
- (b) if he did not comply, what, if any, administrative penalty is appropriate in the circumstances?

RELEVANT SECTIONS OF THE LRA

“consultant lobbyist” means an individual who, for payment, undertakes to lobby on behalf of a client;

“designated filer” means

- (a) A consultant lobbyist

“lobby” subject to section 2 (2), means,

- (a) in relation to a lobbyist, to communicate with a public office holder in an attempt to influence
 - (i) the development of any legislative proposal by the government of British Columbia, a Provincial entity or a member of the Legislative Assembly,
 - (ii) the introduction, amendment, passage or defeat of any Bill or resolution in or before the Legislative Assembly,
 - (iii) the development or enactment of any regulation, including the enactment of a regulation for the purposes of amending or repealing a regulation,
 - (iv) the development, establishment, amendment or termination of any program, policy, directive or guideline of the government of British Columbia or a Provincial entity,
 - (v) the awarding, amendment or termination of any contract, grant or financial benefit by or on behalf of the government of British Columbia or a Provincial entity,
 - (vi) a decision by the Executive Council or a member of the Executive Council to transfer from the Crown for consideration all or part of, or any interest in or asset of,

- any business, enterprise or institution that provides goods or services to the Crown, a Provincial entity or the public, or
- (vii) a decision by the Executive Council or a member of the Executive Council to have the private sector instead of the Crown provide goods or services to the government of British Columbia or a Provincial entity,
 - (b) in relation to a consultant lobbyist only, to arrange a meeting between a public office holder and any other individual, and
 - (c) in relation to an in-house lobbyist only, to arrange a meeting between a public office holder and any other individual for the purposes of attempting to influence any of the matters referred to in paragraph (a) of this definition.

Requirement to file return

- 3(1) Within 10 days after entering into an undertaking to lobby on behalf of a client, a consultant lobbyist must file with the registrar a return in the prescribed form and containing the information required by section 4.

Form and Content of Return

- 4(2) An individual who files a return must supply the registrar with the following information within the applicable period:
 - (a) particulars of any change to the information in the return within 30 days after the change occurs.

BACKGROUND

[5] On April 27, 2011, the lobbyist registered an undertaking to lobby with the Office of the Registrar of Lobbyists for British Columbia (“ORL”).

[6] The LRA, s. 4(1)(b)(ii), requires a consultant lobbyist to indicate the start date and scheduled end date of any undertaking to lobby. The lobbyist provided an undertaking start date of March 14, 2011 and an end date of December 31, 2011. This is registration ID 495004.

[7] The client listed on the return was 3M Canada. The registration stated that the client “provides products, solutions and services related to vehicle traffic safety, sign reflectivity and management as well as license plate and decal products for governments.”

[8] Section 4(1)(j) of the LRA requires a return to include “particulars to identify the subject matter concerning which a lobbyist named in the return has lobbied or expects to lobby, during the relevant period.” The return identified the subject matter of the lobbying as: “Information Technology” and the “intended

outcome” of the lobbying as the “awarding, amendment or termination of a contract, grant or financial benefit.”

[9] The Insurance Corporation of British Columbia (“ICBC”) was listed as the target agency for the lobbying effort.

[10] On December 31, 2011, the ORL sent an automatic, system-generated email to the lobbyist stating that his undertaking had expired and that he had 30 days to extend the end date of the undertaking. The email also stated that, if he did not extend the end date, the system would automatically terminate the registration 30 days after the notification.

[11] The lobbyist did not extend the end date of the registration and on February 3, 2012, the system terminated the lobbyist’s registration.

[12] On June 21, 2012, the lobbyist registered another undertaking to lobby on behalf of 3M Canada, and provided a back-dated undertaking start date of January 1, 2012, with an undertaking end date of December 31, 2013. This is registration ID 10972034. The client, subject matter, intended outcomes and targets of this registration were essentially the same as those of registration ID 495004, which had been terminated on February 3, 2012.

[13] Because the details of the two registrations were the same, the ORL Registry Manager asked whether the undertaking in the second registration was the same undertaking as in the earlier one, and if so, why the first registration was allowed to lapse. The lobbyist explained that he “did not realize the original one expired.”

INVESTIGATION

[14] On October 29, 2012, the ORL commenced an investigation under s. 7.1 of the LRA to determine whether the lobbyist had complied with the LRA.

[15] 3M Canada is the client for both registrations under consideration in this investigation. In response to questions asked as part of the investigation, the Business Manager for 3M Canada wrote to the Deputy Registrar confirming that 3M Canada

...have had a contractual relationship with [the lobbyist]’s company BGL Consulting since January 1, 2012. Prior to that we had a similar relationship with his former company since September 1, 2009. Both agreements have covered [the lobbyist]’s provision of services related to business development, proposal submission and project management activities in support of 3M Canada’s pursuit of business opportunities for motor vehicle registration systems and services with provincial government agencies across Canada.

[16] The Business Manager further clarified that 3M Canada has had a “Master Services Agreement” with the lobbyist company since September 2009, and that “all of the work he has done has been governed by the same agreement.”

[17] The ORL obtained and reviewed an unsigned copy of the contract between the lobbyist’s company, BGL Group Inc., and 3M Canada. The contract has a start date of September 1, 2009 and requires BGL Group Inc. to provide a variety of services to 3M Canada, falling under four headings: Pre RFP activities, RFP Response & Proposal Development Activities, Project Management & Delivery Activities and New Business Development Activities. Specific activities falling under these headings include to: “provide direct and indirect support to all meetings where Motor Vehicle Systems & Services are presented to prospective clients” and to “lead the development of any unsolicited proposals; assist in the delivery of same to prospective clients.”

[18] The lobbyist acknowledged that his registration had expired on December 31, 2011, but said that he “did not realize that it had expired” until a 3M Canada business associate told him in June 2012 that the registration was inactive. The 3M Canada business associate also asked him “to correct the situation.” The ORL system generates an automatic notification to registrants when their registrations expire, but the lobbyist stated that he “may have been notified via an automated email but [he does not] have it or remember it.”

[19] In order to submit a registration, designated filers must register their electronic identity and password with BCeID, an e-service BC government agency separate and distinct from the BC ORL. The ORL does not issue electronic identities and passwords.

[20] The lobbyist stated that when he attempted to re-activate his registration, he could “not remember the password or security questions” and had to re-apply to the BCeID office for a new identity and password. Once the BCeID was secured, said the lobbyist, he registered a new undertaking to lobby on behalf of 3M Canada and submitted it on June 12, 2012.

[21] Although this second registration was for the same undertaking as the previous registration, the lobbyist listed a new start date of January 1, 2012 and a new end date of December 21, 2013. With respect to the January 1, 2012 undertaking start date, the lobbyist stated, “I used January 1, 2012 because I’ve been involved with ICBC meetings with 3M Canada from that time.”

[22] As a result of the investigation, the Deputy Registrar formed the preliminary belief that the lobbyist was non-compliant with the LRA. In accordance with s. 7.2(1), she gave the lobbyist formal notice by letter on October 31, 2012 of the alleged non-compliance, providing him with an

opportunity to be heard with respect to the allegation. The lobbyist responded to the allegation in a series of email messages to the Deputy Registrar.

DISCUSSION

[23] The legal definition of “lobbying” in BC includes “communicating with a public office holder” in an attempt to influence “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.”

[24] Under the LRA, ICBC is an entity that employs public office holders as defined under the Act.

[25] The Deputy Registrar accepted that the agreement between the lobbyist and 3M Canada included an agreement to lobby on behalf of 3M Canada, specifically to deliver unsolicited proposals to public office holders at ICBC for products and services offered by 3M Canada.

[26] Based on the information provided by the lobbyist and his client, 3M Canada, the Deputy Registrar accepted that only one undertaking exists between the lobbyist and 3M Canada, and that the second undertaking that was registered is not a new undertaking, but a continuation of an already-existing one.

[27] The relevant provision of the Act is s. 4(2), which requires an individual who files a return to supply to the Registrar, within 30 days, particulars of any change to the information contained in the return.

[28] The Deputy Registrar found that the lobbyist’s undertaking to lobby on behalf of 3M Canada continued beyond December 31, 2011 (the original end date), and the lobbyist knew that this was the case. Section 4(2)(a) of the LRA obliged him to notify the Registry staff of the change in the terms of the undertaking no later than February 3, 2012. Instead, he submitted the new registration on June 12, 2012, more than four months after the change notification was required to have been submitted.

[29] The purpose of the LRA is to promote transparency in lobbying. It does so by requiring designated filers to register lobbying activities and declare, among other things, who they are lobbying, on whose behalf, on what subject matter and toward what outcome. All of this information is available to the public on a searchable registry, so citizens can see for themselves who is attempting to influence government decisions.

[30] The LRA makes clear that transparency includes timeliness. Thus, the LRA requires designated filers to keep their registrations current by requiring them to advise the Registrar of any changes to the information contained in the registration within 30 days of the change occurring. That includes any changes to the end date of an undertaking. The goal of transparency is frustrated if registrations lapse or are not updated as changes occur.

[31] In this case, the registration lapsed and the lobbyist did not reinstate it until nearly six months later. The lobbyist admits that he had been engaged in dialogue with ICBC in the intervening time between the two registrations. This means that the lobbyist was lobbying without being properly registered.

FINDING

[32] Based on the information provided to the Deputy Registrar by the lobbyist and the Business Manager of 3M Canada and information filed in the two registrations at issue, the Deputy Registrar concluded that the lobbyist did not report changes to his registration to lobby on behalf of 3M Canada within 30 days, as required by s. 4(2)(a) of the LRA.

ADMINISTRATIVE PENALTY

[33] The purpose of the LRA is to promote transparency in lobbying by requiring lobbyists to disclose accurate, current and complete information. Failing to keep information in registrations up to date and accurate undermines the ability of the public to understand who is actually attempting to influence government at any point in time, thereby defeating the LRA's goal of transparency.

[34] In assessing whether a penalty is necessary in this instance, I, as the Acting Deputy Registrar, must consider, among other things, whether a penalty is necessary for general and specific deterrence. I must also consider whether previous enforcement actions have been taken in relation to this registrant, the gravity and magnitude of the contravention, whether the contravention was deliberate, whether the registrant derived any economic benefit from the contravention, as well as any effort the registrant made to report or correct the contravention.

[35] On the question of specific deterrence, I am satisfied that this investigation and hearing process is sufficient to ensure that the lobbyist will keep future registrations up to date.

[36] I must also take into consideration the notion of general deterrence. It is important for all lobbyists to understand that keeping registrations current is not simply "paperwork". It is a serious legal obligation that they must meet if the

objectives of the LRA are to be achieved. I am satisfied that the publication of this report will remind all designated filers of their legal obligations to be diligent in keeping their registrations current and to report changes within 30 days as required by the law.

[37] On the question of the gravity and magnitude of the contravention, the lobbyist allowed his registration to lapse and did not re-register for nearly six months. The result was that he lobbied without being registered or having his lobbying activities open to public scrutiny. Having registered in the past, the lobbyist was aware of his obligation to register. However, he either chose not to re-register, or failed to act with due care in that regard, for a considerable period. He apparently made no effort to correct the transgression until he was prompted to do so by a business associate at his client organization, 3M Canada.

[38] The ORL policies and procedures, which are intended to act only as a guide, suggest that a penalty between \$100 and \$5000 be levied for failing to report changes to a registration.

CONCLUSION

1. Under s. 7.2(2) of the LRA, I find that the lobbyist contravened s. 4(2)(a) of the LRA in respect of registration ID 495004. The notice of alleged contravention has been substantiated.
2. I impose an administrative penalty of \$500.
3. The lobbyist must pay this penalty no later than June 10, 2013.
4. If the lobbyist requests reconsideration under s. 7.3 of the LRA, he is to do so within 30 days of receiving this decision by providing a letter in writing directed to the Registrar of Lobbyists at her business address, setting out the grounds on which reconsideration is requested.

May 2, 2013



Jay Fedorak
Acting Deputy Registrar of Lobbyists