



## INVESTIGATION REPORT 14-03

### BC FEDERATION OF LABOUR

#### DESIGNATED FILER: JAMES SINCLAIR

March 14, 2014

**SUMMARY:** An organization employing an in-house lobbyist was required to file a return. The organization's designated filer filed a return within the legislated time frame. There were several outdated target contacts listed in the registration. The Office of the Registrar of Lobbyists ("ORL") registry manager identified the errors, brought the errors to the designated filer's attention and asked him to correct them. The designated filer failed to make the corrections within the time lines set out in the *Lobbyists Registration Act* ("LRA"). When he did not make the required corrections, the organization's registration was deemed not to have been received by the Registrar. The organization's designated filer thereby failed to file a return as required by s. 3(3)(b) of the LRA within 30 days of its previous return and was fined \$1,000.

**Statutes Considered:** *Lobbyists Registration Act*, S.B.C. 2001, c. 42; *Lobbyists Registration Regulation*, B.C. Reg. 284/2002.

## INTRODUCTION

[1] This report concerns an investigation under s. 7.1 of the 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. This report focuses on the activities of the BC Federation of Labour, an organization that employs 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, alone or with others, for at least 100 hours annually.

[3] The LRA requires that the designated filer must file a return with the ORL if the organization meets the criteria for registering. The LRA describes the designated filer as the most senior officer of the organization who receives payment for performing his or her functions, or where there is no senior officer who receives payment, then the most senior in-house lobbyist. In this case, the organization's designated filer is the President, James Sinclair. Under s. 3(3)(b) of the LRA, the designated filer must file a return within 30 days of the end of each 6 month period from the date of the previous filing.

[4] This investigation is conducted under the authority delegated to the Investigator by the Registrar under s. 7(4)(d) of the LRA. It commenced when the organization's designated filer failed to make corrections, identified by the ORL as necessary, to its return, resulting in the organization's registration being deemed not to have been received by the Registrar. The organization's designated filer thereby failed to file a return required under s. 3(3)(b) of the LRA within 30 days of the expiration of its previous return.

## ISSUES UNDER CONSIDERATION

[5] The questions that must be considered are:

- (a) whether the designated filer of the organization filed a return within the time lines set out in s. 3(3)(b) of the LRA.
- (b) if the designated filer did not comply, what, if any, administrative penalty is appropriate in the circumstances?

## RELEVANT SECTIONS OF THE LRA

**"designated filer"** means

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

**"in-house lobbyist"** means an employee, an officer or a director of an organization

- (a) who receives a payment for the performance of his or her functions, and
- (b) whose lobbying or duty to lobby on behalf of the organization or an affiliate, either alone or together with other individuals in the organization,
  - (i) amounts to at least 100 hours annually, or
  - (ii) otherwise meets criteria established by the regulations;

**"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(3) The designated filer of an organization must file with the registrar a return in the prescribed form and containing the information required by section 4, ...
- (b) if a return has been filed previously, within 30 days of the end of each 6 month period after the date of filing the previous return.

### **RELEVANT SECTIONS OF THE LOBBYISTS REGISTRATION REGULATION (“LRR”)**

#### **Deemed receipt of returns**

- 2(3) If the registrar requests that corrections be made to a return and all of the corrections are submitted to the registrar within 10 days after the registrar makes the request, the return as corrected is deemed to be received by the registrar on the date the return, before the corrections were requested, would have been deemed under subsection (1) to have been received by the registrar if no corrections had been requested to it.
- 2(4) If the registrar requests that corrections be made to a return and all of the corrections are not submitted to the registrar until more than 10 days after the registrar makes the request, the date the return as corrected is deemed to be received by the registrar is the date on which the last correction is deemed to be received by the registrar by applying subsection (1) as though that last correction was a return submitted as described in subsection (1).

### **BACKGROUND**

[6] It is the responsibility of the designated filer to file a return in the prescribed form containing information described in s. 4 of the LRA. The ORL sent all correspondence related to this matter to the designated filer. However, the designated filer did not respond to the ORL’s correspondence. Instead, one of the organization’s in-house lobbyists responded on behalf of the designated filer.

[7] On January 8, 2013, the organization’s registration ID 10972014 expired. Section 3(3)(b) of the LRA requires the designated filer to file a return with the Registrar within 30 days from the date of expiration of the previous return.

[8] On January 22, 2013, the designated filer submitted a return to the ORL generating registration ID 289653.

[9] Section 4 of the LRA sets out the information required to complete a return. Section 4(1)(m) of the LRA obliges the designated filer provide the name of a minister who the designated filer has lobbied or intends to lobby. Section 4(1)(k) requires the designated filer to provide the name of the ministry where a public officer, who the designated filer has lobbied or intends to lobby, serves.

[10] On February 7, 2013, the registry manager notified the designated filer that the return contained incorrect information pertaining to Cabinet ministers and ministries. The registry manager provided the names of the Cabinet ministers and the ministries that were entered incorrectly. Section 2(2)(a) of the LRR notes that if the Registrar requests corrections be made to a return, the return is deemed not to have been received by the Registrar. Section 2(3) of the LRR provides 10 days for the designated filer to make the required corrections. If corrections are requested and received within 10 days of the return being submitted, the return is deemed to have been received on the day it was originally submitted. Section 2(4) of the LRR stipulates if the corrections are made after 10 days of the original submission, the return is deemed to be received on the date the last correction was submitted to the ORL. In this case, the designated filer did not make the corrections; consequently, registration ID 289653 was deemed not to have been received by the Registrar.

[11] On February 28, 2013, the registry manager notified the designated filer that, if the organization continued to meet the criteria for registration, he must complete a new return. The registry manager informed him that the return would be considered late.

[12] On April 19, 2013, the organization filed a new return generating registration ID 15358252. The ORL accepted the return. However, the designated filer failed to file the return within the 30 days required under s. 3(3)(b) of the LRA.

[13] On April 25, 2013, the registry manager asked the organization to explain why the organization did not re-register within the 30 days required under s. 3(3)(b) of the LRA. The organization did not respond.

[14] On May 3, 2013, the registry manager asked the designated filer why the organization did not re-register within 30 days after the expiration of its previous registration. The designated filer was asked to respond by May 7, 2013. The designated filer did not respond.

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## INVESTIGATION

[15] On June 6, 2013, by letter, the ORL informed the designated filer that it was commencing an investigation under s. 7.1 of the LRA to determine if the designated filer of the organization had complied with the LRA.

[16] In its June 7, 2013 response, the organization mentioned that it completed its return on January 22, 2013, generating registration ID 289653. It claimed that it was unaware the ORL had alerted it to the errors in its registration. The organization believed that the return had been accepted.

[17] It was not until April 19, 2013, when the organization attempted to update registration ID 289653, that it discovered this return was not accessible. The organization contacted the ORL and learned that the January return, registration ID 289653, was not corrected within the legislated time frame. Therefore, it was deemed not to have been received by the Registrar and terminated by the system. The organization immediately submitted a new registration ID 15358252.

[18] On September 26, 2013, the Acting Deputy Registrar notified the designated filer that the ORL was providing formal notice under s. 7.2(1)(a) of the LRA that it had formed the belief, subject to hearing from the designated filer, that the designated filer had not meet his obligations under s. 3(3)(b) of the LRA when he failed to file a return within 30 days of the expiration of his previous return. The Acting Deputy Registrar informed the designated filer of the Registrar's responsibilities under s. 7.2(2) of the LRA, if the designated filer did not comply with the LRA.

[19] On October 31, 2013, the organization responded that it re-registered with the ORL on January 22, 2013. The organization declared that its lobbying goals remained the same, it used the registration function that copied all data from the organization's previous registration into the new registration. The organization believed that it had successfully re-registered and at that time was in full compliance with the LRA.

[20] The organization points out that the reason corrections were required had nothing to do with any changes in the organization's lobbying activities. Rather, it resulted from a cabinet shuffle. Due to these ministerial changes, the information in the organization's return was no longer accurate.

[21] It was not until April that the organization realized that it was not in compliance with the LRA. It points out that once the organization discovered it was not registered, it filed a new return.

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## DISCUSSION

[22] When a registration expires, the Lobbyists Registry system sends an automatic notification to the designated filer. The designated filer has 30 days to file a return if the organization continues to lobby.

[23] One of the key considerations for the designated filer is to ensure that the information submitted in a return is accurate. When the designated filer went to re-register with the Lobbyist Registry, the system automatically presented him with information from his previous registration (ID 10972014). The designated filer can edit information from his previous return, if required. The organization believes its use of this copy function, resulted in the denial of its registration.

[24] In this case, the designated filer submitted the information from his old return without reviewing and making the applicable corrections. He certified that the return was accurate. It is the responsibility of the designated filer to review the information in the return to ensure there have been no changes. The designated filer submitted incorrect information to the Registrar.

[25] If the return is accepted by the ORL, the designated filer receives another automatic system notification informing him that the return was accepted. It is the designated filer's responsibility to ensure all returns are accepted by the Registrar.

[26] I make the following observations of the organization's response to the ORL's February 7, 2013 notification.

[27] The organization notes that the ORL did not indicate that the return would not be accepted if the corrections were not made, nor did the ORL provide a deadline for the corrections. I note that s. 2(2) of the LRR clearly specifies that if the Registrar requests corrections, the return is deemed not to have been received. Furthermore, s. 2(4) of the LRR points out that, if the corrections are not made within 10 days of being notified that corrections are required, the return is deemed not to have been received until the date the last correction is made. In this case, the corrections were not made in accordance with the legislation. As a result, the incorrect return was automatically deleted by the system after expiration of the timeline, and the return was deemed not to have been received.

[28] The organization argues that its lobbying intentions did not change. It was a cabinet change that created the errors in its return. The fact that government makes changes to ministerial positions doesn't exempt designated filers from their requirement to comply with the LRA. Section 3(3)(b) of the LRA requires an organization's designated filer to file a return containing the information required

in s. 4 of the LRA. If the organization intends to lobby a public office holder serving in a ministry, the designated filer of the organization is required to name the ministry under s. 4(1)(k) of the LRA. If it intends to lobby a minister, the designated filer is required to name the minister under s. 4(1)(m) of the LRA. This means that the designated filer must correctly record the minister and the ministry in which the minister is serving. It is the designated filer of the organization who is obliged to make sure information in a return is correct.

[29] The organization alleges that it did not receive the February 28, 2013 notification informing it that it must register if it continued to lobby and that the registration would be considered late. Regardless, the designated filer and the organization knew, from previous correspondence, that it had to make corrections. It was the designated filer's responsibility to make the corrections.

## **FINDING**

[30] The designated filer failed to make the corrections within 10 days of being notified that the corrections were required and the return was not accepted. As the designated filer did not file an accurate return within 30 days of the expiration of its previous registration, I find that the organization failed to meet its obligations under s. 3(3)(b) of the LRA.

## **ADMINISTRATIVE PENALTY**

[31] 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.

[32] In assessing whether a penalty is necessary, I must also consider the following:

- previous enforcement actions that 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,
- any effort the registrant made to report or correct the contravention, and
- whether a penalty is necessary for general and specific deterrence.



[33] In determining what penalty is appropriate in these circumstances, I will first consider whether the designated filer has had any past violations of the LRA. I note that the organization has no previous findings that it violated the LRA.

[34] The organization's file history indicates that the designated filer had received a letter on January 10, 2012, regarding his apparent non-compliance, and a warning that further instances of possible non-compliance would result in the ORL taking further action. The warning letter offered an educational opportunity and alerted the designated filer to his responsibilities under the LRA. Therefore, the designated filer was aware of his responsibility to comply with the LRA.

[35] On the question of the gravity and magnitude of the contravention, the designated filer did not make the required corrections. The organization was directed by the ORL to make corrections to comply with the LRA, but it neglected to follow through on these instructions. The result was that the organization lobbied without being registered or having its lobbying activities open to public scrutiny.

[36] In assessing whether the organization deliberately ignored its obligations under the LRA, I must take into consideration its actions in responding to the ORL's request for corrections. In this case, the designated filer was informed that he needed to correct his return and did not respond. Furthermore, he made no effort to correct the contravention until the organization's staff noticed approximately three months later that its return was not accessible.

[37] There is no evidence that the designated filer of the organization benefited from this contravention.

[38] On the question of specific deterrence, I am satisfied that this investigation, hearing process and the ensuing administrative monetary penalty will encourage the designated filer to check that he has met his obligations under the LRA.

[39] I must also take into consideration the notion of general deterrence. It is important for all designated filers 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 and recognition that the ORL will issue administrative penalties to those who contravene the LRA, will remind all designated filers of their legal obligations to be diligent in keeping their registrations current and making required corrections within the legislated timeframes.

[40] I find that the designated filer of the organization failed to meet his obligations under the LRA.

[41] The ORL policies and procedures, which are intended to act only as a guide, suggest that a designated filer be assessed a penalty between \$100 and \$5,000 for the first time it fails to submit its registration within the legislated timelines.

## **CONCLUSION**

1. Under s. 7.2(2) of the LRA, I find that the designated filer contravened s. 3(3)(b) of the LRA. The notice of alleged contravention has been substantiated.
2. For the reasons mentioned above, I impose an administrative penalty of \$1,000.
3. The designated filer must pay this penalty no later than April 25, 2014.
4. If the designated filer 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 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)

March 14, 2014

## **ORIGINAL SIGNED BY**

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Tim Mots, Investigator  
Office of the Registrar of Lobbyists