O.R.L.
office of the registrar of lobbyists
BRITISH COLUMBIA

INVESTIGATION REPORT 12-04

LOBBYIST: MICHAEL BAILEY

Summary: The Lobbyist admitted to registering lobbying activity on behalf of a client that was not taking place. The Acting Deputy Registrar found the alleged contravention of supplying inaccurate information to the Registrar of Lobbyists to be substantiated and issued a monetary penalty of $25.

Statutes Considered: *The Lobbyists Registration Act*, S.B.C. 2001, c. 42, ss. 3(1), 4(1), 7.1, 7.2.

Cases Considered: *Re Cartaway Resources*, [2004] 1 S.C.R. 672.

INTRODUCTION

[1] This report concerns an investigation under s. 7.1 of the *Lobbyists Registration Act* ("LRA"). This provision gives the Registrar of Lobbyists the authority to conduct an investigation to determine whether there has been compliance with the LRA or its regulations. In the event that, as a result of the investigation, 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. The Registrar must also give the person a reasonable opportunity to be heard respecting the alleged contravention.

[2] Investigations comprise just one component of a larger compliance strategy that the Office of the Registrar of Lobbyists ("ORL") has implemented for administering the *Lobbyists Registration Act* ("LRA"). The other components include: education and outreach, incentives, verification of registration information, environmental scanning, and administrative reviews of the Registry.[1] A formal investigation can commence as a result of a complaint from the public or other outside party, or from the Registrar's mandate under s. 7(4)(a) to verify registration information. An investigation can also result from environmental scanning, which refers to proactive monitoring of government and organizations through reviewing news reports and websites to determine whether lobbying

[1] The "*Lobbyist Registration Act* Compliance Strategy" is available at: http://www.lobbyistsregistrar.bc.ca/images/pdfs/2011%2009%2007%20orlcompliance%20strategy.pdf.

activity might be taking place, and comparing the outcome of these reviews with information on the Registry. This process can uncover evidence suggesting that further investigation is warranted to determine whether there is a matter of non-compliance.

[3] This investigation was initiated as the result of an environmental scan of news media, which included a story that indicated that one of the organizations for which the Lobbyist had registered as a consultant lobbyist had denied that he was lobbying on its behalf.[2] This led the Deputy Registrar of Lobbyists to contact the organizations listed on his various registrations to enquire whether the information that he supplied was accurate.

[4] In this case, on November 2, 2011, the Deputy Registrar gave the required notice to the Lobbyist. Counsel for the Lobbyist responded on November 15, 2011. Shortly thereafter, the Deputy Registrar was unable to complete this investigation. In accordance with s. 7(4)(d) of the LRA, the Registrar has delegated to me, in my capacity as Acting Deputy Registrar, the authority to conclude this investigation. To this end, I have reviewed all of the correspondence between the Deputy Registrar and the Lobbyist, as well as her correspondence with the organizations he identified in his registrations. This documentation forms the basis on which I am issuing this decision.

ALLEGED CONTRAVENTION

[5] The question that I must determine is whether the Lobbyist contravened ss. 3(1) and 4(1) of the LRA by supplying inaccurate information on his return relating to purported lobbying activity on behalf of the Canadian Manufacturers and Exporters ("CME") (Registration ID 56739).

[6] Section 3(1) of the LRA reads as follows:

> 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.

[7] Section 4(1) reads as follows:

> 4(1) Each return filed under section 3 must include the following information, as applicable:
>
> (a) the name and business address of the designated filer, and whether he or she is a consultant lobbyist or the designated filer for an in-house lobbyist;

[2] *Public Eye Online* May 13, 2011, http://www.publiceyeonline.com/archives/006091.html.

(b) if the return is filed by a consultant lobbyist,

(i) the name and business address of the firm, if any, where the consultant lobbyist is engaged in business,

(ii) the date on which the undertaking with the client was entered into and is scheduled to terminate, and

(iii) the name of each individual engaged by the consultant lobbyist to lobby on behalf of the client; …

(d) the name and business address of the client or organization;

(e) a summary of the business or activities of the client or organization;

(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 return who lobbies on behalf of the client or organization; …

(j) particulars to identify the subject matter concerning which a lobbyist named in the return has lobbied or expects to lobby, during the relevant period;

(k) if a lobbyist named in the return has lobbied or expects to lobby, during the relevant period, a public office holder employed by or serving in a ministry of the government of British Columbia or a Provincial entity, the name of the ministry or Provincial entity;

(l) if a lobbyist named in the return has lobbied or expects to lobby, during the relevant period,

(i) a member of the Legislative Assembly, or

(ii) a person on the staff of a member of the Legislative Assembly

concerning a matter that involves the member's capacity as a member, the name of that member;

(m) if a lobbyist named in the return has lobbied or expects to lobby, during the relevant period,

(i) a minister, or

(ii) a person on the staff of a minister

concerning a matter that involves the minister's capacity as a minister, the name of that minister; …

INVESTIGATION

[8] A review of the Lobbyist's registration activities led the Deputy Registrar to question whether all of the information that the Lobbyist had entered into the Registry was accurate. The Deputy Registrar initiated an investigation into Registration ID 56739 under s. 7.1 of the LRA. This listed the "Stated Intended

Outcome" as to arrange meetings with public office holders so that the CME could discuss issues affecting CME members. The Deputy Registrar contacted the Director of National Program Development for CME, who responded that CME "did not enter into the undertaking … as registered by [the Lobbyist]."

[9] This led the Deputy Registrar to form the belief that the Lobbyist had supplied inaccurate information into the Registrar. In accordance with s. 7.2 of the LRA, the Deputy Registrar gave the Lobbyist notice of the alleged contravention and the reasons why she believed there had been a contravention. She also provided him with an opportunity to be heard respecting the alleged contravention.

LOBBYIST'S RESPONSE

[10] The Lobbyist provided a formal response to his opportunity to be heard under s. 7.2 of the LRA. He stated that he is a member of the board of advisors of the CME, which is a voluntary position. He has attended many meetings with members of the board and government officials. Although he was not paid for the work, he was concerned that an uniformed member of the public would think it inappropriate if he did not disclose his work for CME. He agreed it was an error to register on behalf of the CME.

[11] While admitting his failure to comply with the requirements of the LRA, he submits that his failure was inadvertent and the result of honest mistakes about those requirements. He felt that registering "out of an abundance of caution" would serve the interests of transparency. He suggested that the contravention was minor and caused no personal benefit to him or harm to anyone else. He also noted that he rectified the error. In conclusion, he suggested that the appropriate outcome would be a finding of non-compliance without issuing an administrative penalty.

FINDING

[12] The evidence collected during the investigation indicates that the Lobbyist was not lobbying on behalf of the Society. Therefore, the information the Lobbyist included in the registration was inaccurate. The Lobbyist does not contest this finding and admits that the registration was in error. As a result, I find that the Lobbyist contravened ss. 3(1) and 4(1) of the LRA because the registered information in respect of the asserted lobbying relationship was inaccurate.

ADMINISTRATIVE PENALTY

[13] The Lobbyist suggests that I should decline to issue an administrative penalty, owing to the minor nature of the contravention and the fact that he has rectified it.

[14] As I noted in previous the Investigation Reports concerning this Lobbyist, the purpose of the LRA is to promote transparency in lobbying by requiring lobbyists to register. The Registry will only provide transparency, if the information it records is accurate. By entering information indicating that the Lobbyist was engaged in lobbying activities that were not in fact taking place, the Lobbyist undermined the integrity of the Registry and clouded the transparency it is supposed to provide. If the public cannot trust that the information in the Registry is accurate, it will cease to fulfill the function as the Legislature intended. I suggest that it is possible that members of the public and other lobbyists and organizations might rely on the inaccurate information in the Registry to their detriment. Other Lobbyists might not pursue opportunities with a potential client, if they believe another lobbyist is already providing them with services. Organizations might engage a lobbyist based on their apparent level of success in representing other clients. Therefore, I disagree that this contravention of the LRA is a minor matter. Even if the intent of the Lobbyist was innocent (considered further below) the effect on the Registry was significant. While his explanations do mitigate the amount of penalty that is appropriate in this case, they do not amount to due diligence and they are not a defence to his duty to comply with the law. As such, an administrative penalty is warranted.

[15] The policies of the Office of the Registrar of Lobbyists provide that the range of penalties with respect to providing false or misleading information is $1000-7000, but also grant the discretion to assess amounts either above or below those amounts, depending on the circumstances.

[16] In assessing the administrative penalty, I note that this case involves unusual circumstances that warrant leniency. The registration regime is a relatively recent requirement. This is a first offence. While the effect of the Lobbyist's actions had the negative effects pointed out above, there is no evidence that the Lobbyist undertook the improper registrations with the intent to deceive and no evidence that he obtained financial benefit from so doing. The Lobbyist acknowledged his errors and, upon being notified of them, attempted to correct them. While the Lobbyist has made a series of similar errors at the same time,[3] I consider it appropriate in this case to consider each one independently as a "first offence". It is also worth noting that the ORL has taken the view that administrative penalties should primarily be used as a means of correcting the behavior of the Lobbyist and other lobbyists. While general deterrence is an appropriate factor to consider in imposing an administrative penalty,[4] and may call for higher penalties in some cases, I have concluded that

[3] I address the others in separate Investigation Reports.
[4] See *Re Cartaway Resources*, [2004] 1 S.C.R. 672.

the finding of contravention and the penalty I have imposed in this case are sufficient to satisfy the purposes of the LRA.

[17] Taking into account all of the relevant factors, I find that assessing a penalty for providing false or misleading information within the standard range that the ORL has established would be excessive. In all the circumstances, I find that the appropriate administrative penalty for the contravention in this case is $25.

CONCLUSION

1. Under s. 7.2 of the LRA, I find that the Lobbyist contravened ss. 3(1) and 4(1) of the LRA in Registration ID 56739. The notice of alleged contravention has been substantiated.

2. I impose an administrative penalty of $25.

3. The Lobbyist must pay the penalty no later than March 30, 2012.

4. If the Lobbyist requests reconsideration under s. 7.3 of the LRA, he is to do so within 30 days of receiving notice of 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.

February 27, 2012

ORIGINAL SIGNED BY

Jay Fedorak
Acting Deputy Registrar