

***Lobbyists Registration Act
Policies and Procedures***
March 2014

The Office of the Registrar of Lobbyists (“ORL”) is responsible for monitoring compliance with British Columbia’s *Lobbyists Registration Act* (“LRA”) and the associated regulations. The underlying objective of the LRA is to ensure transparency of lobbying activities so that members of the public are made aware of who is attempting to influence government decisions.

The ORL seeks compliance with the LRA through an escalating continuum of compliance and enforcement measures, including public education, verification of registration information, compliance monitoring, investigation and administrative penalties.

Purposes of these Policies and Procedures

These policies and procedures have been established to advise members of the public and those engaged in lobbying about what will guide the ORL in exercising its duties under the LRA and the regulations. This document notes relevant sections of the LRA or accompanying regulations, which outline the ORL’s obligations.

These policies and procedures do not fetter the ORL’s ability to depart from these policies and procedures, based on considerations of law or jurisdiction, or in special circumstances.

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1. Responsibilities and Powers of the ORL

Responsibilities of the ORL

- 1.1 Through the designations and functions of the Registrar provided under the LRA, the ORL is generally responsible for monitoring, promoting, and enforcing compliance with the LRA.
- 1.2 The ORL has specific responsibility for:
 - 1.2.1 Managing the online registry of lobbyists, in accordance with section 7;
 - 1.2.2 Overseeing lobbyists' registration, in accordance with sections 3 and 4;
 - 1.2.3 Investigating to determine whether a person has complied with the LRA or the regulations, in accordance with section 7.1;
 - 1.2.4 Giving the person notice of the allegations, the reasons why the ORL believes there has been a contravention, and how the person may exercise an opportunity to be heard, in accordance with section 7.2(1);
 - 1.2.5 Giving a person the opportunity to be heard, in accordance with section 7.2(1) if, after an investigation, the ORL believes the person has not complied with a provision of the LRA or the regulations;
 - 1.2.6 Issuing administrative penalties, in accordance with section 7.2(2);
 - 1.2.7 Submitting reports of non-compliance to the Legislative Assembly, in accordance with section 7.8;
 - 1.2.8 Ensuring public accessibility to information in the registry of lobbyists, in accordance with section 8(1);
 - 1.2.9 Promoting compliance through public education, in accordance with section 9.4.

Powers of the ORL

- 1.3 Under the LRA, the ORL has the power to:
 - 1.3.1 Accept, reject or terminate any registration or change to any registration, in accordance with section 7;
 - 1.3.2 Exempt a person from the contracting prohibition, which says that a person must not simultaneously lobby and give paid advice to the government on the same issue, in accordance with section 2.2;
 - 1.3.3 Prohibit a person who has been convicted of an offence under the LRA from lobbying for up to 2 years, if the ORL considers this measure to be in the public interest, in accordance with section 10(7);

- 1.3.4 Compel the attendance of a person before the Registrar's delegate to answer questions on oath or affirmation, in accordance with section 7.5(1)(a);
- 1.3.5 Compel a person to produce a record in the custody or under the control of the person, in accordance with section 7.5(1)(b).

2. Designated Filers

- 2.1 "Designated Filers" are legally responsible for filing registrations under the LRA.
- 2.2 A "Designated Filer" is defined in section 1(1) of the LRA as:
 - 2.2.1 A consultant lobbyist; or
 - 2.2.2 In the case of an organization that employs one or more in-house lobbyists:
 - (i) The most senior officer of the organization who receives payment for performing his or her function; or
 - (ii) If there is no senior officer who receives payment, the most senior in-house lobbyist.
- 2.3 The ORL is prepared to accept that the obligations of the "senior officer" for an organization will be satisfied if the senior officer for the organization in British Columbia complies with the LRA's filing requirements.
- 2.4 The responsibility for filing a registration may not be delegated to another person.

3. Verifying the Identity of Designated Filers

- 3.1 To register, Designated Filers may obtain a business British Columbia electronic identification ("BCeID"). Those who have obtained a business BCeID are not required to verify their identity to the ORL.
- 3.2 Designated Filers who are not able to obtain a business BCeID may obtain a basic BCeID. The ORL does not accept a registration filed with a basic BCeID until the Designated Filer's identity has been verified by an ORL staff member.
- 3.3 Acceptable identification documents for such verification include government-issued picture identification such as a driver's license, passport or permanent resident card.
- 3.4 A BCeID can be obtained at www.bceid.bc.ca. The ORL does not administer the BCeID program.

4. Filing and Updating Registrations

- 4.1 Designated Filers must make all reasonable efforts to ensure that the information they submit to the ORL is complete, unambiguous and accurate. Before submitting a return, a Designated Filer is responsible for reviewing the information contained in the return and certifying that, to the best of the Designated Filer's knowledge, the information is true.
- 4.2 Designated Filers must report to the ORL any changes to their existing registration within 30 days of the change or within 30 days of when the Designated Filer acquired knowledge of the change, in accordance with section 4(2) of the LRA.
- 4.3 All registrations and changes to registrations will be reviewed by the ORL before they are accepted.
- 4.4 Under section 2 of the *Lobbyists Registration Regulation*, if the ORL requests corrections be made to a return, the Designated Filer is given 10 business days to make those corrections. If all corrections are made within the 10 business days, the return is deemed by law to be received on the day it was first submitted. If all corrections are not made within the 10 business days, the return is deemed to be received on the date the last correction was received. If the corrections are not completed, the Designated Filer who is responsible for that return is deemed not to have filed a return.
- 4.5 If a deficient return results in its being refused rather than corrections being requested, the ORL will, under section 7(5)(a) of the Act, inform the individual who submitted it of the refusal and reason, identify the set time under this Act for filing the return, and give the individual the opportunity to explain why the individual cannot reasonably be expected to file another return or submit another document within the set time.
- 4.6 If a request for extension of time is requested and allowed under section 7(5)(b) of the Act because the individual cannot reasonably be expected to file the return or other document within the set time, and a compliant return is filed within the extended period, the return is deemed to have been filed on the date the Registrar received the one that was refused.
- 4.7 The provisions pertaining to the filing of a return do not limit the Registrar's power under section 4(2)(c) of the Act to request, at any time, clarification of information previously supplied under section 4 of the Act. If such information is not supplied within 30 days after the request is made, under section 7(7) the Registrar may remove the return from the registry, with reasons, and that individual is deemed not to have filed a return.

5. Extending the Time Limit:

- 5.1 Under section 7(5)(b), if the Registrar refuses to accept a return or other document that does not comply with the requirements of the LRA or regulations, Designated Filers may request that the ORL extend the time set under the LRA for filing a return or submitting any document if the Designated Filer cannot reasonably be expected to file or submit the relevant document within the set time.

6. Requesting an Exemption from the Contracting Prohibition

- 6.1 Section 2.1(2)(a) prohibits a person from lobbying on a matter for which the person, or a person associated with that person, holds a contract for providing paid advice to the government of British Columbia or a Provincial entity.
- 6.2 Section 2.1(2)(b) prohibits a person from entering into a contract for providing paid advice on a matter in relation to which the person, or a person associated with that person, is lobbying.
- 6.3 Under section 2.2, a person may ask the ORL to exempt them from the contracting prohibition.
- 6.4 Requests to the ORL under section 2.2 for exemptions from sections 2.1(2)(a) or (b) must be made in writing, and must:
 - 6.4.1 Provide details concerning the intended lobbying or the nature of the intended contract for providing paid advice into which the person wishes to enter;
 - 6.4.2 Provide specifics concerning the association that gives rise to section 2.1(2) (a) or (b);
 - 6.4.3 Explain why the person believes an exemption would be in the public interest.
- 6.5 The ORL will attempt to provide a response in writing to the request for an exemption within 15 days.

7. Requesting that the Registrar Conduct an Investigation

- 7.1 Where a person requests that the Registrar conduct an investigation to establish whether there is or has been compliance with this Act, the requester will be expected to provide the Registrar with the name and address of the subject of the allegation and a description of the facts alleged to constitute a violation of the LRA.
- 7.2 If no investigation is commenced as a result of the request, and the request for investigation has not otherwise been made public, the identity of the person making the request will be kept confidential.
- 7.3 If an investigation is commenced as a result of the request, the identity of the person requesting the investigation may be disclosed to the person under investigation, to the extent that it is necessary to conduct the investigation and adhere to the principles of procedural fairness.
- 7.4 Despite paragraph 7.3, the Registrar may direct that the identity of the person requesting the investigation, and any information disclosed by that person, be kept confidential to the exclusion of any other person, including the person directly affected, on terms the Registrar considers necessary, if the Registrar believes that direction is necessary to ensure the proper administration of the Act, including protecting that person from physical or other harm.
- 7.5 A person who requests an investigation has no rights to notice or information during the investigation, and has no greater procedural rights in an investigation or subsequent hearing than any member of the public.

8. Compliance Investigation

- 8.1 Matters of possible non-compliance may come to the attention of the ORL in a number of ways, including, but not limited to, information contained in a return, or through complaints from the public, environmental scanning or media reports.
- 8.2 Non-compliance by a person under the LRA includes:
 - 8.2.1 Failing to register lobbying activities;
 - 8.2.2 Registering late;
 - 8.2.3 Failing to report changes to the information in the return or late reporting of changes to the undertaking in the return;
 - 8.2.4 Failing to provide the requisite information in or related to the return;
 - 8.2.5 Lobbying on a subject matter prohibited by section 2.1(2) of the LRA;
 - 8.2.6 Providing information that is not true in the return.

- 8.3 The ORL may conduct investigations in accordance with section 7.1(1) of the LRA, if it is considered necessary to establish whether there is or has been compliance by any person with the LRA or the regulations.
- 8.4 During the investigation, the ORL may make inquiries including reviewing information in a return or other documents and contacting a public office holder, Designated Filer or other person. The ORL may also obtain information and/or records from other relevant sources.

9. Discontinuing an Investigation

- 9.1 In accordance with section 7.1(2) of the LRA, the ORL may refuse to investigate or cease an investigation with respect to any matter if they believe that:
 - 9.1.1 The matter could more appropriately be dealt with under another enactment;
 - 9.1.2 The matter is minor or trivial;
 - 9.1.3 Dealing with the matter would serve no useful purpose because of the length of time that has elapsed since the matter arose;
 - 9.1.4 There is any other valid reason for not investigating the matter.
- 9.2 In accordance with section 7.1(3), if the ORL discovers that a charge has been laid or that the subject matter of the investigation is also the subject matter of an investigation to determine whether an offence has been committed, the ORL investigation must be suspended.
- 9.3 If the ORL refuses to investigate alleged non-compliance, ceases an investigation into alleged non-compliance, or makes a finding that there has been no non-compliance, it may decide to issue a report, and may make the report available to the public, if it is considered to be in the public interest, in accordance with section 7.9 of the LRA.
- 9.4 The public interest includes, among other things, where the matter is of significant public controversy, government accountability is at question, or inaccurate information is in the public domain and someone's reputation is at risk.

10. Notice of Alleged Contravention and Opportunity to be Heard

- 10.1 If, after investigation under section 7.1, the ORL believes that a person has not complied with a provision of the LRA or regulation, the person will be given notice, in accordance with section 7.2(1)(a) of the LRA. The notice will provide particulars concerning:
 - 10.1.1 The alleged contravention and the section of the LRA that is at issue;

- 10.1.2 The reasons why the ORL believes there has been a contravention of the LRA;
- 10.1.3 How the person may exercise an opportunity to be heard respecting the alleged contravention;
- 10.1.4 The amount of administrative penalty that might be imposed in the event the ORL finds non-compliance.
- 10.2 During an investigation, the ORL may make an order requiring a person to answer questions on oath or affirmation or to produce a record in the custody or under the control of the person, in accordance with section 7.5(1) of the LRA. Any record demanded must be produced to the ORL within 10 days.
- 10.3 In accordance with section 7.7 of the LRA, the ORL may decide to conduct all or portions of the investigation on a confidential basis, meaning that the ORL may receive information or interview people in confidence, to the exclusion of any other person, if the ORL believes it is necessary to achieve the ends of an investigation or for any other valid reason.
- 10.4 An investigation and hearing are not public processes. Information regarding an investigation may be disclosed only in accordance with section 7.92 of the Act.

11. Decision of the ORL and Administrative Penalty

- 11.1 After giving the person the opportunity to be heard, the ORL will make a determination, on a balance of probabilities, as to whether the person has or has not complied with the LRA or the regulations. The ORL will inform the person in writing of its findings respecting the alleged contravention.
- 11.2 The written decision will contain the following information:
 - 11.2.1. The reasons for the ORL's decision;
 - 11.2.2 Whether a penalty is imposed, the amount of the penalty, the reason for the amount of the penalty and the date by which the penalty must be paid; and
 - 11.2.3 The person's right to request a reconsideration of both the decision and the penalty.
- 11.3 The ORL will inform the person by sending the final decision by such means as the ORL determines is appropriate in the circumstances.

12. Determining the Amount of an Administrative Penalty

- 12.1 The ORL may issue a penalty for non-compliance. The maximum penalty for non-compliance is \$25,000.
- 12.2 Administrative penalties will generally be applied in accordance with the following schedule:

| Contravention | First Instance | Second Instance | Third Instance |
|--|-----------------|------------------|-------------------|
| Failing to Register | \$500-\$7,500 | \$7500-\$15,000 | \$15,000-\$25,000 |
| Registering Late | \$100-\$5,000 | \$5,000-\$10,000 | \$10,000-\$25,000 |
| Failing to Report Changes or Late Reporting of Changes | \$100-\$5,000 | \$5,000-\$10,000 | \$10,000-\$25,000 |
| Lobbying on Prohibited Subject Matter (Contract Prohibition) | \$1,000-\$7,500 | \$7,500-\$15,000 | \$15,000-\$25,000 |
| Providing information that is not true in a return | \$1,000-\$7,500 | \$7,500-\$15,000 | \$15,000-\$25,000 |

- 12.3 In determining the amount of the administrative penalty, the ORL will consider, among other things:
- 12.3.1 Previous enforcement actions for contraventions of the LRA by the person;
 - 12.3.2 The gravity and magnitude of the contravention;
 - 12.3.3 Relevant circumstances relating to the contravention;
 - 12.3.4 Any economic benefit derived from the contravention;
 - 12.3.5 The person's efforts to report and/or correct the contravention; and
 - 12.3.6 The need to deter the individual and others from contravening the Act in the future.
- 12.4 This general policy does not fetter the ORL's ability to conclude that no administrative penalty is appropriate in the circumstances, or to fashion a remedy on either side of the range set out in the general policy, in special circumstances.

13. Reconsiderations

- 13.1 Within 30 days of being informed of a contravention, a person may request that the ORL reconsider its decision.

- 13.2 In accordance with section 7.3(2) of the LRA, the request to the ORL must be in writing and identify the grounds on which reconsideration is requested.
- 13.3 The person who made the decision will not be the same person conducting the reconsideration.
- 13.4 On receiving a request for reconsideration, the person conducting the reconsideration must, in accordance with section 7.3(3) of the LRA:
 - 13.4.1 Consider the grounds on which the reconsideration is requested;
 - 13.4.2 Rescind the decision, the administrative penalty, or both; or confirm or vary the amount of the penalty;
 - 13.4.3 Extend the date by which the penalty must be paid; and
 - 13.4.4 Notify, in writing, the person requesting the reconsideration of the results of the reconsideration and the reasons why the initial decision was confirmed, varied or rescinded.

14. Payment of Administrative Penalties

- 14.1 A person on whom an administrative penalty is imposed must pay the administrative penalty on or before the date stated in the decision of the ORL, or, if the matter has been reconsidered, on the date specified in the reconsideration decision.
- 14.2 If a person fails to pay the penalty on or before the date the penalty is due, the ORL may file a certified copy of the notice imposing the penalty with the Supreme Court or Provincial Court of British Columbia. On being filed, the notice has the same force and effect as if it were a judgement of the court: LRA, section 7.4.

15. Definitions

“administrative penalty” means a monetary penalty that may be imposed by the ORL, even without a criminal prosecution;

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

"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 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;

"lobbyist" means a consultant lobbyist or an in-house lobbyist;

"organization" includes any of the following, whether incorporated, unincorporated, a sole proprietorship or a partnership:

(a) a person other than a person on whose behalf a consultant lobbyist undertakes to lobby;

(b) a business, trade, industry, professional or voluntary organization;

(c) a trade union or labour organization;

(d) a chamber of commerce or board of trade;

(e) a charitable or non-profit organization, association, society, coalition or interest group;

(f) a government, other than the government of British Columbia;

"ORL" means the Office of the Registrar of Lobbyists, and includes the Registrar and any other staff member delegated authority to act on the Registrar's behalf under section 4(e) of the LRA;

"payment" subject to section 2.1, means money or anything of value and includes a contract, a promise or an agreement to pay money or anything else of value, but does not include a reimbursement of expenses;

“prosecution” means conduct of legal proceedings against a defendant for criminal behaviour under the Offence Act;

"registrar" means the person designated as registrar under section 7 (1) or their delegate;

"registry" means the registry established under section 7 (2);

"senior officer" in relation to an organization, means the most senior officer of the organization who is compensated for performing his or her duties.