

FROM THE OFFICE OF THE REGISTRAR OF LOBBYISTS FOR BRITISH COLUMBIA

Lawyers and lobbying: What you need to know

IN POPULAR CULTURE, the word “lobbyist” often invokes an image of a covert back-room meeting between a senior public official and a professional lobbyist representing big corporate interests. In reality, lobbying is a legitimate way for organizations, including non-profits and civil society groups, and individuals to inform and influence government decisions.

In BC, lobbyists must register their actual and prospective lobbying of provincial public office holders, as described in the *Lobbyists Registration Act* (LRA), in a public registry. This online Lobbyists Registry, which is hosted by the Office of the Registrar of Lobbyists for British Columbia (ORL), helps ensure transparency and accountability in the lobbying of public office holders.

WHERE DO LOBBYISTS WORK?

Lobbyists populate many different professions. They can be communications and public relations specialists, administrators of community organizations, presidents of

trade associations — and they may also be lawyers. About 11 per cent of all consultant lobbyists currently listed in the Lobbyists Registry are lawyers, although the actual number of lawyers who lobby could be higher.

WHO DO LOBBYISTS TARGET?

Lobbying targets are public officials, including MLAs and their staff, officers or employees of the government, people appointed by cabinet or ministers to any office or body, officers or employees of any government corporation, or officers or employees of a provincial entity.

DO I NEED TO REGISTER AS A LOBBYIST?

There is a common misconception that only “professional” lobbyists need to register with the ORL. But under the LRA, *anyone* who seeks to influence specific outcomes for payment, on behalf of a client, or arranges a meeting between a provincial public office holder and an individual, is

subject to the LRA and must register their activities with the ORL.

Payment is a key consideration, whether it involves money, a contract you may be awarded, a promise to pay in the future, or any other item or service that has value.

Let’s say, for instance, that you are attempting to arrange a meeting with an MLA to discuss your client’s new business operation. The goal is to influence the awarding of a government contract to your client. If you are being paid for your efforts, you are lobbying. If, on the other hand, you meet with a municipal employee as an unpaid volunteer and try to get an increase to an operating grant for a charity, you are not lobbying.

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WHEN DO I NEED TO REGISTER?

Many consultant lobbyists are confused about when an undertaking to lobby officially begins.

Here is an example: It’s February 2, and you just met with a new client who wants to contract your services. You discuss the details, including the intention to set up or attend meetings with public office holders on behalf of your client. You draft a contract with an effective date of February 14. You and your client sign the agreement on February 10. You know a business analysis still needs to be conducted before any work can begin, and you are unsure whether the business relationship with the client will pan out. In this scenario, the registration must be submitted to the Lobbyists Registry by February 12. Otherwise you risk contravening the LRA and may face an investigation and subsequent penalty.

If the intention to lobby is implied in an agreement with your client — even if you are unsure of the outcome — you must register the “undertaking to lobby” within 10 days of your agreement.

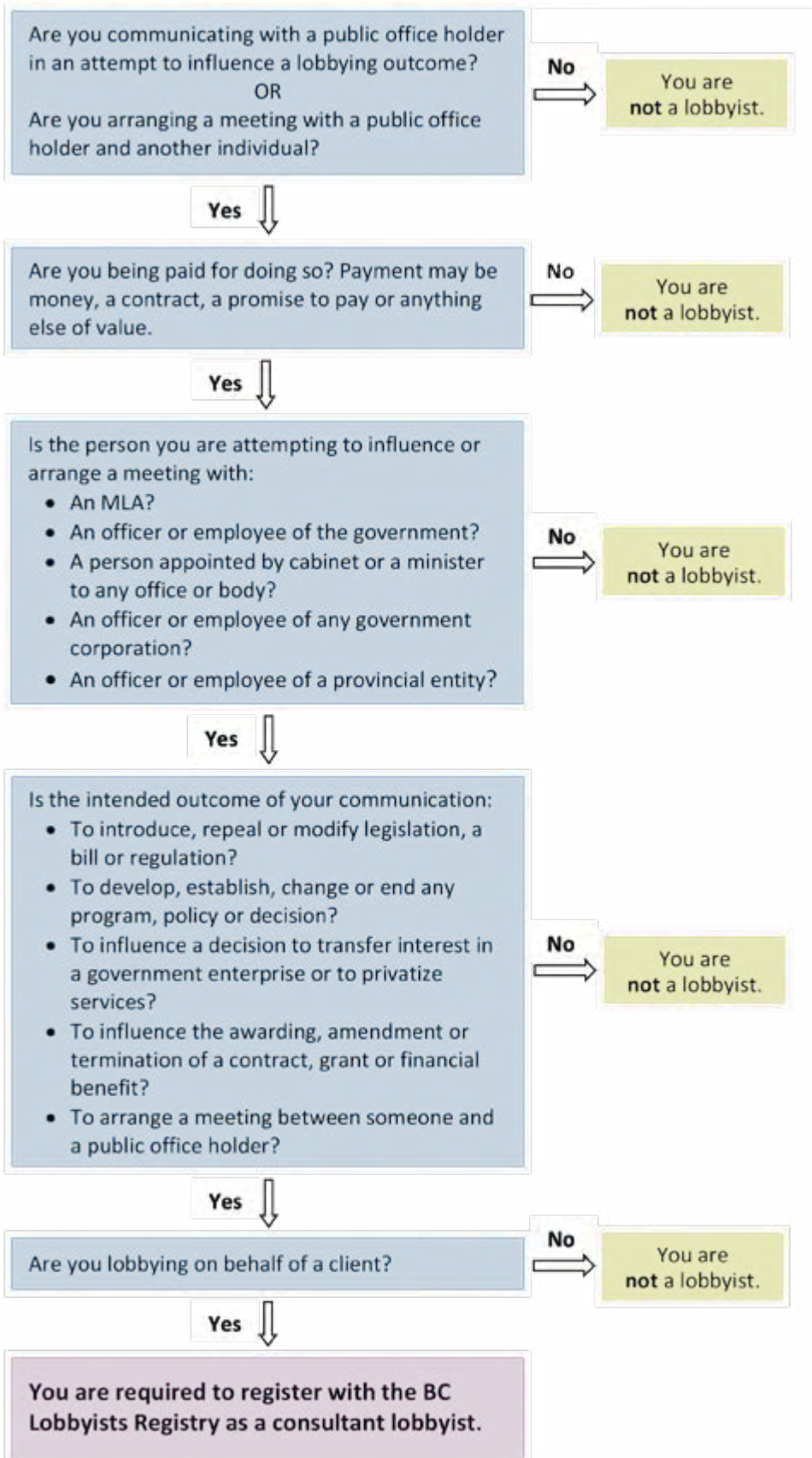
This is not the date when the agreement is signed. It’s also not the effective date of the agreement. Rather, it’s when you reach a “meeting of the minds” between you and your client that your activities may include any activities that meet the definition of “lobby” in the LRA.

Outcome is another important determining factor. If, for example, you are meeting with a public office holder on behalf of your client to introduce or repeal legislation, you are lobbying. If you hope to end a government program on behalf of a client, you are lobbying. Even if you arrange a meeting with a public office holder to introduce your client and the intention of the meeting does not include lobbying, you still meet the definition of lobbying in the LRA.

WHY IS IT IMPORTANT THAT I REGISTER AS SOON AS POSSIBLE?

There are compelling reasons why lawyers who lobby should register their activities in a timely fashion. Here are a few of those reasons:

Are you lobbying? Take our test.



1. It's the law.

Under the LRA, lobbyists who meet the criteria must, within 10 days of reaching an agreement to lobby on behalf of a client, submit a return to the online public registry maintained by the ORL. If you are uncertain about whether your actions constitute lobbying or if you have questions about the registration process, contact the ORL for assistance.

2. It supports transparency.

The purpose of the LRA is to promote greater transparency and accountability in the lobbying of public office holders. Just as individuals, groups or companies have a legitimate right to communicate with elected or appointed government officials, citizens also have the right to know who is seeking to influence government decisions.

3. It can help preserve your professional reputation.

The ORL regularly conducts environmental scans of provincial media and other sources of information. When we discover unregistered lobbying activity, we conduct a compliance review that may lead to an investigation and potential fines. Being meticulous about the disclosure and reporting requirements of the LRA will help you avoid the possibility of damage to your reputation and, by extension, your client's.

4. It can open doors.

In an era where transparency in government activities is highly valued by the citizens of BC, public office holders and the general public have an interest in knowing who is engaged in lobbying activities. There are other advantages to being registered in the Lobbyists Registry. Your targets can easily check the online registry to see if you have registered, view your undertakings and familiarize themselves with your clients' projects. Prospective clients may also use the registry to search for a consultant lobbyist to represent them.

5. It's a positive step toward compliance with the LRA.

The ORL undertakes compliance reviews, initiates investigations and prescribes penalties. When lobbyists are found to be in contravention of the LRA, investigations are tabled in the provincial legislature,

posted on the ORL website, and published in the newsletter, *Influencing B.C.* Registering your lobbying activities is an important step toward maintaining compliance with the LRA and avoiding potential penalties and publication.

FOR MORE INFORMATION

Visit the ORL website (www.lobbyistsregistrar.bc.ca) for more information about the following resources:

- “A Guide to Investigations” outlines the steps the ORL takes when conducting investigations. It was published to provide lobbyists with information about what to expect if they appear to be non-compliant with the LRA — and what is expected of them.
- “Quick Tips for Consultant Lobbyists” offers ways to easily navigate

the Lobbyists Registry to complete a registration.

- **The Future of Lobbying**, a one-day conference to be hosted January 22, 2016 in Vancouver, will offer lobbyists tips and educational panel discussions.

The Registrar of Lobbyists for British Columbia is appointed as an independent officer of the Legislative Assembly. The Information and Privacy Commissioner for British Columbia, Elizabeth Denham, also serves as the Registrar of Lobbyists.

Lawyers are encouraged to read the *Lobbyists Registration Act* regarding their particular circumstances and situations where the Act may or may not apply.

Feature – Access to Justice ... from page 8

year. But in all seriousness, you’re absolutely right; timelines are important. We’re looking at a three-year horizon to make some meaningful impact.

Funding alone, of course, will not solve the problem, but nevertheless it’s an important part of access to justice. Will this committee be looking at finding new sources or improving current sources of funding?

Chief Justice Bauman: We may identify areas where needs could be met by more funding, but we’re not a funding applicant. We’re not forwarding funding initiatives or requests to government.

David Crossin: The institutions will have their own initiatives in terms of funding, but I think more and more there’s a recognition that innovation is equally important.

You’ve said that the committee is committed to action-oriented goals. What does that mean?

David Crossin: It means we facilitate a

meeting of minds where ideas can coalesce around specific issues that we can actually go out and do something about. Not write a report about it, but do something about. Each participant’s marching orders are to take those ideas back to their institutions and say, this is how we believe we can collaborate on this particular issue to achieve this result and this is what we have to do in our institution to participate in that effort. And Access to Justice BC will guide and lead that effort.

What will success look like? If we’re sitting in these chairs three years from now, how will we know whether the committee has succeeded?

Chief Justice Bauman: Performance measurement is a very difficult area, particularly in the justice system. But remember our three aims: we’re going to be asking, has the outcome for individuals users of the system improved as a result of our efforts? Has the outcome for British Columbians generally improved as a result of our efforts? And most importantly, is that initiative sustainable in the future? ♦

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Conduct reviews

THE PUBLICATION OF conduct review summaries is intended to assist lawyers by providing information about ethical and conduct standards.

A conduct review is a confidential meeting between a lawyer against whom a complaint has been made and a conduct review subcommittee, which may also be attended by the complainant at the discretion of the subcommittee. The Discipline Committee may order a conduct review pursuant to Rule 4-4, rather than issue a citation to hold a hearing regarding the lawyer's conduct, if it considers that a conduct review is a more effective disposition and is in the public interest. The committee takes into account a number of factors, including:

- the lawyer's professional conduct record;
- the need for specific or general deterrence;
- the lawyer's acknowledgement of misconduct and any steps taken to remedy any loss or damage caused by his or her conduct; and
- the likelihood that a conduct review will provide an effective rehabilitation or remedial result.

INADEQUATE QUALITY OF SERVICE

A lawyer provided services to or on behalf of clients in connection with transactions purportedly relating to the sale of historic foreign bonds, even though circumstances raised a suspicion that the transactions may be fraudulent or illegal. He should have made inquiries or conducted due diligence to determine that the transactions were legitimate or declined to provide the services. The lawyer also failed to advise the clients that the transactions may be fraudulent or illegal and, as a result, they should cease their involvement, contrary to Chapter 3, Rule 3 of the *Professional Conduct Handbook* then in force. A conduct review subcommittee discussed with the lawyer his failure to fulfill his duty to obtain sufficient knowledge of facts and law before advising his clients (Ch. 1, Canon 3(1) of the Handbook); his duty to serve his clients in a conscientious, diligent manner (Ch. 3, Rule 3); his duty to assist in maintaining the honour and integrity of the legal profession (Ch. 1, Canon 5(1)); his duty not to engage in dishonourable or questionable conduct (Ch. 2, Rule 1); and his duty not to become involved in suspicious activities without first being satisfied on an objective basis that the activities were legitimate. The lawyer admitted that his conduct was inappropriate. He should have refused the retainer and advised his clients against participating in the scheme. The lawyer has taken steps to avoid being involved in this type of conduct in the future and is confident he will not repeat the error. The subcommittee was satisfied that the lawyer will not repeat the same mistake. (CR 2015-22)

A lawyer failed to provide his clients with adequate notice of his holiday plans and failed to make provisions that would allow his clients to complete their real estate transaction as close as possible to the completion date, contrary to rule 3.2-1 of the *Code of Professional Conduct for British Columbia*. The lawyer acknowledged that he failed to provide adequate notice, including notice that his holidays started the day after a scheduled completion date. A conduct review subcommittee noted that lawyers have a duty to communicate effectively with their clients and should ensure that matters are attended to within a reasonable time frame. If a lawyer can reasonably foresee undue delay or a disruption of legal advice or services, the lawyer has a duty to inform the client in advance, so the client can make an informed choice about his or her options. Given the serious consequences if a client breaches a contract for purchase or sale of property, the lawyer should have formulated a contingency plan allowing the clients to complete the transaction as close to the completion date as possible once his holidays began. The lawyer agreed that it was important to communicate more effectively with his clients and, further, to advise his clients of his vacation plans. He acknowledged his misconduct and will take steps to improve communications with his clients and to ensure their interests are properly represented in his absence. (CR 2015-23)

THREATENING BEHAVIOUR

Shortly after moving into a strata residence, a lawyer exercised poor judgment in his interactions with his neighbours involving a private strata dispute. He acted in a threatening and retaliatory manner, contrary to Chapter 2, Rule 1 of the *Professional Conduct Handbook* then in force and rule 2.2 of the *Code for Professional Conduct for British Columbia*. A conduct review subcommittee found that the lawyer's response to conflict was immature, disruptive and completely inconsiderate of the neighbours' rights to enjoy their homes. The lawyer obtained counselling and is now aware that his behaviour was hurtful. He has learned coping mechanisms to deal with the stress of living in a strata complex. His wife is now solely responsible for strata issues while he concentrates on his law practice. The subcommittee expressed concern to the lawyer that he learn to recognize the warning signs of stress and the importance of reaching out for assistance. The subcommittee also explained the concept of progressive discipline, and that the lawyer should be aware that, if he fails to improve his conduct, a citation may be issued in respect of any further misconduct. (CR 2015-16)

TRUST AND GENERAL ACCOUNTING

A lawyer wrote a cheque on his trust account to pay an office