



**OFFICE OF THE ETHICS COMMISSIONER
PROVINCE OF ALBERTA**

**Report of the Investigation
under the *Lobbyists Act***

by

**Josh de Groot
Lobbyist Registrar**

regarding

**Mark Kuspira
Consuming Ventures Inc. (operating as Crush Imports)**

**Submitted to the Speaker
of the Legislative Assembly of Alberta**

by

**Hon. Marguerite Trussler, Q.C.,
Ethics Commissioner**

August 22, 2022

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INTRODUCTION

On May 2, 2022, I commenced this investigation under section 15 of the *Lobbyists Act*, SA 2007, c L-20.5 (“*Act*”), as I had reason to believe that an investigation was necessary to ensure compliance with the *Act*. Specifically, this investigation was commenced to determine whether Mark Kuspira, the owner of a business known as Crush Imports, had breached section 5 or section 19(2) of the *Act*.

SCOPE AND AUTHORITY UNDER THE ACT

The *Act* sets out the obligations of lobbyists in dealing with public office holders. The *Act* establishes the Lobbyist Registrar position and tasks the Lobbyist Registrar with establishing and maintaining a public registry of lobbyists. The *Act* requires individuals and organizations to file returns in that public registry in certain prescribed circumstances.

The Lobbyist Registrar’s authority for conducting an investigation is in section 15 of the *Act*. The requirements for this report are set out in section 17 of the *Act*.

RELEVANT LEGISLATIVE PROVISIONS

This investigation was conducted to determine whether Mr. Kuspira had breached either or both of sections 5(1)(a) or section 19(2) of the *Act*. Those sections read:

Duty to file return: organization lobbyist

5(1) The designated filer of an organization that has an organization lobbyist shall file with the Registrar a return in the prescribed form and containing the information required in Schedule 2

(a) within 2 months after the day on which an individual in that organization becomes an organization lobbyist [...]

Offences and penalties

19(2) A person who lobbies without a return being filed as required by this Act is guilty of an offence.

The following defined terms are relevant to this report:

(d) “designated filer” means

(i) the senior officer of an organization who occupies the highest ranking position in that organization and receives payment for the performance of his or her functions, or

(ii) if there is no senior officer, the organization lobbyist or consultant lobbyist, as the case may be;

- (f) “lobby” means, subject to section 3(2),
- (i) in relation to either a consultant lobbyist or an organization lobbyist, to communicate with a public office holder, directly or through grassroots communication, in an attempt to influence [...]
 - (C) the development or the enactment of any regulation or any order in council,
 - (D) the development, establishment, amendment or termination of any program, policy, directive or guideline of the Government or a prescribed Provincial entity, [...]
- (h) “organization lobbyist” means, subject to subsection (2), an employee, officer or director of an organization who receives a payment for the performance of his or her functions, or a sole proprietor, or a partner in a partnership,
- (i) who lobbies or whose duty is to lobby on behalf of the organization at least 50 hours annually, or
 - (ii) whose lobbying or duty to lobby on behalf of the organization together with the lobbying or the duty to lobby of other persons in the organization amounts to at least 50 hours annually;
- (j) “prescribed Provincial entity” means an entity that is identified as a prescribed Provincial entity under section 3.1;
- (k) “public office holder” means [...]
- (iv) an individual appointed to a board, committee or council established under section 7 of the *Government Organization Act*, and
 - (v) an employee, officer, director or member, as the case may be, of a department or prescribed Provincial entity;

INVESTIGATIVE PROCESS

The following people were interviewed under oath as part of this investigation:

- Mark Kuspira, owner of Crush Imports;
- Kandice Machado, CEO of the Alberta Gaming Liquor and Cannabis Commission (“AGLC”);
- Jody Korchinki, former Vice President of Liquor Services with the AGLC;
- Len Rhodes, Chair of the Board of the AGLC;
- W. Kent Breedlove, Member of the Board of the AGLC;
- Jason Derry, Senior Manager of Liquor Program Services with the AGLC;
- Ernie Tsu, President, Alberta Hospitality Association;
- Kathryn Bond Wightman, also known as Katy Bond, Former Communications Director, Alberta Hospitality Association.

I requested and received documents pursuant to section 15(3) of the *Act* from the AGLC and Mr. Kuspira.

ISSUES

The issues to be determined in this report are:

- Did Mr. Kuspira fail to comply with section 5 of the *Act* by failing to file with the Registrar a return in the prescribed form and containing the information required under the *Act* within the relevant time period?
- Did Mr. Kuspira fail to comply with section 19(2) of the *Act* by lobbying without a return being filed as required by the *Act*?

Both questions can be answered by first determining whether Mr. Kuspira, as the owner and therefore designated filer for Crush Imports, was required to file a return in the Lobbyist Registry. This would be the case if Mr. Kuspira, along with others within the organization, lobbied or had a duty to lobby on behalf of Crush Imports at least 50 hours annually.

FACTS

Opening of this Investigation

On June 17, 2021, Mark Kuspira created an organization lobbyist account in the Alberta Lobbyist Registry for his company, Consuming Ventures Inc. (operating as Crush Imports), listing himself as the Designated Filer. Creating an account is only the first step towards registration. In the case of an organization, once an account is created, the designated filer must then complete a return setting out the information required by Schedule 2 of the *Act*.

This office made a number of attempts to assist Mr. Kuspira in either completing a return or in determining whether registration was required under the *Act*. While Mr. Kuspira indicated verbally and by email to this office that he wanted to “withdraw” from the registration process, he did not provide information sufficient to allow this office to determine whether he was required to register.

As a result, on May 2, 2022, I commenced this investigation to determine whether Mr. Kuspira had breached section 5 or section 19(2) of the *Act*.

Background regarding Mark Kuspira, Crush Imports and the AGLC

Consuming Ventures Inc. is a corporation registered in Alberta and wholly owned by Mark Kuspira. Crush Imports is the name under which the corporation conducts business. As such, I will refer to Consuming Ventures Inc. in this report as Crush Imports.

The Alberta Gaming, Liquor and Cannabis Commission is a corporation established under the *Gaming, Liquor and Cannabis Act*, RSA 2000, c G-1, and controls the importation and sale of

liquor in Alberta. As explained below, the AGLC is a prescribed Provincial entity under the Act and has been since July 1, 2020.

Crush Imports is a liquor agency registered with the AGLC. In Mr. Kuspira's words, the business of Crush Imports is the importation and distribution of wines and spirits. While the AGLC is technically the importer of record of alcohol into Alberta, liquor agencies are at times colloquially referred to as liquor importers.

As a result of this liquor importing model, a liquor agency such as Crush Imports is required to regularly work with the AGLC in order to conduct its business. These regular business interactions include correspondence to determine whether Crush Imports is permitted to represent certain brands of alcohol and interactions through the Liquor Agency Portal to register new liquor products and set prices. These business interactions are clearly not lobbying and I will not detail them in this report.

The facts laid out below are those facts that require a consideration of whether the activity was indeed lobbying by Mr. Kuspira and, if so, whether or not the lobbying was on behalf of Crush Imports. The conclusions on each of these questions are laid out in the Law and Analysis section below.

Mark Kuspira's Communications with Jody Korchinski

Jody Korchinski was the Vice President of Liquor Services for the AGLC from August 2016 until April 2022. Ms. Korchinski and Mr. Kuspira had known each other for a handful of years prior to the events that are the focus on this report, dating back to Mr. Kuspira's time on the board of the Import Vintners & Spirits Association ("IVSA"). At the time of the communications outlined below, Mr. Kuspira was no longer on the board of the IVSA.

On November 2, 2020, Mr. Kuspira and Ms. Korchinski had a telephone call to discuss some of his concerns relating to the AGLC and Connect Logistics, which is contracted by the AGLC to warehouse and distribute wines and spirits in Alberta. Mr. Kuspira had requested this telephone call with Ms. Korchinski following interactions with her team which dealt mainly with Crush Imports' business but also touched on suggestions from Mr. Kuspira on how AGLC could improve operations.

Ms. Korchinski recalled that this telephone call was "in excess of an hour". Mr. Kuspira recalled that this telephone call was in the range of 30-45 minutes. For the purposes of my analysis below, I ascribe one hour of communication time to this telephone call.

This telephone call was memorialized in an email that Mr. Kuspira sent on November 5, 2020. The topics raised by Mr. Kuspira included, among other things, appropriate staffing levels for Connect Logistics, delays in process and communication relating to customs clearance, AGLC policies relating to alcohol samples, the creation of an independent liaison office to address liquor agency issues and Mr. Kuspira's idea to set up an Alberta-based liquor importers' association. According to Mr. Kuspira, the November 5, 2020 email likely took 15-20 minutes to write.

In Mr. Kuspira's November 5, 2020 email, he listed 17 Alberta-based liquor agencies that he indicated were engaged and in favour of dialogue with the AGLC. According to Mr. Kuspira, the engagement with these agencies consisted of "very informal discussions", likely occurring simply during brief conversations at a trade show or other industry event.

On this telephone call, Ms. Korchinski recalls that Mr. Kuspira indicated a desire to set up routine telephone calls between the two of them to discuss his concerns and concerns of the mid- to small-sized Alberta based liquor agencies.

On March 3, 2021, Mr. Kuspira and Ms. Korchinski again spoke by telephone. This call was memorialized in a March 4, 2021 email from Ms. Korchinski to Mr. Kuspira. On this call, Ms. Korchinski encouraged Mr. Kuspira to learn more about the *Act* to determine whether he was required to be registered as a lobbyist under the *Act*. Ms. Korchinski said that she raised the prospect of registration with Mr. Kuspira because of the significant amount of time Mr. Kuspira was spending seeking changes to AGLC policies and procedures.

Both recalled that she mentioned the *Act* but did not provide any specifics on the registration requirements. Mr. Kuspira indicated that this was the first time that anyone had raised registration with him. Ms. Korchinski also recalled that Mr. Kuspira indicated that the *Act* was “new information” for him.

Between the November 5, 2020 and March 3, 2021 calls, Ms. Korchinski recalled that she had further calls with Mr. Kuspira but could not recall the specific number or their length. Ms. Korchinski recalled that Mr. Kuspira would speak both about his specific business concerns as well as more broadly about changes he would like to see implemented at the AGLC. Mr. Kuspira did not recall any further telephone calls with Ms. Korchinski during this same period.

Given Ms. Korchinski’s evidence that she raised the prospect of registration with Mr. Kuspira on the March 3, 2021 call because of the amount of time she felt Mr. Kuspira was spending seeking changes to AGLC policies and procedures, I believe that at least some additional telephone calls did take place during this period.

Neither Mr. Kuspira nor Ms. Korchinski recall any specific direct communications between them following the March 3, 2021 telephone call. Ms. Korchinski recalled that, after March 2021, Mr. Kuspira’s interactions with the AGLC Liquor Services team were more related to administrative issues rather than procedural or policy concerns.

Based on these facts, I find that the time Mr. Kuspira spent in direct communication with Ms. Korchinski, and preparing for that communication, in 2020 was approximately four hours. In 2021, I find that the direct communication between Mr. Kuspira and Ms. Korchinski in 2021 was also approximately four hours.

Mark Kuspira’s Communications with AGLC Liquor Services and other departments

Inducements and Prohibited Relationships Consultation

In Fall 2020, AGLC Regulatory Services held consultations regarding how the AGLC’s inducement and prohibited relationships policies could be modernized. In September 2020, an online survey was sent to all liquor agencies soliciting feedback. Mr. Kuspira completed this survey on September 10, 2020. His responses were brief and appear to have taken perhaps 10 minutes to complete.

AGLC Regulatory Services continued this consultation in Spring 2021. AGLC indicated at this time certain changes it was considering making to its regulations and policies and requested written feedback by March 5, 2021. It does not appear that Mr. Kuspira provided any written

feedback during this round of consultation. It is possible that this topic was discussed during Mr. Kuspira's March 3, 2021 telephone call with Ms. Korchinski mentioned above but neither could specifically recall.

Interactions with Jason Derry

From 2020-2022, Mr. Kuspira also had some interactions with Jason Derry who is the Senior Manager, Liquor Program Services within AGLC Liquor Services. He oversees the Liquor Product and Pricing team which assists agencies with the registration and importation of liquor products. These interactions with the Liquor Product and Pricing team consist of typical business interactions and I do not consider these interactions to be lobbying. Mr. Derry referred to these interactions as "Product Management".

Mr. Kuspira also, at times, had suggestions for Mr. Derry for policies changes within Liquor Services or questions about policy or other issues. Mr. Derry referred to these interactions as "Issues Management" which would have been elevated to his level from the Product and Pricing team. Four issues in particular fell under this Issues Management headline.

First, some interactions dealt with the AGLC "Pre-Committed Orders" policy. It was Mr. Derry's understanding that the previous Senior Manager in his position also had interactions with Mr. Kuspira relating to this policy. Without getting into details, the Pre-Committed Order policy provides a way that liquor retailers can commit in advance to order a product at a particular price, as opposed to paying the price that the product is listed at when the order is processed. According to Mr. Derry, Mr. Kuspira and other specialized liquor agencies made efforts over a number of years to amend this policy as it is not seen as favourable to their business model.

It appears that most of Mr. Kuspira's interactions with the Liquor Program Services team on the Pre-Committed Orders policy took place prior to July 1, 2020 (when the AGLC became a prescribed Provincial entity). Mr. Kuspira did email Mr. Derry in October 2020 seeking to follow up on previous conversations on this topic. Mr. Derry believes he followed up by telephone on this October 2020 email but he was not sure and did not have any record of a telephone call.

The second issue that Mr. Kuspira and Mr. Derry interacted on was a policy change relating to liquor samples which took place in October 2020. At this time, AGLC changed its policy to allow liquor agencies to provide free liquor product samples to members of the public under certain conditions. Previously, liquor agencies could only provide free liquor product samples directly to liquor retailers.

Mr. Kuspira raised concerns with this policy change almost immediately after it happened in October 2020. Mr. Kuspira's concerns about this policy change related to the volume of samples that might be provided to members of the public and around whether appropriate steps were being taken to ensure samples were delivered only to adults.

The third issue that Mr. Kuspira and Mr. Derry interacted on was related to concerns with the online Liquor Agency Portal that liquor agents use to manage their products, particularly relating to either the unavailability of the Portal or other technical issues with the Portal.

The discussions between Mr. Derry and Mr. Kuspira on the three topics above consisted of at least two emails from Mr. Kuspira to Mr. Derry in October 2020 as well as an additional email and

telephone call which occurred in December 2020. Mr. Kuspira believed that this December 2020 telephone call would have been about 15-20 minutes.

Based on Mr. Derry's belief that he may have had an additional telephone call on the Pre-Committed Orders policy with Mr. Kuspira in October 2020, and accounting for the time Mark Kuspira spent preparing to communicate with Mr. Derry, I find that the amount of direct communication between the two in 2020 was approximately one hour.

Finally, since December 2020, Mr. Kuspira and Mr. Derry have had ongoing discussions regarding the representation of a particular European winery in Alberta. It is my understanding that the AGLC continues to investigate this issue. Mr. Kuspira's generally complaint was that a different liquor agency had facilitated the importation and sale of wine from this particular winery after Crush Imports was told by AGLC that Crush Imports could not do the same thing.

Mr. Derry advised that the discussions on this winery issue were not focused on seeking a change to policy but rather expressing frustrations at what Mr. Kuspira perceived to be an unfair outcome.

2021 Liquor Agencies Webinar

On June 17, 2021, AGLC Liquor Services held a webinar for all liquor agencies to attend. This webinar was held to improve communication between AGLC Liquor Services and the liquor agencies, especially since the number of liquor agencies in Alberta had increased substantially in the preceding years. The webinar was about 2 hours long.

Mr. Kuspira attended this webinar and, according to notes taken by AGLC Liquor Services, he actively participated in the "Q&A" portion of the webinar, asking questions relating to:

- Staffing levels for the Liquor Services teams;
- Timing of release of information from industry surveys conducted by AGLC; and
- Processes in place for agencies acquiring liquor samples.

My understanding is that these questions from Mr. Kuspira were indeed simply questions about the operations and processes of AGLC. His questions were in contrast to questions from other agencies during this webinar which were more "political" and "loaded" in a way that suggested those agencies were seeking AGLC policy changes.

Mark Kuspira's Communications with members of the AGLC Board

Other than the December 1, 2021 AGLC Board Meeting presentation detailed below, Kent Breedlove was the only member of the AGLC Board to have any direct communication with Mr. Kuspira in the last 2 years (beyond a single text message from another Board member to Mr. Kuspira referred to below).

Mr. Kuspira and Mr. Breedlove were initially connected in December 2020 by a wine store retailer. Between December 2020 and June 2021, Mr. Kuspira and Mr. Breedlove exchanged a few emails in an attempt to set up an informal face-to-face meeting. As a result of the ongoing COVID-19 pandemic, Mr. Kuspira and Mr. Breedlove did not meet in person until June 2021.

Mr. Kuspira and Mr. Breedlove met at a Calgary restaurant on June 22, 2021. Both Mr. Kuspira and Mr. Breedlove believed that this meeting was about one hour long. During this meeting, Mr.

Kuspira shared some of the same concerns that he shared with Ms. Korchinski during his conversations with her. Mr. Breedlove specifically recalls a discussion of the Key Performance Indicators set by Connect Logistics as well as a discussion of the webinar with AGLC that had occurred the week before. Mr. Kuspira provided suggestions to Mr. Breedlove about how AGLC could improve their processes.

Mr. Breedlove suggested to Mr. Kuspira at this meeting that he would talk to the Board Chair to determine whether Mr. Kuspira could present at an AGLC Board meeting about some of his concerns. Mr. Kuspira was open to that idea.

Following this meeting, the two men subsequently spoke on the phone on July 6, 2021 about the possibility of Mr. Kuspira giving a presentation to the AGLC Board. This telephone call was quite brief, only lasting a few minutes. Following this telephone call, Mr. Kuspira sent Mr. Breedlove an email with information about a couple of issues he wanted to present on before the Board but had no further direct contact that I am aware of.

Based on the above, Mr. Kuspira's direct communication with Mr. Breedlove in 2021, including his emails, the face-to-face meeting and the subsequent telephone call, was approximately 2.5 hours.

Mark Kuspira's Presentation to the AGLC Board

Following Mark Kuspira's conversations with Mr. Breedlove, the AGLC Board Office reached out to him in October 2021 to invite him to meet with the Board for 30 minutes on December 1, 2021. Mr. Kuspira accepted this invitation.

In advance of his presentation, Mr. Kuspira sent the Board Office a three-page document consisting of an agenda and two pages of information. Mr. Kuspira could not put a specific time on how long he spent preparing for this presentation. However, based on the information that he did provide and my review of the document, I ascribe one hour of preparation time for putting together this presentation.

The agenda followed the format that the Board Office had requested for the presentation: an overview of Crush Imports' business, discussion of things the AGLC is doing well and discussion of opportunities/challenges going forward. The list of opportunities/challenges provided by Mr. Kuspira included, among other things, addressing the AGLC's "Pre-Committed Orders" policy, refinement to the alcohol samples process, liquor agency engagement from the AGLC and Connect Logistics and a suggestion that a dispute resolution mechanism or ombudsperson office be set up.

Mr. Kuspira presented to the AGLC Board on December 1, 2021 as scheduled. He presented by videoconference but from Edmonton, as he had travelled to Edmonton from Calgary in hopes of presenting in person to the Board at their offices in St. Albert. All evidence indicates that the presentation stuck to the 30-minute time provided. All evidence also indicates that Mr. Kuspira's presentation generally followed the agenda he provided in advance.

The AGLC Board received presentations from Mr. Kuspira and another individual representing liquor agencies in Alberta. Len Rhodes, the Chair of the AGLC Board, indicated that the Board often received presentations from two stakeholders in the same industry at Board meetings to ensure a well-rounded perspective on issues facing that industry. The evidence from Ms.

Korchinski, who was present for the presentation, and the Board members was that, of the two presentations, Mr. Kuspira's presentation was more granular and focused on process issues rather than "bigger picture" issues. However, they all agreed that Mr. Kuspira was advocating for some policy changes during his presentation.

Following his presentation to the Board, one Board member thanked Mr. Kuspira for his presentation via text message. I am not aware of any other further interactions between Mr. Kuspira and the AGLC Board arising out of this presentation.

Based on the above information, Mr. Kuspira spent about eight hours preparing for and presenting to the AGLC Board in 2021. I have included the time spent travelling to Edmonton in his preparation time.

Mark Kuspira's involvement with the Alberta Hospitality Association

In December 2020, Mr. Kuspira joined the board of the Alberta Hospitality Association (the "AHA") as a volunteer member. He resigned from this role in October 2021. The AHA completed an Initial Return as an organization lobbyist on June 22, 2021 and has maintained its registration since that time. In its initial registration, Mr. Kuspira was listed as a board member but not as an organization lobbyist.

The AHA came together during the COVID-19 pandemic to advocate for the hospitality industry. Mr. Kuspira and the other members of the AHA said that the main focus of the work of the AHA during his time on the board was advocating for the restaurant, bar and nightclub industry as those were, in their view, the industries often hardest hit by COVID-19 public health restrictions.

This investigation did not reveal any direct communication between Mr. Kuspira, while acting in his role as an AHA board member, and any public office holders. While Ms. Korchinski and other AGLC employees were aware that he was an AHA board member, the communications with those public office holders that I am aware of all were in the context of Mr. Kuspira's role as the owner of Crush Imports or as the prospective member of a liquor agency-specific organization.

Mr. Kuspira did participate in board meetings during which the advocacy work of the AHA would have been discussed and planned to some extent. However, as noted above, this work was limited during Mr. Kuspira's time on the board to advocacy on behalf of the restaurant, bar and nightclub industry, not liquor agencies. Ernie Tsu did acknowledge that the AHA may lobby the AGLC in the future and those efforts may be to assist liquor agencies, but in the context of the COVID-19 pandemic which coincided with Mr. Kuspira's time on the board, no efforts were made on that front.

Finally, Mr. Kuspira's name appears on some postings on the AHA website which are variously termed "Open Letters" or "Official Responses" to the Alberta government public health measures. The consistent evidence of those interviewed was that Katy Bond, the Communications Director for the AHA, wrote those posts before seeking comments or approval from the board. The consistent evidence was also that Mr. Kuspira did not actively provide feedback on these posts before they were posted.

LAW AND ANALYSIS

Section 5 – Duty to file return: organization lobbyist

As noted above, the main question that I must answer in this report is whether Mr. Kuspira, or anyone else associated with Crush Imports, lobbied or had a duty to lobby on behalf of Crush Imports at least 50 hours annually. Section 1(3.1) of the *Act* states that, “for the purposes of determining whether lobbying amounts to at least 50 hours annually [...], time spent lobbying includes time spent preparing for communication and communicating with a public office holder.”

This investigation has not revealed any information that would suggest that any person with Crush Imports other than Mr. Kuspira had any contact with public office holders outside of interactions required to simply carry on the business of Crush Imports. Therefore, the obligation to register would only be triggered if Mr. Kuspira lobbied or had a duty to lobby at least 50 hours annually.

Preliminary Considerations

At the outset, I will address some considerations that arose during the investigation:

1. Under Schedule 2 of the former *Lobbyists Act General Regulation*, Alta Reg 247/2009, the AGLC was not a prescribed Provincial entity for the purposes of the *Act*. This Regulation was repealed on July 1, 2020. As a result, all employees, officers, directors or members of the AGLC have been public office holders for the purposes of the *Act* since July 1, 2020. With respect to this matter, any time that Mr. Kuspira spent lobbying or preparing to lobby the AGLC after July 1, 2020 must be included as lobbying time.
2. Prior to June 11, 2018, section 3(2)(c) of the *Act* stated that the *Act* did not apply in respect of a submission made “to a public office holder by an individual on behalf of a person or organization in response to a request initiated by a public office holder for advice or comment on any matter referred to in section 1(1)(f)(i)”. The section was repealed on June 11, 2018 by the *Lobbyists Amendment Act, 2018*, SA 2018, c 9.

As a result, communicating with a public office holder in an attempt to influence any of the matters listed in section 1(1)(f)(i) now falls under the definition of lobbying **even where the public office holder initiates the communication**. With respect to this matter, any time Mr. Kuspira spent communicating with employees or board members of AGLC in an attempt to influence changes to programs, policies, directives or guidelines must be included as lobbying time, even where that communication was initiated by the AGLC.

3. A breach of section 5(1)(a) of the *Act* (failure to register as required) is to be assessed on a strict liability basis (*Levis (Ville) v Tetrault*, 2006 SCC 12 at paras 15-16; *R v Carroll*, 2017 ONSC 2261 at para 7). As such, the breach is made out where an individual who is required to register fails to register, regardless of intent, unless that individual can prove that he or she took all reasonable care to avoid the breach. The definition of “lobbying” also contains no intent element – if an individual is communicating with a public office holder in an attempt to influence policy, they are lobbying whether or not they intend to be a lobbyist.

Mark Kuspira's involvement with the Alberta Hospitality Association

I will first address Mark Kuspira's involvement with the AHA.

Mr. Kuspira was a volunteer on the AHA Board of Directors – he did not receive payment for the performance of his functions. As such, any time spent lobbying **on behalf of the AHA** would not count towards the 50-hour threshold for the AHA.

However, that is not the end of the inquiry. There are circumstances where organizations will require paid employees to participate in industry associations as part of their paid duties as this participation is beneficial for the organization as part of that industry. In that case, the hours spent lobbying on behalf of the industry association would, in most cases, count as lobbying hours **on behalf of the employer organization**. The FAQ section on the Alberta Lobbyist Registry website, which provides this office's interpretation of the *Act* on a number of points, puts it this way:

The crux of the issue is that, any time an organization's employee is lobbying on behalf of the organization (which includes lobbying for the industry as a whole to benefit the organization) as part of their paid job duties as an employee of the organization, then that lobbying must be counted towards the organization's lobbying time and activities regardless of the forum/setting in which the lobbying takes place (unless a specific exemption in the *Act* applies).

Similarly, it may be that participating on the board of an industry association like the AHA was considered part of Mr. Kuspira's duties as the owner of Crush Imports. The questions I must answer are:

1. Was participating on the AHA Board a paid duty of Mr. Kuspira on behalf of Crush Imports?
2. If so, did he take part in any activities on behalf of the AHA which were also part of lobbying efforts **on behalf of Crush Imports**?

On the first question, I conclude that being on the AHA Board was a paid duty of Mr. Kuspira on behalf of Crush Imports. Mr. Kuspira noted that the AHA requested that he join the board to provide his input from the perspective of a liquor agent and not a restaurateur, and that he joined to provide that perspective. Mr. Tsu also noted that part of the reason for having Mr. Kuspira on the board was that the AHA did eventually want to approach the government on reducing red tape around the liquor agency business.

However, I have not identified any activities that he took part in on behalf of the AHA which were also lobbying efforts on behalf of Crush Imports. Mr. Kuspira was on the AHA board during the height of the COVID-19 pandemic. The activities of the AHA during this time were focused on supporting restaurants, bars and nightclubs. While the success of restaurants, bars and nightclubs could also benefit liquor agencies such as Crush Imports, that benefit is too remote, in my opinion, to fit within the intended scope of the *Act*.

As such, I have not ascribed any lobbying time to Mr. Kuspira for his participation on the AHA board.

Mark Kuspira's interactions with the AGLC on behalf of Crush Imports

It is difficult to determine exactly how many hours Mark Kuspira spent directly communicating with and preparing to communicate with public office holders with the AGLC. In this investigation, the difficulty does not arise due to an issue with the credibility of any witnesses, but rather due to issues of reliability of memories due to the passage of time.

It is even more difficult to determine the amount of time spent preparing for communication with public office holders. Different individuals will spend very different amounts of time preparing for communications and the scope of what constitutes preparation time is not well defined. While this office has previously recommended that preparation time continue to be included as time spent lobbying, this investigation has led me to the conclusion that there would be more certainty for organization lobbyists and the public if the 50-hour organization threshold were lowered but preparation time was not included in the calculation.

However, based on the evidence and my findings above, in 2020, Mr. Kuspira spent approximately five hours in 2020 and 14.5 hours in 2021 communicating directly or preparing to communicate directly with public office holders outside of his regular business interactions.

Of course, the definition of "lobby" is narrower than any communication, directly or by grassroots communication. The communication is only lobbying if that communication is done **in an attempt to influence** one of the matters listed in section 1(1)(f)(i).

Some of Mr. Kuspira's communication was clearly done in an attempt to influence the development, establishment, amendment or termination of programs, policies, directives or guidelines of the AGLC. For example, on multiple occasions, he communicated to the AGLC that it should establish an independent liaison position to mediate between the AGLC and liquor agencies. He also sought to influence policies with respect to Pre-Committed Orders and Inducements and Prohibited Relationships.

In other cases, his communication is clearly not done in an attempt to influence. For example, when the Liquor Agency Portal experienced technical difficulties, Mr. Kuspira's communication was simply to clarify what had happened and to understand how those technical issues might have impacted his business.

However, in this case, even if all of the communications described above did fall under the definition of lobbying, I have only found, at most, that Mr. Kuspira spent five hours in 2020 and 14.5 hours in 2021 on these efforts. A determination of whether each specific direct communication described above was "in an attempt to influence" is better addressed where the fact scenario requires that determination to be made.

Mr. Kuspira did not lobby at least 50 hours in any one year.

The remaining question to answer is whether Mr. Kuspira had a duty to lobby on behalf of Crush Imports at least 50 hours annually. On this point, Mr. Kuspira said that, when he looked into the requirements of the Act, he simply did not have the time, on top of his regular work, to commit to what it would take to be a lobbyist. While an organization lobbyist does not have to commit to lobbying 50 hours a year if it is their duty to do so, this comment shows that Mr. Kuspira, as the owner of Crush Imports, did not consider it his duty to lobby at least 50 hours annually on its behalf.

As a result, I find that Mr. Kuspira did not breach section 5 of the *Act* as he was not required to register as an organization lobbyist under the *Act*.

Section 19(2) – Lobbying without a return being filed as required

Section 19(2) of the *Act* makes it an offence to lobby “without a return being filed as required by this Act”. As I have found that Mr. Kuspira was not required by the *Act* to have a return filed, I further find that he has not breached section 19(2) of the *Act*.

CONCLUSION & OBSERVATIONS

As a result of my findings set out above, I find that Mark Kuspira was not required to register in the Alberta Lobbyist Registry and was therefore not in breach of the *Act*.

However, this investigation highlights how the 50-hour organization lobbyist registration threshold fails to promote public transparency of lobbying activities in Alberta and should be lowered, as has been recommended by this office previously. Mr. Kuspira’s influence and access at the AGLC was so significant that Ms. Korchinski recommended that he consider registration under the *Act*. Her recommendation came even before Mr. Kuspira was given further access to AGLC policymakers during a meeting with one Board member, then the entire AGLC Board.

Despite this access to AGLC policymakers, Mr. Kuspira was not required to be registered as an organization lobbyist under the current *Act*. In fact, Mr. Kuspira could have spent twice as much time lobbying in 2021 and still may not have been required to register. This highlights just how much lobbying of Alberta public office holders can occur without any public transparency. This is at odds with the preamble to the *Act*, which states that “it is desirable that the public and public office holders be able to know who is engaged in lobbying activities”.

Josh de Groot
Lobbyist Registrar
Office of the Ethics Commissioner of Alberta