

August 24, 2018

EBC File:15110-50/2018-005 ADJ
AQR File: 18-057

Rachel Roy
Allevato Quail & Roy
405-510 West Hastings Street
Vancouver, BC
V6B 1L8
Ph: (250)424-8631

Dear Rachel Roy:

This letter comprises the Determination under Part 4 of the Application of Administrative Policies Policy 12.1, for the following investigations:

2018-002
Maple Ridge: BBQ at Big Smoke with Bob D-Eith
October 21, 2017

2018-003
Coquitlam: An evening with Drinks and Friends
October 27, 2017

2018-004
Maple Ridge: Sparkle and Shine
November 18, 2017

2018-005
West Kelowna: A Festive Dinner Event
December 3, 2017

In each instance there is an allegation of non-compliance with section 185.02(1) of the *Election Act* which states:

“185.02 (1) No later than 7 days before the date of a specified fundraising function, the organization or individual who plans to hold the specified fundraising function must provide to the chief electoral officer, and to the financial agent of the political party, candidate, leadership contestant or constituency association on whose behalf the specified fundraising function will be held, the following information:

(a) the name of every member of the Executive Council, parliamentary secretary or leader of the political party who is scheduled to attend the specified fundraising function;

- (b) *the amount of the charge per individual for the specified fundraising function;*
- (c) *the date and time of the specified fundraising function;*
- (d) *if the specified fundraising function is held*
 - (i) *in or on premises that are used as a private residence, the address of the premises and the name of the person who usually uses the premises as a private residence, and*
 - (ii) *in or on premises other than premises that are used as a private residence, the usual name of the premises;*
- (e) *the usual name of the political party, candidate, leadership contestant or constituency association that is holding the specified fundraising event or on whose behalf the specified fundraising event is being held.*

An investigation report and recommendations for penalty calculations were provided to the BC NDP on June 18, 2018. At that time the BC NDP was given an Opportunity to be Heard in accordance with Elections BC's Application of Administrative Policies Policy 12.1. On July 6, 2018 Elections BC received a written response waiving the Opportunity to be Heard with respect to the contents of the investigation report, and providing a submission with respect to the proposed penalty calculations. As such, I accept the contents of the investigation report. Below I address the submission provided by the BC NDP on the penalty calculations and provide a final determination.

I accept that the BC NDP was required to report under section 185.02(1) of the *Election Act*, and that they failed to do so. I also give weight to the fact that preceding the identified contraventions, Elections BC reminded the subject of their obligations under section 185.02, and that the subject demonstrated their awareness of these obligations by conducting in-house training on the subject.

Below I have addressed each consideration as it relates to your submission regarding the proposed penalty calculations.

- Your letter states that “...while the events took place on different dates, the inadvertence that led to the imposition of penalties was a single act.” I do not agree that each of the four contraventions should be treated as a single act. The four fundraising functions in question occurred on different dates, in different locations and were attended by different individuals. Simply filing unrelated forms on the same date does not bind these contraventions into a single act. I do however view each of the four files as a “first instance” as I agree that the subject must be given an opportunity to review and improve its internal processes in order to avoid future similar occurrences.
- Your letter highlights the “enforcement gap” that exists under section 220.03 of the *Election Act* that requires a monetary penalty if a major political party, candidate, leadership contestant or registered constituency association is determined to be non-compliant but does not refer to the individual actually required by s. 185.02 to disclose the information. It also highlights that the former Chief Electoral Officer has recommend

changes to this section to resolve this gap. While I acknowledge your concerns and the recommendations of the former Chief Electoral Officer, it is the responsibility of Elections BC to enforce the *Election Act* as it is written.

- Your letter indicates that one of the reasons that the BC NDP failed to comply with s. 185.02(1) of the *Election Act* was that “...the staff person responsible for filing the Spec-FF reports was waiting to receive information from the individuals who planned the events.” I do not accept that a delay in receiving event information from a staff person as an acceptable reason for non-compliance with the *Election Act*. The legislation is prescriptive regarding these requirements.
- You submit that “...applying aggravated penalties for repetition...” is unfair as all four instances were reported simultaneously, and that the BC NDP has not had an opportunity to improve its internal processes in order to avoid future similar occurrences. As stated above, I agree with this position and intend to treat each of the files as a first (but separate) instance of non-compliance.
- Your submission contends that “...using the net income [of the event] as a starting point [for the application of penalties] does not result in a proportional penalty” and that “...the penalties suggested are disproportionate in these circumstances.” I agree that using “net income” for a fundraising event as the baseline for determining an appropriate penalty can result in disproportionate penalties for some events. While there will always be some level of disproportionality, I have applied an alternative strategy for assessing the penalties. Specifically, baselines on an incremental scale to recognize aggravated penalties for repeated like contraventions, and to ensure adjudication decisions are reasonably consistent, predictable, and objective. See below:

Minimum Penalty	\$500	Minimum penalty that would be assessed if the decision-maker decided, on a balance of probabilities, that there has been non-compliance by the subject with the provision of the <i>Election Act</i> set out in the Enforcement Notice
First Instance	\$ 2,500	Baseline for assessing the first instance of a particular contravention
Second Instance	\$ 5,000	Baseline for assessing the second instance of a similar contravention
Third and subsequent Instance	\$ 7,500	Baseline for assessing the third and any subsequent instances of a similar contravention
Maximum Penalty	\$10,000	Maximum penalty allowed under s. 220.03 of the <i>Election Act</i>

- *These are guidelines only. The decision-maker may deviate when they determine it is appropriate to do so based on the individual circumstances of each case.*

- I agree with your assertion that “*the higher range of penalties should only be imposed where there are significant aggravating factors...*” and that these instances of non-compliance by the BC NDP do not appear to be deliberate attempts to circumvent the legislation.
- I agree with your assertion that there are mitigating factors present such as full cooperation with this investigation by the BC NDP and the establishment of preventative measures to avoid recurrence, and that the higher range of penalties should be applied only when factors such as these are not present.
- I accept the investigator’s assessment of the “factors” leading to the assessment of the proposed penalties with one minor revision. The application of “incremental baselines” in the scale on page 3 renders the factor entitled “repetition of behavior” redundant.

For the stated reasons, I assess a total penalty of \$4,000 under section 220.03 of the *Election Act* against the BC NDP for failing to report pre-event information as required by **185.02(1)**. For clarity, an itemized assessment is provided below:

Penalty Imposed

Contravention	2018-002	2018-003	2018-004	2018-005
Baseline (First instance)	\$2,500	\$2,500	\$2,500	\$2,500
Influencing Factors	Penalty Adjustment			
Recently received notice of the compliance rules	\$1,000	\$1,000	\$1,000	\$1,000
Evidence of a deliberate attempt to circumvent the legislation	-\$1,000	-\$1,000	-\$1,000	-\$1,000
Cooperation of the subject	-\$1,000	-\$1,000	-\$1,000	-\$1,000
Preventative measures established	-\$1,500	-\$1,500	-\$1,500	-\$1,500
Additional Factor: Post Event Report Delay	\$1,000	\$1,000		
Additional Factor: Accuracy of the Report	\$1,000			
Subtotal for each contravention	\$2,000	\$1,000	\$0	\$0
Minimum penalty applied*			\$500	\$500
Total for each contravention	\$2,000	\$1,000	\$500	\$500
Total penalty applied	\$4,000			

**Minimum penalty is assessed because the decision-maker has decided, on a balance of probabilities, that there has been non-compliance by the subject with the provision of the Election Act set out in the Enforcement Notice.*

In accordance with Elections BC’s Application of Administrative Monetary Penalties Policy, the monetary penalties will be applied, and this determination published (according to Part 7) 38 days after the date the BC NDP is served the determination. If the BC NDP seeks court relief under the Act, publication will be suspended until the completion of that process.

The BC NDP has a further 30 days following publication and application of the monetary penalties to either pay the penalty or enter into a payment agreement with Elections BC to pay

the penalty over the period of one year. Payment(s) can be made by cheque to the Minister of Finance, C/O Elections BC at the address below.

Mailing Address:

PO Box 9275 Stn Prov Govt
Victoria, BC
V8W 9J6

Physical Location:

Suite 100 – 1112 Fort Street
Victoria, BC

Sincerely,

A handwritten signature in black ink, appearing to read 'Amie Foster', written in a cursive style.

Amie Foster, MPA, FIP
Manager Executive Services and Corporate Administration