

June 3, 2019

EBC File: 15110-25/2018/026

Kevin Anderson

Comox, B.C.

Dear Kevin Anderson:

This letter comprises the Determination under Part 4 of the Application of Administrative Policies Policy 12.1, for investigation REF-2018-001 related to s. 46 of the Electoral Reform Referendum 2018 Regulation and s. 239 of the *Election Act*. Respectively these sections establish the following:

Registration of referendum advertising sponsors (Electoral Reform Referendum 2018 Regulation)

46 (1) The following provisions of the Election Act are adopted and apply in relation to the registration requirements for referendum advertising sponsors except as set out in this section:

- (a) Division 3 [Registration of Sponsors] of Part 11 [Third Party Advertising];*
- (b) section 250.07 [monetary penalties for failing to register];*

and;

Third party sponsors must be registered (Election Act)

239 (1) Subject to subsection (2), an individual or organization who is not registered under this Division must not sponsor election advertising.

(2) A candidate, registered political party or registered constituency association is not required to be registered under this Division.

(3) An individual or organization who is registered or required to be registered as a third party sponsor must be independent of registered political parties, registered constituency organizations, candidates, agents of candidates and financial agents, and must not sponsor election advertising on behalf of or together with any of these.

An allegation that you had been non-compliant with section s. 46 of the Electoral Reform Referendum 2018 Regulation and the related s. 239 of the *Election Act* was investigated following the 2018 Referendum on Electoral Reform. The investigation report and recommendations for penalty calculations were provided to you on March 22, 2019. At that time, you were given an Opportunity to Be Heard in accordance with Elections BC's Application of Administrative Policies Policy. No effort was made by you during the Opportunity to Be Heard period to rebut or disprove the allegations made by Elections BC's investigator, or to provide feedback on how the proposed penalty should be calculated.

As you have provided no evidence to the contrary, I accept the findings of the investigator as set out in the following summary:

“Kevin Anderson paid \$1,029.26 to publish an advertisement in the Comox Valley Record. The advertisement was a full page ad on page A16 of the November 15, 2018 edition of the Comox Valley Record, and was titled My Point of View. The advertisement supported first past the post (FPTP) and opposed proportional representation (PR) during the campaign period for the 2018 Electoral Reform Referendum, which was July 1, 2018 to December 7, 2018. Anderson was not registered as a referendum advertising sponsor. Anderson did not cooperate with Elections BC’s request for him to voluntarily register as a referendum advertising sponsor, and has actively avoided communicating with Elections BC on the matter.”

Elections BC uses a set of 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 Election Act

**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.*

The guidelines suggest a starting calculation of \$2,500 for a contravention in the first instance. In the absence of a rebuttal, or feedback on how the proposed penalty should be calculated, I find the proposed starting point to be appropriate. I also accept the investigator’s recommendations as set out below:

a. The egregiousness of the behaviour:

“While Anderson’s advertisement was not minimal in cost, his behaviour was not egregious. The purpose of the legislation is to ensure transparency – to make it clear who sponsored a particular advertisement that is trying to influence the outcome of the referendum. In this case, Anderson put his name to the advertisement, and even provided a contact email. There has been no indication through my investigation that Anderson attempted to deliberately or knowingly contravene the legislation. Because the contravention of the rules was not egregious, I recommend reducing the penalty for this factor by \$1,000 to \$1,500.”

b. Repetition of the behaviour:

“There is no evidence to suggest that this is a pattern of behaviour with Anderson. We have not had previous complaints or investigations involving Anderson. This appears to be an isolated incidence. I recommend reducing the penalty for this factor by \$1,000 to \$500.”

c. Cooperation of the subject:

“Anderson has not cooperated with my investigation. To the contrary, Anderson actively avoided contact with Elections BC...Because of the importance of this consideration, and the active lack of cooperation from Anderson, I recommend increasing the penalty by \$1,500 to \$2,000.”

d. Preventative measures:

“Much of the policy analysis in this consideration is not relevant to Anderson’s situation as he appears to be operating as an individual rather than as a part of an organization that may need advertising policies. Factor d. (iii) is relevant however in that the non compliance can be easily explained by simple human error. To reflect that I recommend reducing the penalty by \$1,000 to \$1,000.”

e. Previous Monetary Penalties issued under similar circumstances:

“There have not been previous monetary penalties under similar circumstances to consider.”

In agreement with the investigator, I assess a total penalty of \$1,000 for failing to comply with section s. 46 of the Electoral Reform Referendum 2018 Regulation and the related s. 239 of the *Election Act* during the 2018 Referendum on Electoral Reform. A summary table is provided below for reference:

Starting amount: \$2,500	
Influencing factors	Penalty adjustment
a. Egregiousness of the behaviour	- \$1,000
b. Repetition of the behaviour	- \$1,000
c. Cooperation of the Subject	+\$1,500
d. Preventative measures	- \$1,000
e. Previous Monetary Penalties issued under similar circumstances	Not applicable
Total recommended penalty:	\$1,000

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

You have 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', with a long horizontal stroke extending to the right.

Amie Foster, MPA, FIP
Director Corporate Planning & Strategic Initiatives