

July 9 2021

EBC File: 15110-50/2021/509

Jonina Campbell
Executive Director, Green Party Political Association of British Columbia
Via email: jonina.campbell@greenparty.bc.ca

Simon Lewis
Financial Agent, Green Party Political Association of British Columbia
Via email: finance@bcgreens.ca

Dear Jonina Campbell and Simon Lewis:

Re: Administrative Monetary Penalty under the *Election Act*

I am writing further to recent contact you have had with Elections BC compliance and enforcement personnel regarding a contravention of s. 231 of the *Election Act*. This letter comprises the Determination under Part 4 of the Application of Administrative Monetary Penalties Policy 12.1, for investigation 2020-021 related to s. 231 of the *Election Act*, which states:

- 231 (1) Subject to subsection (2), an individual or organization must not sponsor, or publish, broadcast or transmit to the public, any election advertising unless the advertising;*
- (a) identifies the name of the sponsor or, in the case of a candidate, the name of the candidate's financial agent or the financial agent of the registered political party represented by the candidate,*
 - (b) if applicable, indicates that the sponsor is a registered third party sponsor under this Act,*
 - (c) indicates that it was authorized by the identified sponsor or financial agent, and*
 - (d) gives a telephone number or mailing address at which the sponsor or financial agent may be contacted regarding the advertising.*

Background

This matter relates to advertising which ran during the 2020 provincial general election without required authorization statements. Elections BC's Investigations team provided you with the investigation report and recommendations for a penalty amount of \$1000 on June 7, 2021. At that time, you were given an Opportunity to be Heard in accordance with Elections BC's Application of Administrative Monetary Penalties Policy. On June 15, 2021 we received notice from the Green Party Political Association of British Columbia that it had waived the Opportunity to be Heard, and accepted the findings of the investigation.

A summary of the investigation findings are as follows:

On 2020-10-17, the Green Party Political Association of British Columbia ran a two page “false cover wrap” in the Times Colonist newspaper. This wrap did not include an authorization statement.

After completing the investigation, EBC concluded that it was likely that the Green Party Political Association of British Columbia did not comply with s. 231 of the Act, which requires that election advertising for a party include an authorization statement that identifies the authorizing agent and provides their contact information. EBC has prepared this investigation report as required by Policy 12.1 Application of Administrative Monetary Penalties.

For the reasons explained in the narrative below, EBC suggests that the Enforcement Adjudicator assess a penalty of \$1,000 against the Green Party Political Association of British Columbia under s. 231.02 of the Election Act.

Determination

I have carefully reviewed the adjudication file relating to non-compliant advertising by the Green Party Political Association of British Columbia during the 2020 provincial general election (PGE42). I have reviewed images of the advertising, staff notes and investigation notes.

On October 17 2020 the Green Party Political Association of British Columbia ran a two page “false cover wrap” in the Victoria Time Colonist newspaper during the 2020 provincial general election campaign period. A complaint was received by Elections BC that the advertising in question did not include an authorization statement, contrary to s. 231 of the *Election Act*. The mistake was realized by the campaign and self-reported by Simon Lewis, the Green Party Financial Agent immediately after the advertising had been run and after the complaint had been received by Elections BC.

In considering this file I have reviewed the *Election Act*, particularly ss 231 and 231.02 relating to advertising requirements and related administrative monetary penalty provisions. I have also satisfied myself that my appointment as Deputy Chief Electoral Officer under s. 10 and my powers under s. 12(3) of the *Election Act* provide me with authority to make a decision on an administrative monetary penalty up to a maximum penalty of \$10,000. I have also reviewed and considered internal policy established by the Chief Electoral Officer (Policy 12.1) relating to administrative monetary penalties which establishes suggested criteria for consideration by decision makers.

I reviewed the advertising images referred to me by Elections BC Investigations and noted, consistent with the complaint and report from the Green Party, and our subsequent investigation, that the advertising failed to include the required authorization statement contrary to s. 231 of the *Election Act*. I reviewed and considered potential impacts of this non-compliance and found the non-compliance to potentially be of a more significant nature, however there are some mitigating factors. This was very expensive advertising, costing over \$10,000 and there was broad circulation of the newspaper. However, the advertising itself did make it quite obvious that the advertising was from the BC Green Party.

Additionally the BC Green Party did self-report and took steps to ensure the error was not repeated. I note also that the BC Green Party has been cooperative throughout the investigation and has waived an opportunity to be heard during the decision-making process relating to an administrative monetary penalty.

Penalty Calculation

Elections BC decision makers may consider policy guidance when making a determination of an administrative monetary penalty, but are not bound by policy. The *Election Act* s. 231.02 provides authority for administrative monetary penalties of up to \$10,000. The policy guidance assists Elections BC decision makers with ensuring that adjudication decisions consider relevant factors and are reasonably consistent, predictable, and objective.

Policy guidance provides a framework for Elections BC decision-makers to consider matters including:

- the facts of matter at hand;
- egregiousness of behavior;
- repetition of behavior;
- cooperation of the subject;
- prevention;
- previous similar penalties; and
- the *Election Act* requirement for a minimum administrative monetary penalty.

Conclusion

Considering the above, as a result of the admitted non-compliance with s.231 of the *Election Act* and mitigating factors, I have decided that the BC Green Party should be subject to a \$1000 Administrative Monetary Penalty under s. 231.02 of the *Election Act*.

In accordance with Elections BC's Application of Administrative Monetary Penalties Policy, the monetary penalty will be applied, and this determination published on Elections BC's website (as noted in 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
250-387-5305

Sincerely,

A handwritten signature in black ink, appearing to be 'C. S. Porter', with a long horizontal flourish extending to the right.

Charles S. Porter
Deputy Chief Electoral Officer
Electoral Finance and Operations