

July 7, 2021

EBC File: 15110-50/2021/508

Norm Facey
Candidate, 2020 Provincial General Election

Via email: [REDACTED]

Dear Norm Facey:

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--016 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 newspaper print advertisements which ran without authorization statements during the 2020 provincial general election. Elections BC's Investigations team provided you with the investigation report and recommendations for a penalty amount of \$250 on June 7, 2021. At that time, you were given an Opportunity to be Heard in accordance with Elections BC's Application of Administrative Penalties Policy. On June 21, 2021 you notified us that you will waive the Opportunity to be Heard, and that you accept the investigation report's findings.

A summary of the investigation findings are as follows:

On 2020-10-08, Elections BC (EBC) received a complaint that a newspaper print advertisement for Island North British Columbia Liberal Party candidate Norm Facey did not include an authorization statement. EBC reached out to the campaign team the following day to discuss the apparent omission. Unfortunately, given communication limitations between members of the Facey team, as well as the print schedule of the newspaper, a second advertisement ran without an authorization statement.

.../2

After completing the investigation, EBC concluded that it was likely that the campaign for Norm Facey did not comply with s. 231 of the Election Act, which requires that an authorization statement accompany elections advertising by a candidate. EBC have therefore 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 \$250 against the campaign for Norm Facey under s. 231.02 of the Election Act.

Determination

I have carefully reviewed the complaint of non-compliant advertising, staff notes and the investigation file. The complaint related to two election advertisements in the Campbell River Mirror newspaper which were run during the 2020 provincial general election and which did not contain an authorization statement.

In considering this file I have reviewed the *Election Act*, particularly ss 231 and 231.02. I have also satisfied myself that my appointment as Deputy Chief Electoral Officer under s. 10 and my powers under s. 12(3) provide me with authority to make a decision on an administrative monetary penalty. I have also reviewed and considered internal policy established by the Chief Electoral Officer (Policy 12.1) relating to Administrative Monetary Penalties.

I reviewed the advertising images contained in the file and noted, consistent with the complaint and our subsequent investigation that the advertisements failed to include the authorization statement. This failure to include the authorization statement is contrary to the provisions of *Election Act* s. 231. I reviewed and considered potential impacts of this non-compliance and found the matter to be relatively minor in its seriousness, however I did note that the advertisement was run on two successive weeks. I have further reviewed your response to the investigation, and noted that you admitted fault and have been cooperative with the investigation. I also note that when apprised of the potential administrative monetary penalty under s. 231.02 of the *Election Act* you waived your right to be heard. Finally, you have indicated that you will not be running for provincial office in the future.

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 policy guidance assists us 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 the matter at hand;
- egregiousness of behavior;
- repetition of behavior;
- cooperation of the subject;
- prevention; and
- previous similar penalties.

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 you, Norm Facey, should be subject to a \$250 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 read 'C. Porter', with a long horizontal stroke extending to the right.

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