

May 2, 2024

EBC File: 15110-30/2023/297

Mark Anderson
Candidate for Councillor, Duncan

Via email

ENFORCEMENT NOTICE

Dear Mark Anderson:

This letter addresses a contravention under the *Local Elections Campaign Financing Act* (LECFA) and comprises an Enforcement Notice under Part 2 of Policy 36.3 Administration of Monetary Penalties under the *Local Elections Campaign Financing Act*.

Elections BC provided you with a copy of the Investigator's report into this matter, which included their preliminary findings. You responded to the report by email to confirm you received it. You did not object to the information contained in the report but noted, "*a penalty of \$600-900 is still far too much.*"

Background:

You were an unendorsed candidate for Councillor in the city of Duncan in the 2022 General Local Elections and you acted as your own financial agent. For the 2022 calendar year, unendorsed candidates were permitted to contribute up to \$2,500 to their own campaign.

On January 13, 2023, you filed a disclosure statement with Elections BC indicating that you contributed \$3,750.00 to your own campaign in 2022.

Elections BC's Electoral Finance Audit and Assessment team contacted you on May 17, 2023, to advise you of the overcontribution and, on June 26, 2023, you submitted a supplemental report indicating \$1,250.00 of the prohibited contribution was returned on October 15, 2022. On July 12, 2023, you emailed EBC to clarify the return date of the prohibited contribution was May 18, 2023.

The file was then forwarded to the Elections BC's Investigations team for follow up.

On January 4, 2024, Elections BC's Investigations team emailed you a notice of investigation regarding the prohibited contribution and asked if you had any additional information to provide.

On January 5, 2024, you spoke with the Investigator and expressed that the \$1,250.00 overcontribution to your campaign was inadvertent and noted that when you became aware of the prohibited contribution, you worked to bring yourself into compliance and followed the directions of Elections BC to complete the required forms, record the \$1,250.00 prohibited contribution and allocate campaign funds to the 2023 calendar year.

Legislation:

Section 27 (1.01) (b) of LECFA states that a financial agent must not accept campaign contributions from an eligible individual that exceed an applicable campaign contribution limit.

Section 30.04 of LECFA describes the process for establishing a campaign contribution limit:

- 30.01 (1) In this section, "base year" means 2019 or a subsequent calendar year for which a campaign contribution limit is established under subsection (2) or (3).*
- (2) Subject to any applicable regulations, the campaign contribution limit for a base year is, for a candidate who is not endorsed by an elector organization in relation to an election campaign of the candidate, an amount prescribed by regulation or determined in accordance with the regulations.*
- (3) Subject to any applicable regulations, the campaign contribution limit for a base year is, for any one elector organization and all the candidates endorsed by the elector organization in relation to an election campaign of the elector organization, an amount prescribed by regulation or determined in accordance with the regulations.*
- (4) Subject to any applicable regulations, for a calendar year other than a base year, the BC chief electoral officer must establish the campaign contribution limits for that year by*
- (a) determining the ratio between the consumer price index at January 1 of the base year and the consumer price index at January 1 of the year in which the limit applies, and*
 - (b) applying the ratio to adjust the amount prescribed or determined under subsection (2) and (3) that is to apply for that year.*
- (5) For the purpose of establishing a campaign contribution limit under subsection (4), the BC chief electoral officer has the discretion to determine*
- (a) whether to use a consumer price index prepared by the director under the [Statistics Act](#) (British Columbia) or a consumer price index published by Statistics Canada under the [Statistics Act](#) (Canada), and*
 - (b) which consumer price index is applicable for a particular time.*
- (6) As soon as practicable after January 1 of each year, the BC chief electoral officer must*
- (a) have the campaign contribution limits established under subsection (4) published in the Gazette, and*
 - (b) make that information publicly available on an Elections BC authorized internet site.*

Section 70 of the Local Elections Campaign Financing Regulation sets the amount of the campaign contribution limit for 2022 and subsequent years:

- 70 (1) For the purposes of this section, the base year is 2022.*
- (2) For the purposes of section 30.04 (2) [campaign contribution limits for 2019 and subsequent years] of the Act, the prescribed amount for the campaign contribution limit for the base year for a candidate who is not endorsed by an elector organization in relation to an election campaign of the candidate is \$1 250.*
- (3) For the purposes of section 30.04 (3) of the Act, the prescribed amount for the campaign contribution limit for the base year for any one elector organization and all*

the candidates endorsed by the elector organization in relation to an election campaign of the elector organization is \$1 250.

(4) In addition to the campaign contribution limit established by subsection (2), in a calendar year in which an election takes place, a campaign contribution limit of \$1250

(a) is established for a candidate who is not endorsed by an elector organization in relation to the election campaign of the candidate, and

(b) is applicable only to the unendorsed candidate in respect of campaign contributions made by that candidate for use in that candidate's own

election campaign.

(5) In addition to the campaign contribution limit established by subsection (3), in a calendar year in which an election takes place, a campaign contribution limit of \$1250

(a) is established for an elector organization in relation to the election campaign of the elector organization, and

(b) is applicable, collectively, to all the candidates endorsed by the elector organization in relation to that election campaign in respect of campaign contributions made by those candidates for use in that election campaign.

Analysis and Determination:

I have carefully reviewed the Investigator's report, and I concur with their preliminary conclusions. The self-funded campaign contributions exceeded the contribution limit established under section 70 of the Local Elections Campaign Financing Regulation for 2022 by \$1,250.00.

Monetary Penalty:

Because of my finding above, section 68.14 of LECFA requires me to issue an administrative monetary penalty of up to double the amount by which the campaign contribution exceeded the applicable contribution limit against you. The maximum monetary penalty in this case is \$2,500.00.

In assessing this penalty, I note the following:

- Accepting a prohibited contribution gives a candidate an advantage in that the candidate did not need to seek a contribution of that amount from an eligible source, saving the candidate time during a busy campaign.
- Once contacted by Elections BC, you submitted a supplementary report and cooperatively brought yourself into compliance.
- Your campaign replied to requests from the Investigator in a timely manner.
- You have not previously been the subject of a monetary penalty under LECFA.
- You have previously participated in general local elections.

You indicated in your response to the investigation report that you believed the investigator's suggested penalty range of between \$600 and \$900 is too high in the circumstances. You noted to the Investigator that you were cooperative, and worked to bring yourself into compliance once notified of the contravention. I have reviewed your responses, and other penalties assessed under similar circumstances. The penalty I am assessing here is in keeping with those factors.

Based on these considerations, I make the following finding:

- Mark Anderson contravened section 27 (1.01) (b) of LECFA and must pay a penalty of \$650 to the Chief Electoral Officer of B.C., under section 68.14 (2) (b) of that act.

Review/Court Relief:

You may request a review of this determination by an Adjudicator. A request must be made in writing and must be received by the Investigator within 14 days after the date on which the Subject received the Enforcement Notice. The request must state the grounds on which the request for review is made. The Adjudicator is not bound by the Investigator's determinations or reasons in this Enforcement Notice and must consider the matter afresh and with an open mind.

You may also seek relief from the BC Supreme Court from the monetary penalties under section 68.18 of LECFA. You may wish to seek legal advice prior to requesting relief.

Penalty Payment:

Under Policy 36.3 Administration of Monetary Penalties under the *Local Elections Campaign Financing Act*, you have 40 days from today's date to pay the monetary penalties. Payments 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,



Adam Barnes
Director of Investigations