

December 13, 2022

EBC File: 15110-30/2022/210

Brian Bagnall  
Third Party Sponsor – 2022 General Local Elections  
Via email

## ENFORCEMENT NOTICE

Dear Brian Bagnall:

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 his preliminary findings. You have provided a response to the investigation report, which I have taken into consideration in making this decision.

### **Background:**

For the 2022 General Local Election, the pre-campaign period started July 18, 2022, and ended September 16, 2022. The campaign period started September 17, 2022 and ended on general voting day, on October 15, 2022.

On October 6, 2022, Elections BC received a complaint regarding an advertisement in the Times Chronicle, titled Ginsberg vs Scalia. The complaint noted that the ad lacked an authorization statement. The ad promoted one candidate for mayor of Osoyoos, opposed another candidate, and promoted two candidates for council. The ad included your name, Brian Bagnall, at the bottom and was published in the October 6, 2022 edition of the paper.

Elections BC's Compliance team contacted you. They noted that you did not have an authorization statement, and that you were not a registered third party sponsor as required by LECFA. You agreed that you would not advertise again, and that you would register as a third party sponsor under LECFA if you intend to advertise again.

The Elections BC Investigator reached out to you and requested invoices for the ad, and discussed registering as a third party sponsor retroactively.

The invoices that you provided indicated that you spent \$226.80 on the ad. Because of your discussion with the investigator you have now registered as a third party sponsor under LECFA.

**Legislation:**

Section 37 (1) of the *Local Elections Campaign Financing Act* prohibits an individual or organization from sponsoring third party advertising, unless they are first registered with Elections BC. Section 11 of LECFA defines third party advertising as election advertising that was not sponsored by a candidate or an elector organization.

Section 7(1) of LECFA defines election advertising as:

- 7 (1) Subject to subsection (2) and any applicable regulations, election advertising is the transmission to the public by any means,*
- (a) during the campaign period, of any of the following:*
    - (i) a communication that promotes or opposes, directly or indirectly, the election of a candidate or an elector organization that is endorsing a candidate, including a communication that takes a position on an issue with which the candidate or elector organization is associated;*
    - (ii) assent voting advertising that is election advertising under section 8 (3) [assent voting advertising that is election advertising];*
    - (iii) any other communications prescribed by regulation, and*
  - (b) during the pre-campaign period for a general local election, of any of the following:*
    - (i) a communication that promotes or opposes, directly or indirectly, the election of a candidate or an elector organization that is endorsing a candidate;*
    - (ii) assent voting advertising that is election advertising under section 8 (3);*
    - (iii) any other communications prescribed by regulation.*

Section 10 of LECFA sets out the pre-campaign and campaign periods for a local election:

- 10 (1) The election period in relation to an election is the period that*
- (a) begins, as applicable,*
    - (i) in the case of an election that is part of a general local election, at the start of the calendar year in which the election is held,*
    - (ii) in the case of a by-election, on the day the local authority office that is to be filled by the by-election becomes vacant, or*
    - (iii) in the case of any other election, on the date specified by or determined under the regulations, and*
  - (b) ends at the beginning of the campaign period for the election.*
- (1.1) The pre-campaign period in relation to a general local election is the period that*
- (a) begins on the eighty-ninth day before general voting day for the election, and*
  - (b) ends on the twenty-ninth day before general voting day for the election.*
- (2) The campaign period in relation to an election is the period that*
- (a) begins on the twenty-eighth day before general voting day for the election, and*
  - (b) ends, as applicable,*
    - (i) in the case of an election by voting, at the close of general voting for the election, or*
    - (ii) in the case of an election by acclamation, at the end of general voting day.*

*(3)The assent voting proceedings period in relation to non-election assent voting is the period that*

- (a)begins on the twenty-eighth day before general voting day for the assent voting, and*
- (b)ends at the close of general voting for the assent voting.*

**Analysis and Determination:**

I have carefully reviewed the Investigator’s report, and I concur with his preliminary conclusions. The Times Chronicle ad clearly promoted one candidate for mayor of Osoyoos, opposed another candidate, and promoted two candidates for council. The ad was published on October 6, 2022, which was during the campaign period. At the time, you were not a registered third party sponsor as required by section 37(1) of LECFA.

I find that the October 6, 2022 ad that you published in the Times Chronicle during the campaign period contravened section 37(1) of LECFA.

**Monetary Penalty:**

Because of my finding above, s. 68.24(2)(a) of LECFA requires me to issue an administrative monetary penalty against you, of up to \$5,000.

In assessing this penalty, I note the following:

- The lack of an authorization statement would not likely have misled a reader to conclude that the signs were sponsored by another individual or organization – the transparency purpose of the Act had been substantially met.
- In your submission, you indicated that the publication of the advertisements without first registering as a third party sponsor was inadvertent.
- Once contacted by Elections BC, you cooperatively brought yourself into compliance by registering as a third party sponsor.
- You have not previously been the subject of a monetary penalty under LECFA.

Based on these considerations, I make the following finding:

- Brian Bagnall contravened section 37(1) of LECFA, and must pay a penalty of \$100 to the Chief Electoral Officer of BC, under section 68.24(2)(a) 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 68.26 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,

A handwritten signature in black ink, appearing to read "Adam Barnes". The signature is fluid and cursive, with a long horizontal stroke at the end.

Adam Barnes  
Director of Investigations