

January 24, 2023

EBC File: 15110-30/2022/140

Patrick Hrushowy
Cowichan Works Director

and

Brian Danyliw,
Cowichan Works Chair

Via email

ENFORCEMENT NOTICE

Dear Patrick Hrushowy and Brian Danyliw:

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 Brian Danyliw, the Cowichan Works Chair that we have been primarily corresponding with, a copy of the Investigator's report into this matter which included the investigator's preliminary findings. Brian Danyliw did not provide a response to the investigator's report.

Background:

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

On August 5, 2022 Elections BC received a complaint that Cowichan Works was conducting election advertising, without being registered with Elections BC as required by section 37(1) of LECFA). Elections BC reviewed the complaint and Cowichan Works' website, and determined that the activities at the time did not meet the definition of sponsored election advertising in LECFA.

Elections BC was concerned that Cowichan Works may have intended to conduct sponsored election advertising based on the information that was available on its website. The website noted that Cowichan Works was "identifying and encouraging quality candidates who align with our values and share our vision to run for election". On August 8, 2022 Elections BC reached out to Cowichan Works via email. The email indicated that Cowichan Works may need to register as a third party sponsor if it intends to conduct sponsored election advertising, noted that the pre-campaign period had started on July 18, 2022, and included a link to the Elections BC third party advertising rules webpage. That page contained a fulsome explanation of the third party advertising rules for the 2022 General Local Elections.

On August 19, 2022 Elections BC received a letter via email from Brian Danyliw, Chair of Cowichan Works. The letter indicated that Cowichan Works' primary goal is to encourage residents to take note of the upcoming election and for them to understand the importance of voting. The letter noted that Cowichan Works was not positioning itself to be a third party sponsor for any candidates.

On August 31, 2022 Cowichan Works deposited 14,921 cards at the Duncan main post office and paid for neighbourhood mail delivery in the area. The cards were branded as coming from Cowichan Works, included the organization's website address, an email address and indicated

*Local politicians are out of touch, putting Cowichan in crisis
Cowichan needs change
Be part of the change*

On September 6, 2022, Elections BC received a complaint regarding the cards. On September 7, 2022 Elections BC reached out to Cowichan Works, and indicated that the cards are considered to be sponsored election advertising, and that Cowichan Works was required to register as a third party sponsor.

On September 13, 2022 an Elections BC Investigator reached out to Cowichan Works and requested copies of the invoices for the ads, and copies of the original ads.

Cowichan Works responded with copies of invoices for printing and distributing the cards, and an acknowledgement that it may have misunderstood the third party advertising rules. The invoices indicated that Cowichan Works spent \$3,492.30 to print and distribute the cards.

On December 22, 2022, at the request of Elections BC Cowichan Works registered as a third sponsor for the 2022 General Local Election.

Legislation:

Section 37 (1) of the Local Elections Campaign Financing Act prohibits an individual or organization from sponsoring third party advertising, unless they are 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 of LECFA defines election advertising during the pre campaign period as "a communication that promotes or opposes, directly or indirectly, the election of a candidate or an elector organization that is endorsing a candidate".

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. While the advertisements did not specify which local politicians were “out of touch”, they were clearly opposed to the existing council members in the region, and they were sponsored in that Cowichan Works paid to print and distribute the ads. Cowichan Works distributed the cards during the pre-campaign period, and was not a registered third party advertiser prior to distribution as required by section 37(1) of LECFA.

I find that the ads in question contravened section 37(1) of LECFA.

Monetary Penalty:

Because of my finding above, s. 68.24(1) of LECFA requires me to issue an administrative monetary penalty against you, of up to \$10,000.

In assessing this penalty, I note the following:

- The cards that Cowichan Works distributed were largely anonymous. While the cards did include an email address and the organization’s website, the individuals involved in the organization were not identified either on the card or on the website – the transparency purpose of LECFA had not been met,
- Elections BC notified Cowichan Works of the third party advertising rules on August 8, 2022,
- The potential reach of the ad distribution was significant - 14,921 cards could have a large impact in the Cowichan area,
- As an organization the maximum penalty is double that of an individual,
- Cowichan Works has not previously been the subject of a monetary penalty under LECFA
- Cowichan Works agreed to register as a third party sponsor during the investigation – this is a significant factor as it increases the transparency of funding sources, improves regulatory oversight and helps to achieve the aims of the act. If this had not occurred I would have moved this matter forward via a Notice of Apparent Violation under Part 3 of Policy 36.3, and would have recommended the adjudicator consider a penalty of between \$1,000 and \$3,000.

Based on these considerations, I make the following finding:

- Cowichan Works contravened section 37(1) of LECFA, and must pay a penalty of \$750 to the Chief Electoral Officer of BC, under section 68.24(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 68.26 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,



Adam Barnes
Director of Investigations