

January 24, 2023

EBC File: 15110-30/2022/240

Keith Goforth  
Via email

## ENFORCEMENT NOTICE

Dear Keith Goforth:

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 the investigator's preliminary findings. You 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 October 5, 2022, Elections BC received a complaint that you had placed flyers on cars outside an October 4, 2022 Creston Candidate Forum. The complainant was concerned that the flyers appeared to be election advertising, the flyer did not identify you, and you were not registered with Elections BC as a third party sponsor.

On October 7, 2022 Elections BC reached out to you, and indicated that the flyers are considered to be sponsored election advertising, and that you were required to register as a third party sponsor.

On October 26, 2022 an Elections BC Investigator reached out to you and requested copies of the invoices for the ads, and copies of the original ads.

You responded with copies of your invoice for printing the flyers. The invoice indicated that you printed 300 flyers at a cost of \$72.75. You indicated that you had distributed approximately 80 flyers, and that you had destroyed the remaining flyers after Elections BC reached out to you.

The flyers themselves included statements such as "vote for change", and identified candidates that "want change":

- Regional District of Central Kootenay Area B Roger Tierney
- Regional District of Central Kootenay Area C Kelly Vandenberghe
- Town of Creston Mayor Nora Maddocks
- Town of Creston Councillors Greg Banbury, Amber Bartlett, Richard Howes, Elizabeth Ireland, Scott Irwin, Adriana Snashall, Ursula Waslovich

**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 her preliminary conclusions. The flyers that you distributed clearly supported several candidates for the Regional District of Central Kootenay Area and Town of Creston, and they were sponsored in that you paid for the flyers to be professionally printed. You distributed the flyers during the campaign period, and you were 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 \$5,000.

In assessing this penalty, I note the following:

- The flyers that you distributed were anonymous. There was no contact information or any indication that you were the sponsor of the advertisement – the transparency purpose of LECFA had not been met,
- The potential reach of the ad distribution was not significant – you distributed approximately 80 flyers,
- You agreed to register as a third party sponsor during the investigation,
- You have not previously been the subject of a monetary penalty under LECFA

Based on these considerations, I make the following finding:

- Keith Gosforth contravened section 37(1) of LECFA, and must pay a penalty of \$300 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,



Adam Barnes  
Director of Investigations