

August 8, 2023

EBC File: 15110-30/2022/218

Kenneth Holden  
Candidate for Mayor, Vanderhoof  
Via email

## ENFORCEMENT NOTICE

Dear Kenneth Holden:

This letter addresses a contravention under the *Local Elections Campaign Financing Act* (LECFCA) 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 did not comment on the Investigator's report and/or provide any additional information you wish the Director of Investigations to consider.

### **Background:**

You were a candidate for the Mayor of Vanderhoof in the 2022 General Local Election. 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 6, 2022, Elections BC received a complaint regarding an election advertisement flyer that promoted you for Mayor of Vanderhoof as well as three candidates for council and two candidates for schoolboard. The complaint noted that the ads appeared to be missing the required authorization statements. The same complainant also informed Elections BC about a lawn sign saying "Educate... Don't Indoctrinate" that did not contain the required authorization statement and that promoted your candidacy for Mayor.

Elections BC's Compliance team contacted you to remind you about the requirement to include the respective authorization statements on your election advertisements. I understand that you updated the flyer in question with an authorization statement shortly after the Compliance team had contacted you to bring yourself into compliance. We understand that the two candidates for schoolboard had not agreed to be on the flyer and you removed them at that time.

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

The Elections BC Investigator reached out to you and requested copies of the invoices and information about the election advertisement creation process.

Your records indicated that your campaign spent \$140 to produce 200 flyers. This amount was split evenly between you and the three council candidates that remained on the updated flyer (two

candidates were removed from the flyer, as they did not want to have their names on the flyer). You spent \$1,213.12 to produce the 10 lawn signs in question.

**Legislation:**

Section 44 (1) of the *Local Elections Campaign Financing Act* requires that a candidate who sponsors election advertising ensure that the advertisement does the following:

- identifies the financial agent,
- indicates that it was authorized by the financial agent,
- gives a BC telephone number, an email address or a BC mailing address at which the financial agent may be contacted regarding the advertising

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 election advertisement flyers in question, promoting your candidacy for Mayor as well as three candidates for council (Bill Teichroeb, Henry Thiessen, Brad Dejax), and the lawn signs in question, promoting your candidacy for Mayor, were sponsored during the regulated period. The ads did not include an authorization statement as required in section 44(1) of LECFA.

I find that the flyers and lawn signs that your campaign sponsored during the campaign period contravened section 44(1) of LECFA.

**Monetary Penalty:**

Because of my finding above, s. 68.25(1) of LECFA requires me to issue an administrative monetary penalty of up to \$5,000 against you.

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 flyer or signs were sponsored by another individual or organization – the transparency purpose of the Act had been substantially met.
- Once contacted by Elections BC, you cooperatively brought yourself into compliance.
- Your campaign has been cooperative with our investigation.
- The number of flyers handed out was relatively low (according to your statement approx. 150). Additionally, you stated that you recovered a good number of the non-compliant flyers when handing out the corrected ones.
- You have not previously been a candidate for local public office.
- You have not previously been the subject of a monetary penalty under LECFA.
- You failed to add the required authorization statement to two different forms of advertisement.
- You were the main coordinator for the shared flyer advertisement.

Based on these considerations, I make the following finding:

- Kenneth Holden contravened section 44(1) of LECFA, and must pay a penalty of \$200 to the Chief Electoral Officer of B.C., under section 68.25(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