

November 8, 2022

EBC File: 15110-30/2022/161

Elaine McMurray
Candidate for Councillor, Kelowna
Via email

ENFORCEMENT NOTICE

Dear Elaine McMurray:

This letter addresses a contravention under the *Local Election 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 not provided a response to the investigation report.

Background:

You were a candidate for Council in the 2022 Kelowna 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 September 12, 2022, Elections BC received a complaint regarding a lawn sign that promoted Elaine McMurray for Kelowna City Council. Elections BC's Compliance team contacted you to remind you to include all information required in an authorization statement going forward, and requested that you take steps to correct the ads, by adding a full authorization statement. You responded by purchasing 300 sticker labels and applied them to your 150 double sided signs. The file was then forwarded to the Elections BC Investigations team for follow up.

The Elections BC Investigator reached out to you and obtained copies of the invoices for the signs.

You provided the Investigator with copies of your invoices related to the lawn signs. The invoice and receipts indicated that you spent \$3,312.05 on the 15 double sided lawn signs, and an additional \$339.40 on stickers to update the signs with an authorization statement.

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 her preliminary conclusions. The lawn signs that you distributed and used clearly promoted Elaine McMurray for Kelowna City Council, they were erected during the pre-campaign period, and they did not contain the information required in section 44(1) of LECFA.

I find that both the lawn signs that you erected and used during the pre-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 against your campaign, of up to \$5,000.

In assessing this penalty, I note the following:

- The nature of this contravention was not egregious – the lack of an authorization statement would not likely have misled a reader to conclude another party besides your campaign sponsored the ads. The transparency purpose of the act had been substantially met.
- You indicated that the publication of the advertisements without an authorization statement was inadvertent.
- You indicated that this was your first time as a candidate for public office.
- Once contacted by Elections BC, you quickly and cooperatively amended advertisements where possible.
- You have not previously been the subject of a monetary penalty under LECFA.

Based on these considerations, I make the following finding:

- Elaine McMurray contravened section 44(1) of LECFA, and must pay a penalty of \$100 to the Chief Electoral Officer of BC, 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,

A handwritten signature in black ink, appearing to read "Adam Barnes", with a long horizontal flourish extending to the right.

Adam Barnes
Director of Investigations