

March 20, 2023

EBC File: 15110-30/2022/202

David Scott Piercy
Third Party Sponsor

Via email

ENFORCEMENT NOTICE

Dear Scott Piercy:

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. Your response was taken into consideration below.

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 14, 2022 Elections BC received a complaint that flyers were being distributed through Canada Post in the Cowichan Valley. The flyers opposed the election of Sierra Acton as a candidate for Area B Director for the Cowichan Valley Regional District, and indicated that they were "Paid for by an INFORMED Shawnigan Taxpayer!" The header of the flyers stated:

ANTI-ENVIRONMENT
SIERRA ACTON
Anti Housing, Lies & Deceit

Section 37(1) of LECFA requires a third party sponsor to register with Elections BC prior to conducting sponsored election advertising.

On August 14, 2022, an Elections BC investigator contacted Canada Post, and obtained contact information for the advertiser Scott Piercy. The investigator confirmed with Canada Post that approximately 600 flyers were distributed through the Cobble Hill post office, and that approximately 2,100 flyers were being held at the Shawnigan Lake post office. The Shawnigan Lake post office had put a hold on distributing the flyers, as they were concerned that they might not comply with the local election advertising rules. Canada Post confirmed that they would not distribute the remaining 2,100 flyers.

On August 14, 2022 the Elections BC investigator reached out to you and you confirmed that you had sponsored the flyers. You indicated that you were not aware of the election advertising rules related to local elections, and that Canada Post had not informed you of them when you ordered the advertising. You confirmed that you had no other advertising scheduled.

You provided the investigator with copies of all relevant invoices for printing and distributing the advertisements. The total cost for the ads was \$1,362.29, although because Canada Post stopped delivery of most of the flyers the value of the distributed advertising was likely under \$500.

On January 13, 2023, at the request of Elections BC you 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 their preliminary conclusions. The advertisements were clearly opposed to Sierra Acton as a candidate for Area B Director in the Cowichan Valley Regional District. The flyers suggested that she was anti-environment, anti-housing, and accused her of deceit and lying. The ads did not identify you, or provide a means of contacting you. You paid for the ads to be printed and distributed during the pre-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 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 completely anonymous, and provided no contact information for you as the sponsor – the ads would likely have remained anonymous had Elections BC not intervened.
- The potential reach of the ad distribution was significant – 2,700 flyers distributed in Area B of the Cowichan Valley Regional District could have an impact.
- Your response to the investigation report appears dismissive of the LECFA regulations. You suggest that you were acting as directed by Canada Post, and that the penalty is “a joke” because provincial politicians would not receive a similar penalty. You conclude by stating that you will not pay a penalty.
- Throughout our communication with you, you have indicated that you should not be culpable, or as culpable, because Canada Post failed to notify you of the LECFA advertising rules. Canada Post does not administer LECFA, and does not have a role in notifying you of those regulations. Even so, I note that Canada Post did stop approximately 2,100 flyers from being distributed.
- You registered as a third party sponsor.
 - Had you not registered as a third party sponsor 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.
- You have not previously been the subject of a monetary penalty under LECFA.

Based on these considerations, I make the following finding:

- David Scott Piercy contravened section 37(1) of LECFA, and must pay a penalty of \$1,000 to the Chief Electoral Officer of B.C., under section 68.24(2)(a) of that Act.

Review/Court Relief:

You may request an administrative 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 B.C. Supreme Court from the monetary penalties under section 68.26 of LECFA. You have 30 days to seek court relief. 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