

January 18, 2023

EBC File: 15110-30/2022/200

Mark Sager
Mayor, West Vancouver
Via email

ENFORCEMENT NOTICE

Dear Mark Sager:

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 his preliminary findings. You provided a brief response to the investigator's report, which I have taken into consideration in this letter.

Background:

You were a candidate for Mayor for West Vancouver 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 11, 2022, Elections BC received a complaint regarding election advertisements that promoted your mayoral campaign. The complaint noted that the ads lacked an authorization statement. You contacted Elections BC on the same date to self-report the oversight. You provided Elections BC with images of the flyers, multi paged brochures and door hangers. You confirmed that you had amended the remaining material to add an authorization statement.

An Elections BC Investigator reached out to you and requested copies of the invoices for the ads, copies of the original ads and images of the ads that had been revised and brought into compliance.

Your response indicated that approximately 20,000 flyers and brochures were mailed out, and approximately 100 door hangers were distributed, before the error was identified. Your invoices indicated that the design, printing and mail out cost for the ads was \$18,615.16. The advertising development, printing and distribution was shared with Council candidates Sharon Thompson, Scott Snider, Peter Lambur and Linda Watt.

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 mailed and distributed advertisements clearly promoted you as a candidate for Mayor of West Vancouver, and they were distributed during the campaign period. The ads did not contain an authorization statement identifying your financial agent, nor did they provide a BC phone number, a BC address or an email address to contact your financial agent, as required in section 44(1) of LECFA.

I find that the ads in question 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 you, of up to \$5,000.

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 signs were sponsored by another individual or organization – the transparency purpose of the Act had been substantially met.
- You indicated that the publication of the advertisements without an authorization statement was inadvertent.
- While Elections BC did receive complaints about the ads, you did contact Elections BC to self report the oversight
- You cooperatively amended the ads where possible.
- You have not previously been the subject of a monetary penalty under LECFA.
- The potential reach of the ad distribution was significant.
- You were the primary organizer of the shared advertising.
- You have previously participated in several local government events as a candidate, most recently in 2018.

Based on these considerations, I make the following finding:

- Mark Sager contravened section 44(1) of LECFA, and must pay a penalty of \$200 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". The signature is fluid and cursive, with a long horizontal stroke at the end.

Adam Barnes
Director of Investigations