

March 20, 2023

EBC File: 15110-30/2022/190

Neil Monckton &
Louise Onarheim
Team Kennedy Stewart
Via email

ENFORCEMENT NOTICE

Dear Team Kennedy Stewart:

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 any submissions in response.

Background:

Team Kennedy Stewart, also known as FTKS, FTV, Forward Together, Forward Together Vancouver, Forward Vancouver, and by the ballot name Forward with Kennedy Stewart, is a registered Elector Organization under LECFA and was registered as such during the 2022 General Local Election in Vancouver.

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 28, 2022, and October 4, 2022, Elections BC received complaints regarding automated phone calls and texts from Team Kennedy Stewart, which lacked authorization statements. On October 5, 2022, Elections BC reached out to Team Kennedy Stewart, who indicated it would take steps to ensure all automated text and telephone call scripts would contain an authorization statement. On October 21, 2022, an Elections BC investigator contacted Team Kennedy Stewart to initiate this investigation. The investigator obtained copies of all invoices, and scripts for the phone calls and texts.

The investigator determined that all 13 of the automated phone call scripts that Team Kennedy Stewart used had a complete authorization statement as part of the script, and that four out of the five text scripts included images that contained a complete authorization statement. The investigator identified one text script that did not include an image that contained the authorization statement. The script stated:

Hey (Name). It's David from Forward Together. Just checking in again to see if you can take a campaign sign. We can feel the momentum building, and if you can take a sign, that would really help remind folks to vote.

Thanks again, and let me know if I can arrange a sign

Team Kennedy Stewart spent approximately \$5,500 for all texts, and approximately \$500 for the text script that lacked 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, and
- gives a B.C. telephone number, an email address or a B.C. 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 their preliminary conclusions. The text advertisement promoted Team Kennedy Stewart, Kennedy Stewart for Mayor of Vancouver, and several Team Kennedy Stewart council candidates. Team Kennedy Stewart paid to send the texts during the campaign period, and one out of the five text scripts did not contain an authorization statement as required in section 44(1) of LECFA.

I find that the ad 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 \$10,000.

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 ad was sponsored by another individual or organization – the transparency purpose of the Act had been substantially met.
- All 13 of the telephone scripts, and four out of five of the text scripts contained an authorization statement.
- Team Kennedy Stewart indicated that the failure to include the image that contained the authorization statement with the fifth text script was inadvertent.
- Team Kennedy Stewart cooperatively amended the ads where possible.
- Team Kennedy Stewart is an organization, so the maximum penalty is double that of an individual.
- Team Kennedy Stewart is a registered Elector Organization that primarily supported the incumbent Mayor of Vancouver, and as such should have been aware of the election advertising rules.
- Team Kennedy Stewart has not previously been the subject of a monetary penalty under LECFA.

Based on these considerations, I make the following finding:

- Team Kennedy Stewart contravened section 44(1) of LECFA, and must pay a penalty of \$500 to the Chief Electoral Officer of B.C., under section 68.25(2)(b) 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 B.C. 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