

March 21, 2023

EBC File: 15110-30/2022/150

Kelly Vandenberghe
Via email

ENFORCEMENT NOTICE

Dear Kelly Vandenberghe:

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 responded on March 8, 2022, and your response has been taken into consideration in this notice.

Background:

You were a candidate for Area C Director in the Regional District of the Central Kootenay 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 September 14, 2022, Elections BC received a complaint that you had distributed flyers prior to the start of the campaign period. Distributing election advertising prior to the start of the campaign period is not prohibited under LECFA, however upon further review it was determined that the flyers lacked an authorization statement. On September 15, 2022, Elections BC followed up with you regarding the flyers, and informed you that you were required to include an authorization statement on all election advertising, including flyers. On October 4, 2022 an Elections BC investigator reached out to you, to obtain further information about the ads.

Through the process of the investigation, the investigator determined that you had paid for 100 matte business cards, 1,000 custom rack cards, and 500 standard business cards for a total of \$271.50. You confirmed with the investigator that you corrected the error when you became aware of it.

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 various cards that you purchased promoted you as a candidate for Area C Director. The ads were distributed during the pre-campaign period, and did not contain an authorization statement 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.
- The total value of advertisements was \$271.50.
- This was your first local event as a participant.
- You have explained that the error was because you misunderstood the rules regarding election advertising.
- You were cooperative and corrected the errors where possible.

Based on these considerations, I make the following finding:

- Kelly Vandenberghe contravened section 44(1) of LECFA, and must pay a penalty of \$150 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 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,

A handwritten signature in black ink, appearing to read "Adam Barnes". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Adam Barnes
Director of Investigations