

October 4, 2022

EBC File: 15110-30/2022/134

Micah Haince
Executive Director
Pacific Prosperity Foundation
Via email

ENFORCEMENT NOTICE

Dear Micah Haince:

This letter addresses contraventions under both the *Local Election Campaign Financing Act* (LECFA) and the *Election Act*. Per Elections BC Policy 36.3 *Administration of Monetary Penalties under the Local Elections Campaign Financing Act*, as the same facts apply to contraventions of both acts, the matter will proceed as a single process under Policy 36.3 rather than two separate processes. This letter is your enforcement notice under Policy 36.3.

Elections BC provided you with a copy of the Investigator's report into this matter, which included his preliminary findings. You have not provided any response or comment.

Background:

On August 19, 2022 Elections BC discovered a sponsored Facebook advertisement from the Pacific Prosperity Foundation (DBA Pacific Prosperity Network or PPN) Facebook Page. The ad in question was a video indicating PPN intended to "take back British Columbia from the radical left" followed by images of Vancouver Mayor Kennedy Stewart, Premier John Horgan, and former Attorney General David Eby. The video then placed a red X across their faces. The video included a section focused on things the PPN does not support. It included an image of a media story involving Mayor Kennedy Stewart and the statement "Not woke virtue-signalling", as well as a media story featuring Premier John Horgan and Energy Minister Bruce Ralston with the statement "and crippling taxes".

PPN published this same advertisement through two paid posts between August 17, 2022 and August 19, 2022, when Elections BC reached out to request the ads cease. The ads received between 16,000 and 22,000 impressions, and PPN spent a total of \$342.42 on the advertisements over the three-day period that they were active.

PPN published the ads during the 2022 General Local Elections pre-campaign period (July 18, 2022 to September 16, 2022), and during the Surry South By-Election campaign period (August 13, 2022 to September 10, 2022).

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”.

The *Election Act* contains similar provisions to LECFA. Section 239(1) of the *Election Act* prohibits anyone from sponsoring election advertising unless they are already registered with Elections BC. The act defines election advertising as including campaign period election advertising. The act defines campaign period election advertising as follows:

"campaign period election advertising" means the transmission to the public by any means, during the campaign period, of an advertising message that promotes or opposes, directly or indirectly, a registered political party or the election of a candidate, including an advertising message that takes a position on an issue with which a registered political party or candidate is associated...

Analysis and Determination:

I have carefully reviewed the Investigator's report, and I concur with his preliminary conclusions. The advertisement clearly directly opposed Mayor Kennedy Stewart, who is a candidate in the Vancouver mayoral election. The advertisement also clearly directly opposed the BC NDP, a registered political party who had an endorsed candidate in the Surrey South by-election. The PPN published the advertisements during both the pre-campaign period for the 2022 General Local Elections and the campaign period for the Surrey South by-election.

I find that Facebook advertisements sponsored by the Pacific Prosperity Foundation, also called the Pacific Prosperity Network, from August 17 to August 19, 2022, contravened section 239(1) of the *Election Act*, and section 37(1) of LECFA.

Monetary Penalty:

Because of my finding above, section 250.07(2) of the *Election Act*, and section 68.24(2)(b) of LECFA require me to issue an administrative monetary penalty against PPN, of up to \$10,000 each.

In assessing these penalties I note the following:

- the nature of this contravention was not egregious - the advertisements were published for a short period, at a cost of under \$500.
- PPN has indicated that the publication of the advertisements was the result of a miscommunication within the organization, not a deliberate decision.
- Once contacted by Elections BC, PPN quickly and cooperatively stopped the advertisements.
- PPN has not previously been the subject of a monetary penalty under either act.
- PPN has made it clear that they are not willing to register as a third party sponsor as required by both acts.

Based on these considerations I make the following findings:

- The Pacific Prosperity Foundation, also known as the Pacific Prosperity Network, contravened section 37 of LECFA, and must pay a penalty of \$500 to the Chief Electoral Officer of BC under section 68.24(2)(b) of that act.
- The Pacific Prosperity Foundation, also known as the Pacific Prosperity Network, contravened section 239 of the *Election Act*, and must pay a penalty of \$500 to the Chief Electoral Officer of BC under section 250.07(2) 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 250.08 of the *Election Act*, and 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*, PPN has 40 days from today to pay monetary penalties. Payments for the penalties can be made together or by separate cheques 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

This letter and information about these penalties will be published on Elections BC's website, as required by Part 7 of *Policy 36.3 Administration of Monetary Penalties under the Local Elections Campaign Financing Act*.

Sincerely,



Adam Barnes
Director of Investigations