

Policy



Policy 36.3 Administration of Monetary Penalties under the *Local Elections Campaign Financing Act*

Effective Date: 2022-06-16

Amended:

Responsible Program: Investigations

Approved by: CEO

Date Approved: 2022-06-16

Filed: 15110-00

Scope

This policy governs the administration of monetary penalties under the *Local Elections Campaign Financing Act*.

Policy

The Chief Electoral Officer of British Columbia is responsible for administering compliance with the *Local Elections Campaign Financing Act* and its regulations. The *Local Elections Campaign Financing Act* gives the CEO authority to, with or without a complaint, investigate compliance with that statute. Investigations can lead to a range of outcomes. These include prosecution, disqualification from office or imposition of a monetary penalty. This policy deals with monetary penalties only.

Notes

This policy uses defined terms, which are capitalized throughout. Definitions and general information regarding interpretation can be found in the References section.

This policy creates two processes for imposition of penalties after an investigation has been completed: an **Enforcement Notice** process and a **Notice of Apparent Violation** process.

- The **Enforcement Notice** process applies where an Investigator determines that a Provision has been violated and, applying criteria outlined below, determines that a Penalty is to be imposed in an amount less than the amount specified in Part 1 below. The Subject identified in the related Enforcement Notice may pay the Penalty or request an Adjudicator's review of the Investigator's determination.
- The **Notice of Apparent Violation** process applies where an Investigator has reason to believe that a violation has occurred but, because the Investigator believes any Penalty is likely to exceed the amount specified in Part 1 below, the matter is to be determined at first instance by the Adjudicator.

Both processes ensure that a Subject on whom a Penalty is or may be imposed has a reasonable opportunity to be heard about whether they violated a Provision and about any Penalty.

Part 1 – Determination of Process

After completing an investigation, the Investigator must, having regard to the nature of the alleged violation, the evidence, the relevant circumstances and the factors in section 8 of Part 2, form an opinion as to what Penalty will or may be imposed. If the Penalty is likely to be \$1,000.00 or less, the Enforcement Notice process is to be followed. If the Penalty is to be more than \$1,000.00, the Notice of Apparent Violation process is to be followed.

Part 2 – Enforcement Notices

1. If the Investigator is of the opinion that a Penalty of \$1,000.00 or less is likely, the Investigator must proceed under this Part, and sections 2 to 9 apply. After investigation, the Investigator must determine whether a violation of a Provision has occurred and then prepare an Enforcement Notice, directed to the Subject responsible as named in the notice, containing the information required under section 2.
2. An Enforcement Notice must contain the following:
 - (a) a description of the nature of the violation, including a reference to the Provision that the Investigator concludes has been violated;
 - (b) the name of the Subject responsible for the violation;
 - (c) reasonable details about the circumstances of the violation, including reasonable details of the evidence supporting the Investigator's conclusion that a violation has occurred;
 - (d) the amount of any Penalty to be paid for the violation, with reasonable details about the factors that the Investigator considered under Part 5;
 - (e) the date by which the Penalty must be paid and how it can be paid;
 - (f) information to enable the Subject to request a review by the Adjudicator under section 5.

3. An Enforcement Notice is not complete and final until the Investigator signs the notice. The Investigator must then send the Enforcement Notice to the Subject within 7 days after it is signed. The Investigator's determination in the Enforcement Notice that the Subject has violated the identified Provision, and the Investigator's determination of the Penalty, are deemed to be final and conclusive unless a review is sought under section 5.
4. The Subject must pay the Penalty no later than 40 days after the date of receipt of the Enforcement Notice, unless a request for review is made under section 5 or an application for relief has been made to the Supreme Court of British Columbia within the time required under the Act.
5. The Subject may request a review by the 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.
6. If a review is requested, the Investigator must provide the Adjudicator with the request, the investigation report and the contents of the investigation file. The Adjudicator must then give the Subject at least 14 days to make written submissions regarding the Investigator's determination that the Subject has violated a Provision or the Penalty amount, or both.
7. As soon as practicable after receipt of the Subject's submissions, the Adjudicator must decide whether the Investigator's determination is correct or whether the Penalty amount is appropriate, or both, and issue a written decision, with reasons, to the Subject.
8. The Adjudicator is not bound by the Investigator's determinations or reasons in the Enforcement Notice and must consider the matter afresh and with an open mind.
9. If the Adjudicator determines that the Subject has violated a Provision, the Subject must pay any Penalty that the Adjudicator determines, and section 4 applies with the necessary changes.

Part 3 – Notice of Apparent Violation

1. If the Investigator is of the opinion that a Penalty of more than \$1,000.00 is likely, the Investigator must proceed under this Part, and sections 2 to 6 apply. After investigation, the Investigator must prepare a Notice of Apparent Violation directed to the Subject the Investigator has reason to believe is responsible. The notice must contain the information required under section 2.
2. A Notice of Apparent Violation must contain the following:
 - (a) a description of the nature of the apparent violation, including reference to the Provision that the Investigator has reason to believe has been violated;

- (b) reasonable details of the circumstances of the apparent violation, including reasonable details of the evidence supporting the Investigator's belief that a violation has occurred.
3. The Investigator must provide the Adjudicator with the Notice of Apparent Violation, the investigation report and the contents of the investigation file. The Investigator must then give the Subject named in the Notice of Apparent Violation a copy of the investigation report. The Subject must have at least 14 days to make written submissions to the Adjudicator regarding whether the Subject has violated a Provision and what Penalty would be appropriate if the Adjudicator determines that the Subject has violated a Provision.
4. As soon as practicable after receipt of the Subject's submissions, the Adjudicator must decide whether the named Subject has violated the Provision, decide what Penalty is appropriate and issue a written decision, with reasons, to the Subject.
5. The Adjudicator is not bound by the Investigator's opinion or reasons in the Notice of Apparent Violation and must consider the matter afresh and with an open mind.
6. If Adjudicator determines that the Subject has violated a Provision, the Subject must pay any Penalty that the Adjudicator determines, and section 4 of Part 2 applies with the necessary changes.

Part 4 – Timing of Delivery of Notices

The responsible Investigator or Adjudicator may, with the approval of the CEO, wait until after final voting day to complete an investigation, adjudication, Enforcement Notice or Notice of Apparent Violation if the Investigator or Adjudicator is of the opinion that its completion might be perceived as influencing the election or might harm the CEO's reputation for independence and neutrality in the discharge of the CEO's duties.

Part 5 – Investigation Reports

Upon completing an investigation, the Investigator must, if the Investigator has concluded that there is reason to believe a violation has occurred, prepare a report that includes the following:

- (a) the name of the Subject under investigation;
- (b) a description of the nature of the alleged violation, including a reference to the relevant Provision;
- (c) reasonable details of the relevant circumstances, including details about the evidence supporting the Investigator's determination that a violation has occurred or opinion that there is reason to believe a violation has occurred;
- (d) reasons for the determination or opinion stated in the report.

Part 6 – Factors Related to Penalties

The following factors are to be considered in deciding what Penalty is or may be appropriate for a violation, including for determination purposes under section 7:

- (a) the seriousness of the matter, including the amount of money involved and whether wilful disregard for the law appears to have been involved;
- (b) whether the Subject had been notified about the Act's requirements, or warned about the conduct, before the conduct in question occurred;
- (c) whether the Subject voluntarily reported the matter to the CEO before the investigation started;
- (d) whether the Subject gained any undue advantage from the conduct;
- (e) whether the Subject has been found to have violated the Act before;
- (f) whether there is a pattern of non-compliance with the Act by the Subject;
- (g) any due diligence measures, whether administrative or procedural, that the Subject implemented to avoid or reduce the risk of such violations;
- (h) without being bound by previous decisions, the Penalties imposed in similar circumstances, with a view to establishing a reasonably consistent and predictable approach to Penalties;
- (i) any other factors considered relevant given the Act's purposes.

Part 7 – Publication of Information about Penalties Imposed

The CEO must publish at least the following information on an Elections BC authorized internet site as soon as practicable after a Penalty is imposed, and continue to publish the information on that site for at least one year after general voting day for the next general local election:

- (a) the names of individuals or organizations on which a Penalty has been imposed under Divisions 3, 5.1, 5.2, 5.3 and 5.4 of Part 6 of the Act or under section 76.1 of the Act,
- (b) the section under which the Penalty has been imposed,
- (c) the amount of the Penalty.

References

Definitions and Interpretation

- The following defined terms are used in this policy:

- “Act” means the *Local Elections Campaign Financing Act*;
 - “Adjudicator” means the individual who is the Deputy Chief Electoral Officer (Electoral Finance and Operations), or such other individual designated by the CEO from time to time;
 - “CEO” means the Chief Electoral Officer of British Columbia, and includes an Investigator to whom the CEO has, in writing, delegated powers, duties and functions for the investigation and administration of Penalties;
 - “Investigator” means an individual who conducts an investigation that leads or could lead to imposition of a Penalty, which can include the Director of Investigations appointed by the CEO;
 - “Penalty” means a monetary penalty that is or may be imposed under the authority of the Act;
 - “Provision” means a Provision of the Act the violation of which may lead to a Penalty being imposed;
 - “Subject” means the person, political party, constituency association, or third party sponsor who is alleged to be non-compliant with the Act.
- Any term used in this policy that is not defined above has the meaning given to it in, as applicable, the Act or the *Interpretation Act*.
 - In this policy, words in the singular include the plural and words in the plural include the singular, and for any word or expression defined in this policy, other parts of speech and grammatical forms of the same word or expression have corresponding meanings.
 - The *Interpretation Act* provisions for the calculation of time apply to this policy.
 - A notice or request for review that is delivered by email is deemed to be received by the Subject to whom it is sent on the same day as the email is sent. A notice or request for review that is delivered by courier is deemed to be received by the Subject to whom it is sent on the third clear day after that on which it is dispatched to the courier.
 - This policy does not affect or limit the CEO’s powers, duties or functions under any statute or otherwise at law. The CEO keeps an open mind in respect of exercise of the CEO’s powers, duties and functions, including in relation to investigations and monetary penalties.

Legislation

[Local Elections Campaign Financing Act](#)

[Local Elections Campaign Financing Prior to 2022 General Local Election Regulation](#)

[Local Elections Campaign Financing Regulation](#)

A handwritten signature in black ink, consisting of stylized initials 'AB' followed by a long horizontal stroke.

Anton Boegman
Chief Electoral Officer
June 16, 2022