

## CHAPTER 18

### NAMEDROPPING

#### **False Claim of Support**

[Please also see paras. 17.10 to 17.14 of Chapter 17 especially regarding GC lists.]

18.1 A candidate must obtain **prior written consent** from a person or organisation before using the name or logo of that person or organisation, or a pictorial representation of that person in any of his EAs or activities as an indication of support from that person or organisation. Oral consent is **not** sufficient. [S 27 of the ECICO.] The EAC provides a standardised consent form for this purpose. Any indication of support in EAs, be it a text, a photograph or any other material, must be covered by a written consent from the person or organisation concerned. The written consent is a requirement under the ECICO. It protects the candidates from unnecessary complaints and disputes which may arise if only oral consent is obtained. It also protects the electors from being misinformed as to whether a candidate has the support of a person or an organisation. Prior written consent is required if the inclusion of the name, logo or pictorial representation of a person or an organisation, as the case may be, implies support of the candidate concerned. What amounts to “support” will depend on the circumstances of each case. The question to consider is whether any reasonable man who has seen the pictorial representation would have the perception that the persons appearing in the EA support the candidate.

18.2 It is important to note that it is still an offence even if such an EA contains a statement to the effect that it does not imply support from the person or organisation concerned [s 27(4) of the ECICO]. It is also an offence for a

person to give information which he knows or ought to know is materially false or misleading information to a candidate for promoting or prejudicing the election of a candidate or candidates [s 27(6) of the ECICO].

18.3 To avoid confusion, it is advisable for the written consent to set out clearly whether consent is given:

- (a) by a person in his personal capacity - in which case no mention should be made of any office title which he may have, in the candidate's EAs and campaign activities;
- (b) by a person in his official capacity - in which case his office title may be used by the candidate concerned for the said purposes; and
- (c) by an organisation (which may be signed by an authorised person such as its director, chairman or chief executive, etc.) - in which case the name of the organisation may be used by the candidate concerned for the said purposes.

18.4 Care must also be exercised in the use of the office title of an individual and this should be cleared with the person concerned when seeking his written consent. In the case where an office-bearer of an organisation wishes to use his office title to support a candidate, he should be careful not to give the impression that it represents the support of the whole organisation except where a decision has been so taken in a general meeting of all the members of the organisation. This will prevent dispute and dissatisfaction amongst the members. Depending on circumstances, the approval of an organisation or a committee may or may not be needed if an office bearer uses his office title to support a candidate. If a supporter includes in an EA bears the title of "the principal of a school" (for example, "Chan Tai Man, the

Principal”) or “chairman of an owners corporation” (for example, “Chan Tai Man, Chairman of Owners’ Corporation”), it would not be necessary for the candidate to seek the consent of the owners’ corporation or the school concerned since there is no specific mentioning of which school or owners’ corporation. However, it would be desirable for the candidate to seek the organisation’s prior written approval as well if the EA is posted in the building or the school in which he is serving.

18.5 When a candidate has obtained consent of support from a person who holds a certain position in an organisation, he must make sure that in his EAs he does not misrepresent that he has the support of the organisation. He must ensure that his EAs do not give any misleading information that he has the support of the organisation as opposed to the person who holds the position in the organisation. When he has the support of an organisation, he must ensure that his EAs do not represent or give a misleading impression that he has the support of all the members of that organisation, unless the decision of that organisation in giving him support was made at a meeting of all its members present and voting.

18.6 Consent of support in writing by an organisation must be approved by the governing body of the organisation or by a resolution of the members of the organisation passed at a general meeting [s 27(5) of the ECICO]. Candidates should note that the Home Affairs Department has its own guidelines for Mutual Aid Committees and their office bearers in respect of their giving consent of support to candidates. A copy of such guidelines can be found at **Appendix P**.

18.7 Consent can be given to two or more candidates or two or more lists of candidate(s) of a GC, even if they are competing in the same constituency, although that may cause confusion. A consent given can also be revoked. In case of a revocation, in order to avoid dispute, it is advisable for

the person or organisation who has revoked the consent to send a notice or copy of the revocation to the candidate concerned and to the RO for his constituency.

18.8 Once a consent has been revoked, the candidate concerned should be careful to cease immediately using any EA which contains the support of the person or organisation who has made the revocation. The costs incurred for the production of EAs bearing such support which have been used before revocation should still be regarded as the candidate's election expenses and be declared in the return and declaration of election expenses and donations.

18.9 On the question of whether expenditure incurred by an EA will need to be borne by candidate A if candidate A's name or photograph appears in the EA of candidate B to indicate support for candidate B, this would depend on whether the publicity material in question has explicitly or implicitly promoted the election of candidate A. There may be 2 different scenarios in such cases:

#### **Scenario A**

If the appearance of candidate A in candidate B's EA is solely to indicate support for candidate B but not to promote the election of candidate A, the EA should not be treated as a joint EA. The election expenses incurred should be counted as candidate B's election expenses only, but not as candidate A's. Candidate B has to obtain the prior written consent of support from candidate A before using candidate A's names or photographs in his EAs [s 27 of the ECICO].

## **Scenario B**

If candidate B wishes to publish the EAs for promoting his candidature and that of candidate A as well, he must obtain prior written authorisation by candidate A as his election expense agent and the expenses so incurred will have to be borne by the candidates A and B in equal or unequal shares as their respective election expenses, to be calculated by the proportion of the size of the portion advertising each.

18.10 It is not uncommon for candidates to put photographs in their EAs to show their past activities. However, it may be possible for electors to believe that those persons appearing in the photograph support a particular candidate when they receive such EAs. To minimize misunderstanding, for instance, if an EA carries a photograph of the candidate attending an activity with other attendees, a caption specifying the particular nature of the event could be added underneath the photograph in such a way that will not imply, or likely to cause electors to believe, that the candidate has the support of the other people appearing in the photograph. If the photograph is likely to cause electors to believe that the candidate has the support of the other people appearing in the photograph, it is advisable that prior written consent of support should be obtained by the candidate.

18.11 To avoid misleading the electors to believe that a candidate has obtained support from a certain person, organisation, government agency or department, which is not the case, a candidate should not attach any materials published by any such person, organisation, government agency or department together with his own EAs.

## **Form of Consent**

18.12 The standard form “**Consent of Support**” is at **Appendix O**. It should be noted that the form is designed to cover a specific constituency in a particular election. A candidate who subsequently switches to another constituency should seek afresh the consent from the person or organisation concerned.

18.13 There are occasions (as allegations and complaints were received) requiring confirmation of the compliance of the law by a candidate. Therefore, every candidate is **required to deposit a copy** each of the **completed consent forms** with the relevant RO **before** the display, distribution or otherwise use of the relevant EA [s 102(10)(b) of the EAC (EP) (LC) Reg]. The relevant RO will then be in a position to answer such enquiries, thus saving the trouble and sometimes the embarrassment of the candidates. Candidates are also **required to notify** the relevant RO in writing of any **revocation** of consent. Such consent forms and notices of revocation (with the identity document numbers of the persons involved obliterated) will be made available for public inspection at the office of the relevant RO.

## **Penalty**

18.14 It is an illegal conduct under the ECICO for a person to make false claim of support (ie a claim without **prior** written consent from the person or organisation concerned). For details of penalty and sanction, please refer to para. 17.4(b) and Part VII of Chapter 17.