

Local Government Elections Task Force Campaign Finance Rules for Other Voting Discussion Paper

April 2010



Local Government Elections Issue: Other (Issues) Voting

Issue Summary

“Other voting” refers to voting on a bylaw or other matter for which assent of the electors is required or sought. As electors are voting for a proposition rather than an elector organization (a local political party) or candidate for office, other voting is sometimes referred to as “issues voting”. Other voting generally refers to referendum voting, although local governments can also use an “alternative approval process” (AAP), also known as a “counter-petition”. AAPs measure public opposition to bylaw proposals through a petitioning rather than a direct voting process, although AAPs can lead to voting if more than 10% of the electors petition against a proposal.

Certain prescribed classes of bylaw can only proceed if first approved through required other voting processes (see Appendix A). Local governments can also use other voting in a non-binding consultative manner to gauge public opinion. Referenda typically coincide with local elections, although they can occur anytime. AAPs can happen anytime, and follow public notification rules to inform electors of their opportunity to submit elector response forms on an issue.

The *Local Government Act* and the Vancouver Charter specify that other voting is to be conducted in the same manner as an election. For example, election offences and prohibitions against certain election advertising on the day of a vote both apply to other voting. At present, only those aspects of the *Local Government Act* relating to the voting process apply to other voting.

Campaign finance rules exist for provincial and local government elections and the provincial *Recall and Initiative Act*, but not for other voting for local governments. Provincially, advertising sponsorship rules were created for the BC electoral reform referendums in 2005 and 2009.

Other voting campaign processes have generated interest amongst the public and local governments. Controversial referenda and AAPs have drawn more attention to the rules for such processes and a proposed resolution from the City of Vancouver has highlighted the importance of transparency and accountability in other voting campaign processes.

Consideration of campaign financing rules in relation to other voting involves principles of transparency and accessibility. The timeliness of transparency is also of concern. Some argue that campaign finance disclosure has greater bearing on a candidate, who may be disqualified from holding office for failing to file a disclosure report. They point out that if campaign financing as it applies to elections were applied to issues voting, it would reveal who supports or opposes a bylaw proposal after a vote has taken place when little could be done to change the outcome of the vote. Others argue that campaign finance disclosure could reveal patterns of support and opposition for certain initiatives within a community, and provide electors more information for their future decision making.

The application of campaign financing to other voting for local governments would also involve consideration of other principles and issues – for example, consistency in the application of legislation, while remaining flexible for local governments of all types and sizes. Finally, the purpose that campaign financing rules would serve would need to be weighed against the possibility that additional

requirements on those involved in other voting campaigns may limit their accessibility to the democratic process.

Background and Context

Other voting and campaign finance legislation in BC

Local Government

Part 4 (Other Voting) of the *Local Government Act* states that unless otherwise provided, the legislative provisions governing “Electors and Elections” (*Local Government Act*, Part 3) apply to other voting as if other voting for the voting area were an election for a jurisdiction. However, the campaign financing rules do not presently apply to other voting because the campaign financing legislative scheme is tied to “candidates”, “elector organizations” and “campaign organizers” who are not participants in the other voting process.

“Campaign organizers” are groups or individuals that create and implement local government election campaigns that augment the election campaign of one or more candidates or elector organizations. A campaign organizer may do this by promoting or opposing a candidate or an elector organization, or point of view associated with a candidate or an elector organization. For the 2009 UBCM convention, the City of Vancouver proposed a resolution requesting that the definition of “campaign organizer” be extended to include those who campaign for or against other voting issues. As this resolution was not debated at the convention due to time constraints, the UBCM executive referred the resolution to the Local Government Elections Task Force for consideration.

Campaign financing disclosure is governed by the *Local Government Act* (with parallel provisions in the *Vancouver Charter*) and applies to elections for municipalities, regional district electoral areas, boards of education¹ and a number of other local elected offices. Under local government elections campaign financing disclosure rules, all candidates and elector organizations are required to file disclosure statements with the local government within 120 days of general voting day. A campaign organizer need not identify itself to the chief election officer unless it incurs campaign contributions or election expenses greater than \$500. If required to file disclosure statements, campaign organizers must also do so within 120 days of general voting day. Campaign finance disclosure documents are made available to the public. Candidates, elector organizations and campaign organizers that do not file disclosure statements are subject to penalties including disqualification, fines, imprisonment, and prohibition from involvement in future elections.

Provincial

The provincial *Election Act* also establishes that government may conduct non-binding plebiscites (referenda) to gauge public opinion on a matter. Plebiscites are rarely held (the most recent one was in 1972), and are generally regionally-based. The Act is silent regarding the application of campaign finance rules to plebiscites.

¹ Part 4 of the *School Act* prescribes rules for School Board Trustee elections.

The *Referendum Act* does not address campaign finance issues with provincial referenda, unless required by Cabinet regulation. Regulations were created for the 2005 electoral reform referendum, but a separate Act was enacted for the 2009 electoral reform referendum. The *Electoral Reform Referendum 2009 Act* and Regulation provided for campaign financing rules largely parallel to the *Election Act* and established that the *Referendum Act* and Regulation did not apply. Thus, financial agents and opponent and proponent groups were defined, duties and reporting requirements established and rules put in place regulating referendum advertising and how public monies related to the referendum could be used.

The *Recall and Initiative Act* includes campaign finance and third-party advertising rules for issues campaigning. An initiative involves electors petitioning to require the provincial government to take a particular action. The initiative process is provincial in scope, and voter-driven. Initiative participants campaign for signatures to a proposal. When 50% of eligible voters are in favour of an initiative, with at least 50% in two-thirds of all electoral districts, the initiative will be introduced as a Bill in Legislature.

The *Recall and Initiative Act* requires financial agents to be appointed on behalf of initiative petition proponents and opponents. These financial agents must ensure proper recording and reporting of all initiative petition expenses and contributions. The *Recall and Initiative Act* also limits the value of expenses that can be incurred by proponents and opponents, using an amount set by Cabinet regulation multiplied by the number of registered electors.

Other voting and campaign finance legislation in other jurisdictions

Other provinces have legislation for local government other voting, including a process similar to AAPs in Quebec. It appears that Ontario is the only province with campaign finance rules applicable to other voting. Ontario law requires individuals, corporations or trade unions who wish to incur expenses towards local referendum campaigns to register with the clerk of the municipality in question, and file a financial report no later than 31 days after the vote. This form includes disclosure of campaign contributions, income, expenses, campaign surplus/deficit, contributed goods and services, and the spending limit issued by the clerk². Finance rules, such as those regarding what kinds of expenses are subject to the spending limit, are the same as those for candidates for office. However, campaign expense limits are lower for issues voting than for a local election. Ontario's Regulation under the *Municipal Elections Act* mandates a spending limit of 50 cents per elector for ballot voting campaigns (elections campaign limits have a base amount and 85 cents per elector). Questions may also be put on the ballot by the Minister of Municipal Affairs and Housing. These questions are not binding, and campaign spending in relation to these questions is not regulated.

² The form may be viewed at [http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetAttachDocs/017-10552P~2/\\$File/TXT_10552P_Form8.html](http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetAttachDocs/017-10552P~2/$File/TXT_10552P_Form8.html)

Recent other voting experiences in British Columbia

Cranbrook's East Hill Boundary Extension raised issues in the minds of some regarding other voting and campaign finance. City council proposed to significantly increase the size of Cranbrook's current geographical footprint. Approval of the electors was sought by AAP in the summer of 2009. The AAP process garnered more than twice the signatures needed to require the matter to be put to the electors as a referendum. When the issue went to referendum, the "no" side won by 35 votes.

There were public campaigns for and against the boundary extension, with the "yes" side having considerably greater advertising presence. The City of Cranbrook placed a two-page advertisement in the local newspaper to ensure that accurate information on the City's rationale for the boundary expansion was disseminated to the residents of Cranbrook, and to counter claims that had been made by the "no" side. As campaign financing or advertising rules do not exist for other voting, it is not possible to assess how much each side of the issue spent, or who contributed to either campaign.

More recently in the City of Victoria, an AAP process for a \$42 million loan authorization bylaw to replace the Johnson Street Bridge was successfully counter-petitioned. Opponents to the bylaw marshaled financial resources and signatures, forcing the City to abandon the initiative or take the matter to a referendum.³ As with Cranbrook, it is impossible to assess who financed the counter-petition campaign, or by how much.

While high-profile cases such as Cranbrook's East Hill Boundary Extension and the Johnson Street Bridge Loan Authorization Bylaw in Victoria were contentious enough to garner media attention, other voting initiatives are rarely that controversial. Some recent examples include:

- Loan authorization bylaw for fire hall Renovation in North Saanich: \$1,680,000
- Loan authorization bylaw for new public library on Salt Spring Island: \$2,750,000
- Loan authorization bylaw for new bridge in the District of Hope: \$5,000,000
- AAP for Rossland boundary extension to include two mid-size lots from outside municipal boundaries

A study of AAP processes was conducted in 2000, a time when only 5% of the electorate, rather than 10%, was required to successfully counter-petition a bylaw. Only 7 out of 55 (13%) AAP processes collected enough signatures to stop a bylaw from being passed without a referendum. Only 4 of these 7 cases proceeded to referenda and of these only 2 were successful in obtaining the assent of the electorate.

³ A referendum was not sought because the deadline for grant funding would have passed by that point.

Proposed UBCM resolution on other voting

In 2009, the City of Vancouver proposed a requirement for disclosure on other voting campaigns, arguing that the public should be entitled to know the source, amount and nature of all contributions to these campaigns. Vancouver proposed amendments to both the *Local Government Act* and the *Vancouver Charter* prior to the 2011 general local elections.

The Resolutions Committee advised that UBCM membership had not previously considered amendments to the definition of “campaign organizer” to apply explicitly to other voting. The committee recognized the importance of transparency and accountability in other voting processes, but also wondered about the implications of additional disclosure laws on the capacity of local government staff when administering such processes.

The UBCM referred Vancouver’s recommendation to amend the definition of “campaign organizer” to the Local Government Elections Task Force.

Discussion

Other voting is not an election

Before addressing the principles underpinning campaign financing disclosure with respect to other voting, it is important to explore the similarities and differences of other voting processes compared to elections processes. Other voting does not provide for anyone getting into office, nor is it a regular occurrence. There are typically no regular participants who campaign in subsequent votes, and the issues themselves are generally one-time occurrences. The role of local government in an other voting process is also different than in a general election.

In an election, candidates compete for office and the local government’s role is to administer the election process. In other words, the local government is not an active participant in the campaign. However, in other voting processes, local governments often put forward proposals and advocate specific action on a particular matter (such as a loan authorization to fund a new public square). On some of those proposals, they are *required* to seek elector approval to move an issue forward. In cases such as boundary extensions, the proposed bylaw may be the result of a request by property owners living outside the municipal boundary.

There are sometimes three sides to an other voting issue: citizens for, citizens against, and the local government perspective. At times the local government may present information both for and against the proposals. As they are typically advocating action, however, local governments are not always neutral participants in the process. This is in contrast to the provincial process where referenda and

initiative votes are administered by an independent office of legislature - Elections BC (the same office that administers provincial elections).

Local Government Involvement

When a local government advocates a position on an other voting issue, questions may arise with regard to a local government's role in other voting campaigns. The city of Cranbrook was said to have spent a significant amount of money on advertising, including a two-page advertisement in the local newspaper. Some local residents questioned whether this advertising was an appropriate action for a local government to take. However, local governments are required by law to give notice to the public regarding other voting processes and may wish to provide additional information to facilitate an informed vote, or for the purposes of public education.

The boundary between providing information on other voting initiatives, and advocating a position, is not always a clear one for local governments. Local governments are comprised of elected officials with a mandate to make decisions and move initiatives forward. Proposed bylaws that are subject to other voting are often products of election mandates, and some would argue it to be entirely appropriate that a local government incur expenses to educate the public about its position on these proposals. Others argue that local government advertising should be limited and they should be treated the same as other campaign participants and be subject to campaign financing disclosure rules. Conversely, others would argue that local government spending is already a matter of public record and publically available, so no additional disclosure requirement is necessary.

Transparency and accountability

Campaign financing systems reflect the relative importance of certain core principles. Emphasizing or favoring one principle may require de-emphasizing another and so deciding which rules to implement requires consideration of the complex interplay between and among different principles. Rules concerning campaign disclosure are based on the principles of campaign financing⁴. These principles exist in balance with one another, such that some principles may feature more prominently for some elements. In campaign finance disclosure the key principles are those of transparency, accountability and accessibility.

The principle of transparency is central to campaign disclosure rules. Those who argue for the application of campaign finance rules to other voting processes say that voter decisions will be better informed by the transparent accounts of who is actively supporting or opposing other voting issues, and the amounts they are investing in their side of an issue. Others argue diverse reasons may exist for

⁴ Principles underpinning campaign financing rules are discussed in greater detail in the "[Overview of Campaign Financing](#)" discussion paper.

supporting or opposing a bylaw, and therefore whatever picture of political interconnectedness that emerges as a result of campaign finance reporting is not necessarily accurate or significant. An example of this would be when an individual opposes an AAP, not because they disagree with the proposed bylaw, but because they deem the issue important enough to demand a full referendum.

An objective of transparency is to hold individuals or organizations accountable for their activities in a way that influences their behaviour. Some argue that campaign finance rules would make participants accountable to the public for their actions during other voting campaigns. They hold that proponents and opponents to other voting issues will be more aware of what contributions are accepted and how monies are spent if they know that the details about contributions and expenses for other voting campaigns will be subject to public scrutiny.

Others argue that because financial disclosure takes place after the other voting process is complete, the penalties for reporting offences could only impact against individuals involved in the process and would not affect the outcome of a vote. Thus, rules for campaign finance in other voting may not significantly change the way participants in the other voting process operate.

Accessibility and the electorate

The principle of transparency needs to be balanced with the principles of accessibility and accountability, especially in terms of timely access to campaign finance information. *When* campaign finance information becomes available to the public is more critical to other voting than with elections. An elected candidate may be penalized to the point of disqualification from office upon failure to make the required campaign finance disclosure. An other voting issue, once decided by the electorate, may have already been materially acted upon by the time campaign finance disclosures have been submitted. Some would argue that post-vote disclosure does not ensure that information is accessible to the public in a relevant, timely manner.

At the same time, some argue even when campaign finance reporting takes place after the other voting process has completed, there could still be repercussions from campaign financing decisions, and that the rules could ensure accountability (e.g. organizations sponsoring issues voting campaigns could be held accountable through penalties that disallow their participation in subsequent elections). Knowledge of campaign financing may influence the electorate in subsequent other voting processes and encourage greater involvement in the democratic process.

Others might argue that it is not campaign finance disclosure that is most important (given that it would be after the fact), but rather other potential restrictions, such as third party sponsorship advertising rules, that could make some information about who is involved in other voting issues available to the electorate prior to a vote.

Accessibility and other voting campaign participants

Campaign disclosure rules might limit accessibility to other voting by creating administratively burdensome and onerous requirements for participants in the process. Other voting processes follow shorter timelines and the campaigns generally cost less than those for an election. When faced with the complexity of financial disclosure, participants may feel there is not enough time, or that the democratic process is not worth engaging in when the burden of disclosure outweighs the relatively small investment in the campaign itself.

Some argue that the existing legislation is sufficient. In the case of Cranbrook's boundary extension, the opposition were said to have spent less than the proponents of boundary expansion. Despite this, the "no" campaign succeeded in both the AAP and narrowly won the referendum. Some argue this as proof that other voting is engaging citizens in the discussion of issues from which important decisions are being made. From this perspective, campaign finance rules may not materially impact the process and, if onerous, could risk creating barriers to accessibility.

Other Considerations

AAPs are counter-petitions, not voting processes

AAPs are not voting processes, but rather citizen organized counter-petitions designed as a "litmus test" of elector opinion. Thus, rules created for local referenda processes may not easily translate to AAPs. AAPs are intended to test electorate response with greater economy and efficiency than holding a vote on an issue. Some would argue that creating administrative burdens for AAPs could be counter-productive to their original purpose, diminishing the flexibility that AAPs lend local governments in making important decisions. Others would argue that campaigns for issues brought to the electorate by AAP can expand to referendum campaigns if the AAP fails. They argue that having disclosure rules in place for AAP campaigns would better inform the public about who stands behind what issues in subsequent referenda.

Other tools

Other tools that have been raised at the Elections Task Force may have implications for other voting as well. For example, if sponsorship requirements were imposed for election advertising, consideration could be given to the application of such rules to other voting. Advertising sponsorship rules could ensure timely information about who is involved in other voting campaigns (e.g. if the local government sponsored an ad in the newspaper).

If campaign expense limits were to be considered for elections, they might also be considered for other voting. It is argued that such limits "level the playing field." Those who argue for their application to

other voting initiatives express concern that some within other voting initiatives are better able to marshal resources to dominate the public debate, particularly with media advertising. Counter to this position, Cranbrook's East Hill Boundary Extension proposal illustrates how well-organized grassroots opposition can succeed in other voting.

Establishing an appropriate campaign limit for other voting would also need to balance consistency with enough flexibility to suit each context. The nature of such limits would need to be considered. While a per capita basis may be equitable, some costs may not be appropriately captured in that type of approach (e.g. fixed costs that do not vary by population).

Consistency and Flexibility

Creating rules that apply to all other voting processes across the Province may yield significant challenges to smaller local governments faced with administering and enforcing the rules. Is this an area where local choice should be provided? Enabling local governments to create their own bylaws to regulate other voting processes within Provincial guidelines could be one method of mitigating the problem of local capacity.

Direction Questions

The following questions are intended to assist the Task Force to determine whether it wishes to give further consideration to any aspects of campaign finance disclosure or other policy tools with respect to other voting. If so, more research and analysis will be required.

Principles

- Would campaign finance rules make any material difference to the present other voting process given disclosure occurs after voting, and also given the one-time nature of most bylaw proposals?
- Would imposing campaign finance rules on other voting participants diminish accessibility to the democratic process?

Practical considerations

- Are there other, less onerous approaches to achieve greater accountability and transparency in other voting processes (e.g. sponsorship disclosure)?
- Do recent examples of other voting processes represent common experiences, or are they exceptions?
- If rules are applied to other voting, should they also apply to AAPs?

Further work

- Is any further work required on this issue?

APPENDIX A: LOCAL GOVERNMENT DECISIONS REQUIRING THE ASSENT OF THE ELECTORATE OR AN ALTERNATIVE APPROVAL PROCESS

REQUIREMENT FOR PUBLIC APPROVAL OF LOCAL GOVERNMENT DECISIONS		
Decision	Application to local governments	Method of elector approval
Boundary Reduction	Municipalities	Vote
Reducing size of council	Municipalities	Vote
Establishment of municipal forest reserve	Municipalities	Vote
Disposal of water or sewage system	Municipality and regional district	Vote
Fluoridation of water	Municipalities and regional districts	Vote
Granting franchises	Municipalities	Vote or alternative approval process
Boundary Extension	Municipalities	Vote or alternative approval process
Sale or lease of municipal forest reserve	Municipalities	Vote or alternative approval process
Change of municipal classification	Municipalities	Vote or alternative approval process
Development works agreement	Municipalities	Vote or council initiative
Merger of local service areas	Municipalities	Vote or alternative approval process
Unexpended funds	Municipalities and regional districts	Vote or alternative approval process
Loan authorization bylaws	Municipalities and regional districts	Vote or alternative approval process
Disposal of certain utilities other than a water or sewage system	Municipalities and regional districts	Vote or alternative approval process
Liabilities under agreement	Municipalities and regional districts	Vote or alternative approval process
Removal of reservation or dedication of land as a park, public square or heritage	Municipalities and regional districts	Vote or alternative approval process
Exchange or other disposal of park land	Municipalities and regional districts	Vote or alternative approval process
Regional district service area bylaws	Regional districts	Vote, petition or alternative approval process
Local service area	Municipalities	Vote, petition or council initiative