

# Local Government Elections Task Force Campaign Contribution Limits Discussion Paper

January 2010



# *Local Government Elections Issue:*

## *Campaign Contribution Limits*

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### **Issue Summary**

Contribution limits are restrictions on one or both of *who* can contribute and *how much* can be contributed in relation to an election campaign. The current campaign finance systems in British Columbia (for both provincial and local elections) do not impose limits on the amount that a donor may contribute and it is generally true that anyone can contribute, although the provincial system includes some specific prohibitions. The lack of contribution limits does not mean that there are no rules in relation to contributions in British Columbia. In fact, both the provincial and local election legislative schemes contain provisions related to *how* contributions are made; however, there are those that feel contribution limits should be included in British Columbia's local government campaign finance system.

Which rules are implemented in a campaign finance system ultimately depends on what core democratic principles a jurisdiction is trying to emphasize. Fairness, flexibility, consistency, accessibility, transparency and accountability are the principles underpinning campaign finance rules. Jurisdictional system variation stems in part from the complex interplay between these core principles. Emphasizing one principle sometimes means de-emphasizing another and it is this balance that determines which rules are ultimately implemented. For example, overly complex financial rules aimed at increasing transparency and accountability may decrease general accessibility and flexibility. Currently, the local government election system in British Columbia attempts to promote the core principles using a variety of campaign finance provisions (other than contribution limits) including rules about how contributions are made, accepted, recorded and disclosed.

Those in favor of contribution limits assert that limits would increase fairness, broaden the support base and reduce undue influence concerns by taking large donations out of the equation. Those in favor of limits also assert that well designed rules could mitigate the risk of increased "flow through" contributions and that the benefits of contribution limits outweigh the administrative challenges. Those against contribution limits argue that their imposition would be counterproductive since they would encourage attempts to circumvent the rules ultimately resulting in less transparency. They argue further that provisions prohibiting such behavior would be difficult to enforce and that in the end, the additional administrative burden would not be justified.

This paper provides an overview of the current regulatory environment and seeks to identify some of the key considerations related to imposing contribution limits in British Columbia local government elections. The paper ultimately asks the Task Force for directional guidance on whether or not any further work related to contribution limits is required.

### **Background**

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**Document for Discussion:**

Campaign Contribution Limits

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Local government elections are governed by the *Local Government Act* and parallel provisions in the *Vancouver Charter*<sup>1</sup>. Under the legislation, a campaign contribution is defined as the amount of any money or the value of any property or services provided to a candidate, elector organization or campaign organizer for use in an election campaign. Campaign contributions therefore include both monetary contributions (i.e. any contribution that can be deposited into the campaign account) and “in-kind” contributions which, for example, include things like free advertising or printing, the donation of office supplies or the use of office space.

There are currently no contribution limits in local government elections in British Columbia. There are also no contribution amount limits in provincial government elections in B.C., although in provincial elections, some types of organizations are prohibited from contributing at all (e.g. unregistered political parties; unregistered constituency associations; charitable organizations, federal political parties). However, generally speaking, anyone can contribute any amount to the candidate or affiliated organization of their choice in either local or provincial elections.

Campaign financing schemes reflect the relative importance of certain core principles in a jurisdiction. 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. For example, complex recording and reporting provisions aimed at promoting the principles of transparency and accountability may lessen general accessibility for the average citizen. Similarly, advertising expense limits or third party advertising limits may serve the principle of fairness, but are seen by some as offending the broader democratic principle of free speech.

Both the provincial and local systems in British Columbia attempt to promote the core democratic principles of accessibility, consistency, fairness, transparency, flexibility and accountability with a variety of campaign finance provisions. Because the local government campaign finance system emphasizes transparency and flexibility, it is primarily a disclosure-based system designed to function in a wide range of communities. Transparency is promoted by requiring that contributions be recorded in detail (name of contributor, date received etc.), disclosed and ultimately made available for public scrutiny albeit after the election. The local government system also includes a number of other “transparency” rules about *how* contributions are made. For example, anonymous contributions cannot exceed \$50 and all contributions can only be accepted by the financial agent who must deposit monetary contributions into a campaign account. The local government campaign finance system also emphasizes flexibility by being able to function in a wide range of communities. Different communities and their local governments may have different circumstances and needs.

The provincial government system is similar in its basic emphasis on recording and disclosure requirements in relation to contributions. At the provincial level there are no contribution amount limits but there are more robust rules about how contributions are made, accepted and disclosed to enhance transparency and accountability.

In other Canadian jurisdictions only Manitoba, Ontario and Quebec limit or restrict campaign contributions in local government elections via provincial legislation. Some Canadian cities have authority under their own legislation to impose campaign finance rules and some have imposed such

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<sup>1</sup> School Board elections are also conducted using these provisions.

limits<sup>2</sup>. Some provinces do not have any provincially mandated local government campaign financing rules<sup>3</sup>. Other provinces provide legislative authority for municipalities to set their own campaign finance rules by bylaw<sup>4</sup>. At the federal, provincial and territorial level there is a trend towards contribution amount limits and source restrictions. Canada, New Brunswick, Nova Scotia, Quebec, Ontario, Manitoba, Alberta, NWT and Nunavut have such restrictions.

There has only been one UBCM resolution (2003) related to campaign contribution limits (specifically calling for contribution source restrictions prohibiting union and corporation donations)<sup>5</sup>. The resolution was not endorsed by UBCM members. Media coverage of local government campaign finance issues increased following the 2008 British Columbia local government elections. A portion of the campaign finance coverage related to contributions – generally concerns or questions about where campaign contributions are coming from (i.e. foreign, corporate or union) as well as high amounts being donated from single sources and the associated undue influence concerns. While contribution issues attracted more media attention following the 2008 elections than usual, it is important to note that relatively speaking, the concerns do not appear to be widespread considering that over 1,600 elected positions (for over 250 government bodies) are filled using the campaign finance provisions of the *Local Government Act* and the *Vancouver Charter*.

## Discussion

This discussion will not attempt to set out contribution limit options or specific design features of a possible contribution limit system. Rather it will provide a conceptual overview of the case for and against such limits followed by a brief discussion of key considerations that would be required if contribution limits are pursued.

When considering contribution limits it is important to remember there can be two components to a contribution limits scheme:

- Restrictions on *who* can contribute – sometimes referred to as “source restrictions”, and
- Limits on *how much* can be contributed.

One or both of these components may be implemented as part of a campaign finance system and accordingly, the concepts have been split in the following “case for” and “case against” analysis. Generally speaking, those in favour of contribution limits argue that they are necessary to reduce the

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<sup>2</sup> Both the City of Toronto and the City of Winnipeg have implemented contribution limits using their own legislation. In Winnipeg the maximum contribution an individual, corporation, organization or trade union can make to a council candidate is \$750 and \$1,500 for mayoralty candidate. In Toronto, a councillor candidate can accept a maximum of \$750 per contributor, and mayoralty candidates can accept a maximum of \$2,500 per contributor – note that the City of Toronto has recently prohibited corporate and union contributions.

<sup>3</sup> Alberta, Saskatchewan, New Brunswick, PEI, Yukon, Northwest Territories, and Nunavut do not have provincially mandated local government campaign financing rules.

<sup>4</sup> Alberta and Saskatchewan allow local governments to establish their own bylaws regarding campaign financing but local governments in these two provinces have not imposed contribution limits.

<sup>5</sup> In 2009 the City of Vancouver put forward a resolution calling for amendments to the *Vancouver Charter* and the *Local Government Act* to impose contribution source restrictions and contribution amount limits. The resolution was not debated by UBCM members and accordingly was not endorsed by UBCM.

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buying of influence, broaden the support base and ensure that local governments are responsive to the local electorate. Those against contribution limits assert that such limits are not the most effective way to protect the principles of fairness, accountability and transparency. Rather they argue it is better to focus on and encourage open, honest and complete disclosure and enforcement as part of the election process while using the existing conflict of interest rules that are applicable to elected officials for day-to-day ethical conduct matters. Furthermore, those against contribution limits question whether local government elections should be used as a “test case” for the effectiveness of contribution limits in the election process in B.C.

## Who Can Contribute?

Restricting who can contribute in local government elections involves making determinations based on the nature of the subject body (e.g. local vs. non-local (BC); foreign vs. Canadian; incorporated vs. unincorporated; individual vs. organization).

### The case for restricting who can contribute

#### *Local government should be accountable and responsive to the community*

Those in favor of source restrictions argue that campaign contributions from outside the community are problematic because local government is intended to be responsive to the local electorate. Indeed, some question why a foreign or non-local contributor would have an interest in local politics other than an interest in exerting undue influence on candidates. Non-local contributors generally do not bear the costs of the local decision making process and should therefore not be permitted to make local political campaign contributions.

#### *Local government should be accountable and responsive to the local electorate*

Those in favor of source restrictions argue that Local elections must be citizen-focused, citizen-centred and citizen-driven. Democracy is about providing citizens with a level playing field in the political arena. Unions and corporations for example do not vote and should therefore not be permitted to contribute in local election campaigns. Campaign finance rules should be designed to require candidates to engage directly with individual citizens to gain campaign contributions and votes.

### The case against restricting who can contribute

#### *Restricting who can contribute will reduce transparency*

Those against source restrictions assert that restricting who can contribute could encourage interested but ineligible people (e.g. non-locals) to find workarounds. Under the current system, because anyone can contribute, there is very little incentive for a non-local contributor to conceal a contribution by flowing it through one or more “authorized” contributors. In the end, the current approach encourages open and honest disclosure which is more likely to be effective in providing transparency than stringent contribution restrictions that are difficult or impossible to enforce.

### *Challenges associated with picking winners and losers*

Those against source restrictions point out that from a design and implementation standpoint, there would be challenges in deciding exactly who can or cannot contribute to local government election campaigns. For example, how would the choice be made to allow or prohibit contributions from among non-residents, non-resident property owners (since they have the right to vote), non-resident business owners, corporations and unions. Imposing contribution prohibitions or restrictions on some entities but not others could be difficult to defend. In addition, prohibiting contributions from certain entities may remove an important opportunity for those entities to influence the selection of a government that can directly impact them (e.g. the mill in the community or the union that represents its employees).

## **How Much Can Be Contributed?**

Once a determination is made regarding who can contribute (anyone or some subset), the question turns to whether or not there should be monetary limits on the amount that a permitted donor can contribute. In addition to limits on specific candidate donations, instituting contribution amount limits would require consideration of whether or not to include restrictions on the total amount that can be given by any one contributor in the election jurisdiction.

### **The case for limiting how much can be contributed**

#### *Contribution amount limits would broaden support base*

Those in favor of amount limits argue that the broader community is best served if the base of contributions is as extensive as possible. The base of support can and should be broadened by imposing contribution limits that are just high enough to allow candidates to obtain sufficient funds to run a campaign but not so high as to allow a donor to exert undue influence. Without contribution amount limits, candidates may choose to focus on obtaining large donations from a smaller number of donors thereby reducing individual elector engagement. Campaign finance rules should seek to encourage citizen engagement wherever possible.

#### *Contribution amount limits would reduce undue influence*

Those in favor of amount limits argue that allowing large sums of money to be donated by single donors may provide big donors with special access to or indebtedness from candidates. Limiting the amount that any one donor can contribute is an important way to enhance fairness and accountability by reducing the likelihood of influence buying. A system that allows unlimited contributions may be seen by some as giving rise to an apprehension of undue influence.

#### *Outside British Columbia there is a trend toward imposing contribution limits*

Proponents of contribution amount limits point to trends in other jurisdictions. Manitoba, Ontario and Quebec already limit or restrict campaign contributions in local government elections via provincial legislation while some other provinces authorize municipalities to set their own campaign finance rules (see footnote above). At the federal, provincial and territorial level there is a trend toward contribution

amount limits and source restrictions. Canada, New Brunswick, Nova Scotia, Quebec, Ontario, Manitoba, Alberta, NWT and Nunavut have such restrictions.

## The case against limiting how much can be contributed

### *Restricting how much can be contributed will reduce transparency*

Under the current local government elections system, a contributor can contribute as much as he or she wishes. Accordingly, there is very little incentive for a contributor to circumvent a limit by fracturing a large donation into smaller portions that can be donated by others. While such behavior (“flow-through” contributions) is prohibited under the legislation, it may be difficult to detect and prevent, so measures such as contribution limits that could encourage such behavior should be avoided. The current system is more favorable in terms of achieving openness and transparency.

### *Contribution amount limits could impact communities differently*

There is considerable local variation between British Columbia communities and campaign costs can vary accordingly. Designing formulas that recognize this variation (but still allow candidates from Vancouver to Zeballos to raise sufficient funds for a campaign but not enough to be unduly influenced) would be challenging. While it is true that campaign costs in the Lower Mainland tend to be higher than in smaller communities, it is also true that campaigns in rural or remote communities can be more expensive on a per capita basis because some expenses do not vary with the volume of voters. For example, while the costs of a print run will vary with population, the initial design costs of a brochure will generally be fixed regardless of population. Some smaller communities also face a lack of local (i.e. less expensive) advertising opportunities requiring candidate advertisements to be placed in larger, regional newspapers that tend to be more expensive.

### *Existing ethical conduct and other provisions mitigate undue influence concerns*

In addition to requiring campaign contribution disclosure, the current legislative scheme requires local government elected officials to consider the interests of the community when making decisions. In addition, elected officials swear an oath of office under which they undertake to perform the duties of office without allowing any private interest to influence conduct in public matters. Furthermore, the ethical conduct provisions of the *Community Charter* are applicable to local government elected officials and serve to mitigate undue influence concerns by preventing elected officials from voting on or discussing matters in relation to which they have a direct or indirect financial interest.

## Considerations

Campaign contribution limits (both source and amount restrictions) for local government elections could be designed and implemented in British Columbia. Several jurisdictions have implemented such limits. This paper has identified the two primary considerations that must be undertaken if contribution limits are pursued – specifically determining *who* can contribute and *how much*. However there would be

many other considerations as well. Because contribution limits would function as part of the larger campaign finance system, linkages and impacts on the other elements of the campaign finance system (expenses, disclosure, enforcement and public financing) would need to be reviewed. For example, if it were determined that imposing contribution limits would encourage attempts to circumvent the new rules, an examination of possible strategies to mitigate such behavior would be required – many of which could involve adjusting the other campaign finance elements (e.g. strengthening enforcement and disclosure requirements or even considering public financing options). These mitigation measures could increase administrative complexity and administrative demands in relation to local government elections. Finally, as noted, imposing contribution amount limits would also require consideration of whether or not to include restrictions on the total amount that can be given by any one contributor in the election jurisdiction in addition to specific candidate donations.

## Direction Questions

### Principles

- What core democratic or campaign finance principle would be emphasized by imposing contribution limits (fairness, flexibility, consistency, accessibility, transparency or accountability)?
- Would imposing contribution limits de-emphasize any key campaign finance principles?

### Objectives

- What objectives would contribution source restrictions and/or contribution amount limits serve?

### Practical Considerations

- How would decisions be made in relation to establishing contribution source restrictions or amount limits?

### Further work

- Does the Task Force wish to undertake further consideration of contribution limits?
- If so, does the Task Force wish to further consider limits in relation to contribution source restrictions (i.e. who can contribute?) or contribution amount limits (i.e. how much can be contributed), or both?

## Next Steps

If the Task Force wants to undertake further consideration of local government campaign contribution limits, more research and analysis is required. While this paper examined some of the conceptual thinking both for and against contribution limits, actually determining what such limits would look like and how they would function would involve considerable research and design work. If a determination is made to go forward, the two primary considerations are whether to impose contribution source



restrictions, amount restrictions or both. Determining what a contribution limit system would actually look like would require careful review of a myriad of design considerations related to not only the restrictions or limits themselves but also how limits would impact other campaign finance elements and how the risks identified could be mitigated. Some examples of potential design considerations include:

- The limits themselves – *how much* and *who*?
- The application – would it be mandatory or “opt-in”, province-wide or only in certain jurisdictions?
- Regional variation – would the limits be appropriate from Zeballos to Vancouver?

There would also be practical implementation and administrative questions to be addressed.