

Local Government Elections Task Force Corporate Vote Discussion Paper

January 2010



Local Government Elections Issue: Corporate Vote

Issue summary

The “corporate vote” refers to the ability of businesses to vote in local government elections. At times in BC’s history, certain types of corporations have been permitted to vote in local government elections.

British Columbia is currently consistent with most other jurisdictions in not having a corporate vote. However, the debate over whether corporations/businesses should be able to vote has continued since removal of the corporate vote. Business owners and advocacy organizations in particular have argued that the corporate vote should be restored. They have argued that because businesses pay significant amounts of property tax, local elected officials should be accountable to business taxpayers through the electoral system. It has been suggested that local elected officials’ decisions tend to reflect the interests of voting residents rather than other, non-voting taxpayers such as businesses.

Arguments against restoration of the corporate vote include that it is undemocratic for a voter to have more than one vote, and that the right to vote should be an individual right, not one extended to legal entities like corporations. Administrative issues such as the eligibility for a business vote being complex and difficult to verify were factors in the removal of the corporate vote, as were past instances of abuse of the corporate voting provisions.

Evaluating the advantages and disadvantages of a corporate vote in local government elections depends on consideration of principles such as fairness (e.g. ‘one person, one vote’) and integrity (e.g. avoiding potential for abuse of the provisions). The objectives a corporate vote would be expected to serve should be clearly understood and weighed against the likelihood a corporate vote would meet those objectives. If recommending establishment of a corporate vote were contemplated, significant practical considerations also exist that should inform that decision. Policy questions as to types of corporations that should be eligible would need to be explored, as would design challenges around establishing eligibility, creating and maintaining a registry of corporate voters, avoiding potential for abuse and ensuring administrative workability.

Background – history of the corporate vote in BC

Until 1973: Historically, participation in local democracy in BC was generally more closely linked with property ownership and the payment of property taxes. For example, the *Municipal Act* (predecessor to the *Local Government Act*) established three different categories of electors – owner-electors, resident-electors and tenant-electors. All electors could vote in municipal elections; however, only *owner*-electors could run for office and participate in certain local decisions, such as petitioning for municipal incorporations and boundary changes. Specific provisions of the Act also provided corporations with the ability to vote in local elections.

Significant features of the corporate vote – pre-1973

- All corporations were eligible, regardless of corporate structure
- No residency restrictions - foreign-owned corporations could vote

- Corporations could either own or lease property in order to qualify
- Unrestricted number of votes - an individual could vote in relation to his or her residence and (via an agent) in relation to as many corporations as he or she owned, thus garnering more than one vote within a single municipality

The City of Vancouver was an exception – the *Vancouver Charter* never permitted corporations to vote in local elections. Corporations were never able to vote in provincial elections in BC.

1973 – 1976: In 1973, various changes were made to equalize non-property owning residents and property owners under local democratic processes. For example, the distinction between owner-electors and tenant-electors was eliminated, allowing all electors to have a say in matters such as incorporations, boundary changes, and voting on money bylaws. The corporate vote was also discontinued. Eliminating the corporate vote appears to have primarily been motivated by a belief that more than one vote per individual in a community was undemocratic, especially considering the unrestricted number of votes for corporations and that voting corporations need not have been owned by a resident of the community, or even of Canada.

1976 – 1993: In 1976, the corporate vote was re-established, but with much narrower eligibility than existed prior to 1973.

Significant features of the corporate vote – 1976 – 1993

- Corporations could either own or lease property in order to qualify
- ‘one corporation, one vote’ - if a person controlled more than one corporation in a municipality, the person could register only one of the corporations to vote
- A person could not register their corporation to vote if the person resided in the same municipality in which the corporation was located
- A person could only vote once per community, but could vote in more than one election - corporations owned by a person, and located in communities other than the community the person resided in, could be registered to vote
- Limited types of corporation eligible – “corporation” did not include a reporting company as defined in the then *Companies Act*, thus excluding publicly traded companies
- All shares (or at least 50% of the voting shares) in the corporation had to be owned or controlled by one person, or by one person and one or more other individuals connected by specified family relationships

The net effect was that small sole proprietor/family businesses were able to vote in relation to their business if that business is located *outside* of the community where they lived. A person could not vote more than once in a single community, even if he or she had a corporation in the community. As was the case prior to 1973, corporate voting was not permitted in the City of Vancouver.

1993 – present: The corporate vote was discontinued during the comprehensive review of local elections legislation in 1993.

Reasons for discontinuing the corporate vote

- Desire to apply ‘one person, one vote’ principle
- Criteria for eligibility for a business vote was complex and at times difficult for local governments to verify
- Potential for abuse of the provisions led to fairness concerns – e.g. corporations were able to rent a parking space or storage locker and be eligible for a vote; tenant in occupation provisions (applicable to both corporations and individuals) allowed lessees of small fractions of property to vote (in one case, about 500 people registered to vote in relation to one parcel of land)
- Not many businesses were eligible to vote - the effectiveness of the vote on addressing business concerns was arguably minimal
- UBCM supported removal of the corporate vote

Currently, the non-resident property elector provisions that exist under the *Local Government Act* and *Vancouver Charter* provide some measure of representation for businesses operating in a community where the business owner is not resident. Individuals who are registered owners of real property and meet other qualifying criteria (e.g. owning the property for at least 30 days before registration day) are able to vote in elections without being required to reside in the community. Leasing a property does not qualify a person to vote, and only an individual person may be registered to vote in relation to the property – a corporation cannot be registered. If a property is owned (or even partially owned) by a corporation, no one can be registered to vote on behalf of that property.

Since the removal of the corporate vote, some business advocacy organizations have called for its restoration. For example, the BC Chamber of Commerce regularly recommends reinstatement of the corporate vote in its annual resolutions book. Since 1993, resolutions in favour of restoring the corporate vote have been introduced at the annual Union of BC Municipalities (UBCM) convention six times but were defeated five of those times. A resolution was endorsed in 1995, but resulted in no action. A 2007 resolution on the topic was not admitted for debate as the resolution was late, and a 2009 resolution was not debated at convention as debating time ran out. UBCM’s current policy position is against establishing a corporate vote.

Discussion

Principles fundamental to all elections should be considered when thinking about whether a corporate vote should be instituted or not, and if it were, what it would look like. For example, inclusiveness, transparency, honesty, fairness, accountability, and public confidence are general principles of electoral systems that should also be considered in this context.

Practical concerns should also inform consideration of the corporate vote. Regardless of one’s perspective as to whether corporations should be able to vote or not, challenging choices would need to be made as to the scope of the corporate vote, choices that would involve balancing interests within the business community and amongst other electors. Clarity around the objectives a corporate vote would be expected to serve is needed, as is an assessment of the degree to which a corporate vote might meet these objectives. Whether corporations should have the right to vote will also depend in part on the relative importance afforded to different types of accountability – accountability through the ballot box,

and accountability through governance. Voting provides influence over *who* makes the decisions, but its influence on governance - on *how* decisions are made and their *outcomes* - is arguably limited. Lastly, a host of practical and administrative details should also be evaluated when considering whether to recommend reinstatement of a corporate vote.

The case for a corporate vote

Local governments impact business

Some point out that local decisions regarding tax rates and user fees, service provision, zoning, development processes, business regulation/licensing and so on all directly affect businesses, perhaps even to the point of impacting the viability of businesses. Business class property tends to be subject to a higher rate of tax than residential property (reflecting a presumed ability to pay higher taxes and the fact that property taxes are tax deductible).

An incentive is required for local decision makers to reflect business interests

Business owners and business advocacy organizations have argued that businesses contribute to local revenues and otherwise benefit the community (e.g. through job creation), but have insufficient influence on local elected officials. The implication is that since residential taxpayers are able to vote, local elected officials are more responsive to their interests (such as maintaining low rates of residential property tax). Some argue that without direct electoral accountability, local decision makers will simply not be motivated to consider their impact on businesses.

Paying taxes should be tied to voting

Arguing in favour of a corporate vote is essentially arguing that paying property taxes should be connected to having a say in local decision-making. This connection used to be fairly well-entrenched in BC's legislation – for example, prior to 1973 there were no restrictions on the number of corporations that could be registered to vote, regardless of whether they had the same individual owner or not, thus leading to influence at the ballot box proportional to the number of properties one paid taxes on. The corporate vote that existed between 1976 and 1993 reflected more closely the principle of one person, one vote, but was still premised on the idea that paying taxes should be connected to the electoral franchise.

Symbolic value of a corporate vote

Some point to the symbolic importance of having a vote, suggesting that a corporate vote is a form of recognition of the contributions of business to the community. Some corporate vote advocates would acknowledge that a corporate vote might not have a material impact on the outcome of elections, or guarantee “business-friendly” councils are elected. But while a corporate vote might not have a significant impact on local elections, an incentive would exist for those running for office to reflect the interests of business in their platforms, and presumably while in office.

The case against a corporate vote

Voting as a individual right

Some people might argue against a corporate vote simply on the basis that voting should be an individual right, not one extended to legal entities like corporations. They might argue that voting is not just about accountability or achieving representation on the basis of paying taxes; rather it is an expression of personal freedom. The *Charter of Rights and Freedoms* establishes the right of citizens of Canada to vote in elections of members of the House of Commons and legislative assemblies. Corporations are not “citizens.” The possibility of constitutional implications from allowing them a vote at the local level but not provincial or federal level should be explored.

Eligibility & fairness

Prior to 1973, any corporation, even foreign-owned, could vote in local elections. Many people would agree that it is not appropriate for corporations that may not even be Canadian-owned (never mind British Columbian-owned) to vote in local elections. The difficulty then is determining which types of corporations should be able to vote. The 1976-1993 form of the corporate vote was an attempt to provide representation for small business yet still reflect the principle of one vote per person. However, the narrow qualifications were at least partly responsible for little uptake on the corporate vote. There were likely businesses that felt arbitrarily excluded by the eligibility criteria around corporate holdings. For example, small businesses owned by non-family related partners may not have been eligible due to the narrow wording.

If a corporate vote were established, it should be fair in terms of avoiding inadvertently excluding certain types of corporate holdings due to restrictive wording. But eligibility must also be defined precisely enough to avoid ‘opening up’ the eligibility too much or creating opportunities for abuse of the provisions. Due to the complex and varied nature of corporate holdings, the task of balancing these objectives would likely be even more difficult now than in the past. Trade agreements such as the North American Free Trade Agreement (NAFTA) and the Trade, Investment and Labour Mobility Agreement with Alberta (TILMA) impose certain obligations with regard to non-discrimination against corporations in trade partner countries/provinces, so their potential impact on a corporate vote would need to be explored. For example, if only BC corporations were permitted to vote, it would need to be determined whether this could be considered discrimination against corporations from outside of BC, or whether voting eligibility is a matter outside the scope of the agreements.

Typical commercial leases include a requirement for the lessee to pay the property taxes. If a corporate vote should be connected to paying taxes and not just property ownership, there is a further administrative challenge in terms of verifying information submitted by lessees as proof of their eligibility to vote. Also, determining what constitutes a sufficient interest in a property would be required in order to avoid situations where a small amount of property (like a storage locker), or leasing a tiny fraction of a property, qualifies a corporation leasing property to vote.

Some recent media articles criticizing local industrial taxation practices have pointed to mills being unable to vote as a factor in increasing industrial tax rates over time. However, if a somewhat limited corporate vote such as existed between 1976 and 1993 was thought to be a fair balance (e.g. no publicly-traded companies or multinationals), it is important to note that the eligibility criteria would have excluded corporations such as operate the majority of major industrial properties. Accordingly, a corporate vote would be unlikely to address industrial taxation concerns, unless eligibility was as broad as it was prior to 1973 (i.e. foreign-owned corporations can vote).

Effectiveness of the corporate vote in addressing tax issues

Businesses are concerned with their property tax burdens. Businesses are not unique in their concerns—utilities, industrial operations and residents may all express unhappiness with their property tax bills. Regulatory issues are also a concern for businesses. However, property taxes on business are a key problem cited by corporate vote advocates. But would a corporate vote impact local tax rates?

Examining tax rates on property over time does not give an accurate measure of changes in real tax burdens over time because changes in assessed values impact the rates charged and ultimately the total tax burden. That is, rates that appear unchanged over time may disguise a growing tax bill driven by rising assessed values. However, analysis of tax rates on business property over time reveals no ‘spike’ in average business class or light industrial tax rates coinciding with the removal of the corporate vote. In other words, the corporate vote as it formerly existed did not appear to directly impact tax rates on business. This is perhaps partly because not very many corporations were eligible to vote, and of those that were, they did not always exercise their franchise.

A survey after the 1990 elections revealed that there were about 940 eligible corporate voters on the voters’ lists for 118 municipalities. About half of those 940 corporations actually voted. Some business owners argue that the process to register to vote on behalf of their corporation was onerous, though that does not explain why only half the corporations registered to vote actually voted in 1990. It should be acknowledged that a 50% voter participation rate is higher than the average voting rates of citizens; however, the low number of corporations that were actually eligible to vote is noteworthy.

The low number of eligible corporations perhaps partly accounts for the apparent lack of direct influence on tax rates on business. However, it also raises interesting policy and design questions if a corporate vote were re-established. Whether a corporate vote would impact tax rates would depend in part on enough corporations being eligible that they could materially impact the outcome of an election, and whether the symbolism of the corporate vote is a strong influence over local elected officials. This ties back to the question of the desired purpose of a corporate vote – should it have a material impact on local elections outcomes, or is it primarily for principled or symbolic purposes? The effectiveness of a corporate vote would also depend on the power of a vote as an accountability measure relative to other accountability measures.

Accountability beyond the ballot box

Local government accountability has two basic dimensions – accountability through the ballot box, and accountability through governance. Electoral accountability provides influence over *who* makes the decisions. Accountable governance provides influence on *how* decisions are made, and in some cases, the *outcome* of decisions.

The ability to choose who makes decisions is the most basic of democratic exercises, but it does not by itself ensure accountable, balanced governance on a day-to-day basis. Accordingly, there are many requirements for local governments to conduct transparent and participatory decision-making. Requirements for public consultation, participation and transparency also reflect an attempt to provide balance to evolving local government autonomy. For example, the legislation requires...

- consideration of tax burden distribution - annual financial plans must set out the municipality’s objectives and policies regarding distribution of property taxes among the property classes

- public consultation on annual financial plans
- performance management - annual reports require municipalities to set goals for improved municipal performance and report to the public on how they measure up each year
- public consultations on a range of land use planning, budgeting and other matters
- procedural fairness - council and board meetings are generally open; public notice of closed meetings, certain bylaws, etc. must be provided
- transparency - records must be available to the public; local governments are subject to freedom of information requirements; reports respecting how a fee was set must be provided upon request

These requirements reflect the fact that voting is only one tool for local accountability. Voting does not fully reflect the range of community interests that are affected by local decision makers. For example, non-profits may be affected by decisions regarding permissive tax exemptions, or by decisions as to where a particular non-profit might offer its services (for example, homeless shelters). Even though they may be corporate entities (e.g. societies), it is rarely –if ever – argued that they should have a vote.

Reflecting the concerns of some business organizations in response to increased local autonomy over time, legislative reforms have included enhanced accountability measures, and optional ways to support and encourage business. For example, the legislation features...

- Circumscribed business licence authority – municipal authority to regulate business is not a broad power; municipalities may only impose requirements or prohibitions on businesses that are specifically mentioned in the legislation and must provide an opportunity for input from those affected before adopting a business regulation bylaw
- Special procedural requirements regarding business licences – business licence applicants may request written reasons for refusal of their applications; a licence holder must receive notice and an opportunity to be heard if his or her licence is to be suspended or cancelled
- Incentives for encouraging business - municipalities can establish business improvement areas; provide revitalization tax exemptions

The existing requirements for accountable governance, and the tools local governments have for supporting business, should be considered when contemplating the concept of a corporate vote.

Other considerations – consistency & administrative efficiency

Practical matters such as the desired degree of consistency with other electoral legislation should also be considered, as a corporate vote at the local level would be a major inconsistency with provincial and federal legislation. Provincially and federally, a voter must be a Canadian citizen and 18 years of age. There are also very few examples of a corporate vote in other places. *(See Appendix 1 for background on corporate voting in other jurisdictions and orders of government.)*

A corporate vote would also present an additional, significant administrative challenge for local governments, especially regarding verification of eligibility to vote during the registration process. For example, if corporations that lease (not just own) property were to be eligible, verifying information submitted by lessees of proof of their eligibility would be required. Even if a corporate vote was limited to certain types of corporations, providing verification could be difficult –for business owners and local governments - considering the many diverse forms of corporate holdings that exist. Local elections

administrators involved in administering elections prior to 1993 report that administering the corporate vote was a significant challenge and would be concerned if it were re-instituted.

Further, as with all issues for the Task Force's consideration, the impact on boards of education elections must also be considered (e.g. does it make sense for corporations to vote in school board elections? What difficulties might arise if voting eligibility were different in local elections than in school board elections?).

Discussion questions

The following questions are intended to assist in consideration of possible advantages and disadvantages of a corporate vote.

Objectives

- What objectives would a corporate vote serve? Would the goal of a corporate vote be to give business a say in election outcomes, or is it symbolic?

Principles

- Can a corporate vote be reconciled with principles like 'one person, one vote,' and consistency with other electoral rules?
- Not all corporations are businesses, and not all businesses are corporations. Under a corporate vote, which types of corporations should be eligible? Business corporations only? Or should it be a *business* vote, not a *corporate* vote?

Practical considerations

- On what basis could practical challenges be addressed? E.g. how do you legally define the eligible corporations, and how would corporations' eligibility be proven without excessive administrative requirements?

Next steps

If the Task Force wants to undertake further consideration of the corporate vote issue, more research and analysis is required. What a corporate vote could look like would be a key issue for investigation. The previous versions of the corporate vote provide possible examples, but both had shortcomings. Further work examining policy questions (i.e. scope of a corporate vote, eligibility criteria, managing a corporate voters list) would be needed. Significant design questions (such as the many practical administrative challenges a corporate vote would pose) would need to be explored as those design questions might impact the Task Force's consideration of the issue in principle.

Appendix 1: Background - other orders of government & other jurisdictions

A specific ability for corporations/businesses to vote in municipal elections appears to be highly unusual, though many other places do allow non-resident property electors to vote.

Canada

Corporations were never able to vote in Canadian federal elections. Corporations were never able to vote in provincial elections in the Province of British Columbia. Property qualifications for voting in provincial elections in British Columbia were dropped in 1876.

No other Canadian provinces have a corporate vote in municipal elections. Yukon Territory does allow taxpaying corporations to vote in municipal referendums (binding public votes). In the Yukon, corporations must own (not lease) taxable property and corporations may not vote in elections or plebiscites (advisory, non-binding votes).

Some provinces do have provisions similar to BC's non-resident property elector provisions which allow owners of property in a community in which they do not reside to vote in relation to that property. Alberta provides some limited allowances for summer villages that have few, if any, permanent residents. Saskatchewan, Manitoba, Ontario and Quebec have non-resident property elector provisions. The rest of the provinces permit only residents to vote in local elections.

International

The City of London, United Kingdom (UK) has a "corporate vote." The City of London Corporation is a unique form of local government that provides services for the financial and commercial centre of Britain. The City's boundaries cover just over one square mile. Within that area, the City of London serves around 9,000 residents and the 340,000 workers that travel into the City daily. The City is the only area in the UK in which the number of workers significantly outnumbers the residents. In order to be representative of the people receiving and paying for City services, organizations are permitted to vote.

The number of votes afforded to each business is scaled based on the businesses' workforce size. A workforce of 1 to 9 people entitles a business to 1 vote, while a workforce of 3500 people entitles a business to 79 votes. Voting is conducted by voters appointed by and from the organization (e.g. staff). Eligible organizations may be incorporated or unincorporated. The corporate vote is not strictly a "business" vote, however. Eligible organizations include businesses like financial services companies, but also churches, trade associations, charities, hospital trusts and so on. London uses a ward system to help ensure residential voters' influence is not unduly diminished relative to organizational votes – the wards are drawn so that residents have strong influence over at least 4 of the City's 25 wards. The business vote was abolished in all other UK local authority elections in 1969.

No other examples of a corporate vote in local elections were found, though New Zealand and some American states allow non-resident property owners (and sometimes lessees) some ability to vote.