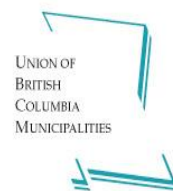


Local Government Elections Task Force Role for ElectionsBC Discussion Paper

March 2010



Local Elections: Exploring a Role for Elections BC

Issue summary

This paper explores considerations around a role for a central body – Elections BC – in local elections in British Columbia (B.C.).¹ Currently, local governments are responsible for every aspect of their own elections. Contemplating a role for Elections BC requires an examination of what “pressure points” exist in local government elections. There are a number of “pressure points” that have been identified by members of the public, media commentators, academics, local governments, and others. For example, some argue that enforcement of some local elections rules, such as campaign finance disclosure, has not been as effective as it should be.

Consideration of possible “gaps” in local government elections rules and enforcement of those rules raises the question as to whether those gaps might be filled by Elections BC. That is, are there areas where a central body has a comparative advantage over local governments? Further, are there changes to local elections rules that might arise from the Local Government Elections Task Force’s review that Elections BC is best positioned to manage?

Consideration of comparative advantages suggests that there are different options for a potential role for Elections BC in local elections. The administrative, procedural elements of local elections have not generally been a subject of controversy. Campaign finance rules have, however, been considered by some to be “pressure points” in local elections. Addressing issues in local elections might in some cases require collaborative solutions by local governments and local government organizations; in other cases, there may be a case for a central, neutral body to have a role. In looking at possible changes to roles and responsibilities in local elections, including exploring a role for Elections BC, there are a significant number of policy considerations, as well as practical, logistical and organizational implications.

Background

Every three years on each local government general voting day, over 1,600 elected positions are filled in over 250 local government bodies, including municipalities, regional districts, boards of education and other special purpose local governments.² In 2008, over 3,050 candidates ran for these offices. Because of the variation in community size in B.C., the scale of individual local elections varies, with some local elections having one or a few voting places and a few officials presiding, while others are much larger (many candidates and elector organizations running, multiple voting places, etc.).

The elections for local governance bodies are managed in a decentralized way. Local elections in BC are currently run by local governments themselves. Each local government appoints its own “Chief Elections Officer” and all local governments in B.C. simultaneously conduct their own elections every three years on general voting day. Local governments are responsible for every aspect of their local election, from *administration* of the election, to *oversight* of compliance with the rules. Below are examples of functions that illustrate the distinction between administration and oversight:

¹ Elections BC is the normal name used to denote the office of the Chief Electoral Officer of British Columbia, although legal authority and responsibility remains vested with the Chief Electoral Officer (CEO) for all aspects of provincial electoral administration. Although this paper explores a potential role for the CEO in local government elections, it refers to “Elections BC” throughout for simplicity.

² Boards of education elections “piggy-back” on local government elections and are run in conjunction with local government elections.

Administration	Oversight
<ul style="list-style-type: none"> •appointing & training election officials •registering eligible voters •setting out voting opportunities & methods (e.g. early polls, use of electronic vote counting machines, mail ballots) •establishing voting locations •conducting voting proceedings •counting the votes •reporting results 	<ul style="list-style-type: none"> •collecting information required of candidates (e.g. names of candidates' financial agents; disclosure forms) •making required elections records publicly available •providing public notice of failure to file disclosure forms •monitoring compliance with rules •responding to complaints •communications and public information

These examples are not a complete list of important functions under the two elements; rather, the examples are meant to give a sense of the range of responsibilities involved in running an election.

The rules under which local elections are conducted are established in provincial legislation. Local governments have some authority to adopt bylaws about certain administrative or procedural matters, such as providing additional voting opportunities before general voting day. Local governments have very little power to adopt bylaws setting out rules regulating candidates or elector organizations, or changing requirements around how oversight of elections is carried out. As an example, a local government cannot adopt a bylaw changing the rules about what types of expenses must be included on a campaign finance disclosure form, but can establish a requirement for nomination deposits for candidates.

Local governments also periodically conduct voting on matters other than elections. For example, some long term borrowing bylaws require approval of the electors before they can be adopted. Local governments may also conduct referenda on matters of public opinion. These non-election voting events are called “other voting” in the legislation, and the rules for other voting are very similar to the rules for elections. Local governments also have responsibility for administration and oversight of these types of voting.

In terms of provincial involvement in local elections, Elections BC currently has no role in relation to local elections.³ However, the Province establishes and maintains the legislative framework for local government elections. The minister responsible for local government has certain legal powers in relation to local elections (e.g. the minister can order an election to be conducted if one is not held or an office is left vacant). The Ministry of Community and Rural Development provides advice for elections participants (voters, candidates, etc.) and provides guidance and training for local administrators in collaboration with the Local Government Management Association. The Ministry also monitors local election issues and trends to support its role in developing changes to local elections legislation as needed.

Elections BC administers and oversees provincial elections in B.C. See Appendix 1 for more information on Elections BC’s role and mandate.

³ Elections BC does provide information from the provincial voters’ list if a local government opts to use the provincial voters’ list as its voters’ list.

What people are saying about local elections

There appear to be relatively few problems in local elections that could be attributed directly to the decentralized approach. That is, there is no clear evidence that local governments themselves are somehow falling short in the actual conduct of elections (e.g. establishing and administering voting opportunities, printing of ballots, counting votes, and so on). Since 1993 (the time of the last comprehensive local elections reforms), there have been few legal challenges dealing with issues such as how voting was conducted, or votes counted. Accordingly, the administrative/procedural conduct of elections by local governments has not been subject to much criticism by the media or public, or in written submissions to the Local Government Elections Task Force. Aside from a significant challenge in Gibsons⁴ in 2008, it appears administrative and procedural issues are not generally a subject of concern.

However, some criticism from media commentators, academics and members of the public has followed the 2008 local elections. Much of this criticism focused on campaign finance issues, with some specific suggestions that enforcement of elections rules needs to be strengthened.⁵ Some media commentators have argued that an independent, neutral body (such as Elections BC) should have a role in overseeing local elections.

At least one formal report recommending changes in local government elections suggested a central body should have a role in local elections. The 1998 “Making Local Accountability Work in British Columbia” report recommended that local elections should be supervised by the provincial CEO, at a minimum in communities of over 50,000 people.⁶

A small number of written submissions to the Local Government Elections Task Force have commented on a role for Elections BC. As of mid-February, about seven of almost one hundred submissions have suggested that there should be central oversight of local elections – for example, that Elections BC should “handle” local elections, or that Elections BC should have a specific role in enforcing elections rules (especially campaign finance).

No Union of BC Municipalities (UBCM) resolutions were found that related specifically to administration or oversight of local government elections. For example, none were found that critiqued the administration of local elections by local governments themselves, called for more enforcement powers, or suggested a role for Elections BC in local elections.

Other provinces/territories in Canada – In having local governments run their own elections, B.C. is consistent with most other Canadian provinces/territories. However, in a few provinces and territories, the central provincial/territorial elections agency has a role in local elections, ranging from full responsibility to a more limited or targeted role.

- **Elections New Brunswick** -full responsibility for conduct of provincial, municipal and district education council elections; rules are very similar for provincial, municipal and school board elections

⁴ Some residents of Gibsons launched a court case to invalidate the 2008 election, alleging that there were irregularities in vote-counting. Although the judge noted that rules were not followed, he found that there was “no evidence of bad faith, only inadvertence and the errors made were discovered and corrected before the official election results were declared;” the case was dismissed.

⁵ See the Campaign Finance Overview Discussion Paper for an analysis of media coverage after the 2008 elections; see the Discussion Papers on Campaign Finance Disclosure and on Enforcement for more detail on incidents that occurred.

⁶ Smith, Patrick J. and Kennedy Stewart, “Making Local Accountability Work in British Columbia,” *Report for the Ministry of Municipal Affairs and Housing*, June 1998.

- **Elections Prince Edward Island** -*full responsibility* for provincial, local government and school board elections; the rules for the four largest communities and the school boards are similar, though the rules for small communities vary widely
- **Elections Yukon** – *full responsibility* for territorial and school governance bodies elections only; *no involvement in municipal elections*, which are run by municipal governments
- **Elections Quebec** – responsible for provincial elections and *oversight and enforcement of local elections rules*, including exclusive responsibility for campaign financing rules at the local level; *does not actually conduct local elections*; Elections Quebec provides directives, advice and support to municipal staff and school board directors appointed as returning officers during elections

In those jurisdictions where a provincial/territorial elections agency has a role in local elections, it is important to be aware of the context that has led to the arrangement. For example, the total population of the Yukon is about 34,000 people (smaller than many B.C. municipalities), and about half of PEI's total population of about 135,000 people lives in one city. So it is perhaps partly a response to capacity issues that central agencies have a role in conducting local elections in these jurisdictions.

See Appendix 2 for further detail on the above provinces and territory.

Principles

Many internationally agreed-upon standards for democratic elections apply to local elections as well. For example, *accessibility* of the electoral system is the idea that both voting and running for office should be open to everyone. *Transparency* and *accountability* are essential elements in promoting public confidence in an elections system. Transparency allows voters to know what influences could be at play in an election and gives voters confidence that elections are administered fairly and consistently. Transparency provides a critical linkage to accountability because transparency requirements assist in enforcement of elections rules. Enforcement of elections rules is a crucial element supporting the principle of *fairness*. Generally, *consistency* – similar rules for candidates and voters, even application/enforcement of those rules – is a desirable principle behind elections rules and supports the principle of fairness. The principle of *flexibility* must also be considered. B.C.'s approach to the legislative framework for local governments is that rules should generally reflect different communities' capacities and needs.

Ultimately, an overarching objective of these principles of electoral systems is to promote public confidence. Even a perception that these principles are violated, or that rules are broken without consequence, can erode public confidence in elections.

Current “pressure points” in local elections

For the purposes of discussing possible changes to how local elections are administered and/or overseen, an examination of some of the apparent problems or criticisms (“pressure points”) of local elections in B.C. might help identify the particular objectives that involvement of a central elections agency could serve. That is, are there areas where involvement of a central body might improve public confidence in local elections? Which pressure points could be addressed by changes to roles and responsibilities in local elections? Can changes to *roles* (not just the *rules*) make a difference?

Perception of conflicts in overseeing local elections

In local elections, it is often a senior staff member (such as the Corporate Officer) that is appointed by council as the Chief Elections Officer (CEO), and the local CEO may in turn appoint other election officials

from the staff. Some local governments appoint an outside elections expert who acts as the local CEO under a contract with the local government.

The integrity and professionalism of the local government staff or the contracted professionals is rarely questioned. However, an appearance that there is not enough distance between politicians and the election administrators could itself cause concern. Some have suggested that conducting enforcement of the elections rules in relation to candidates who might later be the 'boss' of the Corporate Officer could be uncomfortable for staff serving in these dual roles. In particular, decisions involving enforcing the elections rules that apply to candidates (as opposed to the rules around how an election is administered generally) may lead to accusations from candidates that local elections administrators are being overly stringent in applying certain rules, or to questions about their independence from the public if there is an perception that the rules were not enforced. Some local government administrators have stated that while they are comfortable with running elections generally, they would prefer not to be involved in enforcement of campaign finance rules.

These types of pressures have led some to argue that a neutral body would de-politicize enforcement decisions and ensure consistent application of the rules. This would likely benefit candidates, but arguably also local government staff administering the election in terms of avoiding any difficulty in acting independently in their election roles, particularly in enforcing campaign finance rules. From a principled perspective, some would argue that such an approach would bring the local elections system more into line with principles around independent administration and oversight of elections.

Public participation

Some might also argue low voter turnout is an issue in local elections. In 2008, the participation rate in municipal elections ranged from 16% to 92%, suggesting that low voting rates are not a problem everywhere. Low average voter participation (28% in local elections in 2008) is an issue with many possible causes; however, it has been argued that a role for a central body might help improve voter participation, possibly through public education or generally enhancing public confidence in local elections. Others might argue that greater public participation could be encouraged using existing resources (e.g. through a partnership between organizations like Local Government Management Association, UBCM, the Ministry of Community and Rural Development, CivicInfo BC). Different communities have different cultures, so they argue that public participation efforts might best be designed and delivered locally.

Access to campaign finance information

A central element of B.C.'s accountability and transparency rules in local campaign financing is the requirement for candidates to disclose election expenses and contributions. Access to these disclosure documents has been criticized by some as uneven amongst local governments and inadequate. Some local governments provide physical access to disclosure documents at city hall, while others post them online. It has been argued that access to disclosure forms should be consistent and more open, possibly by posting them in an online central repository.

Campaign finance – lack of clarity and understanding

Campaign finance rules appear to generally be a "pressure point." Concerns about campaign finance have been expressed, especially in relation to the transparency requirements, like proper disclosure of campaign contributions and expenses.

For example, in the 2008 elections in several communities (e.g. West Vancouver, Central Saanich, Summerland), it was alleged that third party supporters ("campaign organizers") failed to disclose their

support for candidates or elector organizations, or that candidates failed to disclose support received from such third parties.

It is unclear whether issues around campaign organizers were inadvertent and resulted from a lack of understanding, or whether people chose not to comply with the rules.⁷ The solution to these problems would depend somewhat on the cause of the problems; however, some have argued there is a need to improve transparency in relation to campaign finance issues, like third party disclosure.

Some have said clearer rules (and serious consequences when they are broken) are needed and that public education and clear communication of the rules to elections participants would result in improved compliance. For example, in the 2008 boards of education elections, two people went to court in relation to their disclosure forms and were found to have made errors in good faith. Some argue that more training and advice might help candidates comply with the campaign finance rules.

(Issues around transparency and disclosure are examined more thoroughly in the Discussion Paper on Campaign Finance Disclosure.)

Enforcement of campaign finance rules

A lot of the media and public criticism following the 2008 elections centred on enforcement of elections rules, particularly campaign finance rules. Elections in most communities in B.C. were not affected by campaign finance-related controversy; however, it is clear that concern about whether rules are being followed and effectively enforced exists – especially in those communities where there were allegations of violations of the rules.

Enforcement - responsibility for bringing forward allegations

Who is responsible for enforcement has caused some concern. CEOs have various duties and powers that give them a role in addressing possible violations of the rules. CEOs may do a range of things, from requiring candidates to remove prohibited campaign signs on election day, or more seriously, a CEO may make an application to the Supreme Court challenging the right of an elected candidate to take office if the candidate was not qualified to take office, or committed an elections offence, etc.

However, in many respects, candidates and citizens are responsible for bringing forward allegations of violations of the rules. Under the *Local Government Act*, just as a CEO may make an application to the Supreme Court for a declaration of an invalid election, four electors may get together within 30 days of the election and challenge the validity of an election, or the right of an elected candidate to take office. Some people have argued that costs and difficulty accessing the court are barriers to this provision working effectively. A complaint to the police is a common first step for citizens wishing to trigger an investigation of a local elections matter. Some people have argued that it is unfair to expect citizens to be responsible for bringing such issues to light; further, that such a system means that many potential violations will never be pursued.

Some people have argued that rather than citizen or candidate complaints being a trigger for action, some neutral, independent person or organization should have power to take action on violations of local elections rules, acting on the person or organization's own initiative when there is evidence of possible non-compliance or in response to a citizen complaint. Taking action on possible violations might include doing investigations, or assisting citizens with bringing their complaints to police or the courts. Others argue that as long as easier access to disclosure forms is provided, it is reasonable and

⁷ Due to the short interval between the introduction of the rules regulating "campaign organizers" (people providing support to candidates or elector organizations) and the 2008 local elections, it is possible that lack of awareness could have been a factor.

appropriate for citizens to have a key role in enforcement, since elected officials are ultimately accountable to them.

Enforcement - process and outcomes

What happens *after* a citizen brings a complaint forward has also been criticized. In 2008, allegations around accepting anonymous contributions and lack of disclosure by a third party supporter in Summerland were not investigated because the *Offence Act* limitation period for investigating offences had expired. In Central Saanich, charges were recommended by police after an investigation spurred by a public compliant, but the Crown did not proceed with prosecution.

Timing of enforcement is an issue, then, along with the general challenge for police in investigating allegations related to legislation that they infrequently encounter, especially when weighed against other pressing policing priorities. In provincial elections, Elections BC plays a crucial enforcement role, processing complaints, conducting investigations, investigating suspicious activity (even in the absence of a compliant), involving the police when warranted and making recommendations for prosecution when offences have occurred. Some argue a similar approach should be applied locally – that is, someone other than just the police should have a role in the ‘front-end’ examination of facts and interpretation of legislation needed for alleged violations of the rules to be investigated and prosecuted.

As with the other “pressure points,” the approach to improving enforcement depends largely on how the problem is defined. Enforcement is explored more deeply in the Discussion Paper on Enforcement. Enforcement is raised in the context of this paper, though, as an example of an area where people have argued that there is room for improvement in B.C. local elections – improvement that could possibly be supported by changing roles and responsibilities in local elections.

Policy discussion

Rather than debating whether the elections rules themselves are appropriate, this discussion will attempt to explore issues around filling “gaps” that might exist in how the rules are administered, overseen and enforced. Are there role changes that could make a difference, and if there are, how would any changes balance the principles that inform the local elections system? For example, *consistency* is important – that is, similar rules in different places, for different candidates, and so on. But so too is *flexibility*, the idea that different communities have different needs and capacities; further, it means that certain rules are not effective or necessary in all contexts.

Scale and scope

The issue at hand is to what degree a central body – Elections BC in this case – should have a role in local elections. As previously discussed, “running” an election involves a range of activities that can be broadly classified into administering the election and oversight of the election rules. This conceptual division, and the spectrum of activities under it, suggests a framework for thinking about roles and responsibilities in local elections.

There is a spectrum of possible roles and responsibilities for a central body in managing local elections. A light role could be focused on *enabling* oversight and improving transparency, and include activities like taking and referring complaints and collecting and publishing financial disclosure forms. A medium role could involve *conducting* oversight necessary to encourage compliance and enforce elections rules (e.g. campaign finance). Functions like proactive advice and communication to support compliance, training elections officials, investigating allegations and/or administering penalties could be part of a medium role. A full role would involve everything from administration of voting to oversight.

Presently, local governments are basically entirely responsible for the full spectrum. A role for Elections BC could range from a very light role to a full role, with increased complexity and responsibility for Elections BC in undertaking more involved, active roles. Whether the increased complexities and costs are justified and necessary depends largely on whether Elections BC has a comparative advantage over local governments in delivering the entire spectrum of electoral system management.

Comparative advantages

Some might argue that a full-time, central elections management body has an inherent advantage in terms of expertise over local government administrators that only deal with elections every three years. Indeed, Elections BC benefits from the ongoing ability to build relationships with police forces and the Criminal Justice Branch of the Ministry of Attorney General. Elections BC also has Memoranda of Understanding with all municipal police forces and the RCMP, which are helpful when an alleged violation of the rules needs to be investigated by police and possibly referred for prosecution. Elections BC also has institutional continuity (the CEO is appointed for two general elections plus one year), has a permanent staff and a network of national and international elections professionals for information and best practice-sharing. Those arguing for a “full” Elections BC role might also point to the benefits of statutory independence in promoting public confidence that elections are managed fairly and neutrally. They might then conclude that the benefits of independent, centralized administration outweigh the costs and complexity of Elections BC providing full administration and oversight of local elections.

However, others might argue that the immense scale of local elections provides a counterpoint to the argument for full administration and oversight. As previously mentioned, over 3,050 candidates competed for 1,600 elected positions to be filled in over 250 local government bodies. Other non-election voting also occurs in communities across B.C. throughout the three-year election cycle. The number of candidates and races has in some ways only a minor impact on election administration in terms of infrastructure needed (e.g. voting locations, officials hired and trained).⁸ However, there is a large number of candidates for local offices. Having a role in local elections – especially in terms of providing advice to candidates and undertaking measures to encourage their compliance - would require a proportionate increase in Elections BC’s budget and capacity.

In considering roles, the principle of autonomy for local governments must also be considered as it underpins so much of the local government system generally. Local governments also have some practical efficiency advantages like owning local venues for voting, having regular contact with media outlets for notice requirements, having available staff to enlist in running the elections, etc. Further, having local government staff administer the election provides an opportunity for them to educate candidates not just on the election rules, but also about local government generally – what they can expect should they be elected in terms of time commitments, remuneration, how councils or boards work, local government operations, and so on.

Towards a targeted role for Elections BC

Considering the possible challenges of Elections BC providing full administration and oversight of local elections, and in the absence of evidence that administration by local governments is broadly perceived to be a problem, the idea of focusing on comparative advantages becomes more appealing. It is helpful to consider the apparent “pressure points” in local elections and whether those issues relate at all to *who* is responsible for administering and overseeing the election. That is, is it an issue of *rules*, or *roles*? There are probably few (if any) issues where changes only to *who* carries out a role would be a “silver

⁸ Provincially, 345 candidates competed for 85 seats in the Legislative Assembly. Elections BC hired and trained over 37,000 election officials to administer the last provincial election.

bullet” solution; however, there may be areas where either local governments or Elections BC have a comparative advantage that might support better outcomes.

The apparent lack of problems with administration of local elections, the logistical, cost and capacity implications of Elections BC administering all local elections, and the advantages of local governments in administering their own elections all point to the possibility that a targeted role for Elections BC might be a pragmatic option – for example, a role for Elections BC that addresses current, system-wide issues that are perhaps difficult for individual local governments to address. This conceptual model has at least one other precedent in Canada – Elections Quebec does not administer local elections (conducting voting, etc.), but does provide advice, support and training for senior local elections officials and has responsibility for local campaign finance. (See Appendix 2 for more detail).

In contemplating a targeted role for Elections BC – for example, a role in campaign finance – there remains considerable scope to tailor the role. A light or medium role would serve somewhat different objectives and would have different policy, legal and organizational implications. For example, if improved transparency and accessibility of information were the main objective, a lighter role could be played, with functions such as collecting and publishing disclosure forms for all local elections. If more substantive changes to the enforcement process were the goal (for example, the police or court not being the first stop for citizens making a complaint), a medium role could allow Elections BC to look into allegations of elections rules violations, and have responsibility for reviewing disclosure forms to ensure compliance with campaign finance provisions.

Policy and design considerations

The following examples of policy and design considerations would apply to any level of Elections BC involvement in local elections. However, the degree of complexity and difficulty in addressing the policy and design considerations would be directly connected to the degree of involvement of Elections BC. That is, costs and complexity would rise in step with added responsibilities for Elections BC.

Connections with other issues under Task Force consideration

There is a range of issues under Task Force consideration that would have a direct impact on the feasibility of a role for Elections BC and on policy and design questions around that role. In general, it is difficult to comment authoritatively on the scope of issues to consider in contemplating a role for Elections BC at this early point in the Task Force’s deliberations. However, any changes under consideration would need to be explored as they relate to a role for Elections BC. For example, if it was recommended that local governments be given power to adopt certain campaign finance rules by bylaw, and if Elections BC is to play a role in enforcing campaign finance rules, additional complexity for Elections BC would result from rules that vary from community to community.

Relationships

Elections BC is an independent Office of the Legislature. The CEO is appointed by the Lieutenant Governor in Council on the unanimous recommendation of an all-party committee of the Legislature. Elections BC reporting to the Legislature upholds the principle of independence and is symbolic of Elections BC’s accountability to the public. Constitutionally, local governments are “creatures of the provinces,” and accordingly are embedded in provincial accountability frameworks, but in B.C., they are also orders of government. If local governments were a major client of Elections BC, some form of advice or input by local governments into organizational and budgetary issues, choice of CEO, etc. might be called for by local governments.

High-level arguments about accountability aside, relationships should be considered in terms of supporting effective functioning of any role for Elections BC. Collaboration is a strength of B.C.'s local government system, with crucial political and professional roles played by the Union of BC Municipalities (UBCM) and the Local Government Management Association (LGMA) respectively. Partnerships such as CivicInfo demonstrate the value of such collaboration, linking UBCM, LGMA and the Ministry of Community and Rural Development. Managing a collaborative system requires a "feedback loop" to ensure that the system is working. If an oversight role was played by Elections BC, interests of the public, of UBCM and LGMA and boards of education (via the BC School Trustees Association) would require mechanisms for ongoing management, interest-balancing and communication.

The LGMA and the Ministry of Community and Rural Development currently collaborate to provide advisory materials and training for elections participants (i.e. voters, candidates, elector organizations/parties, campaign organizers/third party supporters, and local elections administrators). How advice and training is delivered would be partly suggested by whatever role Elections BC ultimately has, but collaboration and changes to existing roles would likely be required.

Matching powers with responsibilities

If Elections BC is to be effective in carrying out its assigned roles, consideration must be given to ensuring Elections BC and local governments have the powers necessary to ensure their respective responsibilities can be carried out effectively. As an example, if candidates were required to submit disclosure forms to Elections BC, there would need to be some way to ensure they do so, or some sort of penalty for failure to comply. Enforcement in local elections has been criticized, so it would be important to think carefully about the possible range of compliance and enforcement tools involved in a role for Elections BC.

Practical considerations

There is a number of practical considerations in thinking about an Elections BC role in local elections.

Costs – a role for Elections BC would have cost, staff resourcing and possibly technological (e.g. computing, electoral boundary mapping) implications. The magnitude of those implications would be directly connected to the scope of Elections BC's role. There is no way to estimate the costs without knowing what the role could be. Sharing costs would be another consideration. Changes to roles and responsibilities might have implications for allocations of costs. Currently, local governments are responsible for the costs of their own elections (though the Ministry of Community and Rural Development does provide some staff support in development of advisory materials and so on). If a provincial role were established, fair allocation of costs between local governments and the province would be an issue for discussion.

Different rules - the *Election Act* and the *Local Government Act* rules are similar in principle and in many practical respects, but they are not identical. Depending on the role for Elections BC, technical challenges of Elections BC involvement in both provincial and local elections could be exacerbated by issues like differing elector eligibility rules (e.g. the province has no provision for non-resident property electors), or by overseeing different campaign finance rules - for example, there are slightly different rules for valuing contributions provincially and locally. To reduce such complexity, harmonizing rules locally and provincially might be called for, but applying some of those provincial rules to local elections might be onerous for small campaigns or small communities, which would in turn require consideration.

Overlap of election cycles – if the current local term of office length (three years) is continued, and assuming that no provincial general election is held on a date other than the fixed dates currently set out in the *Constitution Act*, there will be overlap every 12 years. Both general elections would be held in

the same year, with the provincial election in spring and local government elections in fall. Very close election cycles would occur every 15 years, with local governments in the fall of one year and provincial elections in the Spring of the next year. It could be logistically challenging for the same organization to play a role in both elections when they overlap.

Other electoral events and voting - By-elections are required periodically to fill vacated seats provincially and locally. This could imply an ongoing role for Elections BC in local elections, outside of the regular general election day every three years. “Other voting,” such as voting on long term borrowing bylaws, public opinion referenda, and so on should also be considered.

Complexity; party system vs. independents – there is a clear practical difference between elections locally and provincially: parliamentary governance is party-based, and political parties are accordingly important participants in provincial elections. Locally, some communities have elector organizations (akin to political parties), and candidates sometimes run in a loosely-affiliated “slate.” However, in the vast majority of communities, candidates run independently. The independent-based system adds a layer of complexity in providing advice and training to elections participants. Training parties and financial agents for parties would likely be simpler to organize provincially than in the local context. Provincially, Elections BC can hold five to eight regional training sessions for financial agents and get many of the participants requiring the training to attend by virtue of the political parties’ financial agents. This might not be true in local government setting – training the administrators tends to be conducted regionally by Local Government Management Association, but delivering the training to others (candidates, financial agents, etc.) in the same way as is done provincially would require a serious effort.

This independent-based system (and the sheer number of candidates for public office – more than 3,000 in 2008) also has important implications for the approach to fostering compliance with elections rules, especially campaign finance rules. Currently, Elections BC focuses much energy on “front-end” compliance. This involves advisory materials, training and so on. But it also involves proactive communications with candidates, parties, media outlets, auditors, financial agents and other elections participants. As an example, because Elections BC does candidate registration, Elections BC can “trace” that candidate through the process for compliance, overseeing and advising/assisting the candidate as necessary. This approach appears to be quite successful, as there are generally few controversies or legal challenges related to compliance with the provincial elections rules. However, if this approach is to be applied in the local context – for example, if Elections BC had an oversight role for the campaign finance rules - conducting front-end compliance efforts for thousands of candidates would require additional staff and resources.

School trustee elections

Whether any Elections BC role should apply equally to elections of boards of education would need to be considered. Often, school trustee candidates run campaigns that are even smaller than campaigns for local government offices; thus the need for oversight of campaign finance for boards of education elections is perhaps less compelling. However, for the most part, except where provided for in Part 4 of the *School Act*, local government elections rules apply for boards of education.

These and other policy and design questions would require full consideration when contemplating a role for Elections BC.

Direction questions

Objectives

- Do any of the "pressure points" in local elections seem suggest the need for a role for Elections BC?
- What would be the key objectives in developing a role for Elections BC (e.g. better enforcement, more assistance for citizens, better access to disclosure information)?

Scale and scope

- What kind of activities might Elections BC undertake if it had a "light" role, or a "medium" role in local elections?
- Are there functions or activities that local governments are best positioned to undertake, either individually or collectively?

Next steps

- What issues does the Task Force require further information on in terms of considering a role for Elections BC?

Appendix 1

Role and functions of Elections BC

Elections BC is the usual name for the office of the Chief Electoral Officer of British Columbia.

Elections BC is a non-partisan, independent Office of the Legislature. The Chief Electoral Officer and the staff of Elections BC are independent of government and report to the Legislative Assembly as a whole through the Speaker. B.C.'s Chief Electoral Officer (CEO) is appointed by the Lieutenant Governor on the unanimous recommendation of an all-party committee of the legislature for a fixed term: two general elections plus one year.

Elections BC is responsible for the conduct of provincial general elections, by-elections, referendums and administration of initiative and recall legislation. Elections BC's mandate comes from several Acts, including the *Election Act*, *Recall and Initiative Act*, *Constitution Act*, *Constitution Amendment Approval Act*, and the *Referendum Act*. Together, these Acts define Elections BC's responsibilities and set out the duties of the Chief Electoral Officer.

Every aspect of provincial electoral events must be planned for and administered, including the recruitment and training of election officials, the nomination process, voting opportunities, ballot counting and results reporting. Elections BC continuously maintains the provincial voters list (which some local governments use as their voters list), and maintains electoral data and information, including a geo-spatial database of B.C.'s electoral boundaries and an address registry containing all residential addresses in the province. Elections BC conducts public education campaigns to help raise public awareness of the importance of voting and comprehensive event period communications campaigns regarding the electoral process, names of nominated candidates, voting opportunities and the locations and hours of voting.

Elections BC is also responsible for administering electoral finance (also called campaign finance) laws in B.C. Examples of electoral finance rules in BC include laws about how political parties, constituency associations, election advertisers, candidates, and leadership contestants must administer their finances, financial disclosure, auditing and reporting requirements, and rules about election advertising. Elections BC is responsible for the registration of political parties, constituency associations and election advertising sponsors. Political parties and constituency associations must file annual financing reports, which are reviewed for compliance and posted to the Internet for public inspection. An online searchable database of political contributions is also maintained. After an election all entities must file financing reports which are also reviewed and posted on the Internet.

Compliance with elections rules is an important goal for Elections BC. The Chief Electoral Officer has a positive duty to enforce the Act, and Elections BC works proactively to encourage voters, candidates, political parties, constituency associations and election advertising sponsors to comply with the rules. There is a wide range of 'players' in provincial elections, ranging from candidates to constituency associations to political parties to the election officials administering the voting process. Communication, advice and training provided by Elections BC helps people to understand their roles and the rules that apply to them.

In the event of failures to comply with elections legislation, the provincial *Elections Act* lays out the duties and powers of the CEO in relation to enforcement. The CEO has a range of tools for dealing with violations of the rules, ranging from administrative penalties to referring alleged offences to the Courts via the Criminal Justice Branch. In terms of administrative penalties,

- the CEO is required to **publish names** of individuals or organizations that fail to comply with certain requirements of the Act (e.g. filing a required report, exceeding applicable expense limits)
- candidates are subject to a **financial penalty** of double the amount by which their expenses exceeded their limit; candidates elected to the Legislative Assembly that exceed expense limits or fail to file an election financing report **lose their seats**
- political parties that exceed expense limits have their **registration suspended** for 6 months, and **pay a penalty** of double the amount by which their expenses exceeded the limit
- in the event of a failure to file an election financing report, a candidate or leadership contestant is **disqualified** from being nominated, elected or holding office until after the next general election unless the outstanding election financing report and a **late filing penalty** of \$10,000 are submitted
- political parties and constituency associations can be **deregistered** for failing to file financial reports or election financing reports
- third party election advertising sponsors that exceed the advertising limit must **pay a penalty** of 10 times the amount by which the value of the sponsored advertising exceeds the limit, and will be **deregistered** until after the next general election

Offences are laid out in the *Election Act*. Penalties in relation to offences are in addition to any of the administrative penalties listed above. If the CEO has reasonable grounds to believe that the election rules have been broken, the CEO may refer the matter to the Criminal Justice Branch of the Ministry of Attorney General where a determination is made whether or not to proceed with prosecution. The CEO does not have authority to prosecute, however prosecutions may not proceed for offences under the *Election Act* unless the CEO approves the prosecution. A wide range of offences are specified in the Act, such as vote buying, voting when not entitled to vote, accepting prohibited political contributions, exceeding expenses limits, providing false or misleading information and so on. Offences under the Act might result in criminal sanctions (rather than fines or other administrative penalties) if the charges are pressed and the Court finds the person or organization guilty.

Citizens have an ability to play a role in enforcement as well, by bringing allegations of contraventions forward to the CEO. A citizen can bring to the CEO's attention suspicions that the elections rules have been broken. The CEO is required by the Act to consider all written complaints of contraventions and to respond to the complainant.

The CEO is required to conduct periodic investigations of the financial affairs of political participants and may conduct audits. The CEO may also conduct investigations into any matter that might constitute a contravention of the Act. To facilitate enforcement, the CEO may apply to the court for an injunction, or request a warrant to search and seize records and may file certificates with the court regarding election expenses penalties owed by political parties and candidates.

Appendix 2

Jurisdictions with role for central elections agencies in local elections

New Brunswick

- Elections New Brunswick fully responsible local (municipal and education district) elections for past 30 years – change made as part of broad reforms in realigning service responsibilities between local and provincial governments
- Costs of local elections borne by provincial government
- Stand-alone Act for local elections (*Municipal Elections Act*); similar administrative/procedural rules in that Act as for provincial elections
- Campaign finance rules for provincial elections; **no** campaign finance rules in local elections (no financial reporting or disclosure requirements; no spending limits, etc.)
- Fixed election dates provincially and locally (every 4 years); staggered to avoid provincial & local overlap
- New Brunswick’s population is about 740,000; average voter turnout in municipal elections was 48% and 34% in education district elections in 2008

Prince Edward Island

- Elections PEI responsible for local (municipal and school board) elections for 16 years – change made partly due to general reforms of elections system (i.e. establishing Elections PEI as an independent office of the legislature) and amalgamations of several municipalities.
- Costs of municipal and school board elections borne by respective governing authority – i.e. recovered from the municipality
- Despite Elections PEI involvement, no consistent set of elections procedures in different communities – communities establish procedures via bylaw in accordance with various municipal Acts; Elections PEI appears to carry out elections in accordance with those bylaws
- Little elections administration to be conducted in the vast majority of communities – 63 of 74 municipalities hold a special evening meeting where nominations for council come from the floor and blank, write-in ballots are used to vote.
- Fixed elections dates for some communities, but not all – mix of three or four year terms
- PEI has a population of about 140,000; average turnout for municipal elections about 60% and 5% for school board elections in 2007

Yukon

- In the Yukon, municipalities are responsible for their own election
- Elections Yukon has also had responsibility for elections to school governance structures (26 school councils and one school board) for 19 years.
- Costs of municipal elections are borne by municipalities; costs of school governance body elections are borne by the territorial government
- Fixed election dates for municipalities (every three years); every two years for school councils and every three years for the school board
- Yukon has a population of 34,000; municipal election turnout about 34% in 2006 but turnout for school governance body elections is unknown (no list of electors for those elections)

Quebec

- Elections Quebec has had responsibility in relation to local elections since at least 1978 – initially responsibility to provide guidance to municipal returning officers, but the role has evolved over time
- Local governments conduct their own elections, but with support and advice from Elections Quebec, and in the case of campaign finance rules, oversight from Elections Quebec.
- The provincial Chief Elections Officer has power to
 - provide directives, support and advice to local government staff and school board directors general who are appointed as returning officers (including providing training)
 - conduct public education
 - make changes to elections law
 - conduct inquiries and institute legal proceedings for violations of the rules (quasi-judicial power)
- Elections Quebec has responsibility for administering and enforcing the campaign financing rules that apply to municipal and school board elections, though municipalities do have a role in administration - e.g. collecting annual financial reports from candidates and parties
- Campaign financing rules for municipal and school board elections are the same, though there is a threshold – the rules do not currently apply to communities under 5,000 in population)
- Voter turnout in municipal elections in 2009 was about 45% and in school board elections in 2007 it was 7.9%