

Local Government Elections Task Force Local Elections Enforcement Discussion Paper

March 2010



Local Elections Enforcement

Issue summary

The enforcement of local elections rules in B.C. is a complex and nuanced process. For many people, enforcement is understood to mean the investigation and punishment of wrongdoing. In regards to local elections in B.C., however, the punishment of wrongdoing is only one element of a continuum of measures aimed at *preventing* wrongdoing. Other elements of the continuum – including education, compliance rules, and monitoring of compliance – provide opportunities for campaign participants (e.g. candidates and elector organizations (local political parties)) to voluntarily comply with election rules before reaching the costly legal investigation phase of the continuum.

A number of participants are involved in this enforcement continuum. Local governments and the Province provide educational resources and advice during local elections, while the police forces (either municipal or the RCMP) investigate cases of alleged elections violations. The public and campaign participants also play a role in enforcement by bringing matters to the attention of police and, sometimes, taking concerns directly to the courts for determination.

The enforcement of B.C.'s local election rules must also be understood in the context of two different types of election management activities: elections administration; and the oversight of campaign participants. Elections administration refers to those activities that manage the voting process (e.g. voter registration and ballot counting). Each local government administers its own election. Oversight of campaign participants means regulating certain aspects of election campaigns, usually relating to campaign participants' financial activities. This second type of election management activity is somewhat unique within the local government system because only Provincial – rather than local government – rules directly govern the conduct of individuals (i.e. campaign participants).

A number of incidents during the 2008 local elections highlight pressure points in the current enforcement system. Among other issues, these pressure points suggest to some that campaign participants may lack the information and/or advice they require to comply with election rules, and that there may be a number of unnecessary barriers in the current investigation process (e.g. a 6-month time limitation on police investigations into alleged election violations).

Some argue that these pressure points indicate “gaps” in the current enforcement system. If there are gaps in the system, subsequent questions arise. For example, most of the gaps appear to be in the regulation of campaign participants, rather than elections administration. Does this mean separate, more robust enforcement approaches and /or tools are required to ensure greater compliance by campaign participants?

A discussion of enforcement gaps may also require consideration of the enforcement continuum. If there are gaps, where on the continuum of enforcement measures do these gaps exist? Would focusing on one aspect of the continuum (e.g. education) help to prevent incidents where more costly

enforcement measures are required (e.g. police investigation)? Or are there gaps along all phases of the enforcement continuum (i.e.. the education, monitoring, and law enforcement stages)?

Finally, discussion of enforcement gaps also requires consideration of *who* might fill those gaps. Some suggest there's a need to strengthen the tools of existing participants within the system (e.g. giving an existing entity within the enforcement process the power to investigate campaign participants' records); while others suggest the gaps require the involvement of a new entity.

Background

Management of Local Elections

Enforcement rules apply to the entire spectrum of local election management activities¹. For the purposes of examining enforcement issues, election management activities can be divided into two types: elections administration; and the regulation of "campaign participants" (i.e. candidates, campaign organizers² and elector organizations³).

Election Administration

Election administration refers to those activities involved in the management of the voting process. These activities include: the management of election workers, voter registration, and the supervision of nomination, voting and ballot counting processes. Through legislation, the Province has established a basic framework for the administration of local elections in the *Local Government Act*, the *Vancouver Charter*, and the *School Act*. This legislation establishes certain requirements and limits (or standards), but these standards are aimed at local governments themselves, who are empowered through the legislation to administer their own elections and, in some cases, the elections of others (e.g. boards of education).

Through bylaws, local governments can tailor several election administration aspects of the electoral process to the needs of their community. For example, a local government may choose whether to use a voters' list in the election or whether limit registration to election day; and a local government may choose whether to establish additional voting opportunities at a seniors' care home or in other areas of the community to provide greater accessibility.

Election administration rules also apply directly to "other voting" (e.g. the rules regarding vote counting also apply to referendums seeking voter assent on borrowing bylaws).

¹ For more on the scope of election activities please see the Backgrounder on local government elections.

² "Campaign organizers" are individuals or groups who augment campaigns to promote or oppose candidates or points of view during local elections. A campaign organizer need not identify itself to the chief election officer unless it incurs campaign contributions or election expenses greater than \$500.

³ "Elector organizations" are formed for the purpose of promoting a candidate or point of view in a local government election and can indicate their endorsement on the ballot.

Regulation of Campaign Participants

To promote fairness and transparency, the legislation includes rules that regulate the activities of campaign participants. Whereas rules governing elections administration generally regulate the activities of *local governments* in conducting an election, those governing campaigns regulate the activities of *participants – candidates, elector organizations and campaign organizers*. Local governments do not have the ability to customize rules that govern the conduct of participants in the election process; rather these rules have been established provincially through legislation and apply directly to the campaign participants' activities. The legislation includes compliance measures that participants must adhere to in order to participate in an election (e.g. participants must file a campaign finance disclosure statement after the election).

Rules governing campaign participants do *not* apply to other voting situations (e.g. participants in a referendum do not have to provide financial disclosure statements).

Enforcement in the Local Government System

The enforcement of election administration and campaign participant rules involves various participants, and includes a 'continuum' that is aimed at both preventing and punishing wrongdoing.

The Enforcement Continuum

The term enforcement is often used to refer to the process of investigating and prosecuting those who have committed offences against the law. However it also includes a range of measures aimed at preventing violations by encouraging understanding and compliance with the rules. While legal action is an element of this enforcement continuum, preventative measures such as training, education and compliance support are also important. The continuum includes:

- *Education*. Various participants (including the Ministry of Community and Rural Development [the Ministry] and the Local Government Management Association of British Columbia [LGMA]) publish information and provide training to help local governments and the public understand the rules that govern the local government system. To support voluntary compliance, the Ministry also provides on-call advice to election officials, campaign participants and the public during the election period. Additionally, each local government's staff provide advice to campaign participants during and after elections.
- *Compliance rules*. B.C.'s local elections legislation includes a number of requirements that candidates must meet in order to qualify for local office. Most of these requirements address campaign finance issues and are intended to facilitate compliance by campaign participants with respect to campaign disclosure requirements. For example, campaign participants are required to have a financial agent and ensure that campaign funds are placed in a separate bank account. This allows for an audit trail and establishes accountability.
- *Monitoring*. Because legal action involves substantial costs and has significant ramifications, many enforcement systems include a compliance monitoring function that serves as a bridge between compliance rules and the punishment of violations. This function involves monitoring

for compliance and looking into any cases of alleged wrongdoing. Often those who are responsible for compliance monitoring have a bundle of compliance tools to assist them. These ‘tools’ can include the power to inspect records, to compel witnesses, and/or the power to impose administrative penalties. Although no formal monitoring role exists in British Columbia’s local elections enforcement system, the Ministry, local government staff, and electors all participate informally in aspects of compliance monitoring.

- *Legal action and punishment.* Potential offences against election rules are investigated by local law enforcement bodies (i.e. RCMP and/or municipal police forces). Investigations can be initiated by complaint of a local government’s Chief Electoral Officer (CEO), by a candidate, or by an elector. If law enforcement bodies determine a violation has occurred, they forward the matter to prosecutors and recommend that charges be laid. Crown counsel then determines whether to pursue prosecution through the courts (i.e. by assessing whether there is sufficient evidence; whether there is a likelihood of prosecution). Judges determine punishment, which is usually a fine, but can also include imprisonment. In separate legal processes (which can be initiated by electors, a local government or, in some cases, a candidate) judges may also disqualify elected candidates who have committed election-related violations or who are otherwise not eligible to hold office (e.g. disqualified because a false or misleading campaign disclosure statement has been filed).

Ideally, a continuum of enforcement minimizes incidents where legal action and punishment are required. *Voluntary* measures such as advice and education help candidates and administrators understand what they must do to ensure they follow the rules. *Required* measures such as compliance rules ensure that there are standards to be followed and also serve as a tool for citizens and election administrators to monitor election activities. At the end of the continuum, judges have significant discretion in determining penalties so that simple mistakes by candidates do not result in severe punishment. This end of the continuum (legal action and punishment) is costly - both in terms of system costs (monetary, time and perceptions regarding the integrity of the electoral system) and costs to participants.

Who’s involved in enforcement?

The complex nature of enforcement in British Columbia’s local government system means that a number of participants have a role in enforcing local elections rules. These parties include:

- *Local governments*, who enforce their own bylaws⁴. Local government enforcement measures can include education, compliance measures, compliance monitoring, and punishment (e.g. fines, etc).
- *Local government partners* (e.g. LGMA and CivicInfo⁵) who provide information and education to campaign participants.

⁴ Local government bylaws are enforced by local government bylaw enforcement officers, law enforcement bodies and the courts.

- *Provincial government* also provides information to campaign participants and must balance its interest in ensuring its legislation is followed by local governments with the principle of local government autonomy.
- *Citizens* monitor the activities of their local governments and, if they suspect violations, can make a complaint to the law enforcement bodies or in some cases, can make a direct application to the courts.
- *Law enforcement bodies* investigate and make recommendations to Crown Counsel on whether charges should be laid in relation to alleged violations of local government rules.
- *Crown Counsel* prosecutors make determinations as to whether matters should go to court.⁶
- *Courts* adjudicate alleged violations of local government rules and impose penalties for violations.

Rules governing election enforcement

Enforcement rules in B.C.'s local elections (see Appendix 1 for details on the specific elements of enforcement provisions for local government elections).

Election Administration Rules: Each local government is responsible for administering the rules set by provincial legislation and its own bylaws. The main person responsible for administering a local government's elections is its CEO, who is appointed by the governing body (e.g. municipal council). Most often – though not always – a local government's Corporate Officer (CO) will also serve as its CEO. Each local government's CEO reports to council or board and is responsible for enforcing the administrative component of local government elections. Among other roles, CEOs:

- Recruit and provide training to election workers;
- Ensure compliance with local government and Provincial rules by keeping records of various aspects of the administration process, including elector registration, voting, and ballots;
- Oversee the ballot counting process.

Additionally, section 43 of the *Local Government Act* requires that the CEOs must “as far as possible” ensure that all elections rules are “being complied with”.

If a local government fails to comply with the election administration rules, the validity of the election may be challenged.⁷ Electors, candidates or the CEO may make an application to the BC Supreme Court for determination of an invalid election. Additionally, election officials who fail to comply with certain

⁵ CivicInfo BC provides high-quality local government information free of charge on its website, <http://www.civicinfo.bc.ca>. CivicInfo is a collaborative service that receives financial support from local governments, the Province, and other partners in the local government system.

⁶ Given the independence of Crown Counsel, it is listed separately from the provincial government – even though it is technically part of the government.

⁷ The grounds on which an application may be made is limited to: a candidate declared elected is not qualified to hold office; the election was not conducted in accordance with the Act or a regulation or bylaw; or significant election offences were committed – e.g. voter fraud, intimidation, vote buying, etc.

election administration rules may be faced with legal action and court imposed penalties – penalties that can include significant fines and imprisonment.

The Province’s role in the enforcement of local elections administration rules focuses on education. The Ministry provides information guides, on call advice, and responds to written enquiries. As with the enforcement of other aspects of the local government system, the Province does not investigate potential cases of administrative wrongdoing. Instead, this investigatory role is initiated by the CEO, campaign participants, or electors, and is carried out by law enforcement bodies.

Regulation of Campaign Participants. The enforcement of rules directed at campaign participants is similar to enforcement regarding election administration rules.

CEOs participate in the enforcement of campaign rules by, among other things, managing the campaign finance disclosure processes and monitoring campaign activities such as election signage. While, as noted, the CEO does have some obligation to see that campaign rules are being complied with (*LGA* s. 43), the legislation does not provide the CEO with the authority or additional tools to actively investigate alleged violations of campaign finance rules.⁸

Generally, if allegations of wrongdoing occur in relation to campaign participants, it is up to the CEO or citizens to either bring the matter to the attention of law enforcement bodies for investigation or, in some cases, take the matter directly to the Supreme Court. If found guilty of violating the rules, campaign participants can face significant penalties including disqualification, fines and imprisonment.

There are some matters of non-compliance by campaign participants that result in automatic consequences. For instance, failure to file a campaign disclosure statement results in disqualification for a candidate, or a prohibition from participating as an elector organization or campaign organizer until after the next general election.

The Province’s role in the enforcement of local elections campaign rules focuses on education rather than the investigation of allegations of wrongdoing. Again, this investigatory role is initiated by the CEO, candidates or electors, and is carried out by law enforcement bodies.

Enforcement Rules in Provincial Elections

British Columbia’s provincial elections are administered by Elections BC (EBC), a Provincial Office of the Legislature that is headed by the Province’s Chief Electoral Officer. EBC administers general elections and by-elections for the province’s 85 electoral districts.⁹ With regards to enforcement, the Provincial

⁸ For example, the CEO does not have authority to inspect records of participants, conduct audits, or compel witnesses.

⁹ During campaign periods, Election BC’s administrative role includes: recruiting, training and supporting election officials managing the balloting process, advisory services for candidates and party representatives, and monitoring campaign finance activities. During non-election periods, Elections BC fulfills a number of roles including: administering the province’s *Recall and Initiative Act*, maintaining the provincial voters list and address register, publishing party and candidate disclosure statements, and providing support for the electoral boundaries commission, elections policy analysis, and legislative reform.

system relies on a continuum of measures that are similar to those in the local government system. Prior to and during campaign periods, EBC provides information and advice to campaign participants. Compliance rules require these participants to keep a number of financial records. Following an election, campaign participants must file finance disclosure statements detailing contributions and expenditures. At the punishment end of the continuum, courts are responsible for adjudicating offences, determining penalties and for invalidating elections.

There are two significant differences between the local government and the provincial spheres in the enforcement of rules directed at campaign participants: the Province's CEO has a clear mandate to enforce provincial elections legislation; and the Provincial CEO has a bundle of tools that help to monitor compliance. Under s. 12(d) of the Provincial *Election Act (EA)*, the Provincial CEO must "ensure that [the Act] is enforced." Additionally, s. 276 of the *EA* provides several compliance monitoring tools including: access to campaign participant's records, the power to conduct audits of the campaign participant's accounts, and the power to conduct investigations into contraventions of the Act (if the CEO is satisfied a contravention has occurred). Other sections of the *EA* also serve as compliance monitoring tools (e.g. campaign advertisements must include sponsorship disclosure). B.C.'s CEO has also developed several non-legislative compliance measures, including signed memoranda of understanding with B.C.'s municipal police forces and the RCMP that establish the process by which EBC directs cases to law enforcement agencies, and with the Criminal Justice Branch of the Ministry of Attorney General (Crown Counsel) regarding prosecutions of election offences.

Other Jurisdictions

In many respects, B.C.'s system of local elections enforcement resembles the models in other provinces with similar characteristics (i.e. those provinces whose local governments are similar in scale and functions to those in B.C.). In Ontario, Quebec, Manitoba, Saskatchewan and Alberta, local governments manage their own election process.¹⁰ Like B.C., these other provinces rely on a continuum for the enforcement of local government rules. Provincial departments responsible for local governments provide advice and information materials to help local elections administrators, candidates, and voters understand and adhere to Provincial legislation. All of these provinces have compliance measures in their Provincial legislation that regulate aspects of campaign finance. In each of these provinces except Quebec, the investigation and prosecution of campaign violations are carried out at the local level, by local government officials and/or law enforcement bodies.

Quebec's local election enforcement system utilizes the Provincial government's CEO. While local governments *administer* their own elections, the Provincial CEO is responsible for *enforcing* most

¹⁰ Taken as a group, British Columbia Ontario, Quebec, Manitoba, Saskatchewan and Alberta constitute 94% of the Canadian population and more than 75% of local government jurisdictions in Canada. Prince Edward Island and New Brunswick – with smaller populations and different local government traditions – have local elections that are administered by Provincial agencies. In Nova Scotia and Newfoundland, local elections are administered by each local government, but there are no rules governing campaign finance. Newfoundland's local governments also administer their own elections, and there are limited Provincial rules governing financial disclosure by campaign participants.

aspects of local elections. The Quebec CEO may initiate investigations on his or her own or by request from any person and has the power to investigate potential violations of rules governing, among other things, the nomination process, voting day procedures, and campaign finance. If the CEO finds evidence of a violation, he or she may initiate a prosecution of the offender. The CEO also has the power to gather and disseminate information from local governments and candidates relating to most aspects of local elections.

Saskatchewan and Ontario have provisions governing how citizen complaints about local election violations can be dealt with by municipalities. In Ontario, an elector may apply to their local government for a “compliance audit” of a candidate’s election campaign finance statements. A mandatory compliance committee, appointed by the local government, determines whether an audit is warranted. If an audit is ordered, the compliance committee must appoint a certified auditor to undertake the compliance audit. Once the auditor has filed his or her report, the compliance committee may decide to initiate legal proceedings if the candidate has not complied with the law.

In Saskatchewan, each local government may establish campaign disclosure rules and contribution limits and may appoint an Election Disclosure Complaints Official (EDCO). Employees or elected members of the municipality are not permitted to be appointed as the EDCO. If an EDCO appointment is made, citizens can make complaints about alleged campaign financing irregularities to this official, who can investigate candidates’ financial records. If the EDCO upholds the complaint, it is then forwarded to the City Clerk with a recommendation that the matter be considered for prosecution.

Election Experiences

In the 2008 local government elections in B.C., over 3050 candidates ran for office in more than 250 different jurisdictions. While the majority of local elections occurred without incident, experience suggests that the enforcement of election rules was an issue in several communities. A summary of these follows.

- *Central Saanich* – In the fall of 2008, RCMP investigated citizen complaints that a local business, which was seeking a rezoning, made campaign contributions that were not disclosed. The RCMP investigated and recommended 19 charges, but Crown counsel chose not to proceed.
- *Langley* – A local parent group ran an advertisement promoting a slate of board of education candidates. Media reports alleged that they failed to identify themselves to the local government as a “campaign organizer” or file disclosure statements. The matter was investigated by the RCMP who did not recommend any charges.
- *West Vancouver* – It was reported that two citizen associations campaigned extensively on behalf of some municipal candidates without identifying themselves to the local government as “campaign organizers” or filing disclosure statements. Some of the candidates supported by the associations were reported to have made contributions to those associations. Once it realized the requirements, one of the associations immediately provided the required information to the CEO and also filed a disclosure statement after the election. Citizens filed a complaint with the West Vancouver Police Department (WVPD) regarding the other association; the WVPD investigated the allegations and recommended charges, but Crown counsel chose not to proceed.

- *Summerland* – It was reported that an organization placed a series of advertisements in a local paper endorsing several candidates who were subsequently elected to municipal council, including the mayor. The organization did not identify itself as a “campaign organizer” and the candidates reported the ads as “anonymous contributions”, leading to allegations that they wrongfully accepted prohibited contributions. As the limitation period under the *Offence Act* had expired, the RCMP were unable to proceed with an investigation.
- *Gibsons* – Four Gibson’s residents launched a court case to invalidate the 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” and the case was dismissed. The case cost the residents \$20,000.
- Two persons elected to boards of education failed to comply with the disclosure rules and had to apply to court for relief. One, from Victoria, failed to file a disclosure statement and had to obtain a court order reinstating her; the other, from Mission, did not open a campaign account and had to obtain a court order relieving her of that obligation. In both instances, the court found that the candidates had made errors in good faith and were entitled to assume office.

Media coverage regarding these experiences was significant¹¹ and the Ministry received a number of complaints regarding these and other election enforcement issues. Most of the enforcement issues raised were related to campaign financing rules and, specifically, campaign organizers¹².

Discussion

Principles of Enforcement

Four key principles shape enforcement within British Columbia’s local government elections system: accessibility, transparency, fairness and autonomy.

Transparency

Campaign participants, citizens, election administrators, and law enforcement bodies require a framework of rules that are clearly understood by all. Transparent rules provide campaign participants with greater certainty about their responsibilities and help them avoid unintentional election violations. Transparent rules also help citizens understand and participate in the enforcement process. When citizens understand the rules, they can participate in the enforcement process by observing when rules appear to have been violated, and can bring complaints forward when they feel it is warranted. When citizens understand transparent and clear rules, they also have greater confidence in the integrity of the system. For election administrators and law enforcement bodies, a transparent framework of rules enables efficient and effective enforcement activities.

¹¹ For more on media coverage, please see Appendix 2 in the overview paper on campaign financing.

¹² The campaign finance disclosure requirements for campaign organizers were added to the legislation in Spring 2008 and were made applicable for the first time in the Fall 2008 general local elections.

Accessibility

To maintain the integrity of the electoral system, there should be few barriers to timely and appropriate investigation and punishment of election offences. However, the principle of accessible enforcement rules needs to be balanced with safeguards against excessive or trivial investigations of campaign participants.

Fairness

Campaign participants and citizens require a system of rules that apply evenly to all. Unequal application of the rules, or even a perception of unequal application, can damage the integrity of the electoral system, and can cause uncertainty for all campaign participants about how to comply with the rules. Facilitating compliance and the application of administrative fairness is also critical in ensuring that punishment is perceived to be effective. While the punishment of offences must not be too severe (i.e. an unintentional offence is not usually punished with imprisonment), if a perception exists that some cases of rule-breaking have not been punished appropriately, it may compromise public confidence and trust in the local government system.

Autonomy

In the context of local government elections enforcement, the principle of autonomy has two key elements. Autonomy is critical for those who are responsible for overseeing campaign participants, investigating complaints and ultimately determining whether offences have been committed. People and institutions in those roles must be, and must be seen to be, neutral and must exercise their authority without inappropriate influence from others. The perception that those involved in these enforcement activities are neutral is critical for public confidence in the integrity of the enforcement process.

Autonomy is also an important element in the relationship between the province and local governments. In the *Community Charter*, municipalities are recognized as an order of government and have authority to act autonomously in their sphere of jurisdiction. As a result, the Provincial government does not play a significant role in the enforcement of rules that govern local government actions. Election administration, for example, is left to the flexibility of local government bylaws and choices within a framework of provincially legislated rules. For enforcement of rules that apply directly to campaign participants, such as campaign finance disclosure, this aspect of autonomy may be less significant.

Pressure Points

Experiences in the 2008 local government elections identified a number of issues or “pressure points” regarding the enforcement of local government election rules.

1. Election administration enforcement rules

In a limited number of cases, there have been allegations of violations of election administration rules by local election officials. Most local governments appoint their CO to serve in a ‘dual role’ as CEOs

during elections. Some argue that this can leave COs facing substantially heavier workloads during campaign periods and facing competing pressures while holding down both responsibilities.

Some argue that the difficulties local government officials face in carrying out a 'dual role' during elections indicates the need to restrict these officials from administering elections. For proponents of such a restriction, this would ensure that a local government's appointed CEO focused attention solely on the administration of local elections. Additionally, some argue that this would address perceptions regarding the ability of a local government employee – who reports to and is accountable to the current elected body - to act neutrally.

Those opposed to this view argue that the costs of restricting local government officials from serving as CEOs would be too high a burden for most local governments to bear. Additionally, this view holds that in a system which administers elections for over 250 jurisdictions, the number of cases where administrative mistakes have been reported or alleged is too small to indicate a systemic problem. If there are any gaps, this view holds that they can be addressed through information and training.

2. Campaign participants lack information

Some argue that, in a number of cases, campaign participants have lacked sufficient information about campaign rules. The suggestion is that participants committed what appeared to members of the public to be election-related offences (e.g. failing to register as a campaign organizer), but there was uncertainty as to whether the participants knowingly breached the rules. For example, in Summerland, the campaign "organization" that took out the newspaper advertisements was reported to be one individual who may not have seen the "campaign organizer" designation applying to him.

Some argue that providing election participants with more substantive and perhaps more centralized, educational resources will help to avoid cases of unintentional wrongdoing. Currently the Ministry and some local election officials make detailed educational and advisory materials available¹³. Proponents of more targeted education hold that a more concerted and co-ordinated effort to reach out to every election participant may prevent unintentional violations of the rules.

Others argue that more educational resources would be an ineffective solution for the problem of unintentional wrongdoing. Without a substantial increase in the resources expended on education, it would be difficult to reach each campaign participant, and given the relatively small number of incidents, such a cost is not warranted. They also argue that running in an election is a serious commitment, and those who choose to do so should ensure they are aware of all the rules governing their activities during elections.

3. Lack of authoritative compliance advice

¹³ The Ministry provides two detailed guides for campaign participants, the "Candidate's Guide to Local Elections in B.C." and the "Campaign Organizer & Elector Organization Guide to Local Elections in B.C.". Copies of these guides are available on the Ministry website at <http://www.cd.gov.bc.ca/lgd/governance/elections.htm>.

Currently, none of those involved in enforcing local government elections has an explicit responsibility to provide advice on the compliance rules to campaign participants. Advice is provided; however, this advice is usually passive (i.e. it is only provided upon request) and is usually not definitive (e.g. neither the Ministry, the LGMA nor CEOs have the mandate to provide definitive answers on compliance questions because these issues may require legal advice). Some argue that it is difficult for CEOs who are also COs of the local government to monitor compliance of their potential employers. Additionally, the legislation does not provide any investigation/compliance tools such as the right to access campaign participant records, compel witnesses, or to apply to the courts for injunctions¹⁴. Law enforcement bodies, on the other hand, are responsible for investigating cases of non-compliance, but do not have the resources or mandate to work proactively with campaign participants to support voluntary compliance.

Some argue that authoritative compliance advice would have helped avoid some of the enforcement controversies that occurred during the 2008 local elections. In Summerland, for example, media reports suggest that candidates may have received inaccurate advice which contributed to them filing incorrect campaign finance disclosure statements. In West Vancouver, citizens complained about unregistered campaign organizations and eventually took their complaints to the law enforcement bodies. An authoritative compliance advisor, it is argued, may have been able to work with the unregistered groups to ensure their compliance before the matter went to the law enforcement bodies. Similarly, it is argued that an authoritative compliance advisor may have been able to facilitate compliance in the case of the two school trustees who had to seek court relief for situations of non-compliance due to errors made in good faith.

For some, such incidents highlight the need for a neutral and recognizable advisor that can provide compliance advice to campaign participants. They argue that such an advisor could receive complaints from the public as well as enquiries from campaign participants and would have the mandate (i.e. knowledge and authority) to help campaign participants to comply with the rules. To have the greatest influence in preventing wrongdoing, those in favour of such an approach also argue that a compliance advisor requires the ability to compel campaign participants to follow the rules (i.e. the authority to initiate an investigation and/or law enforcement involvement) *or* needs greater compliance tools (e.g. the power to examine campaign participants' records).

On the other hand, some argue that campaign participants already have appropriate resources to support rule-following. The Ministry publishes guides for campaign participants, and provides knowledgeable information to any campaign participant who seeks their advice. If campaign participants require definitive opinions about a compliance issue, they should seek legal advice to ensure they remain within the law. The cost of either locally or provincially based authoritative compliance advice, this view holds, could not be justified. Those opposed to enhanced compliance

¹⁴ Nor does the legislation require campaign advertisers to disclose their sponsorship on campaign advertising. The lack of sponsorship information presented a significant barrier to any attempts of giving compliance advice to, or seeking voluntary compliance from, campaign organizers in relation to the situations in West Vancouver, Summerland and Langley.

advice also argue that a fair enforcement process requires an unbiased investigator (i.e. an investigator who was not involved in providing compliance support to one of the parties involved in the case they are investigating); therefore the compliance support and investigatory roles should be carried out by separate entities.

4. *Lingering suspicion*

Some argue that a fair enforcement system requires thorough and conclusive investigations. During the last election, a few campaign participants were investigated by law enforcement agencies for possible election offences, but the results of these investigations left it unclear to many whether an offence had been committed. No charges have been laid for offences during the 2008 local elections, but some would argue that a ‘cloud of suspicion’ remains around elected local government officials and campaign participants who were investigated but never charged in Summerland and in Central Saanich. They would argue that this is an unfair situation for those elected officials and campaign participants.

They suggest that an entity (i.e. a person or organization) with the authority to conduct preliminary examinations of cases of alleged wrongdoing could prevent situations where suspicion lingers over elected candidates and other campaign participants. Such an entity could investigate potential offences and work with campaign participants to promote their compliance. The entity would also have a “filtering” role, ensuring that only serious cases are brought forward for a full police investigation.

Others argue that such an entity would not necessarily result in more conclusive investigations than the current system. Members of the public may still suspect a campaign participant of committing an offence, even if this participant has been investigated and cleared by the entity. On the other hand, law enforcement bodies or prosecutors may not agree with the investigating entity’s recommendations and the case may not proceed. They argue that fairness requires that offences ultimately be determined through the courts, so an entity may simply add another layer of complexity and cost to the investigation of election offences (i.e. a complaint would have to pass through the entity, the law enforcement bodies, Crown Counsel, and the courts) making it more difficult to reach closure. Additionally, they hold that even court proceedings do not always result in unambiguous findings as sometime courts acquit cases and do not find someone “innocent” or “guilty” (e.g. when the prosecution does not prove their case sufficiently).

5. *Barriers to enforcement*

a) *Significant public action required*

Some argue that the current elections complaints process (which relies on law enforcement bodies to investigate complaints from the public) includes unintentional and unnecessary barriers. When a member of the public has a concern about a potential elections violation, they may contact a provincial body, such as EBC or the Ministry, who will refer them to their local law enforcement agency.

For some complainants, however, contacting a law enforcement agency may be intimidating. Law enforcement activities are associated with the prevention of “serious” crimes (e.g. criminal code offences), and may not appear suited to the administrative nature of most elections violations (i.e.

elections offences often involve administrative oversights or mistakes, while criminal code offences require proof of intent to commit the crimes). It is argued that when people wish to raise concerns about an alleged election violation, they may not consider these issues to be criminal in nature, and therefore could be intimidated by the thought of contacting a law enforcement agency.

If citizens do not wish to complain to a law enforcement agency, they have an alternative process for questioning the validity of an elected candidate or an election. Citizens can initiate a court process to seek the disqualification of an elected candidate or to invalidate an election. However some argue that this alternative process has its own barriers (e.g. court costs or the loss of anonymity caused by a court case).

Some argue that giving a participant within the enforcement system responsibility for receiving complaints and reviewing cases of alleged wrongdoing would provide citizens with a less intimidating complaints process. Others argue that citizens already have suitable avenues to pursue election complaints. For example, law enforcement investigations during the last election show that, when serious concerns about election offences did arise, citizens *were* able to make complaints to local law enforcement bodies. They also argue that the cost of such an entity is not warranted by the relatively small scale of actual enforcement issues.

b) Insufficient compliance tools

Some argue that those responsible for enforcing B.C.'s local election rules *before* cases reach the police investigation phase lack effective compliance monitoring tools. Those who hold this view argue that without such tools (e.g. advertising sponsorship disclosure, access to records, administrative penalties, etc), those responsible for compliance monitoring are limited in their options and, therefore, their ability to facilitate compliance is minimal.

For example, when there is suspicion about a campaign participant, the only option that currently exists is for local CEO or citizens to take their concerns to the police. If it were possible to inspect all the records of a campaign participant *before* the matter went to the police, or to contact a third party advertiser who had not registered as a campaign organizer provide advice regarding registration and campaign finance disclosure statement requirements, then violations may be mitigated or prevented and suspicions may be allayed. Those who support more compliance tools also point to other major jurisdictions in Canada to argue that most of these jurisdictions include some sort of compliance tools for the enforcement of local government election rules.¹⁵

Compliance tools could include the ability to require or conduct audits, the ability to get access to financial records, requiring sponsorship disclosure on campaign advertising (so it is possible to track

¹⁵ See Appendix 2 for a jurisdictional comparison of compliance tools and the role of election officials in the enforcement of election rules.

down advertisers who are not registered as campaign organizers), the ability to seek injunctions to stop non-complying actions, and the ability to impose administrative penalties, etc.

Those opposed to more compliance tools argue that these tools are significant and, if not used appropriately, could be heavy handed. Additionally, they argue that the few cases of reported non-compliance of campaign participants, in a limited number of communities, does not warrant such tools as most participants in the vast majority of communities appear to be complying with the rules.

c) Investigator expertise and resources

Some argue that another barrier in the current system involves law enforcement agency resources and expertise. Municipal police forces and the RCMP dedicate much of their resources to investigating violent and other criminal code offences. Since local elections occur every three years, and, in the vast majority of jurisdictions, occur without incident, it is difficult for law enforcement agencies to anticipate the costs and staff time required for local election related investigations. Some also argue that conducting local elections investigations means that police must divert resources away from their core responsibilities to ensure public safety.

It is also argued that the irregular and sporadic occurrence of local election investigations makes it difficult for law enforcement agencies to develop potentially crucial knowledge of the Province's local government system. For the matters they deal with on a daily basis, police have extensive knowledge and sensitivity to the context in which the issues arrive. Without a similar daily involvement in local government issues, police must expend significant time and resources familiarizing themselves with the complexities of B.C.'s local government system while investigating alleged offences. This can hinder the police's ability to investigate election offences effectively.

Some argue that the difficulties law enforcement agencies face in conducting local elections investigations means that those with more knowledge of local government issues should have a role in monitoring compliance. While this role would not *replace* law enforcement agency investigations, it could *support* such investigations. If a participant within the enforcement system was given a monitoring role, it could plan for an appropriate allocation of resources to investigate potential election offences, and would develop necessary expertise. Others argue that police are adequately prepared to undertake local elections investigations. They argue that police forces are adept organizations with an array of competencies that allow them to investigate offences against various provincial statutes, including the *Local Government Act*.

d) Time constraints

The time required to investigate potential election complaints can also be a barrier to effective enforcement processes. Currently, candidates have 120 days (approximately 4 months) to file their financial disclosure statements (which are important for determining whether candidates followed campaign financing rules). However, under section 3 of the *Offence Act*, police must conclude their

investigation and Crown counsel must begin a prosecution within 6 months of an offence being committed. This leaves a limited amount of time for police to conduct investigations. In Summerland, the 6-month limitation meant the RCMP could not conduct a full investigation of the alleged offences.

Some argue that this barrier could be alleviated by: a) reducing the amount of time that candidates have to file disclosure statements;¹⁶ or b) altering or removing the time limitation on police investigations into elections offences.

Others may argue that both of these time constraints are fair. Lessening the amount of time required for candidates to file their disclosure statements could make a campaign participant's administrative work more difficult. Altering the limitation on police investigations may leave participants facing allegations about election offences beyond what most would consider a reasonable amount of time. Opponents might also suggest that two months (6 months limitation period minus the 4 month filing date) is a suitable amount of time for law enforcement agencies to investigate election-related complaints as such matters should be addressed in timely manner.

Policy Considerations

What are the gaps in the current enforcement system?

Regulation of campaign participants. The incidents and pressure points discussed above indicate that concerns arise mostly in relation to the regulation of campaign participants. Among other issues, concerns have been raised about whether campaign participants lack vital information; about potentially unintentional non-compliance; and about barriers in the investigative process.

Currently, there is one model for the enforcement of rules governing two types of election activities: election campaigns; and elections administration. For example, the enforcement of both activities relies on citizens to monitor compliance, and in both cases the Province's role is primarily educational. However, some argue that the differences between the two activities mean each type of activity requires a different enforcement approach. For example, local governments may have less of a direct interest in campaign participant regulations since the rules being enforced against individuals are Provincial legislation, rather than local government bylaws.

Given the differences between election administration and the regulation of campaign participants, do the 'pressure points' discussed above suggest there are gaps in the enforcement of campaign rules? What would be the advantages of a different approach (e.g. would giving an entity the power to inspect the records of candidates provide greater clarity about whether offences had been committed)? Would there be disadvantages (e.g. would there be logistical difficulties in having one entity responsible for monitoring over 3050 local government candidates in more than 250 jurisdictions)?

¹⁶ The issue of timing of campaign finance disclosure statement was also identified in the paper on campaign finance disclosure – see that discussion paper for more on this point.

Enforcement of administrative rules. Most of the incidents during the past election highlighted gaps in campaign oversight. However, some argue that incidents of administrative errors (e.g. Gibsons) indicate gaps in the enforcement of administrative rules. Are there also gaps in the enforcement of administrative rules?

The enforcement continuum. As discussed in this paper, enforcement can be understood as a continuum of measures, ranging from education, moving through to compliance rules, monitoring compliance, and ending at legal action and punishment. Many would argue that dedicating significant resources and attention to the front end of the continuum (i.e. voluntary measures such as education and compliance support), helps to avoid cases that move to the more costly legal end of the continuum.

Based on the incidents that occurred during the last election, are there gaps on all points of the enforcement continuum? Or is the gap limited to *one* aspect of the continuum (e.g. are the issues limited to the education of campaign participants)? Would focusing on one aspect of the continuum be more cost effective than focusing on others?

Who should have a role in filling the gaps and what should this role be?

Within British Columbia's system, different parties have varying roles and responsibilities in the enforcement of election rules¹⁷. Is there a need to *strengthen* the role of any of these parties? For example, is there a need to establish more clearly who is responsible for elections education – perhaps by establishing a shared mandate for elections education between the Ministry and the LGMA?

In addition to strengthening current roles, could gaps be filled by introducing a new participant to the enforcement of local elections? For example, if it is determined that there is a gap in the monitoring of campaign participant compliance, is there a role for a neutral entity (either a person or an organization) to provide this monitoring role? Among other functions, this entity could be given responsibility for looking into elector complaints, for providing compliance support to campaign participants during elections, and/or for monitoring campaign finance disclosure after elections and recommending cases to law enforcement agencies when a legal investigation appears warranted.

The decision to introduce a neutral entity would entail many design considerations including:

- Would the neutral entity be locally-based (e.g. the Saskatchewan/Ontario model) or provincially-based (e.g. the Quebec model)?
- Would the entity be responsible for multiple aspects of the enforcement continuum, or just one?
- How would the entity accommodate both aspects of the principle of autonomy? How would it respect local government autonomy while maintaining its own independence?

¹⁷ see pg. 3 for a description of the various roles

Other Considerations

School Trustees. How would new enforcement system affect school trustees? Would an enforcement entity be responsible for overseeing trustee's campaigns as well?

Other Voting. Would new enforcement rules apply to other voting? Would an enforcement entity oversee referenda and alternative approval process campaigns?

Direction Questions

Objectives

- Based on the enforcement 'pressure points', what gaps exist in the current enforcement system?
- Where on the enforcement continuum do these gaps exist (e.g. in education, monitoring compliance or in punishment)?

Scale and scope

- Do the gaps require strengthening any of the roles and responsibilities of current parties within the enforcement system? Would giving new tools (e.g. compliance audits) to existing parties be effective?
- Are the gaps in the enforcement system significant enough to require the introduction of a new enforcement entity? What aspects of the enforcement continuum would this entity be responsible for?
- How would the autonomy of such an entity be balanced with the autonomy of local governments?

Next steps

- Which aspect, if any, would the task force like further work on?

Appendix 1: Legislated Enforcement Measures in Local Elections

The legislation governing local government elections and related enforcement provisions¹⁸ have a number of enforcement elements. These elements include: compliance rules; automatic consequences for failure to file campaign disclosure statements; election offence and penalty provisions; and court applications to invalidate an election or disqualify a candidate. Each of these elements will be discussed below.

Compliance rules

There are a number of legislative requirements that are designed to facilitate compliance of campaign participants (candidates, elector organization or campaign organizer). Given that most of the identified enforcement issues seem to focus on campaign financing issues, examples of legislated compliance rules regarding campaign financing provisions will be highlighted.

Campaign participants are required to appoint a financial agent (*LGA s. 85*)¹⁹ and the financial agent is responsible for receiving all contributions and authorising all election expenses (*LGA s. 86*). The financial agent is also responsible for recording information about all contributions (the date, from whom and how much) and all expenses (the date and for what) (*LGA s. 88*). These financial records enable the financial agent to comply with the campaign finance disclosure requirements following the election (*LGA s. 90*). Additionally, the financial agent is required to ensure that all funds are placed in a separate campaign account and that all campaign expenditures are paid from the account (*LGA s. 85.1*). These measures help ensure that there is an adequate audit trail in the event of a law enforcement investigation.

The campaign finance disclosure statement is also an important compliance review tool as it is through this document that interested parties can review the reported campaign finances and commence investigations should the information not correspond with known campaign activities.

Automatic consequences²⁰ for failure to file or failure to file on time

If campaign participants do not file their campaign finance disclosure statement on time (120 days after general voting day), they may still file within a late filing period (an additional 30 days), if they pay a late filing fee of \$500 (*LGA s. 90.2*).²¹

¹⁸ These provisions may be found in the *Local Government Act (LGA)*, *Community Charter (CC)*, *Vancouver Charter (VC)* and *School Act (SA)*.

¹⁹ If a candidate does not appoint a financial agent, the candidate is deemed to be the financial agent (*LGA s. 85*)

²⁰ These automatic consequences are often referred to as “administrative penalties”, because law enforcement agencies and the courts are NOT required to determine the contravention and for the “penalty” to be imposed.

²¹ Where the same or parallel legislative provisions apply to all local bodies, for brevity, only the LGA reference will be given.

If a campaign participant does not file the required campaign financing disclosure statement by the end of the late filing period, and has not sought court relief from the filing obligation, there are automatic consequences. These consequences are as follows:

- *for all candidates*, this automatic consequence means that they are prohibited from holding *any* local elected office until *after the next* general local election (*LGA s. 92*). For elected candidates, this means that they no longer hold office and the seat of the member is vacant. (*LGA s. 92*);
- *for elector organizations*, this automatic consequence means that they are disqualified from endorsing a candidate in any local election and they are prohibited from accepting campaign contributions or incurring election expenses in relation to future elections until *after the next* general local election (*LGA s. 92.1*); and
- *for campaign organizers*, this automatic consequence means that they are prohibited from accepting campaign contributions or incurring election expenses in relation to future elections until *after the next* general local election (*LGA s. 93*).

As there may be a valid reason why a campaign participant cannot comply with the filing obligations (e.g. fire destroyed all records), there is provision for participants to seek court relief (*LGA s. 91*). However, in relation to campaign finance disclosure statements for general elections, this ability is only available up until before the end of the late filing period.

Election offences and penalties

The legislative provisions set out a number of offences and corresponding penalties for contraventions of certain election rules. Law enforcement agencies, the Criminal Justice Branch of the Ministry of Attorney General (Crown counsel), and the courts are involved in determining whether an offence has been committed.

Election offences are dealt with by the BC Supreme Court. Typically, such offences are prosecuted after the municipal police or RCMP makes a recommendation to Crown counsel. Anyone who wishes to have charges laid in relation to an election offence is required to provide evidence to support their allegation. The legislation provides that a person is not guilty of an election offence if they exercised due diligence to prevent the commission of the offence.

Additionally, the *Offence Act* permits private citizens to commence court actions by “laying information” or making an application, directly to a justice.

- The legislation outlines two scales of election offences. The first scale of offences can result in penalties that include:
 - a fine of up to \$10,000;
 - imprisonment for up to two years;
 - prohibition from holding elected office in a local government for up to six years; and
 - prohibition from voting in a local government election for up to six years.

This scale of offences includes:

Vote Buying (LGA s. 151): It is an offence to offer inducements to vote. Inducements can include, but are not limited to:

- offers of money
- gifts
- valuable considerations
- refreshments
- entertainment
- employment
- or any other benefits that reward or persuade individuals to alter their voting behaviour.

It is also an offence to *accept* an inducement to vote.

Intimidation (LGA s. 152): It is an offence to intimidate an elector, by action or threat, to compel the person to vote or to refrain from voting. It is also an offence to punish a person for voting or refraining from voting generally, or for voting in support of a particular candidate.

➤ The second scale of offences can result in penalties including:

- a fine of up to \$5,000;
- imprisonment for up to one year;
- prohibition from holding elected office in a local government for up to six years; and
- prohibition from voting in a local government election for up to six years.

This scale of offences includes:

Advertising on general voting day (LGA s. 152.1): It is an offence to conduct election advertising through newspapers, magazines, radio or television on general voting day.

Campaigning near a voting place (LGA s. 153): It is an offence to engage in campaigning and other activities that show support for one candidate over another within 100 metres of any building where voting is taking place. During both advance voting opportunities and general voting hours (8 a.m. to 8 p.m.), election advertising by means of a public address system or a loudspeaker is not permitted within hearing distance of the voting place. Candidates, and their supporters, must not canvas, solicit votes or advertise within 100 metres of where general or advance voting is taking place. Advertising includes:

- signs, posters, or flyers;
- bumper stickers on vehicles parked outside the voting place; or,
- badges worn by supporters.

Providing or distributing false information (LGA s. 153): It is an offence to falsely withdraw a candidate from an election, distribute a false statement that a candidate has withdrawn, falsely withdraw the

endorsement of an elector organization, consent to nomination when ineligible, provide false information, or make false statements or declarations.

Contravening voting provisions (LGA s. 153): It is an offence to vote when not entitled to, vote more than once in an election, obtain a ballot in the name of another person, interfere with the secrecy of the ballot, tamper with ballots or ballot boxes, or print, reproduce, give out, or destroy ballots without authorization.

Contravening campaign finance provisions (LGA s. 153): It is an offence to: fail to open and use a campaign account, make or accept prohibited contributions or incur unauthorized or unrecorded expenses, fail to transfer surplus funds, or fail to file campaign financing disclosure statements.

Court Applications

The legislative provisions also provide that court applications can be made to invalidate an election, to disqualify a nominee (i.e. a person who has filed a nomination for candidacy in an election), or to disqualify an elected candidate, if certain election rules are contravened. These applications can be made directly to the Supreme Court of BC or the Provincial Court of BC, as applicable, without involving law enforcement agencies and Crown counsel. Anyone who wishes to use these enforcement tools will be required to provide evidence to the court to support their allegations.

There are three court application processes available – invalidating an election, disqualifying a nominee and disqualifying an elected candidate.

Invalidating an election (LGA ss. 143 through to 147): Within 30 days after the declaration of the official election results, a candidate in the election, the chief election officer or at least 4 electors may make an application to the Supreme Court of BC to invalidate an election. An application may only be made on the following bases:

- that an elected candidate was not qualified to hold office at the time of election or, between the time of the election and the time for taking office, the candidate has ceased to be qualified to hold office;
- that an election should be declared invalid because it was not conducted in accordance with this Act or a regulation or bylaw under this Act;
that an election or the election of a candidate should be declared invalid because serious election offences were committed – that a person voted when not entitled to do so (*LGA s. 153 (2) (a)*), or that voting buying (*LGA s. 151*) or intimidation (*LGA s.152*) took place.

If the court declares that a candidate is not qualified to hold office or that an election is invalid, the costs, within the meaning of the Rules of Court, of the persons who made the application must be paid promptly by the local body for which the election was held. Additionally, the court may order that the costs to be paid by the local body may be recovered from any other person as directed by the court. Otherwise, the costs of an application are in the discretion of the court; this often results in unsuccessful applicants paying their own costs.

Disqualifying a nominee: An application to the BC Provincial Court to challenge a nomination may be made by an elector, another nominee, or by the chief election officer (*LGA s. 75*). The challenge may be made only on certain bases. These include that:

- the person is not qualified to be nominated or elected (e.g., did not file a campaign finance disclosure statement or filed a false or incomplete statement or fails to meet the qualifications of office);
- the nomination was not made in accordance with the rules; or
- the named organization is disqualified from endorsing a candidate because the organization failed to file a campaign disclosure statement or filed a false or incomplete campaign disclosure statement

The application must be made before 4 p.m. on the fourth day after the end of the nomination period. The costs of the challenge may be determined by the court.

Disqualifying an elected candidate (CC sections 111 through to 113): The legislative provisions also allow 10 electors or a local government to apply to the Supreme Court of BC to have a person who was elected to office declared disqualified. The basis on which persons may be disqualified includes, but is not limited to the following:

- the person does not meet the qualification requirements;
- the person is prohibited from holding elected office in relation to an local government election offence;
- the person is disqualified for failing to file a campaign finance disclosure statement or for filing a false or incomplete campaign disclosure statement.

Such an application may only be made within 45 days after the alleged basis of the disqualification comes to the attention of the applicants. The costs of an application (within the meaning of the Rules of Court) made by a group of electors must be paid by the local body, if the court declares that the person challenged is not qualified to hold office. The court may order that costs paid by the local body may be recovered from the person who was declared disqualified. Otherwise, costs of an application are in the discretion of the court.

Appendix 2: Role of Election Officials in the Enforcement of Election Rules

	Who is responsible? Neutrality requirements?	Campaign oversight mandate	Complaints	Records	Other investigative powers	Link to police investigation/prosecution
Elections BC	<p>Chief Electoral Officer of B.C. is an independent Officer of the Legislative Assembly.</p> <p>Must be impartial: cannot vote; cannot have other employment; may not make a contribution to, be member of or hold a position with a political party; hold a position with, or make a contribution to a candidate.</p>	<p>Must conduct periodic investigations of the financial affairs of campaign participants.</p> <p>May conduct audits of the accounts of campaign participants.</p> <p>May conduct investigations of any matter that may constitute a violation of the <i>Elections Act</i>.</p>	<p>When complaints are received, CEO must consider whether to investigate.</p> <p>Must refuse to investigate when he/she considers complaints frivolous, vexatious or unfounded.</p> <p>If CEO refuses a written complaint, complainant must be notified in writing of reasons for refusal.</p>	<p>May inspect and make copies of the records of campaign participants.</p> <p>May enter campaign participants' premises to acquire records (with permission of occupant or a warrant).</p> <p>Financial reports of campaign participants must be filed with CEO.</p>	<p>Can seek a court injunction to compel compliance with the Act.</p>	<p>A prosecution of an election offence cannot proceed without the approval of the CEO.</p> <p>CEO can refer cases that he/she has investigated to police or to Crown counsel.</p>
Alberta	<p>A local authority may appoint a returning officer (RO) by resolution.</p> <p>If no RO is appointed, then the local authority's secretary becomes the RO.</p> <p>Under s. 13.1, the RO must be "independent and impartial when performing the duties of a returning officer."</p> <p>No limitation on who may serve as RO.</p>	<p>Local returning officer has no mandate to oversee campaign participants</p>	<p>Complaints are directed to law enforcement agencies; no special provisions are made in the Act for the RO.</p>	<p>Campaign participants must file financial disclosure statements with municipality.</p> <p>If statements are not filed within a certain period, municipal secretary must notify council.</p>	<p>N/A</p>	<p>No link is specified in the legislation; meaning that members of the public, participants and election officials can take complaints to law enforcement agencies.</p>

	Who is responsible? Neutrality requirements?	Campaign oversight mandate	Complaints	Records	Other investigative powers	Link to police investigation/prosecution
Ontario	<p>In most cases, the clerk of a municipality is responsible for conducting elections.</p> <p>Clerk has no campaign oversight role.</p> <p>Each municipality must appoint an Elections Compliance Committee (ECC)</p> <p>ECC made up of 3-7 council appointees who may not be councillors or employees.</p>	<p>The Elections Compliance Committee has the power to consider applications for compliance audits and recommend criminal investigations (filtering role).</p>	<p>Elector may apply for compliance audit of campaign participants' financial statements.</p> <p>Application made to clerk of municipality and must be made within limited period after the deadline for filing disclosure statements has passed.</p> <p>Clerk must forward application to ECC.</p> <p>ECC decides whether complaint is warranted and, if so, must appoint a licensed Compliance Auditor (CA) to conduct a compliance audit.</p>	<p>Campaign participants must file financial disclosure statements and auditor's reports with clerk of municipality.</p> <p>If a compliance audit occurs, CA must be given access to all relevant documents.</p>	<p>CA has powers under Ontario's <i>Public Inquiries Act</i> including the authority to compel witnesses.</p>	<p>If the CA concludes that a campaign participant appears to have contravened the Act, the ECC may decide to commence a legal proceeding against the candidate.</p>
Saskatchewan	<p>Returning officer is clerk of municipality unless council passes a by-law appointing someone else.</p> <p>Some classes of municipalities (i.e. urban but not rural) have the power to establish their own campaign finance and disclosure rules and to establish an Elections Disclosure Complaints Official (EDCO).</p> <p>Thus far, Saskatoon is the only Saskatchewan municipality to have</p>	<p>Returning officer responsible for receiving and administering campaign disclosure statements, and provide a summary report on disclosures to council.</p> <p>Returning officer can refer cases to EDCO.</p> <p>EDCO responsible for conducting investigations into false or incomplete disclosure statements.</p>	<p>EDCO can investigate complaints made by an elector in writing.</p> <p>If EDCO considers complaint frivolous, it can be dismissed.</p> <p>EDCO investigation includes contacting complainants and candidates.</p> <p>Once this investigation has been conducted, the EDCO can either dismiss or uphold the complaint.</p>	<p>EDCO can inspect any documents the EDCO considers necessary.</p>	<p>N/A</p>	<p>If the EDCO upholds the complaint, the matter is referred to Council with a recommendation to consider whether prosecution is warranted.</p>

	Who is responsible? Neutrality requirements?	Campaign oversight mandate	Complaints	Records	Other investigative powers	Link to police investigation/prosecution
	<p>passed a campaign finance and disclosure bylaw that establishes an EDCO (therefore, reference to the EDCO in this table means the official established under <i>Saskatoon's Campaign Disclosure and Spending Limits Bylaw, # 8491</i>)</p> <p>EDCO cannot be an elected councillor or employee of the municipality.</p>					
Manitoba	<p>Senior election official (SEO) appointed by council.</p> <p>SEO must conduct elections "independently and impartially" Council may only direct the SEO by bylaw or resolution.</p>	<p>SEO exercises general direction and supervision over the conduct of elections and votes on questions in the local authority. No explicit campaign oversight mandate.</p>	<p>Complaints are directed to law enforcement agencies; no special provisions are made in the Act for the SEO.</p>	N/A	N/A	<p>No link is specified in the legislation; meaning that members of the public, participants and election officials can take complaints to law enforcement agencies.</p>

	Who is responsible? Neutrality requirements?	Campaign oversight mandate	Complaints	Records	Other investigative powers	Link to police investigation/prosecution
Quebec	<p>Chief Electoral Officer (CEO) is appointed by the National Assembly.</p> <p>CEO must not have other employment.</p>	<p>The CEO may, of his own initiative or at the request of a person, make inquiries regarding compliance issues.</p> <p>CEO is mandated to provide advice and information regarding election financing rules; provide regular information session for parties, candidates, municipalities and the public; and to provide training for election officials.</p> <p>CEO may audit disclosure statements.</p>	<p>Complaints may be directed to CEO, who may investigate.</p> <p>The CEO may refuse to make or to pursue an inquiry where he/she considers the request frivolous, vexatious, made in bad faith, or unnecessary in the circumstances.</p> <p>Where the CEO refuses to make or to pursue an inquiry at the request of a person, he/she must inform that person of his/her refusal and give the reasons in writing.</p>	<p>All supporting evidence (bank statements, original invoices, deposit slips) must be filled with the campaign participants' disclosure reports.</p> <p>CEO has the ability to inspect any record necessary for an inquiry.</p>	<p>For inquiries, the CEO is vested with the powers and immunity of commissioners. This includes the ability to compel witnesses, access to records, etc.</p>	<p>CEO has the ability to institute legal proceedings for violations of all elections legislation.</p>