

# Local Government Elections Task Force Campaign Expense Limits Discussion Paper

March 2010



# *Local Government Elections Issue:* Campaign Expense Limits

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## **Issue Summary**

There are currently no expense limits in British Columbia local government elections meaning that candidates, elector organizations<sup>1</sup> and campaign organizers<sup>2</sup> may spend as much money as they wish during a campaign. However some are calling for the imposition of expense limits in local government elections noting that while it is true that many candidates still spend relatively low amounts on their campaigns, it is also true that in some recent local government elections, relatively high amounts have been spent. There are expense limits in British Columbia provincial elections.

Those in favor of expense limits for local government election campaigns argue that such limits would enhance accessibility and fairness. They assert that as campaign costs continue to rise, the ability of many citizens to run for office is being eroded. Furthermore, they suggest that without expense limits, candidates with less money may not be heard as loudly as candidates who are able to spend more. Proponents of expense limits also point out that expense limits are part of the federal and provincial campaign finance landscape. Those opposed to expense limits argue primarily that such limits would restrict the ability to communicate ideas (thereby de-emphasizing the principle of free speech) while actually reducing transparency by creating an incentive to redirect money away from candidates and elector organizations towards third party participants that may be harder to monitor. Those against expense limits also suggest that the administrative burden related to regulation (including third party advertising controls) and compliance would not be justified.

This paper provides an overview of the current regulatory environment and seeks to identify some of the key considerations related to imposing expense limits in British Columbia local government elections. The paper ultimately asks the Local Government Elections Task Force for directional guidance on whether further work related to expense limits is required.

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<sup>1</sup> “Elector organizations” are organizations that are formed for the purposes of directly promoting a candidate or a point of view in a local government election. Elector organizations are occasionally referred to as civic political parties and may have their endorsement on the ballot if certain criteria are met.

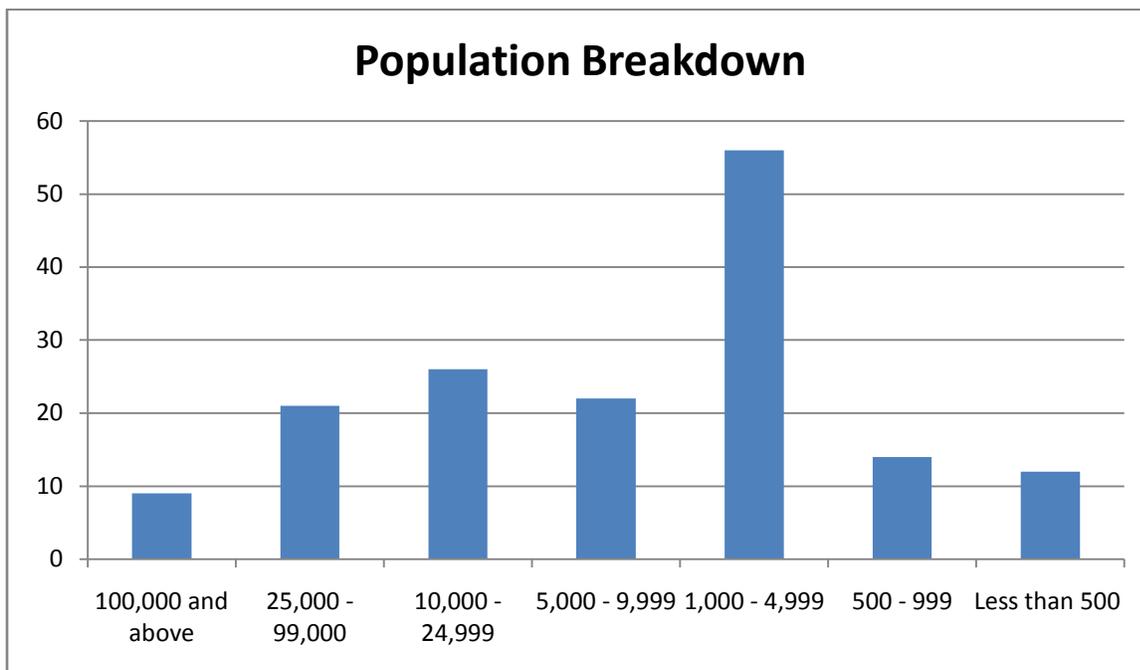
<sup>2</sup> “Campaign organizers” are groups or individuals that create and implement local government election campaigns that augment the election campaign of one or more candidates or elector organizations. A campaign organizer may do this by promoting or opposing a candidate or an elector organization, or point of view. Campaign organizers may be one or two individuals in a single community, or provincial or national organizations that are seeking to elect people in several jurisdictions simultaneously.

## Background

### *Local government elections in British Columbia*

Local government elections in British Columbia are governed by the *Local Government Act* and parallel provisions in the *Vancouver Charter*. Under the *School Act*, these rules also apply to board of education elections. The local government campaign finance system emphasizes transparency and flexibility. It is primarily a disclosure-based system without contribution or expense limits that is designed to function in a wide range of communities<sup>3</sup>. Transparency with respect to expenses is promoted by requiring that expenses be recorded, disclosed and ultimately made available for public scrutiny albeit after the election. The local government system also includes a number of other “transparency” rules about *how* expenses are incurred and valued. For example, expenses can only be incurred by certain individuals and must be made using the appropriate bank account and valuation rules to ensure that expenses are valued to reflect their true market value. A summary of the current treatment of expenses in local government elections is attached as **Appendix A**.

The local government campaign finance system also emphasizes flexibility by being able to function in a wide range of communities because different communities and their local governments may have different circumstances and needs. For example, there are a total of 160 municipalities in British Columbia with populations as shown in the following chart:



Nine municipalities in British Columbia have more than 100,000 people but almost two-thirds of British Columbia’s 160 municipalities have fewer than 10,000 people. The single largest group has between 1,000 and 5,000 people (56 municipalities).

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<sup>3</sup> For more information on the current local government campaign finance system, see Campaign Finance Overview Paper.

Campaign spending varies among candidates, elector organizations and campaign organizers. However, some trends can be seen by comparing municipalities of different sizes. Generally speaking, campaign costs are higher in large centers such as Vancouver. For example, in the 2008 local government election, overall election spending in Vancouver is estimated at \$5.5 million or \$8.80 per capita. For comparison, 2008 overall election spending in Kamloops<sup>4</sup> was \$151,975 or \$1.75 per capita and in Parksville<sup>5</sup> was \$30,445 or \$2.58 per capita. It is important to note that some small communities experience relatively high per capita election spending. In Bowen Island<sup>6</sup> for example, overall election spending for the 2008 election was \$17,364 or \$4.85 per capita.

### *Provincial government elections in British Columbia*

The provincial government campaign finance system is similar in its basic approach to incurring, recording and disclosing election expenses. However, in provincial elections, there are expense limits on candidates<sup>7</sup>, registered political parties<sup>8</sup> and third party advertisers<sup>9</sup>. Since any election expenses incurred by a constituency association must be on behalf of their candidate, and be reported by the candidate, constituency associations do not have separate election expense limits.

Some believe that imposing expense limits on candidates and parties without third party advertising controls could result in money flowing away from regulated campaigns and into unregulated (i.e. unlimited) third party advertising campaigns. The *Election Act* was amended in May 2008, limiting third party election advertising from the start of the 60 day pre-campaign period to the end of voting on general voting day. On March 30, 2009, the British Columbia Supreme Court found that spending limits on third party election advertisers during the 60 day pre-campaign period were an unjustified infringement on the right to freedom of expression guaranteed by the Canadian Charter of Rights and Freedoms. As a result of this decision, there is no longer a limit on the value of election advertising sponsored during the 60 day pre-campaign period by a registered election advertising sponsor. Third party advertising limits still apply to election advertising conducted during the campaign period.

The expense limits present in the provincial system give rise to associated compliance and disclosure requirements, as well as the need to carefully define expenses and specify which expenses count toward the limit and which do not.

### *Other municipalities in Canada*

Local governments in some other Canadian jurisdictions are subject to campaign expense limits. The limits are imposed in a number of ways. Some legislative schemes are empowering and allow all municipalities to set their own rules, while other schemes are more prescriptive. For example, Ontario and Quebec limit expenses in local government elections via provincial legislation<sup>10</sup>. Manitoba requires

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<sup>4</sup> Kamloops population 86,184

<sup>5</sup> Parksville population 11,783

<sup>6</sup> Bowen Island population 3,581

<sup>7</sup> The candidate limit is \$70,000 during the 60 day pre-campaign period and \$70,000 during the campaign period.

<sup>8</sup> The party limit is \$1.1 million during 60 day pre-campaign period and \$4.4 million during the campaign period.

<sup>9</sup> The third party election advertising limit for sponsors is \$3,000 in a single electoral district and \$150,000 province-wide. This limit applies during the campaign period.

<sup>10</sup> In Ontario municipal elections, a mayoralty candidate can spend \$7,500 + 85 cents per elector and a councillor candidate can spend \$5,000 + 85 cents per elector. In Quebec municipal elections, expense limits are set for

that municipalities set campaign finance rules (including expense limits) by bylaw and the City of Winnipeg has passed a bylaw that limits expenses<sup>11</sup>. Newfoundland and Labrador provide authority for municipalities to impose expense limits by bylaw and the City of St. John's has passed such a bylaw<sup>12</sup>. Some Canadian cities have authority under their own, specific legislation to impose campaign finance rules and some have imposed expense limits<sup>13</sup>. At the federal and provincial level, expense limits are typically part of the campaign finance landscape with only Alberta and Yukon not imposing provincial expense limits.

### *What are we hearing about expense limits?*

#### Union of British Columbia Municipalities

To date, there have not been any endorsed UBCM resolutions calling for expense limits in local government elections. However, in 2009, the City of Vancouver put forward a resolution calling for expense limits (along with contribution source restrictions and contribution amount limits) to be imposed on elector organizations, campaign organizers and candidates. The City of Vancouver resolution was not debated or considered by UBCM members due to time constraints. The UBCM executive has referred the resolution to the Local Government Elections Task Force for consideration. The resolution is attached as **Appendix B**.

#### Media coverage

In 2008 and 2009, media coverage related to campaign expense limits was concentrated on the rising costs of election campaigning, particularly in larger centers. Most but not all of the media coverage focused on Vancouver, where it was reported that candidates and their supporters spent \$6 million which was quadruple what was spent in 1996<sup>14</sup>.

#### Submissions

In a submission to the Local Government Elections Task Force, political science Professors Patrick Smith and Kennedy Stewart, both from Simon Fraser University, recommended that expense limits be implemented in local government elections in British Columbia. They suggested that the limits be imposed province wide and based on \$1 per capita for candidates or a \$2 per capita limit for elector organizations (i.e. parties).

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mayor at \$5,400 plus designated amounts per individual elector and for councillor at \$2,700 plus a designated amount per elector (note that in Quebec, expense limits only apply in municipalities with 5,000 or more people).

<sup>11</sup> The Winnipeg bylaw provides that a candidate for mayor may spend 30 cents per elector in the city (adjusted using consumer price index) and a candidate for council can spend 75 cents per elector in the ward (also adjusted using consumer price index).

<sup>12</sup> The St. John's bylaw sets the limit for mayor and councillor candidates at \$10,000 plus one dollar per voter.

<sup>13</sup> In the City of Toronto, a mayoralty candidate can spend \$7,500 + 85 cents per elector; a councillor candidate can spend \$5,000 + 85 cents per elector and a school board trustee candidate can spend \$5,000 + 85 cents per elector.

<sup>14</sup> Vancouver Sun, page A04, September 22, 2009

In its 2004 report, *A City of Neighborhoods*<sup>15</sup>, the Vancouver Electoral Reform Commission recommended that Vancouver council approach the provincial government to consult with Vancouver and other interested municipalities to design a system of restrictions on campaign spending by candidates and parties during municipal elections.

## Discussion

### *Principles*

Campaign financing systems reflect the relative importance of certain core principles in a jurisdiction. Emphasizing or favoring one principle may require de-emphasizing another and so deciding which rules to implement requires consideration of the complex interplay between and among different principles. For example, complex recording and reporting provisions aimed at promoting the principles of transparency and accountability may lessen general accessibility for the average citizen.

Expense limits are seen by some as enhancing or emphasizing *fairness* and *accessibility* by ensuring that all candidates and parties are able to express their ideas equally. This they suggest is important since electors should have a reasonable opportunity to assess the choices presented to them by those seeking elected office. Accordingly, they assert that election discourse should not be dominated by those who have resources sufficient to overwhelm the ability of others to present their ideas to the electorate. However, it is important to keep in mind that while expense limits, in the views of some, may serve the principle of fairness, they are seen by others as restricting free speech and expression by limiting the amount one can spend to advertise or communicate ideas (thereby restricting the ability to campaign).

Some campaign finance systems that limit candidate and party expenses also place restrictions on independent or third-party advertising expenditures. The objective of these restrictions is generally to ensure that money is not spent in ways that would nullify the effectiveness of expense limits on candidates and parties. Some argue that any enhanced fairness resulting from such restrictions is not worth the associated restriction on freedom of expression.

### *The “case for” expense limits and the “case against”*

The following “case for” and “case against” considers some arguments for and against expense limits in local government elections. Generally speaking, those in favour of expense limits argue that as campaign costs continue to rise, expense limits are necessary to enhance fairness and accessibility. They argue that such limits would level the playing field and allow a broader range of citizens to seek public office. Those against expense limits assert that such limits are not the most effective way to protect the principles of fairness, transparency and accessibility. Expense limits they argue would de-emphasize the broader principle of free speech and could encourage third party advertising and third party spending that may be more difficult to monitor. Furthermore, those against expense limits suggest that given the additional administrative burden that such limits would require, their imposition may actually operate as a barrier to some thereby reducing accessibility. Rather they argue it is better to focus on and encourage open, honest and complete disclosure and enforcement.

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<sup>15</sup> [http://vancouver.ca/erc/pdf/verc\\_report.pdf](http://vancouver.ca/erc/pdf/verc_report.pdf)

## The case for expense limits

### *Candidates should have an equal opportunity to communicate their ideas*

Proponents of expense limits argue that expense limits are necessary to ensure that all candidates have an opportunity to effectively express their points of view. Because virtually all forms of communication, other than direct personal contact, cost money and all people do not have the same financial resources, it is argued that expense limits are necessary to prevent those with the most resources from dominating the democratic process.

### *Local government elections should be accessible to all*

Proponents of expense limits argue that as campaign costs continue to rise, the ability of many citizens to run for office is being eroded. Without expense limits, they are concerned that this trend will continue, leaving many unable to participate.

### *Limiting expenses would reduce the need for large contributions and reduce the potential for undue influence.*

Those in favour of expense limits argue that local elections should be citizen-centred and citizen-driven. Under the current “no-limit” system, candidates in some areas may be required to raise large amounts of money to meet rising campaign costs. They suggest that this can mean seeking out large contributions from non-voting or non-local entities (e.g. unions and corporations). Expense limits, it is argued, may reduce the need for candidates to secure large donations and therefore reduce possible undue influence concerns.

### *Expense limits would increase engagement and broaden support base*

Some say that campaign finance rules should be designed to require candidates to engage directly with individual citizens to gain support. Expense limits, they suggest, would encourage candidates to pursue traditional grass roots approaches (e.g. candidate forums and door-to-door canvassing) to building a support base instead of relying on expensive advertising campaigns.

### *Federal, provincial and some municipal campaign finance systems include expense limits*

Federal and British Columbia campaign finance systems include expense limits as do virtually all other provinces<sup>16</sup>. While the rules applicable to local governments vary across Canada, some Canadian municipalities are subject to campaign expense limits.

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<sup>16</sup> Only Alberta and Yukon do not have expense limits for provincial/territorial elections.

## The case against expense limits

### *Expense limits unnecessarily limit free speech*

The Canadian Charter of Rights and Freedoms provides that everyone has certain fundamental freedoms – one of which is freedom of expression. Those opposed to expense limits argue that such limits limit the ability of people to express themselves and that government should not restrict the speech of some (i.e. those who can afford to market their ideas) in order to enhance the relative voice of others. Furthermore, they assert that limiting expression for the purpose of expense limits is not justified since there is no evidence to suggest that candidates can secure an election by spending large amounts of money.

### *Expense limits would limit education and reduce citizen participation*

Because virtually every means of communicating, other than direct personal contact, requires an expenditure of money, some argue that expense limits necessarily reduce the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. Reaching fewer people may mean that fewer people are aware of the issues in local elections. This, they suggest, could further reduce already low participation rates.

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

Under the current local government elections system, a candidate can spend as much as he or she wishes during a campaign. Accordingly, it is argued, there is no incentive to circumvent a limit. Some say that measures such as expense limits would encourage such behavior (i.e. getting around the rules) and should therefore be avoided. In their view, the current system is more effective in achieving openness and transparency.

### *Expense limits could impact communities differently*

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

### *Additional administrative burden would not be justified*

It is argued by some that imposing expense limits in local government election campaigns would significantly increase administrative burdens and require significant changes to the current scheme. For example, they suggest that because expense limits on candidates and elector organizations could lead to increased third party advertising, rules restricting or regulating that advertising would need to be

implemented. As well, compliance and disclosure rules would need to be designed to function properly with expense limits. It is argued that all of these additional measures would increase the burden on candidates which could in turn reduce accessibility.

## Other Considerations

### *Connection to other campaign finance issues*

Multiple campaign finance elements are impacted by the presence of expense limits in the system. For example, a campaign finance system that includes expense limits must also include detailed rules about what counts toward the limit and what does not. Disclosure rules must be designed to take that into account and ensure that the right expenses are disclosed in the proper way. Expense limits also give rise to the need for a compliance mechanism (i.e. how will compliance with the limits be monitored and what happens if limits are exceeded?). Would adding expense limits to the campaign financing rules strengthen the argument for enhanced enforcement measures or a role for an independent body in some aspects of enforcement?

In addition, expense limits are seen by some as giving rise to a corresponding need for third party advertising limits since without such controls, money could shift away from regulated campaigns to third party groups not subject to an expense limit. As noted previously, the provincial campaign finance system includes expense limits and it also includes all of the associated system elements mentioned above (i.e. rules about what counts toward the expense limit, disclosure and compliance rules that take expense limits into account and third party advertising controls).

### *Design challenges associated with local variation*

The design and implementation of expense limits for local government elections would raise a number of questions. How could an expense limit system be designed that would allow candidates from Vancouver to Zeballos to purchase the kind of advertising they need while preventing the race from being dominated by one or two people with access to large amounts of money? Would variation between local governments need to be recognized in an expense limit system? If so, would different rules apply based on population or campaign spending or other factors?

### *Nomination contests*

Election expense limits necessarily require clear rules about what constitutes an election expense for the purposes of the limit. In provincial elections, nomination expenses are not considered election expenses unless they are incurred during the campaign period and exceed a certain threshold (10% of the candidate's election expense limit). In local government elections, nomination expenses are included as election expenses provided they are incurred during the calendar year of the election. If expense limits were implemented for local government elections, would nomination expenses count toward the limit? If so, would an expense limit encourage some candidates and others to place expenses outside of the calendar year of an election to avoid the limit?

### *Multiplication and splintering of elector organizations (i.e. parties)*

While there are exceptions in some communities, at the local level, political parties do not generally play a significant role in elections. Would imposing expense limits on candidates encourage the creation of more elector organizations at the local level (i.e. would candidates wishing to spend more encourage the creation of a supporting elector organization)? Some would argue that encouraging the involvement of political parties in local elections is undesirable since partisan politics is inconsistent with the nature of local government. Additionally, some might argue that the introduction of expense limits on parties may encourage the splintering of existing parties in an attempt to circumvent the expense limits. Doing so could be beneficial since each distinct party could spend up to the expense limit maximum. There may be little reason not to splinter local parties into a series of technically distinct but philosophically connected entities given there is no established or regulated party system in place locally<sup>17</sup> and there is less party name recognition. Could these risks be mitigated?

### *Feasibility of a local choice model*

If municipalities were able to determine whether or not to implement expense limits for local elections, how would the limit amounts actually be set – by the municipalities themselves or by the province as part of an “opt-in” system? Regardless of how expense limit amounts are set, the impacts of expense limits on other campaign finance elements would have to be considered. How would those system impacts be managed? For example, if optional expense limits were implemented, would municipalities also have the ability to change disclosure requirements, enforcement rules, and restrict third party advertisers? Would a multitude of different expense limits systems complicate enforcement?

### *Higher expense limits for mayoralty candidates?*

Should candidates for mayor be permitted to spend more money than candidates for council? Most jurisdictions that have expense limits allow mayoralty candidates to spend more money than people running for a seat on council.

### *Applicability of expense limits to board of education elections*

How would a local government expense limit system apply to or impact school board elections? If local governments were permitted to set and impose expense limits as local choice, would boards of education be granted the same authority? If local governments set their own expense limits, how would expense limits remain uniform across the school district given that there are generally a number of different local governments within each school district?

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<sup>17</sup> Locally elected bodies (e.g., councils and regional boards) do not require “parties” to govern as is the established convention for the provincial legislature. The governance model at the local level is a corporate model, not a parliamentary democracy with a government and an opposition, as is the case at the provincial and federal level.

## Direction Questions

### Principles

- What principles would be emphasized by imposing expense limits (fairness, accessibility or transparency)?
- Would imposing expense limits de-emphasize any key principles?

### Objectives

- What objectives would expense limits serve?

### Practical Considerations

- How would expense limits be implemented? For example:
  - Would they apply equally to all local governments across the province or only in large centers?
  - Would they apply on a voluntary basis with local governments choosing to opt in?
  - If local choice were involved, to what extent would local governments determine the nature and extent of the expense limits? What about other associated elements such as disclosure and enforcement?

### Further work

- Does the Local Government Elections Task Force wish to undertake further work for its consideration of expense limits?

## Next Steps

If the Local Government Elections Task Force wishes to undertake further work for its consideration of local government expense limits, more research and analysis is required. While this paper examined some of the conceptual thinking both for and against expense limits, actually determining what such limits would look like and how they would function would involve considerable research and design work. If a determination is made to go forward, the two primary considerations are: how such limits would be designed and how they would function as part of the larger local government campaign finance system.

## Appendix A: Summary of Expense Rules in BC Local Elections

Local government elections in British Columbia are governed by the *Local Government Act* and parallel provisions in the *Vancouver Charter*. The basic model under the legislation is that expenses must be valued, recorded and ultimately disclosed.

Under the *Local Government Act*, an election expense is the value of property and services used in an election campaign by or on behalf of a candidate, elector organization or campaign organizer in the calendar year preceding the election<sup>18</sup>. Some examples of election expenses are:

- campaign advertising;
- operating a campaign office;
- holding conventions and similar meetings;
- research and opinion polling, and
- campaign-related transportation.

Because the definition of expense is tied to the value of things “used...in the calendar year preceding the election”, items actually paid for before or after that year are still caught by the definition – provided they are used during the relevant year. Also important to note is the fact that the value of an expense is not necessarily the cash amount paid for the goods or services. Rather, the value of the expense is generally the usual market price of the goods or services<sup>19</sup>.

There are currently no expense limits in British Columbia local government elections so candidates, elector organizations and campaign organizers are free to spend as much as they wish. While there are currently no expense limits in local government elections in British Columbia, there are rules about *how* expenses are incurred, recorded and ultimately disclosed. For example:

- only the financial agent (or a person authorized by the financial agent) may incur election expenses on a candidate’s behalf;
- any monies used to pay for campaign related expenses must come from the campaign account;
- expenses must be recorded by the financial agent, and
- the campaign financing disclosure statement must disclose the total value of election expenses incurred, including the value of all full-price, discounted, or donated goods or services; and the total amount of election expenses in each class<sup>20</sup>.

These expense rules are designed primarily to enhance transparency (i.e. to show how contributions were spent). Some services are deemed under the legislation to have no value. For example:

- services provided by a volunteer;
- services provided by a financial agent to comply with legislative requirements;

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<sup>18</sup> For a by-election, the time period for expenses begins after the vacancy (for which the election is being held) is created.

<sup>19</sup> If higher than market price is paid, the expense amount is the actual amount paid and not the market value.

<sup>20</sup> Election campaign advertising or communication expenses; election campaign office expenses; convention and similar meeting expenses; expenses for other campaign related functions; research and polling expenses; campaign related transportation, and other. Note these categories are further broken down in the regulation.

- professional services provided to comply with legislative requirements, and
- free election advertising space provided to a candidate, elector organization or campaign organizer in a periodical publication if the advertising space is made available on an equitable basis to all other candidates.

Because these services have no value, they are neither recorded nor disclosed as expenses (they are also not recorded or disclosed as contributions).

## Appendix B: Vancouver Resolution

### 2009-B104 Limits on Campaign Contributions and Expenses

WHEREAS the funds used to campaign for elected office have grown exponentially by both elector organizations and individual candidates, thereby potentially limiting the ability of many citizens to run for office;

AND WHEREAS some contributions to campaigns for elected office in Vancouver were received from outside of Canada during the 2008 general local elections;

AND WHEREAS the Premier, during the 2009 provincial election campaign, stated that he is waiting for the Union of British Columbia Municipalities to make a request on campaign contribution reform before taking action:

THEREFORE BE IT RESOLVED that the UBCM petition the provincial government to amend the *Local Government Act* and the *Vancouver Charter* to:

- set limits on the annual amount of contributions that can be given by an individual or organization to an elector organization, campaign organizer, or an individual seeking elected office;
- limit the amount of money that may be spent annually by an elector organization, campaign organizer, or an individual seeking elected office during a general local election campaign; and
- disallow contributions to an elector organization, campaign organizer, or an individual seeking elected office, from sources outside of Canada;

AND BE IT FURTHER RESOLVED that any amendments to the disclosure laws be made before the 2011 general local elections.

*Recommendation: No Recommendation*