

What's New in Proposed Elections Legislation

Purpose

The *Local Elections Campaign Financing Act* (LECFA) was introduced into the Legislature on March 26, 2014 to implement most of the recommendations from the 2010 Local Government Elections Task Force. If passed, LECFA will be effective for the November 2014 general local elections. Local government elections, by-elections and “assent voting” are to be administered under both the *Local Government Act* (LGA) and LECFA. The purpose of this document is to provide an overview of key changes introduced by LECFA that will impact the administration of local government elections, as well as to highlight provisions that remain unchanged. This document begins with a brief summary of the key changes introduced under LECFA, followed by a chronological overview of changes as they occur in the election cycle.

What will stay the same?

Local government elections and by-elections will continue to be administered by local governments, with the support of the Province. Administration is defined as preparation for, and organization of elections, including passing election bylaws, covering costs of elections, and administering voting opportunities and vote counting. For example, the types of voting opportunities available to the public will not change. Despite adjustments related to campaign financing and election advertising, election campaigns will be conducted much the same as previous elections. Those participating in election campaigns (candidates, elector organizations, third-party sponsors and financial agents) will need to meet requirements specified in the legislation, and may face penalties if they contravene these requirements. Accepting anonymous contributions of \$50 or less for an election campaign continues to be allowed.

What will change?

An important change introduced by LECFA is a new role for Elections BC (EBC) in overseeing aspects of local elections related to campaign financing and election advertising. EBC will assume responsibility for managing campaign financing disclosure requirements, investigations, and enforcement of campaign financing and election advertising provisions. This change will provide greater consistency in application of these provisions, centralized access to campaign financing and third party advertising information, and related investigation and enforcement mechanisms. EBC’s role also extends to advertising related to by-elections and “assent voting opportunities” (referenda) held by local governments outside of the general local election cycle. Local governments will retain authority for all other aspects of the local election administration process.

The Election Cycle

1. **Appointment of election officials:**

Local governments retain responsibility for appointing a chief election officer and deputy chief election officer who are responsible for conducting the election in accordance with the local election bylaw, the LGA, LECFA, and other relevant election legislation. As in prior years, local chief election officers and deputy chief election officers are empowered to:

- appoint other election officials;
- delegate their authorities as needed; and,
- otherwise ensure the election is conducted in accordance with the legislation.

Local chief election officers will continue to be the key officials responsible for the administration of local elections. Their role in administering the nomination process, voter registration and voting opportunities will not change. EBC's key role in campaign financing enforcement means that EBC will work closely with local chief election officers in the exchange of candidate and elector organization information and to address incidents of non-compliant advertising. Similarly, where contraventions of elections legislation in relation to campaign financing are suspected or alleged, local chief election officers will work with EBC to ensure compliance and, where necessary, enforcement.

2. **Election bylaw:**

As in previous years, any local governments who wish to amend their election bylaw must do so at least eight weeks prior to the first day of nominations for a general local election, or at least six weeks prior to the first day of nominations for a by-election. Local governments will continue to include key decisions about local election administration in their election bylaws, including:

- whether voting machines will be used, and if so, the procedures that will govern the use of voting machines;
- whether mail ballot voting will be used, and if so, what procedures will govern mail ballot voting;
- the date of additional advance voting opportunities, or, in communities of less than 5,000, whether additional advance voting opportunities will be waived;
- whether voter registration will be conducted both on voting day and in advance or on voting day only; and,
- whether nomination deposits will be required.

Disclosure statements and supplementary reports are now filed with EBC and will be posted on a publicly available Internet site. Local governments whose election bylaw allows for disclosure statements and supplementary reports to be viewed on the local government website may want to consider amending their election bylaw to allow for a link to the disclosure documents on EBC's Internet site.

3. **Electors registration:**

Eligibility requirements for resident and non-resident property electors will not change, nor will processes or deadlines for registering to vote in local elections. Local governments retain the authority to determine whether to create their own voter's list, use the provincial voter's list, or limit registration to voting day only.

4. **Nominations:**

Changes to candidate nomination requirements primarily relate to the information that must be provided by the candidate (i.e. phone numbers, email addresses, addresses for service and a solemn declaration attesting to their awareness of LECFA and their intention to comply with its requirements). However, key administrative aspects of nominations remain the same, including:

- candidate eligibility;
- the nomination process and the nomination period;
- advertising for and giving notice of nominations; and,
- the process for challenging nominations.

Significant changes to nominations relate largely to elector organizations and include:

- eligibility to endorse candidates (elector organizations must have 50 members when making the endorsement, rather than for 60 days prior to making the endorsement);
- additional information that must be provided to the local chief election officer; and,
- an enhanced solemn declaration, attesting to awareness of LECFA and intent to abide by its requirements.

Local governments are encouraged to use the standardized nomination forms which incorporate the changes under LECFA. These forms are available in the LGMA elections manual.

Following the close of nominations and the declaration of candidates, local chief election officers are required to provide candidate and elector organization information to EBC to set the stage for the campaign financing disclosure and enforcement process. Local chief election officers must fax or email nomination and endorsement documents to EBC as soon as possible after the declaration of candidates.

5. **Election proceedings period:**

LECFA introduces an election proceedings period, which runs from 46 days prior to general voting day until the close of general voting day. For the 2014 general local elections, this period will run from September 30, 2014 to November 15, 2014. Election advertising rules during the election proceedings period have undergone significant changes, the most significant being:

- the elimination of “campaign organizers”;
- the introduction of third-party sponsors as election participants, including registration and financial disclosure requirements;
- the adoption of the provincial definition of election advertising (with changes to account for the context of local elections);
- the requirement that all election advertising include sponsorship information, such as the name and contact information of the sponsor; and,
- the authority of the B.C. Chief Electoral Officer to remove, destroy or obscure non-compliant election advertising, or to authorize another individual (such as the local chief election officer) to do so.

Third party sponsors, or individuals or organizations who conduct election advertising that is independent from the campaigns of any candidate or elector organization, are subject to registration and disclosure requirements under LECFA. Third party sponsors are required to register with EBC, include sponsorship information on election advertising and file disclosure statements with EBC. Although local chief election officers and EBC will work together to ensure third party sponsors comply with these requirements, primary responsibility for ensuring compliance and enforcement by third party sponsors rests with EBC.

6. **Voting opportunities:**

Arrangements for advance, special and general voting opportunities will not change. Voting opportunities may be described in the local government election bylaw; for example, the election bylaw specifies the date of additional advance voting and special voting opportunities. The election bylaw must also determine whether voting machines will be used; however, as in prior years, voting cannot be conducted by telephone or on the Internet. Local chief election officers retain responsibility for:

- designing ballots;
- overseeing voting opportunities and vote counting;
- managing the presence and behaviour of both candidate representatives and election staff during voting opportunities and vote counting;
- declaring election results; and,
- seeking judicial recounts.

7. Campaign financing:

LECFA makes some significant changes to campaign financing rules. While many requirements remain the same, such as requirements for each campaign to have a financial agent and a campaign account, LECFA clarifies and expands campaign financing provisions. LECFA introduces a role for EBC in ensuring compliance with campaign financing regulations and enforcing those regulations as needed. This new role includes:

- the accurate, timely disclosure of campaign financing and third party sponsor information; and,
- the authority to conduct audits and investigations of election participants.

Additional key changes to campaign financing requirements include:

- requirements to file disclosure statements with EBC rather than the local government; and,
- shorter deadlines for filing campaign financing disclosure statements (90 days rather than 120 days).

Government has chosen a phased approach to implementing the Local Government Elections Task Force recommendations. As a result, expense limits will not be introduced for the 2014 general local elections, but targeted consultation is expected to lead to expense limits legislation for the 2018 general local elections.

8. Post-election:

The process for taking office—namely, how and when elected candidates must take the oath of office—remains the same.

9. Information management:

Local governments retain responsibility for administrative records made throughout the election process, including voting day materials. Changes to information management requirements under LECFA relate primarily to campaign financing disclosure documents:

- EBC will be responsible for managing the campaign financing disclosure process, including publication of disclosure statements on a publically available Internet site.
- Local governments will be required to provide members of the public with access to these statements by either printing copies that are online or by providing Internet access to view these documents.
- Local governments will not be responsible for retaining or maintaining these records.

All other records remain subject to current LGA requirements regarding retention, public inspection and destruction. Local governments are responsible for complying with these requirements.

10. Offences, penalties, and enforcement:

LECFA divides campaign financing-related offences into two tiers (higher penalty offences and lower penalty offences) for the purposes of assigning penalties. *Higher penalty offences* include:

- failure to file disclosure statements or supplementary reports; and,
- providing false or misleading information.

Penalties for higher penalty offences include fines of up to \$10,000 and/or imprisonment for up to two years for individuals, or fines of up to \$20,000 for organizations. Disqualification penalties also apply to higher penalty offences and include:

- for candidates, disqualification from being nominated for, elected to or holding office until after the next general local election and, for a candidate declared elected, ceasing to hold office;
- in addition to the above, for an elected candidate, ceasing to hold office;
- for elector organizations, disqualification from endorsing a candidate until after the next general local election and prohibition from accepting campaign contributions or incurring election expenses until after the next general local election; and,
- for third party sponsors, prohibition from sponsoring advertising and accepting sponsorship contributions until after the next general local election.

Lower penalty offences include all other offences under LECFA, such as failing to include sponsorship information on advertising. Penalties for these offences include fines of up to \$5,000 and/or imprisonment for up to one year for individuals, or fines of up to \$10,000 for organizations. Other general election offences described under the LGA, such as contravening voting-day advertising rules, vote buying, or intimidation, have penalties as specified under that legislation and remain unchanged.

EBC will assume primary responsibility for enforcing financing and disclosure rules under LECFA. This enforcement role will include:

- review of all disclosure statements for compliance with LECFA;
- response to complaints from the public about matters related to campaign financing and third party advertising;
- management of investigations into incidents of non-compliance with LECFA; and,
- when necessary, referral of matters for prosecution.

In order to carry out its enforcement role, EBC will have a suite of powers that are similar to its powers under the *Election Act*, including authority to delegate certain powers to other individuals or offices, such as local chief election officers. It is anticipated that local chief election officers will work closely with EBC to determine the most effective approach to dealing with incidents of non-compliance with elections legislation. Under the proposed legislation, the time limit for starting a prosecution will be one year after the facts on which the information is based first came to the knowledge of the B.C. Chief Electoral Officer.

As in previous years, local chief election officers have authority to do anything necessary to ensure elections are conducted in accordance with election legislation. Local chief election officers do not have the authority to investigate alleged election offences or to enforce compliance. In cases of general election offences under the LGA, the police continue to act as investigators and the courts as adjudicators.

11. Other issues:

a. Assent Voting Advertising

Assent voting (or referenda) is currently referred to as “other voting” in the LGA. Changes introduced by LECFA will now require individuals and organizations that sponsor assent voting advertising during the 30 day assent voting proceedings period to:

- register with EBC;
- disclose sponsorship information on assent voting advertising; and,
- file disclosure statements.

Local governments are required to include sponsorship information on assent voting advertising; however, they are exempt from registration and disclosure requirements.

b. Technical Advisory Committee

LECFA establishes a Technical Advisory Committee (TAC), including representatives from UBCM, LGMA, the BC School Trustees Association, EBC, the ministry responsible for LECFA and others. This group will meet to discuss matters related to the administration and application of LECFA and its regulations. This may include:

- the development and provision of public information, educational materials, training and advice about LECFA;
- the mechanisms for information-sharing between election administration authorities and training for local officials about LECFA; and,
- the forms for campaign financing disclosure statements and supplementary reports.

TAC members will work together to deliver an educational program, including print and web-based advisory materials and guides, in advance of the general local elections.

For more information, please contact:

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