

April 1, 2010

## **Submission to the Local Government Elections Task Force**

### **I. British Columbia School Trustees Association**

BCSTA is a non-profit voluntary association of boards of locally elected school trustees (boards of education constituted under the *School Act*), committed to strengthening the local voice in public education and to improving student achievement. BCSTA represents all of the 60 public boards of education in British Columbia, including the francophone education authority.

Since the election of school trustees follows for the most part the procedures laid out in the *Local Government Act*, school trustees have a significant stake in the recommendations of the Task Force.

### **II General Local Election Issues**

To assist it in making this submission, BCSTA surveyed member trustees about their concerns, especially those identified by the Task Force. Survey responses and past advocacy have assisted the board in formulating this submission.

#### **A. Frequency of Elections and Term Limits**

A majority of school trustees surveyed would support a change to a four-year cycle. In any case, the cycle for elections of school trustees should be the same as for local government members.

We understand that there have been some suggestions to the Task Force that there be term limits for locally elected representatives, including school trustees. BCSTA would oppose such limits for school trustees. The experience and commitment of many of our multiple-term trustees is a valuable asset to local boards that is also drawn upon by other boards and trustees.

We support the notion that local citizens should have the right to select their trustee representatives with as few limitations as possible and this democratic choice should not be limited by experience of the incumbent.

Recommendations: Keep board of education elections to the same time frame as local government elections. Do not impose limits on the number of successive terms that can be served by an individual trustee.

B. Small Campaigns, Dedicated Bank Accounts and Simplification of Campaign Financing Rules

School trustees support a change to campaign financing rules to simplify rules relating to campaigns with low expenses and donations. These are the norm in trustee elections, where many candidates pay their own expenses. It appears that the rules governing the whole province are being written to address a problem perceived to arise in a few urban areas.

BCSTA made representations to this effect to the (then) Minister of Municipal Affairs as a result of a resolution of BCSTA's Annual General Meeting in 2000 "that BCSTA request the Minister of Municipal Affairs to introduce amendments to the *Municipal Act* that would

1. simplify financial disclosure requirements for school trustee candidates and election organizations where total contributions and expenses are less than \$5000, and
2. eliminate the requirement for dedicated bank accounts."

Recommendations:

(1) Campaign financing disclosure requirements should be simplified for campaigns with low expenses and third-party donations.

(2) The requirement (LGA s. 85.1) to open a separate bank account if there are any monetary campaign expenditures or contributions, including those made by the candidate, should not apply where expenditures and third party contributions do not exceed a specified amount.

C. Limits on Campaign Contributions and Expenditures

School trustees would in theory support limits on campaign contributions and expenditures, but additional costs (such as mandatory audited statements) or complexity of reporting requirements would not be supported. If this were the "price" of statutory limits, then the statutory limits would not be supported. While no system is "leakproof," the current reporting requirements appear sufficiently comprehensive to support legislated limits on campaign contributions and expenditures.

D. Public Financing: Provincial Tax Credit for Campaign Contributions

Of the options presented for public financing of elections, school trustees would support a provincial tax credit for campaign contributions. This should be the same across the province, not a subject of local option. A credit against local property taxes would not make sense for school trustee elections and there should be consistency between contributions for local government and trustee candidates. In some school districts, candidates for trusteeship and for local government are financed by the same elector organization and differing tax credits would disrupt this system.

The existing reporting system is adequate to meet the provincial government's need to know that funds were spent for election purposes and the source of the funds.

There should be no restrictions on candidate eligibility for receipted donations. A donor needs to know whether he will receive a receipt without having to worry about how his chosen candidate fares in the election.

An issue not mentioned in the discussion papers is whether tax credits should be available to both corporate and individual taxpayers. The interest of school trustees in this issue is not to generate more money for campaigning but to increase the community's stake in election campaigns. As such, the tax credit should be applicable to individuals. The public interest is not served by providing incentives to corporations to participate in local trustee elections.

Recommendation: A provincial tax credit for school trustee campaign contributions should be available to individual contributors, similar to that available to individual contributors to provincial election campaigns.

E. Enforcement of Campaign Financing Requirements and Role of Elections BC

School trustees would not oppose enforcement of campaign financing requirements through a neutral body such as Elections BC.

The present system puts the board staff and the board of education into the position of taking action on defaults or alleged defaults, even though there is an "automatic disqualification." This can lead to inconsistencies of enforcement and allegations that actions are taken for political reasons. To have a neutral body such as Elections BC charged with investigating and ruling on situations of possible non-compliance would ensure this the process was perceived as unaffected by local political interests.

There is no need to shift responsibility for public education materials and elections training to Elections BC; these are presently well handled by the ministries and organizations involved (including BCSTA). Information is readily available to those who seek it out.

The costs of adding an investigation and enforcement mechanism properly belong to the Province, which enacted the campaign financing legislation. There are no local cost-savings resulting from the involvement of a provincial enforcement agency.

Recommendation

That the Province provide authority for Elections BC to monitor, receive complaints, investigate, and rule on campaign financing disclosure breaches, and that the costs be borne by the Province.

F. Corporate Vote

The arguments in favour of a corporate vote do not apply to the election of school trustees since boards of education are not financed from local property taxation. ("School taxes" flow entirely to provincial consolidated revenue and bear no relation to grants paid by the province to boards of education.)

Recommendation: Even if a corporate vote is reinstated for local government elections, it should not be part of school trustee elections.

**III. Issues Specific to Trustee Elections**

A. Background on Trustee Elections

School districts typically include one or more municipalities and regional district electoral areas. School trustees are elected from trustee electoral areas, which may consist of the whole district (where trustees are elected "at large") or parts of it and which may cross or overlap local government jurisdictions and regional district electoral areas. Thus an election for a school board could involve up to nine different elections (one for each trustee electoral area) and each election could involve more than one local government (for example, a trustee electoral area might include a municipality and parts of electoral areas of two different regional districts).

B. Application of Local Government Bylaws to Trustee Elections

The *Local Government Act* s. 40 and the *School Act* describe mechanisms for harmonizing election bylaws between boards of education and local governments.

If a trustee electoral area falls entirely within the municipality, the municipality is responsible for conducting the trustee election and the municipal elections bylaw applies (SA s. 46(3)). For other types of trustee electoral areas, the board of education is responsible and the board of education election bylaw will govern.

However, in certain circumstances, the board of education bylaw may adopt the provisions of a local government bylaw (SA s.38(5), 45(8)). This is permitted either (i) where there is an agreement for the local government to conduct the school trustee election; or (ii) in order to harmonize elections held at the same time. In practice, the election bylaws must be passed at a time when it is not known whether there will be elections held at the same time (because positions may be filled by acclamation) and therefore agreements have not been entered into.

There are three exceptions where a local government bylaw cannot apply to the trustee election: nomination deposits (LGA s. 72.1); order of names on the ballot (LGA s. 107) and tie-breakers (LGA s.141). In these cases, the board bylaw applies or, if none, the legislated default option applies (*School Act* s. 45(9), 46(9)).

The LGA was amended in 2008 to allow local governments to decide whether to provide expanded public access to candidate nomination documents and campaign financing documents (e.g., by website posting), and to increase the number of nominators required. The amendments did not deal with the potential conflicts between the local government bylaws and board of education bylaws on these matters.

Boards of education need clear authority to ensure consistency within the school district.

Recommendation: That legislative provisions dealing with harmonization of elections be amended to

- (i) remove restrictions on the ability of local governments and boards of education to adopt election bylaws of another entity; and
- (ii) clarify the authority of boards of education to make decisions with respect to trustee candidates and elections, even where a local government conducts the election. This would include giving the board of education the exclusive right to make decisions about setting the number of nominators required and providing public access to candidate nomination documents and campaign financing documents.

#### C. Local versus Provincial Rules

In the discussion papers prepared for the Task Force, a frequently identified issue for your consideration is whether there should be a provincial rule on a specific issue or

whether local governments should be allowed to make their own local rules through their election bylaws.

We understand that the Task Force is reviewing a number of possible areas where local governments may be permitted to set their own rules by bylaw (such as campaign contribution limits or pre-election disclosure).

During those considerations we ask that you keep trustee elections in mind because local options frequently create inconsistencies and confusion for trustee elections.

In particular, in those boards where elections involve a number of local government areas, there can be a number of different rules and inconsistencies that need to be carefully resolved. For this reason you will see in our submission that we generally favour provincially uniform rules.

D. New Local Election Legislation

The *School Act* (section 45 and 46) provides that Part 3 of the LGA applies to school trustee elections, with applicable changes. This leads to confusion and ambiguities for those administering school trustee elections.

Boards of education would support removing the legislative framework governing elections from the *Local Government Act* into a separate *Local Elections Act* that would recognize the equal interest of school trustees and the Ministry of Education in local elections legislation and would address the ambiguities and confusion that arise from trying to read the LGA into the *School Act*.

Recommendation: that the provisions governing local elections for local governments and boards of education be moved into a separate *Local Elections Act* and revised for clarity.

*Respectfully submitted,*

*Board of Directors  
of the British Columbia School Trustees Association*