

**Minutes
Election Advisory Committee
Consultation on Recommended Legislative Changes**

February 8, 2006

12:00 pm – 3:00 pm
Gabriola Island Room, Fairmont Hotel Vancouver
900 West Georgia Street, Vancouver, British Columbia

Attending:

Committee members (in alphabetical order by political party name)

BC Liberal Party: Kelly Reichert, Brian Bonney (on behalf of Hector MacKay-Dunn)
British Columbia Marijuana Party: Kirk Tousaw
Green Party of BC: Scott Hean
New Democratic Party of B.C.: Nikki Hill

Elections BC

Harry Neufeld, Chief Electoral Officer (Chair)
Linda Johnson, Deputy Chief Electoral Officer
Linda Shout, Executive Coordinator (minutes)
Kevin Atcheson, Researcher/Policy Analyst

1. Purpose of Meeting

Harry Neufeld advised that the purpose of this Committee meeting was to review in detail a document pertaining to proposed legislative amendments. Following consultation and Committee members' feedback, the recommendations will be shaped into a report to be tabled in the Legislature by March 31st, 2006.

Responsibility for legislative matters rests with the Deputy Chief Electoral Officer, Linda Johnson, who led discussion on the proposed recommendations. Recommendations that were considered by previous Committee members had been provided to the Committee for review and written response. There were no objections made to putting forward those recommendations, therefore discussion was focused on approaches to drafting some of the previous recommendations, newly proposed amendments and the removal of some previous recommendations. In addition, the recommendations document raises public policy issues that government may wish to consider. These include matters brought forward by Committee members and Elections BC staff.

2. Review of Proposed Legislative Amendments

Section 18(1)(b): Committee members agreed that the section should be amended to clarify that more than one Deputy District Electoral Officer may be appointed for an electoral district.

Section 27: A previous recommendation that schools be closed on General Voting Day has been eliminated. Elections BC has made considerable efforts to ensure student safety at schools used as voting places. Committee members agreed that the benefits of keeping schools open and utilizing them for voting places outweigh other considerations. Keeping schools open avoids child care issues for voters and election officials. As well, schools are increasingly taking advantage of the location of a voting place on their premises as an educational opportunity for students.

Sections 28, 62 and 270: Committee members agreed that these sections of the Act should be amended to provide discretion to the Chief Electoral Officer in determining the most appropriate method and venue to communicate information to the public.

Section 36: Committee members agreed that the Act should be amended to permit registration by telephone during the general registration period. Updating and confirmation of voter records is currently permitted by telephone. Voters who wish to register by telephone would be required to provide all the information necessary for a voter registration official to complete a form on their behalf, and to verbally confirm that they meet the qualifications for registration. The existing Voter Registration Regulation would be amended to require a voter using telephone registration to provide the last six digits of their SIN or a BC driver's license number, consistent with the requirements for registering online. Previous amendments to the Regulation to facilitate online voter registration did not result in an increase in false registrations.

Section 41(3): Committee members agreed that voters in correctional or medical facilities should be permitted to provide only one document with the voter's name and make a solemn declaration as to their residential address in order to register in conjunction with voting. Linda Johnson noted that due to high turnover in some of these facilities they are not enumerated, and voters in these facilities typically do not have with them two pieces of identification that show, in combination, their name, residential address and signature.

Section 48(1): Committee members accepted an amendment recommendation to establish that candidates are entitled to one electronic copy of both the preliminary and revised voters lists. District Electoral Officers have reported that most candidates do not pick up printed copies of the lists that must be made for them by law (2 copies per candidate). Candidates who are unable to make use of an electronic copy could request one printed copy of each list.

Part 5, New Section: This section would require individuals who intend to become a candidate to file a notice with Elections BC within 15 days of their declaration/selection. Committee members agreed that this requirement will allow Elections BC to communicate with the potential candidate and their financial agent in advance to the election period, facilitating knowledge of and compliance with election financing rules.

A concern was raised that some candidates may have difficulty appointing a financial agent far in advance of the election period. Linda Johnson clarified that potential

candidates would be able to act on their own behalf in the absence of appointing a financial agent, so long as a written statement is provided to that effect.

Linda Johnson noted that, as per the *Election Act*, the two documents required to complete a standing nomination (the Statement of Disclosure and solemn declaration of qualification to be a candidate) must be filed between when the election is called and the beginning of the ordinary nomination period.

It was suggested that, with fixed election dates, the standing nomination process could be modified to allow nominees to complete the required forms in advance and file a replacement form if something changes. Candidates could therefore receive their Certificate of Candidacy on Writ Day, provided the forms have been completed correctly. The process for by-elections would remain unchanged.

Kirk Tousaw of the BC Marijuana Party asked what remedy would be applied if a candidate does not file their notice of intent within 15 days. It was agreed that this approach may not be as effective for individuals who decide to be independent candidates. Committee members agreed that the language regarding the requirement to file a notice would focus on candidates who enter the process through a political party or constituency association.

A Committee member asked whether the onus should be on the political party to inform Elections BC when a candidate has been endorsed. Linda Johnson noted that the party endorsement process occurs at the end of the nomination period. Candidates may submit a party endorsement with their nomination, but parties may still withdraw their endorsement until the time nominations close. Political parties appreciate this flexibility. Committee members agreed that political parties could send partial endorsement lists to Elections BC to help streamline the administration of the endorsement process.

Section 56(1): The ordinary nomination period currently begins on Day 6 of the election period and closes on Day 15, leaving only seven days to print and distribute ballots before Advance Voting begins. Many candidates in the 2005 election submitted their nomination papers at the very end of the nomination period. With a fixed election date and the availability of the standing nomination process, closing nominations earlier in the election calendar would improve efficiency with minor impact on candidates.

Scott Hean of the Green Party suggested that the nomination process should close at the very start of the election period, as both the writ and election dates are fixed. Linda Johnson noted that as only the *Constitution Act* was changed to establish fixed election dates, there are numerous areas of electoral legislation that require ongoing review to improve administrative processes in the context of a fixed election date. This recommendation seeks to streamline the process while taking human dynamics into account.

Committee members agreed that with the recommendation that the ordinary nomination period should begin on Writ Day and close on Day 10. Standing nominations would end on Writ Day for fixed date elections only.

Section 57: Committee members agreed that only copies of standing nomination documents, with personal information obscured (for public inspection purposes), be forwarded to District Electoral Officers. Originals should remain at the Chief Electoral Office.

Section 76(3): Committee members agreed with the recommendation to adjust the hours of advance voting to 11:00 a.m – 8:00 p.m.. This may reduce lineups, making it more convenient for those who wish to vote over their lunch break, without reducing the hours available to vote.

Section 103(1): Elections BC was able to take advantage of the fixed election date and increase administrative efficiency by opening District Electoral Offices before Writ Day. However, voters were attending the District Electoral Offices to vote before the writs had been issued. Committee members agreed the wording in the Act should be amended to clarify that voting is not available until after an election has been called.

Section 109(4): The *Election Act* allows voters to be assisted in voting under certain circumstances. However, residents of group homes or extended care facilities are not sufficiently accommodated by this section. Committee members agreed that an amendment to allow individuals to assist in voting by one or more voters in their care would be appropriate. The care relationship should be clearly defined to prevent undue influence by an individual on those they are assisting.

Section 136(1)(b): In the previous election, recounts were requested by candidates in circumstances where the margins between the two leading candidates were significant, making a change in the result unlikely. Committee members agreed that grounds should be established for recounts requested by candidates as part of final count. Committee members also agreed that the grounds should be the same as for judicial recount, and a deadline should be established of no later than 3 days after General Voting Day to request the recount.

Section 154(1)(3): This amendment would establish that political parties and constituency associations may not issue tax receipts for contributions received during a period of suspension. Committee members agreed to this approach.

Section 155(3)(f) and (d) – Committee members agreed with the recommendation to require a political party to provide a name of an individual to whom communications to the political party may be addressed.

Sections 155(3)(j) and 157(3)(h): This proposed amendment would require political parties to submit their account numbers as well as the names and addresses of the savings institutions in order to register as a political party. This amendment would be worded to

clearly state the intent that this requirement is to facilitate the conduct of audits and investigations. Committee members agreed with this recommendation.

Section 159: Often, registered political parties and constituency associations do not file the required notice with the Chief Electoral Officer of any change in their registration information. This recommendation is to establish an administrative penalty of suspension of an organization's registration until the updated information is provided. Committee members agreed this amendment would help ensure organizations comply with the requirements of the Act.

Sections 170 and 171: Committee members agreed to these recommendations, which would establish a deadline for deregistered political parties and constituency associations to file final financial reports and declare any surplus funds.

Sections 175, 179: These amendments would require a registered political party or constituency association to appoint a new financial agent or auditor within 60 days of the vacancy occurring. Currently the Act only specifies that one must be appointed "as soon as possible." There was some discussion of a suggestion that perhaps it should be 120 days rather than 60, but as the Act currently allows 60 days for notification of any change to an organization's information, Committee members agreed that delays could become excessive.

Section 178: This amendment would expand the deputy financial agent's authority to allow them to file financing reports in the absence or incapacity of the financial agent. There was some discussion around allowing deputy financial agents to act on the financial agent's behalf more generally. However, the intent of the Act was clearly to constrain the authority of Deputy Financial Agents, and to ensure that one individual is administratively responsible for financial filing. Committee members agreed to this recommendation as presented.

Sections 223, 224: These amendments were recommended following previous elections, to respond to some difficulties in achieving compliance in financial reporting. Elections BC has found that these amendments are no longer necessary. Committee members agreed that these recommendations will no longer be put forward.

Part 11, new section: In the 2005 election, some individuals in official political campaign capacities applied as advertising sponsors. Committee members agreed that the Act should be more explicit that registered advertising sponsors be independent of registered political parties, registered constituency associations and candidates.

Part 11, new section: These amendments would bring B.C.'s *Election Act* in line with the *Canada Elections Act*, which permits tenants of rental units and residents of strata properties to display election advertising at their residence. Committee members agreed that this lack of consistency with the federal Act creates voter confusion and may restrict individuals' Charter rights to freedom of expression.

Section 228: “Advertising” is not defined in the *Election Act*, which makes it difficult to determine if something constitutes election advertising. New technologies and ways of communicating are posing particular challenges in this area. Committee members agreed that the *Election Act* should be amended to define advertising as it applies to election advertising. Other jurisdictions are also struggling with this definition. If this recommendation is brought forward, legislative counsel will need to research cases and legal opinions to ensure adequate, explicit wording is developed.

Sections 231, 264(1)(b): The *Election Act* prohibits election advertising conducted without the required identification of the sponsor. However, it is difficult to enforce this prohibition as there is low likelihood that the offence would result in prosecution. Committee members agreed that an amendment is appropriate to allow the Chief Electoral Officer or a designated official to remove election advertising that does not contain sponsor identification.

Sections 239, 264(1) (h): Committee members agreed that the Act should be amended to allow the Chief Electoral Officer to impose an administrative penalty for conducting election advertising without being registered.

Linda Johnson noted that the penalty would be in the form of a fine. Although a suspension would potentially be an effective penalty against a registered political party, it would not be effective against third party advertising sponsors.

3. Recommendations for Amendments to Other Acts:

Committee members did not raise any issues or concerns with proposed changes to the *Recall and Initiative Act* to parallel recommendations for amendments to the *Election Act*.

Linda Johnson advised that once the report on recommended legislative changes is tabled in the House, the House must decide whether to act on some or all of the recommendations. Legislators may wait until further recommendations are made regarding the BC-STV electoral system, or they may move forward with some changes in anticipation of testing new legislation in a by-election. If recommendations are brought forward, the Attorney General will convene a team consisting of the Deputy Chief Electoral Officer and senior staff from the Ministry of Attorney General (Legislative Counsel and a Senior Policy Analyst). Legislation may be amended based on models in other jurisdictions, or a discussion paper or briefing note may be prepared for decision by Cabinet regarding the direction government wishes to take.

4. Other Issues

Linda Johnson reminded Committee members that public policy must be decided by the policy makers – it is not Elections BC’s role as an independent electoral administration body to make public policy. She also noted that there is a great deal of scrutiny over electoral legislation changes. Stakeholder consultation is generally performed before

making significant legislative changes. It is likely, for example, that government will want Elections BC to conduct consultation through the Election Advisory Committee on matters of legislative change necessary to establish a BC-STV version of the *Election Act*.

The following matters will be raised in the report as public policy issues to bring to the attention of government and legislators.

Registration of Political Parties

Of the 45 political parties registered at the last election, only 25 fielded candidates. In order to be registered, a political party must declare that its primary purpose is to field candidates for election. Parties are automatically deregistered if they fail to field candidates in two consecutive general elections. However, registered parties that did not endorse candidates in the last election may still take contributions and issue tax receipts. There is a large administrative overhead and associated costs to the public with maintaining the register of registered political parties and constituency associations.

Committee members agreed that a review of the requirements to register and remain registered as a political party would be beneficial. Many provinces require demonstration of a degree of public support by submitting a specified number of signatures of voters or party members before a party can be registered.

Kirk Tousaw of the BC Marijuana Party noted that although having a larger number of political parties is good for democracy, it is in the interest of entrenched political parties to reduce the number of parties in competition for voter support. He raised a concern that the decision to enact legislation restricting the ability for parties to register be made by political parties that are have an interest in limiting the number of parties.

In response, Linda Johnson noted that all changes to electoral law must be reviewed by a number of legislative committees, with input provided by Elections BC as a non-partisan Office of the Legislature.

Nomination Deposits

Concerns have been raised by candidates and political parties regarding the criteria for reimbursement of nomination deposits. Many jurisdictions now focus on compliance with financial filing requirements and deadlines as the criteria for reimbursing deposits, rather than the receipt of a percentage of valid votes. As there are different models evolving across the country, it is appropriate to revisit the model in B.C.

Two jurisdictions currently don't require a nomination deposit. Linda Johnson agreed that Elections BC will conduct further research regarding the reasons these jurisdictions do not require a deposit.

A Committee member suggested that rather than a nomination deposit, the requirement for candidates to collect more signatures in support of their candidacy may be a more effective way to reduce “frivolous” candidacies, so long as the bar is not set unreasonably high.

Encouraging Participation in Electoral Democracy

Participation in electoral democracy includes activities such as working as a scrutineer, assisting with a political campaign, or working as an election official. It is difficult to attract qualified individuals for this work, however, as many potential workers have difficulty getting the needed time off from their employment. Manitoba has legislation that guarantees leave without pay from work to be a candidate, or to work as an election official or for a political campaign (employers may be exempted if they can not reasonably accommodate the time off).

Committee members agreed that, in order to encourage a broad range of citizen engagement in the electoral process, it would be appropriate to consider whether B.C. should adopt a similar model to that of Manitoba.

Making Electoral Democracy Accessible

Committee members agreed that further research on improving access to the electoral process for people with low literacy skills and for individuals with English as a second language is desirable. Elections BC is reviewing all its forms, guides and public materials to ensure plain language standards are met.

Kelly Reichert of the BC Liberal Party suggested that consultants in the field of accessibility could provide valuable advice on removing barriers in various areas. Learning disabilities, for example, may pose a greater barrier to individuals than language considerations.

Impact of Fixed Election Date on Election Advertising and Expense Limits

Although concerns had been raised that fixed election dates may have allowed for circumvention of spending limits, there has been no evidence to suggest this is the case. Third party spending in the 2005 general election was high compared to the previous election, but this may be a reflection of the issues at the time rather than the impact of a fixed election date. However, in order to address concerns and anticipate any potential problem, the campaign period could be redefined for fixed date events.

Committee members affirmed that such an amendment would increase clarity and transparency in this area.

Campaign Issues

These issues have been raised by political parties, candidates and voters as matters of fairness during election campaigns.

Right of Entry: In B.C., access to rental properties by candidates or their agents during a political campaign is established under the *Residential Tenancy Act*. It is suggested that B.C.'s *Election Act* could be amended to provide broader access to apartment buildings, condominiums or other multiple residences in a similar fashion to the federal *Canada Elections Act*.

Candidate Forums and Debates: Although some “all candidates” forums must limit the number of speakers due to space and time constraints, some candidates feel they have been excluded based on their platform or the party they represent. It is suggested that this aspect of fairness to candidates and parties should be addressed.

Kirk Tousaw of the BC Marijuana Party suggested that a set of non-mandatory guidelines developed by Elections BC highlighting the importance of access to candidate forums for all candidates and parties would also be helpful.

Campaign Signs: Elections BC receives many complaints about campaign signs, usually regarding a lack of authorization statements or sign placement. However, lawfully placed signs have also been vandalized or removed. The Act could be amended to make it an offence to remove or destroy an otherwise legally placed sign. A provision could also be made requiring signs to be removed by political parties within an appropriate time following an election. The Committee members agreed that it would be appropriate to address these issues through legislative amendments.

Other Issues

Campaign Finance Rules and Public Funding of Campaigns: Scott Hean of the Green Party suggested election financing provisions could be changed to allow donations only from private individuals and not organizations of any kind. In the alternative, public funding for political parties, similar to the method used federally, could be considered.

Linda Johnson noted that it may be time to review the electoral finance provisions in the *Election Act* as they are 10 years old, and in some areas have not kept pace with changes in other jurisdictions. Some provinces publicly fund auditing requirements. As B.C.'s Chief Electoral Officer does have the authority to demand an audit, perhaps it would be appropriate to fund it. A previous recommendation was put forward to establish a threshold for exempting the audit requirements.

It was agreed that comments will be added to the public policy section of the report regarding a review of campaign finance rules

The election finance portions of B.C.'s Act are not straightforward and could potentially be restructured for clarity. However, as the Act must potentially be amended significantly for the BC-STV system, it may be better to not make any recommendations

to restructure the electoral finance sections of the current Act until the scope of amendments for BC-STV are known.

5. Next Meeting:

Harry Neufeld agreed that an electronic draft of the report on recommended legislative changes will be sent to all Committee members for their review before the report is sent to print.

After the report has been tabled, the legislative focus will shift to amendments required for the BC-STV electoral system. Linda Johnson will provide a presentation to Committee members in mid-April on the workings of the BC-STV system.