

Election Advisory Committee (EAC) Minutes

11 June 2020
10:00 a.m. - noon

Meeting conducted via conference call originating at
the Office of the Chief Electoral Officer

PRESENT

Committee Members (alphabetically by political party name)

- Jordan Reid, BC NDP
- Raj Sihota, BC NDP
- Emile Scheffel, British Columbia Liberal Party
- Sat Harwood, Green Party Political Association of British Columbia

Elections BC Staff

- Anton Boegman, Chief Electoral Officer (Chair)
- Charles Porter, Deputy Chief Electoral Officer, Electoral Finance and Operations
- Yvonne Koehn, Deputy Chief Electoral Officer, Corporate Services
- Jodi Cooke, Executive Director, Electoral Finance
- Aidan Brand, A/Director, Corporate Planning and Strategic Initiatives
- Dan Posey, Analyst, Executive Services
- Arlene Carlson, Executive Coordinator (minutes)

REGRETS

- Paul Barbeau, British Columbia Liberal Party
- Andrew Brown, Green Party Political Association of British Columbia

GUESTS

Office of the Information and Privacy Commissioner (OIPC)

- Michael McEvoy, Information and Privacy Commissioner for BC
- Jeannette Van Den Bulk, Deputy Commissioner for Policy, Adjudication, and Audit
- Christopher Gillespie, Senior Policy Analyst

Meeting commenced at 10:03 a.m.

1. Welcome and Introductions

Anton Boegman, Chief Electoral Officer (CEO), welcomed attendees, and asked participants to introduce themselves. He reviewed the agenda, and then described the role of the Election Advisory Committee (EAC) as established by sections 14 - 16 of the *Election Act*. Anton noted that while not all agenda items today fall under the requirements of section 16, it is in the spirit of that section that Elections BC makes use of this Committee to engage

more broadly on other aspects of political campaigning and election administration. He noted that the first and third agenda items fall under this broader consultation.

2. Political Campaign Activity Code of Practice Update

Anton noted that this is a voluntary code, modeled after similar codes in other Commonwealth jurisdictions. It is intended to promote best practices and fair play in political campaigning by clarifying information and campaigning rules under both the *Personal Information Protection Act* and the *Election Act*. It is an undertaking that has been strongly supported by both himself and the privacy commissioner, and reflects the reality that political campaigning is an area where the mandates of Elections BC and the Office of the Information and Privacy Commissioner touch.

The version of the code presented at the EAC meeting in September last year represented a first draft, and Anton thanked members for taking the time to provide feedback on it. The current version is considerably changed from that initial draft, and incorporates amendments to address several concerns that were raised.

Anton turned the floor over to Michael McEvoy.

Commissioner McEvoy noted that the code stems from the political parties investigation report which was released by the OIPC in 2019. He was pleased to note that all parties have implemented the recommendations in the report, with one small outstanding item. One main takeaway from the report is the key role that political parties play in our democratic system and their need to gather information to understand voters and effectively communicate with them. Commissioner McEvoy has been working with the Chief Electoral Officer to craft a code of practice that addresses how political parties handle personal information.

The purpose of the code is to instill trust in those who hold the public's personal data, and to determine how political parties can collect this information while still following privacy laws. Our aim was to be as concise and straightforward as possible, and to state party obligations as briefly as possible. The Commissioner and the Chief Electoral Officer had previously presented a draft outline of the code and invited feedback. Based on those meetings, it was determined that any approach should be principles based, voluntary, and would need to set out party and campaign responsibilities.

Presented today is a substantially different version for EAC members' review and feedback. We propose a two phase approach, where the code would be signed at both the central party level and at the candidate level. The signed documents would be held by Elections BC. The OIPC often says that, when it comes to an organization's commitment to protection of personal information, the commitment starts at the top. That emphasizes the importance of the leadership of the party signing the code. It indicates at the most senior level a commitment to the principles that extend inside and outside the writ period.

Michael opened the floor for feedback and comments, and stated that he is looking forward to gathering the parties' feedback on this process, including content, the sign-on process, and whether additional guidance is required.

Discussion Questions

- Question: Thinking back to September, we did send a written request for clarification after the meeting, seeking more information on definitions etc. Could you perhaps provide answers to those questions so that we can be fully informed in order to provide additional feedback on today's document.
 - Answer: All parties have the right to communicate and collect information. The code itself is designed to be simple and straightforward, and to lay out the principles more than the descriptions. If it is not providing a sufficient level of detail, we will be happy to work on additional guidance to accompany the code. This guidance would be much more in depth than the code itself.
- Question 1) We have no objections under headings 3 and 5, and most of section 4 as well. Under heading 2 we have some significant questions around scope and definition. The first set of bullets touches on psychographic profiling, and reads that we would need to obtain specific consent for certain activities. While we want to agree to avoid terms of use that are complicated, the idea of obtaining explicit consent is a significant concern. For example, would we need to obtain it if we are simply changing the way a spreadsheet sorts or performing data analytics?
- Question 2) In the first numbered section under heading 2, point 1 says that the political participant agrees to "explain the nature, purpose and consequences of what the individual is consenting to". What does that mean in practice?
- Question 3) In the second numbered section under heading 2, point 1 states that the party must use "clear and direct communication" I have some concerns around the practicality of this point. Who decides what constitutes clear and direct communication? Is it us or is it one of your offices?
- Question 4) Under heading 4, the 6th bullet states that parties commit to "retaining information only until the business and legal obligations for the collection purpose are complete". I am interested in the rationale behind the use of the word "obligation" in this context.
 - Answer to questions 1-4: We do not want a situation where people just tick the box without reading it, it is important to be using plain language detailing how the information will be used. Your point around analytics is well taken, we will take that away for further review. To the last point regarding the retention of information, parties gather information for a purpose and retain it as long as necessary. Every situation has its own context and the aim is for the public to understand that context. A code like this could fill a book, so we set the principles out and hope you will come back to us for guidance as necessary. I would re-emphasizing that we tried to make the code concise and straightforward. If you would prefer more guidance, we can certainly provide that.
- Question: If I may elaborate on the data analytics question to explain a bit more with an example: because we know where someone lives, we may use that information when planning canvassing strategies. By directing parties to obtain consent, the onus is on the parties to enumerate and list the ways that voter data can be used. This is probably a main concern for us.

- Answer: This issue is worthy of further conversation offline between our two offices. We can consider how this information should be made available to the public and how it should be stated. Perhaps this could be available on websites telling the public what data is merged and how it is being used in a broad sense. We will continue to have those discussions.
- Comment: We have a concern that the term “psychographic profiling” is unnecessarily inflammatory, particularly without a definition, and that the use of this wording may have the effect of undermining voter trust.
- Comment: I am pleased to hear you state that parties have the right to communicate and collect information. I hope that the code can be edited to state that. It would show a balance of rights of both the political parties and the public, and would provide context.
- Question: The code is subject to oversight by both EBC and OIPC, how in practical terms would this work?
 - Answer: We tried to synthesize the law as it concerns both offices, however we are very clear on who has jurisdiction on what issue. Our offices work closely together to ensure that a complainant is directed to the appropriate agency. This is nothing new, often a complaint is directed to another agency.

Question: When it comes to individuals who withdraw their consent, in practical terms, once we erase that information how do we keep enough information on file to prove that we have deleted it? And, when that data comes back to us through the voter information update from Elections BC, how do we manage that?

- Answer: Each system differs, our agencies will not micro manage that process, how you notate it is a matter for you to decide. If it ever came back to us, we would simply ask you to produce the record of what happened with that data.
- Comment: To the extent there are some challenges, there is opportunity to clarify what is meant by certain words and add some definitions to clarify expectations. For example, the term psychographic has a slightly sinister connotation. In terms of specific comments, a key issue is, at what point do we need to get more consent when we tweak voter data? The concept of informed consent should be defined in the code. Heading 2, point 5 re: making consent an ongoing process seems more like something that informs the other five principles, rather than being a principle itself. What does that mean in practice? This needs clarification.

Michael noted that the code is meant to prevent a voter ticking a box on a website to receive information, and ending up on the donors list. While recognizing the importance of the need for parties to collect information and their right to the voters list, he also noted that the purpose of the Act is to protect their personal information. The rights of the individual must be balanced with the need of organizations.

- Question: Referring to heading 2, point 6 and the reference to being prepared to demonstrate compliance, when I look at that phrasing there are two interpretations of that. Could you clarify please?

- o Answer: When a breach occurs, the OIPC looks at the specific complaint, and also looks at the overall system in place as well as the specific inventory of data.

Anton invited committee members to provide further feedback on the code of practice by letter or email.

3. Election Financing Regulation and Third Party Sponsor Disclosure Report Regulation

Bill 43 – *The Election Amendment Act 2019* - was passed with unanimous support from legislators and received Royal Assent on November 28, 2019. This Act implemented, almost in its entirety, the May 2018 Report on Recommendations for Legislative Change, tabled by Elections BC following the conclusion of the 41st Provincial General Election.

A major theme of Bill 43 is to enable greater flexibility in the legislation to meet evolving future needs of voters and other political stakeholders. This was done by specifying the replacement of a number of prescriptive sections of the Act with CEO regulations. In essence, rather than having the requirements specified in legislation they will be articulated in regulation. Further, to allow for some of the other changes to be implemented, some existing CEO regulations were also required to be amended. There are two amended regulations resulting from Bill 43 to be discussed today:

- Election Financing Regulation (B.C. Reg. 371/95)
- Third Party Sponsor Disclosure Report Regulation (431/99)

In addition to the changes required to these two regulations as a result of Bill 43, there are also new provisions in the Election Financing Regulation to restrict classes of expenses that are eligible to be claimed as reimbursable election expenses.

As discussed at the EAC meeting on Feb 5, 2020 and during the EAC consultation that began on March 16, the *Election Amendment Act, 2019* removed the requirement for the CEO to establish forms for financial disclosure requirements by regulation, and permitted the CEO to specify those forms instead. However, the CEO must continue to establish regulations that outline the information contained on financial reporting forms. This approach allows greater flexibility in form design moving forward.

In both regulations, the schedules of attached reporting forms have been removed, and replaced with a prescribed list of applicable expense and income classes by which the information must be reported.

Generally, the majority of the information contained in these regulations was previously identified in the regulated forms. Some additional classes of advertising have been identified in both regulations to provide greater transparency. These additional classes of advertising are consistent with the additional categories that were added to the Political Party and Constituency Association Financial Reports Regulation, the Leadership Contestant Financing Reports Regulation and the Nomination Contest Regulation that were presented to this Committee on February 5, 2020.

In addition to prescribing the classes of expenses and income, the Election Financing Regulation also establishes a new class of election expenses that would not be eligible for reimbursement for future elections.

Bill 3 – *Election Amendment Act, 2017* (which received Royal Assent on November 30, 2017) - added new requirements including the reimbursement of up to 50% of the value of eligible election expenses incurred. These reimbursements are to be paid by the CEO out of the Consolidated Revenue Fund to candidates and political parties that receive a sufficient percentage of the vote (candidates 10% of votes, party 10% in by-election or 5% province wide in a general election).

Currently, the *Election Act* establishes a limited list of expenses that are not eligible to be reimbursed, and provides the ability for the CEO to add by regulation additional classes of expenses that should not be eligible for reimbursement. Since reimbursements are paid from public funds, eligible election expenses should be limited to those that are reasonable and necessary for the purpose of running an election campaign. This change comes following a review of the election expense reimbursement practices by other Canadian electoral management bodies, and after administering expense reimbursements for two by-elections.

Discussion Questions

- Question: Re: point 7 – election expenses not to be included for election expense limits - is this the full list or are these in addition to what is currently in the Act?
 - Answer: These are in addition to the expenses currently listed in the Act. There have been no changes to the list of expenses that are not subject to the election expenses limit.
- Question: Re: point 8 - election expenses not to be reimbursed – the stated purpose is to limit items not essential to a campaign. Can you explain the rationale behind having fundraising, salaries and benefits on this list?
 - Answer: We reviewed this issue with other electoral management bodies, and several other Canadian jurisdictions do not reimburse for fundraising activities. As the purpose of fundraising activities is to generate revenue, it does not seem necessary for the cost of that fundraising activity to be paid from public funds in addition to the revenue that is generated. Salaries and benefits are also not reimbursed in several other jurisdictions and this is our opinion also.
- Question: On the salaries and benefits question, I think we need more information around the equity of this reimbursement. Limiting salaries may have a chilling effect on the ability to recruit candidates from economically disadvantaged backgrounds. I would ask that EBC review this exclusion through an equity lens.
 - Answer: We will review that provision.
- Question: Re: point 8B – excluding expenses incurred in day-to-day administration – can you give us a sense of how we might report for those who divide their time between campaigns and general administration. Can we divide their salary and report the campaign portion?
 - Answer: Yes, campaigning is an election expense.

Anton noted that he will be happy to receive any additional comments and questions by June 19.

4. Pandemic Contingency Planning

Anton provided the following verbal update on the work that is being done at Elections BC to plan for an election conducted during a pandemic:

This is a topic on which I wrote to your three parties during the last week of April. At that time, British Columbia was approximately four weeks into pandemic public health restrictions, and although we have all collectively helped to “flatten the curve”, it remains highly likely that the next by-election or election in B.C. will be administered during a phase of this pandemic.

As an election is an event in which millions of British Columbians participate, it is a high-risk event from a public health perspective. Many election processes will necessarily need to be adapted in order to keep voters and election workers safe, as well as to maintain the necessary accessibility to the ballot box and the overall integrity of the electoral process. Which adaptations are essential will to some extent depend on the state of the pandemic in our province at the time of the electoral event, and on the public health guidance of the Provincial Health Officer. I have been and will continue to be in regular contact with that office to better understand public health directives, and how they may impact an electoral event, whether it is six, 12 or 18 months from now.

In my letter, I identified some of the initial high-level adaptations that we were considering. These included:

- *Modification of processes to ensure physical distancing*
- *Provision of sanitation stations and protective equipment*
- *Expanded use of remote voting options such as vote-by-mail and telephone voting, especially for at risk-voters, and,*
- *More options for in-person early voting to reduce numbers on voting days*

These initial adaptations were based on our understanding of the then public health environment, on discussions with other Canadian and international election management bodies, and a review of media and other reports on those few elections that had been held – with varying levels of success – during the pandemic. It goes without saying that the best approach, when public health risk is highest, is likely to defer or postpone an election. This was the case in Saskatchewan, for example, when a proposed spring election was deferred to the fall. When the public health risk is lower, however, it is possible to hold an election in a safe and accessible manner, and one in which voters do not have to choose between exercising their democratic franchise and protecting their health. These assumptions have formed the foundation of our contingency strategy.

Since the end of April, we have maintained our work on election contingency planning. We have continued to engage with other jurisdictions and the Provincial Health Officer, and have surveyed British Columbians to gain insight into how they perceive voting and working as an election official during a pandemic. We have used the framework of physical distancing, engineering controls, administrative controls and personal protective equipment, as a means of assessing our electoral processes, and identifying where adaptations are necessary for reducing COVID-19 transmission hazards. This is the same approach that has been used by B.C. organizations as part of the first phase of re-opening the province.

This framework has allowed us to develop a range of potential adaptations that can be applied to electoral office locations and voting places, as well as to the nomination, voting and counting processes in an election. I will review some of these adaptations now, and look

forward to hearing your feedback. Over the coming months as we develop our plans in more detail, we will make sure to continue this consultation.

Physical distancing is a key control measure and based on the current provincial health office guidance includes:

- Maintaining two metre distance from other individuals and groups
- Maximum occupancy of spaces at 50% of standard fire code occupancy up to a maximum of 50 persons
- Five square metres of open space per person if possible
- Individuals not part of the same group to keep two metre separation, with a maximum group size of six

This has a direct impact on locations that may be used for offices and voting. Large open spaces such as school gyms and banquet halls are preferred to smaller locations like building lobbies or smaller rooms in community buildings. To mitigate potential accessibility issues this means that more days of early voting are likely, beyond the current provision for advance voting. It also means that efforts to manage line-ups are recommended including measures like assigning advance voting opportunities using the Where to Vote cards, and working to develop wait-time functionality for our voting information app. The set-up of voting places will be more spaced out, there will potentially be only one election official per station (this will be a key change if the election is conducted under 2017 rules), taped spacing marks like those used in grocery stores will be used, and the close interaction of scrutineers with election officials will need to be modified.

Physical distancing, especially for those in our population who are at higher-risk, also means that the use of remote voting options will increase. We have seen this in the U.S. and in other jurisdictions where requests for vote-by-mail packages have increased materially. Where we have previously seen less than 1% of voters use vote-by-mail we should expect to see potentially 30-40% or more of all voters use this method. Certainly, this will be the default option for voting at assisted-living centres where previously voting teams would go room-to-room or bed-to-bed. Use of election official assisted telephone voting may also be the best approach for voters in acute care hospitals. These kind of adaptations will have significant infrastructure impacts for Elections BC to ensure there is sufficient capacity to meet this increased need. There may also be requirements to extend the period before final count to allow for complete processing of mail ballots including all of the integrity checks. Depending on volumes, it may look more like the counting period for the recent referendum.

We are also moving forward with the development of our candidate nomination portal. This service is intended to allow candidates to submit nomination documents and pay nomination deposits online, and would allow parties to complete endorsements through the same secure portal. Use of the portal would of course also support physical distancing.

Engineering controls are the second measure in the framework. These controls are closely related to physical distancing, and are often solutions when physical distancing is not possible. Our considerations include:

- Large building footprints and volume – this supports distancing and air circulation to limit risk of indoor airborne contamination
- Preference for locations with at least a separate entrance and exit
- “Sneeze guards” at each voter service station (plexiglass or other material)

- *Reserved locations outside voting places for curbside voting or ballot package drop-off*
- *Line-up spacing marks inside and outside offices and voting places, voter service flow marking in voting places*
- *Voter hand sanitization stations at entrance and exit to voting places*
- *Discard bins for used gloves/masks*
- *Laminated/plastic secrecy sleeves (needed for voting modernization) that can be sanitized between voters*
- *Possible provision of pens to any voter who needs one*

Administrative controls are means to supplement distancing and engineering controls. They typically include process additions and associated communication products. Our considerations here are:

- *Increased facility cleaning/sanitization before and after each voting day*
- *Frequent cleaning of high-touch materials and equipment (for example: pens, tabulators, secrecy screens, accessibility tools for voting, voting screens)*
- *Posters on surface touching etiquette, cough etiquette etc.*
- *No handling of voter ID documents by election officials*
- *Replacement of written declaration with oral declaration*
- *Allow use of voter's own pen – more likely an option if an election is held before October 2021 under the rules in place before Bill 43.*
- *Although some media have reported on elections where medical officials have taken voters' temperatures before permitting them to enter the voting place, that is not a recommendation of our Public Health Officer.*

The last element of the framework is personal protective equipment (PPE). While this control measure is seen to be less effective than the others (especially distancing), it will be an important facet of elections in B.C. during a pandemic. As we finalize plans for the other protective measures I outlined earlier, we will seek advice on which election workers should be equipped with gloves, face masks and protective shields, and which protection standards should be used.

We are also considering whether it would be appropriate to procure sufficient supplies of medical-grade masks to be able to issue one to each voter presenting themselves at an in-person opportunity. This is an option being currently assessed by Elections Saskatchewan, where approximately 450,000 voters turned out at their last election. If we were to do this in B.C. however, it would increase the current procurement challenge for this equipment, requiring millions rather than thousands of masks.

A further note on PPE is that we are tapping into the provincial PPE procurement system to ensure that any supplies that we deploy in voting offices and locations meet the necessary performance standards.

We have also been involved in discussions with staff from the Ministry of Municipal Affairs and Housing regarding local by-elections and assent votes that were postponed due to the pandemic under a Ministerial Order. The conduct of these local electoral events, as well as the upcoming fall election in Saskatchewan, may provide helpful lessons learned as we refine our mitigation measures in preparation for a provincial by-election or general election.

Anton recognized that his comments contain a lot of information, and reminded Committee members it will be available in the meeting minutes. He also encouraged feedback on this subject.

Discussion Questions

- Comment: Thanks for all the work your team has put into this. We appreciate all of the thought that has gone in to it.
- Question: Do you anticipate any kind of collaboration with the Provincial Health Officer on guidelines for political parties on safety precautions? Will EBC communicate this information to us or will you play an advisory role?
 - Answer: Anton is in regular contact with the Deputy Provincial Health Officer, and only yesterday they discussed facilitating the opportunity of inviting either the Provincial Health Officer or her Deputy to an EAC meeting in the fall. They have offered to make a presentation and answer questions on how traditional campaigning will be impacted in the next election. They recognize that campaign activities are governed by provincial health directives and their guidance will be an important part of that.
- Comment: The more prescriptive the PHO can be in terms of what is allowed and what is not, the better adherence there will be at the local level.
- Question: If there is an effort to stagger voting days to reduce the number of people at a voting place, I'd like to express the hope that the participation data would include the date on which a voter has been directed to vote.
 - Answer: We recognize that this is an important factor, we will look at that. Our goal is to reduce lineups while maintaining accessibility.
- Question: I'd just like to underscore (this was also sent in a letter to EBC recently) that we feel it is important to have expanded access to voting, like telephone voting, mail-in ballots, or increased poll locations. It should be managed so that every voter has the same access, and that all options are available and advertised to all voters.
 - Answer: With our communications program we try to do a comprehensive job. We will do even more for this election because of the uncertainty during these times, and we will highlight all opportunities for all voters. As an example, if we distribute a province-wide enumeration letter, we could include all options for voting in the mail-out. We are considering options.

Question: I have a different view of asking voters to vote on different days, I think that could be very confusing for voters. To alleviate confusion, I would encourage EBC to increase other opportunities rather than segment the dates.

- Answer: We are trying to understand best practices in other jurisdictions so we don't see massive line-ups. Our experience during the last election was that, even though there were six advance voting days, line-ups would still occur. We appreciate your concerns and continue to examine this.
- Question: Regarding the recruitment of EBC staff in polling locations, and I am thinking about vulnerable communities here, I hope EBC will focus on ensuring there

are polling locations in those communities (such as First Nations communities) that are staffed by local people. This way, the community does not feel it is putting itself at risk by having people from outside the community working there.

- Answer: We agree. It has always been a principle of ours to recruit locally and we continue to adhere to that.
- Question: As it is unlikely there will be any knocking on doors, how can candidates collect signatures for nomination papers in a physically distanced way? Could this be done online?
 - Answer: We have flagged this as an issue already, and we have no solution as yet. We will collaborate with the OIPC on this.
- Question: In terms of the planning, should we proceed on the assumption that we are going to go in to the next election with social distancing in place?
 - Answer: Yes, that is a fundamental assumption. We have asked the Deputy Public Health Officer for projections, and while he indicated that there is a lot of work being done on the vaccine front, the population will likely not have sufficient immunity by next fall to rescind the distancing directive. All of our planning will be based on distancing first, and the use of PPE if distancing is not possible.
- Comment: To the extent there will be rules or guidance provided about how campaigns will be conducted, the sooner we have that information the better, so that we can begin training.
 - Answer: Agreed, and as things change, we will have to adapt to what is appropriate to the circumstances. Where we have to vary from provisions in the *Election Act* due to a changed process, that will have to be done through an order of the CEO. We will try to put that guidance in clear format to be used as a training aid.

5. Closing Remarks

Anton thanked committee members for their comments, and asked that they provide any feedback on the two Regulations discussed today by June 19. He then thanked members for their time and adjourned the meeting at noon.