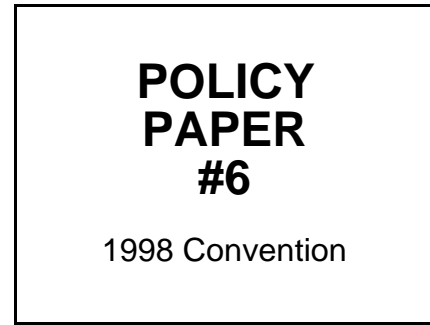


TO: UBCM Members
FROM: Elections Review Task Group
DATE: August 20, 1998
RE: **ELECTION LEGISLATION REVIEW**



1. INTRODUCTION

The existing legislation governing the conduct of local government elections and other voting was significantly altered in 1993.

Each UBCM Convention since 1993 has dealt with resolutions relevant to local government election legislation. Some of the resolutions raised the exact same issues that had been debated in the preceding years. The situation reached the point at the 1997 Convention where 17 resolutions on elections issues were submitted and indicated more than isolated concerns. This resulted in a recommendation by the UBCM Executive, and endorsed by the 1997 Convention, that a focused review of the 1993 elections legislation be carried out.

2. PURPOSE

This report is to give the 1998 UBCM Convention the opportunity to deal with the issues contained here in. Recommendations, from the Convention, will be made to the Provincial Government so that legislative amendments can be considered in time for the 1999 General Local Elections.

3. METHODOLOGY

A questionnaire based upon the topics as contained in the earlier resolutions, and a brief list of other potential issues was distributed to all UBCM member local governments. Prior to being circulated, a critique of the questionnaire was made by members of the Municipal Officers' Association.

One hundred and sixty responses were received to the questionnaire. Respondents represented all classifications of local government, and included both elected and staff members.

From the responses received to the questionnaire, the following two categories of issues are presented.

4. POLICY REVIEW

Section “A” deals with the issues where there was a high degree of unanimity about the need for changes and the direction for change. **This section will be put before the Convention as a “package”.**

Section “B” contains those issues where there is a diversity of responses and no clear direction emerges. **The intent is to have the Convention consider each of the options in this section.**

SECTION “A” — ISSUES AND SUGGESTED DIRECTIONS

This section deals with the issues where there was a high degree of unanimity about the need for changes and the direction for change. **This section will be put before the Convention as a “package”.**

In this section each issue is identified and assigned a number for reference, if required, during subsequent discussions. A brief introduction to the topic precedes a copy of the questions posed to the UBCM members in the survey mentioned earlier. Comments on the responses as they formed the basis for the suggested directions follow. The suggested directions are then put forward for consideration.

A1 PROVIDE ENHANCED VOTING OPPORTUNITIES

Current legislation provides for Advance, Additional Advance, Special Voting and Mail Ballot, in addition to regular voting opportunities. Suggestions have been made that further opportunities for voting need to be provided.

The survey asked:

Are these sufficient to be required by legislation?

If not, should:

legislation require more opportunities

legislation to enable local government to provide more opportunities

Comment:

There doesn't appear to be widespread dissatisfaction with the current range of voting opportunities. While some respondents indicated a desire to expand voting opportunities, there was a limited indication as to where changes could be made. The ability to allow those temporarily absent from the country to vote was one concern. Currently mail voting is restricted to those with a disability which affects their ability to otherwise attend a voting place to vote. There was some indication of a lack of awareness as to how extensive the current enhanced voting provisions are.

Suggested Direction:

Amend the *Municipal Act* to enhance mail voting provisions.

A2 NON-RESIDENT PROPERTY ELECTORS

In order to register at the time of voting, a non-resident property elector must obtain a “certificate” at least 14 days before general voting day. Suggestions are that this provision is overly restrictive and should be modified or eliminated.

The survey asked:

Do you agree that changes are needed with respect to the registration of non-resident property electors?

Comment:

A large percentage of respondents agreed that changes were needed to the requirements for a non-resident property owner to register as an elector. There was little support for retaining the existing registration requirement.

Suggested Direction:

Amend the *Municipal Act* to:

- (i) eliminate the certificate requirement; and
- (ii) allow registration at time of voting, provided adequate proof of ownership is provided.

A3 CANVASSERS AT VOTING PLACES

Some jurisdictions have experienced canvassers and petition takers who utilize the voting place as a desirable location to contact the public, for non-election issues. Voters have suggested that such an activity is intimidating and may disrupt the voting proceedings.

The survey asked:

Do you think that canvassers for non-election issues could disrupt voting?

If yes, what restrictions should be imposed?

i.e. Prohibit all canvassers within 100 metres of the voting place.

Comment:

There is widespread support for legislative restrictions and the 100-metre suggestion. Current provisions concerning signs, badges and the canvassing for votes, etc. cannot take place within 100 metres of where voting proceedings are being conducted. The proposed change would be consistent with the existing “Election Offences.”

Suggested Direction:

Amend the *Municipal Act* to prohibit canvassers within 100 metres of a voting place.

A4 MEDIA ADVERTISING ON VOTING DAY

For local government elections in B.C., political advertising is not prohibited on voting day which is contrary to the provincial and federal election requirements. Suggestions have been made that the different regulations cause confusion and controversy.

The survey asked:

Should political media advertising be regulated on voting day?

If yes, what should be the regulations:

- no advertising after midnight on the day prior to the election*
- restrict the frequency*
- specify the size of printed advertisements*

Comment:

A substantial number of respondents indicated that election advertising should be restricted on general voting day, and favoured the provincial requirements. The provincial “*Election Act*,” in general terms, prohibits election advertising in a newspaper, magazine or on radio or television on general voting day.

Suggested Direction:

Amend the *Municipal Act* to be consistent with the provisions of the provincial *Election Act*.

A5 THIRD-PARTY ADVERTISING

Third-party advertising for a local government election does not identify the third party. Suggestions have been made that the requirements should be similar to federal and provincial, to avoid confusion.

The survey asked:

Is there a need to identify third-party advertisers?

Comment:

A significant number of respondents indicated that the sponsor of election advertising should be identified, and favoured the provincial requirements. The “*Election Act*,” in general terms, requires that the sponsor of election advertising be identified in the advertisement including a telephone number or mailing address.

Suggested Direction:

Amend the *Municipal Act* to be consistent with the provisions of the Election Act.

A6 VOTING DIVISIONS

Municipalities with populations greater than 100,000 must establish voting divisions. A municipality with a lesser population may, by bylaw, exercise the same authority. The public will often utilize the voting place which is most convenient, and become indignant when advised they are at the “wrong place.” Voting divisions can also be costly and may not be necessary.

The survey asked:

Should voting divisions be mandatory for municipalities over 100,000?

Comment:

Responses received tend to reject the compulsory need for voting divisions. However, a number of larger jurisdictions have found voting divisions to be very advantageous in determining the potential voter turn-out for each voting place and avoiding “overload” at some locations.

Suggested Direction:

Amend the *Municipal Act* to allow municipalities to make their own determination with respect to voting divisions.

A7 GENERAL VOTING DAY

General voting day for local government elections has been historically held on a Saturday. General voting day for a general local election (3 years) must be the third Saturday of November. There are, at times, suggestions that the existing date is not always convenient.

The survey asked:

Would it be desirable to change the date for general voting day?

Should changes in the date of general voting day be made for:

general local elections

by-elections

other voting

Comment:

A very large percentage of respondents recommended no change from the current third Saturday in November. Of those proposing a change, winter weather was frequently given as a reason for general voting to be held earlier.

Suggested Direction:

No change to the *Municipal Act*.

A8 EMPLOYEES 4 HOURS CLEAR TIME TO VOTE

The *Election Act* requires that employees are to be provided 4 clear hours in which to vote in provincial and federal elections. The provisions are not a requirement for local government voting. Suggestions have been made that the same provisions should apply to local government.

The survey asked:

Do you agree that employees be provided with 4 clear hours in which to vote ?

Comment:

A majority of the respondents opposed granting employees 4 hours clear time on general voting day for local government.

Individual jurisdictions may, by bylaw, establish dates and set hours for additional voting opportunities, which need not be conducted between the hours of 8:00 a.m. to 8:00 p.m.

Suggested Direction:

No change to the *Municipal Act*.

A9 TERM OF OFFICE/FREQUENCY OF ELECTIONS

The three-year term and triennial elections were put in place in 1990. Prior to this date, an opportunity existed for a council to establish biennial elections for all members. The current requirements are standard in most provinces. Periodically, there have been calls to revise the term and/or the frequency of elections.

The survey asked:

Are you satisfied with the three-year term and triennial elections?

If not, what is the area of concern ?

___ *the three-year term*

___ *triennial elections*

Comment:

Of those supporting a change there was an equal split between those that were concerned about the three-year term and those concerned about the triennial elections (and lack of staggered terms).

Suggested Direction:

No change to the *Municipal Act*.

A10 LIST OF REGISTERED ELECTORS

On the copy of the list of registered electors available for public inspection, the chief election officer has the discretionary authority to omit information in order to protect the privacy or security of an elector. When requested to do so by the elector, such information must be removed. The discretionary authority can become controversial and place an undue burden upon the chief elections officer. Suggestions have been made that such requirements should be altered.

The survey asked:

Do you agree with the need for a change as to how privacy can be protected on the copies of the registered list of electors?

Comment:

Responses tended to indicate that it is the responsibility of individuals to determine if they wish to have their privacy protected.

Suggested Direction:

Amend the *Municipal Act* to:

- (i) eliminate the discretionary authority of the chief election officer;
- (ii) remove information only if requested by the elector; and
- (iii) provide public notice to be given that the “list” contains information that may be considered private and that notice may be given to the chief elections officer to remove the information.

A11 RESIDENT ELECTORS – NO FIXED RESIDENCY

The rules for determining residency refer to a person being a resident of an area and any changes in residency are with respect to the area. An applicant for registration as a resident-electors must include a residential address. An applicant that indicates the area in which the applicant is resident is sufficient if, in the opinion of the person receiving the application, it indicates the location for the purpose of determining whether the applicant is resident in the jurisdiction. Suggestions have been made that the residency provisions need to be clarified.

The survey asked:

Have you had difficulties with interpretations of the residency requirements?

Issues to be considered

___ *Is a homeless person a resident of an area*

___ *A general review of the wording*

Comment:

While a majority did not have difficulty interpreting the section there is a group that does. While there is no strong indication of the direction of change there is an indication that a review is warranted.

Suggested Direction:

Review these provisions of the *Municipal Act* in order to provide greater clarity.

A12 BY-ELECTIONS

The need for a by-election can be imposed upon staff without any advance warning. The local government must appoint a chief election officer as soon as possible after the vacancy occurs. The possibility exists that such an appointment could be delayed, if the regular meeting of the local government was on a monthly basis.

The survey asked:

Should the chief election officer be a continuing appointment?

Comment:

Responses received tended to indicate that with frequent use of the provisions, little problem was experienced. For those who had experienced the actual situation for the first time, or who had read the provisions, it could be a bit daunting. There was an even split of opinion, indicating that local discretionary power could be a useful addition to the legislation.

Suggested Direction:

Amend the *Municipal Act* to provide local discretion to appoint a permanent chief elections officer.

A13 CAMPAIGN FINANCING AND REPORTING

Campaign Financing requirements under Part 3 Division 8 of the “Act” were established in 1993. Comments on the requirements suggest that the administration of the provisions are onerous and costly for local government.

The survey asked:

Have you experienced problems caused by Campaign Financing legislation?

Comment:

While the majority of respondents did not have “problems”, there appeared to be a high level of frustration in dealing with the legislation. This frustration was expressed

by both elected and staff respondents. A task-force of local government elected and staff representatives, together with the Ministry of Municipal Affairs, should prepare a guide for local government officials on the interpretation and application of the provisions.

Suggested Direction:

No change to the *Municipal Act* recommended through this review while recognizing that aspects of campaign financing will be reviewed as part of the accountability stream of *Municipal Act* reform.

A14 SCRUTINEERS FOR OTHER VOTING

The provisions of Part 4, Division 4 of the “Act” did not exist prior to 1993. Suggestions indicate that the Division is overly complex, particularly when compared to the requirements for a candidate’s scrutineer.

The survey asked:

Is there an unnecessary work load placed upon local government in managing the scrutineers for other voting requirements ?

If yes, which provisions could be simplified?

advance registration

appointment by c.e.o.

allow scrutineers to be authorized by appropriate election staff

Comments:

The requirements of this Division of the “Act” have not been experienced by all jurisdictions. The respondents were fairly evenly split as to the question of additional work load. There would seem to be a need for a review to clarify the technical problems of the legislation.

Suggested Direction:

No change to the *Municipal Act* but provide more guidance in administrative manuals.

A15 VOTING MACHINES

The current provisions of the “Act” were part of the 1993 changes. Many jurisdictions have now successfully utilized voting machines, which may have indicated some shortcomings in the legislation.

The survey asked:

Should the enabling bylaw require ministerial approval?

Comment:

A positive response was indicated by those using voting machines. There was a strong indication of frustration in the requirement for ministerial approval of any bylaw.

Suggested Direction:

Amend the *Municipal Act* to eliminate the requirement that the enabling bylaw to allow voting machines in local government elections requires ministerial approval.

A16 CHRONOLOGICAL ORDER OF THE “ACT”

Parts 3 & 4 of the “Act” were created in 1993 after lengthy involvement by elected and appointed local government representatives. The requirements have now been put to practical application on a number of occasions.

The survey asked:

Do you have problems in determining the chronological flow of events?

Comment:

The majority of those responding are not experiencing problems and of these that noted problems, the majority of solutions were non-legislative, such as continuing the elections calendar.

Suggested Direction:

No change to the *Municipal Act*.

SECTION “B” — ISSUES AND OPTIONS

Section “B” contains those issues where there is a diversity of responses and no clear direction emerges. **The intent is to have the Convention consider each of the options in this section.**

In this section each issue is identified and again is assigned a number for reference during subsequent discussions. A brief introduction to the topic precedes a copy of the questions posed to the UBCM members in the survey. Comments on the responses as they formed the basis for the options follow. Options are then put forward for consideration.

B1 FRIVOLOUS CANDIDATES

Current legislation allows any person to run for office if nominated by two qualified electors. In some jurisdictions, this has led to numerous candidates being nominated. Suggestions have been made for legislation that would possibly make it far more difficult for such candidates to be nominated.

The survey asked:

Do you support legislation that would deal with frivolous candidates?

If yes, what options for consideration:

- legislation applicable to all local governments*
- allow local governments to establish legislatively prescribed conditions*
- require a deposit which is refundable if a prescribed minimum of votes received*
- increase the number of nominators required*

Comment:

A vast majority of respondents indicated a need to deal with this issue. The response to the questions together with the various comments produced a number of options. There was significant support for new legislation so the issue appears more the nature of the change that is to be made. However, because some legislative options could impose requirements on jurisdictions that do not experience problems with frivolous candidates, such as smaller jurisdictions, it is suggested to create a set of legislative rules (rather than provide complete local discretion) but allow local governments to opt out of the need to apply them to their particular elections.

For example, the legislation could require a cash deposit, but a local government in its elections bylaw could opt out of that requirement for its election.

Options:

The options would therefore focus on the legislative requirements of an opt-in/opt-out provision by amending the *Municipal Act* to allow local government to invoke a legislative provision to require one or more of the following:

- (a) \$200 cash deposit or bond which is refundable if a prescribed minimum of votes (5%) are received.
- (b) increase the number of nominators to 10.
- (c) limit the number of nominations which can be made by one individual to one candidate per position.
- (d) use of formal names only, and allow use of nick-name only by sworn affidavits.

B2 EXTENSION OF NOMINATION PERIOD

Following the end of the nomination period, the chief election officer must declare as candidates all persons who have been nominated. If there are fewer candidates than required to be elected, Section 74 provides that additional nominations must be received up until 4 p.m. on the third day after the end of the nomination period. If reasonably possible, public notice of the extension of time must also be given. At the end of the extended nomination period, the chief election officer then declares as candidates the additional persons who have been nominated. Suggestions indicate that such requirements may be unfair to those who have “filed” within the specified time.

The survey asked:

Is there a need to change the provisions for the extension of the nomination period?

If yes, what changes should be considered?

- eliminate the extended time and allow the local government to appoint to fill the vacancy*
- declare elected by acclamation those who have filed within the deadline*
- allow additional nominations within the extension period with voting, if required, for only these candidates*
- increase the time of the extended nomination period*
- provide that “notice” could be given by radio and/or printed media*

Comment:

This issue was one where the respondents were fairly evenly divided on the need to change the existing requirements for the extension of the nomination period. Of those that favoured change there was not much support, however, to increasing the nomination periods beyond those that presently exist. There does appear to be a concern about how to provide notice, particularly in jurisdictions that only have weekly papers; this should be reviewed.

Suggested Direction

Review the legislation regarding providing notice of an expanded nomination period; particularly the use of radio or alternative means.

Options:

- (a) No change
- (b) Amend the *Municipal Act* to:
 - (i) declare elected by acclamation those who have filed within the deadline; and
 - (ii) allow additional nominations within the extension period with voting, if required, for only those remaining positions.

B3 THE CORPORATE VOTE

A limited corporate vote, existing prior to the “new” elections legislation, was eliminated in 1993. B.C. was the only province to have such a provision, and records show that the vote was not unduly used. Nevertheless, the proposals to reinstate a corporate vote were vigorously debated at recent UBCM conventions.

The survey asked:

Do you agree with the concept?

If yes, what scope of corporate voting:

___ *all businesses registered in the jurisdiction*

___ *only for business owners who own a business in the jurisdiction, but do not live there*

___ *only closely held family or sole proprietor*

Comment:

Like the results of votes on Convention resolutions on the same topic, there was a very close draw between respondents for and against this issue. Comments from those in favour tended to indicate that a business must own property, with only one vote per business.

Options:

- (a) No change (no corporate vote).
- (b) Amend the *Municipal Act* to provide a vote for corporations that own or occupy land in a local government jurisdiction, provided: (i) the corporation must be 50% or more controlled by an individual or their family; and (ii) the individual who is appointed to vote gets only one corporate vote and is entitled to a corporate vote only if not a resident (this is generally the pre-1993 legislation).
- (c) Amend the *Municipal Act* to provide a vote for any corporation that owns land or occupies property.
- (d) Amend the *Municipal Act* to allow broad corporate voting for all businesses registered in the jurisdiction.
- (e) Amend the *Municipal Act* to provide a voting privilege to any corporation, society or other legal entity that appears on the Assessment roll and is liable to pay property taxes.

B4 RESIDENT ELECTORS – RESIDENCY TIME

A person may vote in a local government election provided they meet certain conditions and have lived within the jurisdiction in which they seek to be registered for at least 30 days prior to the registration date. There have been concerns expressed, particularly in very small jurisdictions, that the short time period can lead to transient persons registering and thus being able to distort the election results.

The survey asked:

Should there be changes to the length of residency time?

If yes, changes to:

___ *increase the residency time for all jurisdictions*

___ *increase the residency time for only jurisdictions with a small population*

Comments:

The response was equally divided on the need for changes to the length of residency. Clearly, there is not widespread satisfaction among the respondents with the current situation and the issue deserves broader consideration. Among those favouring change though, the overwhelming desire was an increase in the residency period applied to all jurisdictions, not just some. As a point of information, the provincial elections residency requirement is six months.

Options:

- (a) No change.
- (b) Amend the *Municipal Act* to increase the residency time to 60 days in all jurisdictions.
- (c) Amend the *Municipal Act* to increase the residency time to six months in all jurisdictions (consistent with provincial elections legislation).

5. OTHER ISSUES

The survey provided the opportunity to identify additional issues and concerns. The suggestions received fall into two categories:

- technical concerns including administration and interpretation.
- policy issues.

The technical or legal interpretation issues will be discussed with Ministry of Municipal Affairs and the Municipal Officers' Association. If changes to legislation are warranted, these will be considered "housekeeping" in nature since no policy implications are involved.

There were some interesting and diverse policy issues raised including:

- Right of recall
- Ability for electors to "place an issue on the ballot"
- Candidates for office should reside within the local jurisdiction
- Names on ballot in alphabetical order
- No indication on ballot of party affiliation or occupation
- Candidates may identify themselves as "independent"
- Voting by long-term residents who are not Canadian citizens

However, none of these were repeatedly raised indicating that there is not a basis to add them to the items to be considered in this report. The matters could be raised through the regular resolutions process.

6. RECOMMENDATIONS

- a. That the suggested directions as set out in section 4A be approved by the convention.
- b. That delegates, by specific motions, determine which of the options for each of the four issues identified in section 4B that should be endorsed and forwarded to the Ministry of Municipal Affairs.