

**Presentation to
Special Committee on Local Elections Expense Limits**

President Sav Dhaliwal

**Wednesday April 15, 2015
9:00 am**

Douglas Fir Room, Legislative Assembly

**UBCM PRESENTATION TO
SPECIAL COMMITTEE ON LOCAL ELECTIONS EXPENSE LIMITS
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Introduction

Good morning. My name is Sav Dhaliwal, UBCM President and a Councillor with the City of Burnaby. Joining me this morning is UBCM's Executive Director Gary MacIsaac.

I wish to extend our thanks to the members of the Special Committee for providing UBCM with this opportunity; and to the staff in the Clerk's Office for accommodating us within your schedule this week.

I believe you received our written submission as part of Phase 1 deliberations on 'principles', which was conveyed to the Committee on November 3, 2014. I reference this letter as it continues to represent UBCM's position in support of the establishment of expense limits and it highlights our involvement in the evolution of this file since the Elections Task Force first reported out in May 2010.

Process and Timelines for the Special Committee

Before we begin our presentation, I would like to make a few comments about the process and timelines that have been provided to this Special Committee.

We are concerned that the Special Committee has been given an extremely tight timeline to undertake a very significant piece of work. Recognizing the complexity of this task, the Province, with the support of UBCM, agreed that expense limits should not be included in the 2014 elections legislation. In part, we felt introducing expense limits in the year of the local election was unworkable, but it was also important to wait for the financial reporting from the 2014 local elections to ensure that we got the numbers right. By waiting, it was

felt that better and more current spending information could be reviewed to ensure that the limits set would be reflective of the current local election environment. However, that analysis is yet to be completed as the Committee winds down its consultations.

You have been given a June 12th deadline, but find yourselves in a situation where you are undertaking consultations in the absence of any analysis of the 2014 expense data. It was our hope, and I assume yours as well, that some form of analysis would have been made publicly available to allow for an open, informed and transparent consultation process that would effectively guide and assist this Committee in its deliberations.

Unfortunately given the tight timeline and lack of data analysis, our presentation is limited in its ability to provide direction to this Special Committee. What we will share is more of a principle-based perspective on expense limits, referencing the work of the 2010 Task Force and subsequent work undertaken by UBCM and Ministry staff as well as various resolutions and policy adopted by our membership. Hopefully this will assist and inform the Committee of UBCM's position on a number of related expense limit matters.

Background – Elections Task Force

By way of background, UBCM and the Province served as co-chairs and members of the Local Government Elections Task Force from December 2009 to May 2010. The final report of the Task Force included 31 recommendations proposing significant changes to local government elections to ensure accountability; enhance transparency; strengthen compliance and enforcement; increase accessibility; and, expand education and advice. One of the most significant changes to local elections as a result of the Task Force's work is with respect to campaign finance rules. And, while most of the Task Force's recommendations have been implemented through the passing of Bills 20 and 21; the residual piece work that remains incomplete is the establishment of expense limits; which is why we are here today.

Establishing expense limits was viewed by the Task Force as key to increasing accessibility to the local elections process. The following Task Force recommendations speak to the need to establish expense limits that will accommodate the diversity of BC communities as well as the different players within the election process. Those recommendations are:

- *Implement expense limits for all campaign participants including electors, elector organizations, and third party advertisers.*

- *Development of the expense limits should be guided by some key considerations:*
 - *Expense limits should be high enough for campaign participants to mount reasonable campaigns and express their views, but not so high as to allow a few participants to dominate election discourse.*
 - *Expense limits need to work in different-sized communities. The formula cannot be based only on an amount per number of electors or population.*
 - *Expense limits for elector organizations should have a neutral effect on decisions to create elector organizations or not. The formula should be based on a number of candidates supported.*

Over the past five years, since the 2010 Task Force report, UBCM and Ministry officials have met a number of times to discuss expense limits. Different jurisdictions, models and formulas have been reviewed and analysis undertaken of available local election expense data from 2008 and 2011. However, identifying a limit and a method to formulate that limit, in a way that works for all election participants has proven challenging. This was predicted by the Task Force back in 2010; and as you undertake the task before you, I expect you share the same sentiments.

Unlike the previous work undertaken by the Ministry with UBCM; the Special Committee is guided by the direction set by the Province, to develop *“provincially-set limits for candidates and third party advertisers in local elections, with limits to be set using a flat-rate amount for jurisdictions under 10,000 people, and a per*

capita formula for those over 10,000 people and third party limits as a percentage of a candidate's limit in the jurisdiction where the third party is advertising."

It is not clear to us why the Province picked a population figure of 10,000 as the cut off for applying a flat amount. Does that mean that communities over 10,000 people have an expense limit based only on their population; or does the per capita formula kick in after a flat amount is first applied to the community? I ask this question because 10,000 was not a figure or threshold that had been identified by the Task Force in its report.

While the Special Committee continues to undertake its work without the analysis of the 2014 data, we understand that this work is now underway. Elections BC advised you in its presentation on March 26th that Dr. Patrick Smith has been contracted to undertake this work keeping in mind the following considerations:

- *average, median and range amounts spent by mayoralty, council and school trustee candidates in jurisdictions under 10,000 over 10,000 and under 100,000, and in jurisdictions over 100,000 – in total and on per capita basis;*
- *third party advertisers in each jurisdiction, regional district, electoral area directors, Vancouver Park Board commissioners; and Islands Trust trustees.*
- *a comparison of spending between endorsed and unendorsed candidates, incumbents and challengers, elected and defeated candidates.*
- *the unique circumstances in electoral organizations such as in Vancouver and Surrey, and any separate analysis by elector organizations, recognizing their collective expenses would have to be attributed to all elector organization candidates.*

Our understanding is that Dr. Smith is to report to the Committee by mid-April. This is a very extensive request, within a very short timeline. As I mentioned earlier, it would have been advantageous to have this work done earlier and

shared amongst interested, affected groups so that there would be a clear understanding of the analysis prior to this Special Committee completing its public consultation process and making its recommendations in June.

However, we would like to discuss some of the analysis conducted by the Ministry of Community, Sport and Cultural Development that was shared with UBCM post Elections Task Force. There are a few caveats that need to be stated up front on the data from the 2008 and 2011 elections. Keeping in mind that local government elections involve some 3000 individuals running for over 1600 elected positions to over 250 local government bodies, the sample sizes from 2008 and 2011 data were quite small ¹, based on disclosure statements that were easily available. And, in the case of elector organizations the costs were allocated equally amongst the candidates, which may or may not have been accurate.

I won't get into too much detail here but basically the key findings were that many of the trends from the 2008 were the carried over to 2011:

1. overall spending is low

(As in 2008, more money was spent in larger communities; very little was spent in the smallest communities.)

(The overall average cost of a mayoral election campaign in 2011 was just over \$17,500, despite some spectacular figures in larger municipalities. This is because the average includes the 11% of mayoral candidates who spent nothing, and a further 51% who spent less than \$3,000. Across the province, only 13% of the candidates in our sample spent more than \$50,000.)

¹ *Data is based on 71 mayor and 475 councillor candidates in 36 communities, 110 school trustees in 8 school districts and 130 electoral area directors in 7 regional districts*

2. on average, mayoral candidates spend more than other candidates; and candidates for council spend more than candidates for school trustee, electoral area director or parks boards.

3. elector organizations are significant, but only in a handful of communities.

(about 10 in 2011. Of the 23 municipalities in Metro Vancouver, only the largest – Vancouver, Surrey, Burnaby, Richmond, the Township of Langley, and Delta – had major elector organization participants. This may have changed as we know that other elector organizations have been established since the last election.)

(just over 6% of mayoral candidates in our sample received financial benefit from elector organization endorsement, yet those candidates accounted for almost 20% of mayoral candidate spending).

(few independent candidates are elected where well-established electoral organizations exist.

What were some of the other findings?

Generally, candidates that spend more money tend to get elected. However as we saw in the 2014 election results, that was certainly not the trend for mayoralty candidates in Victoria, Sechelt, Prince George, Abbotsford, North Vancouver City, Castlegar, North Cowichan, Vernon, New Westminster and Oak Bay.

What can explain this? Based on the 2008 and 2011 work that was conducted, the answer appears to lie within the individual community. When there are competitive elections or “hot races”, it can drive up spending in communities of any size, creating anomalies where more was spent in one community compared to other communities of a similar size.

One of the other trends, was there is significant self-financing in local elections – candidate contributions to their own campaigns of a few hundred to a few thousand dollars are fairly common.

(more extreme examples include a New Westminster council candidate spending \$19,000; mayoral candidates in Prince George and Kelowna spending about \$12,000 and \$13,600 of their own money respectively).

And what about elector organizations? Spending by successful candidates and their elector organizations in 2011 in Vancouver was much higher per resident than the next largest city, Surrey. For instance, Vision Vancouver and its candidates spent \$3.44 per resident compared to Surrey First's \$1.40 per resident.

Spending in Vancouver is uniquely high and appears to increase with each election. In 2008, total candidate spending for Vancouver was reported at around \$4.5 million, in 2011, \$5.3 million and for 2014 recent media reports appear to indicate it might be around \$5.7 million. Again, we are not sure of the final numbers until the analysis has been completed on the 2014 disclosure statements.

High spending in Vancouver has been acknowledged repeatedly by its council as an issue that needs to be addressed. In 2013, our membership endorsed a resolution brought forward to the UBCM Convention from the City of Vancouver requesting that:

UBCM support Vancouver's request to the provincial government for amendments to the Vancouver Charter to allow Vancouver to make rules for election campaign finance that place greater limits on campaign spending and contributions, and provide for greater disclosure.

While the recommendations of the 2010 Elections Task Force only addressed expense limits, Vancouver is also seeking to limit contributions. It was envisioned by the Task Force that if expense limits were put into place, there would be no need to limit contributions. However, our membership as a whole has recognized the challenges facing Vancouver and the need to equalize the playing field and increase accessibility by tackling the problem at both the

expense and contribution level. And while UBCM has supported the development of a province-based approach to establishing expense limits, we are also cognizant that the Vancouver situation is unique and how that gets addressed is an issue for this Special Committee. However, we wanted to acknowledge UBCM's position in our presentation today.

Elements of an Expense Formula

After reviewing the trends from 2008 and 2011 elections, we considered what some potential elements of an expense limit formula might look like. And, while these elements were never formally adopted by UBCM, they were discussed a number of times:

- **need to be formula based;**

(to reflect the diversity of BC communities, single expense limit for all will not work)

- **common starting point; a base amount;**

(it is assumed that each candidate incurs a basic level of campaign costs; such as printing, transportation, office space, advertising therefore it makes sense to establish a floor or base amount for each candidate)

- **should add graduated per capita amounts to reflect population diversity;**

(recognizing the geographic size and population of some communities, it makes sense to develop a per capita formula that would be added to the base amount that would reflect the costs associated with mounting an adequate campaign for the size of the community)

- **should provide higher expense limits for mayoral candidates;**

(2008 & 2011 data shows that mayors do spend more, and expense limits in Ontario and Quebec also have higher limit for mayors. Scenarios looked at setting the per capita rates for councillors at half of the mayor rate, but both had the same base amount)

- **adjustment over time to account for inflation.**

(acknowledge that the costs of printing, signage, office space, advertising do increase over time)

Various scenarios were modeled by the Ministry incorporating these elements. Base amounts of \$3,000 and \$6,000 were tested and per capita amounts at varying levels were plugged in to map out how well the sample communities were captured by the different models. I would point out at this time, we were working under the assumption that for the most part spending is low; and really what we were attempting to do was develop a formula to address those that were deemed to be the anomalies.

In the case of **elector organizations** we went back to the basic principle of the Task Force - no financial incentive to be part of an elector organization. In summary:

- expenses should not be greater than the sum of the candidates limits
- no doubling up of expense limits
- individual candidate expense limits still apply; candidate can assign all / or portion of their limit to the elector organization
- electoral organizations can support as many candidates as there are positions for.

We also recognized the challenges of attribution amongst the candidates within an elector organization. For example, how do you attribute the costs of a newspaper ad when all of the candidates appear; and how do you address the endorsement of candidates in multiple jurisdictions for instance school board, councillor, or mayor? Again, questions that are before this Special Committee.

And finally I would like to briefly touch on **third party advertising**. Once again, I go back to the Task Force report that recommended that expense limits be applied to third parties. There were concerns that if not included, third party advertising could be used to work around the restrictions on campaign spending, which speak to the Task Force's principles of fairness and transparency in balance with the rights to freedom of expression.

There was some discussion about the provincial model for setting third party limits, \$3,000 per riding or \$150,000 maximum across the province, but applying this across the board to all communities would be similar to applying a flat rate expense limit to every candidate. It would not reflect the diversity of BC communities, such as the differences in population or the different costs to undertake advertising in various jurisdictions. Consideration was given to tying third party limits to a portion of the candidate limits in each jurisdiction; and whether it should incorporate a base amount similar to what was provided for candidates, again recognizing that there are basic costs associated with advertising. It appears that the Province has directed the Special Committee to take the latter approach; to look at third party limits as a portion of the candidate limits within that jurisdiction. But one question we would ask is how do you address the issue of cross-jurisdictional advertising where the same ad is placed in three communities, when a candidate in each of the communities will have different expense limits? Again, this is a question that the Special Committee will have to grapple with in the coming weeks.

Concluding Remarks

On behalf of UBCM, I wish to thank you for this opportunity. And while we have tried to share our perspectives and involvements to date on this matter we have also brought forward a number of questions and issues for you to consider. One question we have not yet addressed relates to the 2014 data analysis. Before we close off, I would ask if the work of Dr. Smith will be made publicly available and if so, when? And, if it is going to be publicly available, is there any opportunity for additional submissions to the Special Committee after the April 17th deadline, if in fact, the data is such that there may be a need to provide a supplemental submission?

In closing, we wish you all the best in your deliberations and again thank you for this opportunity.

We would be happy to take questions. Thank you.

Attachment – UBCM Phase 1 Submission - Letter to Special Committee

November 3, 2014

Special Committee on Local Elections Expense Limits
Attn: Jackie Tegart, MLA (Fraser-Nicola), Chair
Selina Robinson, MLA (Coquitlam-Maillardville), Deputy Chair
Parliamentary Committees Office
Room 224, Parliament Buildings
Victoria BC
V8V 1X4

Dear Special Committee Members:

Re: UBCM Submission to Special Committee on Local Elections Expense Limits

Thank you for the opportunity to provide input into your phase 1 deliberations.

We understand the focus of phase 1 to be consideration of:

- a. Principles for the relationship between elector organizations and their endorsed candidates with respect to expense limits, including how elector organizations and endorsed candidates share accountability for expense limits, with consideration for fairness between independent candidates and candidates endorsed by elector organizations.*
- b. Principles for establishing expense limits for third party advertisers, including whether there should be an overarching, cumulative limit on third party spending such as exists in provincial general elections.*

Unfortunately due to the concurrent timing of local government elections and the Special Committee's phase 1 consultation, our Presidents Committee agreed to provide this letter as UBCM's submission in lieu of a formal presentation. As well, recognizing the narrow focus on principles for this phase, our Presidents Committee has directed that we seek an opportunity to meet with the Special Committee as part of the broader phase 2 consultation on expense limit amounts.

As you are aware, UBCM representatives served as co-chair and members of the Local Elections Task Force that was established in 2009. That Task Force reported out in May 2010, identifying 31 recommendations related to improving local government elections in BC. The work of that Task Force was guided by the following principles; principles that UBCM feels would assist this Special Committee in its deliberations. These principles include:

- *consistency* with provincial and federal election rules, where practical;
- *flexibility* to accommodate particular attributes of local government elections and balance *consistency* with the unique needs of local governments;

- *transparency, accessibility, fairness and honesty*, are hallmarks of democratic elections, to be preserved and promoted;
- *efficiency* of the elections process, in both cost and operational resources needed;
- *balance*, among the interests of local government, the provincial government and the public.

These principles are key in understanding the recommendations that came forward from the Task Force and they provide the basis for this submission to the Special Committee. UBCM supported the 31 recommendations and continued to be consulted in the process leading up to the implementation of the recently enacted elections legislation, *Local Elections Campaign Financing Act* (LECFA) and the *Local Elections Statutes Amendment Act* (LESAA).

While this recent legislation has focused on enhancing accountability and greater transparency with respect to campaign finance disclosure, the piece of unfinished business is establishing election expense limits. Recognizing the complexity of this task, the Province, with the support of UBCM, agreed that this work should be deferred, in part, to wait for the financial reporting from the 2014 local elections. By waiting, better information could be reviewed to ensure that the direction taken with respect to expense limits is reflective of the current local election environment. Now that the Special Committee has been tasked with this duty, we assume that this information will be shared with the Committee members as part of your phase 2 deliberations.

It is important to note that UBCM has engaged with the Province at both a staff, and elected level on numerous occasions since the Task Force report to look at various options for setting expense limits. Jointly with Ministry staff we have considered various scenarios including formulas, tiers, per capita amounts, base amounts combined with per capita formulas, as well as other combinations. Again, we assume that this information will be shared with the Special Committee as part of its deliberations in phase 2.

One of our most recent discussions related to expense limits occurred this past April between the UBCM Executive and Minister Oakes. The Minister advised UBCM of her targeted consultation process on setting expense limits, including the issuance of a white paper on options and approaches. Specifically, the white paper put forward two approaches – provincially or locally-set expense limits. The UBCM Executive discussed the two approaches and in follow-up to the April 3rd meeting conveyed a letter to the Minister indicating UBCM support for a provincially mandated approach. A copy of the letter is attached but the following provides our reasoning and rationale for this position:

The Executive noted that the recommendation coming forward from the Elections Task Force in 2010 did envision the Province setting those limits to ensure consistency and fairness, key principles underlying the Task Force's work. Executive members were not comfortable with a local approach that would result in a patchwork of expense limits

across the province creating confusion, leading to inconsistent limits, set by incumbents, thereby questioning the fairness and transparency of the process.

Executive members supported continuing to work with the Province on finding an approach to setting expense limits that would meet the needs of local governments but also respect the guiding principles of the Task Force's work.

As the Special Committee members deliberate on the principles regarding setting expense limits, we would specifically refer members to pg. 22-23 of the Local Elections Task Force report on the section entitled Increase Accessibility. This section specifically addresses the rationale and thought behind the following Task Force recommendations related to expense limits.

Recommendations:

- **Implement expense limits for all campaign participants (e.g. electors, elector organizations, and third party advertisers.)**
- **Development of the expense limits should be guided by some key considerations:**
 - **Expense limits should be high enough for campaign participants to mount reasonable campaigns and express their views, but not so high as to allow a few participants to dominate election discourse.**
 - **Expense limits need to work in different-sized communities (i.e. formula cannot be based only on an amount per number of electors or population).**
 - **Expense limits for elector organizations should have a neutral effect on decisions to create elector organizations or not (i.e. formula should be based on a number of candidates supported.)**

On the matter of third parties specifically, the Task Force was quite clear in its desire to enhance accountability provisions. Task Force members were concerned that the current rules did not provide sufficient clarity on obligations of third party advertisers. It was also acknowledged that by establishing rules for third parties it would make local elections rules consistent with provincial rules; and make them more accountable, similar to candidates and elector organizations. And, by making third parties subject to an expense limit, it would reduce the likelihood of candidates and elector organizations reallocating spending to third parties as a way to 'work around' the expense limit rules.

In response the following recommendations were put forward by the Task Force with respect to third parties.

Recommendations:

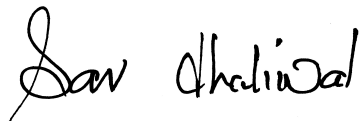
- **Establish that third party advertisers must register and must disclose what they spent on ads and who contributed to them (possibly for advertising expenditures over a certain threshold)**
- **Prohibit advertising by unregistered third parties**
- **Explore establishing some automatic (administrative) penalties for failure to comply with third party advertising rules, such as exceeding expense limits or failing to file a disclosure statement.**
- **Continue to regulate people or organizations (currently referred to as “campaign organizers”) that undertake election campaigns that support (or operate in place of) a candidate or elector organization’s campaign and conduct political activity such as collecting campaign contributions.**

As the Special Committee deliberates on the principles as they relate to candidates, elector organizations and third parties, UBCM would direct the members of the Special Committee back to the principles that guided the Elections Task Force. These principles provide a solid foundation for considering a way forward with respect to setting local election expense limits.

Thank you for this opportunity to provide our input into the Special Committee’s deliberations. We look forward to participating in the discussion related to setting the expense limits as part of your phase 2 deliberations.

If you have any questions, please feel free to contact our UBCM staff at: gmacisaac@ubcm.ca or mcrawford@ubcm.ca.

Yours truly,



Councillor Sav Dhaliwal
UBCM President

Attach. (1)

•April 10 letter to Minister Oakes from UBCM President Rhona Martin

April 10, 2014

The Honourable Coralee Oakes
Minister of Community, Sport and Cultural Development
PO Box 9056, STN PROV GOVT
Victoria, BC
V8W 9E2

Dear Minister:

RE: ELECTIONS LEGISLATION – CAMPAIGN EXPENSE LIMITS

On behalf of the UBCM Executive I would like to extend our thanks for meeting with us last week in Victoria as part of our April 2-4 meeting schedule. It was a great opportunity for our board members to not only meet with you but also personally meet many of the key staff within your ministry.

At our meeting we had an opportunity to briefly discuss the ministry's draft discussion paper on setting campaign expense limits. During our discussion we indicated that our Executive would be considering the matter on Friday and that we would get back to you with their preferred direction. I can advise that the Executive considered the two options proposed – local or provincial – and advised of its support for a provincially mandated approach to local government elections expense limits.

The Executive noted that the recommendation coming forward from the Elections Task Force in 2010 did envision the Province setting those limits to ensure consistency and fairness, key principles underlying the Task Force's work. Executive members were not comfortable with a local approach that would result in a patchwork of expense limits across the province creating confusion, leading to inconsistent limits, set by incumbents, thereby questioning the fairness and transparency of the process.

Executive members supported continuing to work with the Province on finding an approach to setting expense limits that would meet the needs of local governments but also respect the guiding principles of the Task Force's work.

Executive members also wanted to take the opportunity to reiterate the 2013 resolution from the City of Vancouver that requested amendments to the Vancouver Charter to not only deal with expense limits, but also contribution limits, and to provide for greater disclosure. As noted this resolution was endorsed by the membership at the 2013 UBCM Convention.

We recognize that establishing a provincially mandated approach can be a challenging exercise but we offer our assistance in continuing to work with you and your staff in finding an approach that will work for all of our membership.

We look forward to continuing our discussion on this matter.

Yours truly,

A handwritten signature in black ink, appearing to read "Rhona Martin". The signature is fluid and cursive, with the first name "Rhona" being more prominent than the last name "Martin".

Rhona Martin
UBCM President