

SCHOOL TRUSTEE

ELECTION PROCEDURES

IN BRITISH COLUMBIA

A GUIDE FOR BOARDS OF EDUCATION,
ADMINISTRATORS AND ELECTION OFFICIALS

(Seventh Edition, 2008)



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2008 GENERAL SCHOOL ELECTION SIGNIFICANT DATES

Please note that this document is not intended as legal advice and should not be relied upon for that purpose.

AUGUST, 2008

Tuesday, August 5

- Last day to write to the Minister of Education requesting an Advance Voting Exemption Order [Advance Voting Exemption Guidelines]

Monday, August 25

- First day for notice of closure of advance elector registration by a local government officer [Local Government Act, s. 56(5)]

SEPTEMBER, 2008

Tuesday, September 2

- First day on which a chief election officer can issue a notice of nomination [*Local Government Act*, s.70 (1)(4)]
- Last day for a board of education to adopt or amend election bylaws for the November 15 election [*School Act*, s.45 (6)], except for bylaws requiring nomination deposits [*Local Government Act*, s. 73 (1)]

Tuesday, September 16

- Last day for notice of closure of advance elector registration by a local government officer [*Local Government Act*, s. 56 (5)]

Tuesday September 23

- Last day for advance elector registration [Local Government Act, s. 56 (4)]
- Last day for chief election officer to issue an notice of nomination [Local Government Act, s.70(1)(4)]

Wednesday, September 24

- Last day for local government to adopt bylaw to use provincial list of voters as list of registered electors [*Local Government Act* s. 59 (2)]
- Provincial list of voters becomes school district list of registered electors, if applicable [*School Act*, s.43(5)]

Tuesday, September 30

- Period for receiving nominations begins at 9 a.m. [*Local Government Act*, s. 69 (1)]
- List of registered electors available for public inspection at local government offices [*Local Government Act*, s. 62 (3)]

OCTOBER, 2008

Tuesday, October 6

- First day for the chief election officer to give public notice of required advance voting which must be held on November 5 [*Local Government Act*, s. 97 (6)]

Friday, October 10

- Nomination period ends at 4 p.m., except if insufficient candidates nominated [*Local Government Act*, s. 69 (1), s. 74 (2)]
- Period of objections to elector registrations ends at 4 p.m. [*Local Government Act*, s. 64 (2)]
- Declaration of candidates [*Local Government Act*, s. 74 (1)]

Tuesday, October 14

- Extension to nomination period (if applicable) ends at 4 p.m. [*Local Government Act*, s. 74 (2)]
- Deadline for challenge of nominations to be received by Provincial Court by 4 p.m. [*Local Government Act*, s. 75 (2)]

(NOTE: challenge deadline may be extended if nomination period is extended under *Local Government Act*, section 74(2))

Wednesday, October 15

- Last day to move or buy property and qualify as an elector [*Local Government Act*, s. 50 (1) (d) and s. 51 (1) (e)]

Thursday, October 16

- First day to publish notice of election [Local Government Act, s.77(1)]

Friday, October 17

- Last day for originals of faxed nomination documents to be received by the chief election officer [*Local Government Act*, s. 73 (5)]
- A person nominated for election as a school trustee may withdraw by delivering a signed withdrawal to the chief election officer by 4 p.m. After this time, the Minister of Education must approve any such withdrawal [*Local Government Act*, s. 80 (1) (2)]
- Deadline for withdrawal of electoral organization endorsement is 4 p.m. [*Local Government Act*, s. 79(6)]
- Provincial court must hear and make determination regarding a challenge to a nomination by 4 p.m. [*Local Government Act*, s. 75 (7)]

Monday, October 20

- At 4 p.m., the chief election officer must either declare the candidates elected by acclamation or announce that an election by voting is to be held [*Local Government Act*, s. 76(1) (2) (3)]

Wednesday, October 29

- Last day for the chief election officer to give notice to the public of details of the advance voting opportunity on November 5 [*Local Government Act*, s. 97 (6)]

NOVEMBER, 2008

Wednesday, November 5

- Advance voting day [*Local Government Act*, s. 97 (2) (a)]

Saturday, November 8

- Last day to publish notice of election [*Local Government Act*, s. 77 (1)]

Saturday, November 15

- General school election [*School Act*, s. 35 (2)]

Wednesday, November 19

- Official election results must be declared by 4 p.m. [*Local Government Act*, s. 136 (1)]
- Time period for judicial recount application starts [*Local Government Act*, s. 138 (3)]
- Last day to submit report results of an election by acclamation [*Local Government Act*, s. 148 (1)]
- Election materials available for public inspection after declaration [*Local Government Act*, s. 150]

Monday, November 24

- Last day to file an application for a judicial recount [*Local Government Act*, s. 138 (3)]

Tuesday, November 25

- First day to take oath of office if elected by voting [*Local Government Act*, s. 137 (1)]

Friday, November 28

- Last day for judicial recount to be completed [*Local Government Act*, s. 139 (1)]

DECEMBER, 2008

Monday, December 8

- Elected school trustees take office, provided they have taken their oath [*School Act*, s. 49 (a) and s. 50(1)]

December 17 to 19 (dependent on date of declaration of election results)

- Last day to file an application with the BC Supreme Court to determine the validity of an election or the right of an elected candidate to take office [*Local Government Act*, s. 143 (3)]

Friday, December 19

- Last day for the chief election officer to submit a report of the election results to the board of education [*Local Government Act*, s. 148 (1)]
- Last day for public inspection of election material [*Local Government Act*, s. 150 (3)]

JANUARY, 2009

Saturday, January 3

- Last day for trustees elected by voting to take the oath of office [*School Act*, s. 50 (1) (b)]

Wednesday, January 7

- Last day for the secretary treasurers to submit for publication to the BC Gazette the names of trustees who took office December 8, 2008 [*Local Government Act*, s. 149]

Thursday, January 15

- If election results were declared on November 19, first possible day to destroy election materials as listed in *Local Government Act*, s. 150 (6).

Saturday, January 17

- Last possible day for runoff election if judicial recount completed on December 2, 2009 [*Local Government Act*, s. 142]

MARCH, 2009

Monday, March 16

- Last day for all candidates and elector organizations' financial agents to file campaign financing disclosure statements without penalty [*Local Government Act*, s. 90 (1)]

APRIL, 2009

Wednesday, April 15

End of grace period for filing campaign financing disclosure statements. As soon as practicable, secretary treasurer or local government officer must report at an open

meeting of the board the names of late or non-filing candidates and send a copy of the report (with nomination form) to the inspector of municipalities for inclusion in the disqualification list. [*Local Government Act*, s. 90, 90.2, and 92.2]

INTRODUCTION

Objective of This Guide

The objective of this guide is to bring together all relevant features of the Acts and Regulations governing board of education elections, making them more accessible and comprehensible to the lay-person and board of education official. It is organized as a sequential overview of the principal stages of election procedures and is intended to serve as a quick reference. All relevant statute sections are listed to assist the study of wording in the Acts or Regulations.

Readers are cautioned, however, that this guide is **not** a legal reference or text but, rather, serves only as a resource to the relevant legislation; the actual law is contained in the statutes, regulations and any court decisions. Should a specific trustee election question or problem arise, please read the relevant legislative sections and any court decisions and, if in doubt, consult a lawyer.

Organization of This Guide

The guide is divided into two parts:

Part I covers the frequency of elections, responsibility for conducting elections, and voter and candidate qualifications.

Part II follows the sequential stages of a general board of education election as closely as possible, starting with election bylaws and the appointment of election officials, running through to judicial recounts and the oath of office. There is also a separate chapter on trustee by-elections.

Readers are cautioned to note that most references in this guide are not applicable to the City of Vancouver (which is not recognized as a "municipality" under the *Local Government Act* but is, instead, governed by the *Vancouver Charter*), nor are they applicable to the francophone education authority (which is governed by a separate set of election procedures).

What's New in 2008

Bill 7, the *Local Government Statutes Amendment Act, 2008* introduced changes to the *Local Government Act* and the *School Act* that affect election procedures; these changes have been incorporated into the text. They include amendments relating to nominations, voter qualification, mail ballot voting, and campaign financing.

Readers' comments and suggestions on this guide are appreciated. Please contact:

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PART I: GENERAL PRE-ELECTION INFORMATION

CHAPTER 1 - FREQUENCY OF ELECTIONS

When General School Elections Are to be Held

A "general school election" to elect trustees for all boards of education in the Province will next be held on the third Saturday of November 2008 (November 15), and every three years thereafter [*School Act*, section 35]. Following general school elections, elected school trustees take office on the first Monday after December first, provided they have taken their oath of office [*School Act*, section 49 and 50]. They cease to hold office immediately before the first Monday in December after the next general school elections. If fewer than three new trustees have taken office by that date, then the old trustees' terms of office will be extended until such time as at least three new trustees have taken their oaths [*School Act*, section 49 (b)].

For significant dates relating to general trustee elections please see page v.

When a By-Election is to be Held

By-elections must be held to fill vacancies on boards of education that occur between general school elections (for example, when a trustee resigns from office, dies, is convicted of an indictable offence, or the office is declared vacant for conflict of interest) [*School Act*, section 36 (1)]. But if a board vacancy occurs after January 1 in the year of a general local election (2008, 2011, 2013...), the board of education may decide to hold the vacancy open until the election, provided that at least three trustees remain in office [*School Act*, section 36 (2)]. (The procedure for a by-election is reviewed in chapter 16.) The term of office for a trustee elected in a by-election begins upon taking the oath of office and ends in accordance with section 49 (b) [*School Act*, section 36 (7)]. The expiry of the term of office under section 49 (b) is reviewed in Chapter 14.

If, at any time, fewer than three trustees hold office, the board must either hold a by-election or notify the Minister. The Minister must then appoint trustees to fill the vacancies [*School Act*, section 36 (5)]. Should any trustee election not be held as required by the *School Act* (for instance, if no candidates are nominated), or if the electors fail to elect the needed number of trustees, the Minister may appoint trustees to fill the vacancies [*School Act*, section 36 (6)]. Please see Appendix 1.5: Trustee Appointment Guidelines for further information.

Election Following an Official Trustee

An election of a new board may also be required following a period when an official trustee has been conducting a school district's affairs.

CHAPTER 1 - continued

The Lieutenant Governor in Council is empowered by sections 172 and 173 of the *School Act* to appoint an official trustee to replace a board of education under certain specified conditions. Upon such an appointment, the serving trustees in the district cease to hold office, and the official trustee has the powers and duties of the board under the *School Act*.

When the Lieutenant Governor in Council ends the term of an official trustee, a new board of education will be composed of trustees elected or appointed by the Lieutenant Governor in Council. These trustees hold office until the next general school election.

CHAPTER 2 - RESPONSIBILITY FOR ELECTIONS

Who is Responsible for Conducting and Paying for Board of Education Elections?

In order for board of education elections to take place, someone must appoint the necessary officials, arrange for nominations to be held and for balloting (where necessary), and notify the public of times and places. In addition, someone must pay the bills. The responsibility for conducting trustee elections is addressed in section 37 of the *School Act*, while the question of cost reimbursement is addressed in section 38.

Responsibility to Conduct Elections

The responsibility to conduct a trustee election depends upon the geographical relationship between municipal boundaries and the trustee electoral area.

Where a trustee electoral area is all or part of a single municipality, the municipal council must conduct the trustee election [*School Act*, section 37 (1)]. This applies whether the trustee electoral area is all or part of the school district.

Where a trustee electoral area includes all or part of a municipality **and** all or part of a rural area, the board of education may request the Minister of Education to order the municipal council to conduct the trustee elections for the whole trustee electoral area [*School Act*, section 37 (2)]. In practice there is usually a mutual agreement between the board of education and the municipal council so the board does not request an order by the Minister.

The board of education must conduct the trustee elections in all other trustee electoral areas [*School Act*, section 37 (3)]. It should be noted, however, that a board may at any time enter into an agreement with a municipality or regional district under which one party conducts all or part of an election for the other in accordance with the terms of the agreement, including the sharing of costs [*School Act*, section 38 (4); *Local Government Act*, section 40; *Vancouver Charter*, section 13]. A board of education that is party to such an agreement may approve a board by-law that provides for any election by-laws of the municipality or regional district to apply to trustee elections conducted under the agreement [*School Act*, section 38 (5)].

Costs of Trustee Elections

In summary, the board of education is responsible for all costs of trustee elections conducted by the board or by a municipality **except**:

CHAPTER 2 - continued

- Where a municipality conducts a school trustee election under an agreement with a board of education, payment of the costs will be in accordance with the agreement [*School Act*, section 38 (4)];
- Where a municipality conducts an election as a part of a general school election, the board of education must reimburse the municipality for costs that were additional to those incurred by the municipality in conducting the local government election [*School Act*, sections 37 (1), 38 (1)].

Section 38 (1) of the *School Act* contemplates reimbursement of a municipality by a board of education for **incremental**, not proportional, costs. Incremental costs are those costs which are additional to the actual costs of conducting a municipal election.

It is important to note that, in order for reimbursement to take place, actual expenditures must first be incurred. The board would look at each of the municipality's expenditures to determine whether they were incurred for the purpose of conducting the trustee election. Amounts of the municipality's expenses specific to trustee elections would then be reimbursed by the board of education.

Section 38 (3) of the *School Act* specifies that the board of education must reimburse the municipality for costs necessarily incurred where the municipality is required to conduct a trustee election other than a trustee election referred to in section 38 (1) (for example, trustee by-elections, or an election to replace an official trustee).

CHAPTER 3 - VOTER QUALIFICATIONS

Voter Eligibility - General

To be eligible to vote in a school trustee election, a person must qualify either as a resident elector or a non-resident property elector, and must be registered or deemed to be registered as an elector of the trustee electoral area [*School Act*, section 39 (1) (a) (c)]. In addition, the person must **not** be any of the following:

- disqualified under the *School Act*, or other enactment or law, from voting in the election;
- completing a sentence for an indictable offence, unless the person is released on probation or parole and is not in custody;
- involuntarily confined to a psychiatric or other institution as a result of being acquitted of, or found not criminally responsible for, an offence under the *Criminal Code* on account of mental disorder;
- prohibited from voting under the *Local Government Act* or the *Vancouver Charter* for having committed an election offence;
- proven to have accepted an inducement to vote.

[*School Act*, section 39 (1) (b), (2)]

In addition, a person who has filed a declaration with the francophone education authority that he or she has not and will not vote in an election of school trustees is disqualified from voting at a trustee election to which the declaration applies [*School Act*, section 39 (2.1)].

A person is not permitted to vote more than once in a trustee election for any one school district [*School Act*, section 39 (4)]. Further, no corporation or its representative may be registered as an elector, and no corporation may vote [*School Act*, section 39 (3)].

Voter Eligibility - Resident Electors

In order to vote as a resident elector, a person must be all of the following:

- age 18 or older, on or before general voting day;
- a Canadian citizen;
- a resident of British Columbia for at least six months immediately before the time of voting;
- a resident of the trustee electoral area for at least 30 days immediately before the time of voting (see below for residence rules); and
- not disqualified from voting by the *School Act* or any other enactment or law.

[*School Act*, section 40 (1)]

CHAPTER 3 - continued

The "residency rules" stipulate that a person may be the resident of only one trustee electoral area at a time, that being the area where the person lives and to which, when temporarily absent, the person intends to return. Moreover, the person does not cease to be a resident of that area until becoming a resident of a new trustee electoral area. In the case of a person who has established a new residence, other than their usual place of residence, for the purpose of attending an educational institution, that person may choose, for trustee voting purposes, either to be a resident of the person's usual trustee electoral area or the new trustee electoral area where residency is established.

[*School Act*, section 42]

To be registered as a resident elector of a trustee electoral area, a person must either:

- deliver the required completed application form and identification to an election official on voting day; or
- have his or her name appear on a list of registered electors prepared under the *Local Government Act* or *Vancouver Charter* (before the date of advance registration).

[*School Act*, section 43]

The procedures for voter registration are addressed in more detail in Chapter 7.

Voter Eligibility - Non-Resident Property Electors

In order to vote as a non-resident property elector, a person who meets the general requirements described earlier in this chapter must also meet the same age, citizenship and provincial residency requirements as a resident elector:

- age 18 or older, on or before general voting day;
- a Canadian citizen; and
- a resident of British Columbia for at least six months immediately before the time of voting.

In addition, to be eligible as a property elector a person must:

- be a registered owner of real property in the trustee electoral area for at least 30 days immediately before the time of voting; and
- not be a resident elector in any trustee electoral area in the same school district.

[*School Act*, section 41 (1)]

CHAPTER 3 - continued

A person may register as a non-resident property elector for only one parcel of real property in the school district [*School Act*, section 41 (2)]. To be the registered owner of real property under section 41 requires that one of the following apply:

- the owner of a registered estate in fee simple of the property, unless another person holds an interest in the property referred to in paragraphs (b) to (d);
- the holder of the last registered agreement for sale, unless another person holds an interest in the property referred to in paragraph (c) or (d);
- the tenant for life under a registered life interest in the property, unless another person holds an interest in the property referred to in paragraph (d);
- the holder of a registered lease of the property for a term of at least 99 years.

[*School Act*, section 41 (4)]

If more than one individual is registered as an owner of a parcel of real property, only one of them may register as a non-resident property elector for that property. The person registering must have the written consent of the majority of the **individuals** who are registered owners.

[*School Act*, section 41 (5) (6)]

It is possible for a registered owner who has consented to the registration as property elector of another registered owner to withdraw that consent by delivering a withdrawal, in writing, to the secretary treasurer of the board of education at least 52 days before general voting day.

[*School Act*, section 41 (7) (8)]

In order to register as a non-resident property elector of a trustee electoral area, a person who is otherwise qualified to vote must provide the election official responsible for where the person is voting with:

- the address or legal description of the property in relation to which the person is registering,
- proof satisfactory to the official that the person is entitled to register in relation to that property, and
- if applicable, the written consent from the other the other registered owners of the property as required by section 41(6) of the *School Act*.

[*School Act*, section 43 (3) (b)]

CHAPTER 3 - continued

A person is deemed to be registered as a non-resident property elector of a trustee electoral area if all the following requirements are met:

- the person is not entitled to be registered as a resident elector of the trustee electoral area,
- a list of registered electors is prepared for the municipality or regional district where the person owns the property, and
- the person is registered as a non-resident property elector before the date established for the close of advance registration as an elector in the jurisdiction.

[*School Act*, section 43 (6)]

CHAPTER 4 - CANDIDATE QUALIFICATIONS

Who is Eligible to Stand for Election as a Trustee?

The question of who is qualified to be nominated for, elected or appointed to, and to hold office as a school trustee is determined by Part 4, Division 2 (Trustee Qualifications).

[*School Act*, sections 32 to 34]

The overall qualifications for nomination, election and appointment are that the person meet the following requirements:

- an individual who is, or will be on general voting day or effective date of appointment, age 18 or older;
- a Canadian citizen;
- a resident of British Columbia for at least six months before the date of the election or appointment; and
- not disqualified by the *School Act* or any other enactment from voting in an election in British Columbia or from being nominated for, elected to or holding office as trustee.

[*School Act*, section 32 (1)]

The *School Act* is silent with regard to residency requirements in the school district or trustee electoral area in relation to trustee eligibility.

A former trustee or a trustee whose term of office is about to expire is eligible for re-election, if otherwise qualified [*School Act*, section 32 (2)], but no person may be nominated or elected as trustee for more than one trustee electoral area in any one school district at the same time [*School Act*, section 32 (3)].

Disqualifications

Section 33 of the *School Act* lists some specific period disqualifications from being nominated for, being elected to or holding office as a trustee:

- disqualification until the next general school election for failure to take the oath or attend meetings (as provided for in section 52 of the *School Act*);
- disqualification until **after** the next general school election for failure to file a disclosure statement (as provided for in section 92 or 92.4 of the *Local Government Act* and in section 64 or 64.3 of the *Vancouver Charter*);

CHAPTER 4 - continued

- disqualification for a period of not longer than six years for committing an election offence (as provided for in section 154 of the *Local Government Act* and in section 126 of the *Vancouver Charter*);
- disqualification of a person who holds office as a director of a francophone education authority under Part 8.1 of the *School Act*.

Disqualification of Board Employees

Section 34 of the *School Act* sets out that an employee of a board of education is disqualified from being nominated for, being elected to or holding office as a trustee on the board, unless the employee takes a leave of absence while running for office and resigns the employment if elected.

Board Employee Running for Trustee

Before being nominated for office as trustee, the employee must give notice in writing to the board of education of intention to consent to nomination. The employee then takes a leave of absence beginning on the first day of the nomination period (see Chapter 8), or when the employee's notice is given to the board, if later. Unless the employer agrees to a longer leave of absence, the leave ends and employment recommences:

- on the day after the nomination period, should the employee not be nominated;
- on the day after withdrawal, should the employee withdraw as a candidate prior to the election;
- on the last day for taking office (see Chapter 14), if the employee is elected but does not take the oath of office;
- on the last day for an application for a judicial recount to be made, where the employee has not been declared elected and where no application for a judicial recount is made; or
- when the results of the election are determined by, or following, a judicial recount, and the employee is declared not elected.

[*School Act*, section 34 (1) to (5)]

It should be noted that during such a leave of absence, sections 54 and 56 of the *Employment Standards Act* apply [*School Act*, section 34 (6)]. Following is a summary of sections 54 and 56:

CHAPTER 4 - continued

54. Requires reinstatement in previous or a comparable position upon expiry of the leave of absence, with all increments to wages and benefits that would have become due during the absence.

If the employer has discontinued operations during the leave, the employee retains rights to reinstatement should the operations recommence.

56. Deems employment to be continuous, and requires employer to continue to pay into pension, medical or other plan beneficial to the employee, where the employer pays total cost of plan or the employee chooses to continue to pay a joint share.

Also maintains employee entitlements to annual vacation, vacation pay and termination provisions of the *Employment Standards Act*.

Board Employee Takes Office

If elected as trustee, an employee of the board of education must resign from the employment position with the board before taking the oath of office.

[*School Act*, section 34 (7)]

The employee may choose to make the resignation conditional on the employee's election not being declared invalid under the provisions of section 143 of the *Local Government Act*, or section 115 of the *Vancouver Charter* (see Chapter 13 for more details).

[*School Act*, section 34 (8)]

PART II: SPECIFIC PROCEDURES DURING BOARD OF EDUCATION ELECTIONS
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CHAPTER 5 - REFERENCES TO APPLICABLE LEGISLATION

The Specific References to Applicable Legislation for Trustee Election Procedures

The legislation regarding school trustee elections is contained in the *School Act*, the *Local Government Act* and the *Vancouver Charter*. The objective of this chapter is to identify those sections of the respective Acts which apply under particular circumstances, with a general distinction drawn between trustee elections conducted by a board of education and those conducted by a municipality, as determined by section 37 of the *School Act*, and as reviewed in Chapter 2, Responsibility for Elections.

Trustee Elections Conducted by Board of Education

For trustee elections conducted by the board of education, other than for School District No. 39 (Vancouver), those sections of Part 3 of the *Local Government Act* relating to the election of regional directors apply, except as indicated below.

[*School Act*, section 45 (1)]

In applying Part 3 of the *Local Government Act*, references to:

- regional district board or local government means board of education;
- a jurisdiction or electoral area means trustee electoral area;
- secretary of regional district means secretary-treasurer of the board of education;
- and
- minister means Minister of Education.

[*School Act*, section 45 (2)]

Under the *School Act*, certain restrictions or exemptions to Part 3 of the *Local Government Act* are included:

- the Minister, on application by the board of education, may exempt the board from Part 3 of the *Local Government Act* requirements to hold one or both advance voting opportunities [*School Act*, section 45 (5)];

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- for any election bylaws to apply to trustee elections conducted by a board of education, the board must adopt the bylaws at least four weeks before the first day of the trustee election nomination period [*School Act*, section 45 (6)]; and
- where a trustee election or by-election and a local government election occur at the same time, the board may, in order to harmonize the conduct of those elections, adopt the local government's election bylaw for the trustee election. However, this adoption excludes any provision of the bylaw that would determine the order of names on the ballot by lot, or that determines an election result by lot following a judicial recount [*School Act*, section 45 (8) to (10)].

It should be noted that the board of education's power to adopt election bylaws approved by a local government under Part 3 of the *Local Government Act* applies, even though the adoption results in differences in election proceedings between different trustee electoral areas within the same school district [*School Act*, section 45(10)]. The counting of votes, however, cannot begin in any trustee electoral area until the close of voting in all the district's trustee electoral areas [*School Act*, section 47].

Trustee Elections Conducted by Municipality

For trustee elections conducted by a municipality (other than the City of Vancouver) under section 37 (1) or (2) of the *School Act*, those sections of Part 3 of the *Local Government Act* regarding the election of municipal councilors apply, with the following exceptions [*School Act*, section 46]:

- under sections 72.1, 107 and 141 of the *Local Government Act*, any bylaw to require nomination deposits, determine the order of names on the trustee ballot, or to decide the trustee election results following a judicial recount, must be specifically adopted by the board of education [*School Act*, section 46 (4)]; and
- the board may give directions to the municipal chief election officer on the form of trustee ballot to be used [*School Act*, section 46 (5)].

Trustee Elections in School District No. 39 (Vancouver)

For trustee elections in School District No. 39 (Vancouver) that are conducted by the board of education or the City of Vancouver, Part 1 of the Vancouver Charter applies [*School Act*, section 45 (3)]. Similar exceptions to those described above [*School Act*, section 45 (4)] apply where the board conducts the trustee election. Section 46 (1) (b) of the *School Act* applies where the City of Vancouver conducts the trustee election. In addition, section 30 (7) of the *School Act* states that, unless an order under that section provides otherwise, a trustee election in School District No. 39 (Vancouver) must be an election from the school district at large.

CHAPTER 6 - ELECTION BYLAWS AND APPOINTMENT OF OFFICIALS

When a Board of Education Needs to Approve Election Bylaws

The basic rules on board of education responsibility for the adoption of election bylaws are:

- where the board of education is to conduct a trustee election, the board will need to approve any election bylaw that is required;
- where one or more municipalities are responsible for the conduct of trustee elections within the school district, the municipality's election bylaws for the portion of the school district within the municipality will apply, except for any provisions on determining the order of names on ballots by lot and/or breaking a tie vote by lot [*School Act*, section 46 (4)];
- where a municipality or regional district is to conduct a trustee election by agreement with the board of education, the board may either:
 - approve its own comprehensive election bylaw; or
 - approve a bylaw to make the local government's election by-law apply to the trustee election, with a special board bylaw on ballot order by lot and/or tie vote resolution by lot, if desired by the board [*School Act*, sections 38 (4), 45 (8)].

Election Bylaws When Boards of Education Conduct Elections

A board of education that conducts a trustee election must approve all election bylaws at least four weeks before the first day of the nomination period for the election [*School Act*, section 45 (6)]. As a general rule, an election bylaw is essential, either to specify the date of the second mandatory advance voting opportunity, or to provide an exemption where the trustee electoral area has a population of 5,000 or less [*Local Government Act*, section 97 (3)]. The exception is when the Minister has agreed to the board's request for an exemption to either or both of the advance voting opportunities requirement [*School Act*, section 45 (5)].

The **optional** contents of a board of education's election bylaw are:

- additional general voting opportunities [*Local Government Act*, section 96];
- additional advance voting opportunities [*Local Government Act*, section 98];
- special voting opportunities [*Local Government Act*, section 99];
- mail ballot voting [*Local Government Act*, section 100];
- voting machines [*Local Government Act*, section 102];
- voting divisions [*Local Government Act*, section 103];
- order of names on ballot by lot [*Local Government Act*, section 107];
- nomination deposits [*Local Government Act*, section 72.1)
- number of scrutineers at voting places [*Local Government Act*, section 110 (3)];
- and

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- resolution of tie votes after judicial recount [*Local Government Act*, section 141].

A board of education may wish to give special consideration to an election bylaw on the resolution of tie votes after a judicial recount. Such a bylaw would allow the board to avoid the additional costs of having to hold, in accordance with section 142 of the *Local Government Act*, a run-off election for the remaining vacancy(ies) on the board between the unsuccessful candidates who received equal numbers of valid votes (see Chapter 13).

Election Bylaw When Municipality is Required to Conduct Election

Where a municipality is required to conduct a trustee election under section 37 (1) (2) of the *School Act*, the elections bylaw approved by the municipality for its own elections will apply [*School Act*, section 46 (3)]. Such a municipal bylaw may cover matters such as those listed above for optional contents of a board approved election bylaw except for provisions relating to breaking a tie after a judicial recount, regarding which a board make its own bylaws [*School Act*, section 46(4)]. The board of education is also legally entitled to direct the municipality's chief election officer on the form of ballot to be used for the trustee election [*School Act*, section 46 (5)], although the board may wish to assess the additional costs it may incur by approving such a resolution [*School Act*, section 38 (1)].

Election Bylaw When Board Enters Into Agreement With Local Government

Where the conduct of a trustee election is not a municipality's responsibility under section 37 (1) (2) of the *School Act*, the board of education may contract with the municipality or regional district to carry out all or part of the trustee election on the board's behalf, or in conjunction with the local government's election [*School Act*, section 38 (4)]. In that case, the board may approve its own comprehensive election bylaw, or adopt the local government's election bylaw [*School Act*, section 38 (5)], with the exception of any provisions on breaking a tie vote by lot or determining ballot order by lot [*School Act*, section 45 (9)]. Those two provisions will only apply in a trustee election if contained in an election bylaw approved by the board of education.

Appointment of Election Officials

Section 41 (1) of the *Local Government Act* requires the appointment of a chief election officer and a deputy chief election officer for each local election. Their function is to appoint all other election officials needed to administer and conduct the election, and to ensure that the election takes place effectively and in accordance with the law.

[*Local Government Act*, sections 41 to 43]

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The basic responsibility for the appointment of election officials is dependent upon who is legally required under section 37 of the *School Act* to conduct the trustee election.

Where the board of education conducts the trustee election, it must appoint a chief election officer and a deputy chief election officer for each trustee electoral area [*Local Government Act*, section 41 (1)]. There is no statutory impediment to the appointment of the same persons in each area, and they can be board officers or employees.

Where a municipality is required to conduct a trustee election under section 37 (1) or (2) of the *School Act*, the municipally appointed chief election and deputy chief election officers serve in those positions for the trustee election [*School Act*, section 46 (3)].

Where a municipality or regional district conducts a trustee election under an agreement with the board of education, the agreement should specify who appoints the chief election officer and the deputy chief election officer. If the agreement provides for these two election officers to be appointed by the board of education, they may be the persons appointed by the local government.

[*School Act*, section 38 (4)]

CHAPTER 7 - REGISTRATON OF ELECTORS AND VOTING DIVISIONS

What are the Options for Registration of Electors

As stated in Chapter 3, a person is entitled to vote in a school trustee election if qualified as a resident elector or non-resident property elector, registered as or deemed to be registered as an elector of the trustee electoral area, and not disqualified by any statute.

[*School Act*, section 39 (1)]

Section 43 of the *School Act* then specifies the procedures by which a qualified person may become registered, and when a person is deemed to be registered:

- a person registers by delivering a completed application form to the election official responsible at the place where the person is voting or by providing the information required;
- a person is deemed to be registered as an elector if included in a list of municipal or regional district voters prepared before the date established for close of advance registration, or by inclusion on the Provincial List of Voters prepared under the *Election Act* if the requisite local government bylaw has been approved, under section 59 of the *Local Government Act*;
- a person may be registered as an elector in only one trustee electoral area for any one school district [*School Act*, section 43 (2)].

Registration Identification and Procedures

The identification required, and the procedures to be followed, when an eligible resident or non-resident property elector applies for registration are detailed in sections 55 to 60 of the *Local Government Act* and in section 43 (3) of the *School Act*. Section 60 of the *Local Government Act* states that a person, once registered, continues to be an elector of that jurisdiction as long as qualified, except where a municipality has a bylaw limiting registration of electors to registration at time of voting. In a municipality or regional district where advance registration takes place, the municipal clerk or regional district secretary is required to maintain a register of resident electors and a register of non-resident property electors, and to prepare lists of registered voters for election purposes [*Local Government Act*, sections 61 to 65]. Where the Provincial List of Voters prepared under the *Election Act* is used, it becomes the register of resident electors.

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When Does the Use of Voting Divisions Apply?

Municipalities may establish voting divisions for municipal elections by bylaw; where such divisions exist, the electors must be advised of where they will be entitled to vote [*Local Government Act*, section 103]. Any such divisions would apply to voting for school trustees where the municipality is required to conduct the trustee election under section 37 (1) or (2) of the *School Act*.

Any board responsible for conducting trustee elections in its own district under section 37 (3) of the *School Act* may, by bylaw, establish voting divisions and, if it does so, must advise electors where they will be entitled to vote [*School Act*, section 45 (7)].

CHAPTER 8 - CANDIDATE NOMINATIONS, ENDORSEMENTS AND WITHDRAWALS

What are the Nomination Period Requirements?

The necessary qualifications for a person to be eligible to be nominated for election as a school trustee are reviewed in Chapter 4. This chapter covers the nomination procedures for eligible candidates, the endorsements permitted, and the candidate disclosure statements required (all being governed by sections 69 to 93 of the *Local Government Act* or by sections 41 to 65 of the *Vancouver Charter*).

[*School Act*, sections 45, 46]

Nomination Period and Notices

The period for receiving nominations begins at 9 a.m. on the 46th day before general voting day, except when that is a holiday, in which case the nomination period begins on the next day which is not a holiday [*Local Government Act*, section 69 (1) (2)]. The nomination period ends at 4 p.m. on the 36th day before general voting day, except when that is a holiday, in which case the nomination period ends on the previous day which is not a holiday [*Local Government Act*, section 69 (1) (3)].

"Holiday" includes:

- Sunday, Christmas Day, Good Friday and Easter Monday;
- Canada Day, Victoria Day, British Columbia Day, Labour Day, Remembrance Day and New Year's Day;
- December 26, and
- a day set by the Parliament of Canada or by the Legislature, or appointed by proclamation of the Governor General or the Lieutenant Governor, to be observed as a day of general prayer or mourning, a day of public rejoicing or thanksgiving, a day for celebrating the birthday of the reigning Sovereign, or as a public holiday.

[*Interpretation Act*, section 29]

At least six, but not more than 30, days before the nomination period begins, the chief election officer must issue a notice of nomination in accordance with section 44 of the *Local Government Act*, by publication in a newspaper or, where that is not possible, by alternative means [*Local Government Act*, section 70 (1) (4)].

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The notice of nomination shall specify, as a minimum:

- the offices for which candidates are to be elected;
- the dates, time and places at which nominations will be received;
- how interested persons can obtain information on the requirements and procedures for making a nomination; and
- any other information required by regulation under the *Local Government Act*.

The notice may also include any further information the chief election officer considers appropriate, and additional notice may be given to the public.

[*Local Government Act*, section 70]

For significant dates relating to general trustee elections please see page v.

Who May Make Nominations and Documents Required

Bill 7, the *Local Government Statutes Amendment Act*, 2008 has amended the *Local Government Act*, allowing local governments to vary the number of nominators by bylaw. Boards of education have the same authority with regard to trustee electoral areas for which they have responsibility. Without such a bylaw in place a candidate is required to have at least two qualified nominators. A bylaw can set the minimum number of nominators at 10 and in the case of a jurisdiction with a population of 5,000 or more the minimum number of nominators may be set at 25.

Where a municipality is responsible for carrying out a trustee election in a trustee electoral area that is entirely within the municipality, and the municipality passes a bylaw to change the number of nominators required, trustee candidates will be governed by the same rules. If the municipality does not change the number of nominators, then trustee candidates will require at least two qualified nominators.

Boards of Education are encouraged to contact local governments with regard to bylaws that may vary the number of nominators so that they can clearly communicate requirements to potential trustee candidates and so that they can ensure that board of education bylaws do not incorporate conflicting requirements.

In a case where a trustee electoral area contains more than one local government and the board of education has adopted different local government bylaws to apply in different parts of the trustee electoral area in order to harmonize the trustee and local government elections, and where, because of a change in bylaws in the local governments as permitted by Bill 7, the result is a different number of nominators for candidates within one trustee electoral area, the board of education elections bylaw should be carefully reviewed and amendments should be considered to avoid any possible conflicting requirements for the number of nominators required within the same trustee electoral area.

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Every nomination of a person for office as school trustee must be made by two qualified resident or non-resident property electors of the trustee electoral area for which the person is nominated unless a local government or board of education bylaw (as applicable, see above) requires additional nominees. Local bylaws may require 10 or 25 qualified nominators [*Local Government Act*, section 71]. A qualified nominator may subscribe to the nomination documents of as many persons as there are offices to be filled by the election [*Local Government Act*, section 71 (4)]. Each nomination must be in writing and include:

- the full name of the person nominated and, if different, the person's usual name where the person wants the usual name to appear on the ballot;
- the office for which the person is nominated;
- if applicable, a statement that the person nominated is endorsed by an elector organization and wishes to have that endorsement appear on the ballot;
- the residential address of the person nominated and the mailing address if this is different;
- the names and residential addresses of the nominators, plus the address of the property if a nominator is a non-resident property elector; and
- a statement signed by the nominators that, to the best of their knowledge, the person nominated is qualified to be nominated.

[*Local Government Act*, section 72 (1)]

In addition to the written nomination as above, the following documents must be provided to the chief election officer or designate:

- a statement signed by the person nominated consenting to the nomination;
- a solemn declaration that, to the best of the nominated person's knowledge, he or she is qualified to be nominated, that the information provided in the nomination documents is true, and that the person fully intends to accept the office if elected;
- a solemn declaration by a director or other official of any elector organization that is endorsing the candidate, accompanied by the nominated person's consent to the endorsement; and
- the written disclosure of relevant financial interests by the person nominated, as required by section 2 (1) of the *Financial Disclosure Act*.

[*Local Government Act*, section 72 (2)]

The chief election officer may also require a person nominated to provide a contact telephone number [*Local Government Act*, section 72 (4)]. Nomination deposits (refundable if the person is not declared a candidate) of up to \$100 can also be required if a local government or board enacts a bylaw to that effect [*Local Government Act*, section 72.1].

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The person nominated is responsible for ensuring that all the nomination documents and, if applicable, the required nomination fee is delivered to the chief election officer or designate before the end of the nomination period. Delivery may be by hand, mail or other delivery service, or by fax provided that the originals of the documents are received by the chief election officer by the 29th day before general voting day [*Local Government Act*, section 73 (1) to (5)]. After receiving the nomination documents, the chief election officer must review them to determine whether a challenge must be commenced if it appears that a person is disqualified from being nominated, or that an organization named in the nomination documents is disqualified from endorsing a candidate.

The documents must be made available for public inspection until 30 days after the declaration of election results, but must not be used by a person who inspects them except for the purposes of the *Local Government Act* [*Local Government Act*, section 73 (5.1) to (8)]. If authorized by a board of education bylaw, nomination documents may be posted on the board of education website for the same period [*Local Government Act* s. 73(7)].

After receiving nomination documents, the chief election officer must review the disqualification list under section 92.3 of the *Local Government Act* to determine whether a challenge must be made under section 75 of that *Act*.

Insufficient Candidates and Nomination Challenges

Immediately following the end of the nomination period, the chief election officer must declare as candidates all persons nominated. If there are insufficient candidates for the offices to be filled, the chief election officer must publicly extend the time for receiving additional nominations until 4 p.m. on the 3rd day after the end of the nomination period,

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at which time the chief election officer must declare as candidates any additional persons nominated. For further information please see Appendix 1.5: Trustee Appointment Guidelines.

[*Local Government Act*, section 74]

A person's nomination may only be challenged by a person who is an elector of the jurisdiction, by another nominee or by the chief election officer, through an application to the Provincial Court on the basis of one or more of the following:

- that the person is not qualified to be nominated or elected;
- that the nomination was not made in accordance with sections 71 to 73 of the *Local Government Act*;
- that a usual name given is not the person's usual name;
- that the person is not, in fact, endorsed by the elector organization named in the nomination documents;
- that the named organization does not qualify to endorse a candidate;
- that the named organization is disqualified from endorsing a candidate.

Such a challenge must be made before 4 p.m. on the 4th day after the end of the nomination period. Within 72 hours of the end of the challenge period, the court must hear and determine the matter, and issue a non-appealable order on whether the person challenged is a candidate, may use the usual name, or is properly endorsed by an elector organization.

[*Local Government Act*, section 75]

Declaration of Election by Vote or by Acclamation

At 4 p.m. on the Monday following the last day for determining a court challenge described above, the chief election officer must either declare the candidates elected by acclamation where there are as many or fewer candidates than are to be elected, or must declare that an election by voting is to be held where there are more candidates than are to be elected.

[*Local Government Act*, section 76]

If too few persons are elected to fill all the school trustee offices required, the Minister may appoint persons to fill the vacancies [*School Act*, section 36 (6)].

Where an election by voting is required, the chief election officer must publish a notice of election which includes, as a minimum:

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- the offices for which persons are to be elected;
- the usual names and residential addresses of the candidates, except where a candidate requests that only jurisdiction of residence be shown;
- the date, hours and places for voting, including information on any voting divisions; and,
- the documents that will be required in order for a person to register as an elector at the time of voting

[*Local Government Act*, section 77]

Candidate Endorsement by Elector Organizations

Section 79 of the *Local Government Act* makes provisions for an approved elector organization to endorse one or more candidates for trustee elections, and to have its endorsement included on the ballot. The elector organization must have been in existence at least 60 days immediately prior to endorsing a candidate, and must have had a membership of at least 50 electors of the school district throughout that 60 day period. An elector organization must indicate its endorsement by authorizing a director or other official of the elector organization to make a solemn declaration stating that the organization complies with all statutory requirements, including the name of the candidate endorsed by the elector organization, and that the organization name, abbreviation or acronym to be included on the ballot is as stated and does not conflict with any other organization's name, etc.

Only one elector organization endorsement may be shown on a ballot in relation to a candidate [*Local Government Act*, section 79 (5)].

Withdrawal, Death or Incapacity of Candidate

At any time up to 4 p.m. on the 29th day before general voting day, a person nominated for election as a school trustee may withdraw by delivering a signed withdrawal to the chief election officer. After that date, any such withdrawal is subject to approval by the Minister of Education. The Minister may order the election to proceed subject to any conditions specified by the Minister or order that the election is cancelled and a new election be held. Similarly, if a candidate dies or is incapacitated subsequent to the declaration of an election by voting, and before voting day, the Minister may order the election to proceed or a new election to be held, as determined by the Minister.

[*Local Government Act*, section 80]

CHAPTER 9 - CAMPAIGN FINANCING AND DISCLOSURES

What is the Relevant Legislation?

The legislation relevant to campaign contributions, candidates' election expenses, and disclosures by candidates for election as school trustees is contained in sections 83 to 93 of the *Local Government Act*; sections 55 to 65 of the *Vancouver Charter* and in B.C. Reg. 380/93, the Local Government Elections Regulation. They require that all candidates, elector organizations, and campaign organizers to keep track of campaign contributions received and election expenses incurred, and formally disclose them following the election, as described below. The terms 'elector organization' and 'campaign organizer' are defined in section 83 of the *Local Government Act*. The *Financial Disclosure Act* also requires the disclosure of financial interest of nominees in school board elections.

Appointment of Financial Agent and Recording of Contributions and Expenses

Every candidate in a trustee election campaign, including a by-election, **may** appoint a financial agent to accept any campaign contributions and to incur any election expenses. The candidate is deemed to be his/her own financial agent unless a financial agent is appointed in writing and the appointment notice delivered to the chief election officer or delegate. Every elector organization endorsing a candidate in a trustee election campaign **must** appoint a financial agent. An appointment of a financial agent may be rescinded in the same manner the appointment was made.

[*Local Government Act*, sections 83 to 85]

In relation to a financial agent, a candidate must provide the name, address, and telephone number, as well as any other information required by regulation, of the financial agent to the chief election officer as soon as possible after the person is declared as a candidate.

If an elector organization or campaign organizer has incurred election expenses, or received contributions in excess of \$500 it is required to provide the following information to the chief election officer as soon as reasonably possible or after the chief election officer is appointed, whichever is later:

- the legal name of the elector organization or campaign organizer;
- the usual name of the elector organization or campaign organizer, if this is different from its legal name, and any abbreviations, acronyms and other names it uses;
- the name of the financial agent of the elector organization or campaign organizer and an address and telephone number at which the financial agent can be contacted;

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- the name of the president, chair or other chief official of the elector organization or campaign organizer and an address and telephone number at which that person can be contacted;
- the name of the director or other official responsible for the financial affairs of the elector organization or campaign organizer;
- any other information required to be included by regulation

If there is any change in the information supplied regarding financial agents, elector organizations or campaign organizers, the candidate, elector organization or campaign organizer inform the chief election officer as soon as reasonably possible.

[Local Government Act, sections 85.01]

Before incurring an election expense or as soon as practical after receiving a campaign contribution of money, the financial agent must:

- open one or more campaign accounts at a savings institution, exclusively for the purposes of the election campaign and in the name of the candidate's, elector organization's, or campaign organizer's election campaign, as applicable;
- ensure that all campaign contributions of money are deposited into the campaign accounts; and
- ensure that all payments for election expenses are made from the campaign accounts.

[Local Government Act, section 85.1]

The financial agent must receive and record all contributions accepted towards the election campaign, regardless of the amount or when the contribution was made, even if made before the candidate's nomination. The record must include the contributor's name and address, and the date and amount of the contribution, although anonymous contributions of up to \$50 from one source may be accepted and recorded as anonymous. Contributors must be classified as either individuals, corporations, unincorporated organizations engaged in business or commercial activity, trade unions, non-profit organizations or other contributors. If the contributor is a numbered corporation or an unincorporated organization, the full names and addresses of at least 2 individuals who are directors of the organization or, if there are no individual directors, who are principal officers or principal members of the organization must be recorded. Any anonymous contributions over \$50 from one source must be paid to the school district. The value of a property contribution is determined by fair market value of the property or use of the

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property. Services are also valued on a fair market basis, although the value of the following services is deemed to be nil:

- volunteer services, unless the volunteer normally charges for such services as those provided;
- services of the financial agent, as described above;
- professional services provided to comply with statutory requirements of the election; and
- free advertising space in a periodical publication when space is made available on an equitable basis.

[*Local Government Act*, sections 87 to 89]

Election expenses, being the value of property and services used in an election campaign by or on behalf of a candidate, elector organization, or campaign organizer, may be incurred only by a financial agent [*Local Government Act*, sections 83 to 89].

The records of campaign contributions and election expenses must be retained by the financial agent, candidate, elector organization, or campaign organizer until 7 years after general voting day for the election to which they relate.

[*Local Government Act*, section 88(5)]

After the election and after the payment of expenses, there may be a balance remaining in the candidate's campaign account. The transfer of a candidate's surplus campaign funds is handled as follows:

- if the candidate made contributions to his or her election campaign, the financial agent may refund these to the candidate, to the extent that the total balance in the accounts permits this;
- if, after any refund in (1), the total balance in the account is less than \$500, the financial agent may pay the balance to the candidate or in accordance with the directions of the candidate;
- if, after any refund under (1), the total balance in the accounts is \$500 or more, the financial agent must pay the balance as soon as practicable to the board of education for which the election was held. These funds must be held in trust; if the person in respect of whom they were paid is a candidate in the next general local election or in a by-election called before that time, the funds must be paid to the financial agent for use in the election. If the individual does not become a Candidate by the time of the next general election, the funds cease to be trust funds and become part of the general revenue of the board of education or municipality.

[*Local Government Act*, section 89.1]

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Duty to File Disclosure Statements and Required Contents

All candidates, whether elected or not, must ensure that their financial agents file disclosure statements within 120 days after voting day. A disclosure statement is required even if the candidate receives no campaign contributions, incurs no expenses, is acclaimed, dies, withdraws from the election or is declared by a court to no longer be a candidate. Similarly, all elector organizations must ensure that their financial agents file disclosure statements within the same 120 day period. All statements are filed with the school district secretary-treasurer, and each must include:

- the total amount of campaign contributions;
- names, dates, amounts of contributions, class of contributors, and names and addresses of at least 2 individuals who are directors or principal officers/members if the contributor is a numbered corporation or an unincorporated organization for contributions of \$100 or more;
- date and amount of anonymous contributions over \$50 paid to the school district;
- for any other contributions, the total value received and the total number of contributors from whom they were received;
- total amount of election expenses;
- any transfer of candidate's surplus election funds received from the municipality or regional district;
- any balance or deficit in the candidate's election funds on the day the report is prepared; and,
- any surplus in the election funds, and how that surplus was dealt with,
- the name and address of savings institutions for accounts,
- in the case of a disclosure statement for a candidate who was endorsed by an elector organization, the name of the organization,
- in the case of a disclosure statement for a elector organization, the names of the candidates it endorsed,
- in the case of a disclosure statement for campaign organizer, the names of the candidates and elector organizations on behalf of which the campaign organizer campaigned.

[*Local Government Act*, section 90]

B.C. Reg. 380/93, *Local Government Elections Regulation*, requires that the disclosure statement also include information from the following classes of election expenses:

- election campaign advertising or communication expenses (radio, tv, newspaper, signs, pamphlets, newsletters for members of the elector organization...)
- election campaign office expenses (compensation paid to persons for work done relating to election campaign other than for work that has nil value (see sec 89(2) of the *Local Government Act*), rent, insurance, courier services, furniture, telecommunications equipment, office supplies...)

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- convention and similar meeting expenses
- expenses for campaign related functions not described above
- research and polling expenses
- campaign related transportation

All disclosure statements must be solemnly declared by the financial agent and the candidate, or by the elector organization's or campaign organizer's chief official, as appropriate. The declaration must indicate that the disclosure statements are complete, accurate and in conformity with statutory requirements, to the best of their knowledge and belief.

[*Local Government Act*, section 90 (6) and (7)]

Disclosure statements may be filed up to 30 days after the end of the filing period on payment of a \$500 late filing penalty.

[*Local Government Act*, section 90.2]

If additional or changed information becomes available, a supplementary report, accompanied by solemn declarations, must be filed within 30 days of the financial agent, candidate, elector organization, or campaign organizer becoming aware of the additional or changed information.

[*Local Government Act*, sections 90 and 90.1]

Section 91 of the *Local Government Act* outlines how a candidate or elector organization may apply to the Supreme Court for relief from the obligation to file a disclosure statement or supplementary report. An application for relief must be filed with the BC Supreme Court before the end of the late filing period. The application must be set down for court hearing no more than 14 days after filing, and be heard no later than 28 days after filing.

Failure to File Disclosure Statements

A candidate who is declared elected and whose financial agent fails to file the required disclosure statement before the end of the late filing period faces the following penalties:

- if no application to relieve the candidate from the obligation to file a disclosure statement has been filed, the candidate ceases to hold office at the end of the late filing period;

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- if an application for relief from the filing obligations has commenced, but the matter is not set for hearing, the candidate ceases to hold office 15 days after the petition is filed;
- if an application for relief from filing obligations has been filed, but the Supreme Court refuses to grant the relief, the candidate ceases to hold office at the time of that decision;
- if the Supreme Court grants relief but the candidate does not comply with the court order, then the candidate ceases to hold office at the time set for filing or the order, as applicable.

[*Local Government Act*, section 92]

Unless a court order under section 91 of the *Local Government Act* relieves it of this obligation, an elector organization or campaign organizer that fails to file the required disclosure statement before the end of the late filing period faces the following penalties until the after the next general election:

- is disqualified from endorsing a candidate
- is prohibited from accepting campaign contributions or incurring election expenses in future elections

[*Local Government Act*, section 92.1]

As soon as is practical, reports respecting the following must be presented at an open meeting of the local board of education:

- the name of any candidate, elector organization, or campaign organizer for whom a disclosure statement was not filed within 120 days after general voting day;
- the name of any candidate, elector organization, or campaign organizer for whom a disclosure statement was not filed by the end of the late filing period; and,
- the name of any candidate, elector organization, or campaign organizer that is subject to a penalty for failure to file.

Since the disclosure statements are filed with the secretary-treasurer, the secretary-treasurer should ensure that the report is made to the board of education. The secretary-treasurer must send a copy of the report to the Inspector of Municipalities, together with copies of the relevant candidates' nomination forms (or, for elector organizations, the organization's declaration filed with the nomination).

[*Local Government Act*, section 92.2]

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The Inspector of Municipalities must make available for public inspection a list of the individuals and organizations identified as being disqualified for failure to file disclosure statements.

[*Local Government Act*, section 92.3]

A candidate, whether elected or not, that files a false or incomplete disclosure statement or supplementary report is disqualified from holding or seeking any local government or board of education office until after the next general local election in three years time [*Local Government Act*, Section 92.4]. The filing of a supplementary report does not relieve the candidate from the disqualification. Similarly, an elector organization or campaign organizer that files a false or incomplete disclosure statement or supplementary report is disqualified from endorsing any local government or board of education candidate until after the next election. The filing of a supplementary report does not relieve the elector organization or campaign organizer from disqualification

[*Local Government Act*, Section 92.5].

It is an offence liable to a fine, on conviction, of not more than \$10,000 to fail to make or file a disclosure under the *Financial Disclosure Act*.

Public Inspection and Challenge

All the disclosure statements and signed declarations filed with the school district secretary treasurer must be made available for public inspection during regular office hours from the time of filing until 7 years after general voting day for the election to which they relate. If authorized by board of education bylaw, the information may be made publicly available by posting on the board's website or otherwise as set out in the bylaw, for all or part of this period.

[*Local Government Act*, section 93]

CHAPTER 10 - VOTING OPPORTUNITIES AND ARRANGEMENTS

What Opportunities to Vote May be Available?

A qualified elector may vote in a school trustee election at one of the following required or optional voting opportunities:

- a. on general voting day at a required general voting opportunity;
- b. at an additional general voting opportunity, if any;
- c. at a required advance voting opportunity, unless the school district is exempted by the Minister of Education;
- d. at an additional advance voting opportunity, if any;
- e. at a special voting opportunity, if any;
- f. by mail ballot, if available in the jurisdiction.

[*Local Government Act*, section 94]

Where a municipality is required to conduct a trustee election under section 37 (1) (2) of the *School Act*, the elections bylaw passed by the municipality will govern voting opportunities available during the trustee election. Where the board of education is responsible for the trustee election, the extent of the board's discretion is indicated in the following overview of voting opportunities, required and optional.

Required and Additional General Voting Opportunities

The chief election officer must designate at least one “general voting opportunity”, i.e. a voting place within the trustee electoral area that will be available to all eligible electors for the full 8 am to 8 pm voting period on general voting day. This is to be done as soon as reasonably possible after the declaration of an election by voting. If the election bylaws provide for voting divisions, the chief election officer must also specify which voting places will be used for each division. In special circumstances, a required voting opportunity may be held outside the trustee electoral area, as discussed below under General Arrangements for Voting Places.

[*Local Government Act*, sections 95, 101]

Additional voting opportunities open to all electors may be provided depending on the bylaws of the board of education or local government carrying out the election. The bylaws may either specify additional general voting opportunities (which may be for more

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limited hours or be located outside the trustee electoral area) or may authorize the chief election officer to establish them. Voting hours cannot extend later than 8 pm on general voting day.

[*Local Government Act*, sections 96, 101]

The required general voting opportunities have to be included in the published notice of election. The additional ones can be published in any way that the chief election officer considers appropriate, so long as the notice includes the date, place and voting hours.

[*Local Government Act*, sections 77, 96(3)]

Required and Additional Advance Voting Opportunities

Two advance voting opportunities must be provided, while additional advance voting opportunities may be authorized by board of education bylaw.

[*Local Government Act*, section 97 (2)]

One of the required advance voting opportunities must be held on the 10th day before general voting day, and the other on a different date that the board must set by bylaw. The chief election officer then designates voting places and gives notice to the public of their locations, and the date and times (8 a.m. to 8 p.m.) for advance voting, at least six to thirty days before the required advance polling is to take place. In addition, the notice must list the documents that will be required in order for a person to register as an elector at the time of voting, and the place where persons may apply on an advance voting day for non-resident property elector certificates required in order to register at the time of voting. There is provision, however, for the board to provide by bylaw that the second required advance voting opportunity not be held where the population of the trustee electoral area is 5,000 or less.

[*Local Government Act*, section 97]

It is also possible for a board to apply to the Minister for an order exempting it from the *Local Government Act's* requirements that it hold one or both of the advance voting opportunities that would otherwise be required.

[*School Act*, section 45 (5)]

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Additional advance voting opportunities may be provided by a board of education bylaw that either establishes dates, places and times, or authorizes the chief election officer to do this. The chief election officer must then provide notice to the public, in any manner deemed appropriate, of the date, place and voting hours for the additional advance voting opportunity.

[*Local Government Act*, section 98]

Note should also be taken of section 38 (9) to (11) of the *School Act*, which requires that if an advance voting opportunity is open to electors in part of a trustee electoral area, an advance voting opportunity must be open to all electors of the trustee electoral area on the same day.

Location of Additional General and Advance Voting Opportunities

Voting places for additional general voting opportunities and for all advance voting opportunities do not have to be within the trustee electoral area.

[*Local Government Act*, section 101 (3)]

Special Voting Opportunities

Special voting opportunities may be provided by board of education bylaw to give electors otherwise unable to vote the chance to do so (for example, patients at a hospital or a long-term care facility, or workers at remote locations). The location may be outside the trustee electoral area or be a mobile poll. The board's bylaw may include:

- restrictions on who may vote at the special opportunity;
- special voting procedures, including limits on the number of candidate representatives who may be present;
- place, date and times for voting (but no later than 8 p.m. on general voting day), or authorize the chief election officer to set them.

The chief election officer must then give reasonable notice of the special voting opportunity to those entitled to vote at it, and include in the notice the date, location and voting hours, any restriction on who may vote and any special procedures involved.

[*Local Government Act*, section 99]

Mail Ballot Voting

Mail ballot voting (and registration) may be permitted by board of education bylaw for electors who have a physical disability, illness or injury that affects their ability to vote at another voting opportunity or who expect to be absent from the district during all the other

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voting opportunities. In the case of disability or illness the availability of mail ballot voting may be restricted to remote areas of the trustee electoral area [*Local Government Act*, section 100 (1), (3)]. The bylaw must establish procedures which maintain the opportunity to challenge an elector's right to vote, and the chief election officer is responsible for providing reasonable notice of those procedures. [*Local Government Act*, section 100 (4) to (6)]. The elector is required to mail back to the chief election officer a certification envelope and the ballot, which must be received before the close of voting on general voting day [*Local Government Act*, section 100 (7) to (9)].

General Arrangements for Voting Places

So far as reasonably possible, voting places must be easily accessible to physically disabled or mobility impaired persons. If that is not possible, an additional, more accessible voting place outside the trustee electoral area may be authorized [*Local Government Act*, section 101 (1), (2) (b)]. Convenience for a majority of electors is another authorized reason for an additional voting place outside the trustee electoral area [*Local Government Act*, section 101 (2) (c)]. As previously noted, advance polls may also be held outside the trustee electoral area [*Local Government Act*, section 101 (3)].

Election bylaws approved by local governments may provide for the use of automated voting machines, voting recorders or "other devices for voting in an election," subject to any requirements, limits and conditions established by regulation, and to the relevant Minister's approval (if necessary).

[*Local Government Act*, section 102]

Public Notice

The electoral process requires public notice in a number of instances. Section 6.4 and 44 of the *Local Government Act* and section 94 of the *Community Charter*, outline the requirements for public notice. Section 94 of the *Community Charter* requires that public notices be posted in public notice posting places and published in a newspaper distributed at least weekly in the area affected by the notice. Unless otherwise noted publications must be once each week for two consecutive weeks.

CHAPTER 11 - BALLOTS AND VOTING PROCEDURES

Form and Content of Ballots, Order of Names

Where a municipality is legally required to conduct a trustee election under section 37 (1) (2) of the *School Act*, the chief election officer appointed by the municipality determines the form of ballot for the municipal and board of education elections, including the use of composite ballots or sets [*Local Government Act*, section 104]. Nevertheless, the board may direct the chief election officer on the form of ballot to be used for the trustee election [*School Act*, section 46 (5)], with the board paying any additional costs. Also, should the municipality approve a bylaw providing for the order of names on the ballot to be determined by lot, that bylaw would not automatically apply to the trustee election. The board of education must pass its own bylaw if it wants that method to apply for determining the order of names on the trustee ballot [*School Act*, section 46 (4)].

Where the board of education is responsible for the conduct of a trustee election, its chief election officer (see Chapter 6) "must establish the form of ballots to be used in an election" [*Local Government Act*, section 104].

The ballot form must contain the following:

- instructions on the number of candidates to be elected to the office;
- instructions on the appropriate mark for a valid vote;
- full name of each candidate, or usual name if specified by candidate; and
- where applicable, the name, abbreviation or acronym of a candidate's endorsing electoral organization.

[*Local Government Act*, sections 104 (2) (a) and 105 (1) (2)]

The ballot form must not include any indication that a candidate holds or has held an elected office, or received a title, honour, degree or decoration. Also the candidate's occupation must not be included.

[*Local Government Act*, section 105 (3)]

Names are to be listed alphabetically on the ballot, by surnames and then first given names [*Local Government Act*, section 106]. Where two or more candidates share the same surname and first given names, or have names so similar the chief election officer believes they are likely to cause confusion, the chief election officer may consult with the candidates and include on the ballot additional information to assist electors to identify candidates. The board may, however, provide by bylaw for the order of names on the ballot to be determined by lot (detailed procedures for holding the "draw" are specified in the *Local Government Act*, section 107).

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Ballot Boxes -- Construction and Usage

Ballot boxes must be constructed to allow ballots to be inserted, but not withdrawn unless the box is opened. Separate ballot boxes must be provided for each of the five different types of voting opportunities that have been made available in the election (required general, additional general, advance, special and mail), although a ballot box used at one type of voting opportunity may be subsequently used again at another of the same type.

[*Local Government Act*, section 108]

Conduct of Voting Proceedings

On general voting day, election advertising (either by newspaper or magazine publication, or through radio or television) is not permitted.

[*Local Government Act*, section 152.1]

A presiding election official and at least one other election official must be present at each voting place during voting hours; if another official is not available as expected, the presiding election official may appoint a person as an official [*Local Government Act*, section 109]. In addition, only the following persons may be present at a voting place while voting is underway:

- voters, and persons in their care;
- persons assisting voters under sections 48 or 121 of the *Local Government Act*;
- election officials;
- official agent of a candidate;
- one scrutineer per candidate for each ballot box in use, unless the board approves more scrutineers by bylaw;
- other persons permitted by the presiding election official.

A candidate may be present only to vote.

[*Local Government Act*, section 110]

The presiding election official, with a witness, must inspect all the empty ballot boxes before they are used and seal them so they cannot be opened without breaking the seal. At the end of voting, the presiding election official must seal the boxes to prevent insertion of further ballots. Candidate representatives may also add their seals.

[*Local Government Act*, section 111]

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Voting must be by secret ballot, there must be a screened marking area available, and all persons who are present at the voting place must preserve the secrecy of the ballot [*Local Government Act*, section 113]. Electors can vote once only, and a record must be kept of who receives ballots [*Local Government Act*, section 114].

In order to receive a ballot a person must have already registered as a voter (see Chapter 7) or register at the voting place. In the case of advance or special voting opportunities, a person must also sign a written declaration of entitlement to vote at the advance or special voting opportunity. All voters must then sign the official voting book or list of registered electors [*Local Government Act*, section 115]. In the case where a person's right to vote is challenged by an election official, a candidate representative or an elector, or the person's name has already been used by another voter, the person must either satisfy the presiding official of entitlement to vote or make a solemn declaration of that entitlement (in accordance with procedures in sections 116 or 117 of the *Local Government Act*). A spoiled ballot may be replaced upon presentation by the elector to the presiding election official [*Local Government Act*, section 118].

Upon receipt of a ballot an elector must, without delay, proceed to the screened voting compartment, mark the ballot with a cross or a mark acceptable (tick mark) under section 129 of the *Local Government Act*, fold the ballot and deposit it in the sealed ballot box, and then leave. Upon request by the elector, an election official must explain the proper method for voting by ballot.

[*Local Government Act*, section 119]

Only one person may be in a voting compartment at a time, unless accompanied by someone providing approved assistance or who is in the care of the voter [*Local Government Act*, sections 120, 121]. If an elector who comes to the voting place cannot enter due to a physical disability or impaired mobility, the presiding election official or designate must attend the elector and arrange for a secret ballot to take place wherever is practical and close to the voting place [*Local Government Act*, section 122].

If the start of voting at the voting place is delayed, the presiding election official may extend the closing time for a comparable length of time to accommodate electors wishing to vote. At closing time, those electors waiting in the voting place, or in line outside, are entitled to vote.

[*Local Government Act*, section 112]

CHAPTER 12 - COUNTING THE VOTE AND DECLARING THE RESULTS

When and Where Counting is Done and by Whom

Section 47 of the *School Act* requires that the counting of votes for any one trustee electoral area must not take place until the close of voting at all voting places for the whole school district.

The counting of votes must take place as soon as possible after the close of general voting for the election and, in the case of general voting opportunities, at the place(s) where the ballot boxes are located, unless the chief election officer orders another location [*Local Government Act*, section 123 (1) (2)]. The counting of ballots from additional general, advance, special and mail voting opportunities is to be conducted at a place specified by the chief election officer [*Local Government Act*, section 123 (3)]. Candidates must be notified by the chief election officer of locations, other than general voting places, where counting is to take place [*Local Government Act*, section 123 (4)].

Only the presiding election officer and one or more other election officials may carry out the counting of ballots, although one representative for each candidate is entitled to be present at each counting place [*Local Government Act*, sections 124, 125]. The candidate is also entitled to be present when counting is being conducted.

Ballot boxes may be opened only by an election official in the presence of at least one witness. The ballots from boxes for the same type of voting opportunities may be combined prior to counting [*Local Government Act*, sections 126, 127]. During counting and recording, all persons present must be able to see how each ballot is marked. The presiding election official must endorse all ballots that have been rejected or to which there has been an objection [*Local Government Act*, section 128].

Ballots which do not have an allowable mark indicating clearly the intent of the elector to vote for a particular candidate(s) must be rejected, as must ballots which carry more allowable marks than there are offices to be filled or which identify the voter [*Local Government Act*, section 129]. A candidate or candidate representative may object to the acceptance or rejection of a ballot providing the objection is made at the time the ballot is considered. [*Local Government Act*, section 130]

Ballot Accounts, Preliminary and Official Election Results

Sections 131 to 133 of the *Local Government Act* specify how ballot accounts are to be compiled once all counting at a voting place is completed. Once prepared, the accounts must be signed by the presiding election official and delivered to the chief election officer, together with separate sealed packages of ballots classified as accepted, rejected

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and objected to (see section 132 of the *Local Government Act* for more details on how ballots are to be grouped). In addition, other election materials, including voting books and copies of ballot accounts, must be placed in the ballot boxes, sealed and sent to the chief election officer [*Local Government Act*, section 133].

The chief election officer may announce preliminary election results based upon the ballot accounts, but must then conduct a review to determine the official election results [*Local Government Act*, sections 134 (1) and 135]. Following the chief election officer's decisions on all ballots rejected or objected to, the official determination is based on final numbers of ballots accepted or rejected.

A declaration of the official result(s), based on who received the highest number of valid votes cast, must be announced before 4 p.m. on the 4th day following the close of general voting, but subject to an application for a judicial recount. In the case of an equality of valid votes for one office, the election is automatically referred for a judicial recount.

[*Local Government Act*, section 136]

Candidates are entitled to be notified of, and attend, the final counting proceeding undertaken by the chief election officer. The chief election officer must ensure that the ballot accounts are reviewed, either personally or by authorized election officials. The chief election officer may verify the results by counting the votes on all or some of the ballots and may review the decisions of a presiding election official regarding the acceptance or rejection of some or all ballots. The chief election officer may reverse a decision of another election official. A decision of the chief election officer may only be changed on a judicial recount.

[*Local Government Act*, section 135]

Where no application for judicial recount has been received, a trustee who has been declared elected may take the oath of office on the tenth day after the close of general voting. If an application has been made, a trustee may not take the oath until the recount is complete, unless they have been authorized by the court to take the oath.

[*Local Government Act*, section 137]

CHAPTER 13 - JUDICIAL RECOUNTS, RUNOFF AND INVALID ELECTIONS

What are the Requirements for Judicial Recounts?

Applications for judicial recounts [*Local Government Act*, section 138] may be made to the Provincial Court by the chief election officer, an elector or a candidate on the following grounds:

- the votes were not correctly accepted or rejected;
- there was an inaccurate ballot account(s) of valid votes;
- there was an inaccurate final determination of valid votes.

A judicial recount must be applied for by a chief election officer when there is an equality of valid votes.

All applications must be made after the declaration of the official results, but within 9 days after the close of general voting. An application must be accompanied by a brief statement of facts supported by an affidavit. The applicant must immediately notify the chief election officer and the affected candidates, and deliver copies of specified documents to them within 24 hours.

The chief election officer then provides all ballots and ballot accounts to the court, and the judicial recount must be completed within 13 days after the close of general voting, in accordance with procedures specified in section 139 of the *Local Government Act*. The court may appoint persons to assist in the recount (usually members of the election staff).

The result declared by the court is final, subject only to a ruling that the election was invalid (see below). The court also determines who pays the costs of the recount.

[*Local Government Act*, section 140]

If there is still an equality of votes after a judicial recount, and the board of education has not approved a bylaw authorizing a determination by lot (see Chapter 6), a run-off election must be held between the tied candidates within 50 days of the recount. Procedural details for conducting a determination by lot are in section 141 of the *Local Government Act*, and for conducting a run-off election in section 142 of the *Local Government Act*.

Declaration of Invalid Election

Sections 143 to 146 of the *Local Government Act* specify how an application to determine the validity of an election, or the right of an elected candidate to take office,

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can be made to the B.C. Supreme Court. The application must be brought within 30 days from the declaration of official election results. Such an application may be made only by a candidate in the election, the chief election officer, or at least four electors of the trustee electoral area, on one or more of the following grounds:

- a candidate was elected who was not, or has ceased to be, qualified to hold office;
- the election was not conducted in accordance with the *School Act*, or applicable section of the *Local Government Act* or regulations, or an applicable election bylaw;
- there was an election offence of vote buying or intimidation, or a person voted who was not entitled to (see Chapter 15).

Notice of the application must be served on the school district secretary treasurer within two days of the petition to the court, and the court must hear the application after 10 but not later than 21 days after the petition being filed [*Local Government Act*, section 143 (7)]. Until the court declares the election to be valid or invalid, a candidate who has been declared elected and is affected by the court application is entitled to hold office and vote [*Local Government Act*, section 147 (1)]. If the candidate named in the application renounces in writing all claim to the office, the petition to the court may be withdrawn, except when an election offence is alleged [*Local Government Act*, section 143 (9)].

Where the application concerns a candidate's qualifications, the court may declare the candidate qualified or not qualified to hold office. If not qualified, the court must also declare either that the office is vacant, or the candidate who received the next highest total of valid votes is elected instead.

Where the application concerns the validity of the whole election, the court may:

- declare the election confirmed as valid;
- declare the election invalid and that another election must be held to fill all positions;
- declare the election of a candidate invalid, and that the office is vacant
- declare the election of a candidate invalid and that another candidate is duly elected.

[*Local Government Act*, section 145 (2)]

- In the case of a successful application, the school district must reimburse the costs of the applicant(s) promptly. The court may also authorize the school district to recover those costs from other persons, as directed by the court.

[*Local Government Act*, section 146]

CHAPTER 14 - FINAL ELECTION PROCEEDINGS, AND TAKING AND HOLDING OFFICE

What Reporting and Publication of Election Results is Required?

Within 30 days after the declaration of official election results for an election by acclamation or an election by voting, the chief election officer must submit a report of the results to the board of education [*Local Government Act*, section 148 (1) (2)]. If the election results are changed by a judicial recount or declaration of invalid election, the secretary treasurer must submit a supplementary report to the board of education [*Local Government Act*, section 148 (3)].

Secretary treasurers must also submit for publication to the B.C. Gazette the names of elected and appointed trustees within 30 days of their taking office.

[*Local Government Act*, section 149]

As reviewed in Chapter 9, all candidates, whether elected or not, and all elector organizations and campaign organizers must file disclosure statements with the secretary treasurer within 120 days after voting day, and these statements must be made available for public inspection. See Chapter 9 or details on the statements and their availability for public inspection.

Retention and Destruction of Election Materials

The chief election officer must retain all election documents and materials until expiry of the judicial recount period (nine days after voting), following which their retention is the secretary treasurer's responsibility [*Local Government Act*, section 150 (1) (2)]. Subsequent to the declaration of the official election results, the following materials must be available for 30 days for public inspection at the board of education offices during regular office hours:

- voting books used for the election
- copies of registered electors lists used during voting
- other records made during voting proceedings
- any solemn declarations and any written statements or declarations made in relation to voting proceedings.

[*Local Government Act*, section 150 (3) to (5)]

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Eight weeks after the declaration of the official election results, unless ordered otherwise by the courts or if an application for declaration of an invalid election is underway, the following must be destroyed as soon as possible:

- a. ballots used in the election;
- b. ballot stubs used in the election;
- c. copies of registered electors lists used for voting proceedings;
- d. voting books used in the election; and
- e. any solemn declarations and any written statements or declarations made in relation to voting proceedings, other than those used for the registration of electors.

[*Local Government Act*, section 150 (6) (7)]

Taking and Holding Office

The term of office for a person elected at a general school election normally commences on the first Monday after December 1 following the election, provided that the person has taken the oath of office [*School Act*, sections 49, 50]. Persons elected by acclamation can take the oath of office any time after being declared elected, but persons elected by voting must wait until the time period for an application for a judicial recount has ended or a recount confirms the person's election. See Chapter 12 for more details.

In order to take office, a person elected or appointed as trustee must make the prescribed oath of office, by oath or solemn affirmation, within the applicable time limit:

- if elected by voting, within 45 days after declaration of voting results;
- if elected by acclamation, within 50 days after general voting day;
- if appointed to office, within 45 days after the effective date of the appointment.

[*School Act*, section 50 (1)]

If the person fails to make the oath within the required period, the office is deemed to be vacant, and the person is disqualified from holding office as a trustee until the next general school election.

[*School Act*, section 52 (1)]

The oath must be made before a Court of Appeal, B.C. Supreme Court or Provincial Court judge, a justice of the peace or the school district secretary treasurer, and the person making the oath must obtain the complete oath or a certificate of it [*School Act*, section 50 (2)]. The form of oath is contained in B.C. Reg. 382/93, the School Trustee Oath of Office Regulation:

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I, . . . [*name of person elected or appointed*] . . . do [swear][solemnly affirm] that:

- I am qualified to hold office as a trustee in the . . . [*name of school district*] . . . School District and meet the trustee qualification requirements set out in the *School Act*;
- I have not, by myself or any other person, knowingly contravened the *School Act* respecting vote buying, intimidation or other election offences in relation to my election as a trustee; [*not applicable to persons who have been appointed*]
- I will abide by the *School Act* and I will faithfully perform the duties of my office, and will not allow any private interest to influence my conduct in public matters;
- I will comply with the requirements of the *School Act* that relate to conflict of interest and, in particular, I will comply with the requirements relating to disclosure of pecuniary and indirect pecuniary interest in a matter.

A person taking office as a trustee may also make an oath of allegiance [*School Act*, section 50 (4)] in accordance with the Oaths of Allegiance Act (Canada), R.S.C. 1985, c.0-1.

Expiry of Term of Office

The trustee's term of office expires immediately before the first Monday after December 1 in the year of the next general school election, or when at least three newly elected or appointed trustees have taken office [*School Act*, section 49 (b)]. It is also possible for a trustee's term of office to end upon:

- the trustee's resignation, under section 51 of the *School Act*;
- the office being deemed vacant for non-attendance at board meetings, under section 52(2) of the *School Act*;
- disqualification, following failure to file a disclosure statement or knowingly filing an incorrect financial statement within 150 days of the general voting day [*School Act*, section 52 (3) and *Local Government Act*, section 92];
- removal as trustee following conviction for an offence, under section 53 of the *School Act*;
- disqualification following an application to the B.C. Supreme Court by four electors on grounds that the trustee is not qualified, under section 54 of the *School Act*;
- appointment of an official trustee, under section 172 of the *School Act*.

The matter of filling vacancies on the board is addressed in Chapter 1, and by-election procedures are reviewed in Chapter 16.

CHAPTER 15 – ELECTION OFFENCES

What Constitutes an Election Offence and What Penalties Apply

Section 48 (1) of the *School Act* confirms that a person who contravenes section 151, 152, 152.1 or 153 of the *Local Government Act* (or 123, 124, 124.1 or 125 of the *Vancouver Charter*) as they apply to trustee elections commits an offence and is liable to applicable penalties specified in section 154 of the *Local Government Act* (or section 126 of the *Vancouver Charter*). The *Offence Act* governs how a complaint may be laid concerning an alleged offence, and how court proceedings may be instituted. It also specifies that an offence created under an enactment is punishable on summary conviction.

Section 151 of the *Local Government Act* prohibits the giving, lending or acceptance of any inducement or benefit of any kind to influence voting in an election. Section 152 forbids any form of intimidation or compulsion for the same purpose.

Section 153 outlines other election offences, such as:

- voting when not entitled to do so;
- knowingly nominating an unqualified person;
- without authorization, purporting to withdraw a candidate or an elector organization's endorsement of a candidate;
- obtaining a ballot by using another person's name;
- contravening the secrecy of a ballot;
- removing or replacing a ballot;
- removing or destroying a ballot box;
- campaigning within 100 metres of a voting place during voting;
- accepting campaign contributions not made or not received through a financial agent;
- using a list of registered electors for unauthorized purposes;
- impeding or obstructing an election official;
- having an election official attempt to affect the result or validity of an election.

The penalties provided in section 154 of the *Local Government Act* include:

1. for offences under sections 151 or 152
 - fines up to \$10,000;
 - imprisonment of up to two years;
 - prohibitions of up to six years from holding a local government office and/or voting in local government elections.

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2. for offences under section 152.1 or 153
 - fines up to \$5,000
 - imprisonment of up to one year;
 - prohibitions of up to six years from holding a local government office and/or voting in local government elections.

Section 153 (2) (a) of the *Local Government Act* and section 48 (2) of the *School Act* provide that a person who votes at a trustee election when not entitled commits an offence and is liable to the penalties under section 154 (2) of the *Local Government Act* of up to one year imprisonment, a fine of up to \$5,000, and/or prohibition of up to six years from holding local government office and voting in local government elections.

CHAPTER 16 - TRUSTEE BY-ELECTION PROCEDURES

What Procedures Are Required in Trustee By-Elections?

The questions of when vacancies on a board of school trustees need to be filled, and of who is responsible for undertaking and paying for any necessary proceedings, are addressed in Chapter 1. This chapter reviews the procedures for the holding of trustee by-elections, as specified in section 36 of the *School Act*.

Section 36 (1) states that a by-election must be held to fill a vacancy on a board that arises from:

- death or resignation of trustee [see also *School Act*, section 51];
- court declaration of an invalid election [*Local Government Act*, section 143];
- removal of trustee for failure to attend board meetings, failure to make the oath of office within the time limit set by section 50 of the *School Act*, conviction for an indictable offence or disqualification by the courts.

But if the vacancy occurs after January 1 in the year of a general school election (2008, 2011, 2013 . . .), the board may leave the vacancy unfilled, provided that no fewer than three trustees remain on the board until the election [*School Act*, section 36 (2)]. If fewer than three trustees continue to hold office, the board must hold a by-election. If no by-election is held the board must notify the minister who will appoint trustees to fill the vacancies [*School Act*, section 36 (5)].

Where a by-election is to be held, within 30 days after the vacancy occurs, the board must either appoint a chief election officer to conduct the by-election on behalf of the board, or notify the municipal council where a municipality is required to conduct trustee elections – in which case the municipality must appoint a chief election officer within 30 days of the board's notification.

[*School Act*, section 36 (3)]

The chief election officer must set the by-election date for a Saturday no later than 80 days after being appointed and the same nomination, registration and voting procedures are followed as for general school elections.

[*School Act*, section 36 (4)]

CHAPTER 16 - continued

If the by-election is not held as required, or fewer trustees than needed are elected, the Minister may appoint trustees to fill the vacancies.

[*School Act*, section 36 (6)]

The term of office of a trustee elected in a by-election, or appointed by the Minister as above, begins upon taking the oath of office and ends immediately before the first Monday after December 1 in the year of the next general school election.

[*School Act*, section 36 (7)]

Trustee Variation Guidelines

PROVINCE OF BRITISH COLUMBIA, MINISTRY OF EDUCATION

Appendix 1.1: Trustee Variation Guidelines

Note: "**person**" in the *Interpretation Act*, includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law.

These guidelines provide assistance to persons or boards of education when they wish to vary the numbers of trustees in a school district, or to vary the trustee electoral areas and/or the number of trustees assigned to trustee electoral areas.

A person or board of education must consider the principle of voter parity (representation by population) based on the concept of "one person – one vote". Any movement away from "one person – one vote" will only be allowed if it is impossible to have relative equality of voting power and the change will result in more effective representation.

Relevant Legislation

Section 30 (4) (5) of the *School Act*

Procedures

The following procedure is provided as a guide:

1. A person or a board should have a stated rationale for requesting a variation in the number of trustees in a school district, any trustee electoral areas and/or the number of trustees assigned to trustee electoral areas.
2. The rationale should be brought to public attention and the views of the public obtained, as expressed through some form of public consultation.
3. The views of appropriate municipal and regional board officials should be obtained as well as the views of other special interest groups (e.g. First Nations) which will have an interest in this matter.
4. A person or a board should then write a letter to the Minister requesting that, pursuant to section 30 (4) of the *School Act*, the Minister consider making a variation order.

TRUSTEE VARIATION GUIDELINES - continued

5. The letter should include:

- a. in respect to a variation of trustee electoral areas
 - i. for the current trustee electoral areas
 - the name of each trustee electoral area
 - the number of trustees representing each area
 - the metes and bounds description of each area (if currently available)
 - a map which clearly indicates each area (preferably a single map of the complete school district indicating each area);
 - ii. for the proposed trustee electoral areas
 - the name of each area
 - the number of trustees representing each area
 - the metes and bounds description of each area (in both hard copy and electronic format - Microsoft Word preferred)
 - a map which clearly indicates each area (preferably a single map of the complete school district indicating each area);
- b. the rationale for the changes requested and an indication of the nature of the public discussion that was involved including any discussion with boards of education, municipal councils, regional boards or special interest groups (e.g. First Nations);
- c. if applicable, the date that the board of education, municipality, regional board, etc. passed a resolution to request a trustee variation for the school district and/or for certain trustee electoral areas; and
- d. a request that, pursuant to section 30 (5) of the *School Act*, the Minister vary the number of trustees in the manner described or vary the electoral areas, or both of these, including any suggestions by the board, municipality, regional board, etc. concerning the manner in which and the times at which any new trustees under the variation order are to be appointed or elected.

6. The Minister will consider the request and, if the request is not from the board of education affected, the Minister will forward the request and the supporting documentation to the affected board of education to give it an opportunity to respond.

7. Once the Minister has received the affected board of education's response in the event that another person is requesting the variation or, if it is only the board that is making the request, the Minister will consider all the documentation presented and will notify all persons making a request as to the decision as soon as is practical.

8. Note that section 30 (5) of the *School Act* states that if the Minister reduces the number of trustees, then the order reducing the number of trustees becomes effective for the following general school election.

Contact

If you have questions/comments relating to these guidelines, please contact the Governance and Legislation Unit at EDUC.GovernanceDepartment@gov.bc.ca or (250) 356-1404

School District Boundary Change Guidelines

PROVINCE OF BRITISH COLUMBIA, MINISTRY OF EDUCATION

Appendix 1.2: School District Boundary Change Guidelines

These guidelines provide assistance to a person or a board of education when they wish to change their school district outside boundaries. From time to time, the Ministry receives requests for changes to school district boundaries. Since a change in one district boundary will affect the boundary of at least one other school district, a person or a board of education seeking boundary changes must ensure that they confer with all other boards affected by the boundary change.

It should be noted that a change to a school district boundary will likely require changes to the trustee electoral areas of the affected districts. The guidelines of changing trustee electoral areas should be reviewed in conjunction with the boundary change guidelines.

Relevant Legislation

Section 176 of the *School Act*

Additional Definitions:

For the purpose of the procedures below “person” has the same meaning as in the Interpretation Act.

“**Person**” includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law.

Procedures

The following guidelines are provided to assist a person or a board of education in the preparation of the information that the Lieutenant Governor in Council requires before exercising the authority under section 176 of the *School Act*:

1. The person or board of education seeking the change should have a stated rationale for altering the existing school district boundaries.

SCHOOL DISTRICT BOUNDARY CHANGE GUIDELINES – continued

2. The rationale for altering the existing district boundaries should be brought to public attention for discussion and should include appropriate consultation with municipal councils, regional boards and special interest groups, including consultation and discussion with any other board of education(s) whose district boundaries would be altered or affected.
3. All boards of education affected by a proposed boundary change must bring the proposal to the attention of interest groups and the public in their districts and must pass a resolution concerning their agreement or non-agreement with the boundary change.
4. The person or board of education requesting the boundary change should then write to the Minister of Education requesting that, pursuant to section 176 of the *School Act*, the Minister consider recommending to the Lieutenant Governor in Council an order to alter the boundaries of the school district.
5. The letter to the Minister should include:
 - the metes and bounds description of the existing school district boundaries;
 - a map of the existing school district boundaries;
 - a map of the proposed school district boundaries;
 - the rationale for the proposed boundary changes and an indication of the nature of the public discussion that has been involved, including the views of other affected boards of education, municipal councils, regional boards and special interest groups;
 - if the change is being requested by a board of education, the date the board passed a resolution to request an alteration to the school district boundaries;
 - letters from the affected boards of education outlining their public consultation, including copies of resolutions from these affected boards indicating their position on the proposed boundary changes;
 - a request that, pursuant to section 176 of the *School Act*, the Minister of Education consider recommending to the Lieutenant Governor in Council an order to alter the district boundaries; and,
 - an indication of whether or not a transfer of assets (e.g., a school or school bus) between boards of education is being requested pursuant to section 176 (2) of the *School Act*.
6. The Minister will consider the request and notify the person and boards of education, as soon as it is practical, whether the Lieutenant Governor in Council has approved the recommendations made by the Minister.

Contact

If you have questions/comments relating to these guidelines, please contact the Governance and Legislation Unit at EDUC.GovernanceDepartment@gov.bc.ca or (250) 356-1404

Election Conduct Guidelines

PROVINCE OF BRITISH COLUMBIA, MINISTRY OF EDUCATION

Appendix 1.3: Election Conduct Guidelines

The *School Act* states that where a trustee electoral area includes both all or part of a single municipality, and all or part of a rural area, the Minister of Education, if requested by the board of education, may order that the municipal council must conduct the trustee elections for the trustee electoral area.

Relevant Legislation

Sections 37(2) and 38(3) of the *School Act*

Procedures

The following procedure is provided to assist boards of education when requesting a ministerial order to require that a municipal council conduct trustee elections for a trustee electoral area:

1. The board should state the rationale for its request for an order that the municipal council must conduct the trustee election in the trustee electoral area. It should be noted that if the Minister issues the order, the board of education must reimburse the municipality for the costs necessarily incurred by the municipality in conducting the election pursuant to section 38(3) of the *School Act*.
2. The board should consult with the municipality and the rural area in question prior to the municipality passing its election bylaw, and inform the municipality and the rural area of its intention to request a ministerial order for the municipal council to conduct the trustee election for the trustee electoral area in question.
3. The board must pass a resolution concerning its desire to seek an order under section 37(2) of the *School Act*.
4. The secretary treasurer or the board of education chairperson, no later than four weeks prior to the municipality passing its election bylaw, should write to the Minister of Education requesting an order pursuant to section 37(2) of the *School Act*.
5. The letter to the Minister should contain:
 - a. a request that the Minister consider the board's request for an order pursuant to section 37 (2) of the *School Act*;
 - b. for each trustee electoral area for which an order is sought:
 - i. the name of the trustee electoral area;

ELECTION CONDUCT GUIDELINES - continued

- ii. the metes and bounds description of the trustee electoral area
 - iii. the name of the municipality that would be required to conduct the election; and,
 - iv. an indication of previous responsibility and cost for the conduct of the election;
- c. the rationale for each trustee electoral area and a description of the views of the municipal council, local officials of the rural area or other interested parties; and
 - d. the date the board passed a resolution to request an order pursuant to section 37(2) of the *School Act*.
6. The Minister will consider the request and will notify the board as to the decision.

Contact

If you have questions/comments relating to these guidelines, please contact the Governance and Legislation Unit at EDUC.GovernanceDepartment@gov.bc.ca or (250) 356-1404

Advance Voting Exemption Guidelines

PROVINCE OF BRITISH COLUMBIA, MINISTRY OF EDUCATION

Appendix 1.4: Advance Voting Exemption Guidelines

The *School Act* provides that the Minister may by order exempt a board of education from its obligation to hold one or both of the mandatory advance voting opportunities that would otherwise be required under section 97(2) of the *Local Government Act*. In those cases where an electoral area constitutes 5,000 or fewer persons, section 97(3) of the *Local Government Act* permits a board of education to provide, by bylaw, that the second required advance voting opportunity not be held.

Relevant Legislation

Section 45(5) of the *School Act*

Section 97 of the *Local Government Act*

Procedures

The following procedure is provided as a guide to assist school districts in an application for an order exempting a board of education from its obligation to hold one or both of the mandatory advance voting opportunities, otherwise required under the *Local Government Act*.

1. The secretary treasurer or the board of education chairperson, no later than eight weeks before the first day of the nomination period for the election or by-election, should write to the Minister of Education requesting an Advance Voting Exemption Order.
2. The board must pass a resolution concerning its desire to seek an order under section 45(5) of the *School Act* for each electoral area for which the board requests such an order.
3. The letter to the Minister should contain:
 - a. for each trustee electoral area for which an order is sought:
 - i. the name of the trustee electoral area; and
 - ii. the metes and bounds description of the trustee electoral area;

ADVANCE VOTING EXEMPTION GUIDELINES - continued

- b. the rationale for the request, as outlined below, and an indication of any discussion that has taken place with interested parties. The board should have a stated rationale for its request for an exemption order under section 45(5). The rationale could include such considerations as:
 - i. the population of the trustee electoral area;
 - ii. elector turnout in any previous advance voting opportunities, and anticipated voter turnout for advance voting opportunities during the upcoming election, or by-election;
 - iii. any other advance, additional, mail or special voting opportunities being offered;
 - iv. the approximate cost to the board of education of holding advance voting opportunities, based upon previous experience, where information is available;
 - v. the number and location of voting places for general or by-election voting day; and
 - vi. the advance voting opportunities being offered by the local municipal and/or regional government in the case of a general local election.
 - c. the date the board passed a resolution to request an order pursuant to section 45 (5) of the *School Act*; and
 - d. a request that the Minister consider the board's request for an order pursuant to section 45(5) of the *School Act*.
4. The Minister will consider the request and will notify the board as to the decision in time for any board requirements under section 45(6) of the *School Act*.

Contact

If you have questions/comments relating to these guidelines, please contact the Governance and Legislation Unit at EDUC.GovernanceDepartment@gov.bc.ca or (250) 356-1404.

Trustee Appointment Guidelines

PROVINCE OF BRITISH COLUMBIA, MINISTRY OF EDUCATION

Appendix 1.5: Trustee Appointment Guidelines

The purpose of these guidelines are to clarify under what circumstances the Minister of Education may appoint board of education trustees to fill vacancies.

Relevant Legislation

Under authority of the [School Act](#) sections 32 and 36 (6):

32 (1) Except as provided in this Division, a person is qualified to be nominated for office and to be elected or appointed to and hold office as a trustee if, at the relevant time, the person meets all the following requirements:

(a) the person must be an individual who is, or who will be on general voting day for the election or the effective date of the appointment, as applicable, age 18 or older;

(b) the person must be a Canadian citizen;

(c) the person must have been a resident of British Columbia, as determined in accordance with section 42, for at least 6 months immediately before the relevant time;

(d) the person must not be disqualified by this Act or any other enactment from voting in an election in British Columbia or from being nominated for, being elected to or holding office as trustee, or be otherwise disqualified by law.

(2) A person whose term of office as trustee has expired or is about to expire is eligible for re-election if the person is otherwise qualified to be a trustee.

(3) At any one time, a person is not eligible to be nominated for or elected as trustee for more than one trustee electoral area for any one school district.

36 (6) If a trustee election is not held as required by or under this Act, or if the electors fail to elect the number of trustees that are to be elected, the minister may appoint persons as trustees to fill the vacancies.

TRUSTEE APPOINTMENT GUIDELINES - continued

Procedures

The *School Act* states that the Minister of Education may appoint persons as trustees to fill vacancies if :

- an election is not held as required by or under the *School Act*, or
- the electors fail to elect the number of trustees that are to be elected

In situations where either of the above events occurs, the following procedure is provided to assist boards of education:

1. The board of education should wait until after the scheduled date of the trustee election has passed.
2. The secretary-treasurer or the board of education chairperson, within one month after the scheduled election date, should write to the Minister of Education indicating that one of the two events indicated above has occurred and provide any necessary background information.
3. The letter to the Minister should contain:
 - a. the names of each respective trustee electoral area to which an appointment (or appointments) is sought;
 - b. the names of any persons that the board has received in respect of the appointment(s) to each respective trustee electoral area;
 - c. the names of any persons that the board wishes to put forward in respect of the appointment(s) to each respective trustee electoral area; and,
 - d. an affidavit signed by the secretary-treasurer stating that the persons referred to in 3 (c) above meet the requirements for holding office as trustee in section 32 of the *School Act*.
4. The Minister will consider the letter and will notify the secretary-treasurer and the chairperson of the board of education of the Minister's decision as soon as practical.
5. It should be noted that these guidelines do not preclude the Minister from seeking recommendations from sources other than the board of education.

Contact

If you have questions/comments relating to these guidelines, please contact the Governance and Legislation Unit at EDUC.GovernanceDepartment@gov.bc.ca or (250) 356-1404.