



Trustee Elections Bulletin 6/2011

(by e-mail, four pages)

November 23, 2011

To: Election officers for trustee elections, Secretary Treasurers, Executive Assistants
Additional courtesy list

From: Judith Clark, BCSTA General Counsel

Re: Post-Election: inaugural meetings, publication of results, filings

Questions from the field are focusing on plans for inaugural meetings and other post-election processes. This is an updated version of *Trustee Elections Bulletin 6/2008*, so may look familiar to some with long memories. Most of this bulletin is relevant to school district personnel but some also relates to elections officers for trustee elections. I welcome your questions and comments.

Note: When municipalities conduct trustee elections, there is often uncertainty about who fulfills obligations that fall on the “designated local government officer” under the *Local Government Act (LGA)*. Section 46 (2) of the *School Act (SA)* deals with this by providing that this term refers to the secretary treasurer when dealing with trustee elections. In some cases, such as where to file campaign financial disclosure forms, confusion may persist, as candidates may file in the same place as they filed their nomination papers. It is recommended that municipal and school district staff be mindful of possible confusion and communicate about who is doing what.

Transition: end of term of office

Members of the board who were not re-elected cease to be trustees when their term of office expires. That is “immediately before the first Monday after December 1 ... or when at least three trustees elected at ... [the]... election have taken office, whichever is later.”(*SA* s. 49(b)): Thus **December 5, 2011** is the earliest date on which they are no longer trustees (i.e. they are still trustees on December 4th up until midnight, even if new trustees have been sworn in earlier.) They are entitled to continue in office after December 5th until at least three trustees have been sworn in.

Q: The inaugural meeting is scheduled for December 13. A committee meeting is scheduled for December 8. Can the members of the present board participate in the committee meeting, even if they are not returning to the new board?

A: Yes, the present trustees and the present board still has full authority until the new board is sworn in. However, if the new trustees wanted to prevent the present board from carrying out this business, they could do so, if at least three took their oaths ahead of time, as described below, before the inaugural meeting. This would end the term of the present trustees and the present board. Therefore it may not be a good time to conduct controversial business.

Trustee Oath of Office

Q: Where do I find the form of oath?

A: The form has not changed. It can be found on page D-85 of the [Manual of School Law](#), the [School Trustee Oath of Office Regulation](#). It differs slightly from the one used by local governments contained in the *Local Government Elections Regulation*.

Q: What if a trustee-elect cannot attend the inaugural board meeting?

A: It is not necessary that the oath be taken during a board meeting, but the trustee-elect cannot take office until the written certificate is delivered to the secretary treasurer. Trustees must be sworn in within the time limit set out in s.50 of the *School Act* or else their office is deemed vacant (SA s. 52). For candidates elected by voting this is **January 7, 2011**.

Q: Can we ask our board lawyer to attend and administer the oath?

A: No, the oath can only be administered by those persons named in section 50 of the *School Act*: a secretary treasurer, a local government corporate officer, a justice of the peace, or a judge of the Court of Appeal, Supreme Court or Provincial Court. A lawyer or notary is not authorized to administer the oath of office under the *School Act*. This is different from the oaths for local government elected officials, which under section 210(2) of the *Local Government Act* may be administered by a “commissioner for taking affidavits for British Columbia” or the “chief election officer” as well as judges, etc.

Reporting and publication of election results

Q: What reports have to be made and by when?

A: **Chief elections officers** are required to report election results to the board of education by Friday **December 23, 2011** (*LGAct* s. 148(1)). (Reports of acclamations are due by Wednesday **November 23, 2011**.) The report must include “a compilation of information on the ballot counts.” If the election results are changed by judicial recount or court challenge, the **secretary treasurer** is responsible for submitting a supplementary report reflecting the changes.

Secretary treasurers are required to send names of elected trustees to the [BC Gazette](#) for publication (*LGA* s. 149, applicable to school trustee elections by *School Act* s. 45 or s. 46.) The deadline for submission is 30 days after elected candidates (including candidates elected by acclamation) have taken office. Assuming candidates take office December 5, the last day for submission to the *Gazette* is **January 4, 2012**.

The *Gazette* staff advises that:

- Information required is: the names of the elected officials, their positions, the chief electoral officer's name, the date and place that the information was made official
- Cost of the ad is per word; minimum charge is \$52.55 for 100 words.
- You do not need to include payment; you will be invoiced.
- The ad can be e-mailed to mailed to QPGazette@gov.bc.ca or faxed to 250 387-1120 or mailed to BC Gazette, PO Box 9452 Stn Prov Govt, Victoria, BC V8W 9V7
- Cut-off for submission each week is every Tuesday @ 1.30 pm for a Thursday printing and a Friday mail-out.

Financial Disclosure Act statements

There have been no changes in the required form of statements under the *Financial Disclosure Act*. Even though candidates filed one with their nomination papers, all trustees are required to file another between **January 1 and January 15, 2012**. The former trustees are also required to file one made after leaving office, by **January 15, 2012**. The [form](#) is available online.

Campaign financing disclosure

Candidates, elector organizations and campaign organizers are responsible for complying with campaign financing disclosure requirements but any that miss the deadline are likely to look for someone to blame. **Chief election officers** may wish to issue one last reminder to financial agents, noting the deadline of Monday, **March 19**. They will need to ensure that the declarations of financial agents that they received are delivered to secretary treasurers.

Secretary treasurers may wish to diarize reminders to required filers as the time approaches. If some miss the March 19 deadline, then at the board's first public meeting, the secretary treasurer must report to the board any candidates, elector organizations or campaign organizers whose statements have not been filed. This should take place before **April 18**, the last day of the grace period. Any that are still missing after that must be reported to the board's public meeting as soon as practicable and a report sent to the Inspector of Municipalities for inclusion on the [Disqualifications List](#).

[Campaign financing disclosure forms](#) should be filed with the school district secretary treasurer as the person who needs to report on compliance, but this is a frequent source of confusion for candidates and financial agents, and it may be advisable to arrange with local government offices that they accept these filings on the secretary treasurer's behalf.

Board chair election

Q: One of the trustees cannot attend the inaugural meeting; can she vote by proxy for the board chair?

A: Not exactly. The board has no authority to allow trustees to vote for board chair or vice-chair by proxy, but in most cases can permit the absent trustee to participate in the inaugural meeting "by telephone or other means of communication" as authorized by *School Act* section 67(6). The board may (but not must) "allow a trustee to participate in or attend a meeting by telephone or other means of communication if all trustees and other persons participating in or attending the meeting are able to communicate with each other." Some boards have specifically dealt with this in their board procedures. Others could authorize the absent trustee to participate in all or part of the meeting by motion.

A process of voting that preserves the secrecy of the ballot to the fullest extent possible would then be proposed and approved by the board (e.g., that the trustee convey his ballot instructions offline or privately to the secretary treasurer or other board employee who would cast the ballot on his behalf). But the trustee would still have to be participating in the meeting.

Q: A number of trustees are seeking election as board chair. If our board bylaws do not provide for dropping candidates, how can we reach majority support for one candidate?

A: Most board procedure policies or bylaws include procedures for the election of chair and vice-chair. These should ensure that the winner has support from a majority of the board, so the election is not final until one person receives a majority of votes cast.

Robert's Rules of Order advises against routinely dropping the lowest-ranked candidate and recommends repeated balloting with no dropping of candidates other than voluntary withdrawals, arguing that "The nominee in lowest place may turn out to be a 'dark horse' on whom all factions may prefer to agree." (See section 46, pages 437 and 441 in *RRONR* (11th edition).)

In order for the process of repeated balloting to work when the names on the ballot are the same, the trustees may need to have some time to caucus and consider their options.

Q: Our board procedures bylaw provides for drawing of lots as a tie-breaker if there is a tie after two successive ballots. Does this apply when it is not a two-way tie between two candidates?

A: The tie-breaker is intended to resolve a stalemate such as 4-4 or 3-3. In this situation, the winner of the draw cannot be removed as chair unless he loses support, so the result is reasonably stable. If the tie is, for example, 4-4-1 or 3-3-3, then in my opinion the tie-breaker is not intended to apply and another ballot should be held. A decision by lot in the 4-4-1 situation would be unfair. This is not a stalemate: the single vote candidate may cast the deciding vote, or members of one faction may opt for him as the compromise candidate. If the tie-breaker were applied in the 3-3-3 situation, then the winning candidate could be easily removed from the chair by a combination of supporters of the other candidates. So the preferable procedure is to continue the balloting and allow trustees to arrive at their preferred compromise candidate.

Q: What if the board procedures do not provide for a tie-breaker, and the board is at impasse after repeated balloting?

A: If the board procedures are silent, the board can decide how to proceed by motion. Besides the drawing of lots, possibilities include elimination of the bottom candidate from the next round of balloting, a preferential ballot to eliminate the bottom candidate, adjournment of the meeting to a fixed time to complete the election and any other business (the election continues where it left off), the election to be continued at the next meeting, or another election to be held at the next meeting (the election starts afresh, enabling new candidates to be nominated).

War stories: got some?

A de-brief locally with those who shared the election experience can be very useful in improving the process next election. I invite you to share those stories through me, so that at the next election, there is a record that can be drawn on by BCSTA to help in advising boards about possible pitfalls. My e-mail address is jclark@bcsta.org.