



B R O W N L L P
B a r r i s t e r s & S o l i c i t o r s

ELECTION 2013 – IT’S JUST AROUND THE CORNER

by Michael S. Solowan

October 21, 2013 is Election Day for municipalities in Alberta. To help you prepare for election season we have compiled a summary of the most recent amendments to the *Local Authorities Election Act* (“LAEA”) that apply to the upcoming general election as well as important dates and considerations municipalities need to keep in mind to limit the risk of a legal challenge to your local election.

IMPORTANT DATES

September 9-15, 2013	- NOTICE PUBLICATION (calling for Nominations)
September 16-22, 2013	- NOTICE PUBLICATION (calling for Nominations)
September 23, 2013	- NOMINATION DAY
October 21, 2013	- ELECTION DAY

By now municipalities should be addressing their minds to the upcoming general election. In fact, if your municipality intended to pass a bylaw to, for example, establish wards, amend existing ward boundaries or change the number of councillors in the municipality it must have been passed by April 19, 2013 in order to take effect for the October election. Similar timelines apply to bylaws to authorize early nominations, require nomination deposits, or establish early voting hours, passed pursuant to the LAEA, which requires such bylaws be passed *by June 30 of the election year*. Keep in mind that the LAEA imposes a number of distinct timelines for specific types of bylaws (including advertising requirements) so early consideration of these issues and seeking appropriate advice is recommended.

LEGISLATIVE CHANGES

The LAEA was recently amended by Bill 7 – the *Elections Accountability Amendments Act*, which was proclaimed on December 10, 2012. The most noteworthy amendments that take effect for the October 21, 2013 general election are as follows:

- **4 Year Term of Office**

The term of office for councillors (and school board trustees) running for election is now a **four** year term (Section 10(1)).

- **Candidate Nomination Forms**

A Returning Officer is required to refuse a candidate's nomination form if it has not been signed by at least **five** eligible electors (Section 28 (3.01)).

- **Proof of Elector Eligibility**

If a list of electors is **not** prepared by a municipality, voter identification will be required from an elector in order to vote. Acceptable identification is either:

- one piece of government issued picture identification that contains the person's name and current address (such as an Driver's License); OR
- one piece of identification authorized by the Chief Electoral Officer under the *Elections Act*, which indicates the elector's name and current address.

A municipality may pass a bylaw no later than six months prior to nomination day which supplements the number and types of identification required to allow a person to vote (Section 53). However, given the short period of time between the proclamation of the amendments to the LAEA and this deadline the Minister has approved that a bylaw supplementing the identification required by electors may be passed **four** months prior to May 23, 2013, nomination day.

- **Campaign Deficits**

Candidates who have carried over a campaign deficit from a previous election must clear this deficit if they are not running in the October 2013 general election (Section 147.4(1.1)(b)).

- **Campaign Surplus**

The \$500 exemption on campaign surpluses has been eliminated. All surplus funds from a previous election must now be donated to a charity or the municipality if a candidate is not running in the October 2013 general election.

CONDUCT OF THE ELECTION

Detailed procedural rules for the conduct of municipal elections are outlined in the LAEA and its associated regulations. What follows is a brief overview of the general requirements outlined in the LAEA:

Returning Officer

A Council must, by resolution, appoint a Returning Officer. The Returning Officer appoints deputies, constables and other persons as required. The Returning Officer's duties include establishing voting stations, receiving and declaring nominations, providing ballot boxes and doing "all things necessary for the conduct of an election."

Nominations

Municipalities must ensure the nomination of every candidate is in the prescribed form and signed by at least five eligible electors. Each candidate must provide a signed acceptance letter stating the candidate's eligibility to be elected and agreeing to accept the office if elected. A person cannot be nominated for more than one office of the same elected authority.

There are several factors that may make a person ineligible to be a candidate for election, including:

- the person has outstanding taxes exceeding \$50 or other debt owing to the municipality exceeding \$500 and in default for more than 90 days; or
- the person is an employee of a municipality in which he or she is seeking election and has not taken leave of absence (Section 22).

The Returning Officer must receive nominations at the local jurisdiction office between 10 am and noon on Nomination Day, September 23, 2013 (subject to any municipal bylaw that provides otherwise). If the number of persons nominated for any office is less than the number required to be elected, Nomination Day shall be extended (Section 31).

Voting Procedure

Municipalities must comply with the voting procedures outlined in the LAEA in order to avoid legal challenges to the election. The procedures to be followed are more extensive than this article can cover, but some of the areas the LAEA provides procedures for include, but are not limited to, the following:

- the form and content of ballots,
- providing ballot boxes,
- setting up voting stations and privacy requirements when voting,
- voting hours,
- checking voter eligibility,
- who can be present at voting stations,
- irregular voting (such as advance voting, special ballots and institutional voting),
- sealing and opening ballot boxes, and
- counting ballots.

Voting Hours

Municipalities must ensure that every voting station be kept open continuously on Election Day from 10 am until 8 pm (subject to any municipal bylaw that provides that a voting station is to be open before 10 am). The Deputy Returning Officer (DRO) must declare the voting station closed promptly at 8 pm on Election Day. If there is still an elector in the voting station when it is declared closed, that elector will be allowed to vote, but no other elector will be allowed to enter the voting station to vote.

Voting Stations and Privacy Requirements

The vote must be by secret ballot and therefore no one should be in a position where they can see how the elector votes. Aside from electors who are voting, the only individuals entitled to be present at the voting station are:

- the Returning Officer,
- the DRO,
- a constable,
- candidates or their official agents,
- scrutineers,
- and individuals authorized by the DRO to temporarily observe the voting procedures.

Irregular Voting

Provisions for advanced votes, special votes, institutional voting and other irregular voting procedures are also provided for in the LAEA (Sections 72-84). Council bylaws and resolutions will dictate to what extent irregular voting procedures apply to your local election. Municipalities should be considering the types of accommodations they want to make to facilitate irregular voting to assist persons who may be unable to attend a regular voting station on Election Day. The trend we've observed is towards greater accommodation of individuals through irregular voting to encourage voter turnout.

Counting Ballots

The presiding DRO must, in the presence of at least one deputy or returning officer, open each ballot box and count the ballots promptly at the close of the voting station. After counting the votes, the presiding DRO is to make up separate packets of the valid, spoiled, unused and sealed ballots.

Discretionary Ministerial Powers

If a municipality does not comply with the legislative requirements for an election, it may lead to a costly legal challenge to the election. If your municipality is unable to comply with a procedural requirement for an election or misses a procedural deadline, the municipality may appeal to the Minister for relief in the form of a Ministerial Order. The Minister may, in his discretion, give directions governing the conduct of a general election if the Minister considers the provisions of the LAEA to be insufficient (Section 6(1)(a)). The Minister may also decide any questions arising from a difficulty or impossibility of applying the LAEA and then may order that the dates prescribed by the LAEA be altered (Section 6(2)). Please note, however, that an application to have the Minister alter dates prescribed by the LAEA for the doing of any matter or thing should be made immediately upon discovering that your municipality will not be able to comply with the prescribed dates. The Minister cannot retroactively remedy a defect after the election has taken place.

There are many more procedural requirements that govern municipal elections than we can possibly cover in this brief article. Seeking early legal advice and assistance is your municipality's best defence to limit the risk of a costly legal challenge of the election.

If you have any questions or concerns with respect to this article or election matters in general, please contact Michael S. Solowan at 780-497-4893 or msolowan@brownleelaw.com or any other member of the Municipal Governance & Authority Practice Group of Brownlee LLP in Edmonton at (780) 497-4800 or in Calgary at (403) 232-8300.