

2021 By-election: Local Government Act

Qualification of the Nominator

Nomination of candidates

- 86** (1) A nomination for office as a member of a local government must be made in accordance with section 87, separately for each candidate,
- (a) by at least 2 qualified nominators of the municipality or electoral area for which the nomination is made, or
 - (b) if a bylaw under subsection (2) of this section applies, by at least the minimum number of such persons as set by the bylaw.
- (2) A local government may, by bylaw, set the minimum number of qualified nominators as follows:
- (a) in relation to a municipality or electoral area that has a population of 5 000 or more, the minimum number of qualified nominators may be set at either 10 or 25;
 - (b) in relation to a municipality or electoral area that has a population of less than 5 000, the minimum number of qualified nominators may be set at 10.
- (3) In order to be qualified as a nominator, a person
- (a) must be an elector of the municipality or electoral area for which the nomination is made, and
 - (b) in the case of a nomination for an office to be filled on a neighbourhood constituency basis, must also be qualified as a resident elector or non-resident property elector in relation to the area of the neighbourhood constituency.
- (4) A person may subscribe as nominator to as many nomination documents as, but not more than, the number of persons who are to be elected to fill the office for which the election is being held.
- (5) Even if one or more of the nominators are not qualified in accordance with this section, a nomination is valid as long as the nomination is made by at least the minimum number of qualified nominators.

Rules for determining residence

- 67** (1) The following rules apply to determine the area in which a person is a resident:
- (a) a person is a resident of the area where the person lives and to which, whenever absent, the person intends to return;
 - (b) a person may be the resident of only one area at a time for the purposes of this Part;
 - (c) a person does not change the area in which the person is a resident until the person has a new area in which the person is a resident;
 - (d) a person does not cease being a resident of an area by leaving the area for temporary purposes only.
- (2) As an exception to subsection (1), if
- (a) a person establishes for the purposes of attending an educational institution a new area in which the person is a resident, and
 - (b) the new area is away from the usual area in which the person is a resident,
- the person may choose for the purposes of this Part either the usual area or the new area as the area in which the person is a resident.

Qualification of the Nominee

Who may hold office on a local government

81 (1) **A person is qualified to be nominated for office**, and to be elected to and hold office, on a local government 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, 18 years of age 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 67, for at least 6 months immediately before the relevant time;
- (d) the person must not be disqualified under this Act or any other enactment from voting in an election in British Columbia or from being nominated for, being elected to or holding the office, or be otherwise disqualified by law.

(2) **Without limiting subsection (1) (d), the following persons are disqualified from being nominated** for, being elected to or holding office on a local government:

- (a) a person who is a judge of the Court of Appeal, Supreme Court or Provincial Court;
- (b) a person who is disqualified under section 82 as an employee of a local government, except as authorized under that section;
- (c) a person who is disqualified under any of the following provisions of this Act, including as the provisions apply under section 6 (6) [*application to trustees*] of the [Islands Trust Act](#):
 - (i) section 202 (4) [*failure to make oath or affirmation of office*];
 - (ii) section 204 (1) [*unexcused absence from board meetings*];
- (d) a person who is disqualified under any of the following provisions of the [Community Charter](#):
 - (i) Division 6 [*Conflict of Interest*] of Part 4 [*Public Participation and Council Accountability*], including as it applies under section 205 (1) [*application to regional district directors*] of this Act and under section 6 (7) [*application to trustees*] of the [Islands Trust Act](#);
 - (ii) section 120 (1.1) [*failure to make oath of office*];
 - (iii) section 125 (5) [*unexcused absence from council meetings*];
 - (iv) section 191 (3) [*unauthorized expenditures*];
- (e) a person who is disqualified under any of the provisions referred to in paragraph (c) or (d) as the provision applies under another enactment;
- (f) a person who is disqualified from holding office on the council of the City of Vancouver under any of the provisions of the [Vancouver Charter](#) referred to in section 38 (2) (c) or (d) [*disqualifications from holding office*] of that Act;
- (g) a person who is disqualified from holding office under
 - (i) Division 18 [*Election Offences*] of this Part as it applies to elections or voting under this Act or any other Act, or
 - (ii) Division (17) of Part I of the [Vancouver Charter](#) as it applies to elections or voting under that Act or any other Act;
- (h) a person who is disqualified under the [Local Elections Campaign Financing Act](#) from holding office on a local authority;
- (i) a person who is disqualified under any other enactment.

Challenge of Nomination

- 91 (1) A nomination may be challenged only by an application to the Provincial Court in accordance with this section.
- (2) The time period during which a challenge may be made is between the time of the delivery of the nomination documents in accordance with section 89 and 4 p.m. on the 4th day after the end of the nomination period.
- (3) A challenge may be made only by
- (a) a person who is an elector of the municipality or electoral area for which the election is being held,
 - (b) another nominee in the same election, or
 - (c) the chief election officer.
- (4) A challenge may be made only on one or more of the following bases:
- (a) that the person is not qualified to be nominated or elected;
 - (b) that the nomination was not made in accordance with sections 86 to 89;
 - (c) that the usual name given under section 87 (1) (b) in the nomination documents is not in fact the usual name of the person.
- (5) The chief election officer must commence a challenge under this section if, on a review under section 89 (6) [*review of disqualification list*], it appears to the chief election officer that a person is disqualified from being nominated.
- (6) The document filed with the court to commence a challenge must briefly set out the facts on which the challenge is based and must be supported by affidavit as to those facts.
- (7) At the time a challenge is commenced, a time must be set for the hearing that is adequate to allow the court to give its decision on the matter within the time limit set by subsection (9).
- (8) The person making a challenge must
- (a) immediately give notice of the challenge to the chief election officer and the person whose nomination is challenged, and
 - (b) within 24 hours of filing the document commencing the application, serve on these persons that document, the accompanying affidavit and a notice of the time set for the hearing.
- (9) Within 72 hours of the end of the period for commencing a challenge, the court must hear and determine the matter and must issue an order, as applicable,
- (a) confirming the person as a candidate or declaring that the person is no longer a candidate, or
 - (b) declaring that the person is or is not entitled to have the usual name indicated in the nomination documents used on the ballot.
- (10) The court may order that the costs of a challenge, within the meaning of the Supreme Court Civil Rules, be paid in accordance with the order of the court.
- (11) The decision of the court on a challenge under this section is final and may not be appealed.

Candidate Representatives

Appointment of candidate representatives

- 102 (1) A candidate may appoint
- (a) one individual to act as official agent of the candidate, to represent the candidate from the time of appointment until the final determination of the election or the validity of the election, as applicable, and
 - (b) scrutineers, to represent the candidate by observing the conduct of voting and counting proceedings for the election.
- (2) An appointment as a candidate representative must
- (a) be made in writing and signed by the person making the appointment,
 - (b) include the name and address of the person appointed, and
 - (c) be delivered to the chief election officer or a person designated by the chief election officer for this purpose as soon as practicable after the appointment is made.
- (3) An appointment as a candidate representative may be rescinded only in the same manner as the appointment was made.
- (4) An appointment of an official agent may include a delegation of the authority to appoint scrutineers.
- (5) If notice is to be served or otherwise given under this Part to a candidate, it is sufficient if the notice is given to the official agent of the candidate.

Presence of candidate representatives at election proceedings

- 103 (1) A candidate representative present at a place where election proceedings are being conducted must
- (a) carry a copy of the person's appointment under section 102,
 - (b) before beginning duties at the place, show the copy of the appointment to the presiding election official or an election official specified by the presiding election official, and
 - (c) show the copy of the appointment to an election official when requested to do so by the official.
- (2) The presiding election official may designate one or more locations at a place where election proceedings are being conducted as locations from which candidate representatives may observe the proceedings and, if this is done, the candidate representatives must remain in those locations.
- (3) The absence of a candidate representative from a place where election proceedings are being conducted does not invalidate anything done in relation to an election.

Scrutineers

A candidate and/or their official agent (for example, a campaign manager) may appoint scrutineers. Candidates can choose to appoint a relative or friend to scrutineer for them during voting and at the ballot counting process. A candidate's official agent may act as a scrutineer on voting day. While there is no set period for scrutineer appointment in the legislation, the local Chief Election Officer may provide a timeline for scrutineer appointments in the local government's election bylaw or additional guidelines to assist with local election administration.

- A person interested in being a scrutineer can contact the local Chief Election Officer, candidate or candidate's official agent, for more information about the local process and time commitment.

Legislation requires that scrutineer appointments must be:

- Written and signed by the candidate
- Include the full name and address of the person appointed
- Submitted to the local Chief Election Officer as soon as practical after the appointment is made

The appointment of a scrutineer may be cancelled only in the same manner as the appointment was made.