The Rule of 40: What elected officials in Alberta need to know about the Recall Act

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On June 17, 2021, Alberta's Bill 52 received Royal Assent, and the *Recall Act*, S.A. 2021, c. R-5.7 (the Act) was enacted. While the Act is not yet in force, Alberta will soon join British Columbia in providing local electors with the ability to unseat elected officials (including Members of the Legislative Assembly (MLA), city councillors, and school board trustees). Incumbent elected officials, voters, and political parties should review the opportunities and risks created by the Act.

Summary of key changes for elected officials

Bill 52 was introduced on March 15, 2021, following a 2019 Conservative Party campaign promise to increase the accountability of elected officials to local voters throughout their terms. The Bill (and now Act) draws from the recommendations in the 2020 Final Report of the Select Special Democratic Accountability Committee, as well as from the language of similar recall legislation in B.C.

Previously, voters could only scrutinize the actions of their representatives during the election season. Now, voters have the opportunity to recall an elected official at least 18 months after an election, up until six months (or less in some instances) before the next election. Only Canadian citizens of legal voting age (that is, over the age of 18) who have resided in an electoral district for at least three months may initiate a recall petition.

Members of the Legislative Assembly

The process to remove an MLA from elected office is as follows:

1. Eligible electors may apply to the Chief Electoral Officer (the CEO), in accordance with the requirements set out in section 2 of the Act.
2. If the application is properly submitted, the CEO will issue a notice on the Elections Alberta website and provide the elector with a petition form whereby they will have 60 days to gather signatures from 40 per cent of eligible voters in their constituency. The petitioner may seek the assistance of canvassers (who must also be eligible electors in that constituency) in gathering signatures.

3. If sufficient signatures are gathered, the CEO will verify the votes, publish the results, and order a recall vote.
4. A recall vote (similar to a referendum) determining if the MLA shall be removed will be held within six months of the date of the CEO's publishing of the results. A simple majority is required to unseat the incumbent MLA.
5. If the MLA is unseated, the results will be published and a by-election will be held in that riding.

City councillors

The process to remove a city councillor from elected office is as follows:

1. Any individual may apply to the chief administrative officer of the municipality (the CAO) through a notice of recall petition, in accordance with s. 240.2(1) of the Act.
2. If the notice of recall petition complies with the Act, the CAO will provide public notice of the petition.
3. That individual then has 60 days to gather signatures from 40 per cent of eligible voters in that municipality or ward.
4. If enough votes are gathered, the CAO will ensure that the signature-gathering process complied with the Act, provide public notice of the results, and declare that the councillor is removed once the petition is presented at the next council meeting.
5. The city council will then hold a by-election.

School board trustees

The process to remove a school board trustee from elected office is as follows:

1. Any individual may apply to the secretary of the relevant school board through a notice of recall petition, in accordance with s. 96.3 of the Act.
2. If the notice of recall petition accords with the Act, the secretary of the board will provide public notice.
3. That individual then has 120 days to gather signatures from 40 per cent of eligible voters in that school district.
4. If enough votes are gathered, the secretary of the board will ensure that the signature gathering process complied with the Act, provide public notice of the results, and declare that the trustee is removed.
5. The school board must hold a by-election.

Implications

The Act undoubtedly raises concerns amongst elected officials, election administrators, political parties and voters as to whether there will be uncertainty and a flurry of elections flowing from this new recall process. Theoretically, these concerns appear well-founded given that in the 2019 Alberta general election, the winning candidates in over 42 per cent of ridings garnered less than 60 per cent of the vote. However, the experience in B.C. demonstrates that the Act is unlikely to create widespread electoral turmoil. B.C. has had recall legislation similar to the Act since 1995. Since B.C.'s recall legislation came into force, a total of 26 recall petitions have been approved by B.C.'s

Chief Electoral Officer, only one of which had enough valid signatures to proceed. However, in that case, the B.C. MLA who was the subject of the recall petition resigned during the verification process, and the recall process was halted as a result.

Notably, when the recall legislation in B.C. was enacted, it was criticized for its lack of rules surrounding third-party financing, which led to legislative amendments to ease public concerns around the influence of special interest groups in recall elections. On this point, the Government of Alberta has stated that there will be "limits on how much Albertans and third parties, like political action committees, can spend on promoting or arguing against a recall petition and recall vote," much of which will be prescribed in future regulations. To that end, Albertans will likely also wish to see that the Act does not become a tool for well-financed interest groups to recall elected officials and bias public policy disputes in their favour.

For example, with respect to MLAs, under ss. 22-43 of the Act, third parties in Alberta (including any corporations or groups) are restricted from spending over $1,000 in advertising in support or opposition of an MLA during a recall period, without first registering with the CEO and otherwise following the to-be-prescribed spending limits. The Alberta *Election Finances and Contributions Disclosure Act*, R.S.A. 2000, c. E-2 also stipulates that any Albertan businesses or groups engaged in advertising on an issue associated with a candidate or party outside of a general election or by-election period (which presumably includes any recall petitioning period) must register and respect certain spending limits. Thus, while the Act may become a powerful tool for constituents and interest groups to ensure elected officials keep campaign promises, businesses and other groups interested in making use of the new process must keep in mind that the Act and other recall legislation impose strict financing and registration obligations with which to comply.

By

Nikhil Pandey, Alan Ross, Dirk Laudan, Julia Webster, Jake Cabott

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Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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