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## Opinion: Can we hold politicians accountable?

### We vote for promises but are stymied when they're broken

BY BRIAN FIXTER, SPECIAL TO THE VANCOUVER SUN JULY 22, 2014



NPA mayoralty candidate Kirk LaPointe said he'd sign a written code of conduct promising to resign if the his party's campaign goes negative, and challenged Mayor Gregor Robertson to do the same. While it demonstrates conviction to a promise, it would not be enforceable as a contractual guarantee, Brian Fixter writes.

**Photograph by:** Wayne Leidenfrost, PNG

"Can we ever successfully sue a politician for a broken promise?" That was a very simple question posed by one of my students during a recent contract law lecture.

The question drives to the heart of a critical democratic issue: do we have enough measures in place to hold politicians accountable for election promises? Arguably, there is no grander or more important stage for a promise than coming from someone seeking public office, but when there's little accountability for that promise, what's a voter to do?

Heading into the Vancouver municipal elections this fall, there have already been the rumblings of electoral platforms from the major parties. Both the NPA and Vision Vancouver are developing policy planks and trying to convince voters of how they would run the city. However, what happens if they're elected and fail to follow through. **What can those who voted in reliance of all those campaign promises do to demand accountability? Here's the unhappy answer: we can't do that much.**

**The idea of holding politicians' feet to the fire begins and ends with voting. Our vote is considered our true leverage. So if politicians break their promise, our power is to vote them out in the next election. Unfortunately, that does little for the intervening years, and we are left with someone who, at best, has failed to live to their stated promises and, at worst, negligently or fraudulently deceived voters during their campaign.** Also, there's no guarantee that highlighting broken promises will result in an opposition victory in the next election, just look at the recent provincial Liberal party victories in

B.C. and Ontario.

Other than just our votes, provincial politicians are accountable to the B.C. Elections Act, which prohibits someone from engaging in fraud. The language of the act (which is also in some other jurisdictions) makes it an offence to compel or persuade a vote using “fraudulent means.”

This prohibition was the linchpin of a lawsuit during the 1990s, when a group of voters sued the NDP and individual NDP MLAs over the “fudge-it budget.” Ultimately, acquittals were issued, but it remains a live option to sue politicians if their promises rise to the level of fraud.

While in practice this seems like a great safety net, the Elections Act is more of a blunt hammer and appears intended to address more severe forms of fraud rather than a mere unkept promise or general dishonesty.

What about my student’s idea of considering an election promise to be a contract? That idea has some definite appeal, but **courts have routinely stated that campaign promises do not rise to the level of a contractual promise.** The same argument was raised in 2004 when Dalton McGuinty, the former premier of Ontario, was sued by the Canadian Taxpayers Federation for breach of contract.

At issue was McGuinty’s signing of the CTF taxpayer protection promise, for which he agreed to not raise taxes in Ontario. That promise burst when the McGuinty government announced the imposition of a health tax. The case went to the **Ontario Superior Court, which ultimately held that election promises do not equate to binding contracts.** So for better or worse, there is no valid breach of contract claim when a politician promises a course of action and fails to deliver.

Recently, NPA mayoral candidate Kirk LaPointe issued a challenge to Vancouver Mayor Gregor Robertson to run a clean campaign.

LaPointe proposed to sign a written code of conduct promising he will resign if the NPA campaign goes negative. That’s a nice way to demonstrate your conviction to a promise, but it likely would not be enforceable as a contractual guarantee. Even more damning, at the federal level such written pledges to resign if the politician acts or fails to act after elected are prohibited.

Assessing the angles, the short answer is there’s not much voters can do outside of not re-electing the politician in the next election or attempting to gathering support for a recall or referendum; we can look to the repeal of the harmonized sales tax for an example of where that resulted in accountability. But such examples are extraordinarily rare and are tough to repeat.

The sad reality of all this is that the issue of broken election promises is one that has real democratic consequences. Elections Canada has been adamant that broken promises by politicians are a key driver of voter apathy and the stunningly bad voter turnout rates seen at the municipal, provincial, and federal levels. If we don’t expect politicians to live by their word, why bother voting in the first place. That is not only a rational conclusion, but a horrifying one for our democracy.

Until more institutional checks are developed, we are left with our vote and the hope that our politicians will remain honest. Let’s hope as the parties gear for the fall municipal elections, we see some of that honesty and that their political rhetoric matches reality.

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