



ASCA Member School Councils

Delivered via e-Bulletin

March 24, 2021

Re: ASCA Advocacy Policies: P20-04A, P20-04B, P20-04C

Dear ASCA Member School Councils

On behalf of the Alberta School Councils' Association (ASCA) Board of Directors, I am writing to inform Members of decisions made by the ASCA Board at its March 20/21, 2021 Board Meeting relevant to ASCA Advocacy Policies P20-04A, P20-04B and P20-04C, resulting from statements made within Proposed Advocacy Resolution P21-07.

Statements made within Proposed Advocacy Resolution P21-07 call into question the procedural decision of the October 17, 2020 ASCA Regular General Meeting (RGM) Chair, President Brandi Rai, permitting the following motions to be moved, citing a breach of ASCA's existing bylaws:

P20-04A

Minister of Education Definition of Public Education

We request that the Minister of Education define public education as the public, francophone, and separate school systems.

P20-04B

ASCA Definition of Public Education

We request that ASCA define public education as the public, francophone, and separate school systems and use this definition when interpreting existing and new resolution statements such as "all schools" and "school boards".

P20-04C

Integration and Oversight of Charter Schools

We request that the Minister of Education integrate charter schools into the public education systems making them accountable to locally elected trustees and school boards and ensuring access to all students.

The ASCA Board of Directors takes this situation extremely seriously. ASCA immediately initiated a consultation with ASCA 2020 RGM Parliamentarian, Becky Kallal. In addition, ASCA contracted the services of an independent Parliamentarian, Ms. Diana Bacon. Both opinions on this matter are included for reference.

The resulting decisions of the ASCA Board of Directors are:

MOTION: Directors Tarasewich/Rollingson

That the ASCA Board of Directors directs the Executive Director to share the two parliamentarian's opinions with the sponsor of P20-04 and the sponsor of P21-07/P21-10 so they are informed ahead of the 2021 AGM and offer adequate preparation support.

CARRIED UNANIMOUSLY

MOTION: Directors Rollingson/Tarasewich

That the ASCA Board of Directors provides to ASCA Member School Councils the background and information leading to the Parliamentarians' procedural opinions, the Parliamentarians' procedural opinions, and the work being undertaken by the ASCA Board of Directors to correct this procedural error on behalf of the organization and ASCA Member School Councils.

CARRIED UNANIMOUSLY

MOTION: Directors Tarasewich/Gaglione

That the ASCA Board of Directors directs the 2021 AGM Chair to:

- a) Explain to the 2021 AGM assembly that the RGM motion P20-04B inadvertently created a breach of parliamentary rules, and a continuing breach of ASCA bylaws, as per parliamentarian opinion,*
- b) Make a ruling that P20-04B is out of order,*
- c) Explain how the adopted motion conflicts with ASCA Bylaws, which makes Advocacy Policy 20-04B null and void,*
- d) Provide instructions to the Executive Director to remove the policy from the ASCA Advocacy Policy Manual 2020 and subsequent years,*
- e) Provide the assembly with clear information regarding what steps may be taken by ASCA Member School Councils in response to this ruling, and*
- f) ensure that the Chair's ruling and rationale are included in the 2021 AGM minutes.*

CARRIED UNANIMOUSLY

MOTION: Directors Scott/Haggerty

That the ASCA Board of Directors directs the Governance Committee to consider processes enabling ASCA Member School Councils to suggest changes to ASCA Bylaws, Vision and Mission and bring a report and recommendations to the Board in April 2021.

CARRIED UNANIMOUSLY

The ASCA Board of Directors also wants to assure you that this is a correction of an inadvertent procedural error only and is in no way influenced by the content of P20-04B. Acceptance of P20-04A and P20-04C have been deemed to not contradict ASCA's bylaws and will therefore remain as ASCA Advocacy Policies.

The ASCA Board also realizes that these decisions and actions may convey that your Member School Council's participation in setting the direction for ASCA is not fully valued. Please know that this is not the case. The participation of all ASCA Member School Councils in setting the direction for ASCA is highly valued, and ASCA is hopeful that this will not deter you from continuing to represent your school council and community at our events.

The ASCA Board has also instructed me to make Members aware that an *Extraordinary Resolution* could be presented by any ASCA Member School Council at the conclusion of this agenda item during the 2021 ASCA Annual General Meeting (AGM), or at any time during the 2021 ASCA AGM. An *Extraordinary Resolution* is one that arises out of, or develops as a result of, the business conducted at the AGM, and must receive the approval of at least 75% of the voting delegates at the AGM, in order to be added to the agenda for consideration by ASCA Member School Councils.

<https://www.albertaschoolcouncils.ca/public/download/files/173732>

In this situation, an *Extraordinary Resolution*, asking the ASCA Board of Directors to reconsider ASCA Bylaw Clause 3.27 (definition of) Public Education, would result in the ASCA Board either presenting a Special Resolution to amend Clause 3.27 to ASCA Member School Councils at the 2022 ASCA AGM, or providing a report to Members explaining why an amendment is not being proposed.

It should be noted that the *Societies Act* rules regarding the presentation of a Special Resolution to change a society's bylaws are such that any proposed changes coming from the floor at the AGM cannot be considered during that meeting as a minimum of 21 days' notice to all ASCA Member School Councils is required.

It is of the utmost importance that your Member School Council feels prepared to attend the 2021 ASCA AGM with confidence. If you would like to discuss any aspect of the information provided, please do reach out to me directly. I am pleased to be of assistance to your Member School Council in any way that I am able.

Kind Regards,



Wendy Keiver

Executive Director

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Encl/2

C: All ASCA Member School Councils; Brandi Rai, ASCA President; Shelley Odishaw, ASCA Vice President; ASCA Board of Directors; ASCA Staff; ASCA Instructors

Parliamentarian's Opinions:

Ms. Kallal's opinion, extracted from emails is inserted below; the opinion of Professional Registered Parliamentarian Diana Bacon is attached.

At the Regular General meeting in October 2020, ASCA Member School Councils **inadvertently adopted** as Association Advocacy Policy two (2) main motions that were in breach of either specific legislation in Alberta and/or ASCA Bylaws, or the *scope of the intent of Alberta's legislation and/or ASCA's Bylaws*. As a result, the ASCA Board of Directors should declare these each to be a nullity, or 'null and void'.

The two carried motions in question are:

20-04A

Minister of Education Definition of Public Education

We request that the Minister of Education define public education as the public, francophone and separate school systems.

20-04B

ASCA Definition of Public Education

We request that ASCA define public education as the public, francophone, and separate school systems and use this definition when interpreting existing and new resolution statements such as "all schools" and "school boards".

It is believed these are in breach of either specific legislation in Alberta and/or ASCA Bylaws, or the scope of the intent for the following reasons:

Legislation:

Alberta's Education Act (2012): Charter Schools are embedded within the Education Act as an educational choice, requiring the establishment of school councils in the same manner as public, francophone and separate schools. The implied intention within the Education Act is that Charter schools and their school councils are equal to those in public, francophone and separate school systems.

ASCA Bylaws:

Article 3.27 defines public education as: *education delivered by any school in Alberta that is publicly funding including public, separate, francophone and charter school systems*

Article 4.1 states: *Any School Council in Alberta is eligible to become an ASCA Member School Council upon payment of the membership fee.*

Article 6.8 states: *The Board will a) Abide by the ASCA Bylaws, Oath of Office and Code of Conduct*

As such, The ASCA Board of Directors is advised to issue a statement declaring each inadvertently approved motion to be a nullity, either ahead of this year's AGM (April 25, 2021) or during the AGM at the start of the section dealing with new Proposed Advocacy Resolutions. The statement should also explain to ASCA's Member School Councils that following the adoption of these two main motions, further research into the legitimacy of having them be moved/seconded (and not immediately ruled "out of order") and ultimately, with no ill-intent, approved, revealed that each is considered to be, at minimum, in breach of the scope of the intent of Alberta legislation and/or ASCA Bylaws.

As ASCA does not have a General Meeting Rule of Order permitting the acceptance of main motions that are in breach of legislation or its bylaws (specifically or in scope), the Member-accepted practice is to defer to Robert's Rules of Order for guidance. Accepting for discussion any main motion that is in breach of either specific legislation in Alberta and/or ASCA Bylaws or their respective scopes of intent, is contrary to not only Robert's Rules of Order, but any/all generally accepted Rules of Order defining appropriate parliamentary procedures of discussion/decision by an assembly.

It is important to also note that the Board and the Association have not taken any action on these two Advocacy Policies to date, aside from making the Minister of Education Aware of their existence, and incorporating them into the ASCA Advocacy Policy Manual, as is done each year following an AGM.



PARLIAMENTARY OPINION February 17, 2021

INTRODUCTION

I have been asked to submit a parliamentary opinion answering the following questions:

1. Did ASCA err (make a mistake) by accepting for discussion at the 2020 AGM – which was then postponed to the 2020 RGM to the pandemic - the Member Sponsored Proposed Advocacy Resolution listed as P20-04? If so – in what way/for what procedural reason(s)?
2. If ASCA did err as described above, what steps should ASCA take now to resolve, correct, or remedy the situation?
3. If ASCA did err as described above, but ASCA Member School Councils maintain their support for the intent of P20-04A and P20-04B as future Advocacy Policies of the Association, what steps need to be taken for that to happen in a sound and acceptable procedural way?
4. If ASCA did err as described above, and takes the appropriate steps to rectify the situation as recommended, what impact will that have on the Member Proposed Advocacy Resolutions P21-07 and P21-10 for the 2021 AGM?

BACKGROUND INFORMATION PROVIDED

The following documentation was provided to me:

- 2020 Member Proposed Advocacy Resolution (PAR) P20-04 complete (Amended February 19, 2020)
- 2020 RGM DRAFT Minutes
- 2020 RGM Advocacy Resolution Results
- 2020 RGM DRAFT Rules of Order
- 2021 DRAFT Special Resolution to Amend Bylaws
- 2021 P21-07 Member PAR “Respect for ASCA’s Bylaws, Values and Members”
- 2021 P21-10 Member PAR “Achieving Universal Public Education”

Links provided for:

- Advocacy Overview
- ASCA Advocacy Policy Manual
- About ASCA (website)
- Annual Report 2019-2020
- Bylaws of the ASCA
- Board Vision Plan 2021-2024
- 2020 Financial Statements

SOURCES CONSULTED

- Videoconference with WK, Feb 9 & 17, 2021
- Email from WK , Feb 9, 2021
- Robert’s Rules of Order Newly Revised (12th ed.)
- ASCA Bylaws
- P20-04 Amended February 19, 2020
- 2020 RGM Draft Minutes
- 2020 RGM Resolution Results
- Advocacy Policy Manual 2020
- Draft SR21-01 Bylaw Amendments
- P21-07 Respect for ASCA’s Bylaws, Values, and Members
- ASCA Charter (Mission, Vision, Values Statements)
- P21-10 Achieving Universal Public Education

ANALYSIS

1. Did ASCA err (make a mistake) by accepting for discussion at the 2020 AGM – which was then postponed to the 2020 RGM to the pandemic - the Member Sponsored Proposed Advocacy Resolution listed as P20-04? If so – in what way/for what procedural reason(s)?

Robert’s Rules of Order Newly Revised, 12th ed. (RONR) 1:4 reads, “A member of an assembly...is entitled to...the right to attend meetings, to make motions, to speak in debate, and to vote. No member can be individually deprived of these basic rights of membership – or of any basic rights concomitant to them, such as the right to...give previous notice of a motion...”

The minutes of the 2020 RGM read, “Motion that P20-04 Achieving Equitable Public Education be accepted as presented.” [Procedurally the adoption of this motion equates to endorsing an entire report as a statement of the organization; rather than a motion to adopt the recommendations, or ‘requests’.] The minutes do not indicate the multiple resolutions, or ‘requests’ of the proposed P20-04 in the original motion, nor indicate whether the proposed resolution (in its entirety) was filed. A copy of *P20-04 Amended February 19, 2020* was included in the background information provided.

P20-04 included multiple parts, or ‘requests’, and the minutes read, “Motion to divide P20-04 into its separate requests.” [Procedurally, a motion to divide means to divide the original motion into separate motions; however, the original motion does not include the multiple parts, or ‘requests’.] The minutes indicate the motion to divide was adopted. The minutes identify the ‘requests’ as extracted from the original proposed policy P20-04, as follows:

P20-04A Definition of Public Education “We request that the Minister of Education define public education as the public, francophone and separate school systems.”

P20-04B ASCA Definition of Public Education “We further request that ASCA define public education as the public, francophone, and separate school systems and use this definition when interpreting existing and new resolution statements such as “all schools” and “school boards”.

P20-04C Integration of Charter Schools “We further request that the Minister of Education integrate charter schools into the public education systems making them accountable to locally elected trustees and school boards and ensuring access to all students.”

P20-04A and P20-04C appear to indicate an intent to influence legislative bodies. P20-04B appears to indicate a desire for ASCA to create a definition of *public education* which would conflict with how ASCA defines *public education* in ASCA Bylaws. The procedure to amend the Bylaws is stated in the Bylaws. These adopted resolutions are included in the *Advocacy Policy Manual 2020*.

While ASCA has defined *public education* in the Bylaws, if the intent of P20-04B was to change the current definition, then the adoption of P20-04B and the subsequent inclusion in the *Advocacy Policy Manual 2020* would create a continuing breach of the definition of *public education* in ASCA Bylaws, Article 3 Definitions, 3.27, which reads, “Public Education – education delivered by any school in Alberta that is publicly funded including public, separate, francophone and charter school systems.” (The term, *public education*, is referenced in Bylaws 6.3 and 6.4.) The minutes of the 2020 RGM do not reflect an acknowledgement of P20-04B as a breach of the Bylaws.

2. If ASCA did err as described above, what steps should ASCA take now to resolve, correct, or remedy the situation?

RONR (23.3) reads, “It is the right of every member who notices a breach of the rules to insist on their enforcement. If the chair notices a breach, he corrects the matter immediately; but if he fails to do so – through oversight or otherwise – any member can make the appropriate *Point of Order*.”; and, (23:6) “The only exceptions to the requirement that a point of order must be made promptly at the time of the breach arise in connection with breaches that are of a continuing nature, whereby the action taken in violation of the rules is null and void. In such cases, a point of order can be made at any time during the continuance of the breach – that is, at any time the action has continuing force and effect – regardless of how much time has elapsed. Instances of this kind occur when: a) a main motion has been adopted that conflicts with the bylaws (or constitution) of the organization or assembly,…”

In reference to acknowledging a breach of rules, the meeting minutes are to include “all points of order and appeals, whether sustained or lost, together with the reasons given by the chair for his or her ruling…” [RONR 48:4 (10)]

3. If ASCA did err as described above, but ASCA Member School Councils maintain their support for the intent of P20-04A and P20-04B as future Advocacy Policies of the Association, what steps need to be taken for that to happen in a sound and acceptable procedural way?

The adoption of P20-04A at the 2020 RGM appears to be an intent to influence legislative bodies to create a definition of *public education*. P20-04A was adopted and included in the *ASCA Advocacy Policy Manual 2020*.

P20-04B appears as a resolution with an intent for ASCA to create a definition of *public education*; whereas ASCA has previously defined *public education* as indicated in ASCA Bylaw 3.27 which currently defines the term *public education* as referenced in Bylaws 6.3 and 6.4. Bylaws supersede policies; therefore, policies should not be created that conflict with the Bylaws or with previously adopted policies. To change the Bylaws, an amendment to the Bylaws requires the adoption by special resolution as set out in ASCA Bylaws and as defined in the Societies Act of Alberta. ASCA is incorporated and governed by the Societies Act of Alberta.

4. If ASCA did err as described above, and takes the appropriate steps to rectify the situation as recommended, what impact will that have on the Member Proposed Advocacy Resolutions P21-07 and P21-10 for the 2021 AGM?

Proposed Advocacy Resolutions P21-07 and P21-10 include multiple references to P20-04A, P20-04B, and P20-04C. If P20-04B is deemed null and void at the meeting, then the reference to P20-04B will be irrelevant in the proposed resolutions.

CONCLUSION

The answer to each of the questions is as follows:

1. Did ASCA err (make a mistake) by accepting for discussion at the 2020 AGM – which was then postponed to the 2020 RGM to the pandemic - the Member Sponsored Proposed Advocacy Resolution listed as P20-04? If so – in what way/for what procedural reason(s)?

It is my opinion that P20-04 resolution was presented as quite complex with multiple, independent, resolutions. At the time P20-04 or the subsequently divided resolutions were presented, a point of order was not raised, nor was a motion ruled out of order by the chair. It is my opinion that the adoption of P20-04B appears to create a continuing breach of ASCA Bylaws.

2. If ASCA did err as described above, what steps should ASCA take now to resolve, correct, or remedy the situation?

A continuing breach allows the chair to correct (or failing to do so, a member may make a point of order) at any time in a meeting during the continuing breach. It is my opinion that, at the next general meeting, the chair should bring to the assembly's attention the motion that inadvertently created a breach of the rules; make a ruling that P20-04-B is out of order, explain how the adopted motion conflicts with the Bylaws which makes P20-04B null and void; and provide instructions to remove the policy from the ASCA Advocacy Policy Manual 2020. The chair's ruling and rationale are required to be included in minutes of the meeting.

3. If ASCA did err as described above, but ASCA Member School Councils maintain their support for the intent of P20-04A and P20-04B as future Advocacy Policies of the Association, what steps need to be taken for that to happen in a sound and acceptable procedural way?

The bylaws supersede policies; therefore, policies must not be created that would conflict with the Bylaws. It is my opinion that, as the *public education* is defined by ASCA in the Bylaws and, if it is ASCA's intent to change the definition, an amendment to the Bylaws would need to be adopted by special resolution as set out in ASCA Bylaws and as defined in the Societies Act of Alberta.

It is my opinion that P20-04A appears to be an externally focused activity; whereas, P20-04B appears to be an internally focused activity. To avoid future procedural errors, it is my opinion that it would be more efficient to separate external and internal policies accordingly and use a checklist to ensure the adoption of future policies do not create a breach of other rules of a higher rank or with previously adopted motions that are still in force. To change existing rules or policies, the proper procedure would be to use the motions to *rescind* or *amend something previous adopted*. It is also my opinion that a proposed policy should connect to the organization's objects found in the Articles of Incorporation and with the adopted statements of mission, vision, and values.

4. If ASCA did err as described above, and takes the appropriate steps to rectify the situation as recommended, what impact will that have on the Member Proposed Advocacy Resolutions P21-07 and P21-10 for the 2021 AGM?

It is my opinion that if P20-04B is deemed null and void at the meeting then the multiple references to P20-04B will be irrelevant in the proposed resolutions P21-07 and P21-10.

DISCLAIMER

This is a parliamentary opinion, not a legal opinion, based on the information provided. If there is more or new information, the opinion may change.



Diana Bacon, MBA, PRP