

2013

Recommendations for Legislative Change



**ELECTIONS
NOVA SCOTIA**

**39th Provincial General Election
October 8, 2013**

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Summary

On September 7, 2013, at the request of Premier Darrel Dexter, the Lieutenant Governor, the Honourable J.J. Grant CMM, ONS, CD (Ret'd), dissolved the Legislative Assembly. An Order in Council directed the Chief Electoral Officer to issue the writs of election to all 51 electoral districts, ordering that the 39th Provincial General Election be held on Tuesday, October 8, 2013.

At the time of dissolution there were 52 electoral districts in Nova Scotia. Standings in the House of Assembly included: 31 members of the Nova Scotia New Democratic Party, 12 members of the Nova Scotia Liberal Party, 7 members of the Progressive Conservative Association of Nova Scotia and two vacancies.

In the October 8, 2013 Provincial General Election, 176 candidates stood for election: 51 from each of the Nova Scotia Liberal Party (NSLP), the Nova Scotia New Democratic Party (NSNDP), the Progressive Conservative Association of Nova Scotia (PC), 16 representing the Green Party of Nova Scotia (GPNS), and 7 independent candidates.

Elected to the House of Assembly were 33 members of the NSLP, 11 PC, and 7 NSNDP. No candidate of the GPNS or independent candidate was elected.

The NSLP received 190,112 or 45.71% of the valid votes cast, while the NSNDP received 111,622 votes (26.84%), and the PC 109,452 votes (26.31%). The GPNS received 3,528 votes (0.85%) and independent candidates received a total of 1,238 votes (0.3%).

By close of the polls on election day, there were 720,077 electors registered to vote. In total, 419,091 of those electors voted using one of the ways to vote offered throughout the writ period. The percentage of electors who voted was 58.2% compared to 57.91 % in 2009, and 59.89 % in 2006.

A total of 2,221 polling stations were set up in 905 different locations across the province; 183 stations received advance poll voters; 1,949 polling stations serviced election day voters and 89 mobile polls served electors in residential centres. More than 6,000 Nova Scotians were employed.

To enhance access to voting, new voting opportunities were introduced including the continuous poll in each returning office, the out-of-district poll facilitating electors to vote at any returning office regardless of their place of residence, the campus poll that enabled students and other electors to vote at short-term polls on university and NSCC campuses, and the hospital poll that enabled patients, visitors and staff to vote in hospital on specific days before election day.

The 2013 Provincial General Election was the first test of the amended *Elections Act* (the Act), new electoral processes, new boundaries, and new returning officers. The Chief Electoral Officer chose to commission an independent and open review to assess these new features. The audit was designed to focus on the processes used in voting, the training provided to election day workers, and the processes around counting ballots and results tabulation.

Three other audits were also carried out.

In light of the non-compliance problems identified in the 2011 federal general election in Etobicoke Centre, the Chief Electoral Officer ordered a comprehensive review of adherence to policies and procedures in the field during the 2013 Provincial General Election.

ENS employed a team of 14 election officials to review a random sample of election day polls, advance polls, mobile polls, continuous polls, and write-in ballot polls. This compliance audit was conducted over three weeks and compiled for analysis.

The third was a review looking into the success or failure to meet student expectations at the polls offered on university and college campuses throughout the province.

The fourth looked exclusively at allegations of voter fraud during the election.

Recommendations of the Chief Electoral Officer for Legislative Change

Consultations with the Election Commission

Most readers of this report would be unaware of the important role the Election Commission plays in electoral reform in this province. Many of the innovative changes that were introduced in this past general election benefitted directly from the cooperative and collaborative input of the commission members.

The consultation between the Chief Electoral Officer and the Commission to review and modernize the provisions of the Act is ongoing. While many of the recommendations advanced in this report have been discussed with the Election Commission, some before and others since the most recent election, each recommendation will be discussed in detail with the members. The more complex issues with less obvious paths to resolution will be subject to broad consultation and deliberation with the Commission and others before being brought forward for the legislators' consideration.

While the advice we receive from the Election Commission is valued, it should be clearly understood that deliberations with the members are intended to provide guidance to the Chief Electoral Officer. The recommendations contained in this or any report should not be taken as having the endorsement of all members of the Commission unless specifically mentioned that consensus has been reached.

Consultations with the Caucuses of the Registered Parties

It is the responsibility of members of the Election Commission to brief their respective caucuses on their discussions of electoral process reform held in meetings with ENS. It is our understanding that Elections Nova Scotia has not directly interacted with the members of the registered parties' caucuses

in recent years. Because this report contains a large number of administrative changes that would have a significant impact on how provincial elections are administered in Nova Scotia, the Chief Electoral Officer is prepared to have ENS senior staff meet with and respond to questions raised by caucus members at the request of and accompanied by an Election Commission member.

Fixed Date Elections

Perhaps the most important recommendation in terms of the effect its introduction would have on election operations is the institution of fixed date provincial general elections. Nova Scotia is the only province that hasn't enacted fixed date election legislation. As well, the Government of Canada and two of the three territories also have fixed date elections.

The benefits to event preparation and management are evident. Associated with these operational advantages is cost savings in procurement of supplies and services, the leasing of offices and polling locations and, most significantly, in training. Training is typically scheduled every 6 months after the first year in a minority government scenario and after 3 years in a majority government scenario. The cost of refresher training for election workers would be approximately \$280,000 per occasion based on the 2013 experience. Other savings could be realized for rental of space; communications set up, and prearranged transportation services. It is estimated that a fixed election date could save up to \$500,000.

Concurrent with the financial benefit derived from knowing when field staff will be trained (without the requirement to re-train) is an improvement in quality of staff performance and risk management in field operations.

Many other improvements in operations discussed in this report are tied to fixed date elections. Among these are: the potential for ENS to coordinate with the Department of Education and school boards to schedule an existing teacher professional

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development day across the province to coincide with election day which would facilitate the use of schools as polling locations. This in turn, improves the physical accessibility of polls, the efficiency of multiple polling locations, the addition of parking at polling locations, the easy identification and visibility of polling locations in communities, etc. As well, fixed date elections on a professional development day may increase the number of 17 and 18 years old available as election workers.

In Canada, there are two models for fixed date elections. The first, used by all but one provincial jurisdiction in Canada, has an established fixed date and a four-year term. The second model, in place in Alberta, sets an approximate four-year term with an election to be held between March 1 and May 31 in the fourth year of the government's mandate on a date determined by the government. While there are savings and a degree of predictability to be found in both alternatives, the second makes the possibility of coordinating election day with a planned professional development day in the school system more difficult.

The Chief Electoral Officer recommends the establishment of fixed date elections.

Recommendations for Candidates, EDAs and Parties

Candidate Nominations Earlier

Dependent on the introduction of fixed-date elections, the certainty of election day allows candidates to be nominated earlier and to use the complete election period for campaigning.

The number of electors choosing to use one of the new voting opportunities has grown significantly and will continue to grow as more electors understand the choices available to them. This in turn will change how candidates campaign. An early nomination date will permit ENS to offer electors a ballot with the names of the candidates in their home district on demand at any returning office in the province. This should eliminate the mistakes made

by electors using write-in ballots and reduce the number of ballots rejected at the count to those electors who wanted to spoil their ballots.

In the event that a government does not reach full term to the date fixed for a provincial general election or in the case of a by-election, the Chief Electoral Officer recommends that the close of nominations be set to the fifth day after the issuance of the writ of election to provide the parties with additional time to complete their nomination processes. Electors choosing to vote before nominations close would use the traditional write-in ballot as is currently the case.

The Chief Electoral Officer recommends moving the close of nominations to coincide with the issuance of the writ of election for fixed date provincial general elections.

Return of Candidate Deposits

The Act currently reimburses nomination fees only to the candidates who receive no less than 10% of the vote in their electoral district in the belief that it deters frivolous candidatures. In fact, in 2013 Provincial General Election, 26 candidates (seven NSNDP, three PC candidates, and 16 Green Party candidates) representing registered political parties failed to meet the 10% threshold.

The Chief Electoral Officer recommends that nomination deposits of \$200 per candidate be fully refundable to all candidates upon completion of the financial submission by the official agent.

Candidate Eligibility for Expense Rebate

In the 2013 election, of the 176 candidates who ran, 143 were eligible for reimbursement. Of the 33 who did not receive 10% of the votes, many spent nothing. A total of 26 candidates representing registered political parties failed to meet the 10% threshold. Currently, the Act permits a candidate to request a chief electoral officer recount of all the ballots cast in the electoral

district for the sole purpose of determining whether a candidate received the required percentage of the valid votes cast in an election to be entitled to reimbursement of election expenses. In this past election, a candidate did request and was granted this form of recount. The recount confirmed that the candidate did not meet the 10% threshold.

Were the threshold removed, the total cost of reimbursement, currently estimated to be \$2,300,000 would have increased by an additional \$165,000 in 2013. This likely underestimates the additional cost of reimbursement for future elections because candidates who will not meet the 10% threshold will likely spend more money knowing the first \$20,000 spent will be eligible for reimbursement. The additional cost notwithstanding, it is believed that removing this restriction would advance the goal of leveling the playing field and encourage greater participation in the democratic process.

The Chief Electoral Officer recommends removing the 10% vote threshold, authorising all candidates to receive reimbursement for election expenses.

Allow Candidate Remuneration from Employers

Under the current Act (s. 236(7)), candidates are not permitted to receive remuneration from an employer. This has been raised as an issue since the MLAs running in an election receive payment and benefits up to the last day of the month in which election day falls. A step toward levelling the playing field would allow an individual with a minimum 6 months fulltime employment with an employer to receive a paid leave of absence to be a nomination contestant or candidate at the same rate of pay during the writ period. The continuation of salary and benefits would not be deemed a contribution of the employer. Other workers on the campaign would not be permitted to receive payments from employers as they would be ineligible contributors.

The Chief Electoral Officer recommends that candidates may continue to receive employment remuneration which would not be regarded as a contribution by the employer.

The Use of Communication Devices in the Polls

The use of communication devices in the polls was totally banned because they were disruptive to the voting process. The ban was rescinded for designated election officers to facilitate communication with the returning office. This practical change was introduced to avoid having poll officials guessing at answers to difficult questions or delay in reporting exceptional circumstances that require the immediate attention of the returning officer. Allowing candidate agents to have their mobile devices on vibrate or silent, receive and send emails and texts to their campaign headquarters with the latest information on their “bingo sheets” without having to disrupt the voting process is a practical change that should benefit all stakeholders. A strict prohibition would be maintained against any voter using a communication device for any purpose in the poll and any agents talking on the phone, recording videos or taking pictures inside the polls.

The Chief Electoral Officer recommends that the limited use of communication devices in the polls by candidate agents be permitted.

Provision of Lists of Electors to Candidate Campaigns

In the 2013 general election printed copies of the lists of electors (preliminary, revised, official and final) were generated and available to every registered candidate. These lists are an average of 500 pages in length. Printing the lists required valuable resources at times of high stress in each of the returning offices. Returning officers also provide the candidates with digital copies of the list at the same time. The majority of these printed copies were not picked up or used by the candidates’ representatives. This current practice wastes time, money and resources.

The Chief Electoral Officer recommends that lists of electors be made available to candidates in digital format and only be made available in printed form by request in advance of the legislated release dates.

Amend Election Advertising Rules

Under the general heading of election advertising, the Chief Electoral Officer recommends amendments to a number of sections of the Act.

Campaign Signage Rules

Currently the Act requires that once a writ of election is issued, all election advertising must include the phrase “Authorized by the official agent for...” By far the majority of complaints received from the general public, candidates and their campaigns are that the campaign signs do not include this phrase. In most cases the notice is there, but is too small to be readable. When asked to “check for the fine print,” complainants are usually angry that they have wasted their time and that campaigns abuse the obvious intent of the rules.

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The Chief Electoral Officer recommends that the phrase “Authorized by the official agent for ...” be displayed in a font size that is proportional to the size of the font used to display the name of the candidate and further that the colour used for the phrase contrasts with the background on which it is placed.

MLA Constituency Office Signage

In some cases, it has proven to be impractical to take down or cover up the signage on constituency offices. In recognition of this, during this general election MLAs were informed that if they couldn’t take down or cover up their office signage then they needed to add the phrase “Authorized by the official agent for...”

The Chief Electoral Officer recommends that constituency office signage be exempt from the rules governing election advertising.

Remove the Prohibition Against Election Advertising on Election Day

Section 273 was added to the Act at Law Amendments Committee in 2012. It prohibits election advertising on election day but does not treat all forms of election advertising uniformly.

As examples:

- Campaign signs, billboards, websites or ad banners on a website in favour of a party or candidate erected before election day do not have to be removed on election day.
- An ad placed in the newspaper for a party or candidate that is allowed the day before election day cannot be run on election day.
- An advertising ban on election day frustrates parties' and candidates' efforts to offer transportation to the polls.
- Pamphlets or flyers may be delivered on election day.
- Ads placed in weekly papers are acceptable as long as they are not published on election day (Tuesday).
- Tweets and other forms of social media are exempt.

The question must be asked, "In an event that relies completely on campaigning, reaching out with party platforms to electors to help them make an informed choice, who are we protecting with this ban?"

The Chief Electoral Officer recommends that the ban on election day advertising be rescinded.

Amend Election Finance Rules

Tax receipts Issued by Registered Parties

With fixed election dates, it is anticipated that more candidates will register earlier and therefore, more fundraising by candidates will occur in the months leading up to writ day. Contributions

received before the writ is issued are only eligible for tax receipts if they are made to a registered party. In the 2013 general election, more than 60 candidate's official agents received letters from ENS regarding breaches of the Act for issuing tax receipts outside the allowable period. If all tax receipts were issued by the registered party embarrassing errors such as these and others which require refunding part or all of the contribution including surpassing contribution limits by individuals, contributions by non-residents and contributions by organizations would be significantly reduced.

A plan is in place to introduce an electronic issue of tax receipts that can be data entered in the field but approved by the official agent of the registered party, reducing the level of effort for the parties.

For independent candidates, the option would remain to receive tax receipts in paper format that would be used during the eligible period. The period that contributions could be accepted and issued tax receipts would remain the same as the current legislation, from the acceptance of the nomination papers by the returning officer and election day. The tax receipts would be sent out from ENS headquarters to the candidate's official agents, when required.

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The Chief Electoral Officer recommends that candidates, who are associated with a registered party, may not issue tax receipts.

Require Candidate Sign-off of Reports Prepared by Their Official Agent

During the 2013 election, several candidates were not made aware whether their official agent had filed on their behalf, requested an extension, or had issues that would prevent them from sitting in the legislature (s.263). While the requirement for certification under Section 229(1) by the official agent is good practice, it is

the candidate who ultimately suffers the consequences of the failure to file either through embarrassment or inability to sit in the Assembly.

The Chief Electoral Officer recommends that the candidate also be required to sign the financial submission as a declaration that it has been reviewed by the candidate.

Assess Penalties for Late Filing

The filing of financial reports, even though the deadline was extended by 30 days since the 2009 election, has been problematic. It is recommended that a penalty for each day late is introduced. The New Brunswick Elections Act includes a daily penalty of \$50 for each day the report is late. In British Columbia, the fine is a flat \$500.00. The publication of contributions and election expenses is delayed by late filings of these reports.

The Chief Electoral Officer recommends that a penalty, either daily or flat fee, be introduced to encourage timely financial reports.

Changes to Names of Party and Candidate Representatives

Discussions with the official agents of the registered parties have pointed to confusion of terms related to agents of a candidate.

Candidate's Agent

The candidate's representatives that observe the voting processes in the polls are often confused with the candidate's official agent.

The Chief Electoral Officer recommends renaming the candidate's agent at the polls to scrutineer.

Official Agent of the Electoral District Association

The candidate's official agent and the electoral district association's official agent are often confused.

The Chief Electoral Officer recommends renaming the Electoral District Associations official agent to Treasurer.

Compliance and Enforcement

Changes to the Act introduced in 2011 included the introduction of the Compliance Agreement as a measure short of formal charges as a response to breaches of the Act. The experience of the 2013 election leads the Chief Electoral Officer to recommend the introduction of additional enforcement tools in a compliance and enforcement continuum to help achieve greater compliance with the Act.

The first step is communication with regulated parties. In instances of breaches with relatively minor consequences, the Chief Electoral Officer proposes to send a notice of non-compliance alerting the offender of the breach and warning against further breaches. Repeated or continued breaches, as well as more serious transgressions would warrant a formal compliance agreement which could include undertakings by the offender as well as public disclosure of the agreement on the ENS website.

If a compliance agreement cannot be reached between the Chief Electoral Officer and the offender or where the offence itself warrants a stronger response, and the Chief Electoral Officer believes it is in the public interest, the Chief Electoral Officer would refer the matter to the RCMP for investigation.

The reporting of enforcement actions taken by ENS encourages greater compliance and informs the public of any non-compliant activities undertaken by regulated parties. Information protected by the *Access to Information Act* or the *Privacy Act* will not be made public.

Those who enforce the law and regulations, and those who must comply, need to understand how they will be applied. ENS will keep records of offences to ensure consistent application of the law and report on compliance and enforcement in the Chief Electoral Officer's annual report.

The Chief Electoral Officer recommends the addition of a Notice of Non-Compliance for the purpose of ensuring compliance with the *Elections Act*.

Recommendations Affecting Elector Registration and Voting

On-Line Elector Registration

Recent amendments to the Act and the procedural changes and added voting opportunities have removed most obstacles that had made voting difficult for some electors.

An area left to be addressed is registration of electors. While the vast majority of electors over 24 years of age are on the Register of Electors, that record is not as positive for electors under 24. In 2013, the Register of Electors captured 93% of the eligible voting population of Nova Scotia based on the Statistics Canada's Nova Scotia eligible population of 758,822 persons. However, only 57% of eligible electors aged 18-24 were registered compared to more than 95% of eligible electors over 34 years of age.

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In addition, ENS is challenged to maintain the correct address for electors who do not have a driver's license. ENS will be informed if an elector votes in a federal or municipal election, or through the filing of income tax (and authorizing Canada Revenue Agency to share the elector address data with Elections Canada), however, these elector address updates suffer from timeliness, coverage and quality issues.

The experience of Elections Canada and Elections British Columbia leads us to believe that, in concert with other initiatives, on-line and phone registration will improve coverage, currency

and accuracy of the Register of Electors. The 2013 election audit team supported this by recommending online voter registration to the Chief Electoral Officer.

ENS proposes to work cooperatively in the development of a new registration system with election officials at Halifax Regional Municipality and the Cape Breton Regional Municipality who already have experience in on-line registration and with whom we share the list of electors for election purposes.

The Chief Electoral Officer recommends the introduction of registration of electors on-line or by phone.

Request for Elector Identification at the Polls

Electors in provincial elections in Nova Scotia do not need to show identification when they vote. The proposal being put forward is to have election officers request identification at the time of voting. Electors who do not have appropriate identification would be required to sign a declaration attesting to their name, address and eligibility before being permitted to vote.

This should not be an onerous imposition on electors. Increasingly, electors come to the polls prepared to show identification – largely because of the requirement at federal elections. A request for identification at the polls would not only facilitate streaming electors for quick service but also help improve the data in the Register of Electors by checking the information on their identification against the information on the list of electors and making the appropriate changes where differences are observed.

The Chief Electoral Officer recommends that election officers request voter identification at the time of voting. Electors who do not have appropriate identification would be required to sign a declaration attesting to their name, address and eligibility before being permitted to vote.

Add Voter Information Card to the List of Prescribed Form of Identification

A combination of elector identification that includes their VIC will speed the voting process. We estimate that eight out of ten electors already bring their VICs with them to the poll. As discussed elsewhere in this report, because of the method of collection of the data, the high mailing address accuracy and the constant effort to remove duplicate names from the registry, the VIC is the most current and accurate name and address document available to electors in Nova Scotia. As an example, a VIC coupled with another piece of identification displaying the elector's name, may be superior to showing a driver's license, the piece of identification most electors would show to prove their identity. The VIC has an address accuracy rate significantly higher than that of a driver's license.

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A VIC could not be used as identification in isolation. An elector must be able to present a second piece of acceptable identification displaying the elector's name or sign a declaration attesting to the elector's name and address.

The Chief Electoral Officer recommends that the Voter Information Card be added to the prescribed list of acceptable form of identification.

Reconsider Partisan Appointments of Election Officers

The 2013 Election Audit Team recommended removing the provision of the *Elections Act* that has election officers nominated by the political parties that came in first and second in the last election. The primary reason is that the independence of the management of elections has progressed well in Nova Scotia and this is the last vestige of political appointment associated with elections.

The current practice in Nova Scotia presents a number of challenges to good management.

Firstly, electoral district associations and campaigns are increasingly challenged to provide workers for the polls – particularly in urban areas – and, after reserving workers for their campaigns, they have found it difficult to nominate sufficient numbers of election officers to meet ENS requirements. In a post-election survey of returning officers, only seven of the 45 returning officers who responded received sufficient names to fill their deputy returning officer (DRO) and poll clerk positions. Five of the seven were in Cape Breton. Often the same names appeared on lists from more than one party. Almost all returning officers in urban districts, including 16 in HRM, received few or no names from the parties.

Secondly, the responsibilities and duties of the two main positions traditionally divided between the two leading parties in each electoral district, the deputy returning officer (DRO) and poll clerk, have changed significantly and the distinction between these two roles, as well as their job descriptions, have changed dramatically. These election officers must have a higher skill set than was required in the past and must be able to follow procedures precisely or risk the integrity or the perceived integrity of the election.

Returning officers have reported increased difficulty training nominated workers who come with promises of a specific position in a specific location based on the statutory entitlement.

While it is preferred that worker nomination be discontinued, we recognize that many returning officers have a difficult time finding sufficient numbers of potential workers to fill the required positions. A workable compromise is one in which all parties and candidates are given the opportunity to nominate election workers without tying their nominations to specific positions. A standard test developed by ENS would be administered and the returning officer would use the results to appoint workers to appropriate positions accordingly. Nominees identified through

“ Following the recommendation of the 2013 Election Audit Team, the Chief Electoral Officer recommends abandoning the practice of having the parties which came first and second in the previous election provide lists of names for designated election officer positions..”

this process from the parties that came first and second in the last election would be given priority status for training and testing over other applicants.

The Chief Electoral Officer recommends changing the statutory entitlement of the parties that came first and second in the previous election to provide names designated for specific election officer positions. Nominees identified by the parties that came first and second in the last election would be given priority status for training and testing over other applicants.

Early Provision of Lists of Election Workers

Returning officers must have sufficient time to evaluate, appoint, and train all poll workers. The introduction of fixed-date elections should facilitate candidates and their teams to contemplate potential names for their lists much earlier in the campaign.

The Chief Electoral Officer recommends that the provision of lists of potential election officers would have to be received earlier in the election calendar.

Harmonize Early Voting Opportunities

The recommendation of the election audit team was that Elections Nova Scotia merge early voting opportunities – continuous voting, write-in voting and advance voting – into one offering, with the capability of introducing a ‘crescendo’ of available locations, all closing on the weekend prior to election day.

Currently, the requirement for different processes for different voting methods leads to higher risk of administrative error.

The use of the write-in ballot to vote would continue in specifically prescribed situations including voters who are out-of-province, incarcerated and Canadian Armed Forces voters.

The Chief Electoral Officer to recommends improving the early voting opportunity procedures, reducing the number of forms associated with the voting opportunities, and harmonizing procedures to remove artificial differences between the various voting methods.

Using Technology in the Polls

Introduce On Demand Ballots in Early Voting Opportunities

The merging of early voting opportunities coupled with the requirement to have access to the internet at all polls would allow elections officers to identify each voter and to strike them off all lists of electors province wide as they vote. It would also permit the election officers to print a ballot for the voter with the names and party affiliations of the candidates as they would appear on the election day ballot.

This would be an important advancement for several reasons. Currently the elector must fill out a write-in ballot with either the name of the candidate or the registered party they wish to vote for or both. This may put some voters in a difficult position. For instance, the voter may be functionally illiterate and unable to write either the candidate's name or the party. They may have entered the poll thinking that they could just make a mark on a ballot. Similarly, the voter could be interested in voting for a specific candidate but they be unsure of their name and how to spell it and be reluctant to make a mistake that may cost them their vote.

The number of rejected ballots in the 2013 election almost doubled from the totals witnessed in 2009 (1,520 to 2,950). A sample review of the rejected ballots revealed an increase in intentionally spoiled ballots. Many other ballots were rejected due to errors made by the elector incorrectly naming the candidate or the candidate's party. Ballots printed on demand would all but eliminate manual errors made by electors when casting their vote.

As well, on demand ballots used in conjunction with a vote tabulating machine recommended below would not only identify the home district of the elector casting the ballot but also their polling division. Currently this information coveted by party analysts is lost in all early voting opportunities. More than 20 percent of the results in 2013 could not be associated with a specific polling division. At some point after the election, this information could be shared with the registered parties.

This significant change to the current models can only be made possible if two other recommendations are enacted. Nomination day for candidates must be moved back to the day the writs of election are issued and this is only practical if there is a fixed election date.

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The Chief Electoral Officer recommends the use of on-demand ballots printed at the poll to be used in polls before election day.

Vote Tabulators

To further capitalize on reducing the number of forms associated with the voting opportunities, and harmonizing procedures to remove artificial differences between the various voting methods, the Chief Electoral Officer recommends the use of vote tabulators for the counting of ballots cast in the new harmonized continuous poll. This recommendation is brought forward for the following practical reasons:

- Currently, the counting of the ballots in write-in ballot poll, the continuous poll and the advance polls takes several hours to complete. With the introduction of the ballot on demand with the candidates' names and party affiliations for the electors home district, vote tabulators would deliver the results to candidates' agents and returning office staff within minutes of the close of polls. The media consortium and the ENS website would have access to those results shortly thereafter.

- Most early voting opportunities have more than one ballot box to count. To reduce the time it would take to count multiple ballot boxes, returning officers hire two additional election officers to count each additional box at a cost of \$24,000. The use of a vote tabulator would remove this need and reduce the costs associated with producing the count on election night.
- The labour costs associated with counting the ballots cast in the write-in and continuous polls would disappear as would any costs paid to observers of the count for these polls.
- A tabulator could count the ballots cast in the poll for every electoral district. This would not only reduce the cost of couriering packages of ballots to each home district to be counted but also reduce the risk of losing ballots transported around the province. Couriering ballots to home electoral districts cost \$9,000.
- As stated above, on demand ballots used in conjunction with a vote tabulating machine would facilitate identifying the home district of the elector casting the ballot and their polling division. At some point after the election, this information could be shared with the registered parties. More than 20 percent of the results in 2013 could not be associated with a specific polling division.
- Because there are on demand paper ballots for every voting elector, results generated by a tabulator can readily be audited for accuracy at any time.
- Returning officers tend to have many of the most experienced and competent election officers work in advance polls. Current rules require them to be present to count ballots on election night to start counting the advance votes at 8 p.m. Relieving them of this responsibility, frees up knowledgeable personnel to be strategically placed at a potentially problematic poll on election day.
- The cost savings mentioned above could be credited against the cost of the tabulators.

The Chief Electoral Officer recommends the use of vote tabulators for the counting of ballots cast in the new harmonized advance voting opportunities.

Shift Splitting for Deputy Returning Officers and Poll Clerks

In any other line of work, the conditions of employment that deputy returning officers and poll clerks must accept would not only be considered unreasonable but also illegal. These officers are not permitted refreshment breaks, meal breaks or any absence from their stations for a minimum of 13 hours. Voting must stop if either one leaves their station. Historically, this was a requirement to ensure full accountability for the contents of the ballot box. With the processes and procedures in place today, full accountability and an audit trail can be carried out at any time during the day. Subsection 81(13) of the Act exempts election officers of subsection 4(1) of the Labour Standards Code.

Both audits carried out during this election and discussed in detail in this report revealed that most mistakes made by election officers are the result of one of two problems: the inability to sufficiently train workers given the complexity of the job and fatigue as the day wears on. The former is being addressed by ENS through process improvements and job simplification and less complex training. The second can only be corrected by permitting split shifts. Many of our election officers are and will continue to be from the older demographic groups. While permitting the splitting of shifts with an overlap of an half an hour between 2:00 pm and 2:30 pm would marginally add to the overall cost of the election, it would reduce the stress and fatigue of the workers, improve the quality of the work performed during the evening rush to vote and cut down on the number of errors made in completing the paperwork at the end of the day.

“ In any other line of work, the conditions of employment that deputy returning officers and poll clerks must accept would not only be considered unreasonable but also illegal.”

The Chief Electoral Officer recommends providing flexibility to permit some workers to start their duties early in the day and others to replace them later for the latter half of the day.

Use of Observers during the Count

The Act contemplates candidates having representatives at each poll to observe the count on election night. In recent elections, most campaigns have not supplied agents to observe the count in all but few of the polls on election night.

The Act specifically requires two observers to be present as every ballot box is counted on election night. When candidates fail to have their representatives present, the deputy returning officer is required to find two willing people to observe the count. They have two practical choices. In a multiple poll, they can ask another deputy returning officer and poll clerk to watch as they count and vice versa or they can ask two of the last electors voting if they would stay and observe the count. In rural areas of the province, most of the polls single polls and asking electors to watch the count is the only alternative. Regardless of which method is chosen, it costs a minimum of \$15 per hour per observer. In 2013, it cost in excess of \$55,000 to hire observers to watch the count and this does not include the deputy returning officers and poll clerks who would have included their time spent observing in the total hours they worked.

The Chief Electoral Officer recommends removing the requirement to have observers present at the count of each ballot box.

Recommendations Affecting Other Departments or Agencies

Government Advertising During an Election

The actions of other government departments unrelated to electoral events can and do on occasion have unintended consequences on the governance of an electoral event. The following recommendations are offered as a direct result of two such incidents experienced in the course of conducting the 2013 Provincial General Election.

“ The actions of other government departments unrelated to electoral events can and do on occasion have unintended consequences on the governance of an electoral event.”

Amend sections 271 and 272 of the *Elections Act* provisions on Government Advertising

In 2013, prior to the writ of election, ENS received a complaint that government signs in downtown Halifax were election advertising.

ENS sought an opinion from outside legal counsel and, based on that opinion, informed the complainant that the signs were not election advertising as, by definition, election advertising is during a writ period.

The legal opinion also advised that were these signs in place during the election, the signs would be election advertising. ENS met with senior government officials to discuss the complaint and the opinion in an attempt to avoid an issue during an election.

The government's position was that the signs were not election advertising and further, the government could not be bound by the legislation unless it was expressly named in the Act. Upon reflection, it became apparent that there were arguments on both sides of the question that would either require greater clarity in the Act or a decision of a court.

Evidence that the signs would have been election advertising, if posted during the writ period included:

- the naming of ministers who, during an election, would be candidates;

- colours that were closer to reflecting the governing political party than the province of Nova Scotia;
- a campaign-like slogan; and
- the relative sizes of logos and other elements of the signs.

Evidence that the signs may not have been election advertising included:

- the signs had been in place for more than 2 years;
- there had not been an increase in use in anticipation of the general election; and
- previous governments had used similar signage extensively without consequence.

This left ENS in the untenable position of enforcing provisions without clear jurisdiction. Bringing action against those responsible for government advertising during the general election would not have served a constructive purpose. Furthermore, any public airing of these unresolved and potentially contentious issues during the election could have improperly and unfairly influenced the general public's perception of the political parties contesting the election. It may very well have had the unintended consequence of influencing the outcome of the election.

With the general election behind us, ENS is bringing the issue forward to draw attention to the fact that under the current wording of Section 272 the intent of the Act cannot be enforced.

The Chief Electoral Officer recommends removing ENS as regulator of government advertising. The Act should either expressly exclude government advertising material prepared and displayed prior to the writ or, regulations or amendments to legislation provide guidance to government regarding the limits of their advertising that commences in a time prior to a fixed date election or, in the absence of a fixed date provincial general election or during a by-election, limits on government advertising after a writ of election is issued.

Improvements to the Registry of Motor Vehicles Database

ENS depends on several sources for additions, deletions and changes of information about electors currently on the Register of Electors, the central database of Nova Scotia electors. The two most important sources are Elections Canada for all data updates and the Registry of Motor Vehicles (RMV), specifically for “change of address” information.

The RMV on-line tool is used by drivers and vehicle owners to notify the Registrar of a change of address. Currently, the tool allows a civic address to be entered without verification.

In any given month, ENS receives change of address information (either civic address, mailing address, or both) for about 8,000 individuals from the RMV. In general, about 75 per cent of these individuals are electors found on the Register of Electors.

A third of those address updates provided by RMV cannot be used because the address does not match an address in the ENS database or the Nova Scotia Civic Address File (NSCAF) database. This means that each year, roughly 24,000 address updates cannot be applied to the Register of Electors, that is, about 3.5% of the electors in the Register of Electors.

While Service Nova Scotia has acknowledged that an upgrade of the on-line software tool is required, given its priority level, it is unlikely that the upgrade will be completed before the next provincial general election.

The relative importance of the up-to-date address data to ENS, Elections Canada and other municipal, provincial, federal departments and agencies – including police forces and emergency services throughout Nova Scotia – leads to the following recommendation.

The Chief Electoral Officer recommends that Service Nova Scotia and the Chief Information Office raise the priority of this system upgrade so that the project will be completed within the next two years.

“ In any given month, ENS receives change of address information (either civic address, mailing address, or both) for about 8,000 individuals from the RMV.”

Nova Scotia Civic Address File (NSCAF)

The NSCAF program, like RMV, is a responsibility of Service Nova Scotia, and plays an integral role in Nova Scotia's civic addressing system. It is a complex system that involves the public, municipalities, First Nations communities, government departments, emergency response agencies, and telephone service providers. It is the provincial government address standard and is used for everything from emergency response to bus routing and pizza delivery. ENS uses NSCAF to determine in which electoral district individual electors reside and informing them where they go to vote on election day.

The Chief Electoral Officer recommends that NSCAF be declared as the single source for civic address data for the Province of Nova Scotia. More specifically, this would mean all provincial government databases that use civic addresses must use NSCAF as the source for that data or, at a minimum, for the validation of that data in their databases.

Restrictions on Political Activity of ENS Employees

There are currently three classifications of government employees with varying restrictions on political activity: politically restricted, politically limited and unrestricted.

Deputy Heads, CEO's of government departments and offices, commissions or agencies and those in positions confidential to and reporting directly to them are politically restricted. They must resign from their government position to seek nominations, be a candidate, hold a provincial or federal elected office, or engage in other partisan political activity. However, with the exception of the chief electoral officer and the assistant chief electoral officer, the restriction allows the restricted employee to vote in an election, be a member of a provincial or federal political party and attend all-candidates meetings and debates.

Government employees who are politically limited, in addition to the rights of restricted employees, may hold office in a political party, contribute or deal with money to political parties and/or candidates attend electoral district association meetings; and, campaign for a candidate in a provincial or federal election.

While these rights, derived from constitutional rights to participate in political affairs, are appropriate for most members of the Nova Scotia public service, they are not for the chief electoral officer, the assistant chief electoral officer nor the 51 returning officers and the 5 assistant returning officers. The Act currently states that no returning officer or assistant returning officer shall, while in office, knowingly engage in politically partisan conduct. The reason for this restriction is trust. The public-at-large, the candidates and their campaigns need the assurance that those entrusted with election management and administration are not only seen to be objective and impartial but are required by law to be non-partisan.

The Chief Electoral Officer believes these same restrictions should also be extended to the few permanent employees of Elections Nova Scotia.

The Chief Electoral Officer recommends that all permanent employees of ENS be classified as politically restricted employees and prohibited from engaging in politically partisan conduct.

“ The public-at-large, the candidates and their campaigns need the assurance that those entrusted with election management and administration are not only seen to be objective and impartial but are required by law to be non-partisan. ”



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