

Annual Report of the Chief Electoral Officer

2015-2016



OUR VISION

Trusted by all Nova Scotians to excel in the delivery of fair and inclusive elections

OUR MISSION

To serve democracy by delivering provincial elections impartially and professionally.

OUR MANDATE

- Conduct provincial general elections, by-elections and liquor plebiscites,
- Ensure compliance with provincial electoral law including the political financing regime,
- Establish and maintain election-related information, including the Nova Scotia Register of Electors,
- Seek advice and conduct studies related to electoral processes, and,
- Conduct electoral education programs.

OUR VALUES

- Accountability
- Collaboration
- Inclusivity
- Trustworthiness, professionalism, respect, fairness and objectivity
- Transparency

OUR GOALS

- 1 To conduct quality, cost effective, accessible elections.
- 2 To create and provide quality electoral information.
- 3 To engage and educate stakeholders in all aspects of the electoral process.
- 4 To assist, seek and enforce compliance with the *Elections Act*.
- 5 To continuously develop individual and organizational effectiveness.

**Annual Report
of the Chief
Electoral Officer**
2015-2016

July 29, 2016

The Honourable Kevin Murphy
Speaker of Legislative Assembly
1st Floor, Province House
PO Box 1617
Halifax, NS
B3J 2Y3

Dear Mr. Speaker,

I have the honour to present the Annual Report of Elections Nova Scotia, in accordance with the *Elections Act*, SNS 2011, c.5, for the period April 1, 2015 to March 31, 2016.

I respectfully request that you forward this report to the members of the House of Assembly at your earliest convenience.

Respectfully submitted,



Richard Temporale
Chief Electoral Officer

Enclosure

Message of the Chief Electoral Officer

The fiscal year 2015-16 was a busy one at Elections Nova Scotia. Much of the work focused on election readiness.

Under the *Elections Act*, the Governor in Council may issue the writ of election for a general election at any time. Therefore, it is essential that we have a continuous focus on being prepared to deliver a general election when called upon. This includes having the structure and processes in place to grow from a base of 18 head office staff to over 6,000 election workers across the province. It also includes maintaining an accurate permanent register of electors, electoral geography and electoral finance systems, as well as streamlining processes and resolving issues when identified in order to conduct effective and fair elections.

The electoral landscape in Nova Scotia is fashioned by the unique challenges we face as a society such as changing demographics, outmigration from rural to urban centres, technological advancements, changes in the way we communicate and, of course, the ever-constant need and expectations to do more with less. Now more than ever we need to have modern systems in place that provide citizens with more inclusive and accessible choices as to when, where and how they can vote, while at the same time ensuring no candidate or political party has a system induced advantage over another.

In 2014-15, based on input from key stakeholders, Elections Nova Scotia updated its strategic plan to help shape and modernize the electoral environment in Nova Scotia. The plan identifies five organization goals and accompanying performance measures to help crystalize what is important to us, the action we need to take, and how we will know when we have achieved success. The plan also focuses on balancing the challenges, opportunities and risks of the day to ensure strategic success through to 2018.

This annual report highlights key initiatives by goal for the fiscal period 2015-16. It also focuses on efforts taken in this fiscal to advance fairness, balance and inclusiveness system-wide. The report offers insight into the breadth of work undertaken by Elections Nova Scotia to achieve a more modern, streamlined, cost-effective, and balanced electoral management system for all Nova Scotians.

Looking ahead, we have scheduled our readiness date for the 40th provincial general election to be September 1, 2016, which will be 35 months into the mandate of the current government. This is the date that all election processes and materials are planned to be in place, and returning officers selected and trained and at the ready in the event an election is called.

If the 40th provincial general election has not been called by September 1, 2016, a subsequent readiness date has been set for March 1, 2017, toward which we will selectively review what further enhancement can be effectively introduced over that period of time.

Due to the sudden passing of our esteemed colleague, Dana Doiron, and our work to complete our election readiness agenda, this report is being published later than anticipated.

We remain committed to continuous improvement processes to help realize and sustain our vision of being trusted by all Nova Scotians to excel in the delivery of fair, inclusive and accessible elections.

RICHARD P. TEMPORALE

Chief Electoral Officer

July 2016



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OVERVIEW

Delivering on our Goals

As our office is responsible for all aspects of the election process, our projects are varied and, for example, include: working to help secure accessible polling locations for electors with physical disabilities; hiring and training returning officers positions and their staff; and making sure candidates and political parties understand the rules and processes in order to comply with the *Elections Act*. We have been a leader across the country when it comes to offering electors numerous voting opportunities anywhere in the province throughout the election period. As of 2015-16, we have turned our attention to expanding voting opportunities for the disabled community. We are holding discussions on ways to enhance inclusion of Indigenous people, African Nova Scotians and the LGBTIQ+ communities in general elections and by-elections.

We are mindful of the need to develop individual and organizational effectiveness, and to that end some projects within this fiscal period are specifically developed to help us achieve this. This document reports on the activities undertaken at Elections Nova Scotia broken down by goal.

On the next page is a short outline of each goal.



GOAL 1 • CONDUCTING QUALITY, COST-EFFECTIVE, ACCESSIBLE ELECTIONS

This goal includes all activities to ensure every returning office, polling station, and staff member is equipped and ready to deliver and conduct fair and non-partisan elections. This includes developing and disseminating clear and concise materials in a timely way to all staff and political parties and candidates, and providing appropriate training.

GOAL 2 • QUALITY ELECTORAL INFORMATION

One of our key tasks is maintaining and updating election-related data, including the Nova Scotia Register of Electors, which is a list of eligible residents who are registered to vote.

Electors included on this list will be sent voter information by mail during the election telling them where and when they can vote.

GOAL 3 • ENGAGING AND EDUCATING STAKEHOLDERS

We are mandated to conduct voter education and information programs. We want to make sure that the electorate and other stakeholders have what they need to understand when, where, how they can vote and who can vote.

GOAL 4 • ELECTIONS ACT COMPLIANCE

We are also vigilant in our efforts to assist, seek and enforce compliance with the *Elections Act*, including the political financing regime.

We disseminate clear interpretations of the requisite parts of the *Act*, as well as assist various electoral stakeholders prepare their financial statements and returns as required and on time.

Election Nova Scotia calculates and disperses funds to registered parties and candidates pursuant to the *Act*. Elections Nova Scotia works closely with the official agents of the registered parties and has provided training reference material.

GOAL 5 • CONTINUOUS INDIVIDUAL AND ORGANIZATIONAL EFFECTIVENESS

We are mindful of the need to develop individual and organizational effectiveness, and to that end some projects are specifically developed to help us achieve this.

GOAL 1

Conducting quality, cost-effective, accessible elections

The primary mandate of Elections Nova Scotia is to conduct provincial elections; therefore, election preparedness is front and centre in our daily work. Because Nova Scotia does not have a fixed provincial election date, we must be prepared at all times to deliver a general election.

We must make sure that all involved in the provincial election and by-election process have materials and the support they require to fulfill their responsibilities. With this in mind, we carry out our day-to-day duties and develop and publish appropriate resources in a timely manner. Most of the information developed for electors deals with how to vote and the importance of voting. Information produced for election workers deals with the “how” and the “process” of managing returning offices and conducting voting polls. This work includes, but is not limited to:

- Updating and reviewing all election processes;
- Updating and reviewing polling division boundaries;
- Preparing cartographic products;
- Selecting returning office locations;
- Identifying accessible voting places;
- Completing contracts with suppliers;
- Training returning officers and their core staff;
- Preparing and packing all materials so that they are ready to be shipped; and,
- Developing communications material, including materials to help the electorate know when and how to vote.

We continually strive to enhance the election process, using technology as appropriate to gain efficiencies and improve services for the electorate and political players. There is continuous improvement where operational processes and outcomes are reviewed and measures taken to better the overall performance.

Fiscal 2015-16 saw a myriad of projects underway that enhanced various procedures, processes, and products to ensure that we are at the ready to conduct a quality, cost-effective, accessible general election at the drop of the writ. Some have been completed while others are ongoing, anticipated to be completed by the 40th provincial general election readiness date.



40th Provincial General Election Readiness

While governments in Nova Scotia have historically lasted anywhere from 36 to 58 months, we have scheduled our readiness date for the 40th provincial general election to be September 1, 2016, which takes us 35 months into the mandate of the current government. This is the date that all election processes and materials need to be in place, and returning officers selected and trained and at the ready in case a general election is called.

We are targeting the 40th provincial general election cost to be \$10 million (the 2013 election cost was \$9.4 million), and will measure cost effectiveness against this goal. The budget for the 40th provincial general election takes into account the changes in advance voting opportunities, continuous polls and returning office set up. As well, recommended changes to the Tariff of Fees impact the incremental cost for an election by less than \$80,000, or 0.8 per cent.

A list of election-readiness projects undertaken in 2015-16, and the status of each can be found in Appendix A.

Liquor Plebiscite in Municipality of the District of Hants West

A liquor plebiscite is a direct vote on a question in a defined voting area and to the eligible electors in that area relating to the sale and consumption of liquor.

There are two potential plebiscite questions called for under *the Liquor Control Act* and are administered by Elections Nova Scotia.

- Are in favour of the sale of liquor in your municipality in accordance with the *Liquor Control Act*?
- Are you in favour of the sale of liquor for consumption on premises licensed by the Alcohol, Gaming, Fuel and Tobacco Division, Service Nova Scotia?

On 2015-16, one plebiscite was conducted in regards to a dry area in the Municipality of the District of West Hants. In October 2015, Elections Nova Scotia directed the returning officer to conduct a plebiscite as requested by the municipality. The municipality made the request based on two proposed businesses in the dry areas of Falmouth and Mount Denson.

The result of the plebiscite was 84.4% in favour of licensing the business for by-the-glass (on-premises) and 81.8% for packaged (retail) liquor sales. Once again, the turnout for the plebiscite was extremely low. Less than 5 per cent, 77 of the 1,721 eligible registered electors, voted in the plebiscite. Consequently, the cost per voter, at \$127, was high. As a comparator, the operational cost of running the three provincial by-elections in 2015 was \$8.63 per voter, excluding candidate reimbursements for election expenses and audit fees. By-elections typically suffer from lower voter turnout than general elections and as a consequence cost more per vote cast.

Driving Distance to Early Voting and Election Polls

The location of early voting and election polls is important as we want to ensure everyone has reasonable access to voting while containing costs.

One of the measures of reasonable access is using travel time baselines. Two standards have been set by Elections Nova Scotia:

- Voters should be able to reach an advance poll within 25 minutes – seven days of advance poll voting situated in central communities. These communities are places where most electors will travel to shop or do banking, etc., within that week of advance voting.
- Voters should be able to reach their election day polls within 15 minutes.

Returning Officers select polling stations to meet these standards whenever practical. Elections Nova Scotia will test each location. We have developed an innovated approach using improved GIS technology to predict with accuracy the percentage of electors who will meet the travel time baselines.

Early Voting

Drive Time	Elector Count	% of Total
5 Minutes	437,282	59.5%
10 Minutes	593,435	80.7%
15 Minutes	670,652	91.2%
20 Minutes	709,777	96.5%
30 Minutes	731,829	99.5%
Total Registered Electors (May 2016)	735,455	

Election Day

Drive Time	Elector Count	% of Total
5 Minutes	610,549	83.0%
10 Minutes	686,774	93.4%
15 Minutes	714,927	97.2%
20 Minutes	724,937	98.6%
Total Registered Electors (May 2016)	735,455	

97 per cent of all electors are within a 20-minute drive of early (planned) voting opportunities.

Conducting Elections and Accounting for Results

Three by-elections were held on July 14, 2015, and the lessons learned from this experience led to recommendations for legislative change, a plan to pilot a strategic initiative and change in the manner by which Elections Nova Scotia conducts elections and accounts for its results.



Legislative Change

The by-elections in 2015 led to a number of proposed legislative changes to the *Elections Act*. The Chief Electoral Officer (CEO) submitted two reports to the House of Assembly, the first of which included recommendations for legislative change. The recommendations were intended to improve the administration of elections and control costs, including costs for parties and candidates.

Elections Nova Scotia sought advice and input from the Election Commission (EC) on all proposed amendments to the *Elections Act*, which led to the Chief Electoral Officer modifying a number of his recommendations. In addition, the Chief Electoral Officer offered to present the key changes to all party caucuses and the independent member of the Legislature. The Chief Electoral Officer considered their feedback and amended his recommendations for legislation change accordingly.

UPDATE on Status of Legislative Change – June 2016

A number of the key recommendations/legislative amendments were introduced for first reading by the Minister of Justice, the Honourable Diana Whalen, in Bill 162 on April 25, 2016. The Bill was given Royal Assent on May 20, 2016. The amendments to the Act include:

- The election period for a by-election now starts with the issuance of the writ and not on the date the vacancy occurs in the House. This change mirrors the practices in all other Canadian jurisdictions.
- The maximum writ period has been limited to 46 days.
- A sitting member and his or her spouse may choose to vote in the either the electoral district in which the member is running for election or the district where they reside.
- Posting or displaying election advertising, i.e., literature, emblems, posters, and bills that promote or oppose a party or candidate or a position on an issue that a party or candidate is associated is banned within sixty metres of the entrance of buildings in which a voting location is located.

-
- A time limit of one year has been added to the requirement for a prospective political party to obtain 25 signatures in 10 electoral districts requesting registration of the political party on their registration form.
 - Tax receipts, including the reconciliation of used, spoiled or unused receipts, which are provided to the official agents of candidates should be returned directly to the Chief Electoral Officer after the election, instead of the returning officer.
 - Elections Nova Scotia may add fictitious names to the lists of electors provided to municipalities and school boards for their elections. This change will permit Elections Nova Scotia to monitor for misuse of the personal elector information shared with municipal and school board candidates.

Piloting Technology in Election Day Polls – Chief Electoral Officer Directive

The Chief Electoral Officer has recommended that elector registration processes used at all voting opportunities use technology to ensure the integrity of the process and improve efficiency at the poll. As this is a significant initiative, he has recommended that this change be fully implemented for the 41st provincial general election.

The Chief Electoral Officer has notified the Members of the House of Assembly of his intention to run a pilot project to use technology to register electors at election-day polls in the 40th provincial general election. As time permits, the Chief Electoral Officer intends to direct the use of the technology in two electoral districts, one urban and one rural, and report on the initiative to the House. It is expected that the pilot project will cost approximately \$25,000.

Refining the Accounting for Rejected Ballots

In future, during the period between the return of the writ of election and the tabling of the Statement of Votes and Statistics for the election, the Chief Electoral Officer will review each rejected ballot, and categorize each as marked in error, intentionally spoiled or blank. This review will be reported in the Statement of Votes and Statistics presented to the Members of the Assembly.



GOAL 2

Quality Electoral Information

Much of the quality of an election, depends on the quality of the electoral information used.

As Elections Nova Scotia's mandate is establishing and maintaining election-related data, including the Nova Scotia Register of Electors, there are initiatives to ensure the information we hold is accurate, complete and secure, and does not contain erroneous data.

Appendix B provides a brief summary of some of the 2015-16 projects that Elections Nova Scotia undertook to ensure the electoral information held is of the highest quality.

Municipal List of Electors

Improvements to the List of Electors provided to Municipalities

In the months leading to the 2012 municipal and school board elections it was reported that there were issues with the quality of the local lists of electors supplied by Elections Nova Scotia. Reported issues included duplicate elector records, deceased electors, and incorrect addresses for registered electors.

In November 2012, the Chief Electoral Officer held a one-day forum for municipal returning officers responsible for municipal and school board elections to meet with Elections Nova Scotia officials. The forum promoted discussion around primary issues, possible solutions, and best practices for the benefit of future municipal and school board elections. From this work, Elections Nova Scotia developed a plan to mitigate the problems that were encountered and implement enhancements and solutions before the October, 2016 municipal elections.

In total, there were 14 recommendations that were borne from forum discussions with both returning officers and other stakeholders. All of these were explored, and acted upon as appropriate. The Chief Electoral Officer has met his commitment to the province's municipalities in this area. The recommendations and the status of each are given in Appendix C.



GOAL 3

Engaging and Educating Stakeholders

We do our utmost to make sure that Nova Scotians get the information to know how, when and where to vote. Using various media (print, website, Facebook, Twitter, internal portal) we reach out to our various internal and external stakeholders – voting public, candidates, elections workers, parties, electoral district associations, third parties and members of the House of Assembly. Engagement of these groups is key to attaining strategic success for Elections Nova Scotia.

There are many types of projects undertaken at Elections Nova Scotia that fall under this umbrella; for instance, developing a comprehensive and strategic communications plan to guide external communications when a general election is called, and developing and providing election-ready materials, including handbooks, brochures, videos and in-person training, to party officials and candidate officials regarding important election messages.

In addition, we engage with young Nova Scotians that will soon be of voting age to add them to the register of electors when they are eligible to vote to make it easier for them to vote.

There are many projects that started in this fiscal period that are still ongoing. This is because materials are being developed for all stakeholders groups as part of the 40th general election readiness process, with the anticipated completion date of September 1, 2016.

A list of projects that are still ongoing for this fiscal follows:

- Annual Report of the political contributions regime was completed in June 2016;
- Development of communications plan for the 40th general election;
- Various party communications as we lead up to the 40th general election; and,
- Outreach efforts for election workers. There is an opportunity to support election workers who wish to donate their pay to a registered local charity. A study is underway to determine the feasibility of this program, as well as the administrative process for this initiative.



GOAL 4

Elections Act Compliance

An important function of Elections Nova Scotia is to monitor compliance with the *Elections Act*. At times, this calls for dedicated studies to ensure all aspects of the Act are well understood and the Act covers the practices of the day.

The information for the parties, electoral district associations, candidates and third parties involves training in person, via website, and providing handbooks for financial processes and procedures in accordance with the *Elections Act*.

When it comes to compliance with the *Elections Act*, we do our utmost to provide clear interpretations to various stakeholders. For instance, in this fiscal year, five videos were produced for official agents of candidates covering the topics of nominations, contributions, tax receipts, election expenses, and reporting. The number of views these videos receive in the lead up to and during the upcoming general election will be measured.

Review – Leadership Contests

A review of the administration of leadership contests for registered political parties has been underway since the spring of 2015 when the NDP asked to discuss the rules they were considering for their leadership campaign held in the spring of 2016. The current *Elections Act* is silent in this area. There are neither restrictions on who can contribute to a candidate's campaign nor how much can be donated. A jurisdictional review found that six of the ten provinces plus the federal government have legislated rules governing leadership contests. Three of the four Atlantic provinces, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, plus Saskatchewan and Yukon do not. Northwest Territories and Nunavut do not have political party governments. A copy of the jurisdictional review can be found in Appendix D.

The Chief Electoral Officer posed several questions relating to leadership campaigns to the Election Commission. The first question posed required members to describe, in general terms, the rules their parties used to govern their most recent leadership contests. Although the rules imposed and the spending limits differed from party to party, they were generally comparable and fair. The Chief Electoral Officer then sought advice on several more pointed questions, including:

- 1 Should the *Elections Act* be amended to include a section that governs leadership contests?
- 2 If so, should there be rules on contributions be similar to those in place for parties, EDAs and candidates?
- 3 Should contributions to leadership candidates be eligible for tax receipts?
- 4 How should surpluses be disposed of once the contest has been decided?
- 5 Should mandatory reporting of income and expenses for leadership contests be introduced and included in the *Political Contributions Regime Annual Report* presented to the members of the Assembly?
- 6 Should limits be imposed on leadership candidate's expenses?

No consensus positions were reached by the Election Commission on any of these questions, other than the members felt comfortable with the controls their parties had imposed in their respective leadership contests. To them, their rules worked; there was no evidence to suggest any candidate had an unfair advantage or rules had been circumvented.

The Chief Electoral Officer, however, has an obligation to look at leadership contests through the broader public filter. There is a question of transparency and the public's right to know. One of the leaders will be the next premier of this province and will drive the policy initiatives for the next government. The people of the province have the right to know who helped the leadership candidates financially along the way. In the interest of public trust and political legitimacy, common enforceable rules and public disclosure are generally seen as worthwhile endeavors.

To that end, the answers to the five questions noted above, and included below for ease of reference, from the Chief Electoral Officer's perspective, are as follows (in bold):

- 1 Should the *Elections Act* be amended to include a section that governs leadership contests?
Yes, the *Elections Act* should be amended to include general rules for leadership contests.
- 2 If so, should there be rules on contributions be similar to those in place for parties, EDAs and candidates?
Yes, only residents of Nova Scotia should be permitted to contribute funds to a leadership candidate's campaign and their contribution should be limited to \$5,000 per campaign. No corporate or union donations should be permissible.
- 3 Should contributions to leadership candidates be eligible for tax receipts?
No, donors should not expect that their contribution would be eligible for a tax receipt.
- 4 How should surpluses be disposed of once the contest has been decided?
After the conclusion of the contest, the excess funds of each candidate should become the property of the registered party. If the surplus returned by a candidate exceeds \$50 per donor, then each donor should receive a tax receipt from the party for the proportional amount to be applied against that donor's annual contribution limit to the party.
- 5 Should mandatory reporting of income and expenses for leadership contests be introduced and included in the *Political Contributions Regime Annual Report* presented to the members of the Assembly?
Yes, audited statements should be filed with the Chief Electoral Officer and published in the *Political Contributions Regime Annual Report*.
- 6 Should limits be imposed on leadership candidate's expenses?
No, the registered parties should be free to set the spending limits of their leadership campaigns, provided the general rules described in answers 1 through 5 above are implemented.

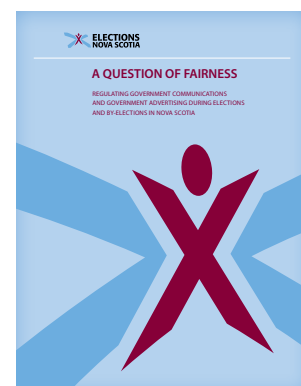
Recommendation:

In the interest of public trust, it is recommended that common rules and public disclosure, similar to those imposed on nominated candidates, be incorporated into the electoral finance section of the Elections Act for registered party leadership contests.

Government Communications and Government Advertising

In the Chief Electoral Officer's report on the conduct of the 2013 provincial general election, he discussed the problems raised by the wording of sections 271 and 272 of the province's *Elections Act*. Specifically, these sections prohibit using government means of transmission of election advertising during an election.

In September 2015, a panel was established by Elections Nova Scotia to explore the possible issues that arise from communications and/or government advertising that is broadcast or published during an election, and to recommend appropriate policies or legislative change to deal with these issues. A copy of the panel's report and recommendations, entitled, **"A Question of Fairness: Regulating Government Communications and Government Advertising During Elections and By-Elections in Nova Scotia"**, can be found in Appendix E.



PANEL TERMS OF REFERENCE

- Examine the various forms of government communications, including those involving advertising, signage and other paid media;
- Identify any form of government communications that provides the governing party or its candidates with an unfair advantage;
- Identify any form or subject of government communications that should be exempt from restriction during the election period;
- Categorize the differences and pragmatic adaptation of policy and guidelines for general elections to by-elections;
- Examine the need and, if desirable, recommend mechanisms for review, approval and rejection of proposed communications.

Panel Members

Jennifer Smith, Dalhousie University (CHAIR)

Jonathan Rose, Queen's University

Leslie Seidle, Institute for Research on Public Policy

Tracey Taweel, Communications Nova Scotia

Dana Doiron, Elections Nova Scotia

Callee Luddington (Research Assistant for Panel)

Panel Recommendations

- 1** That the term “by-election” be included in the references to elections in section 272 of the Nova Scotia *Elections Act*, with the result that the same prohibitions and restrictions against government advertising during elections are applied as well to by-elections;
- 2** That the language of CNS guidelines in its *Communications Policies and Procedures Manual* (see Appendix F) in relation to the election and by-election periods be broadened to include paid government advertising in addition to government communications;
- 3** That government advertising during elections and by-elections be prohibited outright, subject to the following exemptions:
 - a government institution is required by statute or regulation to issue a public notice for legal purposes;
 - an institution must inform the public of a danger to health, safety or the environment;
 - an institution must post an unemployment or staffing notice;
 - an institution needs to issue a call for tenders for a project or work that has been announced publicly before the election is called and that is funded in the current fiscal year budget;
- 4** That section 272 of the Nova Scotia *Elections Act* in its current form be deleted and the following words be substituted:
The government and any person working for the government are prohibited from using public funds to buy or to place advertising in any medium, in Nova Scotia, in Canada or abroad, in support of or against a political party or candidate during an election campaign;
- 5** That the Nova Scotia *Elections Act* be revised to include a provision that enables ENS to advise CNS of what ENS takes to be a serious complaint against the government under section 272 of the Act;
- 6** That the province's elections law explicitly prohibit paid government advertising on social media and on the websites of other organizations during a general election campaign and by-election campaigns.

Chief Electoral Officer's Response to "A Question of Fairness"

- 1 With reference to the work of the panel, the Chief Electoral Officer finds it to be balanced and fair. The panel's findings and recommendations are both reasonable and implementable.
- 2 If Communications Nova Scotia were to broaden the language of its election guidelines in its Communications Policies and Procedures Manual in relation to the election and by-election periods as recommended by the panel, the current gaps in the Communications Nova Scotia policies and procedures with respect to government advertising during provincial elections would be effectively addressed.
- 3 Changes to the election guidelines in the Communications Policies and Procedures Manual would include clarifying that the prohibition covering both paid government advertising and communications (recommendation 2) and expressly prohibiting government advertising during elections and by-elections (recommendation 3), subject to the following exemptions:
 - a government institution is required by statute or regulation to issue a public notice for legal purposes;
 - an institution must inform the public of a danger to health, safety or the environment;
 - an institution must post an unemployment or staffing notice; and,
 - an institution needs to issue a call for tenders for a project or work that has been announced publicly before the election is called and that is funded in the current fiscal year budget.
- 4 While the Chief Electoral Officer agrees with the panel's suggested changes in recommendations 1 and 4 to rewrite the wording of the Section 272 of the Act to simplify and clarify what the government can and cannot do with respect to advertising during an electoral event, he is not recommending the Minister of Justice open the Act in the immediate future for the following reasons:
 - The current definition of "election" in the *Act*, although not explicit, is broad enough to capture by-elections as well as general elections; therefore, the same prohibitions and restrictions against government advertising during general elections could be applied during by-elections
 - The recent change enacted in Bill 162 addresses the panel's general concerns about government advertising during the by-election period by redefining the beginning of the election to be the issuance of the writ and not the date of the vacancy
 - With respect to the panel's recommendation 5, the Chief Electoral Officer currently has both the power and the responsibility to provide Communications Nova Scotia with his opinion on a current government advertising campaign that would contravene the Act during an election period. In fact, this was precisely what occurred during the previous government's tenure and led to his recommendations with respect to government advertising after the 2013 general election (Volume II, *Report on the Conduct of the October 8, 2013 Provincial General Election and Recommendations for Legislative Change*, p. 34). During an event, if the Chief Electoral Officer

believes there has been a breach or if he receives a complaint, serious or not, he must deal with it and inform the complainant of his findings expeditiously. The process is open and transparent and a media release invariably accompanies his findings.

- The Chief Electoral Officer agrees with recommendation 6, which is the province's elections law and in the absence of immediate changes to the Act, Communications Nova Scotia guidelines in its *Communications Policies and Procedures Manual*, explicitly prohibit paid government advertising on social media and on the websites of other organizations during a general election campaign and by-election campaigns. However, the Chief Electoral Officer also believes it should be expanded to include all government advertising, paid or not.

- 5 As the panel concluded, given the fact that Nova Scotia does not have a fixed election date, it is impractical to attempt to police government advertising in the lead-up to the issuance of a writ for a general election or a by-election.

Recommendation:

It is recommended that with the exception of recommendation 5, Communications Nova Scotia broaden the language of its election guidelines in its Communications Policies and Procedures Manual in relation to the election and by-election periods as recommended by the panel. Furthermore, as time permits that Legislative Counsel, rewrite the wording of the Section 272 of the Act to simplify and clarify what the government can and cannot do with respect to advertising during an electoral event.

Elections Act Non-Compliance

In order to ensure transparency, Election Nova Scotia tracks and reports on missed deadlines and other compliance issues.

Nova Scotia Liberal Caucus Office Compliance Agreement

On May 29, 2015, and pursuant to section 294 of the Act, the Chief Electoral Officer entered into a compliance agreement with Linda Tweedie, of Halifax, Nova Scotia, Executive Director of the Nova Scotia Liberal Caucus Office, and with Lloyd Hines, of Guysborough, Nova Scotia, Chair of the Nova Scotia Liberal Caucus.

The *Elections Act* was contravened on May 19, 2015, when the Nova Scotia Liberal Caucus Office published an election advertising flyer which, on or about May 26, 2015 was distributed by Canada Post to approximately 33,000 households in the electoral districts of Dartmouth South, Sydney-Whitney Pier and Cape Breton Centre, during an election, at a total cost of \$7,100.74. In doing so, the Nova Scotia Liberal Caucus Office incurred election advertising expenses that exceeded the limit placed on third-party advertising in a by-election under section 275(4) of the Act. In addition, the

advertising piece was published in contravention of section 277 of the Act as it did not indicate that it was authorized by the Nova Scotia Liberal Caucus.

Under the compliance agreement, the Nova Scotia Liberal Caucus Office has agreed to reimburse the election advertising expenses incurred from non-public funds.

Nova Scotia NDP Caucus Office Compliance Agreement

On June 1, 2015, and pursuant to section 294 of the Act, the Chief Electoral Officer entered into a Compliance Agreement with Mat Whynott, of Halifax, Nova Scotia, Acting Chief of Staff of the Nova Scotia NDP Caucus Office, and with Sterling Belliveau, of Shelburne, Nova Scotia, Chair of the Nova Scotia NDP Caucus.

The *Elections Act* was contravened on April 14, 2015, when the Nova Scotia NDP Caucus Office distributed brochures to 12,796 households in the electoral district of Dartmouth South, during an election, at a total cost of \$2,162.52. In doing so, the Nova Scotia NDP Caucus Office incurred election advertising expenses that exceeded the limit placed on third-party advertising in a by-election under section 275(4) of the Act. In addition, the advertising piece was published in contravention of section 277 of the Act as it did not indicate that it was authorized by the Nova Scotia NDP Caucus.

Under the Compliance Agreement, the Nova Scotia NDP Caucus Office agreed to reimburse the election advertising expenses incurred from non-public funds.

Election Finance

E-tax Receipts

In the fall of 2015, Elections Nova Scotia began a process to identify the steps required to ensure electronic tax receipts issued by registered parties are secure and have appropriate internal controls. Guidelines, a handbook, and an evaluation tool were developed. Three parties expressed interest in pursuing electronic tax receipts. Reviews of these systems is underway using a rigorous evaluation. The parties (that wish to) expect to be in compliance with the issue of tax receipts requirements in the coming year.

Annual Disclosure Report of Contributions

This report was published on June 20, 2016, and provides details of each contributor to a registered party or electoral district association if the amount was \$200 or more.

In the 2015-16 fiscal period, there were no investigations of breaches relating to electoral finance portions of the Act.

GOAL 5

Continuous Individual and Organizational Effectiveness

Individual and organizational effectiveness is key to helping us achieve our goals and to keeping us on the right path. We cannot afford to lose sight of our vision and mandate. In our dynamic environment, we need to continuously take stock of our initiatives in relation to our goals, and adapt our work processes as needed to overcome the particular challenges of the day.

This is no easy feat and cannot happen unless we value and instill a learning culture within the organization and focus on the use of best practices and staff/professional development. We also have to be mindful of the structures in place to allow the flexibility we need while at the same time being as cost conscious.

At Elections Nova Scotia, we focus on attaining and sustaining engaged employees and the continuous growth and development of our organization by building strength in the areas of leadership, decision making and structure; people, work processes and systems; and culture. When we do uncover weaknesses, we develop and implement and/or adapt strategies and processes to improve the situation and ensure the continued growth and development of our organization.

A list of projects that are still ongoing for this fiscal follows:

SharePoint & STOR

While implementation of both Sharepoint and STOR were scheduled for this fiscal period, only the STOR portion of the initiative was advanced. The updating of STOR, including organizing records, and cleaning up the shared drive continues. Sharepoint implementation has been placed on hold.

Business Continuity Management

In January 2016 a Business Continuity Plan was created and signed off with the assistance of Internal Services. A risk assessment was complete as well as an organizational objective documentation. Ongoing simulations are scheduled for business continuity planning, in conjunction with the Department of Internal Services.

Conducting Quarterly Planning Sessions

In 2015 Elections Nova Scotia published a Strategic Plan. Quarterly reviews of the progress against the strategic goals are underway to ensure the organization stays on track to achieve success.

Policies to Enhance Inclusiveness and Advance Operational Effectiveness

- A policy is under development to guide election workers to be respectful and non-challenging should transgendered electors present at the polls.
- An internal policy has been developed to guide elections workers in accommodating members of the Muslim community as poll workers.



Count Yourself In! Census Data

Elections Nova Scotia's goal is to build a more diverse organization that is reflective of the demographics of the Province. The census data for this organization was gathered using the model of the Public Service Commission's survey, *Count Yourself In!*

We collected data from Returning Officers, Assistant Returning Officers, Returning Officers at Large, and head-office staff to determine how Elections Nova Scotia's staff compares. Going forward, Elections Nova Scotia's census data will be used as a baseline measure of diversity within the organization.

		Corporate Profile at a Glance	ENS Profile at a Glance
* less than 1 per cent		N = 11048 / Response Rate = ~ 50%	N = 127 / Responses = 85%
** no response in this category			
Age	Under 18	1%	**
	18-24	7%	**
	25-34	12%	*
	35-44	26%	11%
	45-54	34%	13%
	55-64	23%	43%
	+65	2%	32%
	Prefer Not to Say	2%	*
Immigrant Status	Yes	6%	7%
	No	92%	92%
	Prefer Not to Say	2%	*
Heritage Groups	Acadian	7%	6%
	African Nova Scotian	4%	**
	Gael / Gaelic	6%	4%
	Mi'kmaq	2%	*
	No	76%	82%
	Prefer not to say	5%	6%

* less than 1 per cent		Corporate Profile at a Glance	ENS Profile at a Glance
** no response in this category		N = 11048 / Response Rate = ~ 50%	N = 127 / Responses = 85%
Culture / Ethnicity	Aboriginal	2% (NS Labour Force 3.3%)	*
	Asian	2%	3%
	Black	3% (NS Labour Force 1.9%)	**
	Latin / Hispanic	2%	**
	Middle Eastern	7%	*
	White	81%	84%
	Multiracial	2%	*
	Other	4%	**
	Prefer Not to Say	5%	10%
Disability	Yes	9% (NS Labour Force 9.9%)	6%
	No	87%	93%
	Prefer Not to Say	3%	*
Disability Type	Cognitive / Developmental	6%	**
	Learning	7%	**
	Physical	31%	43%
	Psychological / Mental	25%	14%
	Sensory	11%	43%
	Other	8%	**
	Prefer Not to Say	12%	**

NOTE: Due to rounding, percentages may not add to 100%.

Increasing Transparency for Elections Nova Scotia Management Team

The Chief Electoral Officer is committed to maintaining professional staff who are leading electoral events in Nova Scotia using best practices. Travel is undertaken to keep up-to-date on innovative practices used in other jurisdictions to ensure democratic principles are upheld for the citizens of Nova Scotia. In addition, interprovincial travel takes place for professional development and inter-provincial joint projects.

Beginning April 2016, to increase transparency relating to ENS travel, expenses claimed for travel that exceeds \$250.00 for each senior manager will be published. Normal travel includes the following:

- attending annual national conference for all Chief Electoral Officers from across Canada;
- attending at Council on Governmental Ethics Laws (COGEL);
- partaking in committee work or visitors' programs for elections taking place in other provinces; and,
- training of election workers and official agents within Nova Scotia.

Role of the Election Commission

Established under the *Elections Act*, the members of the Election Commission advise the Chief Electoral Officer on various questions and issues with respect to the administrative conduct of elections. The Commission is composed of a Chair, appointed by the Governor in Council for a term of five years; and two persons appointed for terms of two years by the leaders of each registered party with members sitting in the House of Assembly.

CHAIRPERSON: Vince MacLean

Progressive Conservative Party	New Democratic Party	Liberal Party
Cameron MacKeen	Don Fraser	Jane O'Neil
vacant	Jill Houlihan	Chris MacInnes

On June 22, 2016, Keith Bain of the Progressive Conservative Party resigned his position on the Election Commission.

Chief Electoral Officer

Nova Scotia's Chief Electoral Officer is **Richard P. Temporale**. Mr. Temporale was appointed in June 2012, and since then he has been responsible for the work of Elections Nova Scotia.

Under the direction of Mr. Temporale, Elections Nova Scotia conducts quality, cost effective, accessible general elections, by-elections and plebiscites in a fair and transparent manner.



APPENDIX A • Projects and Summaries

GOAL 1 • Conducting quality, cost-effective, accessible elections

2015-16 Projects

Brief Summary and Status

Returning Office – Locations and Staff

- Standards for the size and location for all voting locations, including election day, community advance (if needed) and campus voting has been completed.
- Roles and responsibilities of the staff in Returning Offices have been reviewed, considering input from returning officers.
- The plan for Returning Offices has been completed. As a result, satellite offices will no longer be offered, and the possibility of combining offices is still under development.
- All returning officers are in place.
- Training of returning officers and other core staff is underway. In-house training sessions and manuals will be augmented with short videos. All training is anticipated to be completed by September 2016.
- The training videos noted above are in various stages of development but will be completed for use in September 2016
- Responsibilities, criteria and tests for each election position have been completed.

Returning Office – Technology

We are working to secure all IT equipment required for the 40th Provincial General Election, including, computers, phones, and returning office infrastructure. In addition, installation plans are being planned and reviewed. We anticipate to have this completed and packed for shipping to individual returning offices September 1, 2016.



Returning Office – Election (worker and elector) Supplies

- Returning Office manuals are being developed and a review of distribution methods completed, taking into consideration returning officer input. As a result, there will be fewer hard copies printed as the Manual will be available through Elections Nova Scotia's electronic portal.
- Returning Office packing instructions on how to organize and pack information to be returned to Elections Nova Scotia after the election have been completed.
- About 25% of election materials have been ordered, with an anticipated completion date of having all materials, ordered, kitted and packed for shipping of September 1, 2016.

Process Updates

- Poll procedures are being updated. This includes various documentation and forms for continuous poll (Returning Office, Community and Campus), write-in ballots, election day, hospital voting, in-home voting, and close of polls. This is being done considering the election audit and compliance audit findings. The anticipated completion date is September 1, 2016.
- Processes to print ballots on demand for out-of-district voting and counting are under development, with an anticipated completion date of September 1, 2016.
- Ballot production: The procedures and materials used to print ballots are being reviewed, with an anticipated completion date of September 1, 2016.
- The process by which to oversee out-of-district and write-in ballot counting at Elections Nova Scotia is being reviewed.

Warehouse Update

- An inventory management program has been implemented to track consumable election materials by location. The Wedge Advanced Software Product (WASP) inventory program can create packing lists for shipments to electoral districts, election kits for the various voting opportunities, as well as track costs of materials.

Finance Updates

- Legislative changes were made and implemented to the provisions for loans to political parties and candidates.
- Payroll Services will not use electronic ROE's for election workers.

Guides and Manuals

- Guides and manuals for candidates and for the candidates' official agents are under development

Forms and Handbooks

- Forms and Handbooks are being reviewed, revised, and rewritten, as required for the parties, candidates, electoral district associations, and third parties

Scrutineer Brochure

- A brochure on the Do's and Don'ts for Scrutineers is under development.
-



APPENDIX B • Projects and Summaries

GOAL 2 • Quality Electoral Information

2015-16 Projects

Brief Summary and Status

Improvements to Register of Electors

- Several procedures and policies have been developed to improve the digital operations of handling the electors' information update in the Register of Electors. Automated procedures ensure that road network and civic addresses are up-to-date, deceased electors and duplicated elector records are removed, moves of electors to new residential civic addresses are captured, and incomplete information of electors is updated based on responses to correspondence sent to electors asking for updated information.
- Work to develop an on-line elector registration process, including policy development and support for phone registration, has been deferred until after September 1, 2016.

Electoral Management System Review and Update

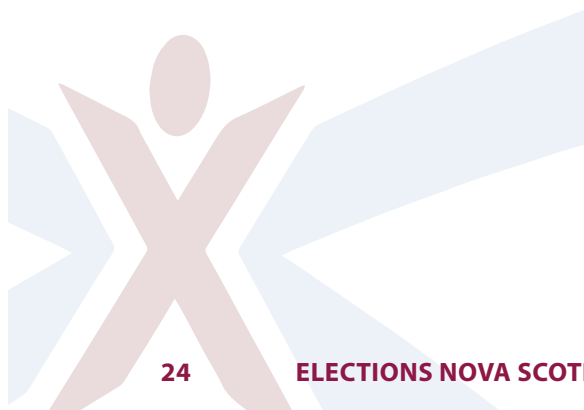
- The Electoral Management System is being updated, based on feedback from 39th general election and Returning Officer input. The anticipated completion date is September 1, 2016.

Electoral Management System Improvements

- Enhancements are being made to the payroll and election worker modules, and the GIS interface. This is scheduled to be completed by September 1, 2016
- Map Production Automation to generate e-versions of maps based on current interface is underway, with an anticipated completion date of September 1, 2016.

EBT Updates

- Initial work on the migration and enhancements to the EBT used by Returning Officers to review and update poll divisions, including "Map my Address" and "Where's my Poll" locations, and poll selection location functions indicates that a different approach is required. This project is ongoing.



**Registering
16- and 17-year olds**

- We are working with the province's privacy officer and the Department of Education on this project. A Data Sharing Agreement has been signed with all school boards. Student information will be provided on an annual bases to Elections Nova Scotia starting in 2016.
- Procedures, policies and digital processes are being developed to ensure addition of qualified 18 year-old electors to the Register of Electors.
- This project is on hold until after the September 1 Election Readiness milestone.

**Compliance of
Electoral Finance Clients**

- All registered parties have submitted their annual financial reports before the deadline of April 30, 2016. Registered Electoral District Associations are required to submit their annual financial reports before March 31, 2016. A total of 84 per cent of these reports were received before this deadline.
-



APPENDIX C

Municipal Forum Recommendations and 2016 Update

Recommendation	Status/Update	Notes
1 As the authority on maintaining the Register of Electors and producing Lists of Electors for provincial, municipal and school board elections in Nova Scotia, Elections Nova Scotia should in future, provide “live lists” via access to ENS servers from the date list data are turned over to a predetermined date after election day rather than supplying municipalities disks containing static lists of electors.	Not possible	All programs and data are behind the provincial government’s firewall It is against the government policy to provide non-employees access to information behind the firewall
2 During the municipal election period Elections Nova Scotia should: <ul style="list-style-type: none">• Extend the functionality of the provincial Election Management System (EMS) to support elector registration processes• Train municipal returning officers on registration processes and forms prior to providing access to live lists in the spring of an election year• Develop elector registration forms for the municipal returning officers to use during the election period.• Provide continual elector registration support to municipal returning officers during the election period	System changes are complete and training and forms are available	
3 Elections Nova Scotia should continue to undertake significant cleansing of the register to eliminate legacy problems. Where List of Electors issues exist, ENS is responsible for contacting the elector, identifying the source of error, and correcting the register maintenance systems.	Complete	

-
- 4** At all times, municipalities should work in conjunction with Elections Nova Scotia to support municipal Lists of Electors and to assist in the maintenance of the provincial Register of Electors. Some of the areas to work on includes:
- When reviewing their data, municipalities should provide feedback to Elections Nova Scotia in preliminary period through the tools and processes developed by Elections Nova Scotia.
 - Municipalities should support the quality of the address information in the Register when reviewing municipal addresses
 - Municipalities should use standard registration forms and processes, including elector registration forms, authorization to view and/or access the electors list.
 - Municipalities should provide the services for electors to review and update their elector information at their facilities using the tools provided by Elections Nova Scotia.

**Requires
compliance
of individual
municipalities**

These tasks are a municipal responsibility

-
- 5** After any local election municipalities should use Elections Nova Scotia tools to update all elector registration transactions within a mutually agreed to period of time, including corrections to the poll book and new elector registrations.

Incomplete

HRM was the only municipality that has taken the Electoral Management System from ENS and used it as the starting point to develop the functionalities that cater to a municipal election

ENS provides the extract of the List of Electors for each municipality in a portable user-friendly format

6 Municipal councils should consider eliminating costly enumeration where it is still employed

Requires municipal council decision

7 The Minister responsible for Service Nova Scotia and Municipal Relations should consider making the following changes to the *Municipal Elections Act*:

Complete

- Regardless of whether a municipal council decides to conduct a full enumeration, all municipalities should be given access to an extract of the provincial register of electors once they agree in writing with ENS terms and conditions for the use of that list.
- Municipalities should be afforded the power to conduct targeted enumeration. Targeted enumeration should be conducted as close to the municipal election date as practical, i.e., in September before the amended list of electors is produced. Target enumeration should be done to enhance the electors list provided by Elections Nova Scotia, i.e., in areas of new developments or in situations where there has been a significant population shift.

8 Further, when reviewing the *Municipal Elections Act*, the Minister should consider updating election procedures and milestones that mirror those enacted in the province's new *Elections Act* including:

- Harmonizing the qualifications of electors in both acts (residency requirements) to reflect that electors in provincial elections require 6 months residency in the province and adding a further qualification for electors in municipal elections that they also have at least three months residency in the municipality in which they are voting. Extending the revision period in the *Municipal Elections Act* to allow electors to update their registration information from the end of August to the day before candidate nominations are filed.
- Timing the release of Lists of Electors to nominated candidates to ensure the highest possible list quality for the Internet voting period.
- Removing the section of the act regarding the certificate of eligibility. Electors can register in conjunction with voting.

Complete

Legislative amendments done to the *Municipal Elections Act*



9 The Registry of Motor Vehicles (RMV) should:

- Provide all data fields to Elections Nova Scotia including the master license number, name, civic and mailing address and date of birth of all license holders.
- Provide authorization to Elections Canada to share the master license number they receive with Elections Nova Scotia.
- Provide a full copy of the drivers' license database to Elections Nova Scotia on an annual basis.
- Incorporate a change of name flag in its data base for individuals who adopt a new name.
- Upgrade the change of address requirements in the Registry's software to ensure that change of address functionality requires:
 - both the civic address and the mailing address to be queried when an individual moves;
 - query the individual making the change about the status of other drivers at the former address; and,
 - encourage other members of the household to update their address if applicable.
- Use NSCAF data exclusively to validate addresses through all change of address processes.

Ongoing

Among other things, ENS is working with RMV and Elections Canada to enter an agreement that would permit ENS to receive each elector's personal driver's license number in the same manner as Elections Canada currently does

The revised agreement is currently in the hands of the solicitor for the RMV

10 Elections Canada should use NSCAF exclusively to validate all Nova Scotia addresses currently in the National Register and to verify addresses submitted to them by electors. This would reduce the number of errors in the agency's data.

Ongoing

Elections Canada is in the process of validating addresses using NSCAF

ENS uses NSCAF to validate Elections Canada addresses wherever possible and provides the validated addresses to Elections Canada

11 Elections Nova Scotia should work with representatives of municipal returning officers to design a standardized Voter Information Card for municipal elections. Canada Post works most effectively if they can communicate a clear message to their Post Masters on the province-wide products that they are responsible for delivering. If the municipalities could agree on a standard looking product, and include instructions that it be delivered to the specified elector or occupant, the instructions province-wide for Canada Post to its Post Masters would be simpler and the success rate for the delivery may benefit.

Not Available

ENS is currently updating the design and the delivery of its voter information cards (VIC)

12 Elections Nova Scotia should assist municipal returning officers during a municipal election year in identifying and resolving undeliverable mail issues with Canada Post.

Available

13 With respect to providing list-related services to electors on-line:

- Elections Nova Scotia should work with Halifax and Cape Breton Regional Municipalities to:
 - develop a web facility to allow existing or new electors to verify and update their address information or register on-line or by phone if they can provide a verifiable identification that meets the privacy standards of the Nova Scotia Freedom of Information and Protection of Privacy Review Office;
 - provide access to this facility to all Nova Scotia municipalities for municipal and school board elections in tandem with the “live list” concept; and,
 - encourage electors and potential to use the web facility to register, update, or confirm their elector information.

**Complete for HRM
Under development for ENS Register of Electors**



14 Similar to the media campaign used around provincial general elections, Elections Nova Scotia should offer a province-wide public education campaign during the municipal election year to encourage electors to take responsibility for ensuring they are registered and if so, on the Register accurately .

Not within ENS Mandate



APPENDIX D

Leadership Contest Regimes in Canadian Jurisdictions – A Summary of Requirements/Features

Requirements/ Features	Canada	British Columbia	Alberta	Manitoba	Ontario	Quebec	New Brunswick
Registered party required to give notice of leadership contest to CEO	Yes	No	Yes	Yes	Yes	Yes	No
Contestants required to register with CEO	Yes	No	Yes	Yes	Yes	Yes	Yes
CEO required to keep public register of contestants	Yes	No	Yes	Yes	No	Yes	Yes
Contestant required to appoint official agent	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Financial statement required to be filed	Within 6 months after contest if contributions or expenses exceed \$5,000.	Within 90 days after a leader selected, unless acclaimed & no financial activity	Within 4 months after leadership vote.	Within 30 days after contest ends.	1 st financial statement within 6 months of leadership vote. 2 nd financial statement within 20 months of leadership vote.	Within 120 days after leadership vote. Returns of all candidates filed by party.	Within 60 days after leadership convention. Simplified financial reporting for contestants who received \$2,000 or less in contributions.
Contestant required to appoint of auditor & submit audit report	Auditor required but audit report only required if contributions or expenses total \$5,000 or more.	Only if the contestant contributions or expenses are \$10,000 or more or upon CEO's request.	No	Yes	Yes	No May be audited by CEO	No

Requirements/ Features	Canada	British Columbia	Alberta	Manitoba	Ontario	Quebec	New Brunswick
Amount limits on contributions	Max. of \$1525 in 2016 to all contestants increased by \$25 each year. Max. of \$25,000 to own campaign.	No limit on contributions by cheque, money order or credit card. \$100 limit on cash contributions	No limit	Max. of \$3,000 during the contest period.	No limit on contributions by any "modern financial practice". \$25 limit on cash contributions.	Max. of \$500 during a given campaign	Max. of \$6,000 to each contestant for total financial support in any form.
Disclosure of contributors required	For contributions valuing more than \$200.	For contributions valuing more than \$250.	For contributions valuing more than \$250.	For contributions valuing \$250 or more.	For contributions valuing more than \$100. 'Real time' reporting (within 10 days).	For all contributions & contributors. Disclosed within 5 days after being reported to CEO	If candidate's total value of all contributions and financing exceeds \$2,000, disclosure is required for contributions by an individual totalling more than \$100 and all contributions by a corporation or trade union.
Disposal of surplus	Must be transferred to registered party or registered district association of party.	Not regulated.	Not regulated.	Transferred to registered party.	Transferred to registered party.	Forwarded to CEO & paid to Minister of Finance.	Must be distributed, within 60 days of being reported to the Supervisor, to contributors or any other person for any purpose approved by Supervisor of Political Financing.

Requirements/ Features	Canada	British Columbia	Alberta	Manitoba	Ontario	Quebec	New Brunswick
CEO can issue guidelines/ directives for contestants	Yes	No	No	Yes	No	Yes	Yes, by Supervisor of Political Financing following consultation with the political financing advisory committee.

Saskatchewan, PEI, NS, NL and YK do not have legislated requirements regarding financial information for leadership contests. NWT and NU do not have registered political party governments.



APPENDIX E

A Question of Fairness: Regulating Government Communications and Government Advertising During Elections and By-Elections in Nova Scotia



A QUESTION OF FAIRNESS

REGULATING GOVERNMENT COMMUNICATIONS
AND GOVERNMENT ADVERTISING DURING ELECTIONS
AND BY-ELECTIONS IN NOVA SCOTIA



DEDICATION

This report is dedicated to the memory of Dana Phillip Doiron, under whose leadership the panel was established. He served as a member of the panel, contributing his valuable expertise and knowledge to its work. Mr. Doiron was a fine public servant of Nova Scotia, a devoted official of Elections Nova Scotia and a strong believer in the Canadian tradition of free and fair elections.

Panel on the Regulation of Government Communications and Government
Advertising During General Elections and By-Elections

Richard Temporale
Chief Electoral Office
Elections Nova Scotia
6-7037 Mumford Road
Halifax, Nova Scotia
B3L 2J1

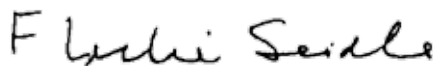
Dear Richard:

We are pleased to submit to you the final report of the panel established to inquire into the regulation of government communications and government advertising during general elections and by-elections. The report contains the recommendations of the panel regulation in this area.


Sincerely,



Jennifer Smith, Chair



Leslie Seidle



Jonathan Rose



Tracey Taweel

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INTRODUCTION

Principle of Fairness

In his report on the conduct of the provincial general election held on October 8, 2013, the Chief Electoral Officer (CEO) of Nova Scotia discussed the problems raised by sections 271 and 272 of the province's *Elections Act*¹. These sections prohibit government election advertising during a general election, but not a by-election, and not during a predefined run-up period to such elections. The CEO stated that the lack of precision and clarity in the wording of these sections make it impossible for the intent of the legislation to be enforced.

The concerns thus raised by the CEO form the backdrop of the panel's work. It was established in September 2015 by Elections Nova Scotia (ENS) to explore the issues that arise out of government advertising alleged to be election advertising that is broadcast or published during a general election and by-elections and the run-up to these elections. ENS asked the panel to recommend appropriate policies to deal with these issues.

The panel was comprised of the following members:

Jennifer Smith, Dalhousie University (Chair)
Jonathan Rose, Queen's University
Leslie Seidle, Institute for Research on Public Policy
Tracey Taweel, Communications Nova Scotia
Dana Doiron, Elections Nova Scotia
Callee Luddington was the research assistant for the panel.

The terms of reference of the panel are set out below:

- Examine the various forms of government communications, including those involving advertising, signage and other paid media;
- Identify any form of government communications that provides the governing party or its candidates with an unfair advantage;
- Identify any form or subject of government communications that should be exempt from restriction during the election period;
- Categorize the differences and pragmatic adaptation of policy and guidelines for general elections to by-elections;
- Examine the need and, if desirable, recommend mechanisms for review, approval and rejection of proposed communications.

¹ *An Act Respecting the Election of Members to the House of Assembly and Electoral Finance*, Chapter 5 of the Acts of 2011, amended 2011, c.60, 2013, c.17

In its approach to the task, the panel based its recommendations and reasoning on the **principle of fairness**. This choice is rooted in the fact that Canadian governments and Canadian courts, consistent with the Canadian Charter of Rights and Freedoms, have adopted it in their approach to the many aspects of the regulation of elections. For example, in the Supreme Court decision, *Harper v Canada (Attorney General)*, 2004, the Court argued that fairness was important for three reasons:

- (1) to promote equality in the political discourse;**
- (2) to protect the integrity of the financing regime applicable to candidates and parties; and**
- (3) to ensure that voters have confidence in the electoral process.**

We believe that any government communications up to and during an election should be consistent with the principle of fairness as enunciated by the court.

An example of the use of the principle of fairness with which Canadians are familiar is the limits that are imposed on election spending by political parties and their candidates. The purpose is to establish fairness among the competitors or, if you will, a level playing field on which they can compete. Of course, no one expects to see a completely level playing field. That would be impossible to sustain. But something approximating it is an important objective as well as a practicable one in an effort to prevent the political parties and the candidates with the deepest pockets from running away with all of the electoral prizes.

In applying the general principle of fairness to the issue of government communications in the lead up to and during general elections and by-elections, the panel derived the following two more specific principles:

- (1) A political party, by virtue of being the governing party, should not possess an advantage over other parties.**
- (2) A candidate, by virtue of being a member of the governing party, should not possess an advantage over other candidates.**

How do these two principles translate into concrete practice? In order to pursue that question, it is essential first to define what we are referring to when we use the terms “government communications” and “government advertising.”

1. GOVERNMENT COMMUNICATIONS AND GOVERNMENT ADVERTISING

Government Communications

The phrase government communications, broadly understood, refers to the efforts of governments to inform, persuade and educate citizens, residents, and visitors. Governments of all political stripes use communications for these purposes, and for more general purposes as well, for example, to maintain legitimacy, to ensure compliance with their policies and to fulfill democratic ideals. As Walter Lippmann has written, “the health of society depends on the quality of information it receives.”²

Generally most communications by government are informational, and there are many recognizable forms. Traditional forms include announcements, news releases, public service announcements on radio, television and in print, out-of-home advertising (i.e. billboards), and events. Newer forms of communication, by contrast, encompass websites and digital platforms. Examples of these are Facebook, Twitter, Instagram and Snapchat, among others. For our purposes, an important point about these social media is the increase in their use, by everyone, governments included.

The potential abuse of government communication for partisan purposes is one reason why many jurisdictions impose some restrictions on it. The act that regulates it in Nova Scotia is the *Public Service Act, Respecting the Office of Communications Nova Scotia*, passed by the House of Assembly in 2013, which refers to “non-partisan communications from the Government of the Province.”³ This language underscores the point that government communications, paid for by taxpayers, should be non-partisan. In other words, they are expected to convey to people information about government activities, programs and policies that is accurate, objective and relevant to the issue at hand. They are not intended to promote, directly or indirectly, the partisan interests of the governing party.

Government Advertising

Government advertising occurs when government pays or proposes to pay for placement of space or time in media—regardless of the platform used. Therefore it is a distinct component of government communications. Let us consider two types of government advertising. Under the heading of non-contentious communication are, say, notices about new regulations governing the location of moorings off coastal residential properties. Such notices convey information. The government is stipulating the rules to be followed by those who might want to secure a mooring. This information is useful and practical for property owners, who now are able to follow the correct procedures to secure moorings, should they choose to do so.

² Walter Lippmann, *Public Opinion* (New York: Macmillan, 1945) p. 16

³ Chapter 42 of the Acts of 2013

On the other hand, government advertising may be about more than mere information conveyance. Often, it encourages a change in behaviour or attitudes toward an issue around which there is widespread agreement. For example, the government might develop an advertising campaign to encourage people to get flu shots every fall. Such a campaign could include basic health information. But in this instance, the government cares about the choices that members of the public make and therefore will seek to influence them to get the shots by explaining why such an action is good for them and the public generally, and possibly by making the choice an easy one to accomplish (providing free flu shots). Moreover, the control of the message is held to be important enough for the government agency involved to buy the space or the time. This category of advertising may seek to change or influence behaviour or attitudes but there is general agreement about its propriety: we do not object to being reminded to buckle our seat belts, not drink and drive, or get a flu shot.

Partisan Government Advertising

Distinct from all of this is partisan government advertising, which can be defined as government advertising that is designed to enhance the electoral prospects of the governing party. Hatt describes it as communication that is “geared towards [the] political objectives of retaining power” using taxpayers money.⁴ As he points out, it is easy to see why governments might be tempted on occasion to engage in partisan advertising. First, they have access to hefty advertising budgets. Second, contemporary forms of mass advertising are powerful tools with which to influence public opinion.⁵ And finally, there are very few limits imposed on how or what governments can advertise.

It is not always easy to say when non-partisan government advertising ends and where partisan government advertising begins. Undoubtedly there are grey areas, that is, examples over which well-intentioned, informed observers might disagree. Nonetheless, when elections and by-elections are on the horizon, the principle of fairness dictates a measure of vigilance. Certainly during elections and by-elections, and sometimes even in the run up to them, there are real restrictions in place on the type of government communications that are considered permissible.

Later in the report we offer examples of such restrictions, including legislated restrictions in jurisdictions outside Nova Scotia, and non-legislative, conventional restrictions that are captured in the concept of the “caretaker convention.” In the next section, we look at the considerable body of policy on the subject that has been developed by Communications Nova Scotia (CNS). Their work supplies an admirable jumping off point for the panel’s considerations.

⁴ Kayle Hatt, “The Abuse of Government Advertising: Examining Partisan Advantage-Seeking and Parliamentary Innovations Designed to Eliminate Misuse” in *Public Policy and Governance Review*, Volume 6, Issue 1 (Winter 2014), 78-89, p. 82

⁵ *Ibid*, p. 81

2. CNS POLICY GUIDELINES

In the *Public Service Act, Respecting the Office of Communications Nova Scotia*, CNS is charged with the task of coordinating the delivery of communications across the government of Nova Scotia in accordance with a specified set of standards, among which is objectivity. Government communications are to be “objective and not directed at promoting partisan interests.”⁶

Guidelines in Government Advertising

CNS has produced *Guidelines on Government Advertising*, 2013, in which this standard is reflected in the third of the five principles developed to guide its work. We cite the third principle in full:

Principle 3: Advertising must be objective and not directed at promoting partisan interests.

A. Advertising must be presented in objective language and be free of partisan argument.

B. Advertising must not try to foster a positive impression of a particular political party or promote partisan interests by mentioning the party in Government by name, or by including partisan slogans or images.

C. Advertising must not:

i. Directly attack or scorn the views, policies or actions of others such as the policies and opinions of opposition parties or groups;

ii. Be designed to influence public support for a political party, a candidate for election, a Minister or a Member of the Legislative Assembly; or

iii. Refer or link to the websites of politicians or political parties.⁷

It is worth noting that in the prohibition against partisan government advertising, CNS examines both sides of the coin: government advertising that promotes the governing party; and government advertising that denigrates the opponents of the government. Both are prohibited partisan undertakings.

In its *Communications Policies and Procedures Manual*, revised in 2014, CNS again stresses the principle that government communications issued through its office ought not to be partisan in nature or tone. To that end, it offers guidelines designed to help public servants observe the principle. For example, government communications must not include the names of political parties or identify the government or government members by party affiliation. Or again, for the most part only members of Cabinet or others speaking on their behalf are permitted to make announcements or appear in photographs issued through CNS.⁸

⁶ Chapter 376 of the Revised Statutes, 1989, S.251B [c(vi)]

⁷ Government of Nova Scotia, *Communications Nova Scotia*, December 2013

⁸ *Communications Policies and Procedures Manual*, p.33

Government Advertising During Elections

A section of the Manual entitled “Communications Guidelines and Protocols During an Election Campaign” is focused on the subject matter assigned to the panel. Logically, CNS points out that the principles and guidelines already established apply as much to the election period as they do outside it. Nevertheless, the circumstances of an election, itself a highly partisan event, necessitate additional watchfulness over government communications. CNS stipulates there ought to be no announcements of new funding and/or new programs during this period; and that any announcements that are made “should not suggest or give favour to a Minister, the government or any political party.”⁹

Given that the work of government does not come to a grinding halt during election campaigns, it is not surprising to find that CNS lists some common-sense exemptions from the rule. First, the government need not forgo an announcement if there stands to be a material loss to the province - possibly a legal sanction - by not proceeding with it. Second is the case of tenders. If funding for a project or work has been announced publicly before the election begins, and the funding has been approved already in the current fiscal year budget, then the funding announcement can include a call for tenders. The third exemption concerns projects that are funded and announced on an annual basis, being routine government business.

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It should be stressed that this section of the guidelines does not address government *advertising* more broadly. It is focused almost solely on ensuring that *announcements* during an election campaign do not favour the government, a minister or any political party or candidate. An announcement is a statement by a candidate or leader that may be disseminated by the media. An advertisement, as mentioned above, is a paid notice that is placed in the media. The panel takes the view that the guidelines should be expanded to allow only limited government advertising during election campaigns. In this respect, it recommends the policy followed by the federal government, which is discussed in the next section of the report.

Social Media

Finally, in a segment entitled “Social Media Policy,” CNS addresses the issue of government partisanship that may occur in social media. To this end, it asks that social media initiated by the government be moderated to ensure compliance with the non-partisan ethic.¹¹ We note that CNS also warns government employees against using social media for partisan purposes in the course of their work or when identifying themselves as government employees.

Notably, by-elections are not mentioned in the CNS documents. It is the view of the panel that, following the principle of fairness, CNS policy on government communications in general, and in relation to elections, should apply to by-elections. Therefore, it recommends that the term, by-election, be included in the references to elections. That way, the same prohibitions and restrictions against government communications made during elections are applied to those made during by-elections.

In the next section the panel looks at the approaches used in other jurisdictions to maintain the principle of non-partisanship in government communications in the days *preceding* general elections and by-elections, and during the period of these elections.

⁹ *Ibid*, p. 61

¹⁰ *Ibid*, pp. 61-2

¹¹ Government of Nova Scotia, *Common Services Manual*, Treasury Board Office, 2010, p. 3

3. APPROACHES USED IN OTHER JURISDICTIONS

(I) Convention

In many respects, the policy guidelines of CNS for the election period that have been reviewed above are consistent with the spirit of the caretaker convention followed in the Westminster-style systems of parliamentary government. To cite an example, the CNS guideline that discourages the governing party from using government offices, including CNS itself, to announce the funding of new programs during the election campaign aligns with the caretaker view that government should attend only to its core routines at such a time, and remain apart from electoral politics.

The need for and rationale of the caretaker convention flow from the principle of responsible government that lies at the heart of the Westminster system. In keeping with the principle, the government must enjoy the confidence of the House of Commons in order to maintain itself in office. However, once the House is dissolved preparatory to the calling of an election, there is no elected body that can hold the government to account for its actions. Thus there is a democratic void. Accordingly, the convention has developed that at such times it is appropriate for the government to retreat to “caretaker” mode, and to concentrate on its ordinary, ongoing business, while avoiding controversial or major public-policy decisions and actions. Of course, avoiding such decisions and actions is not always possible. In its discussion of the caretaker convention, the Privy Council Office (PCO) of Canada says that legitimate exceptions to the general rule are:

- *decisions on urgent matters that are in the public interest;*
- *decisions that can be reversed by a new government without undue transaction costs;*
- *decisions that have the support of the opposition parties as well as the governing party.*

These general guidelines supplement the more explicit rules used by the federal government, which are discussed below.

The PCO document on the caretaker convention highlights the importance of ensuring that during an election the offices and resources of government not be used for partisan purposes. The line between official government business and partisan political activities, it states, must be observed strictly.

(II) Legislation and Regulation

An alternative approach to the regulation of government communication is legislation or regulation, which has the advantage of clearly codifying the rules. There are now three such examples in Canada: the federal government, Manitoba and Saskatchewan.

It must be stressed that each of these jurisdictions has laws that establish a fixed date on which elections are held, subject of course to the power reserved to the Governor General and Lieutenants Governor, on the advice of their respective first ministers, to decide on some other date. Nova Scotia has avoided fixed election dates, thereby making it impossible to know in advance the pre-election period and regulate government advertising within it. So it might be supposed that examples of fixed-date jurisdictions are

¹² <http://www.pcobcp.gc.ca/index.asp?lang=eng&page=convention&doc=convention-eng.htm>

inapplicable here. But that is true only in relation to the period leading up to elections, since such a period hardly exists in the absence of a known, fixed date. They are helpful guides in terms of the election period, itself, whether general elections or by-elections.

The government of Canada defines government advertising as “any message, conveyed in Canada or abroad, and paid for by the government for placement in media such as newspapers, television, radio, internet, cinema and out-of-home.”¹³ The government of Canada prohibits government institutions from using public funds to buy advertising in support of a political party. Further, it stipulates that government institutions suspend advertising altogether during general elections, although there is no mention of by-elections. Exceptions to this rule are permitted whenever the government is required by statute or regulation to issue a public notice for legal purposes; when it needs to address public health, safety or environmental concerns; and to post employment or staffing notices.¹⁴ These common-sense exceptions are similar to those enunciated under the caretaker convention and, to an extent, the CNS guidelines.

Because they have fixed election dates, Manitoba and Saskatchewan are able to regulate government advertising in a specified time frame before the election period and during the election period itself in a more detailed way. For example, Manitoba prohibits government departments and Crown agencies from publishing or advertising information about their programs and activities in the last 90 days before polling day and on polling day, itself, in the case of a fixed date election (that is, one that actually falls on the fixed date); and during the election period of any other general election (that is, one that does not fall on the fixed date) or by-election. An exception to the rule is made for government advertising that is required by law, that is related to ongoing programs or that arises out of unexpected public safety concerns.¹⁵

The rules in Saskatchewan are even more finely tuned to the rhythm of an election campaign. There, the election period is 27 days before polling day. During the election period and for 30 days before the election period, the province prohibits government ministries from advertising their activities in any manner whatsoever. In the 90 days prior to the election period, the province permits government advertising that is designed only to inform the public about government programs and services. In the 120 days before the election period, no government ministry is permitted to spend more on advertising than it did during the same time frame the year before. Clearly both Manitoba and Saskatchewan are concerned about prohibiting the use of government advertising for partisan purposes in the lead up to elections as well as during the election period. And that concern extends to by-elections as well. Both Manitoba and Saskatchewan also prohibit all but very limited advertising during by-elections.¹⁶ For example, in Saskatchewan the provincial government is prohibited from publishing “in any manner in the constituency any information with respect to the activities of the ministry.”¹⁷

¹³ Treasury Board Secretariat, Communications Policy of the Government of Canada, S. 23, “Advertising.” <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12316&ision=HTML>

¹⁴ Ibid

¹⁵ Government of Manitoba, *The Election Financing Act*, CCSM, c. E27, Part 13, “Restrictions on Government Advertising,” ss. 92-94

¹⁶ Bruce Owen, “Election Law Creates ‘Cone of Silence’”, Winnipeg Free Press, April 4, 2015. <http://www.winnipegfreepress.com/local/election-law-creates-cone-of-silence-298658011.html>

¹⁷ Government of Saskatchewan, *The Election Act*, 1996, Chapter E-6.01, S. 277(3).

4. REGULATORY GAPS IN NOVA SCOTIA'S SYSTEM

As we have seen, Nova Scotia retains a strong ethic of non-partisanship in government communications and advertising, both in general and specifically in relation to elections. This ethic is clear in the policy and guidelines of CNS and in the province's election law. Nevertheless, as implied by the preceding discussion, the panel has concluded that there are gaps in the system that need to be addressed. It has already been noted that, in the panel's opinion, the language of CNS guidelines specifically in relation to the election period needs to be broadened to include government advertising in addition to government communications. There are other gaps as well.

First, and most obvious, is the by-election, which has more or less fallen through the regulatory cracks. Second is that, under the province's election law, ENS has little flexibility to deal with complaints about government advertising during an election period in a timely manner. It is worth considering whether this lack of flexibility can be ameliorated. As well there is the very language of section 272 of the Nova Scotia *Elections Act*, which prohibits election advertising using a means of transmission of the government, language that is likely to strike the ordinary reader as somewhat opaque. It needs to be clarified. Third is the issue of new social media, the increasing use of which makes it worth a second look. Fourth is the run up to elections and by-elections, which remains unregulated, at least by comparison with the Manitoba and Saskatchewan models. Given the fact that there is no fixed election date in Nova Scotia, the ability to regulate communications in the run-up period seems to vanish into thin air, but again there is some value in discussing the issue anyway.

(I) By-Elections

One way of dealing with the by-election issue is simply to add by-elections to the policy and legal language used in connection with existing prohibitions against partisan government advertising. Indeed, the panel recommends that this be done. The use of the principle of fairness elucidated at the beginning of this report suggests that the same rules around governing advertising in a general election be applied to by-elections. Accordingly, the panel recommends *that the term by-election be included in the references to elections throughout the relevant legislation, with the result that the same prohibitions and restrictions against government communications during elections are also applied to by-elections.*

In this regard, the panel recommends a prohibition, with certain exceptions, on all government advertising during the course of a by-election campaign. This is consistent with the CNS guidelines for general elections and with the caretaker convention used by the federal government during general elections. The panel therefore recommends *that the language of the CNS guidelines specifically in relation to the election and by-election periods be broadened to include government advertising in addition to government announcements.*

Some might object that a prohibition of government advertising during general elections is too severe for use during by-elections. But it is not. First, the recommendation flows from the principle of applying the same rules to similar electoral contests. Second, it takes account of the campaign dynamics that are unique to by-elections, such as the adjacent-district announcement (discussed below). Third is the precedent in the other jurisdictions mentioned above.

In the course of a by-election campaign, the government might make a policy or program announcement that is minor from the standpoint of the province as a whole, but important for the electoral district in which the by-election is held. True, the announcement might be made in an adjacent district rather than the by-election district itself. Nevertheless, media spillover practically guarantees coverage in the by-election district. The consequence is that the governing party's candidate may benefit from a government announcement that is paid with taxpayer dollars. This violates the fairness doctrine.

Another practice is the government-sponsored campaign event, again in an adjacent riding, at which the governing party's candidate is shown side by side with, say, a minister of the Crown. The media spillover effect is the same as it is in the preceding example, with the same effect, namely a potential advantage for one candidate over the others, and at public expense. The use of billboards in adjacent ridings to make government announcements or even reminders of existing policies that may be of interest in the by-election district is another practice that can be used to discriminate in favour of the governing party's candidate over rival candidates.

It is not practical to recommend that the government cease all announcements and communications during the period of a by-election outside of the constituency where the contest is occurring. Further, given the nature of media like television, and social media, it is not possible to carve out an area surrounding the by-election district and apply prohibitions within it.

Following the lead of other provincial governments such as Manitoba and Saskatchewan, we have concluded that paid government advertising should be explicitly prohibited in by-elections as well as general elections. The panel therefore recommends *that government advertising during elections and by-elections be prohibited, subject to the following exemptions:*

- *a government institution is required by statute or regulation to issue a public notice for legal purposes;*
- *an institution must inform the public of a danger to health, safety or the environment;*
- *an institution must post an unemployment or staffing notice;*
- *an institution needs to issue a call for tenders for a project or work that has been announced publicly before the election is called and that is funded in the current fiscal year budget.*

(II) Elections Nova Scotia (ENS)

As noted above, section 272 of Nova Scotia's electoral law prohibits the use of government advertising during an election period. In other words, it prohibits government from "election advertising" -- what we have called partisan advertising above. We cite the definition of election advertising under the law in its entirety:

[it] means the transmission to the public by any means during an election of an advertising message that promotes or opposes a registered party or the election of a candidate, including one that takes a position on an issue with which a registered party or candidate is associated but, for greater certainty, does not include (i) the transmission to the public of an editorial, a debate, a speech, an interview, a column, a letter, a commentary or news, (ii) the distribution of a book, or the promotion of the sale of a book for not less than its commercial value, if the book was planned to be made available to the public regardless of whether there was to be an election, (iii) the transmission of a document directly by a person a group to their members, employees or shareholders, as the case may be, or (iv) the transmission by an individual, on a noncommercial basis.¹⁸

ENS is responsible for administering the law, which means enforcing the prohibition in section 272. During an election campaign ENS might receive a complaint or allegation that the government has engaged in government advertising. ENS is empowered under the law to investigate the complaint, at the conclusion of which it would make a determination as to its validity. If it found the complaint to be valid, then it could issue a sanction, say, in the form of a fine.

This procedure is problematic from the standpoint of timing. It is likely to take ENS a few weeks to conduct the investigation and make the determination; by that time the election might be over. Assuming the complaint to have been a valid one, this would mean the damage was done, so to speak, or that the government might have gained the advantage that it was seeking from the advertisement during the campaign. The obvious question is this: how can ENS mitigate such a problem during the election campaign without getting drawn into the campaign itself?

The complexity of the issue being raised here is compounded by the fact that the violation under consideration - breaking the rule against government advertising during election campaigns - also implies a violation of the guidelines established by CNS. In other words, it is the prospect of a partisan government advertisement that somehow got through the funnel of CNS.

The panel recommends that ENS be enabled to advise CNS of what ENS considers to be a serious complaint against the government under section 272 of the election law. For its part, CNS may or may not agree with ENS' judgment about the complaint. Either way, CNS would be able to brief the minister about the complaint, ideally before the complainant chooses to make the grievance public. Such a course of action would allow the government to be aware of the complaint and have the opportunity to retract the advertisement.

¹⁸ Government of Nova Scotia, *Elections Act*, 2011, c.5, s.2(i), pp.10-11

There remains the wording of the prohibition against government election advertising in section 272, which reads as follows: “No person shall knowingly conduct election advertising or cause it to be conducted using a means of transmission of the Government of the Province.”¹⁹

For the average reader, there are a couple of problems with the way the prohibition is worded. First is that the phrase “election advertising” is defined elsewhere, with the result that it is not automatically evident what the term means. Second is that the phrase “means of transmission” does not effectively convey the array of instruments of government communication. By contrast, as we have noted above in Section 3 on the caretaker convention, the PCO guidelines on the conduct of ministers and public servants during an election begin with the simple admonition that the departmental communications and public affairs units of ministers must not be involved in partisan matters; indicate what the units can and cannot do; and refer to websites and social media as well as traditional media venues. Alternatively, there is the language employed by the Treasury Board Secretariat, which we have cited in full in the same section.

The panel recommends that section 272 in its current form be deleted and the following substituted:

The government and any person working for the government are prohibited from using public funds to buy advertising in any medium, in Nova Scotia, in other jurisdictions in Canada or abroad, in support of or against a political party or candidate during an election campaign.

(III) Social Media

Social or digital media are growing exponentially in our personal lives as they are for the purposes of marketing in the private sector. It is hardly surprising that their use has also been embraced by government. As a result, in Nova Scotia they are covered by the regulatory framework that is in place to discourage partisan government advertising.

Two types of use of digital media are relevant here. One is their use by government agencies to communicate with the public, either through their own websites or by posting on platforms such as Facebook. Or they might use social media such as Twitter for communications purposes. Undoubtedly, the prohibition against government election advertising in section 272 of the elections law is understood to include advertising in such venues, since they can be considered examples of “transmissions.” Nevertheless, social media need to be accounted for more explicitly in legislation. Moreover, it might be asked whether ENS should monitor digital communications during an election period.

In addition to their use by government departments, websites and social media are also used by individual public servants. CNS has developed guidelines to assist public servants in making appropriate decisions about the use of digital communications. For example, they ought not to use their personal social media accounts in the conduct of government business. Nor should they use government social media accounts in partisan fashion by making partisan political comments or by linking to the website of political parties

¹⁹ Ibid, p. 147

or the social media accounts of politicians.²⁰ These guidelines apply as much during election periods as outside of them. That being so, again there remains the issue of whether this use of websites and social media ought to be addressed in the elections law. The panel takes the view that they should be so addressed. Therefore, the panel recommends *that the province's elections law explicitly prohibit government advertising on social media (such as Twitter and Instagram) and on the websites of other organizations (such as Facebook or search engines) during elections and by-elections.*

(IV) The Run-Up Phase

Since there is no fixed election date in Nova Scotia, there is no defined run-up to the election period. Therefore it is impossible for the province specifically to regulate government communications and advertising during the run-up to an election.

The fixed election date is not a panacea from the standpoint of improving the conduct of parliamentary democracy. It has disadvantages, one of which, arguably, is to encourage the phenomenon known as the permanent campaign by giving the political parties a sure framework within which to plan their strategies and to build their financial war chests. They have an incentive to remain continually in campaign mode, as it were, and therefore on partisan alert at all times. The result is to intensify the already overly partisan rivalry between the political parties of which many Canadians despair.

On the other hand, the prominently advertised merit of the fixed election date is fairness in so far as it takes away the opportunity of the governing party to choose a date convenient to its partisan prospects. This opportunity was a longstanding feature of the parliamentary system. Often - although not always - it proved to be an advantage for the governing party over the rival opposition parties. The fixed date removes the advantage - unless of course the government decides to ignore it, or loses the confidence of the legislature and asks the Crown's representative to set an election date irrespective of the fixed-date requirement.

Another merit of the fixed election date is to enable legislators to define the run-up to the election period, as we have seen in the cases of Manitoba and Saskatchewan. It can be argued that this so-called run-up period is taking on more importance with the passing years. Why? The answer lies in the amount of unregulated money that political parties and candidates can spend on advertising without having to declare this as an election expense. Moreover, political parties are increasingly reliant on advertising as a primary vehicle of persuasion in an electoral campaign. In the heightened partisan atmosphere of the weeks leading to an election period, governments can be expected to succumb to the understandable temptation to advertise their policies with considerable enthusiasm, to help prime their electoral platform. This prospect can be eliminated by strict regulation of government communications and advertising in the run-up period as well as the election period. It must be stressed that the panel is not making an argument in favour of the fixed date election, which issue is not part of its remit in any event. The panel is merely pointing out that the fixed date - not without its own peculiar disadvantages - does allow for regulation during the increasingly important run-up phase to an election period. And in its absence, regulating government advertising during it is virtually impossible.

²⁰ Government of Nova Scotia, Common Services Manual, Ch. 6: Communication Services, 6.9 Social Media Policy, pp. 3-4

5. OUR RECOMMENDATIONS

As referenced throughout the text, the panel has made several recommendations that, for ease of reference, are itemized below:

1. That the term “by-election” be included in the references to elections in section 272 of the Nova Scotia *Elections Act*, with the result that the same prohibitions and restrictions against government advertising during elections are applied as well to by-elections;
2. That the language of CNS guidelines in its *Communications Policies and Procedures Manual* in relation to the election and by-election periods be broadened to include paid government advertising in addition to government communications;
3. That government advertising during elections and by-elections be prohibited outright, subject to the following exemptions:
 - *a government institution is required by statute or regulation to issue a public notice for legal purposes;*
 - *an institution must inform the public of a danger to health, safety or the environment;*
 - *an institution must post an unemployment or staffing notice;*
 - *an institution needs to issue a call for tenders for a project or work that has been announced publicly before the election is called and that is funded in the current fiscal year budget;*
4. That section 272 of the Nova Scotia *Elections Act* in its current form be deleted and the following words be substituted:

The government and any person working for the government are prohibited from using public funds to buy or to place advertising in any medium, in Nova Scotia, in Canada or abroad, in support of or against a political party or candidate during an election campaign;
5. That the Nova Scotia *Elections Act* be revised to include a provision that enables ENS to advise CNS of what ENS takes to be a serious complaint against the government under section 272 of the Act;
6. That the province’s elections law explicitly prohibit paid government advertising on social media and on the websites of other organizations during a general election campaign and by-election campaigns.

APPENDIX F

Communications Guidelines and Protocols During an Election Campaign

While the pre-established guidelines for government communications generally apply during an election campaign, there are some exceptions to ensure that Communications Nova Scotia be non-partisan.

The following guidelines apply during an election campaign :

Announcement of the Election Campaign

It is important that the electoral process be on public record. The following is appropriate to go through Communications Nova Scotia:

- A note to editors of the photo opportunity or media availability of the election call
- A government photographer may attend the event and take photographs for distribution to media and for government record (not for political or campaign purposes).
- A news release announcing the election date (no references to campaign strategy or political party).
- The photograph can be featured on the government home page, with a link to the news release announcing the election date.

Announcements During the Election Campaign

Announcements about the daily operation and business of government will continue during an election campaign. Under law, there is still an Executive Council. While the general practice has been not to quote Cabinet Ministers, there may be circumstances where it is appropriate to do so. Communications Nova Scotia staff in departments should consult with their Managing Director when planning announcements.

The following guidelines apply:

- Announcements and news releases should not suggest or give favour to a Minister, the government or any political party.
- All partisan and political communications is coordinated through individual caucus offices.
- No new funding or new program announcements may be made.
- Program staff, Deputy Ministers and other senior government officials may be quoted in a news release in place of the Minister, where appropriate.
- An announcement may be made if there will be material loss to government by not proceeding with it (i.e., some funding agreements state that an announcement must be made as part of that agreement). Communications Nova Scotia staff in departments should consult with a Managing Director prior to planning any announcement.

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- If funding for a project or work has been publically announced prior to the announcement of the election, the news release announcing the tender may be sent (i.e., road maintenance and constructions announcements are often made well in advance of the tender announcement). The funding must have been already approved in the current fiscal year budget, and the work publically announced prior to the election call.
 - Some projects are funded and announced on an annual basis as routine department business (i.e., sport fishing funding, etc.). These announcements may proceed, in consultation with a Managing Director.
 - On occasion, communications staff may be contacted by a journalist to respond to an inquiry or comment on a departmental policy or a program that has become part of the election campaign or platform. Communications staff can provide factual information about existing departmental policies and programs. However, for comments beyond basic facts, the journalist should be referred directly to the Minister for response or to the relevant political party.

Advertising

Minister's names are not included in advertising copy during an election campaign. Advertising on the electoral process may come through Communications Nova Scotia.

Photographs/ Video

Communications Nova Scotia does not provide photographic or video services to candidates during an election campaign. Government photographs and video must not be used for political or campaign purposes.

Media Monitoring

Media monitoring services will be limited to the election process only (i.e., accessibility of polls, advance, special polls, etc.). There will be no media monitoring of campaigns, platforms, promises or related events/activities.

Graphic Design/ Print Production, Printing and Web Development Services

Communications Nova Scotia will not design, produce or print political or campaign related information. Information on the election process may be produced and distributed via print or electronically through Communications Nova Scotia.

House of Assembly - Use of Province House

Province House and the services of Legislative Television Broadcast & Recording Services (LegTV), may not be booked for announcements or events that may suggest or give favour to the government or any political party. Each individual request will be assessed by the staff of the House of Assembly Operations or LegTV.

Legislative Television

Program material may not be used for political party advertising, election campaigns or any other politically partisan activity.

Program material may not be edited for use in promotional material by any political party or other organization and may not be used in any edited form that could mislead or misinform an audience or viewer, or which does not present a balanced portrayal of the proceedings of the House.

After the Election

Communications Nova Scotia staff will provide full communications support, advice and services, as required, during the transition and swearing in of the new government .

Communications Support staff work with the Protocol Office to co-ordinate logistics for the swearing in ceremony of the Executive Council and with House of Assembly staff for the swearing in of the Members of the Legislative Assembly .

Elections Nova Scotia Organizational Chart

