

Report on the Conduct of the August 17, 2021, Provincial General Election and Recommendations for Legislative Change • Volume 2

41st Provincial General Election
August 17, 2021

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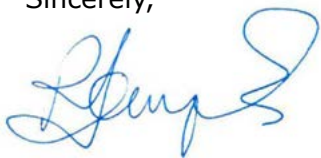
The Honourable Keith Bain
Speaker of the House of Assembly
Legislative Assembly of Nova Scotia
Province House
1726 Hollis Street
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Dear Mr. Speaker:

The Report of the Chief Electoral Officer on the Proceedings of the 41st Provincial General Election held August 17, 2021, is published in three volumes. *Volume I, Statement of Votes & Statistics* was published in January 2022. This report is *Volume II, Report on the Conduct of the August 17, 2021, Provincial General Election and Recommendations for Legislative Change* which includes lessons learned and legislative recommendations. *Volume III, Financial Information & Statistics*, to be published later this year will provide financial information on election expenses, candidate reimbursement, election administration, costs, and financial statistics.

I am honoured to present *Volume II, Report on the Conduct of the August 17, 2021, Provincial General Election and Recommendations for Legislative Change* to the Legislative Assembly, in accordance with Section 163 of the *Elections Act*.

Sincerely,



Richard Temporale
Chief Electoral Officer



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Message from the Chief Electoral Officer

As the Chief Electoral Officer (CEO) for Nova Scotia, I am pleased to provide this report and recommendations for legislative change following the 41st Provincial General Election (PGE). The delivery of this report is bittersweet for me because it is my last official report before my retirement on May 31, 2022. This message is the final opportunity to share my position on a couple of key issues I feel impact Elections Nova Scotia (ENS) as an independent agency and the integrity of the electoral process in our province.

As CEO, I am accountable to the House of Assembly to provide independent, non-partisan, and strategic advice on election-related matters and best practices in accordance with the terms of the *Elections Act*, and relevant laws. As an independent non-partisan agency, ENS reports to the members of the House of Assembly through the Speaker. Thus, we should exist and operate arm's length from the Government of the day's mandate. Unlike Government departments who are accountable to their ministers, ENS is accountable to all eligible voters who reside permanently in this province. The agency's mandate is to prepare and deliver fair, inclusive, and accessible elections impartially and professionally.

The independence of ENS is the first key issue that I would like to address in this message. During my tenure, I have learned that as senior departmental staff and ministers change, the history and understanding of the independence of ENS and how we fulfil our mandate can erode over time. Given this context alone, it is prudent, to strengthen the legislative framework that protects ENS's independence and in turn, the integrity of Nova Scotia's electoral process. Therefore, four of the legislative recommendations presented in this report are related to the theme of independence.

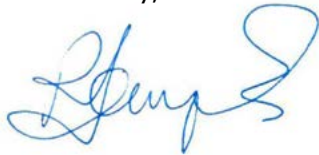
I am sharing my views on ENS's independence because I feel a positive working relationship between ENS, our registered political parties, candidates, and the elected members of the House of Assembly is critical to our continued efforts to innovate and deliver fair, balanced, and inclusive elections to the high standard that the citizens of Nova Scotians have come to expect.

With the increase in mainstream communication through social media and interference in democratic processes in high profile elections internationally in recent years, it has become evident that the integrity of our democratic processes must be maintained and enhanced. Even though Nova Scotia, and all Canadian jurisdictions entrust the administration of their elections to non-partisan bodies, free of political interference, I feel it is timely to open a discussion about what our independence means to Nova Scotia's democracy and what further measures are needed to continue to ensure the voters' trust in what ENS does is beyond reproach.

Another key issue that I feel has a significant impact on the electoral process is the implementation of a fixed-date election cycle. I view the introduction of this legislative change as a great step forward for all Nova Scotians and thank the current Government for its commitment to this change. Knowing when the next PGE will be held in a majority Government scenario, will allow for more certainty and efficiency in both the planning of the delivery of the event as well as the enhancement of our voter education and outreach efforts. With this new framework, ENS can consider innovation to take Nova Scotia's electoral process to the next level. As a result, I believe several legislative adjustments are necessary to make fixed-date elections run smoothly and, on a level playing field to the benefit of all participants.

I am honoured to have served Nova Scotia as the CEO and wholeheartedly thank the Election Commission (EC) members who routinely provide me with practical advice on issues and my proposed recommendations for legislative change, and the executive teams of the registered parties for their trust and confidence that we have been and will continue to be, open and transparent in the delivery of our responsibilities. The professionalism and dedication of the ENS team and the work they do is truly something I am proud of. I feel I am leaving ENS in a strong position to continue to be an innovative leader amongst electoral management bodies in Canada. The recommendations I have included in this report, if enacted, represent the next steps of electoral reform to enhance the integrity of our electoral process. I know that the ENS team is well positioned and capable to integrate these changes in their strategic plan and prepare to meet the challenges of the electoral planning cycle for the 42nd PGE to be held on July 15, 2025.

Sincerely,



Richard Temporale
Chief Electoral Officer

Summary

Volume I, Statement of Votes & Statistics, published in January 2022 provided a detailed overview of the 41st PGE. That report is available on the ENS website (www.electionsnovascotia.ca). The following is a summary of the election and its outcome.

On July 17, 2021, pursuant to an Order of the Lieutenant Governor in Council, writs of election were issued under the *Elections Act* by the CEO, for the 55 electoral districts in Nova Scotia ordering that a PGE be held on Tuesday, August 17, 2021.

On August 19, at the Official Addition, the Progressive Conservative Association of Nova Scotia (PC Party) was determined to have won the most electoral districts. The following chart indicates the number of electoral districts confirmed with the return of the writs of election for each registered political party and independent candidates:

Registered Political Parties and independent candidates	Number of Electoral Districts
Atlantica Party Association of Nova Scotia (Atlantica)	0
Green Party of Nova Scotia (Green Party)	0
Nova Scotia Liberal Party (Liberal Party)	17
Nova Scotia New Democratic Party (NDP)	6
Progressive Conservative Association of Nova Scotia (PC Party)	31
Independent Candidates	1

One recount was requested and held for the electoral district of Glace Bay-Dominion at the Sydney Justice Centre on Monday, August 30, 2021, by presiding Supreme Court Justice Jamie S. Campbell. The results of the recount confirmed Mr. John White, PC Party as the winning candidate.

Terms and Abbreviations

ANSLO – African Nova Scotian Liaison Officer

ARO – Assistant returning officer

Atlantica – Atlantica Party Association of Nova Scotia

CEO – Chief Electoral Officer

CRO – Community Relations Officer

EC – Election Commission

Elector – Someone who is eligible to vote. To be an elector in Nova Scotia elections, you must be 18 years or older as of election day, a Canadian citizen, and have resided in Nova Scotia for six months or more prior to the date of the writ. In this report the terms elector and voter are used interchangeably.

ENS – Elections Nova Scotia

FNLO – First Nations Liaison Officer

Green Party – Green Party of Nova Scotia

Liberal Party – Nova Scotia Liberal Party

NDP – Nova Scotia New Democratic Party

OA – Official agent

PC Party – Progressive Conservative Association of Nova Scotia

PGE – Provincial general election

PO – Presiding officer

RA – Revision assistant

RO – Returning officer

VIC – Voter Information Card

Voter – An elector who has voted. In this report the term voter is used interchangeably with elector.

WIB – Write-in ballot

Electoral Planning

The PGE planning cycle includes the following three phases:

- 1 Planning and Preparation** – the period when staff prepare election readiness project plans for implementation. These plans account for routine operational needs as well as any new revised procedural or legislative changes.
- 2 Implementation** – with plans approved, staff begin to implement. This typically involves enhancements to our election management systems software, hiring and training core returning office staff, procuring and preparing election equipment, technology and materials, as well as identifying and inspecting returning offices and voting locations; and
- 3 Delivery** – staff execute election activities as planned. With a fixed-date election cycle, this will include a proposed 120-day period before election day for election spending and all activities during the writ period. The post-election activities can extend up to 12 months after election day to complete the audit of the candidate financial reports and to publish the post-election reports.

Without fixed-date election legislation in place for the 41st PGE, the CEO chose the earliest date on which a PGE was likely to be called and planned and budgeted accordingly. Originally the election readiness date for the 41st PGE was set as April 1, 2020, but due to imposed budgetary constraints in the 2019-2020 fiscal year, the CEO felt compelled to defer election readiness to April 1, 2021. Over the planning cycle for the 41st PGE, ENS published three election readiness reports (published in November 2019, January 2021 and April 2021) which outlined the significant challenges that ENS faced in planning for the pending PGE. These challenges included a lag by a full fiscal year in our request for budget appropriations, legislative uncertainty, and a global pandemic.

Despite these issues, ENS met the April 2021 election readiness deadline for the 41st PGE. ENS also responded when legislative amendments to the *Elections Act*, as outlined in Bill 225, were proclaimed in May 2021. Careful election readiness planning and significant effort to meet tight timelines ensured ENS was ready and able to deliver a safe, fair, and inclusive election on August 17, 2021.

This section reports on significant work done during the electoral planning for the 41st PGE.

With fixed-date election legislation proclaimed in September 2021, the planning cycle for the next PGE will have more stability. ENS is now in a better position to plan for and budget the sequence of election readiness activities over a four-year cycle.

Legislative Context

In the spring 2020 sitting of the legislature, Government tabled Bill 225 that introduced legislative changes that included most of the CEO recommendations following the 40th PGE in 2017. Bill 225 passed and received Royal Assent in March 2020, but proclamation did not occur until 14 months hence, May 6, 2021. Once proclaimed, ENS had authorization to implement the proposed legislative changes, but it left a tight timeline in the spring of 2021 with the April 2021 election readiness date already passed. Unfortunately, this meant that approved enhancements for the introduction of internet voting for members of the military who are deployed out of province and the use of e-balloting for early voting could not be accommodated in such a short timeframe. Other less complex changes in Bill 225 were successfully incorporated before the call of the PGE in July 2021.

This report signals the beginning of ENS's election readiness planning as it pertains to proposed legislative changes. The 20 recommendations included in this report have been reviewed by the EC. Sixteen of them have the unanimous support of the commission members. Four recommendations are not unanimously supported by the EC Members. All 20 recommendations are being presented to the Members of the House of Assembly. As recent experience has shown, the timing of the legislative process and proclamation of the resulting legislative changes is critical to ENS's on-going election readiness preparations leading up to the 42nd PGE in 2025.

New Electoral Boundaries

At the time of dissolution of the House of Assembly on July 17, 2021, there were 51 electoral districts in Nova Scotia as defined in 2012.

The 41st PGE was the first with the 55 electoral districts recommended by the 2019 Electoral Boundaries Commission. Bill 187, *House of Assembly Act (amended)* was passed in October 2019 to implement the recommendations of the Electoral Boundary Commission.

The introduction of four additional electoral districts was integrated into ENS's election readiness planning. ENS generated maps and new polling divisions to be prepared for this change.

By law, when the previous electoral boundaries were dissolved so were the corresponding Returning Officer (RO) appointments. The new boundary set precipitated a province-wide merit-based recruitment effort for 55 ROs to administer the election according to the new boundaries. In early March 2021, the ROs were sworn-in by the CEO virtually.

During the administration of the 41st PGE, voter and candidate feedback highlighted a few discrepancies with regard to where the Boundaries Commission report defined district borders. In response to this feedback, an internal review of all the electoral district boundaries was conducted to ensure there were no other districts requiring administrative intervention. As a result of this review, a report will be tabled this fall, as per Section 5A of the *House of Assembly Act*, recommending minor adjustments to four electoral district's boundaries.

This report includes a recommendation for changes to the *House of Assembly Act* (please see recommendation 7) necessary to provide the CEO authority to present reasonable administrative updates to electoral boundaries for the consideration of the MLAs in the future.

COVID-19 Pandemic

The COVID-19 pandemic presented a unique challenge for ENS's planning for the 41st PGE.

Election readiness planning was well underway when the Province of Nova Scotia declared a state of emergency in March of 2020. This required some significant reassessments and the inclusion of public health measures in all aspects of ENS's work.

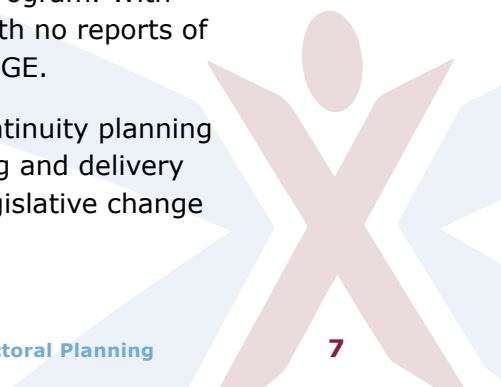
ENS staff learned from the experiences of other Canadian election management bodies that conducted elections during the pandemic and incorporated best practices from these jurisdictions.

ENS also worked closely with Nova Scotia Public Health officials to incorporate COVID-19 precautions in all voting procedures, informational materials, and training plans. The goal was to ensure the safety of voters, election staff, candidates, and their campaign teams while delivering a fair, inclusive and balanced election. To achieve this, ENS took the following steps:

- Developed COVID-19 training programs to educate election workers on safety protocols
- Developed a vote safely public awareness campaign to help build voter confidence
- Engaged crisis communications support to be prepared to respond to emerging COVID-19 issues during the election
- Increased early voting locations and days of operation, and encouraged voters to consider voting by mail using a write-in ballot (WIB)
- Increased square footage, where possible, in voting locations to meet and/or exceed physical distancing requirements
- Implemented various safety precautions (e.g., sanitizer, masks and barriers) at in-person voting locations to keep election workers and voters safe.

Implementing these new measures in a tight timeline without knowing when the election would be called and staying up to date as COVID-19 restrictions changed created a significant amount of work for ENS staff and the 55 ROs in the field. ENS worked with Finance and Treasury Board to secure incremental funding required because of COVID-19 as well as the Strategic Capital Planning division of Department of Health and Wellness which provided protective equipment (i.e. masks and sanitizers) through their emergency supply office. This additional workload required ENS to leverage more resources and to engage in an innovative procurement program. With these precautions in place, ENS successfully delivered a safe election with no reports of COVID-19 transmission or exposure at voting locations during the 41st PGE.

This unique experience highlighted the need to incorporate business continuity planning to address any unexpected challenges that may impact election planning and delivery in the future and is addressed in several of the recommendations for legislative change related to independence.



Operational Planning

To be election ready, the operations division and the ROs conducted various election readiness assignments. The following section details the assignments undertaken during the election readiness cycle for the 41st PGE.

Recruitment

In the summer of 2020, the appointed ROs conducted their returning office core staff recruitment assignment. This assignment was a critical step in our efforts to be election ready as it required ROs to hire individuals that would fulfill the roles of Assistant Returning Officer (ARO), Revision Assistant (RA) and Presiding Officers (PO) for the returning office continuous poll. Across the province 220 core staff were hired and registered to work with ENS. As outlined in the previous section, the COVID-19 pandemic had an impact on electoral planning. The recruitment of election workers was one area that was significantly impacted making it more difficult for ROs to hire and retain the number of election workers needed.

Polling Division Review

Polling division boundary reviews are required between PGEs due to population migration around the province. The passing of Bill 187, *House of Assembly Act* (amended) in October 2019 changed the number of electoral districts from 51 to 55. This change in turn, forced a re-evaluation of existing polling divisions. ENS engaged in a multi-phased project to review, analyze, and generate new polling division boundaries, which started in January 2020 and ended in November 2020. Phases included:

- In-depth review and analysis by internal technical staff;
- Review and feedback from ROs;
- Opportunity for review and feedback from the electoral district associations in each new district.

The project made use of voters counts extracted from the Register of Electors. Mapping technologies (Geographic Information Systems or GIS) were used to complete the bulk of the review and analytical work. This technology was also used to produce the mapping products and tools used by ROs during their review activities. By leveraging this technology, especially the use of online mapping tools, ENS staff were able to work with the ROs more efficiently. These innovations allowed for remote meetings, resulting in reduced time, no travel, visualization of information, and created a safe work environment for participants during the pandemic.

Training

As part of ENS's 'layered learning' approach to training field staff, returning office core staff were required to take pre-event training. This training was delivered via e-modules, with core staff reviewing them from home. The goal of this training was to prepare staff for their eventual event training, which is typically delivered as close as possible to the defined election readiness date. As the e-module based pre-event training was new, a survey was conducted to collect feedback for enhancements to the program.

Event training of over 275 returning office core staff took place the month of March 2021. Typically, event training is conducted in-person, requiring all field staff to travel to Halifax and attend hands-on training sessions. Due to the COVID-19 pandemic, in-person training was not possible and virtual training programs were developed and delivered from our office. There were 10 election topics delivered and over 30 virtual sessions conducted by ENS staff. Following the event training delivered in March, additional sessions took place for any new core staff that were hired.

Candidate official agent training was also updated to include the new provision for financial compensation for incremental childcare, eldercare, spousal care, and disability costs. Training was delivered virtually through online modules. Handbooks were also updated and revamped to reflect the new legislation.

Voting Locations

ENS rented approximately 1,000 voting locations during the 41st PGE, which included early voting (returning offices, advance polls, community polls) as well as election day locations. ROs conducted detailed onsite inspections beginning the fall of 2020. Typically, the voting location inspection assignment is conducted during the spring/summer to ensure more ideal weather, as there are exterior inspection requirements. However, the pandemic delayed the start of this assignment as well as elongated the timeframe for completion, due to the iterative easing and tightening of restrictions. These inspections were conducted to ensure the voting locations leased for the election met our accessibility and connectivity requirements.

Technology was leveraged to increase the efficiency of this process. ENS developed the Voting Location Inspection Tool, a map-based software which is installed on portable computer tablets and deployed to the field. The tool allows: digital capture of the information; standardization of data input; ability to easily add new locations; connectivity to existing tools and databases (EMS); view location in context with electoral district and polling division boundaries. Benefits in using this tool included: greater accuracy of information; faster collection; faster data processing; reduction of materials (paper forms) in the field during collection activities. The tool's functionality also included the ability to collect photos of the location as well as complete detailed wireless internet connectivity testing. An online mapping tool was deployed to the ROs during the election which allowed them to assign polling divisions to locations. This tool accessed all the data they collected during the voting location inspection project months before.



During these inspections ROs faced numerous challenges, some of which were directly worsened by the pandemic.

- **Inadequate accessibility** – Since the 40th PGE, ENS has increased accessibility requirements for returning offices and voting locations to ensure barrier free access during an election. Meeting these requirements has been, and continues to be, a challenge as the buildings used by ENS across the province are often not up to current accessibility standards. Temporary remediation has been our solution to address barriers but often has limited effectiveness.
- **Lack of connectivity** – ENS relies on cellular infrastructure for internet connectivity using wireless turbo-hubs. This historically has been necessary as internet service providers could not ramp up wired internet service in a non-fixed-date election environment. ENS was surprised to find that the availability of this service degraded since the 40th PGE. Voting locations that have been used in the past, where connectivity was available and reliable, could not be leased in some cases due to the current lack of connectivity. In three electoral districts ENS had to run early voting polls with no technology, just to be able to provide voters reasonable access to a voting location.
- **Denial of access** – Community/recreation centres, churches, firehalls, and schools are typical facilities used for voting locations. ROs were not able to access some of these locations due to the pandemic. Many locations were closed or unwilling to allow outside visitors. This resulted in ROs having to find alternate locations or reduce the number of voting locations in their district.

Logistics

In planning for an election, a tremendous amount of effort goes into readying and packing all the materials and equipment ROs require to administer the election. For the 41st PGE our office secured the services of a logistics vendor to manage the delivery of these materials across the province. Historically, the non-fixed-date election environment made this partnership challenging due to the vendor having little lead time to ramp up staffing in response to an election call. The pandemic environment increased this challenge and in May of 2021 ENS was informed by the logistics vendor that they could not meet their commitment, meaning delivery service could not be guaranteed within 72 hours of the election being called.

As a result of this loss of service, the decision was made to begin leasing returning offices for a period of three months beginning June 1, 2021, to obtain addresses that the new logistics vendors could begin delivering to. The success of the election rested on the materials and equipment being in the field and available once the election was called. The increase in lease cost due to this decision was warranted as a mitigation of risk, and attributable to the reduced availability of transport drivers during the COVID-19 pandemic.

Overall, it took an unprecedented six weeks to get all returning offices leased, with some leases only being signed the week the election was called. The elongated timeframe was a direct result of the pandemic and the struggle to find landlords that would lease space to ENS as well as being able to connect with those responsible for signing lease agreements.

Election Delivery

The *Volume I, Statement of Votes & Statistics* published in January 2022, provides details and statistics regarding the delivery of the 41st PGE in Nova Scotia. This section of the Volume II report focuses on several new processes utilized during the 41st PGE and the outcomes. Some of these new initiatives were necessary due to the COVID-19 pandemic while others were part of ENS's election readiness planning. Some of the work and experiences highlighted in this section have led to recommendations for legislative change or have laid the groundwork for other improvements and further planning for future elections.

Operations

Telecommunications

The need for reliable telecommunication services is an absolute for the delivery of a modern election. Each returning office needs telephone equipment for core staff as well as a toll-free number for voters and candidates to contact the returning office. A support call center (RO Support Centre), operating out of ENS headquarters in Dartmouth, provided advice and answers to pressing questions for ROs and their staff during the election. The centre was staffed by 10-12 support agents.

In the 41st PGE, 3 major changes were implemented regarding telecommunication solutions used by ENS.

- Cell phones used as office phones at returning offices
- Cloud-based office telephone solution used at returning offices
- Cloud-based office telephone solution used at RO Support Centre

ENS had piloted the use of cell phones as office phones as well as using a cloud-based office telephone solution in returning offices for the 2020 March by-elections. Based on the success of this pilot project, staff recommended the implementation of this solution across the province during the 41st PGE.

The pilot project proved the traditional landline systems could be efficiently replaced by cell phones and a cloud-based solution. ENS deployed and activated telephony in 55 returning offices far more quickly and lower the cost compared to the landline system used during the 40th PGE. Cell and the office telephone systems were activated and ready to use by core staff as soon as they received their first delivery of office supplies and equipment. During previous PGEs, telephone service could take up to a week to be setup. Overall, this solution provided both a cost savings and flexibility related to the timing of the deployment/activation and its significantly earlier availability for use by the general public and campaign teams.

The cloud-based office telephone solution was also used for the RO Support Centre telephone system requirements. The cloud-based system provided ENS with flexibility regarding administration and management of the system and its functionality. The system was activated within a day and required little setup time with respect to infrastructure and equipment.

One issue related to the use of cell phones in the returning office was the dependency on the cell phone service infrastructure in all regions of the province. A handful of returning offices needed landlines installed because of poor cell phone signal coverage in some rural areas of Nova Scotia. As a result, unless service levels improve in those areas, cell phones can not be used for all returning office telephones for the 42nd PGE in 2025. A review of all available options will be completed, and alternative solutions will be piloted in future rural by-elections.

Recruitment

Historically more than 6,000 elections workers are hired during a PGE. The 41st PGE required more election workers to meet COVID-19 protocols required at voting locations. There are always challenges regarding election worker recruitment, especially election day workers. However, this election saw an increase across the province and even extended into hiring returning office core staff. The following were cited as reasons why people did not want to work the election:

- Pandemic
 - People were still collecting Canada Emergency Response Benefit (CERB) and not interested in working during the election
 - People worried that there was a high risk of catching COVID-19 if they worked the election
- Summer Election
 - People were on vacation
 - COVID restrictions in the province had lifted (Phase 4 July 14, 2021) and people wanted to travel
- Possibility of an overlapping federal election. Federal election worker positions usually pay better than provincial position, especially returning office core staff.

The impact of these challenges resulted in:

- Merging election day polls due to lack of staff
- Increasing the staffing budget because in several returning offices we had to hire extra staff in key positions and have job-shadowing.

Election Workers

Training of election workers during an election is both intense and laborious. Election workers scheduled to work at early voting locations have historically been trained in Halifax by ENS staff. Election day workers are traditionally trained in the field by ROs and their staff.

Because of the pandemic, the plan for the 41st PGE was to train early voting election workers regionally across the province to keep them as close to home as possible and to reduce travel. The easing and tightening of restrictions during the pandemic led to planning challenges including the inability to secure suitable space and resources for ENS staff and regional trainers to deliver training. As a result, this training had to be done by ROs and their staff.

While the circumstances were not ideal for our ROs, they rose to the occasion and did the best they could to ensure that the election workers were prepared for their roles.

Official Agents

ENS's traditional delivery of training to the Official Agents (OAs) for the candidates was also impacted by the pandemic. During past elections, in person delivery of training was conducted in six regions across the province. In 2021, on-line training was created and delivered on demand for all OAs. The OA handbook was also updated and simplified. The handbook, training and forms were updated to incorporate the new legislative change to provide financial assistance for candidates who incur incremental costs for disability, eldercare, childcare, and spousal care. There were also sessions organized for candidates and parties to virtually meet with ENS finance staff to offer clarifications, answer questions and discuss changes to the electoral finance processes.

CEO Directive for Opening Ballot Envelopes

Like other jurisdictions that had elections during the pandemic, ENS focused on encouraging Nova Scotians to vote early. As such, ENS anticipated higher than normal volumes of early voting ballots. During the election ENS saw very large increases to voter turnout at early voting opportunities and, as a result, our staff knew it would take longer to count those ballots on election night.

To expediate the count, the CEO issued a directive to registered political parties as well as instructions to ROs that all ballot envelopes were to be opened between days three and two of the Election Calendar. Usually, ballots remain in the ballot envelopes until the close of polls on election night, but due to the increased volume opening all the envelopes on election night would have led to increased delays in reporting results.

This efficiency enabled the ballot counters to begin counting the ballots immediately after the polls closed and consequently almost all electoral districts were able to report their early voting results before midnight on election day.



Outreach Strategies

ENS engages in outreach efforts with special voter groups to help them overcome any barriers to participation, such as language and cultural consideration, and to help them exercise their democratic rights. The goal of ENS's outreach strategies is to build ongoing relationships with voter communities to ensure their needs are understood and met.

Three outreach initiatives were implemented for the 41st PGE. These strategies focused on improving accessibility and inclusivity for First Nation, African Nova Scotian, and Acadian Francophone Nova Scotian voters. To facilitate this work for the 41st PGE ENS hired two First Nations Liaison Officers (FNLOs) and one African Nova Scotian Liaison Officer (ANSLO) to lead outreach activities with their respective communities. Some election materials were also translated into French. Additionally, a Community Relations Officer (CRO) was identified in each of the 13 Mi'kmaq communities. A second, additional CRO was identified in both Membertou and Eskasoni due to the size of these communities. CROs performed outreach activities in their communities by distributing information to and answering questions raised by Community members, as well as assisting the RO in recruitment of community members for work at polling stations on election day.

During the 41st PGE, ENS also implemented a legislative change to provide financial assistance for candidates who incur incremental costs for costs related to disability, eldercare, childcare, and spousal care. This removal of the financial barrier for these individuals was welcomed by candidates and parties.

ENS also participated in focused communications with Students Nova Scotia, a not-for-profit and non-partisan advocacy group that represents Nova Scotia post-secondary students, to help inform new voters and student voters living in Nova Scotia when and how they could vote.

This outreach work helped ENS deliver on its mandate to provide fair and inclusive elections to all voters throughout Nova Scotia.

To date, ENS's outreach efforts have focused on specific special voter groups. A fixed-date election cycle allows ENS to consider the outreach programs in a way that has not been contemplated previously. Knowing when the next election will occur can help ENS focus voter engagement and outreach work in a defined pre-writ period. Outreach will be a key focus in ENS's strategic plan for the 42nd PGE readiness cycle.

Communications Program

The ENS mandate includes public communications to ensure Nova Scotian voters receive information describing how, when, and where to vote. Throughout the election period, information is distributed to our internal and external stakeholders, eligible voters, candidates, election workers, registered political parties, third party advertisers, and the public-at-large. A variety of media including print, web-based, social networks and a public call centre are employed to engage stakeholders in two-way communications.

The key focus of the communications program for the 41st PGE was voting safely during the COVID-19 pandemic. ENS worked with a marketing-communications company to develop a public awareness campaign. This was a new approach for ENS due to the need to communicate pandemic precautions. The multi-media campaign helped build voter confidence and provide balanced information on the safe voting options available. A key feature of the campaign was an information flyer mailed directly to all Nova Scotia households in the first week of the writ period. This new communications tool was well received and was a great way to connect with voters and encourage participation early in the election period. With a fixed-date election cycle now in place, ENS will plan to leverage a direct mail communications flyer in the pre-writ period for voter education when possible.

ENS also recognized that during this election, media outlets would not only be key partners to disseminate voting information but could help bolster voter confidence by building a general understanding of safe voting options. To set the tone for media relations in the 41st PGE, ENS held a pre-election media briefing to outline key features and safety precaution. The briefing was attended both virtually and in-person by 15 reporters representing print, radio, and television media outlets in Nova Scotia. The media briefing included access to visuals in the warehouse and a mock voting location to demonstrate firsthand the safety precautions being deployed. This briefing built a good foundation for media relations throughout the election period and provided media outlets visual content that were otherwise difficult to obtain due to COVID-19 restrictions. Overall, the media relations plan was a success providing positive coverage throughout the election period.

Once again Voter Information Cards (VICs) were a key communication tool for the election. Personalized VICs were mailed to registered voters with specific information on their closest voting locations. When the election calendar for the 41st PGE was set, the VIC production and timing for mailing aligned with the civic holiday on Monday, August 2, 2021. Canada Post did not offer delivery service on the civic holiday which resulted in the VIC delivery to voters' mailboxes later than anticipated.

A fixed-date election cycle allows ENS to contemplate new voter education and pre-writ communications programs for future elections, optimizing the messaging in the weeks leading up the writ period and the writ period, including considering the statutory holiday that falls within the writ period. It will also allow for some more streamlining of the VIC production timeline. This is viewed by the ENS staff to be an opportunity to enhance communications efforts to engage voters in the electoral process.



Recommendations for Legislative Change

Overview of Recommendations

The recommendations for legislative change presented in this report have been developed based on the post election review and feedback during the delivery of the 41st PGE. The intent of these recommendations is to improve Nova Scotia's electoral process to achieve the highest quality election administered in our province.

As part of the development of these recommendations, ENS consulted with the EC and this report indicates which recommendations received the unanimous support of the Commission members and those that did not.

The 20 recommendations are grouped into six themes: Independence, Fixed-date Elections, Clarity, Transparency, Alignment, and Electoral Finance. Each recommendation presented includes a preamble as to why the CEO feels it's consideration by the members of the House of Assembly is necessary at this time. Specific details as to the sections of the *Acts* that require changes to implement each recommendation are found in the legislative table in Appendix A. The urgency to proceed is based on the fact that this Government will be into the second year of its mandate when the next sitting of the legislature commences in the fall of 2022, and ENS needs a minimum of 12–18 months before the issuance of a writ to update procedures, manuals and training modules and be fully election ready.

Independence

As outlined in the CEO message, ENS's mandate is to be an independent non-partisan agency. Its ability to operate arms-length from Government without interference is fundamental to the integrity of our electoral processes. Therefore, given recent history, the CEO believes strongly that it is time to recommend legislative changes that would strengthen ENS's independence and protect its ability to operate outside the purview of Executive Council in favour of reporting to and taking direction directly from all members of the House of Assembly on matters pertaining to provincial elections.

There are four recommendations related to ENS's authority to operate as an independent non-partisan agency.

Annual Estimates

As an independent agency, the *Elections Act* currently requires ENS to present its annual budget estimates to a special committee of the House of Assembly. This special committee consisting of representation from the political parties represented in the House of Assembly reviews, votes on, and recommends the agency's estimates to Finance and Treasury Board for final approval and inclusion in the Government's annual budget. However, Finance and Treasury Board is neither obligated to follow the advice nor the recommendations of this special committee.

In recent years the estimates reviewed and recommended by the special committee have been altered by Finance and Treasury Board before the finalization of the provincial budget without further consultation with either the special committee or ENS. In 2019-2020, the removal of election readiness funding without explanation forced ENS to abandon much of its planned election readiness program for that year and to postpone its election readiness target date a full year from when ENS felt it was prudent based on elections called in the province over the past 20 years. Given the agency had no prior knowledge of when an election may have been called, this change jeopardized its ability meet its mandate.

As an independent agency, it is important for funding not only to remain non-partisan but also predictable in order to meet election readiness targets. To ensure this, the CEO is recommending changes to the *Elections Act* to provide authority to the special committee to approve ENS's annual estimates, adding authority that precludes the need to recommend them to the Finance and Treasury Board. Rather the special committee's recommendation should be put before the members of the Assembly for an open and transparent debate in the House of Assembly, followed by a vote on the amount to be included in the budget estimates. This is not a precedent setting occurrence in Canada. In fact, eight of the thirteen other jurisdictions have similar independent budgetary processes for their electoral agency, and two more are partially regulated this way. Those being Yukon, Nunavut, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Prince Edward Island and Canada.

ENS takes its financial reporting to the public seriously. For accountability and transparency purposes regarding its use of public funds, ENS includes an independently audited financial statement in each of its annual reports.

Recommendation 1

Modify language referring to the annual estimates in the Act so the special committee's recommendation of ENS's estimates to Treasury Board is not optional for inclusion with the provincial budget. The governing party would have the same ability as the opposition parties to review, to debate and to propose a vote to alter this budget in the House of Assembly if it so chooses.

This recommendation does not have the unanimous support of the members of the EC.

Warrant to Pay for By-elections

Under the current statutes, the costs related to the administration of a PGE are paid for by Government through a warrant submitted by the CEO to Finance and Treasury Board. This is a straightforward procedure that works well both from the Government's perspective and that of ENS.

By comparison the process currently followed for paying for the delivery of by-elections is quite different.

In the decade between June 2010 and March 2020, ENS has administered 14 by-elections. In its annual budget submission, ENS has routinely identified by-elections as an in-year plausible pressure based on this history. Finance and Treasury Board routinely removes the anticipated costs of a by-election out of its final budget allocation, even in years where a vacancy exists, and legislation requires the Government to hold a by-election within a six-month period. It is understandable why Finance staff may recommend not providing funds on the speculation a by-election may occur, but this creates funding uncertainty for ENS.

A reasonable solution would be to modify language in the *Finance Act* to permit the Government to cover the spending by ENS for the administration of a PGE to include similar powers for the costs incurred during by-elections.

Recommendation 2

Modify language in the Finance Act that permits the Government to cover the spending by ENS for the administration of a general election to include similar powers for the costs incurred during by-elections.

This recommendation has the unanimous support of the members of the EC.

Legislative Change Recommendation Process

Currently, legislative change recommendations by the CEO are considered by Government through the Minister of Justice as the Minister responsible for the *Elections Act*. Although registered political parties are consulted by ENS through the EC during the development of recommendations, the process to bring them to the House of Assembly through the Department of Justice could be perceived as partisan and inappropriate. Consider the scenario where, after seeking the advice of the members of the EC on a given issue, the Minister of Justice or Executive Council, decided not to act on the CEO's recommendation. The CEO could not bring an amendment to the floor of the Legislature for debate. In some cases, recommendations are based on a Supreme Court ruling in another Canadian jurisdiction that clearly infers a change should be made in the Nova Scotia election context. The Government of the day may have its reasons for not wanting to proceed with the recommended change, but without full disclosure and proper debate among the members of the Assembly, the stakeholders in the electoral process, would have little understanding of the issues at hand or the reasons for not proceeding.

Allowing ENS to present legislative recommendations directly to a special committee of the House of Assembly instead of the Department of Justice would ensure the process is non-partisan, transparent and respectful of ENS's independent status. Adding such a provision(s) would increase the independence of the office of the CEO by allowing an all-party committee to consider the unabridged legislative recommendations to be discussed publicly and voted on in the Legislature, rather than as filtered by a Minister of the governing party.

Recommendation 3

Add provisions so the Chief Electoral Officer may present annually to a committee of the House of Assembly, designated on recommendations for legislative changes.

This recommendation does not have the unanimous support of the members of the EC.



Chief Electoral Officer Hiring Process

The *Elections Act* states that the CEO is an Officer of the House of Assembly and that their office is an office of the House. The CEO is solely accountable to the legislative branch of Government and must be seen to be independent from the executive branch of Government for two reasons:

- To protect the constitutional right to vote in a provincial election through the administration of the *Elections Act*
- To maintain the separation of power between the legislative branch and the executive branch, i.e., Government

Given the need for the CEO to be non-partisan and independent from the executive branch of Government, it would be prudent to formalize a nonpartisan search process that operates at arms-length from Executive Council. The CEO favours the process used when he was hired in 2012. A panel made up of current EC members and a Public Service Commission (PSC) representative whose sole responsibility is to ensure the hiring process is open, fair, and follows the same steps employed by the public service in other senior competitions. This process would ensure that the appointee meets the job competencies and has the endorsement of the three registered political parties with representation in the House of Assembly, thus ensuring they are beyond partisan reproach.

This type of legislated hiring process for a CEO is more consistent with most of the 14 electoral jurisdictions in Canada. 10 Canadian jurisdictions have a fixed process for appointing a new CEO in legislation. Only Saskatchewan, Newfoundland and Labrador, Elections Canada, and Nova Scotia currently do not have these types of provisions. The approach that is recommended is in line with the legislative requirements of our provincial neighbour, New Brunswick, where the process for choosing the CEO is embodied in their *Elections Act*. Adopting this recommendation would bring Nova Scotia in line with the majority of Canadian provinces' best practices.

Recommendation 4

Add provisions to ensure the before a CEO appointment can be made under subsection 7(1), a selection committee shall be formed.

This recommendation does not have the unanimous support of the members of the EC.

Fixed-Date Elections

With Bill 1 receiving Royal Assent on November 5, 2021, Nova Scotia became the last of 14 jurisdictions in Canada to provide certainty to the province's election cycle for the general public, the registered parties, the third parties with interests in current issues, and all potential candidates considering a run for a seat in the House of Assembly.

While the introduction of a fixed-date election cycle provides more certainty around when the writs will be issued, on its own it creates a domino effect on other aspects of the event that should be addressed before the next PGE to enhance the electoral process for all stakeholders.

The following recommendations are related to fixed-date elections.

Defined Pre-writ Campaign Period

Extending the campaign period to include 120 days prior to election day would provide greater transparency for registered political parties and candidate spending. It would also introduce a further measure of control and transparency for third-party advertisers in the lead-up to a fixed-date election. Without extending the campaign period, the amount third parties could spend for or against an election issue, candidate or registered party before the writs are issued is unlimited potentially unfairly influencing the voting public's perception. The same concern exists for other stakeholders including potential candidates in the approaching election. Four other Canadian jurisdictions have defined pre-writ campaign periods prior to the writs of election being issued. Elections Ontario has a defined campaign period that applies to third parties but not registered political parties or candidates.

Recommendation 5

Add provisions to the Elections Act to define the pre-writ campaign for a fixed-date election only as follows:

- *In the case of a general election held in accordance with Section 29A(2), the period commencing 120 days before election day, in the year in which the election is held and ending with the issuance of a writ.*
- *Revise Section 278(1) to capture the pre-writ Campaign Period.*

This recommendation has the unanimous support of the members of the EC.



Variable Election Period

Maintaining a variable election period (30 to 46 days) with fixed-date election legislation would continue a level of uncertainty with regard to when the writ of election might be issued. If the goal of fixed-date election legislation is certainty and transparency, then the amount of variability must be reduced or removed. The proposed changes herein would have the election period have a seven-day variability.

Both Elections New Brunswick and Elections Ontario have fixed election periods, of 33 and 30 days respectively. Four other provinces have fixed election periods, but not fixed writ dates, which allows them to have some variability. Nova Scotia currently has the highest variability in our election period, across all Canadian jurisdictions, at 16 days of variability.

If changes are made to Section 29 to reduce the variability and set the election period to between 30 and 37 days, then corresponding adjustments must be made in Section 74(2)(b) to adjust the timeframe.

In terms of the 42nd General Election what is proposed here would mean the writ would be issued sometime the week of June 8th.

Recommendation 6

Make the following amendments to the Elections Act to reduce the variability of the election period to a maximum of seven days:

- *Amend Section 29(a) and (b) to set the election period to between 30-37 days in duration.*
- *Amend Section 74(2)(b) to adjust the timeframe for the election period.*

This recommendation has the unanimous support of the members of the EC.

Clarity

As the electoral process evolves it is important to ensure there is clarity regarding regulations and processes. The recommendations for legislative changes in this section are intended to bring clarity given recent changes to the electoral process in Nova Scotia.

Electoral Boundary Changes

The CEO is recommending amendments to the *House of Assembly Act* regarding electoral boundary changes to enhance clarity. One provides further authority to the CEO to address issues in the future and the other is simply housekeeping to clean up an error.

To address the concerns raised by voters during the 41st PGE regarding the placement of electoral boundaries by the 2019 Nova Scotia Boundaries Commission, a change to the *House of Assembly Act* is recommended to amend the existing authority of the CEO to address boundary issues.

The *House of Assembly Act* allows for the CEO to make recommendations for minor changes to electoral district boundaries, however the legislation constrains the recommendation to not alter the number of voters in any electoral district by more than three hundred.

The first amendment to the *House of Assembly Act* related to electoral boundary changes is to allow the CEO to have discretion to recommend to the members of the House of Assembly to change the number of voters, while not exceeding or falling below the threshold set for total number of voters in an electoral district within the Electoral Boundaries Commissions Report.

The second amendment to the *House of Assembly Act* related to electoral boundary changes is a housekeeping clean up to correct an error made when legislative changes were made in 2019. When legislative changes were made to enact the new electoral boundaries in 2019, ENS recommended that Government move away from the previous metes and bounds descriptions of electoral boundaries in favour of digital boundary descriptions. This recommendation was accepted and implemented in the *House of Assembly Act*, but a Subsection related to metes and bounds remained in error. ENS recommends repealing this Subsection, since legislated metes and bounds are no longer defined within the *House of Assembly Act*. The approval of a report the CEO submits to the House of Assembly as per Subsection 5A(1) permits the alteration to a boundary.



Recommendation 7

To make the following amendments to the House of Assembly Act to clarify issues regarding the CEO changing electoral boundaries.

- *In Section 5A(2) of the House of Assembly Act, remove the constraint of a maximum 300 electors and allow for greater CEO discretion.*
- *Remove Section 7(2) the requirement to amend the House of Assembly Act when electoral boundaries change due to CEO recommended changes.*

This recommendation has the unanimous support of the members of the EC.

Election Commission Chair

Currently the position of Chair of the EC is a five-year appointment term. Within a given election cycle the timing of this appointment period means an in-coming Government may not have an opportunity to consider the appointment of a new EC Chair.

The CEO is recommending that the term for the Chair of the EC be changed to account for a change in Government. This recommended change aligns to the fixed-date election legislation with a half year extension to allow Government, following an election, time to decide to reappoint or select a new Chair.

Recommendation 8

Change the term for the Chair of the EC as stated in Section 356(3) to account for a change in Government.

This recommendation has the unanimous support of the members of the EC.

Transparency

Transparency is important to the integrity of the electoral process. Although many recommendations related to independence, fixed-date elections, as well as efficiency and clarity also provide a greater level of accountability, the recommendations presented in this section speak specifically to transparency.

Voting Prior to Close of Nominations

The number of people choosing to vote before the close of nominations has been growing ever since the right to vote prior to the close of nominations was first introduced in 2001.

Following the 40th Provincial General Election, the CEO recommended a legislative change to not allow voting prior to the close of nominations. He offered the recommendation despite not having any support from the members of the Election Commission. This recommendation did not make it into Bill 225 when it was introduced in 2020.

It is important to understand why this recommendation was made despite the lack of endorsement of the EC members and the registered parties. As an election administrator, ENS can see the obvious advantages been given to incumbents choosing to run again as well as candidates nominated and endorsed by a registered party early in the writ period.

In 2017 and 2021, 3,378 and 10,035 people respectively voted before the close of nominations. The latter increase was largely the result of the ENS media campaign suggesting voters use this method of voting to enhance their personal safety during the COVID-19 pandemic. This notwithstanding, there was a lack of transparency for those 10,035 voters who chose to vote before the close of nominations in 2021, because they did not have the full knowledge of all the candidates to choose from. The final lists of candidates could not be provided to them until nominations closed.

ENS is submitting this same legislative change recommendation again, because the reasons for requesting this change were reconfirmed during the 41st PGE. It is important to point out that this recommendation does not enjoy the unanimous support of the members of the EC.

In addition to this recommendation, and to strengthen the commitment to equity and transparency, ENS is recommending removing the names of the registered political parties from the write-in ballot. Nova Scotia is the only jurisdiction in Canada that provides this information on the WIB ballot. Should the members choose to legislate not allow voting prior to the close of nominations, there is still a need to use the write-in ballot for hospital voting and as the contingency ballot should technical failures occur during early voting. We are also recommending the CEO have discretionary authority to mail write-in ballots prior to the close of nominations, in cases where an elector's geographic location would likely impede their vote being returned in time to count on election night.

If the recommendation to not allow voting until after the close of nominations does not proceed, it is our belief that the need to remove the party names from the WIB increases substantially. Both for equity and fairness for those running for office and for the transparency and clarity of those choosing to vote early, before the close of nominations.

It is worth noting that in the 2017 court decision by Justice Gillian D. Butler in Newfoundland in the case of *Mitchell v. Jackman*, Justice Butler opined, not allowing voting prior to the close of nominations is more equitable to all candidates and is more transparent to voters.

Lastly, for full disclosure, of the fourteen jurisdictions across Canada, only Newfoundland and the Northwest Territories do not allow voting prior to the close of nominations. That fact may make it a widely accepted practice but not necessarily an equitable or right practice.

Recommendation 9

Make amendments to eliminate potential for voting prior to the close of nominations and to remove the list of registered political parties on the WIB:

- *Amend Section 139A to not allow voting prior to the close of nominations.*
- *Amend Section 140(2) to not allow voting at a returning office continuous poll until after the close of nominations.*
- *Amend Section 103(1) so write-in ballot kits would not be issued until after the close of nominations.*
- *Amend Section 103(2) and 107(3) to remove the names of the registered political parties from the WIB.*

The first 3 amendments (Sections 139A, 140(2), and 103(1) in this recommendation do not have the unanimous support of the members of the EC. The amendments to Sections 103(2) and 107(3) were not presented to the EC due to time constraints.

Candidate Registration

This amendment is necessary to avoid the situation when a candidate submits their registration form at the same time as their nomination papers, since acceptance of the nomination is also deemed to be their registration. The intent of registration is for transparency of candidate's activity between elections.

Prospective candidates can register with ENS head office at any time prior to an electoral event to permit them to begin raising and spending money between elections. Once an election is called, all candidates including those who were already registered must submit their official nomination form to the returning office to have their name appear on the ballot. If a candidate was not registered before the writ, then the candidate is deemed to be registered on the date the nomination was accepted by the RO.

In the 41st PGE with a non-fixed-date election, candidates who were not registered before the writ submitted their registration and nomination forms at the same time, which was unnecessary. It also caused confusion since the registration form is approved, as specified in legislation, by the CEO and the nomination form is approved by the RO in the electoral district.

The CEO is recommending that Section 203(2) be changed to define the end of the period for the registration process for candidates.

Recommendation 10

Change Section 203(2) to define the registration period as ending once the writ of election has been issued for the district in which a candidate intends to run. This will eliminate the duplication and confusion which has resulted when candidates submit their registration form at the same time as their nomination papers after the writ was issued.

This recommendation has the unanimous support of the members of the EC.

Returning Officer Residency Requirement

RO appointments have a legislative requirement for the RO to reside in the electoral district in which they administer the election.

Meeting the residency requirement for ROs continues to be excessively challenging in terms of recruitment. Although there is provision for the CEO to appoint an acting RO for outside the district, no long-term appointment can be made. During the 41st PGE there were 12 ROs appointed in “acting” positions from out of district.

The residency requirement for ROs is inconsistent with requirements for candidates. Candidates do not have to reside in the electoral district in which they are running, and the CEO feels this flexibility should be extended to the RO role.

Recommendation 11

Remove Section 22(6) (b), which requires ROs to reside in the electoral district in which they were appointed.

This recommendation has the unanimous support of the members of the EC.



Write-in Ballot Changes

The following recommendations support a change to allow candidate ballots to replace WIBs after the candidate had been nominated. This change would enhance transparency for voters to allow them to know the names of the nominated candidates in their electoral district for which they can cast their vote.

These changes are being recommended following the 41st PGE because ENS received multiple questions and comments from candidates and their representatives as well as registered parties about the continued use of WIBs after the candidate had been nominated. They argued that it unnecessarily caused voter confusion and could possibly lead to rejected ballots when some or all candidate names were known.

The CEO feels the changes recommended in this section would mitigate most of the concerns raised. As well, keeping the references in the *Act* more generic by removing references to WIBs specifically, where reasonable provides ENS more latitude in future as options for voting change.

Recommendation 12

Make the following amendments to allow candidate ballots to replace write-in ballots following the close of nominations and remove specific requirement for a WIB where reasonable.

- *Amend Sections 101(2) to (4), 101(14), 101(15)(e), 102(1) and (3), and 103(2) to (4)*
- *Change the titles of Section 105, 107, and 108*
- *Remove references to WIB in Sections 105(1)(a)(b), 105(1A), 105A(a)(b)(c), 107(1A) to (g), 107(1B) to (1D), 107(2), 108(1)*
- *Clarify that Section 107(3) to (5) is dealing with rejecting a WIB*

This recommendation has the unanimous support of the members of the EC.

Alignment

During an election many discrepancies or inconsistencies are noted within the electoral practices and procedures. The recommendations for legislative changes in this section are mainly housekeeping matters that need to be addressed to improve the legislative alignment with existing internal procedures in Nova Scotia.

Residential Centre Polling Divisions

The *Elections Act* allows the CEO to establish a separate polling division for a residential centre in which ten or more voters reside. The current practice is for mobile polls to be held at residential centres with 40 or more voters and to serve all others by WIB team. The removal of a number of voters will allow for more flexibility and the efficient use of election workers. The CEO is recommending this change to ensure alignment between the legislation and existing practice.

Recommendation 13

In Section 35(3) remove the reference to the number of electors.

This recommendation has the unanimous support of the members of the EC.

Returning Office Continuous Poll

A returning office continuous poll rarely has fewer than 15 votes. If a merger is required for a returning office continuous poll because it has fewer than 15 votes, then the merge should be with the WIB poll instead of with the ballots of an election day poll, as currently prescribed within the *Elections Act*.

This amendment is required to set the procedure in the *Elections Act* to be in line with the current counting process and to enable the merger of digital and paper eBallots and give the CEO more discretion in handling low votes from a returning office continuous poll. This will preserve the turnout election day polls report with known number of voters on the official list. This is considered an administrative correction.

Recommendation 14

Amend Section 143(2) to allow for CEO discretion when merging low votes from a returning office continuous poll.

This recommendation has the unanimous support of the members of the EC.



Administrative Corrections

Two administrative corrections are required to update the *Elections Act*.

An update is needed to correct reference to the position of Election Clerk within the *Elections Act*. The term 'Election Clerk' was replaced by Assistant Returning Officer (ARO) by the amendments to the Elections Act made in Chapter 17 of the Acts of 2015, which came into effect by Royal Assent on May 11, 2015.

The second correction is to Section 303 of the *Elections Act* because it only references advance and election day polls, which appears to be an oversight. It should also account for the returning office continuous polls as well as any community polls held. The CEO is recommending that this section be updated to include the returning office continuous polls and community polls.

These two amendments are considered administrative corrections.

Recommendation 15

Make the following administrative corrections to the Elections Act:

- *Update Section 350(1) (b) to replace the term 'Election Clerk' with 'Assistant Returning Officer'.*
- *Update the language in Section 303 to include continuous and community polls.*

This recommendation has the unanimous support of the members of the EC.

Offences

While reviewing the *Elections Act* for potential updates following the 41st PGE, it was determined that the legal provisions within the offences section needed to be strengthened.

The CEO feels the following updates to Part IV of the *Elections Act* are needed to address current gaps and weaknesses. This is considered an administrative update.

Recommendation 16

Update Part IV of the Elections Act to include offences using new technology, electoral officers, material and equipment as follows:

- *Add offences for both the write-in and internet voting polls.*
- *Amend Section 335 to include offenses respecting election equipment, materials and ballots.*
- *Add new clauses in Section 336 and 337 related to the applications of a personal information number.*
- *Add a new section related to offences by a systems election officer.*

This recommendation has the unanimous support of the members of the EC.



Electoral Finance

The recommendations for legislative change presented in this section pertain to electoral finance practices. Further recommendations may be made in the final post-election report, *Volume III, Financial Information & Statistics*, which will be published later this year. *Volume III* will provide financial information on election expenses, candidate reimbursement, election administration costs and financial statistics.

Nomination Deposit

Following the 40th PGE in 2017, the CEO recommended the candidate nomination deposit no longer be required for fairness. This recommendation was made following a court decision in the province of Alberta: *Szuchewycz v Canada (Attorney General)*, 2017 ABQB 645, in which the Court held that the provision related to the nomination deposit created a disadvantage on some prospective candidates that was limiting and unconstitutional.

This recommendation was not included in the legislative changes introduced in Bill 225 and proclaimed in May of 2021. It is also noted that the CEO waived the nomination deposit for by-elections held between the 40th and 41st PGEs. All candidates are eligible to have their deposit returned under the current legislation.

The CEO feels it is prudent to recommend this change again given the court ruling and the fact that some other jurisdictions in Canada have also taken steps to eliminate nomination deposits for candidates.

Recommendation 17

For greater fairness a candidate deposit would no longer be required by making the following amendments:

- *Amend clause 65(2)(b) to no longer require a prospective candidate to submit a two-hundred-dollar nomination deposit by deleting it in its entirety.*
- *Amend Subsections 66(2)(3), 67(1)(2)(3)(4), 69(1), 71, and 72 (3) to delete reference to nomination deposit.*
- *Amend clause 166(i)(xi) by deleting it in its entirety*

This recommendation has the unanimous support of the members of the EC.

Transfers

This recommendation will clarify the rules regarding transfers of services, money or property among related entities to cover the situation when a candidate is running for office and would like to transfer advertising materials from a previous election when running for a different registered party.

In the 41st PGE, ENS encountered instances where candidates who had run in previous elections reused campaign signs that no longer reflected their registered party affiliation. This situation illustrated the need for clarity regarding transfers among related entities. Specifically, to cover the situation when a candidate is running for office and would like to transfer advertising materials from a previous election when running for a different registered party or as an independent.

Recommendation 18

Update Sections 213 and 214 to clarify application of rules regarding transfers between related entities.

This recommendation has the unanimous support of the members of the EC.

Disclosure statement

A housekeeping update is needed to address an inconsistency between the subsections of Section 240 of the *Elections Act* so that all will state 'to be equal to or exceed two hundred dollars'. Further amendment is now needed to align Sections 240(2) and (3) which currently specify disclosure for contributions that exceed two hundred dollars.

Recommendation 19

Amend Section 240(2) and (3) to clarify that the disclosure amount is to be equal to or exceed two hundred dollars.

This recommendation has the unanimous support of the members of the EC.



Campaign Period Finances

If recommendations made in the report related to a campaign period are accepted, then further amendments will be required to align the period covering election expense spending limits, reimbursement limits and maximum election expenses.

Recommendation 20

Make the following amendments to align the period covering election expense spending limits, reimbursement limits and maximum election expenses with both the pre-writ campaign period and the writ period for fixed-date elections.

- *Amend Sections 259(1) and 260(1) regarding the longer period associated with election expense spending limits to reflect the inclusion of the pre-writ campaign period rather than only the writ period.*
- *Amend Section 260(4) to account for the longer period associated with the inclusion of pre-writ campaign period when calculating maximum election expenses.*
- *Amend Section 278(1) to ensure a third party shall register within seven days of incurring election advertising expenses of a total amount of five hundred dollars and may not register before the issue of the writ or, in the case of a fixed-date, the start of the pre-writ campaign period.*

This recommendation has the unanimous support of the members of the EC.

Conclusion

While the Premier of the day may have the discretion of deciding the date upon which the writs of election would be issued, democratic elections themselves have always been about choice for and by the people. Current members of the House of Assembly, whether they are Government members or opposition members, may choose to present themselves to the electorate as candidates who choose to contest a given seat. The public entrusts ENS with the responsibility of ensuring the playing field is level, the rules give no advantage to any one candidate, the processes employed are transparent and accountable, the opportunities to vote are equally accessible to all, and that ENS, as the administrators of the election once called are adequately prepared to deliver the event to a level of professionalism and integrity all the stakeholders expect.

It is for these very reasons that it is so important to protect and strengthen the non-partisan independence of ENS through continued legislative reform as outlined in this report.

There are two unresolved issues related to independent candidates that arose out of the debriefing after the 41st PGE that had not been fully vetted at the time of the publishing of this report. ENS staff will continue to review of the following independent candidate issues and discuss potential recommendations with the members of the EC before the 42nd PGE.

The issues in question are as follows:

Unfair disadvantage independent candidates face when it comes to raising money.

Registered candidates who choose to run under the banner of a registered party have a distinct advantage over their rivals who choose to run as independents. They can, through agreement with their registered political party hold fundraising events at any time between elections. Independent candidates have the same right, but they currently cannot provide their donors with a tax receipt before the writ of election is issued. This is an issue of fairness and should be addressed.

Any unspent funds raised by a party candidate after an election can be transferred to the EDA or party for which they ran.

An independent has no such option. The only option available to independent candidates is to transfer any surplus funds to the general revenues of the province. There is no valid reason for the province to be the only option available. An option for consideration could be to permit independent candidates the opportunity of donating their surplus funds to a charity of their choice that is registered in Nova Scotia.

Lastly there are two operational improvements that have yet to be resolved. They are as follows:

Finding a less costly and more reliable vehicle for informing voters of their specific voting rights and options during an election.

The current vehicle most often used to deliver this information is the voter information card (VIC). The benefits of this card are two-fold. It provides voter specific information on where and when they can vote and it can also act as a valid piece of identification for voters, when presented with a second piece of valid identification.

There are variables beyond ENS's control in locking down voting locations, before the VIC publication date, that are a critical element of the information provided to the voter. This forces the production of the VICs to be extremely time sensitive. ENS has been able to find one company in Canada that can turn around the production of these cards in the window available before advance voting starts. Secondly, the only practical way to deliver this information to individuals directly has traditionally been by Canada Post. Try as they might, many VICs are misdirected or undelivered to valid residential addresses within acceptable timeframes. The cost of delivery by Canada Post has also increased to a point where alternative ways of getting this information out to individual voters should be considered.

Expanding the right to vote anywhere within the voter's electoral district on election day.

The first step would be to use technology to register and strike off voters at the polls which would significantly reduce human error rates. This objective could be met for the 42nd PGE but there are costs associated with securing the required technology. Less realistic for the 42nd would be to permit voters to vote anywhere within their electoral district. There are a number of obstacles to this including legislative changes, meeting the parties desire to know results by polling division, the cost of technology for all election day polls and the limits to the availability of acceptable internet coverage in the more rural districts in the province. That said, a realistic interim goal could be to pilot this change in by-elections or in a select number of districts during the 42nd PGE.

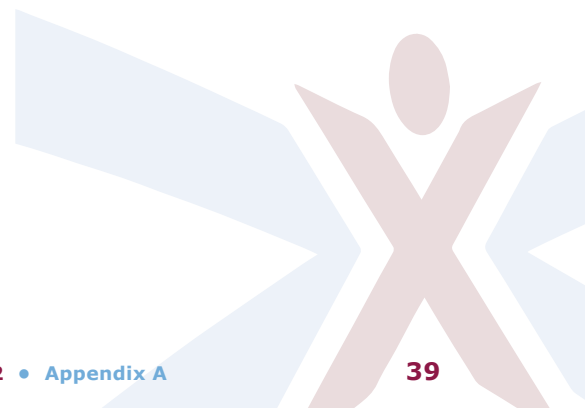
Appendix A: Legislative Recommendation Table

Title	#	Summary of Amendment	Elections Act Reference / Suggested Wording	Election Commission feedback
Independence				
Annual Estimates	1	Modify language so the special committee's recommendation of estimates to Treasury Board is not optional for inclusion. The governing party maintains its ability to alter this budget during debates in the House of Assembly.	Modify language referring to the annual estimates in the <i>Act</i> so the special committee's recommendation of ENS's estimates to Treasury Board is not optional for inclusion with the provincial budget. The governing party would have the same ability as the opposition parties to review, to debate and to propose a vote to alter this budget in the House of Assembly if it so chooses.	Not unanimously supported
Warrant to pay for by-elections	2	Align the funding process for by-elections with the existing warrant system for provincial general elections as defined in the <i>Finance Act</i> .	Modify language in the <i>Finance Act</i> to permit the Government to cover the spending by ENS for the administration of a general election to include similar powers for the costs incurred during by-elections.	Unanimously supported
Legislative change process	3	Allow the Chief Electoral Officer to present legislative recommendations to a special committee instead of to Executive Council through the Minister of Justice.	Add provisions so the Chief Electoral Officer may present annually to a committee of the House of Assembly, designated on recommendation for legislative changes.	Not unanimously supported
CEO hiring process	4	To support greater transparency and independence, prescribe within the <i>Elections Act</i> procedures for the recruitment/appointment of the Chief Electoral Officer.	Add provisions to ensure that before a CEO appointment can be made under subsection 7(1), a selection committee shall be formed.	Not unanimously supported



Title	#	Summary of Amendment	Elections Act Reference / Suggested Wording	Election Commission feedback
Fixed-Date Elections				
Define Pre-writ Campaign Period	5	Introducing a pre-writ campaign period provides greater transparency for election expense spending for a registered political party or candidate, and introduces a measure of control on third-party spending in the lead-up to a fixed-date election.	Add provisions to the <i>Elections Act</i> to define the pre-writ campaign for a fixed-date election only as follows: - in the case of a general election held in accordance with Section 29A(2), the period commencing 120 days before election day, in the year in which the election is held and ending with the issuance of a writ.	Unanimously supported
Variable Election Period	6	Make the following amendments to the <i>Elections Act</i> to reduce the variability of the election period to a maximum of seven days.	- Amend Section 29(a) and (b) to set the election period to between 30-37 days in duration. - Amend Section 74(2)(b) to adjust the timeframe for the election period.	Unanimously supported
Clarity				
Electoral Boundary Changes	7	To make the following amendments to the <i>House of Assembly Act</i> to clarify issues regarding the CEO changing electoral boundaries.	In Section 5A(2) of the <i>House of Assembly Act</i> , remove the constraint of a maximum 300 electors and allow for greater CEO discretion. Remove Section 7(2) the requirement to amend the <i>House of Assembly Act</i> when electoral boundaries change due to CEO recommended changes.	Unanimously supported
Election Commission Chair	8	Change the term for the Chair of the Election Commission to account for a change in Government.	Change the term for the Chair of the EC as stated in Section 356(3) to account for a change in Government.	Unanimously supported

Title	#	Summary of Amendment	Elections Act Reference / Suggested Wording	Election Commission feedback
Transparency				
Voting Prior to Close of Nominations	9	Make amendments to eliminate potential for voting prior to the close of nominations and to remove the list of registered political parties on the WIB.	<ul style="list-style-type: none"> - Amend Section 139A to not allow voting prior to the close of nominations. - Amend Section 140(2) to not allow voting at a returning office continuous poll until after the close of nominations. - Amend Section 103(1) so write-in ballot kits would not be issued until after the close of nominations. - Amend Section 103(2) and 107(3) to removed the names of the registered political parties from the WIB. 	Not unanimously supported
Candidate Registration	10	This amendment is necessary to avoid the situation when a candidate submits their registration form at the same time as their nomination papers, since acceptance of the nomination is also the deemed registration. The intent of registration is for transparency of candidate's activity between elections.	Change Section 203(2) to define the registration period as ending once the writ of election has been issued for the district in which in which a candidate intends to run. This will eliminate the duplication and confusion which has resulted when candidates submit their registration form at the same time as their nomination papers after the writ was issued.	Unanimously supported
Returning Officer Residency Requirement	11	Remove requirement to have a returning officer reside in the electoral district they support.	Remove Section 22(6) (b), which requires ROs to reside in the electoral district in which they were appointed.	Unanimously supported
Write-in Ballot Changes	12	Make the following amendments to allow candidate ballots to replace write-in ballots following the close of nominations and remove specific requirement for a WIB where reasonable.	<p>Amend Sections 101(2) to (4), 101(14), 101(15)(e), 102(1) and (3), and 103(2) to (4)</p> <p>Change the titles of Section 105, 107, and 108</p> <p>Remove references to WIB in Sections 105(1)(a)(b), 105(1A), 105A(a)(b) (c), 107(1A) to (g), 107(1B) to (1D), 107(2), 108(1)</p> <p>Clarify that Section 107(3) to (5) is dealing with rejecting a WIB</p>	Unanimously supported



Title	#	Summary of Amendment	Elections Act Reference / Suggested Wording	Election Commission feedback
Alignment				
Residential Centre Polling Divisions	13	The removal of a number of voters will allow for more flexibility and the efficient use of election workers.	In Section 35(3) remove the reference to the number of electors.	Unanimously supported
Returning Office Continuous Poll	14	This amendment is required to set the procedure in the <i>Elections Act</i> to be in line with the current counting process and to enable the merger of digital and paper eBallots and give the CEO more discretion in handling low votes from a returning office continuous poll. This will preserve the turnout election day polls report with known number of voters on the official list. This is considered an administrative correction.	Amend Section 143(2) to allow for CEO discretion when merging low votes from a returning office continuous poll.	Unanimously supported
Administrative Corrections	15	Make administrative corrections to update the <i>Elections Act</i> .	<ul style="list-style-type: none"> - Update Section 350(1) (b) to replace the term 'Election Clerk' with 'Assistant Returning Officer'. - Update the language in Section 303 to include continuous and community polls. 	Unanimously supported
Offences	16	Update Part IV of the <i>Elections Act</i> to include offences using new technology, electoral officers, material and equipment.	<p>Amend Section 335 to include offences respecting election equipment, materials and ballots.</p> <p>Section 336 and 337 related to the applications for a personal information number.</p> <p>Add a new section related to offences by a systems election officer.</p>	Unanimously supported

Title	#	Summary of Amendment	Elections Act Reference / Suggested Wording	Election Commission feedback
Electoral Finance				
Nomination Deposit	17	For greater fairness a candidate deposit would no longer be required.	<ul style="list-style-type: none"> - Amend clause 65(2)(b) to no longer require a prospective candidate to submit a two-hundred-dollar nomination deposit by deleting it in its entirety Further amend Subsections 66(2)(3) and 67(1)(2)(3)(4) to delete reference to nomination deposit. - Amend clause 166(i)(xi) by deleting it in its entirety. 	Unanimously supported
Transfers	18	Clarify the rules regarding transfers of services, money, or property among related entities to cover the situation when a candidate is running for office and would like to transfer advertising materials from a previous election when running for a different registered party.	Update Sections 213 and 214 to clarify application of rules regarding transfers between related entities.	Unanimously supported
Disclosure Statement	19	A housekeeping update is needed to address an inconsistency between the subsections of Section 240 of the <i>Elections Act</i> so that all will state 'to be equal to or exceed two hundred dollars'. Further amendment is now needed to align Sections 240(2) and (3) which currently specify disclosure for contributions that exceed two hundred dollars.	- Amend Section 240(2) and (3) to clarify that the disclosure amount is to be equal to or exceed two hundred dollars.	Unanimously supported
Campaign Period Finances	20	Make amendments to align the period covering election expense spending limits, reimbursement limits and maximum election expenses with the campaign period.	<ul style="list-style-type: none"> - Amend Sections 259(1) and 260(1) regarding the longer period associated with election expenses with both the pre-writ campaign period and the writ period for fixed-date elections. - Amend Section 260(4) to account for the longer period associated with the inclusion of pre-writ campaign period when calculating maximum election expenses. - Amend Section 278(1) to ensure a third party shall register within seven days of incurring election advertising expenses of a total amount of five hundred dollars and may not register before the issue of the writ or, in the case of a fixed-date, the start of the pre-writ campaign period. 	Unanimously supported

