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May 6, 2011

The Honourable Gordie Gosse
Speaker of the House of Assembly
Province of Nova Scotia
1726 Hollis Street, Province House
Halifax, NS
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Dear Mr. Speaker,

In response to Resolution No. 645 of the House of Assembly, together with the Elections Nova Scotia senior management team, I have reviewed the current *Elections Act* and other relevant legislation to identify areas in which the current legislation is deficient, requires modernization, or calls for simplification.

Following is my report on our findings and my recommendations for changes to the *Elections Act* as well as draft legislation for the consideration of the Members of the House of Assembly.

I acknowledge with thanks and sincere appreciation the participation and valuable input of representatives of the recognized parties and members of the Elections Commission, returning officers, other election officials, representatives of the disability community, as well as other individuals and groups with whom we consulted during the review.

We at Elections Nova Scotia look forward to a continuing dialogue as we move Nova Scotia's election legislation forward.

Respectfully submitted,

Christine McCulloch, Q.C.
Chief Electoral Officer

1. Introduction

In response to Resolution No. 645 of the House of Assembly (Appendix A), Elections Nova Scotia has reviewed the *Elections Act*, the *Members and Public Employees Disclosure Act (MPEDA)* and the *Political Contributions Regulations* in light of the experience of recent electoral events in Nova Scotia and examined the modernized election and election financing legislation of jurisdictions across Canada, including the *Canada Elections Act*. The team approached the review with an eye to modern election management in a Nova Scotia context and looked for lessons in organization as well as for approaches to specific areas identified for improvement. Elections Nova Scotia sought ways of piloting new technologies and processes in a controlled way including adoption by the House of Assembly as they are proven effective.

Elections Nova Scotia then identified and engaged three Nova Scotia political scientists with experience in public policy research related to elections and election financing. The researchers conducted literature searches, prepared discussion papers and delivered reports and recommendations that provided context and background useful in the consultation phase of the project.

The Chief Electoral Officer consulted representatives of the recognized parties¹, the Election Commission (as representative of recognized parties with members elected to the House of Assembly), senior executives of election management bodies in Canada regarding various aspects of the new Act and representative groups of returning officers in Nova Scotia on poll procedures, training, and returning office and poll signage. While not limiting the areas of consultation, discussions regarding improved access and enhanced voting opportunities, election expenses, political contributions, improved accountability and the regulation of third party participation in election campaigns were among the topics on the agenda. A number of irritants and needs identified by candidates, recognized parties, and electoral district associations such as nomination requirements, the “200 foot rule” for campaign signs near polling places, and deputy returning officer (DRO) depositing ballots for voters, were also included in the review.

The Election Commission was asked to provide advice to the Chief Electoral Officer in two important areas in particular. Firstly, while the current *Elections Act*, *MPEDA* and the *Political Contributions Regulations* define offences and prescribe

¹ Consultation with representatives of the recognized parties included the Green Party of Nova Scotia and The Atlantica Party Association of Nova Scotia

penalties for contraventions under those Acts, there are no effective provisions for investigation and prosecution or other methods of enforcing the law. Secondly, the new electoral finance regime required a thorough review to address deficiencies and difficulties found in practice. The Election Commission reviewed the contributions aspects of electoral finance. Consultation on election expenses is ongoing with an aim to report on recommendations in that area in the near future.

Elections Nova Scotia staff met with groups and individuals representing and advocates for specific groups of electors who have faced challenges in voting because of limited mobility, literacy challenges, or vision or hearing impairments to receive comment on current election practices and suggestions for improvement.

Elections Nova Scotia hosted a Conference on Elections and Electoral Finance at Saint Mary's University in Halifax at which commissioned papers were presented for review and discussion by invited delegates including advocates for seniors and persons with disabilities, young and new voters, political scientists and other public policy researchers, registered parties, Members of the Legislative Assembly, and Canadian election management bodies.

Many of the proposed changes to election law in Nova Scotia are fashioned to enable the Chief Electoral Officer to streamline operations, improve access and simplify the voting process for electors today and in the future, as technology evolves and best practices demand. As well, the draft *Elections Act* consolidates election law with electoral finance law currently in *MPEDA* and other regulations and statutes of Nova Scotia.

This report is designed to be read in conjunction with the draft Act appended and draws attention to many of the significant improvements and identifies areas where future consultation would be beneficial.

2. Independence

Proposed changes to the *Elections Act* include the recognition of the Chief Electoral Officer as an Officer of the Legislature, appointed by resolution of the House of Assembly, responsible for the administration of provincial elections, the electoral finance regime and the registration of electors.

As an Officer of the Legislature, the Chief Electoral Officer supplements and complements the efforts of the House of Assembly to maintain the integrity of democratic elections, electoral financing including contributions to and public

funding of political entities. This is done by setting standards, consulting individuals and public organizations, conducting studies, recommending changes where needed, issuing public reports and appearing before committees of the Legislature to present findings and recommendations.

The Chief Electoral Officer serves the House of Assembly and is directed by and accountable to that body, which is the ultimate watchdog under our system of responsible government. To command public trust and confidence, the Chief Electoral Officer, as an Officer of the Legislature, must be, however, conspicuously and robustly independent of ministers, the public service and even to some extent, the House itself. In performing the statutory functions of office, the Chief Electoral Officer will have authority, budget and undoubted influence and must be transparently and meaningfully accountable to the house in an appropriate manner. The Chief Electoral Officer will be accountable to the House of Assembly to present proposed strategic initiatives in an annual plan and budget for review.

To help assure the independent but accountable status of the Office, the draft Act provides that the Chief Electoral Officer be appointed by the Governor in Council on the resolution of the House of Assembly carried by a majority of the members voting. The proposed term of office is ten years with provision for reappointment.

The increasing requirements of returning officers calls for a rigorous selection process coupled with ongoing professional development.

The recommended changes to the *Elections Act* also reflect the need for accountability and effective management of other election officers.

A Returning officer (RO) is instrumental in delivering the election in an electoral district. In light of this important role, concerns have been raised in the past that control over the appointment process by the governing party gives rise to perceptions of bias. While responsibility for the administration of elections has been the longstanding primary mandate of the Chief Electoral Officer, effective management and reporting relationships are difficult without responsibility and control of the appointment and dismissal process.

The proposed changes to the *Elections Act* allow the Chief Electoral Officer to appoint returning officers with provisions that ensure the merit principle is applied.

The principle and perception of political impartiality and neutrality are fundamental in the administration of elections and central to the performance of the returning officer's duties. In this regard, the Chief Electoral Officer will require returning officers and other election officers trained in professional election service delivery to abide by a code of conduct supported by an oath of office.

The returning office must be made fully operational within a couple of days of the election call. The returning officer in each electoral district is responsible for leasing one or more offices; hiring and training staff; organizing supplies received from Elections Nova Scotia; setting up and connecting telephones, computers and other equipment; and, leasing voting facilities. Returning officers also oversee the mailing of voter information cards; revising the various lists of electors used during the election and are responsible for receiving candidate nomination papers, the training of hundreds of election officials, advance voting, continuous voting at the returning office, voting by write-in ballot by mail or write-in ballot coordinator team and, of course, election day and wrap-up activities. Completing all of these tasks involves managing, on average, 120-135 employees in each district. All of these tasks are conducted under the general direction of and to the standards set by Elections Nova Scotia.

Returning officers must be very versatile. Their extensive duties call for the use of a wide range of modern management techniques, including financial planning, contract negotiation, public relations, office automation, and material, human and financial resources management. ROs must be both skilled and efficient to complete their tasks within the short periods of time allowed by the election calendar.

The work of returning officers calls for a rigorous selection process coupled with ongoing training, professional development and performance management. Elections Nova Scotia is actively considering a professional development program leading to certification of returning officers, possibly in partnership with one or more electoral management bodies in Canada.

3. Consolidation of Electoral Finance Provisions

*"Good stewardship of public funds is enhanced when regulations, policies and guidelines are clear and comprehensive."*²

Among the areas that required updating and modernization are the electoral finance provisions in *MPEDA*. The first steps involved consolidating and reorganizing the electoral finance provisions of *MPEDA* under the *Elections Act* and clarifying and prescribing consequences when candidates or electoral district associations and parties fail to meet their responsibilities under the Act. The political contributions rules in Nova Scotia are relatively new and moved political entities rapidly into an environment of reporting requirements. It is important to remain vigilant to opportunities to simplify the regime without sacrificing the minimum standards of the regime.

3.1 Tax Receipts

Currently, an annual general meeting of a recognized party is viewed as a fundraising event and therefore the cost of attending the event is deemed to be not eligible for a tax receipt.

During consultation we discussed whether the benefit that accrues to participants was tangible. As no meal or other tangible benefit accrues to the participant as a function of paying a registration fee, it was agreed that an annual general meeting should be treated differently from other fundraising events where the primary motive is to generate a profit.

The proposed legislation provides for the issuance of a tax receipt for 100% of the registration fee for an annual general meeting paid by an individual. A key benefit is that the change may encourage participation in the political process.

The proposed legislation clarifies that contributions in the form of participation in a lottery or raffle are not eligible for tax receipts.

3.2 Official Agent and Their Agents

During the consultation it was noted that it is unrealistic to require that all contributions be made directly from the contributor only to the official agent. Those consulted felt that it is neither reasonable to expect that an official agent be in attendance to accept contributions at all times that they are offered nor is it reasonable to expect that the individual at the

² Jacques Lapointe, Auditor General of Nova Scotia, Report of the Auditor General, February, 2010

campaign office would refuse to accept a contribution from a contributor. Conversely, it was understood that one official agent ultimately must be responsible for receiving, recording, and verifying the eligibility of a contribution.

The draft Act requires that certain information be recorded at the time a contribution is made and that a record of transmittal from a person authorized by the official agent to accept contributions be forwarded to the official agent with the contribution. The recording of this information is fundamental to the integrity of the contributions regime and is necessary to protect the official agent and the individual receiving the contribution. The draft Act requires the recording of the name and address of the contributor, the amount of the contributions on a cumulative basis, and the dates they were made.

This provision strikes a reasonable balance between the need for political entities to receive contributions as they are made and the requirement that the official agent record, report, and disclose contributions in accordance with the Act.

4. Third Party Regulation

Electoral finance regimes in a number of Canadian jurisdictions have evolved beyond basic rules governing election spending and contribution disclosure requirements. Although the pace at which electoral reform has advanced differs by jurisdiction, the trend has been towards the introduction of contribution limits, contributor eligibility rules and the public funding of political entities. In Nova Scotia the establishment of a true electoral finance regime resulted from amendments to *MPEDA* proclaimed in force on March 2, 2007. The electoral finance provisions of *MPEDA*, as well as the Political Contribution Regulations made under *MPEDA*, have been incorporated into the draft *Elections Act*.

The recommendation on the regulation of third party participation in elections is a moderate model that seeks to provide a balance between the objective of fairness for the electoral competitors and the rights of third parties to participate in election campaigns, through disclosure, registration and reporting.

There is increasing recognition by both legislators and the public that organizations, apart from parties and candidates, undertake activities – particularly with respect to advertising – that have the potential to influence how electors vote

during an election. Additionally, these third parties may solicit contributions to fund those activities in a manner similar to the solicitation of political contributions by parties and candidates.

Recognized parties and candidates are subject to certain rules regarding their funding and the expenses they may incur to promote their candidacy or challenge that of their opponents, while third parties are not. The underlying principles of disclosure and spending limits are about the importance of a level playing field for all who intervene in the electoral process. Third party legislation establishes laws respecting the “political” activities of third parties and may include registration, spending limits and disclosure of these third parties and their contributors.

In 2004, the Supreme Court of Canada issued its decision in *Harper v. Canada (Attorney General)*³. The nine-member court ruled unanimously that the limits on third party election advertising as well as registration and reporting requirements adopted in 2000, were constitutional.

The Chief Electoral Officer recommends the inclusion in the *Elections Act* of a moderate model of regulation of third party participation in election campaigns. This model would provide fairness for the electoral competitors, and a balance between the right of electors to know the source of political advertising and the rights of third parties to participate in election campaigns. It would include requirements for registration, disclosure and reporting by third parties.

A third party is defined as a person or group other than a candidate, a recognized party or an electoral district association of a recognized party. Under this moderate model, all third-parties conducting election advertising during an election would provide basic identifying information as part of that advertising.

The reason for the disclosure requirement is to let electors know the interest behind a public position. Elections are not meant to be challenging investigative research projects for electors. The purpose of requiring third parties to register is to ensure that the particulars regarding their identity are clear.

³ *Harper v. Canada (Attorney General)*, [2004] 1 S.C.R. 827, 2004 SCC 33,

The registration provisions of this model would require third parties to register with Elections Nova Scotia once they incur election advertising expenses of set amount. They would produce a financial report within a reasonable time after election day itemizing their election advertising expenses and the sources of these advertising funds.

The final feature of the model would impose limits on the amount a third party could incur in election advertising expenses in either absolute terms or relative to the spending limits imposed on recognized parties.

In our consultation with the recognized parties and the Election Commission, there was no consensus regarding the regulation of third party participation in election campaigns. As third party regulation had been the subject of two previous bills introduced in the House of Assembly (Bill 63, November 2009 and Bill No. 48, April 2010), the Chief Electoral Officer will welcome the discussion of the practical elements with a view to incorporating the results in the new *Elections Act*.

5. Access to Voting Opportunities

Resolution No. 645 spoke directly to improving access and enhancing voting options when modernizing the *Elections Act*. The draft Act seeks to satisfy the objectives contemplated by the resolution in a number of ways.

5.1 Election Day Polls

The aim of the proposed changes is to reduce the wait time it takes for the average elector to vote at peak voting times and to reduce the potential for human error when poll officials process electors.

The existing legislation is explicit about which poll official positions are to be used and who is to do which tasks in the polls. Rather than describing operational directives in such minute detail, the draft Act details the tasks that must be completed and leaves the operational details that may change over time, to be prescribed by the Chief Electoral Officer. To electors, the manner in which they vote will be the same as they have experienced in the past.

5.2 Returning Officers' Continuous Poll

In the draft *Elections Act*, the Chief Electoral Officer has recommended changes to improve access throughout most of the election period to address the challenges facing electors with disabilities, seniors, and those in various special residential facilities.

The current *Elections Act* limits early voting opportunities to six days for the Special poll at the returning office and to two days of Advance polling at specially designated polls set up for the purpose. With the use of current technology and live access to a centralized list of electors, election officers at each returning office are able to maintain records of voting in real time and enable voters to vote at any time during office hours at the returning office up to the start of the Advance poll.

5.3 Mobile Polls

With respect to the conduct of mobile polls, there are two changes of note. The first is with regard to where a returning officer may place a mobile poll. The current Act is unnecessarily restrictive. It permits mobile polls only in long term care facilities. Many seniors and electors with mobility issues live in other types of facilities. The draft *Elections Act* recognizes this fact and broadens the types of eligible residential centres.

The second change reduces the minimum time a mobile poll must remain at any location from three to two hours. In the 2009 General Election, the 99 mobile polls averaged 65 electors per poll. A two-hour minimum is sufficient time for 65 electors to vote. Larger centres could be given more time as necessary however, the change in the minimum time will increase the opportunity for returning officers to schedule a given mobile poll team to more locations on election day.

The result is more electors will have an opportunity to vote at a potentially lower cost per elector served.

5.4 Improved Access for Voters with Special Needs

The *Canadian Charter of Rights and Freedoms*⁴ guarantees citizens the right to vote and run for office and provides a guarantee of equality rights to persons with disabilities. The *Elections Act* currently requires that returning officers, in establishing the polling locations for a general election, ensure that the polling location has level access to accommodate voters with physical disabilities.

⁴ Harper v. Canada (Attorney General), [2004] 1 S.C.R. 827, 2004 SCC 33,

Many types of disabilities exist. These may include physical, sensory, cognitive, psychiatric, health-related, age related as well as others that may not be apparent. Moreover, increasingly, advocates of persons with disabilities look to election management bodies to progress beyond assisting voters to ensuring that they can vote independently in the future.

Elections Nova Scotia and election management bodies throughout Canada are endeavoring to ensure barrier free access as a first step towards voting independently.

During the review, Elections Nova Scotia consulted representatives and advocates of persons with disabilities including those with vision impairments, hearing loss, learning disabilities, physical handicaps and limited mobility and persons with reading difficulties from dyslexia to low literacy and numeracy skills. To advance the goal of voting independently, the draft legislation authorizes the Chief Electoral Officer to appoint advisory committees to work with Elections Nova Scotia in finding solutions.

Elections Nova Scotia has already started this process by establishing relationships with advocacy groups and a number of individuals to identify obstacles and determine how to remove them.

5.5 Write-in ballot Coordinators and Agents

Under the current Act, an elector who needs assistance to apply for and vote by write-in ballot must find another elector who lives in the same polling division who is willing to act as an agent or have a relative of voting age and resident in the province act as an agent. That agent must appear in person at the returning office to complete an application, obtain a ballot for the elector for whom they are acting and return it to the returning office once it is marked by the voter. This complexity is necessary to ensure the integrity of the vote.

The draft Act increases the categories of persons permitted to act as an agent and provides for a team of election officers – write-in ballot coordinators – to provide the services of an agent where friends or family are not available to the elector.

These new provisions significantly reduce the number of people who are unable to vote because of mobility issues and temporary hospitalization.

In the draft Act, a write-in ballot coordinator team may, in one trip, assist with completing the application process, deliver a ballot to an elector, assist in casting a vote if necessary, help to prepare the envelope to hold the ballot, assist with inserting the ballot in the temporary ballot box if necessary; and return the completed application in the ballot envelopes to the presiding officer. Write-in ballot coordinator teams will also be used to assist electors who have mobility issues in residential centres where fewer than 10 electors may reside and to assist electors temporarily in hospitals both in and out of their electoral district.

These new provisions significantly reduce the number of people who are unable to vote because of mobility issues and temporary hospitalization. However, electors who are hospitalized in the few days before election day will not be able to apply to vote by write-in ballot and will only be able to vote at the polling station to which they have been assigned for the election day poll. This remains a problem to be solved.

5.6 Voting Out-of-District

Under the current Act, an elector may vote when out of their electoral district only by using the write-in ballot process. The elector must apply for a ballot through their home returning officer, complete the application process by mail or courier, wait for the ballot kit to be mailed or couriered to them and return the completed ballot envelopes by mail or courier before close of polls on election day.

This approach will remain an option for electors out of district who cannot get to a returning office during the writ period. However, a proposed change will permit an elector who is out of his or her district, but in the province, to visit any returning office to vote at the write-in ballot poll on any day the returning office is open to the public up to the start of the Advance poll.

Since each returning office will have access to a live list of electors for the province as a whole, the elector will be struck off the list as voted and this will be visible immediately in all returning offices.

The unopened envelopes containing the ballots cast, along with the original copy of the application to vote by write-in ballot, will be couriered to the respective home electoral district returning office and will be included as part of the count on election night in the presence of candidates' representatives.

6. Piloting

Maintaining a healthy democracy requires an electoral process that is responsive to change while continuing to foster accessibility, integrity and public confidence.

After each electoral event, the Chief Electoral Officer directs a review of operations, looks for ways to improve election procedures, and reports to the House of Assembly. Progress made in recent years includes improvements in the registration of electors and the management of the lists of electors; improved training of election workers, new training seminars for official agents of candidates and broadened communications to electors and future voters through the Internet.

While these improvements will make a difference, more could be achieved.

The draft *Elections Act* gives authority to the Chief Electoral Officer to run pilot projects to test a process, procedure, equipment, or technology that is different from that required by the Act. Pilots could include minor and

major adjustments to the legislation in specific areas identified in the draft Act. The Chief Electoral Officer will outline plans for any significant pilot project that Elections Nova Scotia intends to undertake in the Chief Electoral Officer's annual plan and budget presented to the House of Assembly. Any such pilot would be limited in time and scope and require a report and recommendations to the House of Assembly after conducting the pilot project.

For example, a pilot during a by-election could involve testing a new approach to serving student electors on campus with a view to improving services, enhancing outreach and increasing access.

Increasingly, Nova Scotians expect to be able to carry out their business with government electronically. When proven technology is available, the piloting provision would facilitate the testing of e-voting to supplement traditional balloting methods.

When proven technology is available, the piloting provision would facilitate the testing of e-voting to supplement traditional balloting methods.

6.1 Public Education Programs and Research Studies

In 2009, the *Select Committee on Participation in the Democratic Process*⁵ made a number of recommendations regarding information and education programs that, over time, could contribute to increased participation in elections.

The draft *Elections Act* provides that the Chief Electoral Officer may seek the advice of the Election Commission regarding public communication, education and information programs to make the electoral process better known to the public, including information and curriculum materials for new electors and those persons and groups most likely to experience difficulties in exercising their democratic rights.

An important aspect of the introduction of the position of Commissioner of Elections is that it would remove the dual role of regulator and investigator/enforcer which has been carried by the Chief Electoral Officer to date.

As well, it provides the authority for the Chief Electoral Officer to implement such programs and to carry out studies, consult experts, conduct surveys, or other means to provide the public with information relating to Nova Scotia's electoral process, the democratic right to vote and how to be a candidate. The Chief Electoral Officer will outline plans for studies, surveys and information programs in the Chief Electoral Officer's annual plan and budget presented to the House of Assembly and report on the results on their completion and assessment.

7. Commissioner of Elections

Modeled in part on the Commissioner of Canada Elections and the Commissioner of Elections in Manitoba, Elections Nova Scotia recommends the establishment of an independent official whose duty is to ensure that the *Elections Act* is complied with and enforced.

⁵ Draft Report - http://nslegislature.ca/index.php/committees/select_committees/participation_in_the_democratic_process/

With the adoption of this recommendation, anyone with a complaint or allegation of wrongdoing would refer it to the Commissioner. Each complaint would be reviewed to determine whether there is a basis for the allegation. When satisfied that there is substance to the complaint, the Commissioner could order an investigation.

As well, should the Chief Electoral Officer have reasonable grounds to believe that an election officer may have committed an offence, the Chief Electoral Officer would direct the Commissioner to make the inquiries required in the circumstances and avoid a potential conflict of interest were the Chief Electoral Officer to investigate an election officer responsible to the Chief Electoral Officer or the Chief Electoral Officer personally.

The Commissioner could also conclude a compliance agreement with anyone the Commissioner has reasonable grounds to believe has committed, is about to commit or is likely to commit an offence. This is a voluntary agreement between the Commissioner and the person, in which the person agrees to terms and conditions necessary to ensure compliance with the Act. The Commissioner would make a summary of the compliance agreement public on the Elections Nova Scotia website.

No prosecution for an offence could be instituted by a person other than the Director of Public Prosecutions without the Director's prior consent.

The draft *Elections Act* provides that a prosecution for an offence may be instituted at any time, but not later than 2 years after the day on which the Commissioner became aware of the facts giving rise to the prosecution, and not later than 5 years after the day on which the offence was committed. This change in limitation periods brings Nova Scotia's Act into line with other elections acts in Canada.

An important aspect of the introduction of the position of Commissioner of Elections is that it would remove the dual role of regulator and investigator/enforcer which has been carried by the Chief Electoral Officer to date. Placing responsibility for enforcement and compliance with a person other than the Chief Electoral Officer would remove a significant impediment to ongoing healthy working relationships with recognized parties, electoral district associations, and candidates.

During consultation, the view was expressed that the Commissioner of Elections in Nova Scotia should be appointed by the House of Assembly on the recommendation of a committee of the House of Assembly rather than the Chief Electoral Officer as in other jurisdictions.

It is envisaged that the role of the Commissioner would be a part-time appointment with the weight of activity concentrated around an election period. A preliminary projection of the financial costs associated with the position and administrative support would not be more than were the Chief Electoral Officer responsible for these activities.

7.1 Register of Electors

Under the draft *Elections Act*, the Chief Electoral Officer is required to establish a Register of Electors. This replaces what was called the “permanent list of electors” and captures Elections Nova Scotia’s existing practice of registering eligible electors in Nova Scotia.

Elections Nova Scotia uses the Register of Electors to keep the information required to carry out its legislated mandate only.

The Register of Electors includes the name, date of birth, sex, residential address and mailing information of electors. It also includes the geographic description that accurately identifies the elector’s residential address. Both information types contribute to the creation of the list of electors for an election which is synchronized with the geographic boundaries of electoral districts and polling divisions.

The draft *Elections Act* also calls for the continuous update of the Register to ensure the accuracy and currency of the electors’ information. It allows the Register to contain information that uniquely identifies electors and assists in distinguishing one person from another when creating, revising or updating the elector’s information in the Register. The draft Act enables the Chief Electoral Officer to enter into data sharing agreements with Elections Canada, municipalities, school boards, other provincial public bodies and non-government sources to receive updated personal information of electors. The Chief Electoral Officer may also carry out focused enumeration activities both between elections to update the Register of Electors and during an election to update the lists of electors. Another feature of the draft Act is that it provides authority to hold in the Register, with their consent or that of their parent or guardian if needed, information about persons who may become eligible to vote in the near future to streamline registration when they become eligible.

The draft Act specifies that every registered elector may be a resident of only one place at a time. This provision now also applies to university and college students who have the choice to register as either residing at their family home or at a residence while attending an educational institution. This change avoids duplicate information of electors in the Register and ensures an accurate list of electors.

Candidates in provincial elections must destroy all lists of electors... within ten days of the close of polls on election day.

The draft *Elections Act* requires the Chief Electoral Officer to take all steps necessary to ensure that the electoral boundaries and other electoral geographic descriptions are accurate and to enter into agreements with any person for the purpose of obtaining or providing mapping, geographic or demographic information. This captures Elections Nova Scotia's current practices of employing best practices and state-of-the-art geographic information systems (GIS) technology to benefit from the digital geographical data obtained through geographic data sharing agreements with relevant provincial bodies and municipalities. Nova Scotia geographic information is exemplary in the country and, when used for electoral purposes, contributes to the integrity and accuracy of the lists of electors and electoral maps that Elections Nova Scotia makes available to recognized parties and candidates and publicly on the Elections Nova Scotia website.

The draft Act has removed obstacles to the use of evolving technology and enables its current and future use in the election processes and in the electronic systems that support election processes.

8. Security and Privacy

Provisions for safeguarding the privacy of information in the Register of Electors have been strengthened in the proposed legislation. The draft Act specifies the information that may be disclosed by the Chief Electoral Officer to municipalities and school boards for their electoral purposes and that it may be shared with Elections Canada. It also limits the information that may be disclosed to recognized parties, independent members of the House of Assembly between elections and candidates and recognized parties during an election to the names, residential and mailing addresses of registered electors. All such information provided by Elections Nova Scotia must be used only for electoral purposes and it is an offence to use that information for other purposes. Neither the date of birth nor the sex of the elector is disclosed at any time.

The draft Act requires candidates in provincial elections to destroy all lists of electors received during an election and any copies of the list of electors provided to others by or on behalf of the candidate and inform the Chief Electoral Officer of the destruction within ten days of the close of polls on election day.

The Chief Electoral Officer may also include fictitious elector information within the provided lists of electors for the purpose of tracing any unauthorized use of elector information.

To protect the personal information of electors, the draft Act obliges school boards and candidates to destroy all lists of electors received for purposes of a municipal or school board election and any copies of a list of electors provided to others within ten days of the close of the polls on election day. Similarly, municipalities must confirm to the Chief Electoral Officer that all the elector information provided by the municipality to others, including a candidate nominated at a municipal election, has been used only for election administration purposes.

These provisions in themselves may not provide the security required under the *Freedom of Information and Protection of Privacy Act* and it is recommended that the *Municipal Elections Act* be amended with the aim of strengthening that security.

8.1 Specific Issues

8.1.1 Recount

The current *Elections Act* details a procedure that contemplates a judge personally conducting a recount of each ballot. A recount conducted under these rules could take several weeks to complete.

Elections Nova Scotia took the opportunity of the judicial recount in the 2009 by-election in the electoral district of Inverness to improve the recount process. The Chief Electoral Officer designed a procedure whereby a group of handpicked knowledgeable election officers (returning officers from other provincial electoral districts) would conduct the poll by poll recount of ballots cast under the scrutiny of the judge and representatives of each candidate. The proposed process was explained to the candidates and their representatives as it was being developed. They agreed with the final model. The model was subsequently reviewed and, with minor adjustments, agreed to by Mr. Justice Simon J. MacDonald and used in the actual recount.

Under the proposed legislation, the rules, timing to apply for and the granting of a recount would mirror the current requirements. However, the Chief Electoral Officer, not the judge, is responsible for establishing the procedures to be followed during the recount and choosing the appropriate election officers. The judge would continue to preside over the proceedings at a recount, rule on all disputes about ballots and poll records, verify the final count, declare the elected candidate and decide on any allocation of costs.

The proposed changes will bring consistency and professionalism to the administration of recounts and a measure of predictability and clarity for the candidates and parties involved.

8.1.2 Election Day

The current Act states that election day "...shall be a Tuesday, not less than thirty days from the date of the writ." After surveying election management bodies across the country, Elections Nova Scotia consulted the recognized parties and the Election Commission to consider Saturday as a possible election day or, like Quebec, make election day a school holiday.

Returning officers traditionally have turned to public buildings to house their polls. By far the majority of polls throughout the province are located in community centres and halls, fire halls, church halls, schools, legions, and recreation centres. Increasingly, ROs have turned to schools as ideal polling places (in 2009, 10% of the polls were located in schools). Most schools have drop off zones and some parking available, including designated parking for disabled visitors; are well known to the local electorate; are usually in close proximity to the general population; have gymnasiums capable of housing many polls; are accessible to the disabled and have furniture, washroom facilities and telephones.

However, school administrators are reluctant to allow polling in their facilities on school days. The prime concern, understandably, is the security of students. As well, using the gymnasium for a day can disrupt physical education activities, plays, concerts, sports activities and at times, graduation ceremonies that have been planned well in advance.

As well, ROs, particularly in urban areas, are increasingly turning to advertising to find applicants to work in polls. As previously mentioned employing students in some poll positions would engage youth in the electoral process, potentially support future voter engagement, and help alleviate the shortage of election workers.

During consultation we heard reservations regarding a Saturday election day. While the potential benefits were acknowledged, there was concern expressed that electors would be less likely to vote because it would interfere with

weekend activities and that, as Saturdays are days of worship for some faiths, it may be inappropriate as election day. As well, there was concern about making any change in election day because of the uncertainty of the impact.

As mentioned, the Province of Quebec has made election day a holiday to address these concerns as well as to underscore the importance of an election.

The growing challenges of ensuring accessible polling places and availability of election workers across the province will require further attention and wider consultation.

8.1.3 Public Opinion Surveys

It is important that the public is able to make an informed judgment on the value of election surveys. All surveys are not the same. The draft *Elections Act* provides that media publishing survey results will have to provide details about survey methodology.

Under the draft Act, the first person or media outlet to release the results of an election opinion survey must indicate who sponsored the survey, who carried it out and when, the population from which the survey sample was drawn, how many persons were contacted, and the survey's margin of error. If a survey has not been conducted using recognized statistical methods, this must be stated. Print and Internet publishers must also include the wording of the survey questions and instructions on how to obtain the written report, which the survey sponsor must make available to the public. Any other media outlet that broadcasts or publishes survey results during the 24 hours following initial publication must provide the same information. Also, no new opinion survey may be published on election day before polling stations close.

These new provisions mirror rules in place for federal elections and many provincial elections and do not present a more onerous burden for news media.

8.1.4 Time off to Vote

The current *Elections Act* requires an elector who is an employee to have three consecutive hours to vote on election day. If the employee does not have three consecutive hours of his or her own time during polling hours (8 am to 7 pm), the employer must provide the balance of time off with pay before work or after work or provide three consecutive hours with pay during work at the time of day that best suits the employer. There are exemptions to this provision for employees who work in operations or dispatch for firms involved in transporting goods, services or people.

With the increased number of opportunities to vote during the election period – the returning office continuous poll, the advance poll and voting by write-in ballot – the question arose whether this provision remains relevant.

During consultation, it was suggested that the three consecutive hours is considered an established right. It is consistent as well with provisions in the *Canada Elections Act* that governs federal elections. There was no consensus on either removing the provision or amending it in light of the dated exemption limited to transportation workers. No change has been made in the proposed legislation.

While discussing time off to vote, it was noted that a few provinces have introduced provisions for electors to take leave without pay to work on behalf of a party or candidate or as an election official for the election management body. During consultation, it was recognized generally that it was an interesting concept that would require study.

During the consultation with the Election Commission regarding the availability of election workers, it was suggested that the temporary assignment of public servants to election positions be given consideration. While the challenges may make this impracticable, the benefits merit study and further consultation.

8.1.5 Registered Party Suspension or Electoral District Association Suspension

The initiation of the current deregistration process is extreme when the missed deadline was inadvertent and immediately addressed. In this situation initiation of the deregistration process is not the appropriate tool for garnering compliance and the perception of the public as a result may be disproportionate to the actual non-compliance.

The proposed suspension process provides for a 30 day period during which a registered party may comply with the reporting obligations under the Act. In the event that the report is not filed by the end of the 30 day suspension period, the Chief Electoral Officer is required to initiate the deregistration process. During the period of suspension the affected party or electoral district association is prohibited from accepting a contribution, issuing a receipt for income tax purposes, and making a transfer. The suspension is an intermediate process that strikes a balance between inadvertent non-compliance and unwillingness to comply.

The draft Act also provides the Chief Electoral Officer with the authority to extend the time for filing election expense reports by official agents of candidates.

8.1.6 Helping train Campaign Volunteers

Electoral district associations and election campaigns generally are dependent on volunteers. Some record keeping and reporting provisions, while necessary and important, are challenging for participants in campaigns.

During the Provincial General Election in 2009, Elections Nova Scotia created and conducted a series of seminars for the official agents of candidates and consequently, compliance and the quality of reporting was significantly improved over the 2006 Provincial General Election. Elections Nova Scotia will expand this program to prepare materials and training sessions to help volunteers understand and meet the requirements of the Act.

8.1.7 Student Election Workers

Elections Nova Scotia believes that more informed and involved youth will develop a sense of accomplishment and purpose, gain a better understanding of and sensitivity towards community issues, and are more likely to make participation in the electoral process a life-long activity.

Young people who work as election officials at Advance polls and on election day would be applying their theoretical knowledge from the civics classroom and acquiring the practical knowledge within their own community. This is the hallmark of participatory learning and a great example of community service.

Citizenship education, in part, requires learning how democratic and governmental institutions work, our collective responsibility, and commitment to keep them working well, as well as learning about our rights and freedoms. The draft *Elections Act* includes a provision to facilitate Nova Scotian residents 16-18 years old to participate as election workers in selected positions.

8.1.8 Fixed Date Elections

While the federal Parliament and a number of provinces have introduced fixed dates for elections in recent years, we believe it is too soon to gauge the costs and benefits associated with fixed-date elections. There are obvious benefits for the election management body in knowing when an election will be held. Even the limited experience in Canada raises the spectre of long election campaigns when the date of the election is known well in advance. It was not a subject of consultation from an election administration point of view it has obvious benefits but whether it is suitable from a public policy perspective has yet to be determined.

8.1.9 Candidate Eligibility and Disqualification

The current *Elections Act* refers to the *House of Assembly Act*⁶ or “any other Act” as a source for determining whether a potential candidate is eligible or disqualified from running for political office. Unfortunately the *House of Assembly Act* is out of date and it is unclear what these other sources of disqualification or ineligibility are. It makes sense that the rules appear in the *House of Assembly Act* since essentially they are the same for candidates as for members, but no current single source for identifying the rules exists. Further study of this problem is recommended and should involve expertise respecting the *House of Assembly Act*.

8.1.10 Women and Youth Groups Affiliated with Recognized Parties

During consultation, the issue of whether funds held by women and youth groups affiliated with a recognized party could be transferred to the recognized party was raised. The problem identified is that there appears to be no legal method for moving these funds into the party since the changes to the contributions regime. The matter was discussed and no consensus could be reached.

9. Going Forward

While much has been accomplished through this review, there are a number of areas for continued consultation and improvement.

- Electoral Finance Regime: the political contribution rules are relatively new and continued effort should be made to simplify the rules, address deficiencies and resolve issues such as in the area of loans made to finance political campaigns.
- Advisory committees: the proposed legislation enables the establishment of advisory committees to seek solutions to identified issues. As an example, the consultation with organizations representing the disabled community indicated that a major problem confronting the community is the inability to find transportation to the polls. Elections Nova Scotia will take a leading role in establishing a multi-stakeholder committee to look for a solution.

⁶ SNS 2007, c.1

Resolution No. 645

"... be it resolved that:

"(a) the Chief Electoral Officer, Christine McCulloch, Q.C. be asked to conduct a comprehensive review of the Elections Act, Members and Public Employees Disclosure Act, and Political Contributions Disclosure Regulations, and relevant Sections of other Statutes and regulations of Nova Scotia and prepare a report to the House of Assembly including a modernized Elections Act and an Electoral Finance Act for the House to consider;

"(b) the modernized Elections Act reflect the Select Committee's recommendation that the law be as "voter-friendly" as possible, while maintaining the integrity of confidentiality and impartiality that it currently embodies;

"(c) the Electoral Finance Act consolidate electoral finance provisions contained in other Statutes of Nova Scotia and address the anomalies and deficiencies for administrating, and enforcing the electoral finance provisions of the Members and Public Employees Disclosure Act and the Elections Act;

"(d) the Chief Electoral Officer consult with appropriate experts, the members of the Election Commission and representatives of the province's recognized Parties on the content of the modernized Elections Act and electoral finances;

"(e) the Chief Electoral Officer make her best efforts to report to the House of Assembly with draft legislation for consideration of the House during the 2010 Fall sitting of the House."