



# **18<sup>th</sup> Legislative Assembly of the Northwest Territories**

## **Standing Committee on Rules and Procedures**

Report on the Review of the Chief Electoral Officer's Report on the Administration of the 2015 Territorial General Election, Supplementary Recommendations, and the White Paper on the Independence and Accountability of Election Administration in the Northwest Territories

Chair: Mr. Kevin O'Reilly

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## STANDING COMMITTEE ON RULES AND PROCEDURES

### REPORT ON THE REVIEW OF THE CHIEF ELECTORAL OFFICER'S REPORT ON THE ADMINISTRATION OF THE 2015 TERRITORIAL GENERAL ELECTION, SUPPLEMENTARY RECOMMENDATIONS, AND THE WHITE PAPER ON THE INDEPENDENCE AND ACCOUNTABILITY OF ELECTION ADMINISTRATION IN THE NORTHWEST TERRITORIES

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## **STANDING COMMITTEE ON RULES AND PROCEDURES**

### **REPORT ON THE REVIEW OF THE CHIEF ELECTORAL OFFICER'S REPORT ON THE ADMINISTRATION OF THE 2015 TERRITORIAL GENERAL ELECTION, SUPPLEMENTARY RECOMMENDATIONS, AND THE WHITE PAPER ON THE INDEPENDENCE AND ACCOUNTABILITY OF ELECTION ADMINISTRATION IN THE NORTHWEST TERRITORIES**

#### **INTRODUCTION**

The Chief Electoral Officer (CEO) of the Northwest Territories issued three reports, tabled by the Speaker on May 31, 2016, February 28, 2017, and June 1, 2017. These reports contain 107 recommendations for changes related to election administration, including many legislative amendments. The first report, the only one required of the CEO under the Act, is entitled "Modernizing Election Administration in the Northwest Territories". It stems from the conduct of the 2015 general election and sets the theme for all three reports.

It is the Standing Committee on Rules and Procedures' responsibility to review the reports and make recommendations to the Legislative Assembly. Because the CEO's two reports and the White Paper are closely related, the Committee opted to carry out a coordinated and comprehensive review. The Committee now offers its findings and recommendations as a platform for a coordinated response from the Legislative Assembly.

The Committee notified former candidates, interested stakeholders, and media prior to the publicly advertised hearings with the Chief Electoral Officer (CEO) in Yellowknife on September 9, 2016 and June 12, 2017. Public submissions were also received from Norman Snowshoe and David Wasylciw (personally, and as chair of OpenNWT). Additional submissions were sought following the tabling of the White Paper from stakeholders and via the Committee's website. The Committee thanks the CEO and her staff, and all who provided their comments and attended the hearings.

#### **REVIEW OF THE CHIEF ELECTORAL OFFICER'S REPORT ON THE ADMINISTRATION OF THE 2015 GENERAL ELECTION**

The CEO's report, "Modernizing Election Administration in the Northwest Territories," includes 42 recommendations to amend the Elections and Plebiscites Act (the Act), and one recommendation to repeal the Act and replace it with a new one.

The Committee notes that the current act is relatively modern, having come into force in 2007 with the addition of provisions for plebiscites. The Act has been strengthened by

each assembly since that time, assisted by many thoughtful recommendations from previous CEOs and the public. While prescriptive where necessary, the Act is broadly enabling and flexible, allowing the CEO great latitude in conducting elections and managing Elections NWT.

Committee Members believe that many of the amendments proposed by the CEO will further improve the Act, and represent by far the most efficient means of regulating and adapting the territory's electoral process to current needs.

Another very significant change was proposed by OpenNWT at the Committee's first public hearing a year ago, to move to a ranked system of voting for candidates. Such a system would ensure that to win, a candidate must have the support of the majority of voters. It is currently possible for a candidate to win despite a significant majority voting for others. By contrast, ranked voting can result in a candidate with fewer 'first choice' votes than another to win the election based on strong 'second choice' support. However, requiring voters to rank their preferences also necessitates a more elaborate balloting and vote-counting system.

Ranked voting is not widely used in Canada, but there are notable examples: the federal Conservative Party and the New Democratic Party use it to elect their leaders, and the City of London, Ontario has adopted ranked voting for its 2018 civic election. To date, ranked voting has received very little attention in the Northwest Territories. At minimum, such a fundamental change should be widely and publicly debated prior to a decision being made to adopt this system in the NWT. The necessary public discussion has not taken place.

### **CEO term of office**

The CEO's first recommendation is to approximately double the length of the term of office, which at four years matches the shortest of any province or territory. While there are advantages to a longer term, the Committee notes that the CEO may be reappointed, and the term extended up to six months after its expiry. The four-year term is also consistent with those of all other statutory officers of the Assembly except the Information and Privacy Commissioner, whose term is five years. The Committee is satisfied that the four-year term and options for continuity are sufficient.

### **Elector eligibility and residency requirements**

Only the three northern territories have a 12-month residency requirement for citizens to qualify to vote. In seven provinces the requirement is six months, and less in all others. The CEO recommends adopting a residency requirement of six consecutive months. The Committee received no public comment on this recommendation, and notes that

previous CEOs suggested an even shorter, three-month residency requirement to enable as many residents as possible to vote. Committee members support the six-month compromise, which is in line with most of the provinces.

### **Recommendation 1**

**The Standing Committee on Rules and Procedures recommends that the Elections and Plebiscites Act be amended to establish an elector residency requirement of six consecutive months on or before polling day.**

### **Polling day and alternate polling day**

The CEO recommends a Saturday polling day to remove barriers to elector attendance, address security issues at polls located in schools, and expand the pool of returning officers and poll workers. Similar advice was given by the previous CEO after the 2011 election. However, no Canadian jurisdictions have weekend elections so there is no evidence of its potential impact. Members fear that a weekend election might either discourage traditional pursuits on the land or reduce voter turnout in small communities where turnout is typically very high.

Members are nevertheless convinced that our current Monday polling day is not ideal, due in part to reduced weekend media attention and the reluctance of candidates to campaign vigorously on Sundays. Eight other provinces and territories have polling days on other weekdays. British Columbia, Manitoba and Newfoundland/Labrador have Tuesday polls, and Members feel this option is the best fit with the rhythm of life in the Northwest Territories.

Since 2007, when the timing of federal elections was nominally fixed, two of three elections have been held in October (with the other in May). In the event of overlap of the normal, fixed territorial election period with the federal election, the Act requires that the territorial election "must be the third Monday in November of that year." This was the case for the 2015 election. The CEO points to weather-related complications and recommends a spring or summer alternative. The Committee agrees that winter weather posed challenges for candidates' campaigns as well, and that late November is not a suitable alternative. One option is to move the alternate date forward somewhat, as was suggested during our public hearing.

Another option is to hold our territorial election on a fixed date regardless of the date of a federal election. In 2015, the federal election was held on October 19 and the NWT's followed on November 23 instead of the first Monday in October, which would have resulted in holding the territorial election on October 5. In retrospect, this earlier date



would have been preferable despite the overlapping campaign periods; November weather proved too disruptive, as noted by the CEO on page 65 of her report.

## **Recommendation 2**

**The Standing Committee on Rules and Procedures recommends that the Elections and Plebiscites Act be amended to set the first Tuesday in October as polling day, and that the November alternative polling day be eliminated.**

### **Register and list of electors**

The CEO pointed out that in some communities there is a substantial difference between the voting-age population and the number of registered voters. The greatest discrepancies are in Yellowknife, Inuvik and Behchok'o. The Committee agrees with the CEO's Recommendation 10 to codify current practices and improve maintenance of a permanent list of electors. It may also be beneficial to extend the deadline for revisions of the list, as was suggested during our public hearing. This would provide more time for electors to register in advance, and for names to be struck from the list if they are no longer eligible to vote in the NWT.

The Act currently provides that the list of electors may only include certain personal information, including the elector's full name, address, telephone number, gender, birth date, and date of NWT residence. The Act also strictly limits how an elector's birth date and gender information may be used. The CEO recommends that the Act be amended to permit Elections NWT to collect electors' email addresses as well.

The Committee agrees that collection of electors' email addresses is potentially a useful tool in improving the list of electors, but cautions that internet service and use of email vary considerably from community to community. The use of electors' email addresses should be restricted under section 54(5) of the Act, ensuring that they cannot be provided to candidates or used for general distribution of information.

Committee Members also note that sections 54(2)(d) and 54(5) refer to use of an elector's gender as a means of identification. This practice is no longer necessary or appropriate, and the Committee recommends that references to identification by gender be removed from the Act.

The CEO also recommended changing the Act to further restrict inspection of the list of electors containing only names and addresses. This was the subject of much Committee discussion. Inspection of the preliminary list of electors is a feature of almost all Canadian election legislation, ensuring some public scrutiny of the very basis of

electing representatives. This measure is a safeguard of election integrity. In 2011, our previous CEO recommended that section 65 be amended to include authority for the CEO to communicate the contents of the list of electors by the best possible means. This change was not made, as our predecessor committee was content with the existing provision. It is also significant that the Local Authorities Election Act requires that the list of voters be posted in five conspicuous places in the electoral district at least 30 days before the vote. These local voters' lists are essentially components of the NWT's list of electors. It does not make sense that the list of electors is fully confidential at one level and fully public at another. The Committee recommends that public access to the list be maintained at the territorial level.

### **Recommendation 3**

**The Standing Committee on Rules and Procedures recommends that the Elections and Plebiscites Act be amended per Recommendations 10 of the CEO Report on the Administration of the 2015 Territorial General Election, to reflect current practices of maintaining a permanent list of electors; and,**

**That the Act be amended to remove references to identification of electors by gender.**

### **Campaigning and third-party advertising**

The CEO recommends amending the Act to limit third-party advertising, as is done in most Canadian jurisdictions and echoing the advice of the previous CEO. Typically, regulation involves a spending limit, registration, and post-campaign reporting. Currently, third parties may advertise their support for or opposition to a candidate or candidates, or public policies, with no spending limit and no requirement to report to the CEO or the public. This has not been a significant problem in our elections, but our system is wide open to influence by people, corporations or organizations with ample resources and a political mission. The Committee agrees that proactive change is necessary. We emphasize that the goal is to ensure fair elections, not to impede political discourse or freedom of expression.

### **Recommendation 4**

**The Standing Committee on Rules and Procedures recommends that the Elections and Plebiscites Act be amended to limit and regulate third-party election advertising related to candidates and/or policy.**

## **Absentee ballots, electronic voting, expanded voting in the Office of the Returning Officer, and location of polls**

Timeliness of mail-in ballots has been an issue in every election of this millennium, despite the low number of total ballots involved. However, use of absentee ballots has increased; 244 were requested for the 2015 election. Ballots were available for one month, but after allowing for return time the window is effectively shorter. Of 146 absentee ballots received by Elections NWT, 35 (or 24%) arrived too late to be counted. While absent electors have some responsibility for timeliness, mailing times are not entirely within their control.

The CEO recommended amending the Act to permit electronic voting and greater use of technology to manage and report the vote. The Committee Chair and CEO witnessed Prince Edward Island's use of electronic voting for a plebiscite in 2016. The province's chief electoral officer reported that the vote was well-conducted and accurate, but also flagged significant risks in a detailed audit report tabled in the legislature. The associated Independent Technical Panel on Voting Integrity recommended that use of online and telephone voting for federal or provincial elections should be limited to absentee voters for "the immediate foreseeable future."

The Gwichya Gwich'in Band in Tsiigehtchic initiated electronic voting in a 2015 referendum to replace proxy voting and as an option for all electors, along with mail-in ballots and traditional polling stations. The system allowed for telephone voting and online voting. The method enabled greater participation by electors living away from the community. Following this successful trial run, the Band is considering use of the technology for future council elections.

Electronic voting represents an opportunity to improve the timeliness of votes from absent electors, should they wish to cast their ballots electronically instead of on paper. It is important, however, that electors have the option of using a paper ballot or voting electronically. In the Committee's opinion, technological change may most benefit the absentee ballot system and reduce the need for some special voting opportunities, which have not all been particularly effective. For those who choose a paper absentee ballot, Elections NWT should consider use of prepaid courier services or express mail. The Committee supports amending the Act to allow for the option of electronic voting for absentee ballots in the NWT when a reliable, practical system can be tested and implemented.

Extending the opportunity to vote in the Office of the Returning Officer from the close of the nomination and withdrawal period till the second day before polling day may also reduce the need for absentee ballots and special voting opportunities.

Allowing voting from the close of the nomination and withdrawal period to election day certainly makes it more convenient for residents to vote, particularly those who work at

remote mining camps. However, this convenience comes with a risk that early voters will be less informed than those who cast their ballots after campaigning is complete. Early voting may also be an advantage to incumbents who have been in the public eye due to their service in the legislature over the previous four or more years.

The Committee therefore urges caution with respect to extending early voting opportunities too much. It may be wise to set a date that allows all candidates a chance to publicize the key elements of their campaigns before early voting begins.

Additionally, the Committee agrees with a public submission that in districts with public transit, polls should be easily accessible from a transit route. Polls should also be easily accessible on foot, clearly identified, and visible from a reasonable distance.

#### **Recommendation 5**

**The Standing Committee on Rules and Procedures recommends that the Elections and Plebiscites Act be amended to:**

**Allow for the option of electronic voting for absentee ballots;  
To provide an elector who has requested an absentee ballot to cancel his or her application in favour of an ordinary ballot on polling day; and,  
To extend the period for voting in the Office of the Returning Officer.**

#### **Candidate banking and a discretionary period for financial reporting**

The Committee agrees with the CEO that the requirement for every candidate to establish an account at a bank or other institution for monetary campaign contributions may be a barrier to potential candidates who live in small communities lacking these services.

However, the CEO also informed the Committee that financial reporting is the source of the most problems for candidates in meeting the requirements of the Act. Candidates/official agents must provide financial reports to the CEO within 60 days of polling day. The requirement for candidates to file statements from a bank or other approved institution has only been in place for one election – it is the result of an amendment passed by the 17<sup>th</sup> Assembly in an effort to improve candidates' financial reporting.

Results in the 2015 election were not encouraging: only 31 of 60 candidate/official agents filed their financial reports on time, a remarkable decline from 2011 when 41 of 47 reports were timely and complete. The current CEO informed Committee Members

that in 2015 many reports were initially incomplete, resulting in substantial expense and effort to ensure compliance with the Act. The Committee also heard several times that financial reporting instructions and forms could be improved by Elections NWT and we believe this will decrease the amount of time required for processing and ensuring compliance. None of these changes require legislative amendments.

The CEO also proposes amendments to the Act to allow latitude for the CEO to grant extensions to elected candidates who miss the deadline for financial reports and must apply to the Supreme Court of the NWT for an order allowing an authorized excuse. The Act currently requires compliance with these provisions before an elected candidate can sit in the legislature, a relatively strict measure that may also penalize the electorate of the district in question. For unelected candidates, the Act already enables the CEO to extend the filing deadline.

While the Committee agrees with the CEO's proposed amendments, discussed above and set out in Recommendations 33, 35 and 37 of her report on the 2015 election, they do not fully solve the problem of late and incomplete financial reporting. Election campaigns solicit money from trusting members of the public and there must be thorough and transparent accounting of these funds.

#### **Recommendation 6**

**The Standing Committee on Rules and Procedures recommends that the Elections and Plebiscites Act be amended to replace the requirement for candidates to file statements from a bank or other financial institution with a practical, reliable requirement that ensures accountability and transparency; and,**

**That the Act be amended to provide the CEO with discretion to extend elected candidates' deadline for filing accurate and complete financial statements for up to 15 calendar days.**

#### **Campaign expenses, candidate contributions, and reimbursement of candidates**

Most Canadian provinces reimburse election expenses of political parties or candidates, or both. All but Alberta, British Columbia, Yukon, Nunavut and the NWT reimburse part of a candidate's election expenses. Reimbursement from the public purse is based on the candidate receiving a certain percentage of the vote.

This aspect of campaign financing was addressed by former CEO David Brock in his Auxiliary Report of the Chief Electoral Officer on the 2011 election. However, he made

no recommendation to adopt a system of reimbursing a portion of candidates' campaign expenses.

The average campaign in 2015 cost about \$8,000, down from almost \$10,000 in 2007. However, there is great range in 2015 campaign spending from the \$1,897 average for Mackenzie Delta candidates to the \$19,945 average in Yellowknife Centre. The cost of campaigning in the NWT may deter potential candidates from running for election. This opinion was expressed in OpenNWT's submission to the Committee, supporting partial reimbursement: "Financing of elections this way...would increase the viability of campaigning for those who would not normally consider putting their name forward. In line with the 18<sup>th</sup> Assembly's mandate commitment to improve access to elections for women, this would improve the ability of those candidates that might not have access to personal funds to enter NWT politics."

At the same time, there has been no great public outcry to subsidize the cost of campaigning in the NWT, and no hard evidence that the cost is a significant barrier to candidacy. This report may serve to begin public discussion of the issue, but it is premature to recommend that public funds be spent in this manner.

### **Elections NWT mandate**

The CEO recommends expanding the mandate of Elections NWT to include the administration of the Local Authorities Elections Act, currently the responsibility of the Department of Municipal and Community Affairs (MACA). The CEO suggests that consolidating responsibility for all elections under Elections NWT would be fiscally efficient, build capacity, and improve the list of electors. Similar systems are used in about half of Canada's provinces and territories, where electoral management bodies administer smaller electoral events as well as general elections.

The NWT's Local Authorities Elections Act applies to municipal councils and District Education Authorities, including those in charter communities and authorities subject to the Tlicho Community Government Act. On the advice of Cabinet, the Commissioner appoints a member of the public service as Chief Municipal Electoral Officer. The appointments, along with two deputies, have been MACA employees who also advise communities on governance and serve other functions.

After the 2003 election, CEO David Hamilton recommended a review of potential benefits of Elections NWT administering the Local Authorities Elections Act. In 2005, the Standing Committee on Rules and Procedures recommended "that a review be undertaken to consider the efficiencies and sharing of resources that could occur with the Office of the Chief Electoral Officer assuming the administrative responsibility for elections of community governments under the Local Authorities Election Act." Preliminary research was done; CEO Sandra Arberry commented in 2007 that "much

groundwork will be required" and "implementation will require...a transfer of resources and additional personnel" as well as legislative amendments.

During the course of the Committee's review of the current CEO's report, advice was received from the Minister of Municipal and Community Affairs that dialogue with her department, the NWT Association of Communities (NWTAC), and all community governments should precede any further interest in a consolidation of election responsibilities. Similar advice was received from the NWTAC. The Committee cannot consider expansion of Elections NWT's mandate in the absence of appropriate research and evaluation of options.

#### **Recommendation 7**

**The Standing Committee on Rules and Procedures recommends that the CEO consult with the Department of Municipal and Community Affairs, the NWT Association of Communities, and a broad range of community government representatives with respect to consolidation of responsibilities for the administration of general and local elections; and,**

**That the results of this research, when complete, be included in the CEO's subsequent report to the Legislative Assembly.**

#### **Housekeeping recommendations**

The Committee agrees with a number of recommendations made by the CEO for the sake of efficiency and clarity of processes. These include such matters as voting compartments, materials, multi-district polling officers, multi-district ballots, advance polls by community, and various others.

#### **Recommendation 8**

**The Standing Committee on Rules and Procedures recommends that the Elections and Plebiscites Act be amended in accord with Recommendations 2, 10, 13, 16, 17, 22, 23, 24, 28, 29, 30, 31, 32, 34, 36, and 38 in the CEO Report on the Administration of the 2015 Territorial General Election. (See Appendix A)**

Mr. Wasylciw suggested that nomination packages for candidates should be available for review before the writ is dropped. This would allow potential candidates to study the packages and identify questions or concerns before the election period begins. The

Committee agrees. The Act does not establish when nomination forms are to be released. Forms are updated from time to time, as they were in 2015. It does not appear that a change of the Act is necessary for Elections NWT to implement this.

In addition, the Committee agrees with several of Mr. Wasylciw's housekeeping recommendations:

- 1) Eliminate duplication of information required in forms for financial reporting by candidates/official agents;
- 2) Investigate the possibility of issuing electronic tax receipts for campaign contributions;
- 3) Restore the categorization of campaign expenses used on financial information forms in previous elections;
- 4) Information for residents sworn in at the polls should be entered into the digital record system so it is immediately available, rather than on paper;
- 5) There must be opportunity for candidates or their designates to scrutinize the count of all ballots, including advance polls;
- 6) Elections NWT should consider providing open sessions for potential candidates and/or official agents in between elections to provide general information about the process and inform them about changes to the Act; and,
- 7) Elections NWT should solicit input from candidates and agents directly before preparing the CEO's post-election report.

These measures can be implemented by Elections NWT without changes to the Act.

## **REVIEW OF THE CHIEF ELECTORAL OFFICER'S SUPPLEMENTARY RECOMMENDATIONS ON THE ADMINISTRATION OF THE 2015 GENERAL ELECTION**

The CEO provided four additional recommendations to the Assembly on June 1, 2017. One was to remove the requirement in the Act to establish bank accounts for campaign contributions. This issue is addressed in the Committee's Recommendation 6, already discussed.

### **Third party certification of candidates' financial reports**

The CEO's proposal to require that candidates' financial reports be certified by a qualified third party is not an acceptable solution to the problem of incomplete and inaccurate reporting. Accountants and auditors are even scarcer in small communities than financial institutions. Neither is the Committee convinced that the proposal to



subsidize candidates' costs for certification of statements would be effective and efficient.

### **Non-compliance penalty**

The Committee agrees that the current \$250-penalty is not a meaningful deterrent for failure to file financial reports, and that the cost of enforcement is typically much greater than the penalty. Raising the penalty to \$5,000 or \$10,000 as proposed, matching British Columbia's, seems unduly harsh and likely to result in some large, uncollected fines. Committee Members propose increasing the penalty to \$500, with additional daily fines to a maximum of \$1,000.

### **Returning officer appointments**

Experienced returning officers are a key factor in conducting NWT elections and they are a great resource to our electoral system. The Committee shares the CEO's opinion that there is little logic in reappointing veteran returning officers for each election, and notes that three provinces and the Yukon appoint returning officers for life. Revocation provisions in the Act already ensure that returning officers can be removed when necessary.

### **Recommendation 9**

**The Standing Committee on Rules and Procedures recommends that section 257.1(1) of the Elections and Plebiscites Act be amended to increase the penalty for non-compliance to \$500, plus a daily fine of \$50 to a maximum of \$1,000; and,**

**That the Act be amended to establish that the term of office for returning officers expires with resignation, change of permanent residency to outside the Northwest Territories, revocation, or death.**

## **REVIEW OF THE WHITE PAPER ON THE INDEPENDENCE AND ACCOUNTABILITY OF ELECTION ADMINISTRATION IN THE NORTHWEST TERRITORIES**

The White Paper is the first document of its kind in the Northwest Territories to comprehensively review election administration. It was prepared by Lorne Gibson, an electoral management consultant and former CEO in Alberta. Mr. Gibson was commissioned by our CEO to provide an independent review of our legislation and the autonomy of Elections NWT. The report includes 60 recommendations that lead our

CEO, Ms. Nicole Latour, to conclude that Elections NWT is “an agency bound to government and not truly independent as intended.” In her opening remarks at the Committee's public hearing in September, 2016, Ms. Latour stressed that “the overarching requirement...is allowing Elections NWT to make its own decisions and act in its best interest, free from government policies, systems and administrative interference.”

After further research and much discussion, the Committee does not share that view. Some of the White Paper's recommendations and comparisons with other jurisdictions overlook important conventions of the NWT's Assembly, our system of approval for appropriations, the role of the Commissioner, other legislation, and practical operation of our consensus government. Other recommendations address authorities already present in the current Elections and Plebiscites Act.

However, the Committee considered the implications of all the recommendations and found that many would codify or clarify current practices and potentially improve our legislation.

The CEO is one of several officers of the Legislative Assembly who are appointed to provide an independent service, oversight and/or advice, free of political influence. This independence is critical to the integrity of their work, which is also subject to considerable public scrutiny. The various statutory officers of the Assembly are established by respective legislation setting out their terms and authorities. Their funding is provided by the Legislative Assembly; administrative support is provided by staff in the Office of the Clerk. These arrangements are reviewed by the Board of Management and ultimately included in the public review and vote on the Legislative Assembly's budget.

This system clearly meets Mr. Gibson's standards that “independence exists when there is no political consequence for the actions of a Legislative Officer who is fulfilling the mandate of his or her office”, and that “independence is usually less complete with respect to such administrative matters as budgeting and staffing, where an election management body is often required to negotiate with other parts of the governmental system and follow established merit-based hiring practices, classification systems and compensation formulas applicable to other public servants.” These comments assisted the Committee in assessing the appropriate degree of independence and accountability to recommend for the CEO and Elections NWT.

The Committee was also mindful of the Elections and Plebiscites Act's flexibility and adaptability to circumstances. It is not desirable to shift the balance toward a prescriptive act, an outcome that could be the result of over-codification of current practices. In short, the Committee is reluctant to fix things that are not broken.

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## **The CEO, Office of the CEO (OCEO or Elections NWT), and powers of the CEO**

To start, it is essential that the establishment of the CEO's position, office and major duties are clear in their intent and practice. As mentioned earlier, the Act provides the CEO with great latitude in conducting elections and managing Elections NWT. Over time, previous CEOs have developed sound practices. Conventions have evolved under the broad umbrella of what is permitted under the Act. The White Paper includes recommendations that many of these practices be codified or clarified, for the benefit of both consistent election management and public understanding of the CEO's role. The Committee agrees to the extent outlined in the following recommendation.

### **Recommendation 10**

**The Standing Committee on Rules and Procedures recommends that the *Elections and Plebiscites Act* be amended as needed to provide that:**

**The CEO is an independent officer of the Legislative Assembly;**

**That the CEO shall take an oath affirming that she or he will impartially and faithfully exercise the powers of the CEO and perform all duties fairly, objectively, and with due care;**

**That no proceeding may be commenced against the CEO, or a person acting for or under the direction of the CEO, for anything done or omitted in good faith in the exercise, intended exercise, or performance of a duty, responsibility or power under the Act;**

**The Office of the CEO (OCEO or Elections NWT) is established to ensure impartial administration and conduct of elections and plebiscites;**

**The CEO administers and manages the business of Elections NWT;**

**The CEO shall examine all statements, reports, forms and other information filed with the CEO;**

**The CEO shall publish reports filed pursuant to this Act on Elections NWT's website, or in such a manner determined to be effective by the CEO;**

**The CEO shall formulate policies regarding the conduct of elections;**

**The CEO may prescribe forms for use under this Act;**

**The CEO may engage the services of professionals or experts such as counsel or accountants as necessary to carry out the CEO's duties under this Act, within the appropriation for Elections NWT; and,**

**The CEO shall submit annual estimates of the funds required to operate Elections NWT to the Board of Management via the Speaker.**

The White Paper proposes a significant increase of the powers of the CEO and autonomy of Elections NWT. This includes elevating the CEO to the classification, authority, salary and benefits of a senior deputy minister; the power to establish human

resource policies, job classifications, and pay scales; and, an exemption from the Human Resources job evaluation process. Implementation of these recommendations would require expansion of staff, duplication of available services, and increase the operating costs of Elections NWT. The Committee considers these measures ultimately counter-productive, with high risk of unintended consequences. In some cases, these are powers the Legislative Assembly itself has not exercised, due in part to the lack of scale required for efficiency. Not only is Elections NWT very much smaller, but its operation is strongly cyclical, with needs that are often short in duration.

Several recommendations (including some referred to previously) address the relationship of the CEO to the Assembly's Board of Management (BOM), chaired by the Speaker. This relationship is established by the Act and BOM's mandate. The Committee wishes to be clear that the views it expresses should not be interpreted as infringements of BOM's jurisdiction or decision-making processes. Such views will therefore not be accompanied by official recommendations to the Assembly.

The White Paper suggests that the Act should require the Board of Management to consult with the CEO respecting Election NWT's annual budget, and, should BOM recommend a lower appropriation than requested, the Act should enable the CEO to submit a written objection to the Speaker. It is normal practice for the Board of Management to meet with the CEO to discuss Elections NWT's annual budget. This is BOM's practice, and control of its own practice should not be fettered by the Elections and Plebiscites Act. The Act is silent on the issue of a written objection to the Speaker; it is not prohibited. Anecdotally, the Committee has heard that such objections have occurred in the past. It is common sense that the CEO may correspond with the Speaker or BOM about Election NWT's annual budget. Moreover, this budget is reviewed in the Assembly chamber, in public, as part of the Legislative Assembly's proposed appropriation. Members may question any item. The Committee is satisfied that the current system is effective.

Similarly, the White Paper recommends that the Act be amended to require the CEO to submit an annual business plan and subsequent performance report to BOM. This office is part of the Legislative Assembly's annual business plan development, and a budget proposal is submitted to BOM annually, in preparation for the budget discussed above. The Committee is not convinced that this proposed amendment is necessary, but the Board of Management may determine otherwise. In the same category is the White Paper's recommendation that BOM conduct an annual performance review of the CEO, with constructive feedback concerning expectations and achievements. We repeat our caution against creating an overly prescriptive Act.

The Act provides that the CEO is appointed by the Commissioner of the Northwest Territories, on the recommendation of the Legislative Assembly (as is the case for other Assembly officers). The Board of Management is responsible for the selection process, and ultimately recommends a candidate for the Assembly's consideration. The White

Paper recommends that the Act be amended to require that another selection committee be established to conduct a merit-based competition for candidates it would recommend to the Board of Management. Such a decision rests with the Board of Management, which currently employs the same practice to recruit and recommend all officers of the Assembly for appointment.

It is also proposed that the ultimate appointment of the CEO be made directly by the Assembly, without the Commissioner's involvement. It should be noted that the Commissioner's role is not political and should not be confused with executive government. In the case of the CEO's appointment, the Commissioner acts on the Assembly's recommendation and lends the prestige of her or his office to the occasion. The Committee sees no need to remove the Commissioner from the traditional appointment process, which is in legislation for all statutory officers of the Assembly.

### **CEO reports to the Legislative Assembly**

The White Paper includes several recommendations to improve the CEO's reporting to the Legislative Assembly and to ensure the timeliness of the CEO's advice, which is particularly important when legislative amendments might be needed. Clear and timely reporting requirements have the added benefit of increasing accountability and the information available to the public.

#### **Recommendation 11**

**The Standing Committee on Rules and Procedures recommends that the Elections and Plebiscites Act be amended to:**

**Require the CEO to submit an annual report to the Legislative Assembly describing work done under the direction of the CEO pursuant to the Act;**  
**Require the CEO to submit a report to the Legislative Assembly after each election or plebiscite about the conduct of the election or plebiscite;**  
**Provide the CEO with the option of combining his or her reports into one in the year of an election or plebiscite;**  
**Provide that the CEO may report to the Legislative Assembly at any other time, on any matter that the CEO considers necessary; and,**  
**Provide that any of the CEO's reports to the Legislative Assembly may include recommendations for legislative amendments to improve the administration of elections under this or any other related Act.**

## **Powers of investigation and enforcement**

The CEO's powers of investigation and enforcement under the Act were considerably enhanced by the 17<sup>th</sup> Assembly. The trend to sharpen the CEO's authorities in this area continues with ten recommendations in the White Paper.

Section 279 of the Act gives the CEO broad authority to investigate any matter that comes to her/his attention that may be an offence under the Act. Similarly, the CEO has great latitude to investigate to the extent he or she considers warranted. Although the CEO may begin an investigation without a complaint, complaints have historically driven the need for investigations. Complaints may be made to the CEO by anyone, within a year after polling day. However, section 284 of the Act prevents commencement of the prosecution of any offence more than one year after the date of the offence. This could result in the inability to properly investigate and prosecute an offence stemming from a complaint registered shortly before the one-year anniversary date.

The White Paper recommends that the Act be amended to set the deadline for prosecution at one year after the date the CEO has reasonable and probable grounds to believe an offence has been committed. This proposal could result in an extended investigation followed by up to a year's consideration before a decision to proceed with a prosecution. This is not timely by Canadian standards, and the Supreme Court of Canada has stressed the need for timely prosecutions of offenses. Further, the limbo created in such circumstances is not in the public interest.

The Committee notes that the deadline for complaints – within a year after polling day – effectively provides for less time for any offense that occurs after polling day, such as those related to filing financial reports. To resolve this issue, and improve timeliness, the Committee recommends that complaints should be made to the CEO within six months of the alleged offence.

With respect to prosecution of an offense, the Committee recommends that the CEO should have authority to begin a prosecution up to one year from the date of the alleged offence.

The CEO has the power to compel witnesses to appear, give evidence, and produce documents in the course of an investigation. However, the Act falls short of making it an offence to obstruct an investigation authorized by the CEO. This omission should be remedied.

It has been the general practice of CEOs to make public the results of investigations of potential offences under the Act. The White Paper suggests that the Act provide some guidelines for publication of the outcomes of investigations; the Committee agrees.

### **Recommendation 12**

**The Standing Committee on Rules and Procedures recommends that the Elections and Plebiscites Act be amended to:**

**Require the CEO to notify the complainant in writing, with reasons, if the CEO decides not to conduct an investigation of a complaint;**

**Make it an offence to obstruct the CEO or her/his designate in carrying out an inspection or investigation under this Act, or to withhold, conceal, or destroy any records, documents, or things relevant to the investigation;**

**Provide that when the CEO believes it is in the public interest, the outcome of investigations may be published on Election NWT's website or by other means the CEO considers appropriate, and information provided may include the name of the person investigated and the nature of the matter;**

**Provide that complaints respecting omissions or offences under the Act may be made within six months of the alleged omission or offence; and,**

**Provide that the deadline for the CEO to commence a prosecution under the Act is one year from the date of the alleged offence.**

### **Materials for schools and students**

Section 8 of the Act directs the CEO to implement a program to inform electors about elections. This might be interpreted as an impediment to informing students, as some would not yet be of voting age. The White Paper recommends revising the Act to specifically enable outreach to schools and students. Statistics in the CEO Report on the Administration of the 2015 Territorial General Election show that approximately 2,800 people aged 18 to 25 are not registered electors – a number equivalent to about ten percent of all registered electors in the NWT. A very significant number of our young people are not exercising their right to vote. The Committee agrees that building our young people's knowledge of basic civics might improve the turnout of young voters.

### **Recommendation 13**

**The Standing Committee on Rules and Procedures recommends that the Elections and Plebiscites Act be amended to enable the CEO to develop and make materials available to schools for distribution to students who have reached voting age or will soon do so, including information on the NWT's electoral process, the right to vote, how to have one's name added to the register of electors, and any other matter that the CEO considers useful to electors and prospective electors.**

## **Use of new voting technology**

New voting technology has significantly changed voting methods around the world. With these changes have come new challenges in ensuring the integrity and security of the vote. The White Paper recommends that for by-elections the CEO should have greater flexibility to deploy different technology than is required by the Act for general elections. The Committee agrees that by-elections represent an opportunity to put election-ready technology to use and gain valuable experience, or to use potentially more efficient methods in a smaller election and/or plebiscites.

### **Recommendation 14**

**The Standing Committee on Rules and Procedures recommends that the Elections and Plebiscites Act be amended to enable the CEO, at a by-election, to direct use of voting equipment, vote-counting equipment, or alternative voting methods that differ from those required elsewhere in the Act.**

## **Obtaining and sharing elector information**

Elections NWT's register of electors is created from data acquired from various sources through information-sharing agreements. These sources include Elections Canada, agencies of three GNWT departments, and the City of Yellowknife. In her report on the 2015 election, the CEO notes it may also be useful to obtain information collected under the Motor Vehicles Act, and to enter agreements with Aboriginal governments and more municipalities. This practice has been in place for some time, but is not specifically described in the Act.

The White Paper recommends codification of this current practice, enabling agreements with "any person, government agency, or institution." In addition, Elections NWT seeks authority to make agreements to provide address, mapping, demographic, geographic or geospatial information to these parties.

The Committee believes that the register of electors could be much improved. As full enumeration is becoming a last resort, usage of resident data from other reliable sources is necessary and should be specifically sanctioned in the Act.



### **Recommendation 15**

**The Standing Committee on Rules and Procedures recommends that the Elections and Plebiscites Act be amended to:**

**Authorize the CEO to enter agreements with any person or government department or institution to obtain information, including personal information, to update the register of electors; and,**

**Permit the CEO to enter agreements with any person or government department or institution to provide address, mapping, demographic or geographic information, including geospatial information; and,**

**Ensure appropriate protection of the privacy of personal information.**

### **CONCLUSION**

The three reports from Elections NWT and reviewed by the Committee contain more recommendations to the Legislative Assembly than from any CEO in the history of the Northwest Territories. However this fact is not an indicator that our election administration is in crisis, or even in need of substantial overhaul. Elections in the NWT are very well-organized, reliable, and firmly based on competent legislation. The Committee is confident that the recommendations in this report will help ensure continuity in that regard, provide additional flexibility to adapt to new technology and methods, and improve the CEO's ability to enforce the Act. The Committee is also confident that these changes can be made in time for the next general election.

Considerable work will be necessary if the Assembly accepts the Committee's recommendations. Many amendments to the Act will have to be drafted, considered by the Assembly, and implemented well before the next election. In addition, consultation and research on the consolidation of responsibilities for administration of general and local elections is a very substantial task for Elections NWT and relevant stakeholders.

Public comment and feedback confirms the Committee's view that NWT elections are on a very solid footing. The input we received was very thoughtful and helpful, but only a handful of citizens felt the need to provide advice despite several available occasions and means of doing so. The Committee very much appreciates all the suggestions received, as well as the assistance of the Chief Electoral Officer and her staff.

## **APPENDIX A**

### **SELECTED RECOMMENDATIONS FROM THE CEO REPORT ON THE ADMINISTRATION OF THE 2015 TERRITORIAL GENERAL ELECTION**

#### **Recommendation 2: Oaths or Affirmation Transmittal**

Amend subsection 17(2) to change when copies of oaths or affirmations are to be provided to the CEO.

#### **Recommendation 10: List of Electors**

Amend sections 63 through 76 as required to reflect the current practices of maintaining and using a permanent list.

#### **Recommendation 13: Polling Divisions**

Amend sections 106 and 107 to allow for more flexibility or a new approach in managing central polling stations.

#### **Recommendation 16: Voting Compartments**

Amend subsection 116(1) to include voting compartment.

#### **Recommendation 17: Material Supply**

Amend subsection 116(2) to reflect current supply practices.

#### **Recommendation 22: Multi-district Polling Officers**

Amend paragraph 136.1(2)(a) to reflect current practices for multi-district polls.

#### **Recommendation 23: Multi-district Notice**

Amend paragraph 136.1(2)(c) to reflect current practices for posting multi-district notices.

#### **Recommendation 24: Multi-district Ballots**

Amend subsection 136.2(1) to reflect current practices for issuing ballots at multi-district polls.

#### **Recommendation 28: Advance Polls**

Amend sections 151.1 through 151.10 to enable the establishment of advance polls based on communities rather than polling divisions.

#### **Recommendation 29: Polling Station Account**

Repeal subsection 195(3) to align with current election management system practices.

**Recommendation 30: Polling Station Materials**

Amend paragraph 195(4)(b) to align with current election management system practices.

**Recommendation 31: Polling Station Envelope**

Amend paragraph 195(4)(d) to align with current election management system practices.

**Recommendation 32: Campaign Expenses**

Amend subsection 238(1) to clarify limits on election spending.

**Recommendation 34: Tax Receipts**

Amend subsection 256(1) to provide a consolidated list of items to be submitted with a candidate's financial report.

**Recommendation 36: Publication**

Amend section 260 to utilize additional or alternative means to make candidates' financial reports public.

**Recommendation 38: Definition Consolidation**

Amend the Act to ensure all definitions are collectively found in the appropriate area of the Act.

