

MODERNIZING ELECTION ADMINISTRATION in the Northwest Territories

Supplementary Recommendations

May 24, 2017

The Honourable Jackson Lafferty
Speaker of the Legislative Assembly of the NWT
PO Box 1320
Yellowknife NT X1A 2L9

Dear Mr. Speaker,

Please accept these supplementary recommendations as additional propositions for consideration as they relate to administering electoral events in the Northwest Territories.

Last year, in accordance with subsection 266(2), I provided you with my report, *Modernizing Election Administration in the Northwest Territories*, as a means to bring forward matters that require the attention of the Legislative Assembly. The initial report delivered a comprehensive overview of the electoral event itself, however, the subsection stipulates the report must be provided 'within six months after a general election' and preceded the completion of some post-electoral administrative activities.

A number of matters became apparent during post-electoral activities, necessitating these additional recommendations that also require consideration by the Legislative Assembly. They are presented as recommended changes to remove barriers and ensure sensible and fiscally responsible practices prevail in all aspects of election administration in the Northwest Territories.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nicole Latour', written in a cursive style.

Nicole Latour
Chief Electoral Officer, Northwest Territories

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REMARKS OF THE CEO



Remarks of the Chief Electoral Officer

Remarks of the Chief Electoral Officer

Approximately one year ago I provided my report, *Modernizing Election Administration in the Northwest Territories*, in accordance with subsection 266(2) of the *Elections and Plebiscites Act* (the Act). As this submission must be provided within six months after a general election, some matters worthy of the attention of the Legislative Assembly were not included. These matters stem from post-election activities that occur in the Office of the Chief Electoral Officer (OCEO) but do not come to fruition within the six-month reporting timeline provided in the statutes.

The four supplementary recommendations, primarily related to candidates filing their candidate's financial reports (CFR), became necessary as the OCEO proceeded with the business surrounding compliance and non-compliance issues with the CFRs. Specifically, these recommendations move toward removing a significant barrier for the Official Agents of Candidates, ensuring the OCEO has the ability to achieve compliance from duly elected Candidates under the Act as currently written, ensuring the means and cost

of compliance do not defy logic and fiscal responsibility, and alleviating an unnecessary bureaucratic exercise.

The first recommendation – numbered **44**, in continuation of the previous report – is specific to establishing bank accounts for campaign contributions, and proposes to repeal and amend sections that impose a prejudiced demand on the Official Agents for Candidates from some communities in the outlying regions. However, the inability to comply with section 246 of the Act extends beyond the smaller communities. In fact, unopened accounts and missing or delayed statements are the leading causes of Official Agents either not filing in a timely manner, or having the inability to fully comply even if they engage in the filing process.

Only 22 of the 33 communities in the Northwest Territories have financial services in the form of a chartered bank or an acceptable alternate institution such as a Co-operative, Northern, or NorthMart that can be approved in accordance with the Act. This

means that Official Agents from 33% of our communities are without financial services and at a significant disadvantage, as bank accounts cannot be opened in absentia.

Furthermore, neither banks nor institutions are beholden to the Act and Official Agents have reported being subjected to additional demands, policies, procedures, et cetera, placed on them by banks and approved institutions that are further burdensome and complex. Additionally, there are delays in Official Agents receiving complete statements of closed accounts that utilize cheques, as suppliers process their payments at will and reconciling the account is contingent on all payments having cleared the account.

From the OCEO's perspective, there is an absence of rationale on this requirement, other than it was likely adopted from formative legislation that exists in partisan jurisdictions where contributions to parties and individual candidates need to be distinguishable in an audit exercise. This is not the case in the Northwest Territories and the requirement



appears excessive when considering our electoral system. The balance sheet included as part of the CFR, along with supporting documentation, is a sufficient means to document the cash-flow of a campaign's contributions and expenses.

Recommendation **45** proposes a different model for CFR submission that is mutually beneficial to the Official Agent, the duly elected Members of the Legislative Assembly, and the OCEO. Not only does it share the economic benefits of an electoral event, it also achieves a necessary professional standard of review and ensures duly elected members comply with paragraph 256(3)(b) of the Act, which requires submission of a complete and accurate CFR.

Very few CFRs submitted to the OCEO are accurate and correct and the OCEO bears a substantial burden to bring them to a satisfactory level of completion. The model of providing a capped reimbursement to Candidates or Official Agents to have an accounting professional review and certify

their CFR as accurate and complete negates a review at the OCEO. It also places the true responsibility, as intended and in accordance with the Act, with the Candidate.

From a fiscal perspective, there is a significant election administration cost savings with reimbursing candidates for the professional review, as opposed to the remuneration and benefits needed to engage a casual employee. Currently, the costs and efforts associated with a Candidate's reporting responsibilities are being transferred to the Government of the Northwest Territories, as an OCEO employee is left to chase individuals for supporting documentation, and complete the CFR to bring the candidate into compliance and allow it to be published in accordance with the Act. CFRs are intended to be submitted for review, not completion. Engaging some professional assistance and certifying a report's accuracy prior to submission would allow that to happen. Furthermore, third-party audits of CFRs occur in all Canadian jurisdictions, with the exception of the Northwest Territories and Yukon.

In addition, adopting the reimbursement for professional certification of accuracy and completeness model would allow compliance of paragraph 256(3)(b) on the part of the OCEO and duly elected Members. As the Act is currently written, a duly elected candidate who files a CFR that may contain errors or is found to be incomplete is unable sit or vote as a Member. This could be problematic for Members who file on the last day of the allowable filing period and they may find themselves subject to subsection 262(1) of the Act.

There is also a need to review whether the completion of a full CFR is necessary for acclaimed members or non-elected candidates who receive and spend very little. Some thought should be given to a shorter declaration that ensures any pre-election expenses have been paid and perhaps asserts that the candidate spent and collected less than a set amount. Something to bear in mind when making the decision on what that amount should be is: over the last three electoral events, 32% of candidates spent less than \$3,000, while 11% of candidates spent less than \$1,000.



Remarks of the Chief Electoral Officer

When Official Agents and Candidates do not meet their obligations to file on time – or at all – they are subject to the loss of their nomination deposit and must pay what is known as an administrative monetary penalty (AMP) of \$250. Recommendation **46** is offered for consideration as the only means currently provided to the Chief Electoral Officer to ensure remittance of the AMP and/or subsequently receive the CFR (which is paramount) is to prosecute the offending party. A clear imbalance exists when considering the extent of the effort and costs associated with pursuing a prosecution.

Clearly the AMP in itself is not enough of a deterrent for non-compliance, and consideration of increasing the amount or adopting the model of an accruing penalty is warranted. Fines for failure to file and late filing penalties from other Canadian jurisdictions are included in the recommendations section for comparison.

With confidence, I suggest that if recommendations 44 and 45 are adequately addressed, the matter raised in recommendation 46 will be significantly lessened.

The final recommendation, **47**, is a simple suggestion to lessen the bureaucratic practice around Returning Officer appointments. It is a request to amend subsection 19(3) and repeal the associated subsection 19(4) to allow a Returning Officer to be appointed for life. The current process requires continuing officers to once again fill out paperwork they already completed during their previous appointment, and for the appointments to go through the formal gazetting exercise every four years. Many longstanding officers have inquired about the continual practice when they have no intention of discontinuing their service.

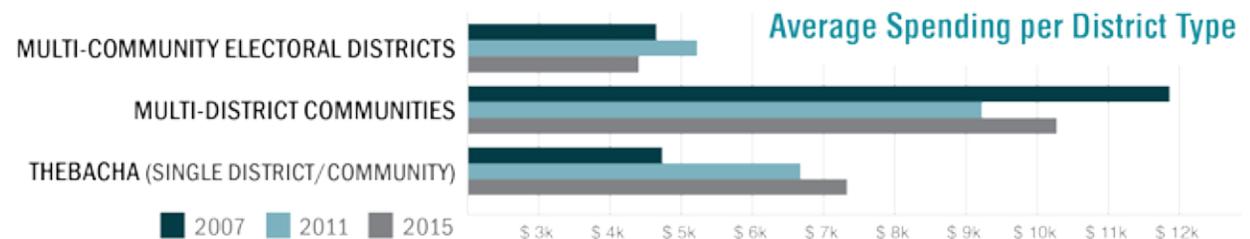
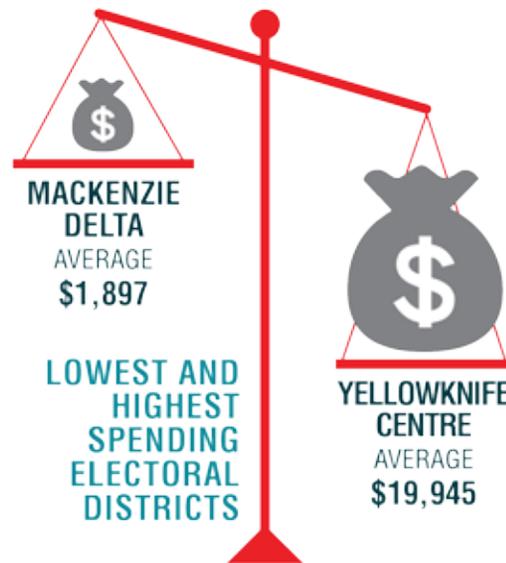
The OCEO views these senior officers as an investment and are committed to a long-term relationship unless circumstances dictate otherwise. Officer retention is crucial to ensuring we continue to build our expert knowledge with respect to election administration. Having sunsets on appointments makes little or no sense from a human resource capacity-building perspective. The OCEO holds the belief that Returning Officers should only be removed if there is cause, if they leave the north, or if they are deceased. Having officers appointed for life also supports the OCEO mandate of ensuring election readiness at all times.

AVERAGE CANDIDATE SPENDING IN LAST THREE ELECTIONS





CANDIDATE SPENDING IN THE LAST THREE ELECTIONS







RECOMMENDATIONS



Recommendations

44 | Financial Institution Requirement

Section 246; Paragraph 256(1)(a.1); Subsection 257(1); Subsection 257.1(1); Paragraph 262(1)(a)

Recommendation

Repeal section 246 and paragraph 256(1)(a.1) and amend associated subsections 257(1), 257.1(1) and paragraph 262(1)(a) requiring a candidate to include statements from a bank or financial institution in their candidate's financial report.

Rationale for Change

- Section 246 of the Elections and Plebiscites Act (the Act) presents a significant barrier for candidates and their official agents.
- Unopened bank accounts and missing or late bank statements are the leading causes of delayed or un-filed Candidate Financial Reports.
- 33% of NWT communities are without a chartered bank or suitable institution that allows for an accounting statement.
- Opening an account with a chartered bank in absentia is unachievable for candidates or official agents who are located in communities without any financial services.
- Chartered banks or other approved financial institutions are not beholden to the Act, and official agents are often subject to additional barriers in the form of policies, procedures, or requirements placed on them by banks and institutions.
- Providing a complete statement of a closed and reconciled bank account is contingent on all campaign expense payments clearing in a timely manner.
- The original rationale for bank involvement is unclear.
- The candidate's financial report includes a balance sheet that captures the cash flow detail of a campaign.

NWT FINANCIAL SERVICES AVAILABILITY BY COMMUNITY

Chartered Bank(s)	Northern/ NorthMart*	Co-op**	No Financial Services
Norman Wells	Aklavik	Fort Good Hope	Dettah
Inuvik	Behchoko	Déline	Enterprise
Fort Simpson	Déline	Sachs Harbour	Gamètì
Yellowknife	Fort Good Hope	Colville Lake	Hay River Reserve
Hay River	Fort Liard	Lutselk'e	Jean Marie River
Fort Smith	Fort McPherson	Fort McPherson	Kakisa
	Fort Providence	Yellowknife	Nahanni Butte
	Fort Resolution		Trout Lake
	Fort Simpson		Wekweètì
	Fort Smith		Whatì
	Hay River		Wrigley
	Inuvik		
	Norman Wells		
	Paulatuk		
	Tsiigehtchic		
	Tuktoyaktuk		
	Tulita		
	Ulukhaktok		

* Operates the WeFinancial program, which allows customers to open deposit accounts
 ** Arctic Co-operatives Limited will create a deposit account at discretion of management

CANADIAN JURISDICTIONS THAT REQUIRE BANK INVOLVEMENT

REQUIRED

Canada
 Alberta
 Saskatchewan
 Manitoba
 Ontario
 New Brunswick
 Nova Scotia
 Newfoundland & Labrador
 Northwest Territories
 Nunavut

NO REQUIREMENT

British Columbia
 Prince Edward Island
 Yukon

OTHER

Quebec*

**does require an account, but all contributions are received and distributed by CEO*



45 | Candidate Financial Reporting

Sections, subsections and paragraphs: 251(2)(b), 252(b), 254(2)(a), 255(3), 256(1)(a), 256(1)(b), 256(3), 257(1), 257.1(1) 258(1), 258(3), 261(1)(d), 262(1)(a)

Recommendation

Amend paragraph 256(1)(a) to read ‘...an accurate audited signed report in the approved form ...’ that requires all candidate’s financial reports to be audited by a certified third party before they are submitted to the Chief Electoral Officer;

add to section 1, a definition that defines the certified third party as “a person registered as a member in good standing with the Association under subsection 10(2) of the Certified General Accountants’ Association Act, R.S.N.W.T. 1988,c.C-1”;

add a paragraph, 80(s), to require the nomination papers include a signed confirmation that the candidate understands they must file an accurate and complete candidate’s financial report that has been audited by a certified third party;

add a paragraph 256(1)(d) to subsection 256(1) to include the submission of the auditor’s invoice for less than or equal to a maximum set reimbursable amount of \$1000, that is not an eligible elections expense, which is to be paid directly to the auditor by the Office of the Chief Electoral Officer;

add a paragraph 256(1)(e) to include an auditor’s report/certificate as described in subsection 10.1(1) of the Certified General Accountants’ Association Act;

repeal paragraph 256(1)(b) and add 256(1.1) to require, subject to subsection 258(3), all bills proving payment of election expenses referred to in paragraphs 251(2)(b), 252(b) and 254(2)(a), and subsection 255(3) are to be retained for one year after ordinary polling day;

amend subsection 256(3), subsection 257(1), subsection 257.1(1), paragraph 262(1)(a) to remove the words “the bills proving payment of election expenses”;

amend section 258(1) by removing the words “and deliver those bills to the Chief Electoral Officer as required under paragraph 256(1)(b)”;

amend section 261(1)(d) by removing the words “and delivery of bills under subsection 258(3)”;

add subsection 256(1.2) requiring the official agent to deliver all bills proving payment of election expenses, receipts, and supporting documentation of expenses to the certified third party auditor; and

add subsection 256(1.3) to provide an exemption from filing a full candidates’ financial report for acclaimed and non-elected candidates whose expenses totaled less than \$1000 by alternately requiring a signed and notarized declaration in an approved form affirming that less than \$1000 was raised or expended for campaign expenses, and any pre-election period and campaign expenses have been paid in full.



Rationale for Change

- The Office of the Chief Electoral Officer (OCEO) bears a significant burden in managing incomplete and inaccurate candidate's financial reports (CFR) to bring them to fruition.
- The OCEO struggles to engage qualified personnel on a short term basis to review CFRs.
- Requiring the CFR to meet a professional review standard that is certified as complete and accurate by a designated accounting professional negates additional review by the OCEO; this would likely realize a cost saving in election administration as a reimbursement model will prove less expensive than engaging a casual employee to conduct reviews.
- As it is currently written, paragraph 256(3)(b) is impossible to enforce when a submission is made on the day of the deadline.
- Submission of a certified accurate and complete CFR would ensure duly elected candidates avoid the effects of non-compliance with paragraph 256(3)(b).
- Reimbursement of auditing fees, partial or otherwise, for candidates' financial submissions is a common model for most Canadian Election Management Bodies.
- For acclaimed and non-elected candidates who receive and spend very little, completing a full audited candidate's financial report seems like an unnecessary exercise.
- Over the last three electoral events 32% of candidates have spent less than \$3000; 11% less than \$1000.

AUDITING AND REIMBURSEMENTS ELECTORAL JURISDICTIONS ACROSS CANADA

	AUDIT REQUIRED		REIMBURSEMENT
	YES	NO	
FED	●		Up to \$1,500 paid directly to the auditor
BC*	●		--
AB**	●		--
SK	●		The lesser of \$650 or cost of the audit
MB	●		Up to a maximum of \$1,500
ON	●		The lesser of \$1,000 or cost of the audit
QC^t	●		Half the cost up to \$15,000
NB	●		--
NS	●		Up to a maximum of \$781.89
PE	●		--
NL	●		The lesser of \$500 or cost of the audit
YT		●	--
NT		●	--
NU	●		Contract between the CEO and the auditor

*Only returns higher than \$10,000

**Only returns higher than \$1,000

^tParties only



Recommendations

46 | Non-Compliance Penalty

Subsection 257.1

Recommendation

Amend section 257.1 to either:

- a) increase the amount of the penalty to \$5,000 or,*
- b) have the penalty accrue at \$50 for each day the contravention continues to a maximum of \$10,000;*

and that additional consideration be given to the language to replace “receiving a demand from the Chief Electoral Officer” to “receiving an order from the Chief Electoral Officer” to file their candidates’ financial report and remit their monetary administrative penalty within 30 days from the filing date.

Furthermore, that the Chief Electoral Officer be authorized to file the order with the courts and ensure the order is served by personal delivery to the person to be notified. And, if that person fails to comply with the order issued under the Elections and Plebiscites Act, that person is in contempt and liable for any costs and expenses incurred as a result of any action required to carry out the order. And, that the Government of the Northwest Territories may claim and recover costs and expenses as a debt due to the Government of the Northwest Territories and that service restrictions are enacted for that person.

Rationale for Change

- The current administrative monetary penalty is not enough of a deterrent for non-compliance with section 256(1).
- In the absence of cost recovery legislation, the cost and effort that is required to prosecute an individual for the non-remittance of such a paltry administrative monetary penalty and/or non-compliance in filing their CFR far outweighs the amount of the penalty being sought and is not a prudent use of public funds.
- Although subsection 257.1(3) alludes to the possibility of continued non-compliance in CFR filing, the legislation is primarily tailored to collect the administrative monetary penalty, whereas the receipt of the CFR is paramount.

LATE FILING PENALTIES AND FINES FOR FAILURE TO FILE COMPLETE CANDIDATE FINANCIAL REPORTS ACROSS CANADA

JURISDICTION	FINE FOR FAILURE TO FILE*		LATE FILING PENALTIES
	Candidates and/or Agents of Candidates	Registered Parties and/or Agents of Parties	Person responsible for filing report
Canada	\$2,000	\$5,000	--
British Columbia	\$5,000 - \$10,000	\$5,000 - \$10,000	min. \$500 payment
Alberta	\$1,000	\$5,000	--
Saskatchewan	\$5,000	\$5,000	--
Manitoba	\$5,000	\$50,000	\$25 per day/max 30 days
Ontario	\$5,000	\$5,000	\$50 per day (no limit)
Quebec	\$500	\$500	--
New Brunswick	\$140 - \$1,100	<--	\$50 per day (no limit)
Nova Scotia	\$5,000	\$5,000	--
Prince Edward Island	\$2,000-\$5,000	\$5,000 - \$10,000	--
Newfoundland and Labrador	\$1,000	\$1,000	\$50 per day/max \$10K
Yukon	\$5,000	\$5,000	--
Northwest Territories	\$5,000	\$5,000	\$250 payment
Nunavut	\$5,000	\$5,000	--

* Paid upon summary conviction



Recommendations

47 | Returning Officer Appointments

Subsections 19(3) and 19(4)

Recommendation

Amend subsection 19(3) to read “The term of office of a returning officer expires with resignation, change of permanent residency to outside the Northwest Territories, revocation of appointment, or death”; and

repeal subsection 19(4).

Rationale for Change

- Elections NWT views each returning officer as an investment, and retention of competent senior election administrators is critical. The exercise of extinguishing an appointment only to re-appoint is overly bureaucratic and unnecessary.
- As returning officers are appointed until one (1) year after the general election in which they serve, making the appointments lifetime terms would eliminate an unnecessarily repetitive mass-appointment process.
- Appointing new returning officers only as required would ensure the agency is in a better state of election readiness.

RETURNING OFFICER APPOINTMENTS IN CANADA

2 YEARS

Alberta

4 YEARS

British Columbia
Saskatchewan
Manitoba
New Brunswick
Northwest Territories
Nunavut

10 YEARS

Canada
Ontario
Quebec

NO LIMIT

Nova Scotia
Newfoundland & Labrador
Prince Edward Island
Yukon

REAPPOINTMENT OPTION FOR RETURNING OFFICERS IN CANADA

OPTION FOR REAPPOINTMENT

Canada
British Columbia
Saskatchewan
Manitoba
Ontario
Quebec
New Brunswick
Northwest Territories
Nunavut

OPTION NOT SPECIFIED

Alberta
New Brunswick

NOT APPLICABLE

Nova Scotia
Newfoundland & Labrador
Prince Edward Island
Yukon

The background of the image is a dark teal color with a complex, repeating geometric pattern of various-sized triangles and polygons in lighter shades of teal. The pattern is dense and covers the entire area. A dark teal horizontal band is positioned at the bottom of the image, containing white text.

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