



17th Legislative Assembly of the Northwest Territories

Standing Committee on Rules and Procedures

Report on the Review of
the Auxiliary Report of the
Chief Electoral Officer
on Issues Arising from the
2011 General Election

Chair: Mr. Bob Bromley

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Committee Analyst

**STANDING COMMITTEE ON
RULES AND PROCEDURES**

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AUXILIARY REPORT OF THE CHIEF ELECTORAL OFFICER
ON ISSUES ARISING FROM THE 2011 GENERAL ELECTION**

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STANDING COMMITTEE ON RULES AND PROCEDURES

REPORT ON THE REVIEW OF THE AUXILIARY REPORT OF THE CHIEF ELECTORAL OFFICER ON ISSUES ARISING FROM THE 2011 GENERAL ELECTION

INTRODUCTION

The Auxiliary Report of the Chief Electoral Officer of the Northwest Territories on Issues Arising from the 2011 General Election was tabled in the Legislative Assembly on October 23, 2013. It is the Standing Committee on Rules and Procedures' responsibility to review the report and make recommendations to the Legislative Assembly.

The Committee held public hearings with the Chief Electoral Officer (CEO) in Yellowknife on February 27th and May 27, 2014. At the latter meeting, one witness, in addition to the CEO, made presentations to the Committee, and provided a written submission. The Committee thanks everyone who provided their comments and attended the hearings.

REVIEW OF THE CHIEF ELECTORAL OFFICER'S RECOMMENDATIONS AND PUBLIC CONCERNS

The CEO's Auxiliary Report includes a number of recommendations for amendments to the *Elections and Plebiscites Act* (the *Act*) and other changes to improve electoral processes. The research and reasoning supporting these recommendations are described thoroughly in the CEO's Auxiliary Report. The Committee considered this information, public input, and the views of fellow Members in reaching consensus on the recommendations included in the following summary.

Voter Identification Requirements

The purpose of voter identification requirements is to ensure that only eligible electors cast ballots – to protect the rights of voters and candidates to fair elections. The CEO was asked to provide additional research on identification requirements following his initial report on the 2011 election. The evidence shows that the electoral process in the NWT is sound and trustworthy.

Allegations of ineligible electors casting ballots are very rare in the NWT. In the past 15 years, spanning four general elections and one by-election, there have

been just two complaints – and no evidence of unqualified electors actually voting. This suggests that stricter voting requirements would be a preventive measure, not a solution to a burning problem.

The Committee shares concerns it heard that stringent federal identification requirements discourage qualified voters from casting their ballots. There is great disparity in the number of people with government-issued, photo identification, depending on where they live:

- 80% of Yellowknife residents have a driver's licence or general identification card, compared to
- 76% of residents of regional centres; and
- 44% of residents of the remaining 27 communities.

The smaller communities also have higher proportions of aboriginal electors, meaning they would currently be disproportionately impacted by this type of identification requirement. This could be mitigated by a better system of issuing identification in our smaller communities, and by implementing a robust vouching system that ensures both the rights of eligible voters and the integrity of the electoral system.

The Committee endorses the following principles for voting requirement rules outlined by the CEO:

- *Consistency*: Rules should be the same regardless of place of residence;
- *Integrity*: Confidence in a free and fair electoral system is paramount;
- *Participation*: It is better to punish an unqualified elector who votes than to exclude qualified electors from voting; and
- *Trust*: The overwhelming majority of electors participate in good faith.

The Committee also accepts the CEO's recommendations with respect to voter identification requirements.

Recommendation 1

The Standing Committee on Rules and Procedures recommends that the Act be amended to increase the number of times an elector may vouch for another elector from one to five.

Recommendation 2

The Standing Committee on Rules and Procedures recommends that the Act be amended to prohibit candidates from vouching for another elector.

Recommendation 3

The Standing Committee on Rules and Procedures recommends that Elections NWT and the GNWT work together to expand the coverage of government-issue photo identification among residents of the Northwest Territories.

Polling Day

Polling day is currently the first Monday of October. In his first report on the 2011 election, the CEO suggested that having polling day on a Monday presents challenges for election administration and candidates, and may impede voter turnout. The CEO recommended that polling day be changed to a Saturday, or a day later in the week than Monday, or be declared a holiday. The Standing Committee requested additional research.

However, there is very little research on the relationship between polling day and voter turnout, and what does exist is inconclusive. No province or territory holds general elections on weekends, although municipalities do in three provinces.

In the absence of research supporting the argument that voter turnout is lower on Mondays, the Standing Committee does not support a change to the polling day at this time.

Prohibition on Broadcasting

The CEO was asked to identify options for clarifying the rules with respect to broadcasting. For example, current legislation bans a candidate from polling day promotion of his or her campaign on radio, but allows a newspaper ad to be published that day.

The Committee believes that some limit on last-minute campaign advertising is reasonable, and helps ensure the fairness of our elections. However, any limit should not be discriminatory, favouring one method of advertising over another,

and potentially one campaign strategy over another. Moreover, the definition of election advertising must be clear, practical, and easily applied, particularly in light of rapid changes in communication technology.

To these ends, the Committee makes the following recommendations:

Recommendation 4

The Standing Committee on Rules and Procedures recommends that sections 104 and 299 of the Act be amended to prohibit election advertising on polling day and the day prior.

Recommendation 5

The Standing Committee on Rules and Procedures recommends that the definition of election advertising in section 237 of the Act be clarified, as proposed by the CEO on page 13 of his auxiliary report.

Recommendation 6

The Standing Committee on Rules and Procedures recommends that for greater clarity and certainty, the term “campaign material” be replaced by “election advertising” throughout the Act.

New Special Voting Opportunities

In the 2011 election, residents of 11 communities had only one opportunity to vote, on polling day itself. Residents of these communities are to be commended for the generally strong voter turnouts. However, all residents of the Northwest Territories should have comparable opportunity to vote.

The Committee requested that the CEO develop detailed recommendations for a new special voting opportunity to replace the provisions for advance polls in communities without a resident returning officer and populations of less than 500. The Committee is convinced that provisions for advance polls in these small communities can be replaced by a new voting opportunity that will allow electors in all communities, regardless of size, to vote before polling day if need be.

Recommendation 7

The Standing Committee on Rules and Procedures recommends that sections 152 to 162 of the Act be repealed, as well as all other references to an advance poll, and that the CEO provide the Assembly with detailed recommendations to establish a new special voting opportunity for communities without a resident returning officer, similar to voting in the Office of the Returning Officer.

Campaign Finance Provisions

The CEO's additional research on campaign financing in other jurisdictions was very informative, despite the role of political parties in many instances. For example, partial reimbursement of candidates' campaign expenses is done in all Canadian jurisdictions except Alberta, British Columbia, and the three territories. Adopting such a system of public financing was proposed by Yellowknife resident David Wasyliw, who made both oral and written presentations to the Committee. He points out that the cost to taxpayers would be quite modest.

While subsidizing the cost of running a campaign might lower a barrier for some candidates, reimbursing candidates' expenses is not a simple matter in our system. Running as independents, candidates for our legislature typically raise funds in their constituencies, and must account for those funds as required by the Act. Many candidates also contribute to their own campaigns, in varying degrees. This raises the issue of how a reimbursement to a candidate would be administered and monitored.

Absent evidence to the contrary, Committee members are not persuaded that the cost of campaigning is a significant barrier to potential candidates in the NWT as it may be in more populous jurisdictions. In addition, reimbursements would unnecessarily increase the complexity of administering elections, which affects both candidates and Elections NWT.

The system of campaign financing in the NWT is currently fair, transparent, and independently regulated, as it should be. This does not mean there is no room for improvement. For example, to ensure full transparency and accountability, anonymous donations to candidates' campaigns are not allowed in half of Canada's electoral jurisdictions. Some that do allow anonymous contributions limit the total amount a candidate can collect. The Committee agrees with this approach, and suggests that a limit of \$1,500 be imposed, per candidate. This is equivalent to the maximum allowed by a single contributor.

Recommendation 8

The Standing Committee on Rules and Procedures recommends that the campaign financing provisions of the Act be drafted in plain language, with a view to improving their logical consistency.

Recommendation 9

The Standing Committee on Rules and Procedures recommends that the current limit of \$100 remain for each anonymous donation, but that each candidate be limited to a total of \$1,500 in anonymous contributions to his or her campaign.

Recommendation 10

The Standing Committee on Rules and Procedures recommends that the types of expenditures that may be incurred by a candidate, rather than the official agent, be expanded to allow minor, practical expenditures.

Recommendation 11

The Standing Committee on Rules and Procedures recommends that the Act be amended to require candidates to include statements from accredited financial institutions for campaign accounts in their financial reports to Elections NWT.

Recommendation 12

The Standing Committee on Rules and Procedures directs the Chief Electoral Officer to provide additional research on the regulation of third-party election advertising for future consideration.

Additional Enforcement Powers

In the event of an investigation of an alleged breach of election law, the CEO currently lacks the power to summon persons to appear, produce documents and give evidence. This can be a serious impediment to thorough investigation.

In the past, the Committee has several times called for more active or enhanced enforcement of the *Elections and Plebiscites Act*.

To address this, the CEO recommended amending the *Act* to grant the CEO the same enforcement powers as a Board of Inquiry under the *Public Inquiries Act*, or by conferring appropriate specific powers. These powers are similar to those available to CEOs elsewhere in Canada, including the Yukon and Nunavut, and have already been granted in the NWT to the administrators of the *Human Rights Act*, *Residential Tenancies Act*, and *Electoral Boundaries Commission Act*. The Committee agrees that thorough investigation of complaints is essential.

Recommendation 13

The Standing Committee on Rules and Procedures recommends that the Act be amended to strengthen the enforcement powers of the CEO, by conferring the specific power to summon persons to appear, produce documents, and give evidence under oath.

CONCLUSION

Members of the Standing Committee on Rules and Procedures believe that taken together, the recommendations stemming from this review will help clarify, modernize and strengthen the NWT's electoral system. It is a strong system, founded on fairness, transparency, and accountability. We thank the CEO for his diligence, and all who provided public input or attended the Committee's hearings.

