



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

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

Report on the Review of the Report  
of the Chief Electoral Officer on the  
Administration of the 2007 Election

Chair: Mr. Robert Hawkins, MLA

## **MEMBERS OF THE STANDING COMMITTEE ON RULES AND PROCEDURES**

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March 11, 2009

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Rules and Procedures is pleased to provide its Report on the Review of the Report of the Chief Electoral Officer on the Administration of the 2007 Election and commends it to the House.

Robert Hawkins, MLA  
Chairperson

**STANDING COMMITTEE ON  
RULES AND PROCEDURES**

**REPORT ON THE REVIEW OF THE REPORT  
OF THE CHIEF ELECTORAL OFFICER  
ON THE ADMINISTRATION OF THE 2007 ELECTION**

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

### **REPORT ON THE REVIEW OF THE REPORT OF THE CHIEF ELECTORAL OFFICER ON THE ADMINISTRATION OF THE 2007 ELECTION**

#### **INTRODUCTION**

The Chief Electoral Officer of the NWT is required to table a report on the administration of the general election in 2007. That report was tabled on May 29, 2008. The Standing Committee on Rules and Procedures is tasked with the responsibility to review the report and make recommendations to the Members of the Legislative Assembly.

The Standing Committee met with the NWT Chief Electoral Officer at a public meeting on December 15, 2008. The Standing Committee also asked all candidates, electoral officers and MLAs to provide their views.

This public discussion and consideration of views supports the Legislative Assembly in its desire to continually improve the processes used to administer territorial elections.

#### **SUBMISSIONS FROM THE CANDIDATES AND OFFICIAL AGENTS**

The Standing Committee invited all Returning Officers, Official Agents and all candidates to review the Report of the Chief Electoral Officer and to identify any concerns or comments about the administration of the election. Six persons (excluding MLAs) responded and identified the following concerns:

- Some communities (those in electoral districts with more than one community) did not have a Returning Officer in their community. This meant that the community residents were not able to vote in the Office of the Returning Office (“early vote”) and some people were concerned that this seemed unfair.
- The office hours for the Returning Officer were not effectively communicated.
- There were not enough special mobile polls.
- The special ballot process is too complicated and too slow.
- Candidates are not required to be residents of the electoral district.

- The legislation permits candidates to assist voters at the voting booth with voting and this does not seem to be fair. Friends may assist and some see this as unfair.
- The rules about signage are unclear and inconsistently enforced.
- There were not enough communications activities and information materials from the Chief Electoral Officer.
- There were issues related to the location of signs and campaign activities.
- MLAs should not have preferred access to the Voters' List.
- Old campaign material, such as signs, which are re-used in another election, should be assigned a monetary value.
- There were concerns that each voter's residency in the electoral district was not confirmed, because it is not clearly required in the legislation.
- There were concerns that the voter identification processes were not consistently applied.

The submissions from the candidates and official agents are attached in Appendix A.

## **MEMBERS' CONCERNS**

All MLAs were invited to a meeting to discuss the Report of the Chief Electoral Officer. Mr. Krutko, Mr. Jacobsen, Mr. Yakelaya, Mr. Ramsay, Mr. Abernethy, Mr. Lafferty and Mr. Bromley attended, in addition to the regular Committee Members. This section provides a brief overview of the concerns discussed by Members.

### **Electoral Officials**

- Requiring the Electoral Officials to be resident in the electoral district has limited hiring options unnecessarily.

### **Early Voting Opportunities / Unequal Access to Early Voting**

- There was disappointment that some communities did not have a Returning Officer located in the community and therefore did not have early voting opportunities, other than an Advance Poll.
- In some communities, the office hours of the Returning Officer were not clear to community residents.

- In some communities, access to the office of the Returning Officer was not barrier-free.
- Candidate's agents are not permitted to witness the vote or the counting of the early votes.

### **Student Voting / Special Ballots**

- There were some people who did not understand this process and could not easily find the instructions.
- There were some mail-in (special) ballots which were not counted for a variety of reasons.
- Special ballots required the use of mail services, which are too slow for a short election period.

### **Signage - Labelling and Locations**

- There was irritation about the requirement to relocate signage which was placed near polling stations and/or Office of the Returning Officer, especially when the signage was located before the polling location and/or Office of the Returning Officer had been determined.
- There was concern that Elections NWT did not communicate clearly and consistently about signage rules to all candidates well in advance.
- There was concern that Elections NWT only responded to complaints and did not assume a more active role in enforcement activities.

### **Mobile Polls**

- Mobile polls are appreciated and their use should be increased. Members suggested that mobile polls should be used at the mine sites.

### **Voters' List**

- The list had too many inaccuracies, even after revisions.
- The list was not provided to candidates in a useable format.

### **Criminal Records Checks**

- There was concern that some candidates had a criminal record. This did not affect their eligibility to be a candidate, because the law does not disqualify them.

### **Residency of Voters**

- Most Members were satisfied with the existing one-year residency requirement and did not want change.

### **Voter Identification**

- There were concerns about the amount of time it takes to administer the oath for electors who were not on the list, especially when there are a large number of these voters.
- Some Members suggested that, at some point, voter identification should be required for every voter, such as at enumeration or at the polling station.
- There were concerns that each voter's residency in the electoral district was not confirmed, because it is not required in the legislation.
- There were concerns that the voter identification processes were not consistently applied.

### **Reporting of Expenses**

- Some Members wanted signs from previous elections to be given a monetary value.
- Some Members wanted to be able to incur official expenses before the start of the election period.

### **Enforcement Issues**

- Members expressed concerns about the difficulties related to enforcement.
- Some candidates have not yet filed their expense reports and there are no consequences.
- Elections NWT seemed unable to thoroughly investigate complaints.

### **Access to Apartment and Condo Buildings**

- Members wanted to see improvements to the candidates' access to these buildings, which often remained limited, even after the Chief Electoral Officer notified the building owners about their obligations.

### **Candidates Assisting at the Polls**

- Some Members consider that candidates should be prohibited from assisting voters at the booth because many people perceive this as unfair.

## **Communications / Information from the Elections Office**

- Members were concerned that communications and information from Elections NWT was not proactive and consistent. An example of this included the lack of clear direction provided to apartment building owners. Another example is the lack of clear direction provided about the requirements for identifying sponsorship information on signage.
- Members were concerned that Returning Officers need better training and information resources.
- Some Members indicated that there was poor organization at some polling stations which minimized the privacy of the booths.
- Some Members wanted improved communications with voters about their electoral district designation, especially if there are changes.

## **Elections Night Reporting**

- Members want accurate results on election night to be reported more quickly than was done on the 2007 election night.

## **REVIEW OF THE RECOMMENDATIONS FROM THE CHIEF ELECTORAL OFFICER**

On December 15, 2008, the Members of the Standing Committee met with Ms. Sandra Arberry, Chief Electoral Officer, and Patrick Orr, legal counsel for Elections NWT. The Members of the Standing Committee reviewed the report of the Chief Electoral Officer. The Chief Electoral Officer's report identified recommendations for amending the *Elections and Plebiscites Act*. That report describes the recommendations thoroughly. The Standing Committee considered that advice and has determined its recommendations as follows. The Chief Electoral Officer's recommendations are described very briefly.

## **Campaigning**

- a) The prohibition of campaigning within 100 m of a polling station causes confusion.
  - The distance is large and can include nearby homes and floors above and below.
  - It does not apply to the Office of the Returning Officer.
  - Sometimes offices or polling stations are located after candidates' offices are established and signs are placed.

The Chief Electoral Officer recommended that a 25 m prohibition apply to campaigning near polling stations and the Office of the Returning Officer, and that the Chief Electoral Officer be authorized to make exceptions.

The Standing Committee agrees.

- b) The Chief Electoral Officer recommended that the requirements in the law for identifying sponsorship on signs be clarified.

The Standing Committee agrees that the *Act* should be amended to clarify that the wording has to be visible and legible and also recommends that the actual wording should be identified in legislation.

- c) The Chief Electoral Officer recommended that the Chief Electoral Officer should have the authority to remove illegal campaign materials and be able to charge those costs to the candidate who failed to remove the material.

The Standing Committee agrees that the Chief Electoral Officer should have the authority to remove illegal materials. The Standing Committee has recommended that additional research on “enforcement” be undertaken before it can consider a recommendation to charge costs to candidates.

- d) The Chief Electoral Officer recommended that the obligations of owners and managers of multiple dwelling buildings be strengthened to clarify the obligations in order to increase candidates’ access.

The Standing Committee agrees with this recommendation.

### **Illegal Practices and Corrupt Practices**

- a) The Chief Electoral Officer recommended that references to illegal and corrupt practices should be referred to as “election offences”.

The Standing Committee agrees.

- b) The Chief Electoral Officer recommended that the *Act* should be amended to provide a standard disqualification period of five years (from the date of conviction) for a candidate with a conviction under this Act. This recommendation is based on a review of case law.

The Standing Committee agrees.

- c) The Chief Electoral Officer recommended that the existing voter disqualification for convictions related to elections offences in Canada be removed. The Chief Electoral Officer also recommended that candidate disqualification be based on convictions for elections offences related to the NWT elections legislation, not other elections offences in Canada.

The Standing Committee agrees that the voter disqualification clauses should be removed.

The Standing Committee has asked for additional research to be undertaken into whether criminal convictions can disqualify a candidate.

### **Residency Requirements**

- a) The Chief Electoral Officer recommended that the residency requirement be reduced to three months.

The Standing Committee does not support a change to the residency requirements.

### **Polling Stations**

- a) The Chief Electoral Officer recommended that a designate of the Chief Electoral Officer should be able to be present at a polling station and/or recount.

The Standing Committee agrees.

- b) The Chief Electoral Officer recommended that only one person representing the candidate, or the candidate, may remain at a polling station or be present during the count.

The Standing Committee recommends that the candidate should not be permitted to attend at a polling station, except briefly. The Standing Committee agrees with the CEO's recommendation that, during the count, only one person representing the candidate, or the candidate, may be present.

- c) The Chief Electoral Officer recommended that candidates take the same oath as polling agents when attending a poll.

The Standing Committee has recommended that candidates be permitted to attend a poll only briefly, as in Alberta's *Elections Act*.

### **Chief Electoral Officer**

- a) The Chief Electoral Officer recommends that the term of appointment for the Chief Electoral Officer should increase from four to seven years.

The Standing Committee recommends that the four year term remain unchanged. This includes the authority to extend the term up to six months after term has finished and the authority to re-appoint.

- b) The Chief Electoral Officer recommended that the Chief Electoral Officer should have the right to vote.

The Standing Committee agrees.

### **Privacy of Voter Information**

- a) The Chief Electoral Officer recommended that the clause in the law which requires a written record in the polling book for electors who decline a ballot should be removed.

The Standing Committee agrees.

- b) The Chief Electoral Officer recommended that the Nominating process be replaced with a simple declaration and oath.

The Standing Committee does not agree with this change and recommends no changes be made to this process.

### **Voting Opportunities**

- a) The Chief Electoral Officer recommended that the Chief Electoral Officer be permitted to establish mobile polls in a wider variety of situations.

The Standing Committee agrees.

- b) The Chief Electoral Officer recommends that the clause in the *Act* be amended so that only the Chief Electoral Officer has the authority to establish an advance poll.

The Standing Committee agrees.

## Financial

- a) The Chief Electoral Officer recommends that the financial reporting status of the elected Members, not all candidates, be reported to the Clerk of the Legislative Assembly.

The Standing Committee agrees.

- b) The Chief Electoral Officer recommends that the financial reporting requirements need a civil remedy in addition to prosecution powers already provided.

The Standing Committee has recommended that additional research on “enforcement” be undertaken before it can consider a recommendation to establish a civil remedy.

## Housekeeping Amendments

The Chief Electoral Officer recommended a number of minor housekeeping amendments.

The Standing Committee agrees with a consideration of these “housekeeping” amendments by the legislative drafter.

## RECOMMENDATIONS

### Recommendation 1

**That the *Elections and Plebiscites Act* be amended to refer to both “illegal practices” and “corrupt practices” as “election offences”.**

### Recommendation 2

**That the *Elections and Plebiscites Act* be amended to provide a disqualification period of five years (from the date of conviction) for a candidate with a conviction under this Act.**

**Recommendation 3**

**That the *Elections and Plebiscites Act* be amended to remove the voter disqualification for convictions related to election offences in other jurisdictions.**

**Recommendation 4**

**That the *Elections and Plebiscites Act* be amended to permit a designate of the Chief Electoral Officer to be present at a polling station and/or recount.**

**Recommendation 5**

**That the *Elections and Plebiscites Act* be amended to permit only one person representing the candidate, or the candidate, to be present during the count.**

**Recommendation 6**

**That the *Elections and Plebiscites Act* be amended to restrict the attendance of a candidate at a polling station except to vote and for brief visits during polling hours.**

**Recommendation 7**

**That the *Elections and Plebiscites Act* be amended to permit the Chief Electoral Officer to vote.**

**Recommendation 8**

**That the *Elections and Plebiscites Act* be amended to remove the requirement for a written record in the polling book for electors who decline a ballot.**

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**Recommendation 9**

**That the *Elections and Plebiscites Act* be amended to permit mobile polls in a wider variety of situations.**

**Recommendation 10**

**That the *Elections and Plebiscites Act* be amended to allow that only the Chief Electoral Officer has the authority to establish an advance poll.**

**Recommendation 11**

**That the *Elections and Plebiscites Act* be amended to direct that the financial reporting status of only the elected Members, not all candidates, be reported to the Clerk of the Legislative Assembly.**

**Recommendation 12**

**That the “housekeeping” amendments, which are identified by the Chief Electoral Officer on pages 22 and 23 of the Report of the Chief Electoral Officer, be considered by the legislative drafter during the preparation of the other amendments.**

**COMMITTEE RECOMMENDATIONS**

This section identifies the recommendations of the Standing Committee. The recommendations are organized in three sections – direction to the Chief Electoral Officer, direction for amendments to the *Elections and Plebiscites Act*, and topics that require additional work before direction can be established.

1. The Standing Committee on Rules and Procedures recommends that the Chief Electoral Officer should:

- Improve the reporting of results on Elections Night, so that the elections results are accurate and released in a timely fashion. Further, the Standing Committee recommends that the Chief Electoral Officer should report back to the Committee before the end of 2009 about the changes in policies and procedures that will be made to ensure the needed improvements.
- Improve the communications from Elections NWT, for topics such as:
  - Employers' obligations;
  - Multiple residency buildings;
  - Office hours;
  - Special ballots;
  - Mobile polls; and
  - Signage requirements.
- The Standing Committee recommends that communications need to be clear and consistent. More information needs to be available, including information about:
  - How to make a complaint;
  - What happens to a complaint;
  - The consequences of violating the Elections and Plebiscites Act; and
  - Decisions and direction of the Chief Electoral Officer that all affected candidates need to have.
- Improve the performance of Returning Officers and other officials through training.
- Increase the number of locations which have opportunities for early voting.
- Increase the use of mobile polls, such as at the mine sites.

### **Recommendation 13**

**The Standing Committee on Rules and Procedures recommends that the Chief Electoral Officer improve the reporting of results on election night, to ensure that the elections results are accurate and released in a timely fashion.**

**Further, the Standing Committee recommends that the Chief Electoral Officer should report back to the Committee before the end of 2009 about the changes in Elections NWT policies and procedures that will be made to ensure the needed improvements.**

### **Recommendation 14**

**The Standing Committee on Rules and Procedures recommends that the Chief Electoral Officer improve and clarify the communications from Elections NWT for topics such as: employers' obligations; access to multiple residency buildings; office hours of Elections NWT offices; special ballots; mobile polls; and signage requirements.**

**Further, the Standing Committee recommends that clear and consistent information be available to all candidates and the public concerning the initiation of a complaint, what happens to a complaint, the consequences of violating the *Elections and Plebiscites Act* and decisions and direction from the Chief Electoral Officer.**

### **Recommendation 15**

**The Standing Committee on Rules and Procedures recommends that the Chief Electoral Officer work to improve the performance of Returning Officers and other officials through training.**

### **Recommendation 16**

**The Standing Committee on Rules and Procedures recommends that the Chief Electoral Officer increase the number of locations which have opportunities for early voting and increase the use of mobile polls, such as at the mine sites.**

2. The Standing Committee on Rules and Procedures recommends that amendments to the *Elections and Plebiscites Act* are needed:

- To establish very clear requirements about signage and location of campaign activities.
  - The distance of signs from the polling station and Office of the Returning Officer would be the same, would be measured from the front door of the building and would be 25 m. The Chief Electoral Officer would have the authority to make exemptions.
  - Campaign activities would similarly not be permitted.
  - The exact words that would be required on campaign material could be identified in the law.
- To give the Chief Electoral Officer the authority to provide the Voters' List in a digital format (that can be manipulated) to all candidates.
  - The authority for the Chief Electoral Officer to do this would be established in law to make it certain that it is permitted.
  - The authority to provide the Voters' List to MLAs after the election period would be modified or deleted to minimize the appearance of preferential treatment.
- To permit the Chief Electoral Officer to collect information from certain key sources, such as the NWT Healthcare Plan registrations list.
  - The accuracy of the Voters' List could be improved without significantly increasing costs.
  - The ability to acquire the NWT Healthcare Plan list could be identified in law. This is the way the Juror's list is now established.
  - The ability to acquire the Student Financial Assistance student list could also be identified in law.
  - These changes would also require supporting amendments to the *Medical Care Act* and the *Student Financial Assistance Act*.
- To remove the requirement that Returning Officers and other officials must be residents in the electoral district.
  - By practice, appointing a resident would be beneficial, but it is not always possible.

- To establish and accelerate the voter identification processes at the polls.
  - The use of “vouching” for voters could apply only in certain communities (smaller NWT communities, where there are fewer transients). Returning Officers in other communities would have to confirm all voters’ identification proving citizenship and residency in the electoral district. The types of acceptable identification documents could be identified in the law or its regulations.
- To prohibit candidates and any of their agents at that station from assisting voters in the voting booth.
  - This would still leave friends or family who are not candidates’ agents at that station able to assist.
- To permit candidates’ agents to be present at the count of the early votes.
- To make the process for special ballots less complicated and faster.
  - It could also permit students who are outside their district attending school to have the option of voting in that school electoral district or in their home electoral district.
  - Additional research will be undertaken to identify specific solutions that could be considered.

#### **Recommendation 17**

**That the *Elections and Plebiscites Act* be amended to establish detailed requirements about signage and location of campaign activities, as follows:**

- a. Signs and campaigning activities are to be prohibited within 25 m from the front door of the polling station or the Office of the Returning Officer; and**
- b. The Chief Electoral Officer is to have the authority to make exemptions from this requirement.**

**Recommendation 18**

**That the *Elections and Plebiscites Act* be amended to identify the exact wording regarding sponsorship which will be required on campaign material and the requirements for legibility related to size and location of the information on the materials.**

**Recommendation 19**

**That the *Elections and Plebiscites Act* be amended to give the Chief Electoral Officer the authority to provide the Voters' List in a digital format which can be manipulated, to all candidates and to the elected candidates (MLAs) immediately after the election period.**

**Recommendation 20**

**That the *Elections and Plebiscites Act* be amended to permit the Chief Electoral Officer to collect information from the NWT Healthcare Plan registrations list and the Student Financial Assistance student list. Further that the *Medical Care Act* and the *Student Financial Assistance Act* be amended to support these changes.**

**Recommendation 21**

**That the *Elections and Plebiscites Act* be amended to remove the requirement that Returning Officers and other officials must be residents in the electoral district.**

**Recommendation 22**

**That the *Elections and Plebiscites Act* be amended to establish a detailed voter identification process to be used at polling stations in NWT communities with the exception of certain designated small communities.**

**Recommendation 23**

**That the *Elections and Plebiscites Act* be amended to prohibit candidates and any of their agents from assisting voters in the voting booth.**

**Recommendation 24**

**That the *Elections and Plebiscites Act* be amended to permit the attendance of candidates' agents at the count of the early and advance votes.**

**Recommendation 25**

**That the *Elections and Plebiscites Act* be amended to make the process for special ballots less complicated, including permitting students who are outside their district attending school in the NWT to have the option of voting in that school electoral district or in their home electoral district.**

The Standing Committee on Rules and Procedures will return with additional recommendations after its review of research for the following three topics. This work will be reviewed with Members before September 2009:

- Options for criminal records checks for the candidates will be examined.

This topic raises significant Charter of Rights and Freedoms issues and needs to be carefully considered to understand what the limitations and options are.

- Additional research to identify specific solutions to improving the special ballot processes will be undertaken.
- Options for improving enforcement will be considered.

It may be possible to make amendments so that some simpler enforcement methods can be included, such as civil and administrative penalties (fines, warnings, etc.). This will take additional research.

Any changes also need to include a consideration of requirements for public reporting about enforcement and compliance activities.

## **APPENDIX A**

### **SUBMISSIONS FROM CANDIDATES AND OFFICIAL AGENTS**