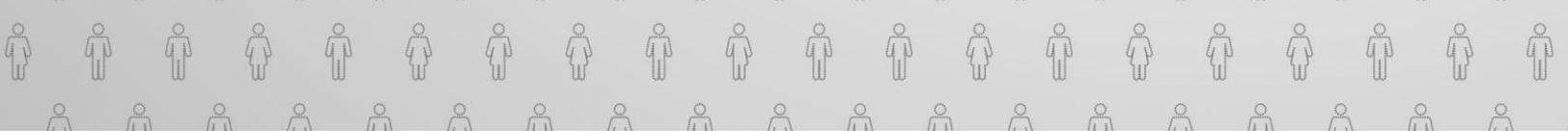




Modernizing New Brunswick's Electoral Legislation

Elections New Brunswick - June 2019



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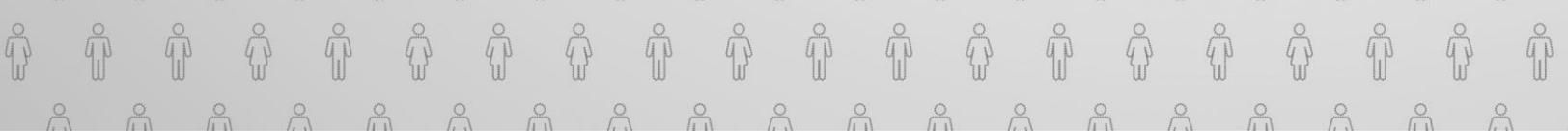
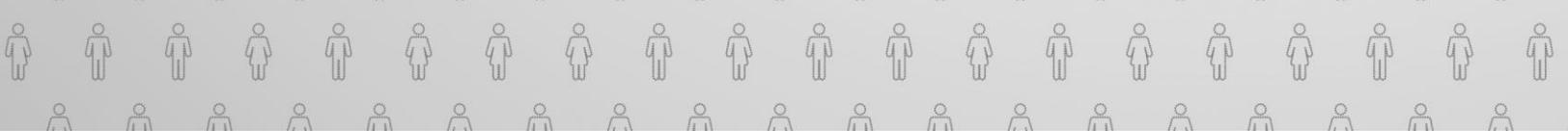
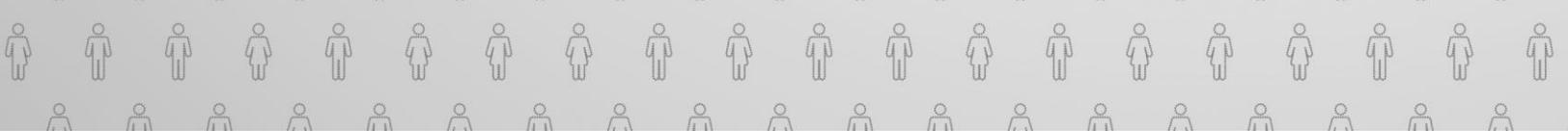


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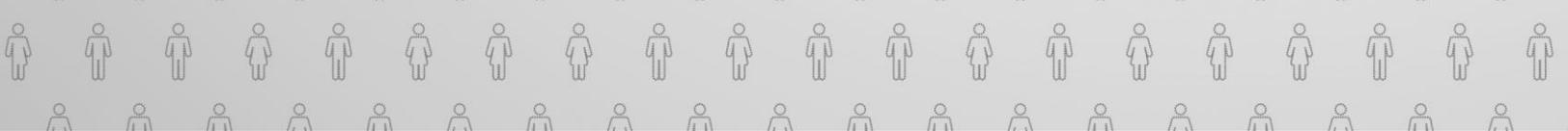
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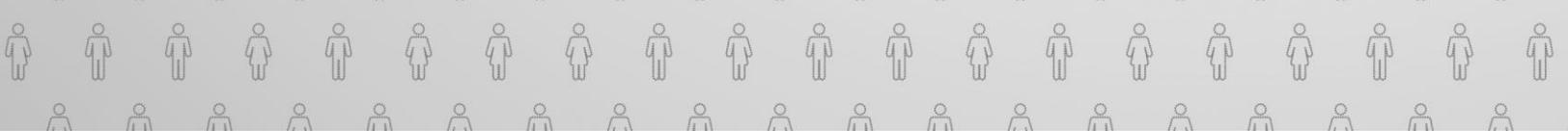
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INTRODUCTION

With a history that pre-dates Canada's Confederation, New Brunswick has had more than 200 years of experience with elections. Some of that history is quite colourful and features controversial scandals, civic unrest, blatant voter "persuasion" and outright corruption. However, the evolution of legislative democracy, particularly in the last half-century, has resulted in the adoption of accountable, principled and carefully managed administrative electoral processes that are in step with other Canadian jurisdictions.

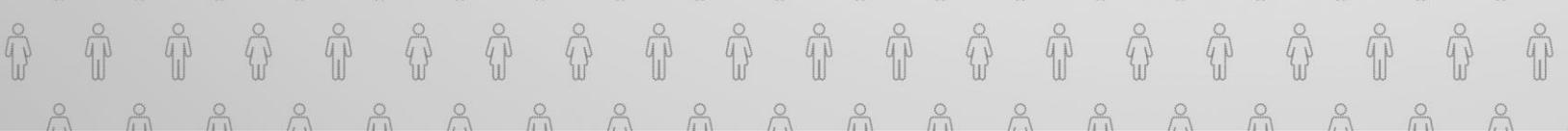
Significant advances can be traced to electoral reform in 1967, including the original enactment of New Brunswick's current *Elections Act*, R.S.N.B. 1973, c.E-3. This was followed by the enactment in 1978 and 1979, respectively, of the *Political Process Financing Act*, S.N.B. 1978, c.P-9.3, and the *Municipal Elections Act*, S.N.B. 1979, c.M-21.01. Over the last 52 years, all of these foundational legislative pieces of New Brunswick's electoral system have been amended regularly to address changes in election processes and policies and electoral reform, such as the lowering of the voting age to 18 years in 1971. However, none of these Acts have been amended in a holistic way, despite reviews and consultation with stakeholder groups over the last number of years, beginning with the 2012 two-part discussion paper, "Changes to the electoral and political financing processes in New Brunswick".

In Elections New Brunswick's *Strategic Plan – 2018-2027*, "seeking legislative change to modernize ... the *Elections Act*, the *Political Process Financing Act* and the *Municipal Elections Act*" was identified as an important strategic action in fulfilling its strategic goal of increasing the efficiency and effectiveness of the electoral process. Although the members of the Legislative Assembly are the policy makers with regard to election legislation, as the individual charged with the administration of all election legislation, it is incumbent on the Chief Electoral Officer to make recommendations for amendments to the legislation for the better administration of the electoral process and the political financing process.

Our discussion paper, *Modernizing New Brunswick's Electoral Legislation*, is much more than an exercise of re-writing or amending our existing legislation. We are proposing wide-ranging changes that will enhance voting procedures for New Brunswickers. The proposed changes will also align the rules related to political financing with the realities of political campaigning under fixed-date elections.

The paper includes a total of 108 recommendations covering the three primary pieces of legislation that guide the administration of elections. A number of these recommendations will ring familiar, especially with those stakeholders who have been part of the political landscape over the past decade.

Some recommendations will require the political will to relinquish long-standing practises that favour the governing party. Others are less substantive and are intended to close loopholes or clear up ambiguities in the Acts that, in our opinion, were not contemplated by the original legislators.



Examples of recommendations that will require a significant adjustment in political mindset include Recommendations 1, 4, 5 and 92 which propose giving the Chief Electoral Officer the authority and autonomy to hire returning officers, election clerks, and other key election officials through a merit-based process. Both provincial and municipal returning officers are currently appointed by an Order-in-Council. Recommendation 34 would require the governing party to hold a by-election to fill a vacancy created by the resignation of a member of the Legislative Assembly within six months after the date on which the vacancy was certified. The current legislation only requires that the date for the by-election be announced within six months after the certification of the vacancy.

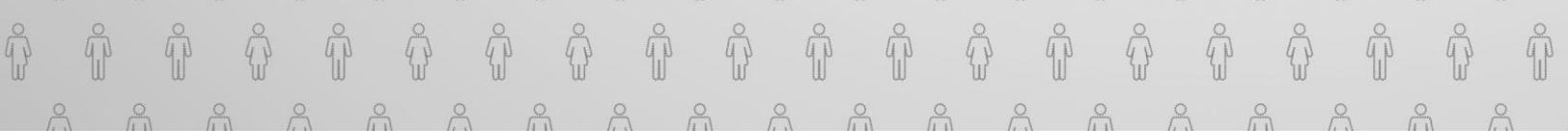
Examples of recommendations that simply close loopholes include Recommendation 27, which clarifies that an individual can only be a candidate in one electoral district and only for one registered political party. Recommendation 36 addresses an oversight in the legislation that technically prohibits minor children from entering polling stations with a parent or guardian.

Some recommendations will result in significant changes to the political financing regime, but which we believe will be welcome simplifications to a process that is often viewed as complicated and cumbersome. Examples of such recommendations include Recommendations 52 through 56 which propose replacing the complicated system of official representatives, chief agents, electoral district agents, official agents and chief financial officers with a single financial agent responsible for all aspects of a political entity's financial business. Under Recommendation 59, election expenses would include any expenses incurred or assets used during the calendar year in which a fixed-date election is held – , thus reflecting current campaigning strategies under fixed-date elections. Other recommendations, such as Recommendations 71 through 75 will simplify reporting on smaller contributions by allowing for small anonymous contributions and increasing the limits on cash contributions, on entrance fees that are not considered contributions and on contributions that may be anonymized for reporting purposes.

Recommendation 79 provides for a new comprehensive financial return that would combine the annual financial reporting of a registered district association with the electoral reporting for its candidate. This significant change will cut in half the number of financial returns that must be filed for the year of a provincial general election. This recommendation also changes the filing date of the new financial return to address the ramifications of the general election day moving to the third Monday in October, beginning in 2022.

Through this document, Elections New Brunswick is soliciting feedback from all stakeholders in the democratic process – electors, academics, political parties, district associations, candidates and members of the Legislative Assembly – on improvements we are recommending to the electoral and political financing processes in New Brunswick.

The feedback we receive from all of you will form the basis of the recommendations we make to lawmakers for comprehensive amendments to the *Elections Act*, the *Political Process Financing Act* and the *Municipal Elections Act*.



PART I - ELECTIONS ACT

1. Introduction

The *Elections Act*, R.S.N.B. 1973, c.E-3, was originally enacted in 1967. The *Elections Act* sets out the rules and regulations for the conduct of the election of members to the Legislative Assembly, as well as establishing the Chief Electoral Officer as an independent officer of the Legislative Assembly and establishing the office of Elections New Brunswick.¹

In this Part, we will discuss issues relating to the operation of a general election by Elections New Brunswick. Many of our recommendations have been discussed in the past with the advisory committee on the electoral process. In addition to the substantive issues discussed in this Part, Elections New Brunswick is recommending that the *Elections Act* be repealed and replaced to accomplish the following objectives:

- A. A more user-friendly arrangement that follows the logical progression of an election;
- B. Use of consistent, plain language and contemporary legislative drafting techniques, including gender-neutral language; and
- C. Correction of inconsistencies, anomalies and editorial errors that have been introduced over the life of the legislation.

The above changes have not been identified in this document in order to focus discussion on matters of substantive change. However, we welcome any suggestions you may have that will improve the *Elections Act*.

2. Recommended changes to Electoral Processes

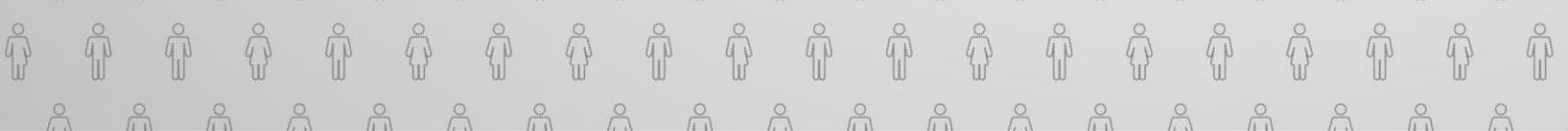
Many of the amendments to the *Elections Act* which Elections New Brunswick is recommending for consideration and feedback have been discussed previously with stakeholders in the 2012 discussion paper, “Changes to the electoral and political financing processes in New Brunswick” and on numerous occasions with the Advisory Committee on the Electoral Process.²

Our recommendations are organized into the following broad categories:

- Returning officers and staffing
- Register of electors and list of electors
- Residency
- Candidates and nomination papers
- By-elections
- Voting
- Judicial Recounts

¹ *Elections Act*, R.S.N.B. 1973, c.E-3, ss. 5(3) and (3.01).

² *Ibid* at s. 154.

- 
- Advertising
 - Miscellaneous

A. Returning officers and staffing

Elections New Brunswick frequently receives complaints that returning officers are appointed on a partisan basis by the government of the day and should be selected in another manner, that people from one party were selected over those from another, that poll workers were not able to actually do the work for which they were hired, and a multitude of other complaints. The following recommendations for amendment address a wide range of issues with respect to the staffing of Elections New Brunswick, from the appointment of returning officers to the hiring of high school students as poll officials.

i. Competitive recruitment and hiring process

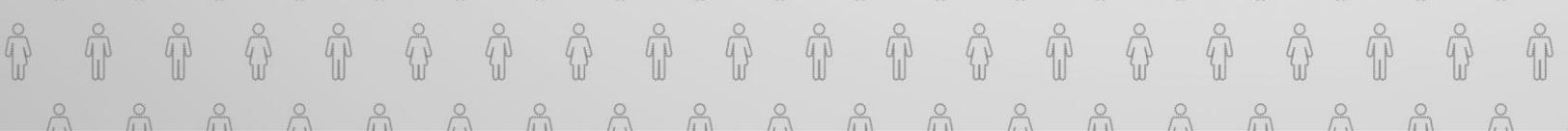
As an independent officer of the Legislative Assembly, the Chief Electoral Officer exercises general direction and supervision over the administrative conduct of elections, and must enforce on the part of election officers, their fairness, impartiality and compliance with the *Elections Act*. It is widely recognized that the independence of the Chief Electoral Officer from government interference and influence is of utmost importance in maintaining and ensuring public confidence in the administration of elections:

One of the hallmark achievements of Canadian government is the independence of election administration from government. Perhaps it is even possible to state that independence has become the first principle of election administration in Canada.³

While the Chief Electoral Officer is responsible for overall direction and supervision of the conduct of elections, the Chief Electoral Officer does not have complete authority to perform these tasks. Only the Lieutenant-Governor in Council has the authority to appoint returning officers. Returning officers are responsible for the administration and conduct of elections in their respective electoral districts. A capable, competent and well-trained returning officer is a significant factor in the success of an election in an electoral district. In each electoral district, the returning officer is responsible for hiring, supervising and training returning office and polling station workers; securing appropriate locations for the returning office and polling stations; administering the special voting process; administering the nomination process; dealing with members of the public, the media and candidates or prospective candidates; and managing disputes regarding the electoral process.

Historically, the appointment of returning officers in Canada has been at the discretion of the governing party; however, this is no longer the case in most jurisdictions across the country. Today, the

³ David M. Brock, “The Independence of Election Administration from Government”, (2015) Special Issue *Journal of Parliamentary and Political Law, The Informed Citizens’ Guide to Elections: Electioneering Based on the Rule of Law* 93 at 93.



appointment of returning officers has moved to the Chief Electoral Officers, signifying more broadly the independence of election administration from government.⁴

Subsection 9(1) of the *Elections Act* provides as follows:

9(1) The Lieutenant-Governor in Council may appoint a returning officer for each electoral district.

In Canada, the federal government, the provinces of Newfoundland and Labrador, Nova Scotia, Quebec, Manitoba, Saskatchewan, Alberta, and British Columbia, and the territories of Nunavut, Northwest Territories, and Yukon, all have the Chief Electoral Officer appoint returning officers. To do this, most provinces and territories use a formalized hiring process before appointing returning officers. The length of their appointments vary from four months to ten years, but with the authority to hire staff, these Chief Electoral Officers have the ability to fill vacancies and provide appropriate training when needed.

In Ontario, the Lieutenant-Governor in Council appoints returning officers on the recommendation of the Chief Electoral Officer and after consulting with the other political parties. Elections Ontario uses a formalized recruiting, testing, and hiring process to select nominees for recommendation to the Lieutenant-Governor in Council. Returning officers are appointed for ten year terms, and Elections Ontario provides ongoing training to them to ensure they remain election-ready.

Accordingly, **only New Brunswick and Prince Edward Island still have the Lieutenant-Governor in Council choose and appoint the returning officers.** In Prince Edward Island, returning officers are appointed for life; while in New Brunswick, appointments expire eight months after a general election.

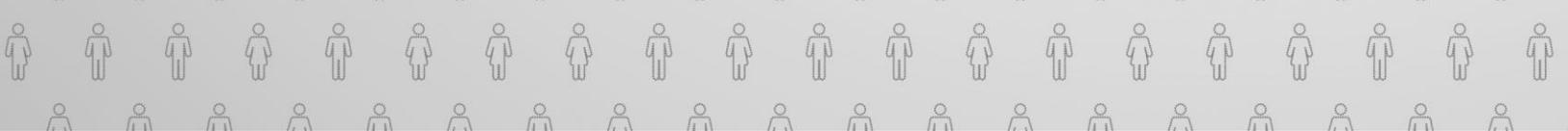
It is our opinion that if returning officers are hired directly by the Chief Electoral Officer after a formal competency-based hiring and evaluation process, independence to act in a non-partisan manner would be guaranteed. While political entities would remain a valuable source to ensure politically-minded people apply to work in this role, they would not be the deciding authority on who is employed in the job.

Under section 17 of the *Elections Act*, returning officers appoint their election clerks. Election clerks fulfill a critical role in their respective electoral districts. They are the returning officers' second-in-command and, if for any reason a returning officer is disqualified from performing or unable to perform his or her duties, the election clerk must step in to perform those duties.⁵ Given the important function performed by election clerks, which includes receiving all of the same training as returning officers, Elections New Brunswick is of the opinion that election clerks should be recruited and hired in the same manner as returning officers.

Jurisdictions across Canada are almost equally split between those in which the election clerk, or equivalent, is appointed by the local returning officer or the Chief Electoral Officer. Federally and in

⁴ *Ibid* at 99.

⁵ *Supra* note 1 at s. 17(2).



Newfoundland and Labrador, Prince Edward Island, Quebec, Nova Scotia, the Northwest Territories and Nunavut, they are appointed by the returning officers. In the remaining jurisdictions – Manitoba, British Columbia, Ontario, Saskatchewan, Alberta and the Yukon, they are appointed by the Chief Electoral Officers.

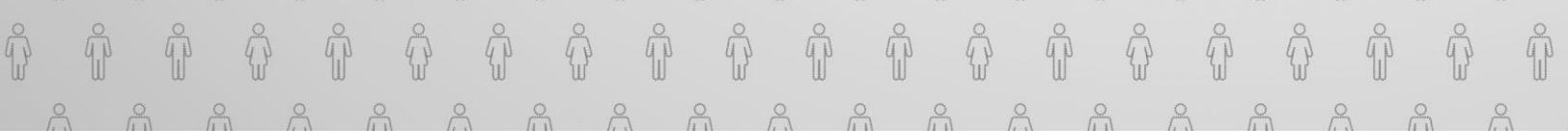
Giving the Chief Electoral Officer the authority to appoint his or her key officials would also ensure that returning officers and election clerks could be hired well in advance of an election, as opposed to the historical norm of returning officers being appointed shortly before training for an election. More advanced training could be conducted prior to elections, on-going refresher training could be delivered and returning officers and their election clerks could be involved in the development of process improvements that are developed between elections. This would have the immediate benefit of providing better quality service to electors, and allows for succession planning over the long term to properly plan for future elections.

Recommendation 1: Chief Electoral Officer appoints returning officers and election clerks.

1. Amend subsection 9(1) of the *Elections Act* so returning officers are appointed by the Chief Electoral Officer. In selecting returning officers, Elections New Brunswick will administer a formal competency-based hiring and evaluation process conducted well before an election, and will provide ongoing training between elections to returning officers. Returning officers will be subject to a probationary period and will continue to be hired for a fixed term that expires 240 days after polling day for the general election following the appointment.
2. Amend section 9 of the *Elections Act* to authorize the Chief Electoral Officer to revoke the appointment of a returning officer for cause.
3. Amend section 17 of the *Elections Act* so election clerks are appointed by the Chief Electoral Officer. In selecting election clerks, Elections New Brunswick will administer a formal competency-based hiring and evaluation process conducted well before an election, and will provide ongoing training between elections to election clerks. The returning officer for each electoral district would be an integral part of the team involved in the hiring and evaluation process for the election clerk in his or her electoral district. Election clerks will be subject to a probationary period and will be hired for a fixed term that expires 240 days after polling day for the general election following the appointment.
4. Amend section 17 of the *Elections Act* to authorize the Chief Electoral Officer to revoke the appointment of an election clerk for cause.

ii. Expiration of returning officer appointments

Under subsection 9(5) of the *Elections Act*, a returning officer's appointment expires 240 days following the polling day for the general election which follows the returning officer's appointment. If a writ of election for a by-election, or a general election, is issued while an existing returning officer appointment is current, that appointment should not be permitted to expire automatically while an election is underway.



Recommendation 2: Continuation of returning officer appointment.

Amend section 9 of the *Elections Act* to continue a returning officer's appointment if it would otherwise expire during a general election or a by-election. The appointment should be extended until 30 days following the return of the writ for that election.

iii. Administration of more than one electoral district

A person is not required to reside in the electoral district for which he or she has been appointed as the returning officer. This often occurs in larger cities with multiple electoral districts, such as Fredericton, Saint John and Moncton.

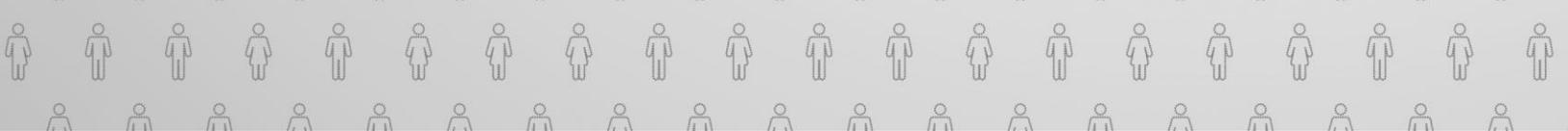
There is potential for significant cost savings in the administration of a general election if fewer returning officers were appointed and fewer returning offices needed to be opened. On average, in 2018, Elections New Brunswick spent \$80,000 to staff, rent and set up returning offices in each electoral district. In total, almost \$4 million was spent on returning office staff and returning offices, and this figure does not include expenses related to supplying each office with items such as computers, printers and faxes. In total, the overall direct cost for the 2018 election was \$11.5 million.

Each of the 49 electoral districts has a returning officer appointed who, in turn, opens a returning office within the electoral district and, in some cases, a satellite office. In the 2018 general election, a total of 50 offices were opened around the Province. Each office is required to hire two special voting officers who work in the returning office for the entire election period and another two special voting officers who collect the vote of electors outside the office when required, as directed by subsection 87.51(1) of the *Elections Act*. In addition, each office requires a receptionist, a revision officer to maintain the list of electors for that district, and an election clerk to manage the staff. Each electoral district also has one Training Officer appointed. Overall, 49 election contests are administered, with each returning officer managing only one election contest with three to six candidates on each ballot.

In contrast, in the municipal, district education council, and regional health authority elections, there are 14 *regional* returning officers appointed, who in turn open 23 returning offices or satellite offices. Each office must have a receptionist, revision officers, special voting officers, and an election clerk. Each of the 14 regions also has two training officers appointed. Overall, in the May 2016 quadrennial elections, there were 636 contested municipal council seats, 68 district education council contested seats, and 16 regional health authority contested seats, with 1181 candidates province-wide in 2016.

Significant savings could be realized in urban electoral districts by consolidating returning offices. For example, in the greater Fredericton area, six returning offices were opened during the 2018 provincial general election at an approximate cost of \$480,000. If operations could be consolidated into a single returning office, estimate savings would be in the vicinity of \$400,000.

Any reduction in returning office locations would not impact on the number of advance or ordinary polling stations that are opened for an election.



Recommendation 3: Appoint returning officers to more than one electoral district.

- a. Amend section 9 of the *Elections Act* so an individual may be appointed the returning officer for more than one electoral district if the Chief Electoral Officer believes it is reasonable to do so. This would reduce the costs associated with opening returning offices during a provincial general election, particularly in cities with multiple electoral districts, and also make it easier to find appropriate returning office locations in tight rental markets.
- b. Amend subsection 16(2.1) of the *Elections Act* so that an individual appointed as the returning officer for more than one electoral district is not required to open an office in each of those electoral districts. In those circumstances, the returning officer would be required to open one office in a place that is convenient for the electors of all such districts.

iv. *De-politicize the hiring of election officers*

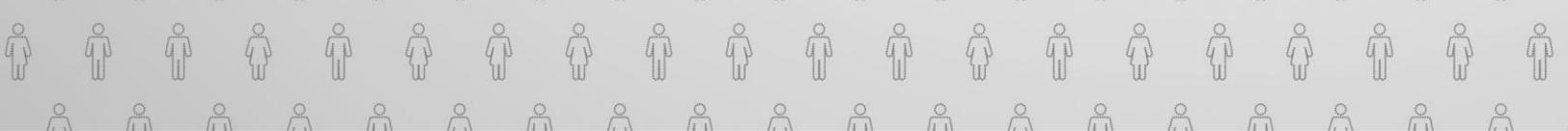
Section 61 of the *Elections Act* provides for the appointment of poll officials by returning officers. In particular, subsection 61(5) establishes the procedure for the registered district associations of registered political parties to provide lists of nominees for these appointments. Subsections 61(7) and (8) require a returning officer to appoint at least one nominee from each of the governing party's list and the official opposition's list in each polling station, and, to maintain an equal number of nominees from each of these party's lists at each polling station. Similar provisions for the appointment of special voting officers can be found at section 87.51 of the *Elections Act*.

As indicated above, the independence of the Chief Electoral Officer from political interference and influence is of utmost importance in maintaining and ensuring public confidence in the administration of elections. As an independent officer of the Legislative Assembly whose mandate is to conduct free and fair elections in a transparent and non-partisan manner, the legislated requirement to appoint partisan nominees as election officers undermines the impartial and non-partisan role of the Chief Electoral Officer and Elections New Brunswick. Further, this requirement unnecessarily and invariably exposes the Chief Electoral Officer and returning office staff to baseless partisan attacks and complaints on the integrity and fairness of the process for hiring returning office and polling staff.

The requirement to appoint polling officials and special voting officers nominated by the governing party and the party of the official opposition has its origins in a time when elections were not administered by an independent, non-partisan and professionally staffed election management body. It is, to be frank, a relic of the past - a time when elections were administered in a partisan manner, and checks and balances were necessary to ensure transparency and fairness in the electoral process. This is no longer the case. In fact, the fairness of the legislated requirement is questionable given it excludes a majority of the registered political parties.⁶

In order to enhance the non-partisan and impartial role of Elections New Brunswick, we recommend that the requirement to appoint partisan political nominees to polling station positions and as special voting officers be repealed. Registered political parties would continue to be permitted to submit lists of nominees to Returning Officers to ensure politically-minded people apply to work for these positions.

⁶ As of December 2018, there are five registered political parties in New Brunswick.



The transparency of the electoral process will continue to be ensured through the ongoing appointment of scrutineers, who are appointed by political parties and candidates to observe the proceedings at the polling stations and to represent their interests at the polls.

Recommendation 4: Repeal the requirement for returning officers to appoint partisan political nominees to polling official positions and reduce opportunities for partisan interference in the hiring of polling officials.

Amend section 61 of the *Elections Act* as follows:

- i. amend subsection (7) to remove the requirement for a returning officer to appoint nominees from registered political parties to polling official positions; and
- ii. repeal subsections (8), (10), (11) and (12).

Recommendation 5: Repeal requirement for returning officers to appoint partisan political nominees as special voting officers.

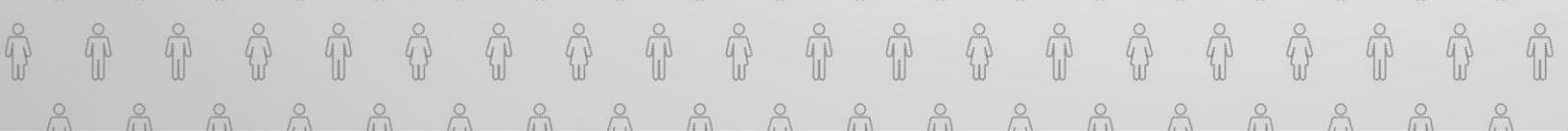
Amend section 87.51 of the *Elections Act* to remove the requirement to appoint special voting officers from lists of nominees filed under subsection 61(5) of the Act and to remove all references to appointing and scheduling for work an equal number of special voting officers from the governing and official opposition parties.

v. *Timeliness of political party nominees*

Currently, subsection 61(5) of the *Elections Act* provides for the district associations of registered political parties to submit the names of potential poll workers to Returning Officers up to 25 days prior to Election Day. This provision leaves only ten days for a Returning Officer's staff to attempt to contact, assess competencies of, select and appoint people to fill the required positions in polling stations prior to training beginning before the advance polls, the first of which is held nine days prior to Election Day. By virtue of subsection 87.51(1) of the *Elections Act*, these same lists are used to fill special voting officer positions at the returning offices. Special voting officers must be trained and ready to begin work when the writs of election are issued. Clearly, it is not possible to wait until the deadline for the submission of these lists to select special voting officers.

Prior to a scheduled general election, Elections New Brunswick suggests this deadline should be moved to June 30. This would allow Returning Officers sufficient time to contact nominees and assess their competencies, and ensure nominees fully understand the commitments and required job descriptions before being appointed. In the case of a by-election, or a general election not held in accordance with the scheduled date, the deadline would remain the same as it is now because the date of such an election is not known in advance.

Amendments are also recommended in order to deal with situations in which a registered political party does not have district associations or district associations are unable to provide a Returning Officer with a list of sufficient nominees. Registered district associations would continue to be able to provide nominees; however, registered political parties should also be explicitly authorized to provide names of nominees.



Recommendation 6: Require registered district associations and registered political parties to submit nominees for poll official positions no later than June 30 in the year of a scheduled general election.

Amend subsection 61(5) of the *Elections Act* as follows:

- i. require a registered district association to file with the returning officer a list of nominees for appointment as poll officials
 - a. no later than June 30 in the year of a scheduled general election; and
 - b. before noon on the seventh day following the issue of the writ for all other elections; and
- ii. authorize a registered political party to file with any returning officer a list of nominees for appointment as poll officials
 - a. no later than June 30 in the year of a scheduled general election; and
 - b. before noon on the seventh day following the issue of the writ for all other elections.

vi. *Candidates as election officers*

In the *Municipal Elections Act*, subsection 18(2) prevents candidates from being an election officer. There appears to be no restriction in the *Elections Act* that prevents a candidate from working as an election officer.

We propose that the *Elections Act* be amended to prohibit a candidate in an election from being appointed as or acting as an election officer in any electoral district in that election.

Recommendation 7: Prohibit a candidate from working as an election officer.

Amend section 10.1 of the *Elections Act* to ensure a candidate:

- i. cannot be appointed as an election officer if the candidate is running for election; and
- ii. cannot act or continue to act as an election officer if the candidate is running for election.

vii. *Family associates of candidates as election officers*

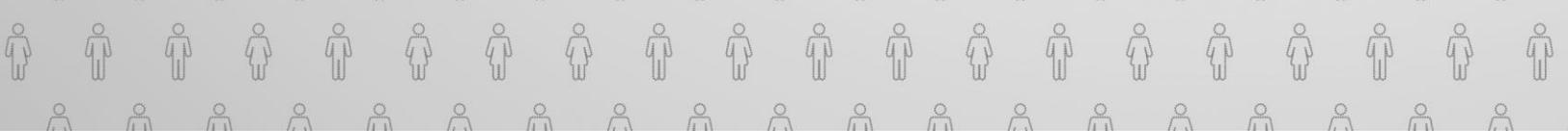
In the *Elections Act*, “family associate” is defined as follows:

“family associate” means the spouse of the candidate and the parent, child, brother or sister of the candidate or of the spouse of the candidate.

Section 10.1 states that,

10.1 No person who is a family associate of a candidate may be appointed, act or continue to act as an election officer, other than a returning officer or an enumerator, in any electoral district in which a ballot may be cast for that candidate.

Since general enumerations are not used any more, and enumeration work is very limited and targeted to specific neighbourhoods, we propose removing enumerators from the exclusion noted above. Further, as ballots may be cast for any electoral district in the Province in any returning office in the



Province, it should also be clarified that this prohibition is restricted to the electoral district in which the candidate is running for election.

Finally, because both a returning officer and the election clerk in an electoral district are critical to ensuring the election is managed effectively, both of these officials should be permitted to continue to act in their position if they are the family associate of a person who becomes a candidate after their appointment. Training for these two positions is done months in advance of an election, and if a person to whom they are a family associate decides to become a candidate during an election, there would be insufficient time to hire a new returning officer or election clerk. However, a family associate of a candidate should not be qualified to be appointed as a returning officer or an election clerk.

Recommendation 8: Update restrictions on family associates working as election officers.

Amend section 10.1 of the *Elections Act* to ensure a family associate of a candidate:

- i. cannot be appointed as an election officer in the electoral district where the candidate is running for election; and
- ii. cannot act or continue to act as an election officer, other than as a returning officer or an election clerk, in the electoral district where the candidate is running for election.

viii. Election oaths

Subsection 124(2) of the *Elections Act* lists specific election officers who may administer an oath, affirmation, affidavit or statutory declaration. This list does not include training officers because this position did not exist when the provision was written.

Training officers are normally the election officials who deal with the poll workers when they come in for training. It makes sense to allow them to administer workers' oaths at the returning offices.

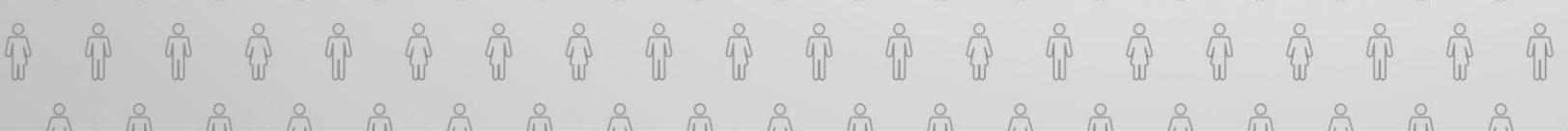
Recommendation 9: Permit training officers to administer election oaths, etc.

Amend subsection 124(2) of the *Elections Act* to permit training officers to administer oaths, etc. Training officers should also be specifically listed in the definition of "election officer" under section 2 of the *Elections Act*.

ix. Appointment of youth as election officers

Since 2006, youth who are 16 or 17 years of age may be appointed as election officers under section 10.01 of the *Elections Act* if, but for their age, they are otherwise qualified to vote under the Act. However, they are limited to being appointed as a voters list officer, a poll revision officer or a constable. By contrast, under section 22 of the *Municipal Elections Act*, the same young people may be appointed as any election officer other than a poll supervisor.

Employing young people as election officers complements their formal civics education with hands-on experiential learning, providing them with a first-hand understanding of the electoral process and developing an awareness of and interest in future elections. In the years since these amendments, hundreds of high school students have participated as elections officers and have gained invaluable experience and understanding of the electoral process, which is often shared with their classmates upon their return to class. Their employment also greatly benefits Elections New Brunswick by allowing us to



staff the polling stations with energetic, technologically-savvy young people who also assist us in meeting our obligations under the *Official Languages Act* by making a larger pool of bilingual workers available to us.

With all the checks and balances in place, there is no reason that a young person could not issue ballots, or be one of the officials who counts ballots if a hand count occurs. Further, it often makes more sense to permit a technically-adept young person to act as a tabulation machine officer. There is also no reason to restrict a young person from being employed at a returning office in a capacity that does not impact on their school hours. Often, this takes the form of casual employees to pack or unpack supplies, or help with technical setups.

Finally, having different employment rules for provincial and municipal elections makes it more difficult for those election officials who work in multiple electoral events. When possible, Elections New Brunswick tries to maintain consistency between provincial and municipal electoral processes.

Recommendation 10: Permit 16 and 17 year-olds to be appointed as an election officer other than a poll supervisor.

Amend section 10.01 of the *Elections Act* to permit 16 and 17 year-olds to be appointed as any poll official referred to in subsection 61(1) of the Act, except a poll supervisor.

x. Remuneration of youth election officers

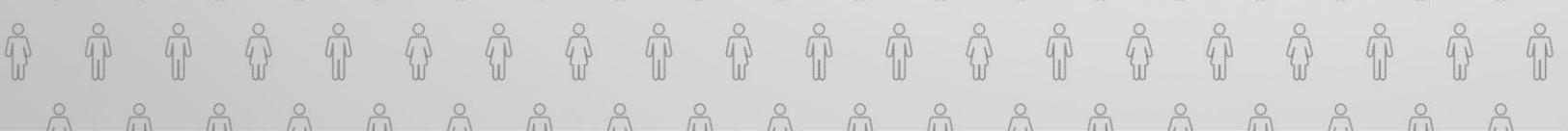
When 16 and 17 year-old election officers work at a polling station, they perform the same tasks as older election officers. They work side-by-side, and in some cases outshine older workers, because they are more comfortable using the technology in use and have the stronger language skills to communicate in both official languages.

Unfortunately, while 16 and 17 year-old election officers work side-by-side doing the same tasks as older workers, they cannot be paid for work performed during regular school hours because section 17 of the *Education Act* does not permit anyone to employ a child during his or her school hours. As an example, a high school student who works at an advance poll can be paid for Saturday, but on Monday, he or she can only receive compensation for the hours outside school hours.

In a number of instances, 16 and 17 year-old students have indicated that they were unwilling to work at a polling station due to the inequity of pay for doing the same work as older workers. This is seen as a detriment to the overall purpose of Elections New Brunswick's High School Employment Program: to address an apparent lack of interest among young people in politics, voting and the electoral process, while also benefiting Elections New Brunswick in accessing a pool of technically-skilled, bilingual, and enthusiastic election officers.

Recommendation 11: Permit high school students to be remunerated when they work as election officers during school hours.

Amend the *Elections Act* or, in the alternative section 17 of the *Education Act*, to permit a child who is otherwise required to attend school under section 15 of the *Education Act* to be employed and compensated as an election officer under section 10.01 of the *Elections Act* if the



child's absence from school has been approved in writing by the principal or designated representative of the child's school and by the child's parent or guardian.

xi. Sharing election officer information

Workers in elections often work in elections for all three levels of government (federal, provincial, and municipal). To assist with staffing the various positions, it is helpful to be able to provide and receive potential lists of workers who have previously been trained as an election officer, by either Elections Canada or Elections New Brunswick.

It is therefore proposed that the Chief Electoral Officer be authorized to enter into an agreement with the Chief Electoral Officer for Canada concerning the sharing of information of former election officials, limited to the person's name, election officer role, and contact information. Elections Canada has active two-way information sharing agreements concerning election workers with Saskatchewan, Alberta, British Columbia, and Northwest Territories. In addition, they have unused two-way information sharing agreements concerning election workers with Nova Scotia, PEI, Manitoba, and Nunavut.

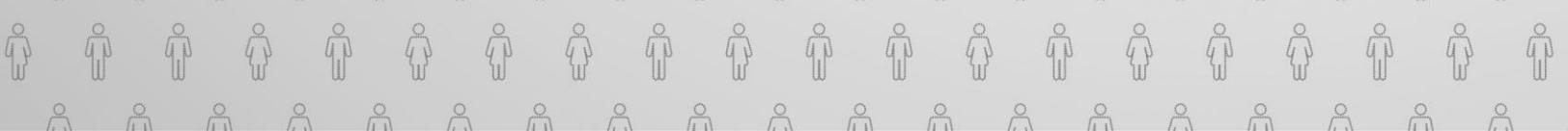
In addition, the Department of Environment and Local Government conducts local votes on issues related to local service district administration. Elections New Brunswick already provides the list of electors to departmental officials under section 20.51 of the *Elections Act* for the purpose of administering this voting process. Elections New Brunswick is often also asked if they can supply names of potential workers to work these local votes who are already knowledgeable about polling station procedures. Therefore, it is proposed that the Chief Electoral Officer be authorized to provide this information to a department or agency of the Province that administers a voting process or election.

Recommendation 12: Authorize the Chief Electoral Officer to share information on former election officers with Elections Canada and with agencies and departments of the Province.

- a.** Based on the model in section 20.15, amend the *Elections Act* to authorize the Chief Electoral Officer to enter into an agreement with the Chief Electoral Officer for Canada concerning the sharing of information of former election officers, limited to the person's name, election officer role, and contact information for the purposes of conducting an election or other form of vote under its administration.
- b.** Amend the *Elections Act* to authorize the Chief Electoral Officer to share with a department or agency of the Province the information of former election officers, limited to the person's name, election officer role, and contact information, for the purposes of conducting an election or other form of vote under its administration.

xii. Staff of Elections New Brunswick

Sections 6 through 8 of the *Elections Act* are concerned with the staffing of Elections New Brunswick, including the appointment by the Lieutenant-Governor in Council of two Assistant Electoral Officers. As with returning officers, it is not appropriate for key staff of the independent, non-partisan body responsible for the administration of elections to be subject to appointment by the Lieutenant-Governor in Council. To ensure there is no partisan interference or influence in the hiring of these individuals, and that their appointment is competency-based, it is recommended that this requirement in subsection 6(1) of the *Elections Act* be removed. Of the eleven jurisdictions that mention a similar position in their



legislation, only three are appointed by the Lieutenant-Governor or Governor in Council (Canada, Nova Scotia and Ontario). All others are appointed by their respective Chief Electoral Officer, except in Prince Edward Island, where the Deputy Chief Electoral Officer is appointed by the Legislative Assembly.

It is also recommended that the title of these positions be changed to “Deputy Chief Electoral Officer” to more accurately reflect the authority and responsibility of the positions. “Assistant Electoral Officer” is often confused with assistant “election officer”, causing awkwardness and confusion in communications, at media events, etc. This title would also be more consistent with the terminology used in other Canadian jurisdictions. “Deputy Chief Electoral Officer” is used in six jurisdictions; “Assistant Chief Electoral Officer” is used in five jurisdictions (including Elections Canada); and the remaining two jurisdictions have no mention of a deputy or assistant in their legislation.

Recommendation 13: The Chief Electoral Officer appoints two Deputy Chief Electoral Officers.

Amend subsection 6(1) of the *Elections Act* to require the Chief Electoral Officer, rather than the Lieutenant-Governor in Council, to appoint two Deputy Chief Electoral Officers.

B. Register of electors and lists of electors

Under section 20.1 of the *Elections Act*, the Chief Electoral Officer has maintained a permanent register of electors since 2006. Similar to other jurisdictions across the country, the permanent register of electors has replaced the more traditional enumeration process for registering electors. From this register, lists of electors are generated for each electoral district in the Province for use at elections, plebiscites and referenda.

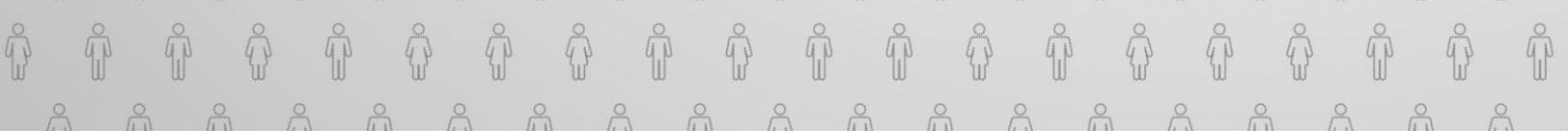
In order to maintain the register of electors, Elections New Brunswick collects the names, addresses, dates of birth and gender of electors. Elections New Brunswick receives data from a number of sources in order to ensure the register is up-to-date and accurate, including from applications by individual electors. Other data sources from which the *Elections Act* authorizes Elections New Brunswick to receive information include Elections Canada, government departments such as Service New Brunswick and the Department of Justice and Public Safety, and treatment centers such as nursing homes and special care homes.

In the 20 years since the *Elections Act* was amended to mandate the establishment of the permanent register of electors, Elections New Brunswick has identified a number of areas for which modifications should be considered.

i. Lists of electors – Enhancing security of voter information

Under various provisions of the *Elections Act*,⁷ the Chief Electoral Officer is required to provide information extracted from the register of electors to various participants in the political system. These lists of electors are provided both during an election and on an annual basis, and during an election include whether an elector has voted. As a result, political parties, candidates and members of the Legislative Assembly have access to a large amount of New Brunswickers’ personal information. With

⁷ *Supra* note 1 at ss. 20, 20.5, 41 and 42.1.



modern information technology, large amounts of information can be easily analyzed and processed, combined with other sources, and stored in physical or cloud-based databases. All of which increase the risk of an unintended privacy breach.

The *Elections Act* does not prescribe any standards with which candidates and political party representatives must comply before the Chief Electoral Officer is required to provide them with this personal information. That Act does not prescribe nor require that political parties have safeguards in place for protecting personal information or standards for how and where data is stored, who can access it, with whom it can be shared, and whether it can be merged with other data. There are also no prescribed procedures to be followed in the event of a privacy breach. Further, in part because the Chief Electoral Officer and Elections New Brunswick are not subject to the *Right to Information and Protection of Privacy Act*, S.N.B. 2009, c. R-10.6, there is no legislation which governs the custody or care of elector’s personal information once it is passed on to candidates and the political parties.

Elections New Brunswick is therefore recommending that, before receiving any personal information under the *Elections Act*, a political party or individual who is entitled under the Act to receive personal information be required to file a privacy policy with the Chief Electoral Officer for approval.

Election management bodies across the country are struggling with this same issue. For example, in September 2017, British Columbia’s Acting Information and Privacy Commissioner launched an investigation into whether political parties in that province were properly collecting, using and disclosing the personal information of its residents in accordance with the rules in the *Personal Information Protection Act*.⁸ In December 2015, Saskatchewan’s Chief Electoral Officer issued an *Interpretation Bulletin*⁹ indicating that certain personal information legislatively required to be included on the voters list for the upcoming election would not be included by virtue of his power to remove information from the voters list “to protect the security or privacy of a voter”.¹⁰ The *Interpretation Bulletin* further indicated that a comprehensive review would be undertaken of all privacy and security measures related to the register of electors and the voters lists. In both the case of British Columbia and Saskatchewan, more robust requirements are in place for the protection of these lists by political parties than currently exist in New Brunswick.

Recommendation 14: Require the recipient of a list of electors to file a privacy policy with the Chief Electoral Officer before receiving such a list.

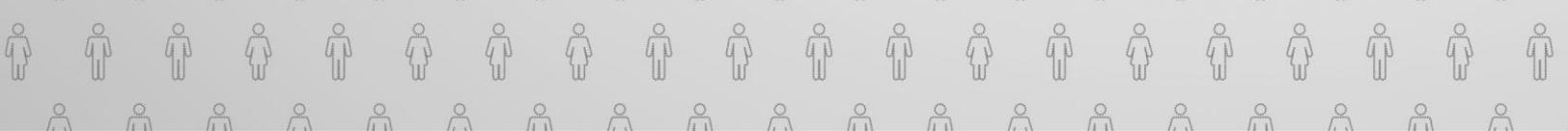
Amend the *Elections Act* to provide as follows:

- i. require a person who is entitled to receive a list of electors under section 20, 20.5, 41 or 42.1 to file with the Chief Electoral Officer a privacy policy for approval before receiving such a list;
- ii. the privacy policy shall be in the form prescribed by the Chief Electoral Officer and shall set out, to the satisfaction of the Chief Electoral Officer, those reasonable security

⁸ S.B.C. 2003, c.63.

⁹ *Interpretation Bulletin* No. ESKIB-2015/01, December 28, 2015.

¹⁰ *The Election Act, 1996*, S.S. 1996, c. E-6.01, ss.18.6(3), 18.7(3)

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- arrangements as are necessary to protect the personal information contained in the list from the risk of unauthorized access, collection, use, disclosure or disposal;
- iii. authorize the Chief Electoral Officer to waive the requirement to file a privacy policy if a privacy policy has been previously filed by the same person;
 - iv. authorize the Integrity Commissioner to receive and investigate complaints from the public related to the collection, use and disclosure of personal information contained in a list of electors by a recipient of the list;
 - v. authorize the Integrity Commissioner to conduct an audit in order to evaluate the level of conformity with a privacy policy, which could be conducted on the Commissioner's own initiative or on request of the Chief Electoral Officer; and
 - vi. in the event of a breach or a suspected breach of privacy with respect to personal information contained in a list of electors provided to a person under those sections:
 - a. require the person to immediately advise the Chief Electoral Officer of the breach or suspected breach and to take any measures that the Chief Electoral Officer directs to rectify the breach;
 - b. authorize the Chief Electoral Officer to take such measures as are considered necessary to rectify the breach, including advising affected electors; and
 - c. require the Chief Electoral Officer to refer a reported breach or suspected breach to the Integrity Commissioner for investigation and to make recommendations.

ii. Content of lists of electors

As indicated above, the requirement to provide lists of electors to various political parties and individuals is found in sections 20, 20.5, 41 and 42.1 of the *Elections Act*. The Act prescribes which personal information is to be included in this list in only two of these instances – subsections 20.5(2) and 42.1(1). The Chief Electoral Officer has provided the other lists in accordance with the requirements of subsections 20.5(2) and 42.1(1), but it would be preferable that all four provisions were consistent.

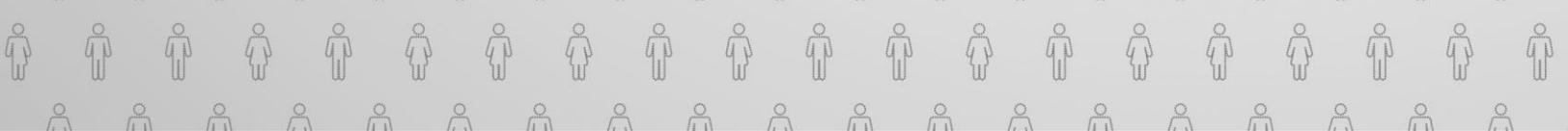
Recommendation 15: Consistently prescribe the contents of lists of electors provided to political parties and other individuals.

Amend subsection 20(3) and paragraph 41(b) of the *Elections Act* to limit the data included in the lists of electors provided under those provisions to the following personal information of electors – surnames, given names, sex, civic addresses and mailing addresses.

iii. Protecting the personal information of vulnerable electors

The *Elections Act* has no provision to protect the privacy or safety of vulnerable electors contained on a list of electors. All electors must appear on a list of electors in order to vote and the lists of electors must be shared with registered political parties and candidates, therefore, a vulnerable elector cannot vote without sharing his or her name and current address with an unknown number of persons.

A number of jurisdictions across the country have taken measures to address this serious concern. The Chief Electoral Officer of Ontario, on the written request of a voter, may redact from any record made available to political entities, data partners and to the public, any information that the Chief Electoral



Officer reasonably believes would, if made available, endanger the life, health or security of the elector. An elector in Manitoba may request that the Chief Electoral Officer not include the elector's information in the register of voters or a voters list in order to protect the voter's personal security. In British Columbia, the Chief Electoral Officer may prepare a list of voters, including a list of voters used for election purposes, which omits or obscures the address of a voter or other information about a voter in order to protect the privacy or security of the voter.

Recommendation 16: Provide a means to protect an elector's safety and to opt-out of sharing with political parties.

Amend the *Elections Act* to permit the Chief Electoral Officer, on the request of an elector, to redact any record made available to political entities, data partners and to the public, any information that the Chief Electoral Officer reasonably believes would, if made available, endanger the life, health or security of the elector. This includes the anonymization of personal information included on a list of electors provided to candidates and registered political parties during an election period.

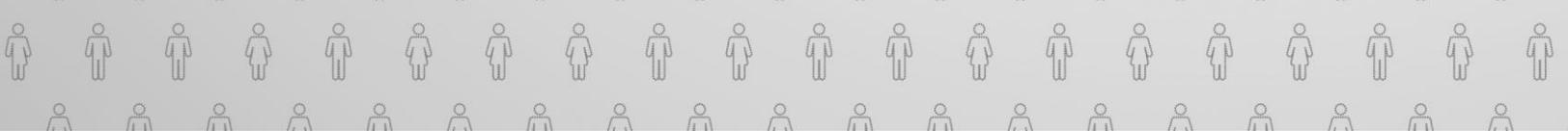
iv. Provision of a list of electors to registered political parties during an election period

Subsection 20(3) of the *Elections Act* authorizes a returning officer to provide the preliminary list of electors for his or her electoral district to each "recognized party which has an officially nominated candidate in the electoral district." A person's nomination papers must be accepted by a returning officer prior to becoming an officially nominated candidate. Similarly, section 41 of the Act authorizes a returning officer to provide a copy of the revised list of electors for his or her electoral district to each party and candidate who received a copy of the preliminary list of electors.

These provisions mean that a recognized party cannot receive a preliminary list of electors for an electoral district until their candidate's nomination has been officially accepted by the local returning officer. Further, those political parties that choose to centrally manage campaigns must work with 49 separate lists of electors that have been picked up locally by a candidate's agent, who then must ship them to a central point from around the Province. This is a cumbersome process and makes personal information vulnerable to loss.

It is therefore recommended that, at the start of the election period, the Chief Electoral Officer be authorized to send the preliminary list of electors for each electoral district to the headquarters of each registered political party on request, notwithstanding there may not yet be an officially nominated candidate in each electoral district. This is similar to the process to supply an annual extract from the register of electors to members of the Legislative Assembly. On request, the Chief Electoral Officer should also be authorized to send the revised lists of electors to the headquarters of each registered political parties before advance and ordinary polling days.

As this service would only be on the request of the registered political parties, those parties that continue to use decentralized campaigns could continue to obtain information from the local returning officers, as is the case now.



Recommendation 17: Authorize the Chief Electoral Officer to provide copies of the preliminary and revised lists of electors to registered political parties during the election period.

- a. Amend section 20 of the *Elections Act* to authorize the Chief Electoral Officer, when the preliminary lists of electors have been created, to send them to the headquarters of each registered political party on request, notwithstanding that there may not yet be an officially nominated candidate in each electoral district.
- b. Amend section 41 of the *Elections Act* to authorize the Chief Electoral Officer, on request, to send the revised lists of electors to the headquarters of each registered political party when those lists are required to be provided to a candidate during an election.

v. *Provision of a list of electors following the close of polls on Election Day*

As referred to above, subsection 20(3) of the *Elections Act* requires a returning officer to provide a copy of the list of electors to each recognized party which has an officially nominated candidate in the electoral district and to each independent candidate who has been officially nominated in the electoral district. Further, section 41 of the *Elections Act* requires a returning officer to provide a copy of the revised list of electors to each party and candidate who was provided with a copy of the preliminary lists of electors prior to the advance and ordinary polls.

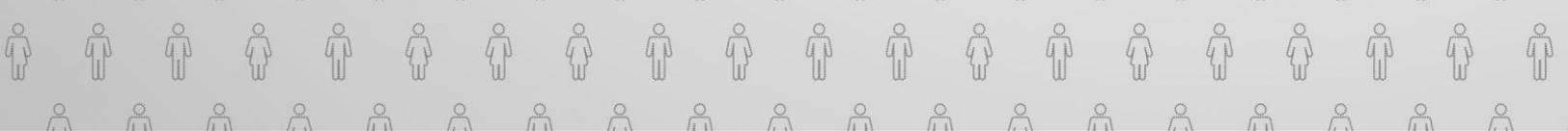
Subsection 42(2) of the *Elections Act* provides as follows:

42(2) A political party or a candidate who has been furnished with copies of the preliminary and official lists of electors may use the lists for communicating with electors during the election period, including communications for the purpose of soliciting contributions and recruiting party members, but for no other purpose.

Section 42.1 requires the Chief Electoral Officer to complete all revisions after Election Day, and to prepare a final list of electors of all electors whose names have been included in or added to the official list of electors by the close of polls on ordinary polling day. The final list is provided to the elected member in respect of his or her electoral district and, on request, one copy of the list is provided to each registered political party.

Elections New Brunswick often receives requests from candidates following the election asking for the list of electors, particularly with information as to who voted. This information is relevant during the electoral period, and is readily available to scrutineers in the polling stations while they are open, but has no relevance after the polls close. Although there is no authority to provide lists of electors with this information after ordinary polling day, it would be beneficial to Elections New Brunswick if it were clearly stated that this was not permissible.

In comparison, the provision of a list of electors to candidates in municipal elections after Election Day is prohibited under subsection 12.1(3) of the *Municipal Elections Act*.



Recommendation 18: Clarify the distribution of lists of electors after ordinary polling day.

Amend the *Elections Act* to provide that preliminary lists of electors prepared under section 20 and revised lists of electors prepared under section 36 are intended to be used only during the election period and will not be provided to a political party or candidate after the close of the polls on ordinary polling day.

vi. Access to multiple dwelling sites

While full enumerations are no longer used to maintain the register of electors, returning officers may still conduct targeted revisions of new subdivisions or areas with significant changes in population. In many cases, there is difficulty in accessing secure buildings, whether they are apartment buildings under the control of a landlord or condominiums with a home-owner association.

There is no provision in the *Elections Act* concerning access to these types of buildings; however, in the *Residential Tenancies Act*, section 17 provides as follows:

17 A landlord, his servants or agents, shall not unreasonably restrict access to the premises by candidates, or their authorized representatives, for election to the House of Commons, the Legislative Assembly or any office in a municipal or rural community government for the purpose of canvassing or distributing election material.

This provision allows campaign teams to access buildings; however, there is no provision for an election officer, performing targeted revision on behalf of Elections New Brunswick, to be able to gain access to a secure building.

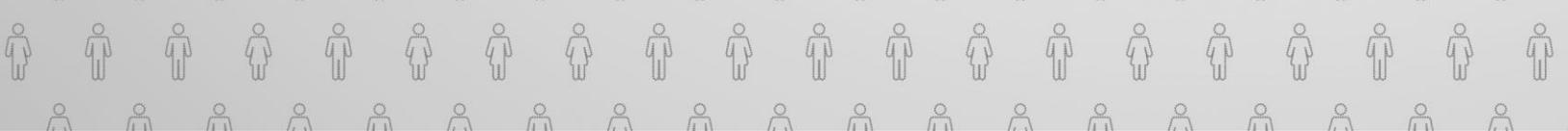
Recommendation 19: Require election officers to be granted entry to multiple-dwelling sites for the purposes of updating the register of electors.

Amend the *Elections Act*, in a manner similar to section 29 of Alberta's *Election Act*, as follows:

- i. Define a "multiple-dwelling site" as an apartment building, condominium building or other multiple residence building, or any site in which more than one residence is contained, including a mobile home park, gated community and any similar site;
- ii. On producing identification prescribed by the Chief Electoral Officer, a person in control of a multiple-dwelling site shall permit an election officer to access a multiple-dwelling site between 9:00 a.m. and 9:00 p.m. for the purpose of updating the register of electors; and
- iii. A person to whom an election officer has produced identification shall not obstruct or interfere with, cause or permit the obstruction or interference with, the free access of an election officer to the residential units in a multiple-dwelling site.

vii. Registering future electors

Elections New Brunswick is continuously seeking ways to reduce barriers to participation in the democratic process for all electors. One method of doing so is ensuring eligible electors are included in the register of electors. Registering eligible electors who have recently turned 18 years of age can often be challenging. Whether they enroll in a post-secondary institution or join the workforce after



graduating high school, many of these young citizens are difficult for us to identify and contact until the first time they decide to vote and register during an election. Elections New Brunswick believes that reaching these young “future voters” while they are still high school students would facilitate their inclusion in the register of electors, making it possible for us to provide them with timely information related to an election.

Jurisdictions across the country have approached the pre-registration of future electors in a number of ways. For example, in Ontario, the Chief Electoral Officer maintains a “provisional register” of 16 and 17 year-old Canadian citizens who reside in Ontario. These individuals must request to be added to the provisional register; however, once on the register, they are automatically moved to Ontario’s permanent register of electors.¹¹ In Alberta, the Chief Electoral Officer is authorized to maintain a register of electors that includes persons who “will be eligible to be electors”; on the request of Alberta’s Chief Electoral Officer, the Minister of Education and other school administrators are required to provide the Chief Electoral Officer with the personal information necessary to maintain the register with respect to students who are at least 16 years of age.¹² Finally, there is currently a Bill before the federal Parliament to amend the *Canada Elections Act*.¹³ If enacted, the federal Chief Electoral Officer will be required to maintain a “Register of Future Electors”, which will include information on Canadian citizens who wish to pre-register who are 14 years of age or older but under 18 years of age.

Like the Alberta *Election Act*, section 20.2 of New Brunswick’s *Elections Act* contemplates that the register of electors will include information on persons the Chief Electoral Officer, “has reason to believe ... will be qualified electors on satisfying age or residency requirements”. However, paragraph 20.6(1)(c) of the Act provides two limits on the effectiveness of this provision. Firstly, the Department of Education and Early Childhood Development and its school districts are not authorized to provide information to the Chief Electoral Officer for the purpose of identifying persons who may become eligible to be electors. With respect to young people who are 16 and 17 years of age, these are the best sources of information on future electors. Also, paragraph 20.6(1)(c) limits Elections New Brunswick to identifying individuals for inclusion in the register of electors who will become eligible electors within six months.

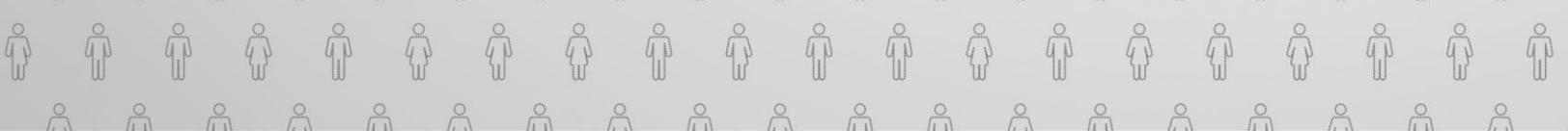
With a “register of future electors”, the pre-registration of young New Brunswickers could be achieved in a number of ways. For example, an annual process could be undertaken in the various high schools across the Province to complete requests for addition to the register of future electors. This would likely have a significant impact on the Department of Education and Early Childhood Development’s operations and curriculum delivery, and would require significant time and resources to complete.

Alternatively, a secure, on-line registration tool could be developed for future electors to submit their information, including certifying they meet the eligibility requirements. Matching would occur with existing driver’s license data to ensure the persons were residents of New Brunswick prior to being

¹¹ *Election Act*, R.S.O. 1990, c.E.6, s.17.7.

¹² *Election Act*, R.S.A. 2000, c.E-1, ss.13, 13.1(6)

¹³ Bill C-76, *An Act to amend the Canada Elections Act and other Acts and to make certain consequential amendments*, 1st Sess., 42nd Parl., 2018.



added to the register of future electors. We anticipate that making the service available on-line would appeal to younger future electors who are more likely to access services via the internet. In addition, as a result of people using the on-line registration well in advance of an election, Elections New Brunswick could consider communicating with electors electronically with respect to voting information.

Recommendation 20: Require the Chief Electoral Officer to maintain a register of future electors and authorize him to receive information to maintain that database from the Department of Education and Early Childhood Development with respect to 16 and 17 year-old students.

- a. Amend the *Elections Act* to require the Chief Electoral Officer to maintain a register of future electors, similar to that under the Ontario *Elections Act*. The register of future electors would include 16 and 17 year-old residents of New Brunswick who are Canadian citizens. On reaching 18 years of age, those individuals on the register of future electors would automatically be moved to the register of electors. In all other respects, the register of future electors would be treated the same under the *Elections Act* as the register of electors.
- b. Amend Schedule C of the *Elections Act* to include the Department of Education and Early Childhood Development and school districts established under the *Education Act* in the list of provincial departments and agencies from which the Chief Electoral Officer may receive information to update and maintain the register of future electors. With respect to students who are at least 16 years of age, authorize the Chief Electoral Officer to receive from the department and school districts the following information: name, address, sex, date of birth, citizenship and other related information.

C. Residency

Under the *Elections Act*, being ordinarily resident in the Province is one of the qualifications that must be met in order to vote in a provincial election. Where one is ordinarily resident in the Province also determines in which electoral district you will be eligible to vote. Sections 44 through 46 of the *Elections Act* establishes rules for determining a person's ordinary residence, including rules for individuals in exceptional circumstances such as students, inmates and residents of long-term care facilities.

i. Ordinary residence of electors

As indicated above, one must be ordinarily resident in the Province for 40 days to be qualified to vote in a provincial election, and, under subsection 43(1) of the *Elections Act*, the electoral district in which one is ordinarily resident determines where one votes.

With regard to the electoral district in which one is qualified to vote, subsection 43(1) of the *Elections Act* provides as follows:

43(1) Except as hereinafter provided every person is qualified to vote and entitled to have his name placed on the list of electors for the polling division in which he ordinarily resides at the time of the preparation and revision of the list of electors therefor, if he ...

(d) subject to section 45, will be ordinarily resident in that electoral district on the date of the election.

This provision poses a number of practical problems that should be addressed.

Firstly, for more than 20 years, the lists of electors have been generated from the register of electors rather than being based on a door-to-door enumeration. As such, there is no way to know when a list is generated from the voter information database if an individual in the register will be ordinarily resident in an electoral district on the date of the election. The Act should reflect that the reality that the determination as to which list of electors an elector is on is determined when the list is generated.

Secondly, it is not unusual for an elector to move during an election period, often from one electoral district to another. If such an elector chooses to vote at one of the many voting opportunities provided before election day, paragraph 43(1)(d) can lead to a number of problems. These problems arise out of the requirement that one is qualified to vote in the electoral district where one resides **on Election Day**.

Examples of problematic scenarios include the following:

- i. an elector presents to vote at an early voting opportunity (e.g. by special ballot at the returning office) in the electoral district where the elector resides and does not know that he or she will be residing elsewhere come Election Day; or
- ii. an elector presents to vote at an early voting opportunity (e.g. at an advance poll) in the electoral district where the elector currently resides; the elector knows he or she will be moving before Election Day, but is on the list of electors for that polling station and does not mention his or her intention to reside elsewhere on Election Day.

In both of these cases, in accordance with subsection 43(1), the elector was not qualified to vote in the electoral district in which the elector voted; however, this would only have become the case AFTER the individual voted and, in all likelihood, without any ill intentions when he or she voted. It is our opinion that this is not an acceptable result.

By contrast, in Nova Scotia, for example, the corresponding provision in the Nova Scotia *Elections Act*¹⁴ is written more broadly such that it does not specify that an elector must reside in an electoral district on Election Day:

38(1) Subject to Section 39, a person may vote in an election if the person ...

(d) resides in the electoral district in which the election is being held.

In this case, the only concern is, “Where does the elector reside when he or she votes?” It is our opinion that this should be the case in New Brunswick as well.

¹⁴ S.N.S. 2011, c. 5 at s.38.

Recommendation 21: An elector be entitled to have his or her name on the list of electors for the polling division in which the elector ordinarily resides when the list is prepared.

Amend section 43 of the *Elections Act* so that an elector is entitled to have his or her name on the list of electors for the polling division in which the elector ordinarily resides when the list is prepared, without regard for where the elector will be ordinarily resident on Election Day. This would require separating subsection 43(1) into two provisions – one addressing who is qualified to vote and a second addressing entitlement to be added to a list of electors.

Recommendation 22: An elector be qualified to vote in an electoral district if the elector ordinarily resides in the electoral district in which the election is being held.

Amend paragraph 43(1)(d) of the *Elections Act* so that an elector is qualified to vote in an electoral district if the elector ordinarily resides in the electoral district in which the election is being held.

ii. Ordinary residence of incarcerated electors

Under the *Elections Act*, no rules exist as to the location of the ordinary residence of prisoners who are eligible to vote in an election.

In April 2003, the *Elections Act* was amended to remove the prohibition on voting by prisoners and persons found mentally incompetent. Such prohibitions at the federal level had been found to be unconstitutional and the provincial provisions were considered to be equally invalid. However, detailed procedures for prisoner voting were not included in the amendments.

In order to administer provincial elections since that time, the Chief Electoral Officer has issued guidelines defining “ordinary residence” for inmates. These guidelines follow those outlined in subsection 251(2) of the *Canada Elections Act*; however, they have never been included in the *Elections Act*.

Recommendation 23: Define “ordinary residence” for incarcerated electors.

Amend the *Elections Act* to permit the place of ordinary residence of an incarcerated elector to be the first of the following places for which the elector knows the civic and mailing addresses:

- i. his or her residence before being incarcerated;
- ii. the residence of the spouse, the common-law partner, a relative or a dependant of the elector, a relative of his or her spouse or common-law partner, or a person with whom the elector would live but for his or her incarceration;
- iii. the place of his or her arrest; or
- iv. the last court where the elector was convicted and sentenced.

iii. Not an ordinary residence

Section 46 of the *Elections Act* prescribes specific circumstances in which a person shall not be deemed to be ordinarily resident in the Province or an electoral district:

46(1) No person shall, for the purpose of this Act, be deemed to be ordinarily resident in the Province, if occupying quarters or premises that are generally occupied

by him only during some or all of the months of May to October, inclusive, and generally remain unoccupied during some or all of the months of November to April, inclusive, unless

- (a) he is occupying such quarters in the course of and in the pursuit of his ordinary gainful occupation, or
- (b) he has no quarters in any other electoral district to which he might at will remove.

46(2) A person shall not be deemed to have gained a residence in the Province, or in an electoral district, if he has come into the Province for temporary purposes only, without the intention of making the Province, and some place in the electoral district, his home.

Paragraph 46(1)(b) clarifies that “snowbirds” who occupy their ordinary residence in New Brunswick only during certain months are not captured by the rule set out in subsection 46(1). However, it is unclear what purpose is served by paragraph 46(1)(a) that is not already covered by the general rules on ordinary residence, including the “temporary purpose” rule set out in subsection 46(2). It is therefore recommended that paragraph 46(1)(a) be repealed to bring greater clarity to the rules regarding ordinary residence.

Recommendation 24: Clarify the rules regarding when a person is not deemed an ordinary resident of the Province or an electoral district.

Repeal paragraph 46(1)(a) of the *Elections Act*.

D. Candidates and nomination papers

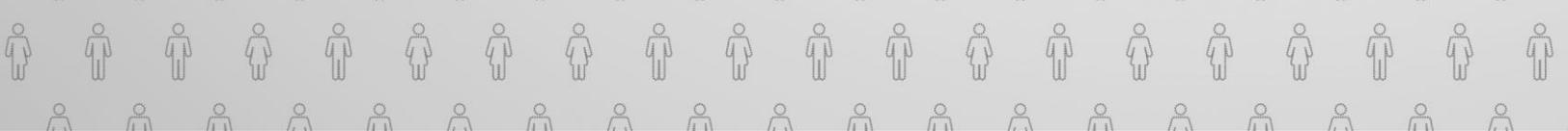
i. Deadline for nominations

Section 13 of the *Elections Act* prescribes the requirements for an Order in Council that commences an election. Paragraph 13(2)(c) prescribes the date and time for the close of nominations of candidates:

13(2) An Order in Council under subsection (1) shall do the following: ...

- (c) fix the date and time for the close of nominations of candidates, which shall be as follows:
 - (i) for a scheduled general election, 2 p.m. on the twentieth day before ordinary polling day; and
 - (ii) for all other elections, 2 p.m. on the seventeenth day before ordinary polling day;

Over the last ten to fifteen years, the technology involved in elections has evolved significantly. Closing nominations for candidates on the seventeenth or even twentieth day before ordinary polling for a general election does not allow sufficient time to program and test tabulation machines and to print



ballot papers for all 49 electoral districts before the first day of advance polling. Under the current legislated timelines, in the case of a scheduled general election, ballots arrive only two days before the advanced polling day. If any problems were to occur with the printing and delivery of ballots or the testing of tabulation machines, there is no contingency time built into the schedule to deal with such situations. It is therefore proposed that the close of nominations for all general elections be the twenty-fourth day before ordinary polling day; the close of nominations for all other elections (i.e.: by-elections) should remain on the seventeenth day before ordinary polling day as the same timing challenges are not present when an election is being conducted in a single electoral district.

Recommendation 25: Change deadline for close of nominations for a general election.

Amend subparagraph 13(2)(c)(i) of the *Elections Act* to require that the date and time fixed for the close of nominations of candidates for any general election be 2 p.m. on the twenty-fourth day before ordinary polling day.

ii. Residency of candidate

Under subsection 45(3) of the *Elections Act*, a candidate, and a spouse or dependant of the candidate who lives with the candidate and who is qualified as an elector, are entitled to have their names entered on the lists of electors for and vote at one of the following four places:

- where the candidate is ordinarily resident;
- where the candidate is temporarily resident during an election if it is in the electoral district where he or she is a candidate;
- where the returning office is located for the electoral district in which he or she is a candidate; or
- if the candidate was a sitting member of the Legislative Assembly when it was dissolved, where the former member resided while carrying out his or her duties as a member.

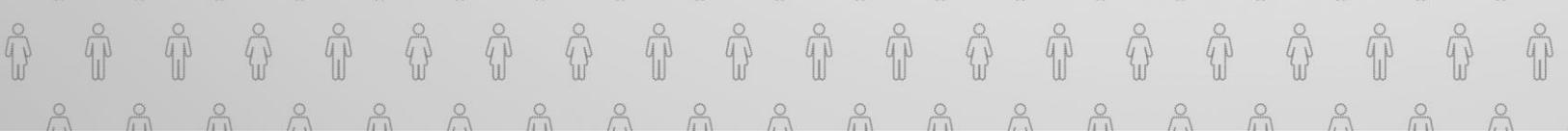
This provision allows a person who is a candidate in an electoral district other than the one in which the person is ordinarily resident to vote for him or herself.

When previously considered, it was the consensus of all parties represented on the Advisory Committee on the Electoral Process that this exception should be limited to the candidate.

Also, if more than one electoral district is to be administered from one returning office, consideration must be given to providing for the situation in which candidates run for election in an electoral district other than where they are ordinarily resident. If there is no returning office in the electoral district where the candidate is running for election, it is recommended that the candidate's name be entered on the list of electors at the address of a government building in the electoral district.

Recommendation 26: Allow only a candidate to have the option to be placed on the list of electors for an electoral district other than where he or she is ordinarily resident.

Amend subsection 45(3) of the *Elections Act* to allow only a candidate to be placed on the list of electors for and to vote in an electoral district other than the one where he or she is ordinarily resident as set out in that subsection. Also provide that if there is no returning office located in



the electoral district in which he or she is a candidate, allow the candidate's name to be added to the list of electors for any place where a federal, provincial or municipal building is located in the electoral district in which he or she is a candidate.

iii. Candidate - one political party, one electoral district

It would seem logical that a person may offer to run as a candidate in only one electoral district and for only one party in a given election. Most jurisdictions have restrictions to prevent candidates from offering more than once in the same election. However, the *Elections Act* does not include any such express restriction.

Canada and Newfoundland and Labrador restrict parties to endorsing only one candidate per district. Prince Edward Island, Quebec, Ontario, Manitoba, Alberta, British Columbia, Nunavut, Northwest Territories, and Yukon each restrict candidates to running in only one district.

Clear legislation in this regard would prevent any confusion or ambiguity at nomination time during an election.

Recommendation 27: Expressly limit a candidate to being a candidate in only one electoral district and for only one registered political party

Amend the provisions of the *Elections Act* dealing with the qualifications of candidates so that in any one election period:

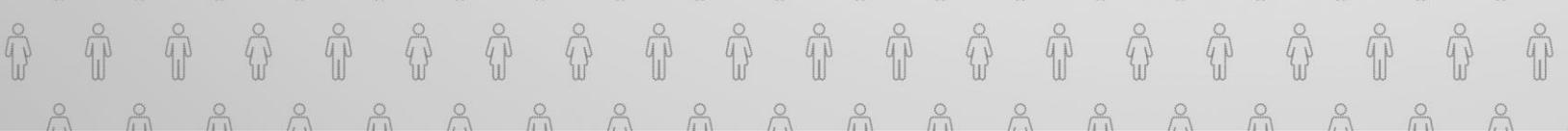
- a person may be an official candidate of only one registered political party, and may not also run as an independent candidate in the same election period;
- a registered political party may only have one official candidate in each electoral district; and
- a person is not entitled to be nominated as a candidate for more than one electoral district.

iv. Returning officer responsibilities

Section 51 of the *Elections Act* details the procedure to follow for the nomination of a candidate. It requires that at least 25 duly qualified electors from the electoral district nominate a candidate for that electoral district.

Subsection 51(5) simply requires that the returning officer accept the affidavit of the witness that obtained the 25 nominator signatures as proof that the persons who signed as nominators are duly qualified electors of the electoral district. The legislation assumes that the witness has the knowledge and training to understand, identify, and swear that electors are eligible to vote in the riding. However, experience has shown that this is not always the case.

For example, in the Kent by-election of April 15, 2013, one candidate's nomination papers contained numerous nominators' names whose address did not fall within the electoral district. The nomination paper was filed nearly at the deadline, and there was no opportunity to obtain new nominator signatures. The candidate subsequently withdrew from the election.



The returning officer, who has an intimate knowledge of the electoral district boundaries, and access to the Register of Electors, should be responsible for examining and providing a ruling on the qualification of the nominators as duly qualified electors of that electoral district. It is important to note that nominators need only be eligible to vote in that electoral district, but not necessarily be listed on the Register of Electors. Detailed instructions provided to returning officers provide procedures on how to verify each candidate's nomination papers.

Similar procedures already exist under the *Municipal Elections Act*¹⁵ for municipal returning officers, and the concepts present in those provisions should be available for provincial elections as well.

Recommendation 28: Clearly enumerate the responsibilities of a returning officer when accepting a candidate's nomination paper

Amend section 51 of the *Elections Act* to provide that:

- i. a returning officer shall review a candidate's nomination paper in accordance with the Chief Electoral Officer's instructions to ensure that it is complete;
- ii. a returning officer shall only accept the nomination paper of a candidate on being satisfied that at least 25 of the nominators are entitled to vote in the electoral district; and
- iii. the nomination of a candidate is not be voided by reason that, after the returning officer was satisfied that at least 25 of the nominators were entitled to vote in the electoral district, it is determined that less than 25 were so entitled.

v. Candidate nominators

Under section 51 of the *Elections Act*, any 25 or more electors qualified to vote in an electoral district may nominate a candidate for that electoral district. Section 51 does not expressly state that a candidate may not be his or her own nominator. However, the language of the section and the supporting forms – including the requirement for the signed consent of the candidate to his or her nomination¹⁶ – clearly contemplate that a nominator should be a person other than the candidate. This is supported by the recognition by the courts and others, such as the *Lortie Commission*,¹⁷ that the purpose for requiring prospective candidates to present nominators rather than allowing for self-nomination is to demonstrate public support for an individual's candidacy.¹⁸

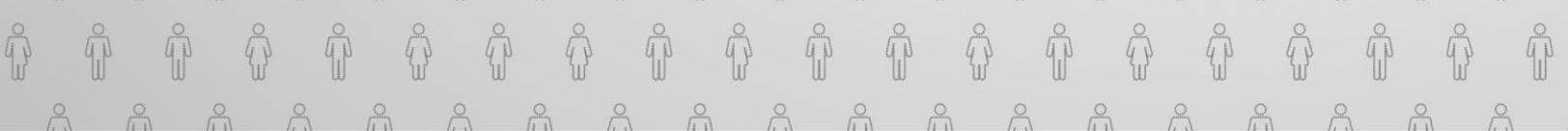
Elections New Brunswick therefore recommends that it be clarified that a candidate may not sign his or her nomination paper as a nominator in order to provide clear, unambiguous directions to prospective candidates and to returning officers responsible for accepting nominations papers.

¹⁵ See *Municipal Elections Act*, S.N.B. 1979, c.M-21.01, s.17.

¹⁶ *Supra* note 1 at para. 51(5)(c).

¹⁷ Canada, Royal Commission on Electoral Reform and Party Financing, *Final Report: Reforming Electoral Democracy*, vols. 1, 2 (Ottawa: Minister of Supply and Services, 1991).

¹⁸ *Szuchewycz v Canada (Attorney General)*, 2017 ABQB 645 (CanLII).



Recommendation 29: Clarify that a candidate may not be a nominator of his or her own candidacy

Amend section 51 of the *Elections Act* to expressly prohibit a candidate from being one of the eligible electors who signs his or her nomination paper.

vi. Deposit requirement

Subsection 51(5) of the *Elections Act* requires a prospective candidate, when filing his or her nomination paper with a returning officer, to include a \$100 deposit. A returning officer is prohibited from acting on any nomination paper unless it is accompanied by the prescribed deposit. When a candidate submits a statement of election expenses as required under section 81 of the *Political Process Financing Act*, the \$100 deposit is returned to the candidate.

This deposit was first introduced and set at \$100 in **1916**. Given that **102 years** have passed, it is difficult to know if the original purpose of the deposit was to ensure that candidates were serious when submitting their nomination papers or to create barriers to becoming a candidate for certain groups within New Brunswick society. In 2018, the \$100 deposit is inadequate to deter frivolous candidates and serves no other practical or legitimate purpose. However, receiving and refunding the \$100 deposit is a significant administrative burden for Elections New Brunswick.

In jurisdictions where the deposit requirement for candidates is more significant, it has been challenged and found to be in breach of section 3 of the *Canadian Charter of Rights and Freedoms*.¹⁹ In *Figuroa v Canada (Attorney General)*²⁰ Molloy J. said the following at para. 16 with respect to the \$1,000 deposit requirement under the *Canada Elections Act*:

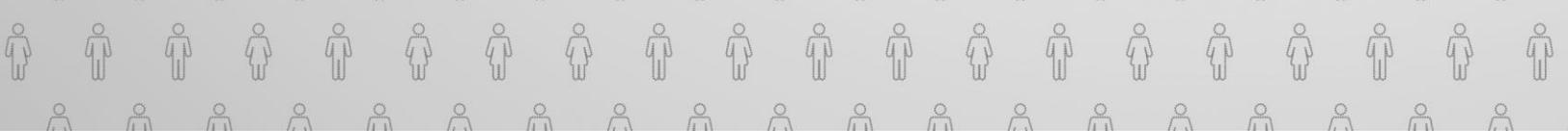
Quite simply, a right is limited if one must pay \$1000.00 before one can exercise it.... It is clear that \$1000.00 is not a trifling sum of money. Indeed, the possibility of losing \$500.00 was specifically intended by Parliament to act as a deterrent to those candidates who might otherwise be inclined to neglect their reporting responsibilities under the Act. For purposes of the analysis under s. 3, it is not necessary for me to inquire beyond that. The requirement of paying \$1000.00 is a disadvantage and therefore a limitation on the s. 3 right. I therefore find that this provision of the Act violates s. 3 of the *Charter*.

She concluded as follows at para. 43:

If there is a legitimate need to limit participation in the electoral process only to serious candidates who have a measure of public support, alternative means are available which do not impose financial obstacles to discourage candidacy. One obvious example is the recommendation by the Lortie Commission that the nomination by residents in the constituency be the measure of public support. Lortie proposed that “only those who do not meet their obligations under the Act should be

¹⁹ *Figuroa v Canada (Attorney General)* (1999), 43 OR (3d) 728; *de Jong v Attorney General of Ontario* (2007), 88 OR (3d) 335; *Szuchewycz v Canada (Attorney General)*, *supra* note 18.

²⁰ *Ibid.*



penalized” and that “the deposit is not to deter frivolous candidates; this objective is achieved by requiring public endorsement for a nomination”.

Therefore, Elections New Brunswick recommends that the requirement to deposit \$100 with a candidate’s nomination paper be removed.

Recommendation 30: Remove the requirement for a deposit of \$100 to accompany a candidate’s nomination paper.

Amend section 51 of the *Elections Act* to remove the nomination deposit requirement by:

- i. amending subsection (5) to remove the requirement to deposit \$100 with a candidate’s nomination paper;
- ii. repealing subsections 51(6) to (9); and
- iii. adding a provision to section 51, similar to subsection 17(2.1) of the *Municipal Elections Act*, which requires a returning officer to provide a person filing a nomination paper with written confirmation of receipt of the nomination paper, which shall be proof, in the absence of evidence to the contrary, that the candidate has been duly and regularly nominated.

vii. Candidate’s agent

At present, subsection 51(4) of the *Elections Act* presumes that an agent named by the candidate on his or her nomination paper manages both the use of the list of electors and scrutineers locally in an electoral district:

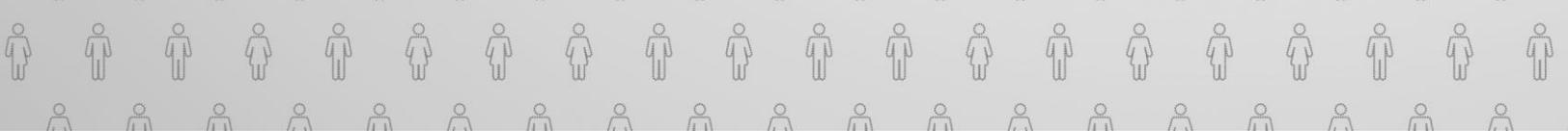
51(4) The nomination paper of a candidate shall designate the name of an agent to whom copies of the lists of electors are to be provided under subsection 20(3) and who may appoint a scrutineer to act at the polls under section 72.

In past general elections, some political parties have managed the lists of electors for all 49 electoral districts centrally. In those cases, the person responsible has to obtain the individual lists from the candidate’s agent in each electoral district, and merge them centrally. A candidate’s agent may authorize another person to use the information with which they have been provided, but the process is cumbersome, and prone to error or potential data loss. In addition, a candidate may wish to have different individuals responsible for the list of electors and for managing scrutineers.

It is recommended that a candidate be permitted, but not required, to name two different people as agents, instead of one per electoral district. It should be noted that these agents are different from the “official agent” that a candidate is required to appoint under section 69 of the *Political Process Financing Act* and who is responsible for authorizing election expenses of the candidate.

Recommendation 31: Permit candidates to appoint different persons as their agent for obtaining copies of the list of electors and for appointing scrutineers.

Amend subsection 51(4) of the *Elections Act* to allow a candidate’s nomination paper to name an agent to whom copies of the lists of electors are to be provided under subsection 20(3) of the



Act, and a different agent who may appoint a scrutineer to act at the polls under section 72 of the Act.

viii. Independent candidates

Section 136 of the *Elections Act* authorizes the Chief Electoral Officer to register independent candidates. A registered independent candidate is required to appoint both an official representative and an official agent. The candidate's official agent is responsible for submitting the candidate's statement of election expenses, and the candidate's official representative is responsible for submitting an annual financial return similar to the annual financial return that is filed by the official representative of a registered political party. Both the *Political Process Financing Act* and *Elections New Brunswick's Provincial Political Financing Manual* provide that a registered independent candidate may be required to file annual financial returns in years following an election:

If transactions are still occurring in the subsequent calendar year or years, then one or more additional annual financial returns would be required until the candidate's registration is cancelled.²¹

Although section 141 of the *Elections Act* authorizes the Chief Electoral Officer to cancel the registration of a registered independent candidate who fails to file an annual financial return under the *Political Process Financing Act*, there is no mechanism for the Chief Electoral Officer to cancel the registration simply because the election is complete and all post-election requirements have been completed by the candidate. Subsection 139(4) of the *Elections Act* authorizes the Chief Electoral Officer to cancel the registration of an independent candidate on written application of the candidate; however, most registered independent candidates fail to make such an application. The result being that registered independent candidates stay on the registry indefinitely, which must be cleaned-up by Elections New Brunswick staff in preparation for the next election.

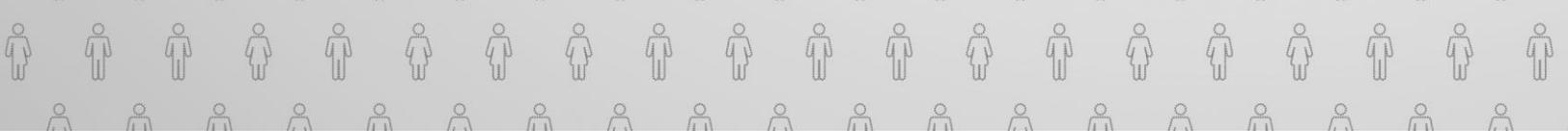
A mechanism should be in place that authorizes the Chief Electoral Officer to cancel the registration of an independent candidate unless the candidate confirms that he or she wishes to continue to be a registered independent candidate. Such a candidate would then clearly be subject to the requirement to file an annual financial return under section 62 of the *Political Process Financing Act* until the candidate applies for cancellation of his or her registration under subsection 139(4) of the *Elections Act*.

Recommendation 32: Authorize the Chief Electoral Officer to initiate cancellation of the registration of an independent candidate.

Amend the *Elections Act* to authorize the Chief Electoral Officer to cancel the registration of a registered independent candidate if the following conditions have been met:

- i. the official representative of the registered independent candidate has filed a financial return for the preceding calendar year in accordance with section 62 of the *Political Process Financing Act*;

²¹ Elections New Brunswick, *Provincial Political Financing Manual* (Fredericton: Elections New Brunswick, May 2018) at 132.

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- ii. the official agent of the registered independent candidate has filed a statement of election expenses in accordance with subsection 81(1) of the *Political Process Financing Act*;
 - iii. the Chief Electoral Officer has provided the registered independent candidate with 30 days' notice in writing of the proposed cancellation; and
 - iv. the registered independent candidate has not indicated that he or she wishes to continue as a registered independent candidate.

ix. Presence at polling stations

Section 72 of the *Elections Act* authorizes certain individuals to be present at polling stations on advance and ordinary polling days. Included in this list are candidates and their scrutineers. The Act sets out certain duties that a scrutineer is entitled to perform. For example, before a poll opens, a scrutineer may inspect the ballot box, ballot papers and other forms and documents;²² while the polls are open, a scrutineer may require a person applying to vote to take an oath if the scrutineer has reason to believe the person is not qualified to vote.²³ However, the Act does not touch on behaviour of scrutineers and candidates that is not acceptable within a polling station.

The Chief Electoral Officer has issued a document entitled *Information for Scrutineers/Candidate Representatives* which is available on the Elections New Brunswick website. This document sets out acceptable and unacceptable scrutineer behaviour at page 4:

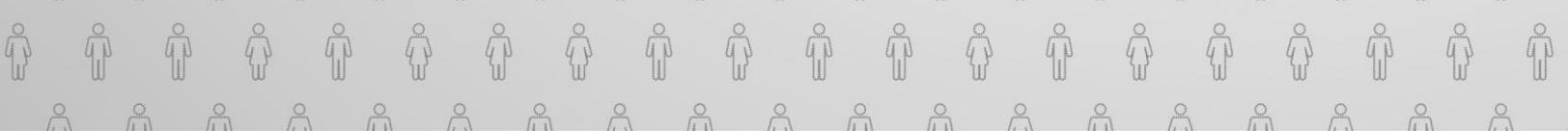
As a scrutineer at a polling station, you:

- may not wear any clothing showing logos or messages indicating any party or candidate affiliation;
- may not wear or carry anything to indicate any party or candidate affiliation (i.e., no pins or badges);
- may not enter into discussions with voters in the polling area, either before or after they have voted;
- may not do anything that would impede the voting process;
- may not use a telephone, cellular telephone, or other telecommunications device in the room where the poll is held.

All but the third bullet above reflect prohibitions in the *Elections Act* that apply generally to anyone who is present in a polling station. Elections New Brunswick encounters other behaviour at polling stations that is unacceptable and undermines its non-partisan role, such as candidates or scrutineers providing gifts of refreshments to poll officials. In order to ensure such behaviour does not occur and to provide poll supervisors with sufficient authority to manage such behaviour, it is recommended that provisions setting out clear rules regarding the activities of candidates and scrutineers at polling stations be included in the *Elections Act*.

²² *Supra* note 1 at s. 74(1).

²³ *Supra* note 1 at s. 75.01(4).



The conduct of scrutineers is dealt with in a number of ways in other Canadian jurisdictions. For example, in Alberta, the Chief Electoral Officer is required to establish a code of conduct for scrutineers, and a scrutineer who does not comply with the code may be removed from a polling station. Whereas, in British Columbia, the legislation does not touch on the conduct of scrutineers at the polls. The *Canada Elections Act* addresses specific activities that are authorized and prohibits conduct that delays or impedes an elector casting a ballot. In Manitoba, the Act is much the same as New Brunswick's is now – it prescribes specific powers of a scrutineer. Other jurisdictions fall along this continuum.

Recommendation 33: Establish rules regarding prohibited activities of candidates and scrutineers at polling stations on advance and ordinary polling days.

Amend section 72 of the *Elections Act* to prohibit candidates and scrutineers present at a polling station on an advance or ordinary polling day from doing any of the following:

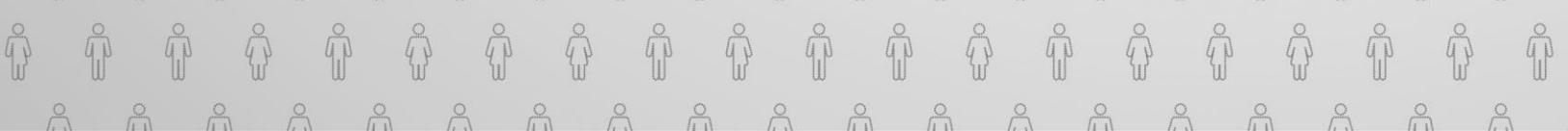
- i. entering into discussion with voters in the polling station, either before or after they have voted, except as necessary to fulfill a duty prescribed by the Act;
- ii. providing meals, refreshments or other gifts to a poll official.

E. By-elections

There is a widely-held belief that the ordinary polling day of a by-election must be scheduled to occur within a six-month period following a member's resignation; however, this is not the case. Although subsection 15(1) of the *Elections Act* has been amended over the years, the relevant phrase has remained constant since 1967 and requires the Lieutenant-Governor in Council to direct the issue of a writ of election for a by-election within six months after the date on which the vacancy was certified to the Speaker. For example, if a vacancy is certified on January 1, an Order-in-Council could be issued as late as June 30 ordering that a writ of election be issued by the Chief Electoral Officer at some date several months in the future. This could result in the residents of an electoral district being without representation in the Legislative Assembly for a significant period of time.

It is recommended that when a vacancy in the Legislative Assembly is certified to the Speaker of the Legislative Assembly, the Lieutenant-Governor in Council be required to direct the issue of a writ of election to fill the vacancy so that the date fixed for the ordinary polling day is within six months after the date on which the vacancy was certified. It is also recommended that a by-election should not be required to be held during the 12 month period prior to a scheduled general election, although the Lieutenant-Governor in Council should have the option to call a by-election during this period if desired.

Requiring that an election to fill the vacant seat in the Legislative Assembly be held within six months will ensure that the public in that electoral district will not be left without representation for an inordinate period of time and that the legislative requirements accord with the widely held understanding of the provision. Also, a six-month period provides the flexibility to ensure a by-election is not required to be held during a period, such as the Christmas holidays, when the public would not be focused on the event, and Elections New Brunswick would face significant logistical challenges in finding government officials, suppliers and service providers able to complete their work within the legislated deadlines for an election period.



Recommendation 34: Require a by-election to fill a vacancy in the Legislative Assembly held within six months after the vacancy is certified to the Speaker.

Amend section 15 of the *Elections Act* to require that when a vacancy in the Legislative Assembly is certified to the Speaker of the Legislative Assembly or the Clerk of the Legislative Assembly, that the Lieutenant-Governor in Council must direct the issue of a writ of election fixing the date of ordinary polling day as a date that is within six months after the date the vacancy was certified. However, if a vacancy is certified on a date less than one year prior to the date of a scheduled general election, the Lieutenant-Governor in Council should not be required to, but may direct that a by-election be held.

F. Voting

i. Tie votes

As with any other elector, a returning officer is placed on the list of electors for the polling division in which he or she ordinarily resides.²⁴ However, under subsection 43(2) of the *Elections Act*, the returning officer for each electoral district is disqualified from voting unless, “there is an equality of votes in the final addition of votes or on a recount.” In the event of such a tie, under subsection 92.1(3), the returning officer is then required to cast the deciding vote before declaring a candidate elected for the electoral district.

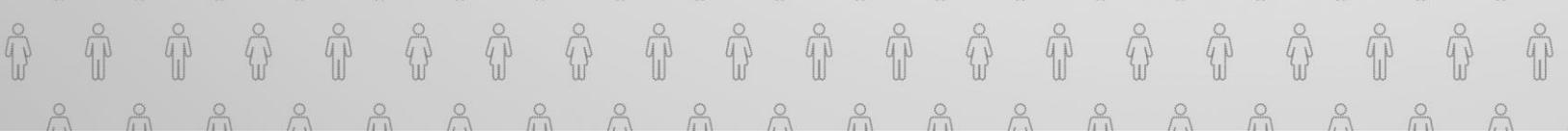
There are obviously a number of problems with this process, not the least of which is that, except in the rare occasion of a tie vote, a returning officer is denied the section 3 Charter guaranteed right to vote. Further, due to the circumstances under which a returning officer is required to cast a vote, the secrecy of the returning officer’s vote is not maintained. Finally, there is the unavoidable perception by many that the political appointment of a returning officer means the returning officer will be beholden to the party who appointed him or her and vote accordingly.

In order to vote and break a tie vote, the returning officer would have to have his or her name on the list of electors for that electoral district. However, since 2010, a returning officer is not required to reside in the electoral district for which he or she has been appointed. In such a case, the returning officer would not be qualified to vote to break the tie vote. Also, as discussed above, we are recommending that a returning officer be permitted to manage more than one electoral district in an election. If this recommendation is adopted, and should a tie result in both districts, the returning officer would be required to vote twice, something expressly prohibited in the *Elections Act*, and in at least one electoral district where he or she was not a qualified elector.

We are recommending that a returning officer’s name be placed on the list of electors where he or she ordinarily resides, and that a returning officer be permitted to vote like any other elector in an election.

In these circumstances, if a tie vote occurred after the official addition, it is recommended that the returning officer would be required to apply to a judge for an automatic recount. If a tie vote remains after a judicial recount, the procedure used for tie votes in the *Municipal Elections Act* should be

²⁴ *Supra* note 1 at s. 43(1).



adopted.²⁵ Following a recount, a judge places the names of the tied candidates in a receptacle and draws one of the names to be the winner of the contest. Conceptually, this is a much fairer method of breaking the tie vote. It does not place such enormous pressure on the vote cast by the returning officer, pressure that effectively removes the secrecy of his or her democratic vote when the tie is broken, and should a returning officer be responsible for more than one electoral district, the tie can still be resolved.

Ties are dealt with in a number of different ways across Canada. In Nova Scotia and Prince Edward Island, if a tie vote remains following a recount, the returning officer draws a name or flips a coin. In Ontario, as in New Brunswick, the returning officer casts the deciding vote.

By contrast, if a tie vote remains following a recount in Canada, Newfoundland and Labrador, Quebec, Manitoba, Saskatchewan, Alberta, British Columbia, Nunavut and Northwest Territories, no winner is declared and a by-election is then called to resolve the tie.

Recommendation 35: Allow returning officers to vote like any other qualified elector and modify the process for breaking a tie in the case of an equality of votes between two or more candidates.

- a. Repeal paragraph 43(2)(b) of the *Elections Act* so that returning officers are no longer disqualified from voting by virtue of their office.
- b. Repeal subsections 92.1(3) and 94.2(10) of the *Elections Act* so that returning officers are no longer required to cast the deciding vote in the event of an equality of votes on the final addition of votes or on a judicial recount.
- c. Amend the *Elections Act* to provide that in the case of an equality of votes after the official addition of votes, a returning officer is required to apply to a judge of The Court of Queen's Bench of New Brunswick for a judicial recount. If, after such a recount, an equality of votes remains, the judge would place the names of the tied candidates in a receptacle and declare elected the candidates whose name is withdrawn.

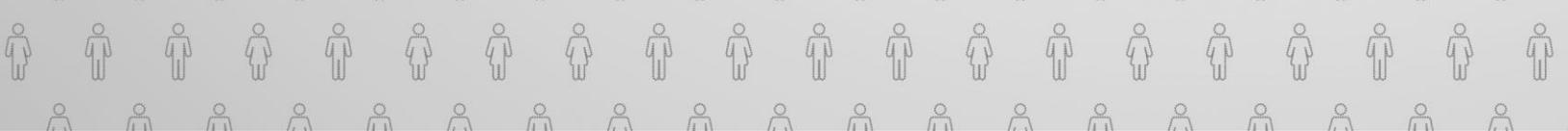
ii. Children in polling stations

Section 72 of the *Elections Act* lists the persons who may be present at a polling station on ordinary polling day or an advance polling day. In addition to specific election officers, polling officials, candidates and scrutineers, only the following persons may be present in a polling station:

- an elector engaged in or waiting to vote;
- a person assisting an elector in accordance with the Act; and
- any other person authorized by the Chief Electoral Officer.

Electors often bring their young children with them when they go to a polling station to vote. There is no specific reference allowing such minor children in the care of an elector to be present in a polling station. However, it would be irresponsible and impossible for election officials to force parents to leave their young children outside a polling station in order to vote, and it is impractical – if not impossible –

²⁵ *Supra* note 15 at s. 42(9).



for the Chief Electoral Officer to provide written authorization for each such incident across the Province.

In addition to addressing the practical problems associated with not expressly permitting electors to bring their minor children with them to a polling station, Elections New Brunswick believes that removing this barrier provides other benefits for voter turnout and democratic education. Firstly, it eliminates a potential barrier to exercising one's democratic right to vote for parents of young children who may not have access to alternative childcare arrangements. Secondly, it helps to foster the importance of voting among children and supports their civics education they receive at school.

In order to promote better education of the electoral process, and to encourage young persons to become registered as an elector when they turn 18, it could be beneficial to allow students to visit a polling station while electors vote. Such visits would need to be authorized by the returning officer, and would be limited to minimize impact on electors voting. The Chief Electoral Officer would provide guidelines to returning officers as to when to provide permission for such visits.

Recommendation 36: Permit minor children of a voter and students and teachers to be present in a polling station on advance and ordinary polling days.

Amend section 72 of the *Elections Act* to permit the following persons to be present at a polling station on an ordinary or advance polling day:

- i. persons in the care of an elector engaged in or waiting to vote; and
- ii. at the discretion of and on such terms and conditions as specified in writing by the returning officer, any person or group of persons for educational purposes.

iii. Additional voting opportunities

Sections 87.51 to 87.64 of the *Elections Act* set out the additional voting opportunities that are provided to New Brunswick electors outside of the traditional voting opportunities on Election Day and advance polling days. In New Brunswick, when an elector avails oneself of an additional voting opportunity, one votes by "special ballot" and one's vote is taken by a pair of special voting officers. Such opportunities include additional polls established at treatment centres²⁶ and individual visits by appointment at residences and acute care units of public hospitals.

Sections 87.61 and 87.62 deal with individual applications by electors to vote by special ballot, and subsections 87.61(3) and 87.62(1) and (2) deal specifically with applications by electors who are unable to attend ordinary or advance polls:

87.61(3) Despite subsection (2), the special voting officers may issue a special ballot paper by personally delivering it to an elector outside an office of the returning officer if they are satisfied that the elector will be unable to attend the ordinary or advance polls due to the illness or incapacity of the elector or due to the illness or incapacity of a person for whose care the elector is primarily responsible.

²⁶ Defined in the *Elections Act* to include nursing homes, special care homes, assisted living facilities, extended care units in public hospitals etc.

87.62(1) If a special ballot paper is issued to an elector in accordance with paragraph 87.61(2)(a) or subsection 87.61(3),

- (a) the elector shall do the following:
 - (i) mark the special ballot paper in favour of the candidate for whom he or she votes in the space provided for this on the special ballot paper;
 - (ii) place a mark on the special ballot paper beside the word “yes” or “no” opposite a question submitted to plebiscite; and
 - (iii) deposit the special ballot paper in the ballot box; and
- (b) the special voting officer shall record in the special ballot poll book that the elector has voted.

87.62(2) If a special ballot paper is issued to an elector under subsection 87.61(3), 2 special voting officers shall be present to take the vote of the elector.

These provisions prescribe a very clear process to be followed when an elector’s vote is taken in person by special voting officers. However, it is not sufficiently flexible to deal with circumstances that might be encountered by special voting officers in these situations. In particular, the prescribed process would be unable to accommodate an elector who is in isolation in the acute care unit of a hospital or of a treatment centre. Further, given the number of potential variants, it would be difficult to provide for every possible scenario.

Subsection 5(5) of the *Elections Act* provides the Chief Electoral Officer with broad authority to “adapt the provisions of this Act to the execution of its intent.” It is our opinion that resorting to this provision in the circumstances described above is not appropriate as it has much broader implications and could lead to innumerable requests for adaptations to the special ballot voting process that could not be reasonably accommodated; however, the Chief Electoral Officer should be authorized to adapt the procedure prescribed by section 87.62 in clearly prescribed circumstances to reasonably accommodate electors.

Recommendation 37: Authorize the Chief Electoral Officer to adapt the special ballot voting procedure to accommodate an elector placed in isolation in a hospital, a treatment centre or a private residence due to illness.

Amend section 87.62 of the *Elections Act* to authorize the Chief Electoral Officer to adapt the procedures prescribed by that section to enable an elector to vote if

- i. the elector has been issued a special ballot paper under subsection 87.61(3), and
- ii. the special voting officers are unable to deliver the ballot to the elector because the elector, due to illness, has been placed in isolation in a hospital, treatment centre or private residence.

G. Judicial Recounts

The procedures for a judge to recount ballots are set out in subsection 94.2(1) of the *Elections Act*:

94.2(1) At the time and place fixed for a recount and in the presence of those people in attendance, the judge

- (a) shall recount all the votes on ballots returned by the appropriate poll officials,
- (b) shall open the sealed envelopes or boxes containing the counted ballots, the rejected ballots and the spoiled ballot papers, and
- (c) shall not open any other envelopes or boxes containing other documents.

“Counted ballots” are those ballots placed in a ballot box by the voter which were validly cast, having only one candidate’s name marked by the voter.

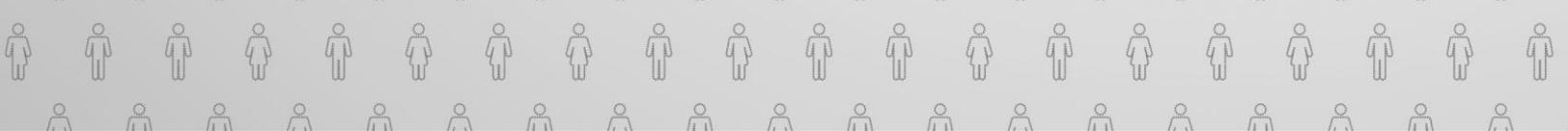
“Rejected ballots” are those ballots placed in a ballot box by the voter which were not validly cast, as they were either unmarked or so improperly marked that they are unable to be counted. For example, they may have no candidate’s name or more than one candidate’s name marked by the voter, or the voter’s mark is not marked in the circle next to a candidate’s name.

“Spoiled ballot papers” are created when a voter makes a mistake when marking his or her ballot and returns it to the ballot issuing officer to obtain a new ballot. The returned ballot is marked as “spoiled”, it is placed in the “spoiled ballots envelope”, and a new ballot is issued to the voter. There is no limit to the number of spoiled ballots that a voter may mark while voting.

Changes to special ballot voting procedures were made in 2010 to allow for the use of tabulation machines at returning offices. When a voter has marked his special ballot and deposited it in a traditional cardboard ballot box (normally though an “additional poll” in a nursing home or at a treatment centre), it must be fed through a tabulation machine at the returning office in order to be counted. This also occurs when the voter has used a “write-in” ballot prior to the close of nominations.

In the case of write-in ballots, and in some cases ballots found in the traditional cardboard ballot boxes, they must have a “replacement ballot” created. Because the tabulation machine cannot understand a handwritten name as a vote, creating a replacement ballot transcribes the voter’s intended vote onto a machine-readable ballot that is then tabulated. Similarly, on some regular ballots, particularly those collected from nursing homes, the voter’s mark may be too light for the tabulation machine to interpret. The process to create a replacement ballot is very specific, with scrutineers from each candidate offered the opportunity to be present, and the original ballot being stored in a “replaced ballots envelope”. The Chief Electoral Officer issued directives concerning the process to be used in these situations. These are available online at <http://www.electionsnb.ca/content/enb/en/resources/directives.html>.

In the case of a judicial recount, the judge may wish to verify that the replacement ballot process has been done properly. Specific authority should to be given for judges to open replaced ballot envelopes on a judicial recount.



Recommendation 38: Permit judges to review “replaced ballots” during a judicial recount.

Amend subsection 94.2(1) of the *Elections Act* to direct a judge performing a judicial recount to open the envelopes or boxes containing replaced ballots, but not the spoiled ballot papers as they serve no purpose in a judicial recount.

H. Advertising

Section 117 of the *Elections Act* sets out various rules regarding prohibited advertising and “electioneering”. These vary from outdated rules regarding the prohibited use of loud speakers and bunting on vehicles on ordinary polling day²⁷ to the prohibited broadcasting of political advertising on television and radio on ordinary polling day and the day immediately preceding it²⁸ to the prohibited placement of political signs within 30 metres of a polling station on an ordinary or advance polling day.²⁹ Some of these rules harken back to electioneering practices that are no longer in use, while others are not reflective of modern political advertising practices, such as the use of social media to spread political messaging, while still others are difficult or impractical to enforce. This section will recommend changes to the provisions dealing the prohibited electioneering, including the complete repeal of some aspects of the provisions.

i. Election advertising on vehicles

Since 1967, the intention of subsection 117(1) of the *Elections Act* is to prevent vehicles that display political advertising from moving about on polling day:

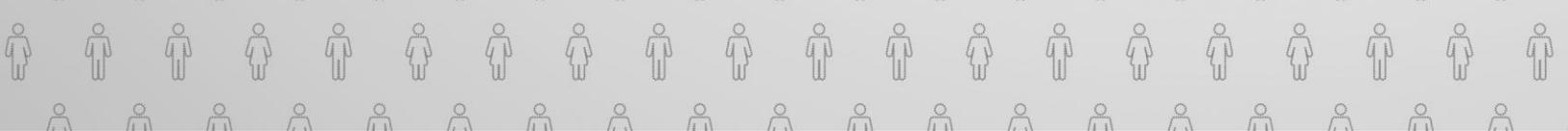
117(1) No person shall furnish or supply any loud speaker, bunting, ensign, banner, standard or set of colours, or any other flag, to any person with intent that it shall be carried, worn or used on automobiles, trucks or other vehicles, as political propaganda, on the ordinary polling day; and no person shall, with any such intent, carry, wear or use, on automobiles, trucks or other vehicles, any such loud speaker, bunting, ensign, banner, standard or set of colours, or any other flag, on the ordinary polling day.

It is not clear from the legislation, however, that having a sign on a stationary, or parked, vehicle *is* permitted. This is mainly an issue for “wrapped” vehicles that are covered in vehicle-sized logos or slogans. The issue was addressed during the 2010 general election with the Chief Electoral Officer issuing a directive, which has remained in place through the most recent general election. The directive does not prevent a vehicle with a sign from being parked in one spot, in sight of anyone on polling day. Once parked, it is subject to the normal rules concerning static advertising signs set out in subsection 117(5). Further, although an elector may vote on any day during the election period at a returning office, there is no prohibition on vehicles bearing such “political propaganda” moving about on other days during the election period, including advance polling day.

²⁷ *Supra* note 1 at ss. 117(1) and (2).

²⁸ *Supra* note 1 at s. 117(3).

²⁹ *Supra* note 1 at 117(5).



This provision, in its modern incarnation, is difficult to enforce. For example, signs may be placed on public busses which Elections New Brunswick cannot require to remain parked on ordinary polling day. Further, as occurred in the most recent general election, if a vehicle bearing political propaganda is parked within 30 metres of a polling station on an advance or ordinary polling day – which is prohibited – and Elections New Brunswick requests that the vehicle be moved, the act of moving the vehicle outside the 30 metre perimeter is also an offence.

It is the opinion of Elections New Brunswick that movement of wrapped vehicles on ordinary polling day is not a significant concern and that the objective achieved by this provision is not clear. It is therefore recommended that this prohibition be repealed.

Recommendation 39: Remove prohibition on vehicles bearing political propaganda on ordinary polling day.

Repeal subsection 117(1) of the *Elections Act* to eliminate all prohibitions on vehicles bearing “political propaganda” on ordinary polling day, regardless of whether moving or stationary.

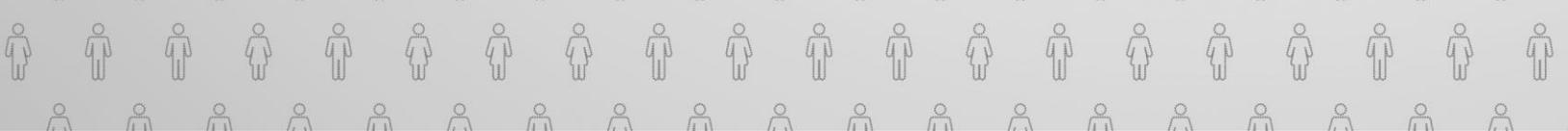
ii. Election advertising near polling station or returning office

In the *Elections Act*, subsection 117(1.1) prohibits the use of loudspeakers where the sound can be heard within 30 metres of a polling station on an advance or ordinary polling day. Subsection 117(5) prohibits the placement of partisan election signs from being placed within 30 metres of a polling station.

In both cases, the restriction applies only to polling stations, defined in section 2 as “a building, or a portion of a building, secured by a returning officer for the taking of the votes of electors on the ordinary polling day or an advance polling day.” The *Elections Act* does not prohibit the placement of signs near returning offices or satellite returning offices, perhaps because voting in person at returning offices did not occur before 2006.

There were complaints made to Elections New Brunswick during the 2010, 2014 and 2018 general elections concerning the placement of partisan election signs near returning offices. It was argued that, because an elector could vote in person by special ballot in a returning office, election signs should also be prohibited nearby to returning office locations. In some cases, there were large standing signs erected immediately in front of returning offices or even on the same building.

Polling stations are rented for one or two days, whereas a returning office is opened for approximately eight weeks. When securing returning office space, there are a number of considerations that must be accounted for. These include level access for the disability community, the convenience of the location for electors, sufficient space to meet the needs of the returning office staff, cost, availability of ample parking, internet connectivity and, of course, availability for the months of August, September and October. In certain areas of the Province, securing space that meets the needs of the returning office staff and the needs of the public can be difficult, particularly in rural electoral districts where available commercial space is often quite limited. As a result, it is not unusual in many areas of the Province for a returning office and a candidate’s campaign office to be located in the same building. In fact, in the



2018 provincial general election, a candidate's campaign office was located in the same building as a polling station used during the election.

Given the realities of existing commercial space in some areas of the Province, it is impractical to consider expanding the applicability of the 30 metre prohibited advertising zone to returning offices. In addition, venues that make for ideal polling stations due to their size, accessibility and ample parking – such as vacant space in large commercial or retail centres and sports arenas – present their own challenges for the enforcement of the prohibited advertising zone set out in subsection 117(5) of the Act. Often, however, the characteristics that make them ideal polling stations are counter-productive to the intent of creating a political advertising-free zone around polling stations, given that Elections New Brunswick measures the 30 metre zone from the entrance to the space which we have rented. For example, in the case of a polling station located in a community room at the Grant Harvey Centre in Fredericton, political advertising would be prohibited within 30 metres of the entry to this space, but would be permissible in the parking lot and along the driveway entrance to the building.

It is therefore recommended that a more practical but comprehensive approach be taken with regard to political advertising in and around polling stations and returning offices that addresses the above practical concerns and is easy to enforce due to its clarity.

Recommendation 40: Prohibit political advertising from being displayed in or on a polling station or returning office.

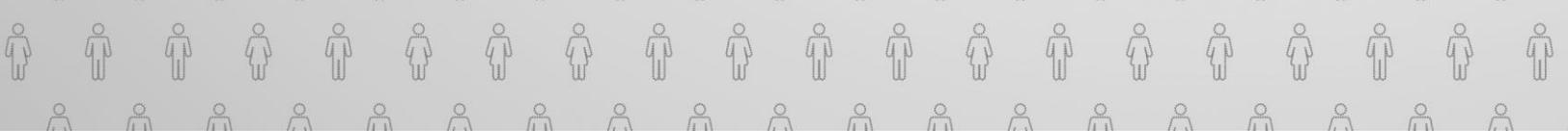
Amend subsection 117(5) of the *Elections Act* to provide the following:

- i. on an advance or ordinary polling day, no person may display, or cause to be displayed, in or on a polling station or a building within which a polling station is located any advertising having reference to an election, a candidate or a matter to be voted on at a plebiscite;
- ii. no person may display, or cause to be displayed, in or on a returning office or a building within which a returning office is located any advertising having reference to an election, a candidate or a matter to be voted on at a plebiscite;
- iii. if a returning office or polling station is located in a building in which the campaign headquarters of a candidate is also located, signage advising the public of the location of the campaign headquarters shall be permitted to be displayed on or in the building.

iii. Restricted advertising period

Subsection 117(3) of the *Elections Act* prohibits the broadcast over radio or television, the publication in a newspaper, magazine or similar publication and the transmission by any means to telephones, computers, telecopier machines, or any other device capable of receiving unsolicited communication of any form of partisan election advertising on ordinary polling day or the day immediately preceding it.

The *Elections Act* has contained similar provisions since 1967. Modern day elections are run much differently than those of that era, and communication mechanisms such as *Facebook*, *Twitter*, and the internet were never anticipated. In practice, these provisions have little impact on the public: election signs may remain posted along streets; new election signs may be placed; candidates may continue to



distribute fliers; Canada Post may continue to deliver advertisements by mail; and campaign workers may continue to make personal telephone calls to potential voters.

In recent years, the Chief Electoral Officer has had to make interpretations that continue to permit candidates to update content on *Facebook* and *Twitter*, as well as campaign websites, because it is deemed that only those internet users who search out and actively become a friend or follower of a candidate would receive such election-related advertisements. Paid *Google* and *Facebook* ads, robocalls and spam emails were interpreted as being prohibited by the *Elections Act* on the Sunday and Monday, but would continue to be permitted on every other day of the election. Currently, investigating and obtaining sufficient evidence to prosecute such an offence within the digital realm would be a significant burden and expense, especially when one considers that the offences in question are a Category C offence, punishable by a fine of between \$140 and \$1,100.

In general, candidates simply want a level playing field, and when one candidate posts a “Get out and vote on Monday” message to his or her *Facebook* account, many electors and other candidates view this as being illegal, causing significant debate and discussion, when it simply is not warranted. In today’s connected society, there is no reason to retain this restriction on transmitting election advertising on Election Day and the Sunday prior.

Canada, Newfoundland and Labrador, Nova Scotia, Ontario and British Columbia all have restrictions against transmitting election advertising on Election Day and/or on the day preceding Election Day. No restrictions were noted in Prince Edward Island, Quebec, Manitoba, Saskatchewan, Alberta, Nunavut, Northwest Territories or Yukon.

Recommendation 41: Remove the restricted advertising period on Election Day and the day immediately preceding Election Day.

Repeal subsections 117(3) and (4) of the *Elections Act* to remove the restriction to broadcast, publish or transmit election advertising on Election Day or the day immediately preceding it.

iv. *Illegal practices*

The *Elections Act* outlines various restrictions and procedures to follow in an election. They may be broadly categorized as the follows:

- rules, which if violated, are a corrupt practice and an offence;
- rules, which if violated, are an illegal practice and an offence;
- rules, which if violated, are an offence; and
- rules, which if violated or not followed, are not offences.

Corrupt practices include the following:

- bribery of electors and candidates;
- personation;
- threatening others; and
- destroying ballots.

Illegal practices include the following:

- attempting to communicate information as to the candidate for whom an elector has voted;
- as an employer, failing to give an employee sufficient time to vote;
- inducing another person to vote, knowing that person is not qualified to do so;
- knowingly causing incorrect information to be given to an elector respecting their polling station;
- aiding or procuring advertising in the restricted advertising period from outside New Brunswick;
- displaying an election sign within 30 metres of a polling station; and
- signing a written document restricting freedom of action in the Legislative Assembly.

Simple offences include the following:

- working as an election officer while a family associate of a candidate;
- refusing to attend on the summons of a returning officer when he or she is declaring the elected candidate;
- voting, knowing that one is not qualified to vote;
- unauthorized use of a list of electors;
- as an election officer, wilfully violating a provision of the Act;
- defacing or altering any printed proclamation or notice required by the Act;
- supplying loud speakers or any flag to anyone with the intent that it be used at a polling station;
- using a loud speaker to convey political propaganda heard within 30 metres of a polling station;
- supplying any flag, ribbon, label or like favour to or for any person with the intent that it be worn or used by anyone at a polling station; and
- during the restricted advertising period, broadcasting, publishing or transmitting unsolicited communications of a speech, any entertainment, or any political advertising.

Section 119 of the *Elections Act* provides that a person convicted of an offence that is a corrupt or illegal practice is disqualified from the following for five years following his or her conviction:

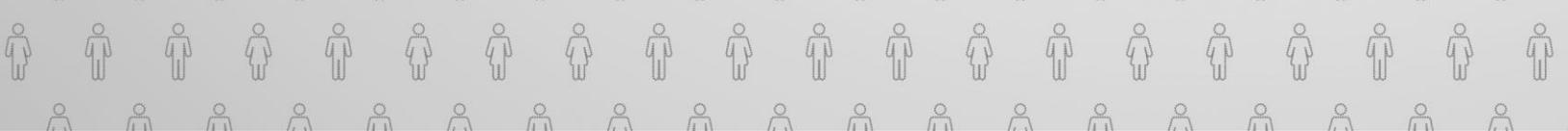
- a) being registered as an elector or of voting at any election,
- b) holding any office in the nomination of the Crown or of the Lieutenant-Governor in Council; or
- c) being elected to or sitting in the Legislative Assembly.

Section 119 recognizes that corrupt and illegal practices are so serious (bribery, personation, destroying ballots, threatening or misleading electors, etc.) that in addition to being an offence, a candidate could not hold office, even if elected in that election.

However, the following two illegal practices are much less serious and often occur in provincial elections, normally inadvertently, by candidates and their agents:

- s. 117(4) - aiding or procuring advertising in the restricted advertising period from outside NB; and
- s. 117(5) - displaying an election sign within 30 metres of a polling station.

It is recommended that violating subsection 117(5) of the *Elections Act* should remain an offence, but that violation of the provision should not be an illegal practice. If subsection 117(4) of the Act is not



repealed as recommended above, violation of that provision should similarly simply be an offence. In the *Canada Elections Act* and the election legislation of most provinces and territories, corrupt and illegal practices do not include advertising offences. On the other hand, if one is convicted of an offence under the *Nunavut Elections Act* (which may include displaying campaign materials at a polling place), one is disqualified from sitting as a member of the Legislative Assembly and prevented from holding office for five years.

Recommendation 42: Make violation of certain advertising provisions offences only rather than an offence and an illegal practice.

Amend subsections 117(4) and (5) of the *Elections Act* so that violation of either provision is simply an offence rather than an offence which is also an illegal practice.

I. Political Parties

i. Registration of new political party

Section 131 of the *Elections Act* establishes what political parties may be registered. These include a political party described at paragraph 131(d):

- (d) a party whose leader was elected by a convention, which has district associations in at least ten electoral districts and that undertakes to present official candidates in at least ten electoral districts at the next general election.

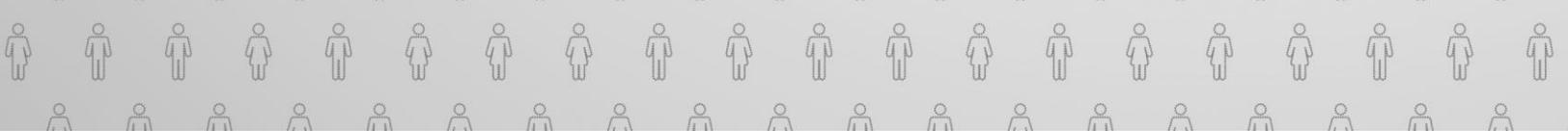
Section 133 of the *Elections Act* requires the Chief Electoral Officer to register a political party that satisfies the requirements of that section. In the case of political party described in paragraph 131(d), paragraph 133(2)(c) requires that the political party establish it has complied with section 47 of the *Political Process Financing Act*.

Section 47 of the *Political Process Financing Act* addresses how one is to deal with contributions made in contravention of the Act and surplus contributions. Under the *Political Process Financing Act*, contributions may only be made to a registered political party. As a result, previous Chief Electoral Officers have interpreted paragraph 133(2)(c) to mean that a political party may receive contributions in anticipation of registration, and that receipt of such contributions must have been in compliance with the *Political Process Financing Act* as if the political party were registered. However, this is not clear on the face of the provision.

It is therefore recommended that paragraph 133(2)(c) be amended to more clearly and unambiguously reflect the intent of the provision.

Recommendation 43: Clarify the requirement for compliance with the Political Process Financing Act on registration of a political party.

Amend paragraph 133(2)(c) of the *Elections Act* to clarify that a political party being registered pursuant to paragraph 131(d) of the Act must establish that any contributions received by it prior to registration were received in compliance with the *Political Process Financing Act* as if were a registered political party.



ii. *Change of name of registered political party*

As indicated above, section 133 of the *Elections Act* requires the Chief Electoral Officer to register a political party that satisfies the requirements of that section, and subsection 139(1) of the Act authorizes the Chief Electoral Officer to change the name of a registered political party on the application of the leader of the party. The Act imposes no restrictions or limitations on when a political party may register or vary its name.

Significant logistical challenges would arise if a political party were to be registered or to change its name during the election period. In particular, on the ballot paper at an election, the names of candidates of a registered political party, and, more specifically, a recognized party,³⁰ include the party affiliation of the candidates and the order of names on the ballot paper are determined by the candidate's party affiliation, if any.³¹

Although this might seem like an unlikely occurrence, in order to avoid such a situation, it is suggested that it would be appropriate to prohibit the following during an election period:

- i. the change of name of a registered political party; and
- ii. the registration of a political party.

An "election period" is defined in section 2 of the *Elections Act* as "the period commencing with the issue of a writ for an election and ending when the candidate or candidates have been returned as elected."

Recommendation 44: During an election period, prohibit the registration of a political party and the change of name of a registered political party.

Amend the *Elections Act* as follows:

- i. amend section 132 to prohibit the Chief Electoral Officer from registering a political party during an election period; and
- ii. amend section 139 to prohibit a registered political party from applying to vary the name of the party during an election period.

iii. *Recognized Parties*

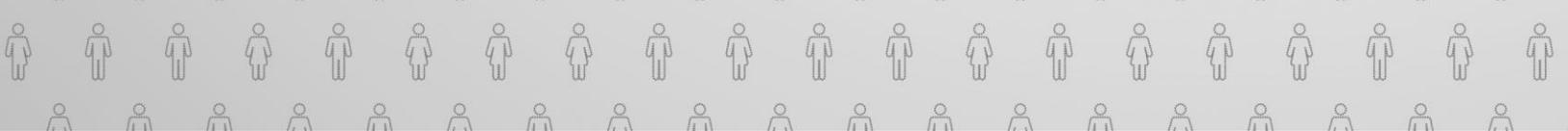
A "recognized party" is defined as follows at section 2 of the *Elections Act*:

"recognized party" means any registered party that at a general election has, or at the general election preceding a by-election had, not less than ten candidates officially nominated;

A registered party, or registered political party, refers to a political party registered under section 133 of the Act.

³⁰ A recognized party is a registered political party, "that at a general election has ... not less than ten candidates officially nominated."

³¹ *Supra* note 1 at ss. 63(5) - (7).



Although the Chief Electoral Officer is required to cancel the registration of a political party that does not present candidates in at least ten electoral districts in a general election, the Chief Electoral Officer would not do so during the election period as he must provide the political party with written reasons and a reasonable opportunity to be heard. Therefore, it is possible that during an election, a political party might continue to be a registered political party, although it would not be a “recognized party”.

As indicated above, the most significant benefits of being a recognized party are that their official candidates appear on the ballot paper with their party affiliation, and the candidates of recognized parties appear on the ballot before independent candidates. In accordance with the definition of “independent candidate” at section 2 of the *Elections Act*, an official candidate of a registered political party that is **not** a recognized party would be considered an independent candidate for the purposes of an election. On reviewing the limited occurrences of “recognized party” in the *Elections Act*, the only real benefit of being a candidate of a “recognized party” rather than an “independent candidate” is that already mentioned with respect to how the candidate appears on the ballot paper.

It is the opinion of Elections New Brunswick that it is neither necessary nor reasonable to maintain this distinction between a registered political party and a recognized party. Further, it may cause confusion for electors if an officially nominated candidate of a registered political party is listed as an independent candidate on the ballot paper. It appears that the concept of a “recognized party” was first introduced to the *Elections Act* in 1967, at which time “registered political party” did not appear in the Act. Since that time, the benefits of being a “recognized party” have been eroded by successive legislative amendments.

Recommendation 45: Remove the concept of a “recognized party” from the *Elections Act*.

Amend section 2 of the *Elections Act* by repealing the definition “recognized party” and replacing all other references to “recognized party” in the *Elections Act* to “registered political party”, including in subsections 63(6) and (7) so that candidates are arranged on the ballot paper by reference to registered political parties rather than by recognized parties.

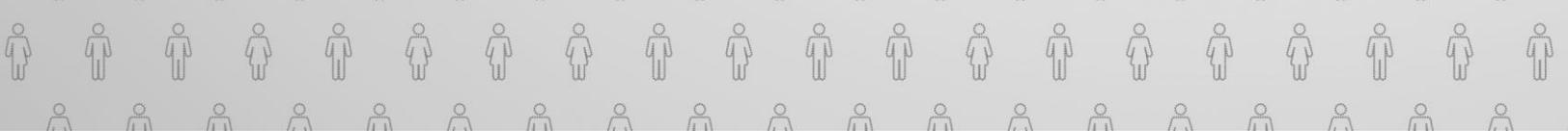
iv. Leadership Contests

In 2015, amendments were made to the *Elections Act* and the *Political Process Financing Act* to regulate leadership and nomination contests.³² Under subsection 136.1(3) of the *Elections Act*, following the holding of a leadership convention, a registered political party must file with the Chief Electoral Officer a certificate of leadership convention which includes, amongst other things, the individual elected as the new party leader at the convention. Under section 148 of the Act, in order to update the registration of a political party – which registration includes the name of the leader of the party³³ – the leader of the registered political party must submit a signed form with the Chief Electoral Officer.

It seems redundant to require a signed form from the leader of a registered political party subsequent to a leadership convention when a certificate of leadership convention is also required to be filed with the Chief Electoral Officer. Further it is unclear whether it is the outgoing or newly elected leader who

³² *An Act Respecting Leadership Contestants and Nomination Contestants*, S.N.B. 2015, c.17.

³³ *Supra* note 1 at s.133(1)(c).



should be signing this form. It is therefore recommended that the Registry of Political Parties be updated accordingly on receipt of a certificate of leadership convention and dispense with the requirement, in those circumstances, for the leader of the party to submit any further documentation..

Recommendation 46: Update Registry of Political Parties on receipt of a certificate of leadership

Amend section 136.1 of the *Elections Act* so that, on receipt of a certificate of leadership convention, the Chief Electoral Officer is authorized to update the Registry of Political Parties accordingly.

J. Miscellaneous

i. Custody of elections documents

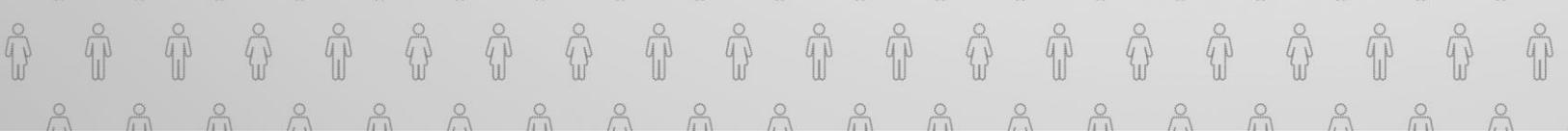
Section 98 of the *Elections Act* places election documents in the custody and control of the Chief Electoral Officer on their return from the respective returning officers. After one year, these documents are then to be deposited with the provincial archivist. Other than to produce a final list of electors and to update the register of electors, election documents are not to be inspected or produced except by order of a judge of The Court of Queen’s Bench of New Brunswick.³⁴ This would appear to preclude the Chief Electoral Officer and her staff from inspecting election documents in her custody and control. In the months following an election, the Chief Electoral Officer and her staff should be entitled to such access in order to execute random, statistically significant validations of tabulation machine results and to review or audit the work performed by election officials.

The ability to perform such validations and reviews serves several purposes. Firstly, the validation of tabulation machine results enhances public confidence in the integrity of the electoral process and the technology used to facilitate the process. Secondly, performance reviews or audits allow Elections New Brunswick to identify areas in which training or processes may require improvement, to assess worker performance and adherence to prescribed procedures and guidelines and to determine if process improvements have achieved their desired objective.

Section 540 of the *Canada Elections Act* is quite similar to section 98 of New Brunswick’s *Election Act*; however, the federal Act expressly states that the prohibition on inspection or production of election documents without a court order does not prohibit the Chief Electoral Officer or any authorized member of his or her staff from inspecting such documents. Whereas in Ontario, the Chief Electoral Officer and his or her staff may inspect election documents “in the course of investigating a possible corrupt practice.”³⁵

³⁴ *Supra* note 1 at ss. 98(1)-(2).

³⁵ *Supra* note 11 at s. 86(2).



Recommendation 47: Authorize the Chief Electoral Officer and her staff to inspect election documents in his custody.

Amend section 98 of the *Elections Act* to authorize the Chief Electoral Officer or any authorized member of her staff to inspect election documents returned to him under subsection 98(1) of the Act.

ii. Regulations

Section 123 of the *Elections Act* provides authority for, amongst other things, the compensation of election workers and the payment of expenses incurred for carrying on an election. Subsection 123(2) of the Act specifically authorizes the making of regulations by the Lieutenant-Governor in Council for a “tariff of fees applicable for payment of returning officers [and] others employed at or with respect to an election under this Act.”

The *Tariff of Fees Regulation - Elections Act*, N.B. Reg. 2010-105, prescribes the maximum amounts that the Chief Electoral Officer will pay for the rental of location as an advance, ordinary or additional poll. However, the Act does not currently authorize this portion of the regulation. Such a regulation is necessary as the maximum rental fee is an important tool in controlling election costs. Similar provisions have existed in the current and past versions of the *Tariff of Fees Regulation* under the *Elections Act* since 1978, and the Act should be amended to provide adequate regulation-making authority for their inclusion in the *Tariff of Fees Regulation*.

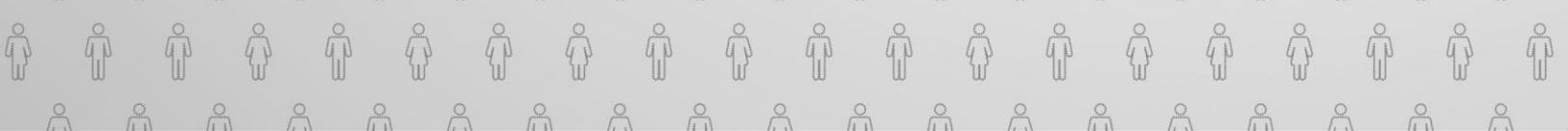
Elections New Brunswick routinely provides products and materials to third parties. Such products and materials include providing ballot boxes to union groups, election supplies to municipalities conducting their own plebiscites, and mapping products printed for political parties and government departments. Currently, Elections New Brunswick is not authorized to charge fees for services or products provided by Elections New Brunswick in such circumstances, and doing so has an impact on the office’s annual operating budget. It is therefore recommended that Elections New Brunswick be authorized to recover, on a cost recovery basis, all products or services provided by Elections New Brunswick that are not required to be provided free of charge under existing legislation.

Recommendation 48: Provide regulation-making authority to prescribe maximum rental fees to be paid for the rental of premises for election purposes.

Amend subsection 123(2) of the *Elections Act* to authorize the Lieutenant-Governor in Council to make regulations prescribing fees payable for the rental of premises for election purposes.

Recommendation 49: Authorize the Chief Electoral Officer to impose fees for products and services provided by Elections New Brunswick.

Amend section 123 of the *Elections Act* to authorize the Chief Electoral Officer to impose fees for all products and services created by or supplied by Elections New Brunswick, other than lists of electors supplied in accordance with the Act.



PART II – POLITICAL PROCESS FINANCING ACT

1. Introduction

The *Political Process Financing Act*, S.N.B. 1978, c.P-9.3, was originally enacted in 1978. The *Political Process Financing Act* confers responsibility for the administration of the Act and the enforcement of its provisions on the Supervisor of Political Financing, who, by virtue of section 4 of the Act, is the Chief Electoral Officer.³⁶ The *Political Process Financing Act* sets out the political financing rules for political parties, district associations, candidates, leadership and nomination contestants, and third parties. The Act establishes limits on spending by and contributions to these individuals and groups, establishes financial reporting requirements and establishes the entitlement to and amount of public financing of political parties and candidates.

The main objective of the *Political Process Financing Act* is to establish and maintain a “level playing field” for all candidates, political parties and third parties participating in the democratic process in New Brunswick. Creating a level playing field is intended to prevent wealthier interests from dominating the political process and discourse in New Brunswick. A further objective of the Act is to ensure transparency in the financing of the political process. The playing field is not only level, but the public is entitled to know who is financially supporting those participating in the process.

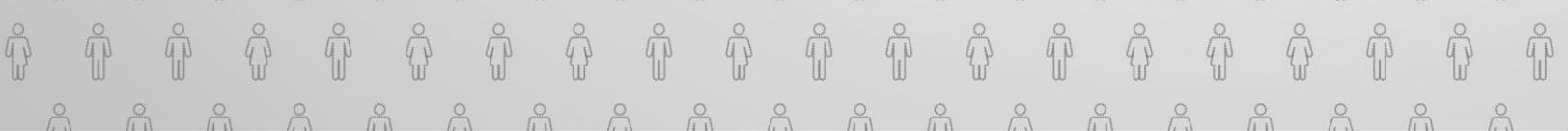
In this Part, we propose that significant reforms be made to the political financing regime in an effort to:

1. simplify the process for its participants;
2. reflect the changes in political strategy that have occurred as a result of the introduction in 2010 of scheduled elections in New Brunswick; and
3. address the significant implications of the pending change in the scheduled date of provincial general elections to the third Monday in October, beginning in 2022.

We will also discuss issues relating to the administration, oversight and enforcement of the political financing regime by Elections New Brunswick. Many of our recommendations have been previously discussed with the advisory committee on the financing of the political process and will advance Election New Brunswick’s strategic goal of simplifying and modernizing the financial reporting process. In addition to the substantive issues discussed in this Part, Elections New Brunswick is recommending that the *Political Process Financing Act* be repealed and replaced to accomplish the following objectives:

1. A more user-friendly arrangement;
2. Use of consistent, plain language and contemporary legislative drafting techniques, including gender-neutral language; and
3. Correction of inconsistencies, anomalies and editorial errors that have been introduced over the life of the legislation.

³⁶ *Political Process Financing Act*, S.N.B. 1978, c.P-9.3, at s. 14.



Such changes have not been identified in this document in order to focus discussion on matters of substantive change. However, we welcome any suggestions you may have that will improve the *Political Process Financing Act*.

2. Recommended changes to political financing regime

A. Supervisor of Political Financing

In 2007, by virtue of *An Act Respecting Elections New Brunswick*,³⁷ the Office of the Supervisor of Political Financing was merged with the Office of the Chief Electoral officer to create Elections New Brunswick. As indicated above, part of this merger involved conferring the duties and powers of the Supervisor of Political Financing under the *Political Process Financing Act* on the Chief Electoral Officer; however, the term “Supervisor of Political Financing” was retained in the *Political Process Financing Act* to minimize and simplify the legislative amendments required at the time.

Now, it would be worthwhile to complete the merger of these two offices. The need for two different titles under the *Elections Act* and the *Political Process Financing Act* should be eliminated. It is recommended that the terms “Supervisor of Political Financing” and “Supervisor” used throughout the *Political Process Financing Act* should be replaced with “Chief Electoral Officer”.

Recommendation 50: Replace references to “Supervisor of Political Financing” with “Chief Electoral Officer”.

Amend the *Political Process Financing Act* by replacing all references to “Supervisor of Political Financing” and “Supervisor” with “Chief Electoral Officer”.

B. Advisory committee

Another remnant of the era before the merger of the Office of the Supervisor of Political Financing with the Office of the Chief Electoral Officer is the existence of two separate advisory committees. The Advisory Committee on the Electoral Process is established under section 154 of the *Elections Act*, and the Advisory Committee on the Financing of the Political Process is established under section 20 of the *Political Process Financing Act*.

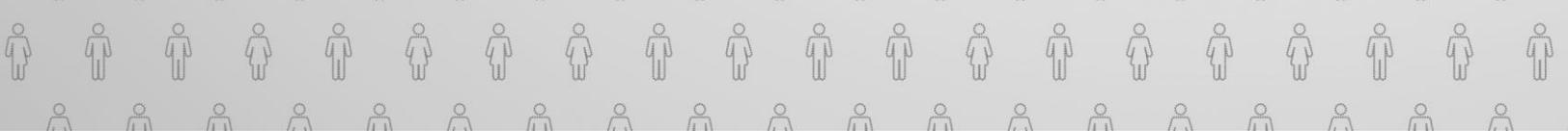
Each advisory committee is chaired by the Chief Electoral Officer/Supervisor of Political Financing and their respective members consist of two representatives from each registered political party that presented official candidates in at least one-half of the electoral districts at the immediately preceding general election. Each member’s term lasts for a single session of a Legislature, although they are usually reappointed.

The legislated mandates of the committees are relatively similar:

Elections Act:

159 The advisory committee shall give its advice and opinion on any matter or question posed by the Chief Electoral Officer relating to the electoral process and to the application of this Act.

³⁷ S.N.B. 2007, c.55.



161 The Chief Electoral Officer shall consult the advisory committee periodically with regard to the application of this Act.

Political Process Financing Act:

25 The Advisory Committee shall give its opinion on any question posed by the Supervisor relating to the financing of the political process and to the application of this Act.

27(1) The Supervisor shall consult the Advisory Committee periodically with regard to the application of this Act.

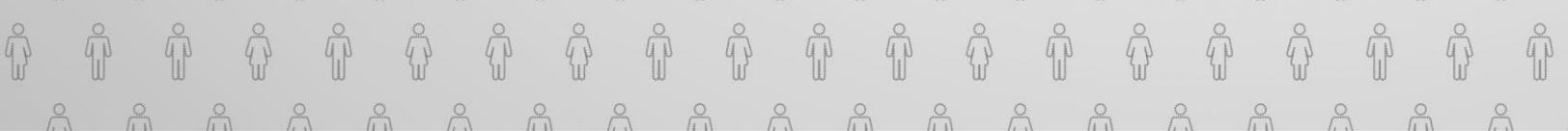
27(2) The Supervisor shall consult with the Advisory Committee before issuing any guideline he is authorized to issue under this Act.

In addition, each committee may make the results of its work public.

As one might expect, when discussing changes to either the electoral process or the financing of the political process, there is often an overlap of the issues. Therefore, the Chief Electoral Officer generally calls for a joint meeting of both committees, rather than meeting with each committee separately. It is therefore recommended that the two committees be merged into one committee.

Recommendation 51: Merge the advisory committees under the *Elections Act* and the *Political Process Financing Act* into one advisory committee.

- a. Repeal sections 20 to 27, and 92 of the *Political Process Financing Act*.
- b. Amend sections 154 to 161 of the *Elections Act* as follows to expand the mandate of the advisory committee established under that Act:
 - i. the advisory committee on the electoral and political financing processes shall be established and shall be known simply as “the advisory committee”;
 - ii. the advisory committee shall consist of the Chief Electoral Officer and two representatives of each registered political party that had official candidates in at least one-half of all electoral districts at the immediately preceding general election;
 - iii. the mandate of the advisory committee shall be the following:
 - to give its advice and opinion on any matter or question posed by the Chief Electoral Officer relating to the electoral process, the financing of the political process and the application of the *Elections Act* or the *Political Process Financing Act*;
 - the Chief Electoral Officer shall consult the advisory committee with regard to the application of the *Elections Act* and the *Political Process Financing Act*, and before issuing a guideline under the *Political Process Financing Act*; and
 - to consider for approval a directive issued by the Chief Electoral Officer under section 5.1 of the *Elections Act*;

- 
- iv. the term of a member's appointment should be extended so that it lasts the duration of a Legislature in order to minimize the unnecessary formality of annual reappointments and ensure continuity on the advisory committee; and
 - v. a member may be replaced at any time by his or her respective leader.

C. Responsibility for legislated duties

Background

As mentioned above in Part I, under the *Elections Act*, the Chief Electoral Officer maintains a registry of political parties, district associations, independent candidates, leadership contestants and nominations contestants.³⁸ With respect to all of these except independent candidates, the respective registry must include, amongst other things, the names of the officers of the party or association.³⁹ Under sections 137 and 138, respectively, of the *Elections Act*, the Chief Electoral Officer also maintains registries of official representatives and chief agents.

Section 137 of the *Elections Act*:

- a. requires all registered political parties, registered district associations and registered independent candidates to file the name of their official representatives with the Chief Electoral Officer;⁴⁰
- b. authorizes leadership and nomination contestants to be their own official representatives;⁴¹
- c. authorizes the official representative of a registered political party to appoint deputy official representatives for each electoral district; and⁴²
- d. establishes the qualifications to be an official representative.⁴³

Section 138 of the *Elections Act* similarly requires all registered political parties to appoint a chief agent and all registered independent candidates to appoint an official agent, and establishes their respective qualifications. At subsection 138(7), the chief agent of a registered political party is also authorized to appoint electoral district agents for each electoral district.

With respect to the officially nominated candidate of a registered political party, the requirement to have an official agent is found at section 69 of the *Political Process Financing Act*. This official agent can be either the electoral district agent appointed by the party's chief agent or another individual appointed by the candidate. In either case, the agent must be registered with the Chief Electoral Officer.

Although the requirements to appoint official representatives and chief agents are found in the *Elections Act*, the responsibilities and duties of official representatives, chief agents and official agents are largely found in the *Political Process Financing Act*.

³⁸ *Supra* note 1 at s. 130.

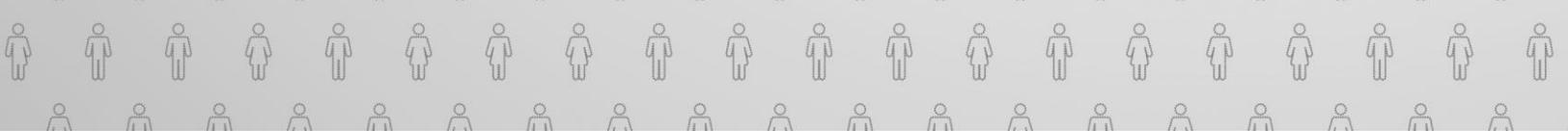
³⁹ *Supra* note 1 at ss. 133(1)(e) and 135(d).

⁴⁰ *Supra* note 1 at ss. 137(2)-(4).

⁴¹ *Supra* note 1 at s. 137(5.1).

⁴² *Supra* note 1 at s. 137(7).

⁴³ *Supra* note 1 at s. 137(8).



An official representative is the single person responsible under the *Political Process Financing Act* for public accountability of the financial affairs of a registered political party or a registered district association.⁴⁴ Amongst the responsibilities and duties of the official representative of a registered political party are the following:⁴⁵

- a. soliciting and receiving all contributions and arranging all financing for the party, including those contributions and financing needed to fund the party's election activities;
- b. issuing receipts for income tax purposes for received contributions;
- c. paying all election expenses authorized by the party's chief agent;
- d. authorizing all non-election spending;
- e. complying with the annual limits on advertising expenditures; and
- f. submitting annual and semi-annual financial returns to the Supervisor.

The official representative of a registered district association has similar duties and responsibilities with respect to his or her district association.

Chief agents and official agents, on the other hand, have sole responsibility for authorizing election expenses of a registered political party or a nominated candidate.⁴⁶ Among the responsibilities and duties of the chief agent of a registered political party are the following:⁴⁷

- a. ensuring compliance with the election spending limit and other election expenditures rules set out in the *Political Process Financing Act*;
- b. authorizing and controlling all election-related spending on behalf of the party; and
- c. submitting the party's electoral financial return.

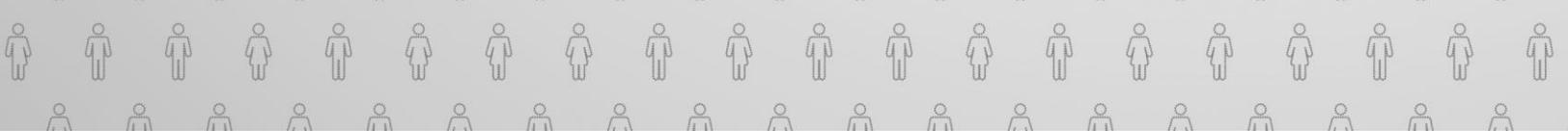
The official agent of a candidate has similar duties and responsibilities with respect to his or her candidate. In both cases, neither a chief agent nor an official agent may solicit or receive contributions directly, nor may the agent obtain financing for his or her respective campaign. All funds to be spent on an election campaign must be supplied to the respective agent by the official representative of the registered political party, registered district association or registered independent candidate.

⁴⁴ *Supra* note 21 at 8.

⁴⁵ *Supra* note 21 at 9 and 68.

⁴⁶ *Supra* note 36 at s. 70(1).

⁴⁷ *Supra* note 21 at 70.



Current issues

This structure was put in place in 1978 when the political financing regime was first enacted. Based on our experience, and feedback received from the various political actors in the system, this structure is in need of reconsideration and reform. It is far too complex. The separation of roles and responsibilities between official representatives and chief or official agents often leads to confusion as to who is responsible for completing each legislated duty. In fact, transactions are commonly being initiated by persons without the legal authority to do so. The confusion of “having too many cooks in the kitchen” is only exacerbated by the titles given to these roles, titles which provide no obvious sign-posts to the responsibilities a position has under the legislation.

Quite often, the volunteer responsible for ensuring compliance with provisions of the *Political Process Financing Act* – be it an official representative or a chief or official agent – is not around the table when decisions are made which impact on this compliance. The responsibilities imposed by the Act do not seem to be reflective of actual lines of responsibility and authority within political parties and their district associations. Unfortunately, it is the responsible individual under the Act who is subject to potential prosecution when the Act is violated.⁴⁸

In addition, as political parties have evolved and matured over the last 41 years, the record-keeping and accounting necessary to fulfill various financial responsibilities are done by staff. This is particularly the case with official representatives.

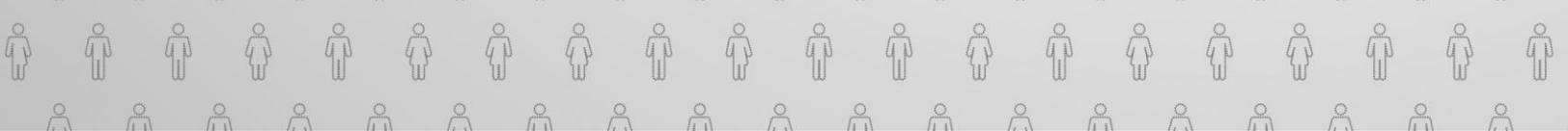
In addition to not reflecting the internal realities of political parties and district associations, it is our opinion that the current structure of responsibilities under the *Political Process Financing Act* does not reflect best practices in the governance of associations. Best practices in governance policies would indicate that the chief executive officer of an association should be ultimately responsible for the activities of the association, including all financial activities. The chief executive officer may delegate the authority to carry out various aspects of the association’s activities, but ultimate responsibility should remain with the chief executive officer.

Proposals for significant reform

We are therefore proposing a significant reform to the responsibility for legislated duties of registered political parties, registered district associations and candidates under the *Political Process Financing Act*. Changes are also recommended with respect to leadership or nomination contestants, but to a lesser extent. It is our opinion that these recommendations will simplify the administration of financial matters for all impacted parties.

It is recommended that one position, to be called the “financial agent”, be responsible for all financial matters of the political entity. For a registered political party, the president or similar chief executive

⁴⁸ Examples: A chief agent or official agent is subject to conviction for a category H offence under the *Provincial Offences Procedure Act* for authorizing election expenses that exceed the prescribed limit [*Supra* note 36 at s. 85(1)(a)]; an official representative is subject to conviction for a category C offence under the *Provincial Offences Procedure Act* for failing to file a financial return on time [*Supra* note 36 at s. 81.1(1)]; a chief agent or an official agent is subject to conviction for a category C offence under the *Provincial Offences Procedure Act* for failing to file a statement of election expenses on time [*Supra* note 36 at s.88].



officer of the party as determined by its constitution would be deemed to be the financial agent. For a registered district association, the president or similar chief executive officer of the association as determined by its constitution would be deemed to be the financial agent. This change would effectively combine the current responsibilities of the official representative and the chief/official agent.

As a result of this change, an official agent would no longer be appointed for an official candidate of a registered political party. Rather, the financial agent of the registered district association would become responsible for all financial aspects of its candidate's campaign. In the case where a registered political party nominates an official candidate but there is no district association registered in that electoral district, the party would be permitted to create and register a district association in support of its nominated candidate.

It is not anticipated nor expected that the financial agent would carry out all financial duties personally. The financial agent would be authorized to delegate the authority to carry out these functions; however, ultimate responsibility would remain with the financial agent. Such authority to delegate would be similar to the manner in which an official representative, for example, may currently authorize other persons to incur non-election expenditures under the direction of the official representative.⁴⁹

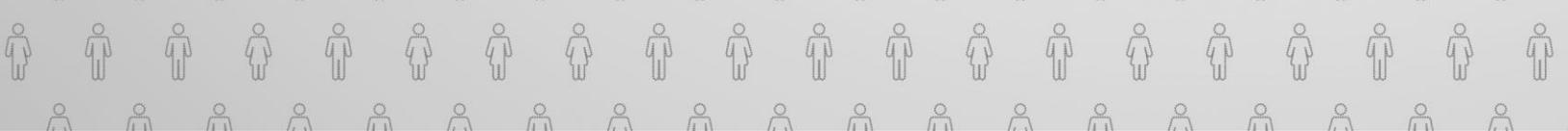
Similarly, it is recommended that independent candidates, leadership contestants and nomination contestants no longer be required to appoint official agents and official representatives, as the case may currently require. In these cases, the individual would instead appoint a financial agent to be responsible for all financial aspects of his or her campaign.

Finally, as a measure of consistency and to remove any confusion with the actual chief financial officer of any incorporated entity, we recommend also using the term "financial agent" with respect to registered third parties, replacing the term "chief financial officer" used in the *Political Process Financing Act*.

Recommendation 52: With respect to registered political parties, registered district associations and candidates, assign responsibility for compliance with the *Political Process Financing Act* to a financial agent.

- a. Amend section 137 of the *Elections Act* to replace "official representative" with "financial agent", and repealing all references to "deputy official representative".
- b. Repeal section 138 of the *Elections Act* to remove the requirement to appoint and register chief agents and electoral district agents.
- c. Make all amendments to the *Elections Act* consequential on the amendment of section 137 and the repeal of section 138 with respect to registered political parties and registered district associations.
- d. Repeal section 68 of the *Political Process Financing Act* to remove the requirement for a registered political party to have a chief agent in order to incur election expenses.

⁴⁹ *Supra* note 36 at s. 49(1).

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- e. Amend the *Political Process Financing Act* so that, with respect to a registered political party, a registered district association or a candidate, the financial agent is responsible for performing all duties currently imposed on an official representative, a chief agent, an electoral district agent or an official agent. A financial agent shall include anyone authorized by the financial agent to act on his or her behalf and be defined with reference to the position designated in the party's or association's constitution as the chief executive officer (e.g.: the president).
 - f. Repeal section 69 of the *Political Process Financing Act* to remove the requirement for a candidate to have an official agent.
 - g. Repeal section 43 of the *Political Process Financing Act* to remove references to "deputy official representative".

Recommendation 53: With respect to registered political parties and registered district associations, deem the chief executive officer to be the financial agent.

- a. Amend paragraphs 133(1)(e) and 135(d) of the *Elections Act* to require a political party or district association, when it applies for registration, to provide the names and addresses of its chief executive officer as determined by its constitution (e.g.: president) and its treasurer.
- b. Upon registration, the president of a registered political party or of a registered district association, respectively, shall be deemed to be the financial agent of the party or association.

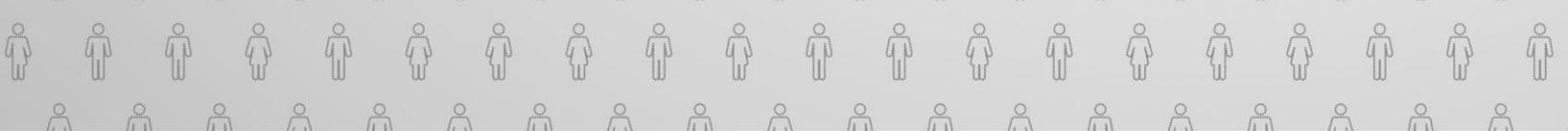
Recommendation 54: Permit a registered political party to create and register a district association for the purpose of supporting the political activities of its official candidate in an electoral district.

Amend the definition of "district association" at section 2 of the *Elections Act* as follows:

"district association" means an association of persons supporting a political party in an electoral district or an association created by a political party to support an official candidate of the party in that electoral district. [Emphasis added]

Recommendation 55: With respect to leadership contestants and nomination contestants, assign responsibility for compliance with the *Political Process Financing Act* to a financial agent of the leadership contestant or nomination contestant.

- a. Amend the following provisions of the *Elections Act*:
 - i. paragraph 136.1(2)(c) - official representative of a leadership contestant becomes financial agent; and
 - ii. paragraph 136.2(2)(d) - official representative of a nomination contestant becomes financial agent.
- b. Make all amendments to the *Elections Act* consequential on the amendment of sections 137 and 138 with respect to leadership contestants and nomination contestants.
- c. Amend the *Political Process Financing Act* so that, with respect to a leadership contestant or a nomination contestant, the financial agent of a leadership contestant or nomination contestant is responsible for performing all duties currently imposed on an official



representative. That individual would be authorized to designate anyone to act on his or her behalf with respect to the responsibilities imposed by the Act on a leadership contestant or a nomination contestant.

Recommendation 56: With respect to registered third parties, assign responsibility for compliance with the *Political Process Financing Act* to a financial agent.

- a. Amend sections 84.1 to 84.9, 85, and 88.1 of the *Political Process Financing Act* to replace “chief financial officer” with “financial agent”.

The introduction of the “financial agent” will be reflected in the rest of the discussion in this Part.

D. Election expenses

i. Calculation of election expenses spending limits

The spending limits on election expenses of registered political parties and candidates are prescribed by formulas set out at section 77 of the *Political Process Financing Act*.⁵⁰

77(1) Election expenses of a registered political party shall be limited so as not to exceed:

- (a) for a general election, an amount equal to the product obtained by multiplying one dollar by the number of electors in the aggregate of the electoral districts in which such party has candidates, and
- (b) for a by-election, an amount of seven thousand dollars for each by-election.

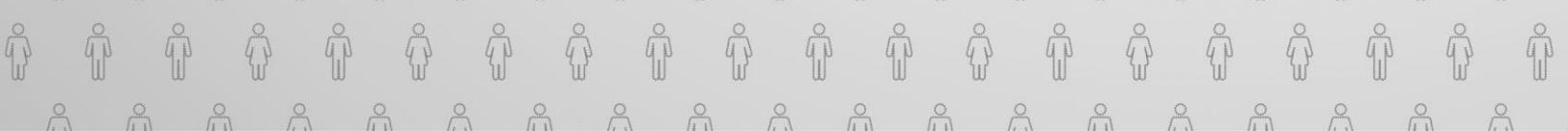
77(2) Election expenses of a candidate shall be limited so as not to exceed:

- (a) for a general election, an amount equal to the sum obtained by allowing one dollar and seventy-five cents for each of the electors in the electoral district for which he is a candidate,
- (b) for a by-election, an amount equal to the sum obtained by allowing two dollars for each of the electors in the electoral district for which he is a candidate.

77(3) Notwithstanding subsection (2), in no case shall the election expenses of any candidate be limited to an amount less than eleven thousand dollars or exceed twenty-two thousand dollars.

It is the opinion of the Supervisor that a number of improvements and simplifications should be made to these calculations.

⁵⁰ The amount calculated under section 77 is adjusted for inflation in accordance with section 77.1.



a. Date for determining number of electors

In accordance with section 80 of the Act, the calculation of the election expenses limits for political parties and candidates is based on the number of electors included on the preliminary list of electors prepared by the Chief Electoral Officer on the first day of the election period for each electoral district. Most jurisdictions in Canada use this type of formula. However, the Supervisor also prepares an estimate of the election expenses limits based on the number of electors registered on January 1. The purpose of this estimate is to give political parties and candidates an early indication of what they can expect the election expenses spending limits to be for the upcoming provincial general election.

With the register of electors, it is a simple exercise to determine the number of electors in each electoral district as of January 1 annually, and to calculate the election expenses spending limits as of that date for a scheduled general election. As we are also proposing below that the period to incur election expenses be the entire calendar year in which an election is held, it is proposed that, in the case of a scheduled general election, the election expenses spending limits be based on the number of electors in each electoral district on January 1 of that year.

For registered political parties, their spending limit would still need to include a factor for the number of electoral districts in which the party has candidates, something which cannot be determined until the close of nominations during the election period.

For a by-election or a provincial general election that is not held on the fixed date, the spending limits would continue to be established from the preliminary list of electors on the day the writ or writs of election are issued.

Recommendation 57: In the case of a scheduled general election, determine the election expenses spending limits based on the number of electors in each electoral district on January 1 of the year in which the election is to be held.

Amend section 80 of the *Political Process Financing Act* so that, for the purpose of calculating election expenses spending limits for a scheduled general election, the number of electors in each electoral district shall be determined as of January 1 of the year in which the election is to be held. In the case of a by-election or an unscheduled general election, the number of electors and the corresponding spending limits shall continue to be determined based on the preliminary list of electors.

b. Common spending limit for all electoral districts

In order to further simplify the calculation of election expenses spending limits, it is proposed that there should be a common spending limit for each electoral district, regardless of the size of the electoral district. Having one amount for all candidates in all electoral districts would be very desirable for the simplicity it would create for all participants in an election. This is a reasonable approach given the number of electors per electoral district, other than in “extraordinary circumstances”, must be within 15% of the electoral quotient established under the *Electoral Boundaries and Representation Act*.⁵¹

⁵¹ R.S.N.B. 2014, c.106, ss.10 and 11.

With a common election expenses spending limit for all candidates, there is no longer a need for a “floor” and “ceiling” on the spending limit, as provided in subsection 77(3) of the Act. This was originally necessitated by the fact that there was a wide range in the number of electors in electoral districts across the Province, resulting in a great deal of variance in spending limits. Smaller, rural, county-based ridings often had significantly fewer electors than larger, city-based ridings.

Finally, in order to further simplify the election expenses spending limits calculations and their application by financial agents, it is recommended that the calculations of the spending limits for candidates and registered political parties be rounded up or down to the nearest thousand dollars.

To demonstrate the practical impact of these proposals on a candidate, the following table shows what the calculation of the spending limits for a candidate in the 2018 provincial general election would have been under the proposed changes:

	Proposed calculation of spending limit
Base amount per elector	\$1.75
Inflation adjustment	2.000
Adjusted amount per elector	\$3.50
Number of electoral districts	49
Average number of electors per district ⁵²	11,569
Spending limit	\$40,492
Rounded spending limit	\$40,000

(**Note:** The average spending limit for a candidate in the 2018 provincial general election was \$40,676.)

Recommendation 58: Simplify the calculation of election expenses spending limits.

Amend section 77 of the *Political Process Financing Act* to calculate the election expenses spending limits as follows:

- i. for a registered political party at a general election:⁵³

(Total Number of Electors in the Province / Number of Electoral Districts) x (\$1.00 x Inflation Adjustment Factor⁵⁴) x Number of Electoral Districts in which the Party has Officially Nominated Candidates

- ii. for candidates at a general election:

(Total Number of Electors in the Province / Number of Electoral Districts) x (\$1.75 x Inflation Adjustment Factor)

- iii. for candidates at a by-election:

⁵² Figure based on 566,922 New Brunswick electors at August 2018.

⁵³ There is no change recommended to the election expenses limit of a registered political party for a by-election, which is prescribed by paragraph 77(1)(b) as \$7,000 per by-election (and adjusted for inflation).

⁵⁴ The inflation adjustment factor is calculated in accordance with section 77.1 of the Act.

(Total Number of Electors in the Province / Number of Electoral Districts) x (\$2.00 x Inflation Adjustment Factor)

iv. the spending limits shall be rounded to the nearest thousand dollars; and

Repeal subsection 77(3) of the Act to eliminate the “floor” and “ceiling” on the calculation of the election expenses spending limit for candidates.

ii. *Period to report election expenses*

Since the introduction of fixed-date elections in New Brunswick in 2010, it has become evident that the political strategies for an election have changed significantly. In the 2018 provincial general election, many candidates were nominated in late 2017 and early 2018, and many candidates, registered political parties and registered district associations engaged in some form of campaign activity and communication with their electorate well before the official start of the election on August 23, 2018.

Since 2010, the Supervisor has observed a number of areas that are problematic for participants in an electoral campaign, including:

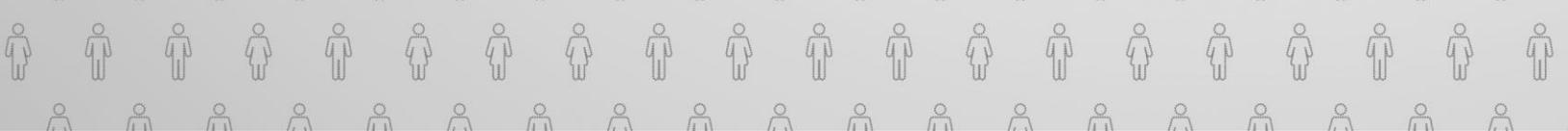
- distinguishing so-called “pre-writ advertising” from election-period advertising;
- “double counting” for advertising displayed during the pre-writ and election periods;
- accounting for the set-up costs of a campaign office; and
- reporting election expenses incurred by the registered district association rather than by the official agent of the candidate.

It would be advantageous for registered political parties, registered district associations, candidates, and financial agents if these problem areas were addressed by a set of rules that were simple and instinctive to the participants. Based on the experience and observation of the Supervisor, it seems that most people can reasonably determine when an expenditure is made for the purpose of electing a candidate and should reasonably be treated as an election expense. Quite simply, everything purchased and used for an election, over and above normal operating expenditures, should be treated as election expenses.

Much of the difficulty arises out of the definition of “election expenses” found in subsection 67(1) of the *Political Process Financing Act*, and the underlined portion of the definition in particular:

67(1) In this Act “election expenses” means all expenditures incurred during an election period for the purpose of promoting or opposing directly or indirectly, the election of a candidate or that of the candidates of a party, including every person who subsequently becomes or who is likely to become a candidate, and includes all expenditures incurred before an election period for literature, objects or materials of an advertising nature used during the election period for such purposes. [*Emphasis added*]

Any solution to this challenge should result in a rule that is easily understood by the participants in electoral campaigns and is reflective of the reality of electoral campaigns conducted under fixed-date elections. It is suggested that this can be achieved by amending the definition of “election expenses” so



that, rather than being limited to those expenditures incurred or assets used during the election period, election expenses include those expenditures incurred or assets used during the calendar year of an election.

Recommendation 59: Expand the definition of “election expenses” so that it includes expenses incurred or assets used during the calendar year in which an election is held.

Amend subsection 67(1) of the *Political Process Financing Act* so that “election expenses” is defined so as to include expenditures incurred or assets used in the calendar year in which an election is held, provided those expenditures are incurred for the purpose of promoting or opposing directly or indirectly, the election of a candidate or that of the candidates of a party, including every person who subsequently becomes or who is likely to become a candidate. It would no longer be necessary to specifically include “expenditures incurred before an election period for literature, objects or materials of an advertising nature used during the election period for such purposes,” as the new definition would capture this material.

Recommendation 60: Clarify that the costs associated with holding a fundraising event outside the election period are not election expenses.

Amend subsection 67(2) of the *Political Process Financing Act* to exclude from the definition of “election expenses” all costs incurred in relation to a fundraising event which is held outside the election period. This amendment is necessitated by the proposed amendment to the definition of election expenses. It is not the intention of the above recommendation that the costs associated with holding a fundraising event outside of the election period should be reported as election expenses. Costs associated with holding a fundraising event during the election period, however, would be considered election expenses.

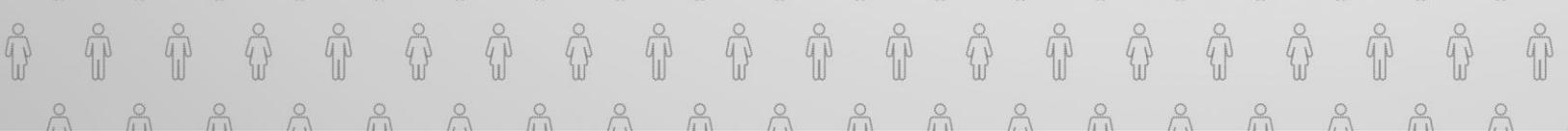
Recommendation 61: Clarify that the advertising costs associated with publicizing a public meeting are not election expenses.

Amend subsection 67(2) of the *Political Process Financing Act* to exclude from the definition of “election expenses” the advertising costs incurred to publicize a public meeting as described in subsection 50(2). This would exclude, for example, notices of a nomination meeting from being subject to the spending limit on election expenses.

iii. Limiting pre-writ election advertising

Although it is proposed that pre-writ expenditures that are in fact election expenses should be reported as election expenses and subject to the limits on election expenses prescribed by section 77 of the *Political Process Financing Act*, the advisory committee under the Act unanimously agreed in previous discussions that they wish to prevent an assault on the public with advertising campaigns that run too long in the vein of American presidential election campaigns. Pre-writ campaigning should be allowed, but a mechanism needs to be in place to prevent a protracted onslaught of pre-writ advertising.

It is therefore recommended that any expenditures incurred before the issuance of an election writ for advertising that “promotes or opposes directly or indirectly, the election of a candidate or that of the candidates of a party, including every person who subsequently becomes or who is likely to become a candidate,” would *simultaneously* be subject to the annual advertising limits prescribed in section 50 of



the *Political Process Financing Act*, notwithstanding the revised definition of “election expenses” in section 67 of the Act.

Recommendation 62: Ensure that pre-writ electoral advertising on behalf of registered political parties, registered district associations, and candidates is simultaneously subject to the annual “non-election” advertising limit, despite its inclusion in election expenses.

Amend the *Political Process Financing Act* to ensure that, notwithstanding the proposed revised definition of “election expenses” in section 67 of the Act, the annual limits prescribed by subsection 50(1) of the Act still apply to all advertising expenditures incurred by registered political parties, registered district associations and registered independent candidates outside of the election period.

E. Advertising

i. Advertising outside election period

Section 50 of the *Political Process Financing Act* sets out spending limits on non-election advertising expenditures that may be incurred by registered political parties, registered district associations and registered independent candidates. Subsections 50(2) and (3) establish certain exclusions from the prescribed spending limits. Although some amendments have been made to this section over the years, the language of subsection 50(1) which describes the advertising to which the spending limits apply has not been updated since enactment in 1978 and does not reflect methods of advertising in the 21st century.

The introductory words of subsection 50(1) are as follows:

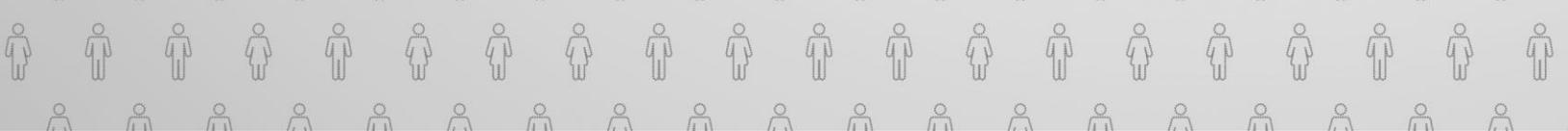
50(1) Expenditures other than election expenses incurred by registered political parties, registered district associations or registered independent candidates for advertising on broadcasting undertakings⁵⁵ or in newspapers, periodicals or other printed matter shall be limited so as not to exceed: ... [*Emphasis added*]

The underlined phrases above have caused particular problems for interpreting and applying the legislation in recent years as media for disseminating political advertising have expanded to include websites, online streaming of programming and social media platforms. The express wording of the provision has resulted in distinctions being made that, although legally correct, are not reasonable.

For example, it has been determined that a “broadcasting undertaking” includes programming broadcast over the internet, but does not include Facebook. Therefore, advertising on the former is captured by the expenditure limit in subsection 50(1), but advertising on the latter is not.

Similarly, “other printed matter” has given rise to debates over whether the following are “other printed matter” subject to the spending limit: vehicle wrapping; pamphlets; handbills; door knockers; clothing with printed messages; buttons, pins and other memorabilia; etc.

⁵⁵ “Broadcast undertaking” is defined at subsection 1(1) of the *Political Process Financing Act* as “a broadcasting undertaking as defined in section 2 of the *Broadcasting Act* (Canada).”



To simplify this provision, remove interpretive loopholes and make the provision nimble enough to apply to future changes in advertising media and mediums, it is recommended that this provision simply place spending limits on non-election advertising expenditures. Subsection 50(1) would still be subject to the exclusions and exceptions set out in subsections 50(2) and (3).⁵⁶

Recommendation 63: Simplify the rules regarding spending limits on non-election advertising expenditures by registered political parties, registered district associations and registered independent candidates.

- i. Amend subsections 50(1) and (2) of the *Political Process Financing Act* to indicate that the spending limits on non-election advertising expenditures apply to all manner of advertising by striking out “on broadcasting undertakings or in newspapers, periodicals or other printed matter”.
- ii. Amend paragraph 50(3)(c) of the *Political Process Financing Act* so that this exclusion applies to the publication of season’s greetings, congratulatory messages or best wishes for community events, regardless of where it is published by striking out “in a newspaper”.

With respect to the exclusions and exceptions set out in subsections 50(2) and (3) of the *Political Process Financing Act*, it has been open to interpretation whether the following exclusion at paragraph 50(2)(a) is broad enough to include advertising for a fundraising event:

50(2) Subsection (1) does not apply to expenditures incurred by registered political parties, registered district associations or registered independent candidates for advertising on broadcasting undertakings or in newspapers, periodicals or other printed matter if such advertising is limited to:

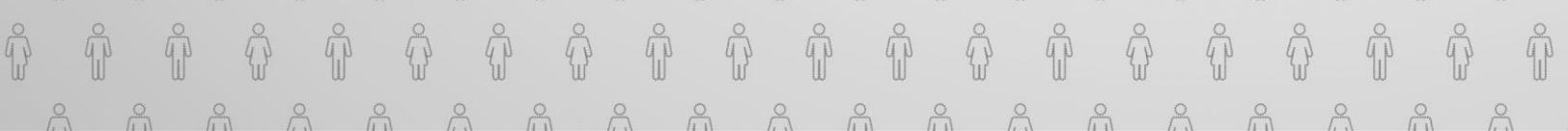
- (a) publicizing the date, time, place and subject matter of a public meeting organized by a registered political party, registered district association or registered independent candidate and an advertisement described in this paragraph may include a photo of a guest speaker and

It is the opinion of Elections New Brunswick that subsection 50(2) does not capture advertising for fundraising activities, but that advertising related to fundraising activities should be excluded from the spending limit on non-election advertising expenditures, provided the event does not occur during the election period. When a registered political party, registered district association or registered independent candidate submits its annual financial return, all the costs associated with holding a fundraising event are reported as an expense of the event and this should be sufficient.

Recommendation 64: Expenditures incurred for advertising related to a fundraising activity should be excluded from the spending limits on non-election advertising expenditures.

Amend section 50 of the *Political Process Financing Act* to indicate that the spending limits on non-election advertising expenditures set out in subsection 50(1) do not apply to expenditures incurred by registered political parties, registered district associations or registered independent

⁵⁶ The prescribed spending limits do not apply to the publication of notices of public meetings and seasonal and congratulatory messages, and the production and distribution of newsletters to party members and Christmas cards, and the cost of postage for mailing letters etc.



candidates for advertising related to fundraising activities, provided that the event is not held during the election period.

ii. Advertising disclosure requirements

Section 73 of the *Political Process Financing Act* sets out the disclosure requirements for print and broadcast advertising ordered on behalf of a registered political party or a candidate for election advertising. These provisions have not been updated since the Act was written in 1978 and are in need of modernization in a number of respects.

In making the following recommendations, Elections New Brunswick has been mindful that the purpose of including such disclosure requirements in the *Political Process Financing Act* is to facilitate the tracking and tracing of advertising expenditures to ensure compliance with the political financing regime in the Province. Based on complaints received by and concerns expressed to Elections New Brunswick during the 2018 provincial general election campaign regarding election signs and other advertising by registered political parties and third parties, a discussion of the broader public policy reasons for such disclosure requirements may be necessary. Such a discussion might justify broader legislative amendments in this area. However, it is the position of Elections New Brunswick that this is a discussion more appropriately had by the elected members of the Legislative Assembly as it goes beyond improving the administration of the political financing process.

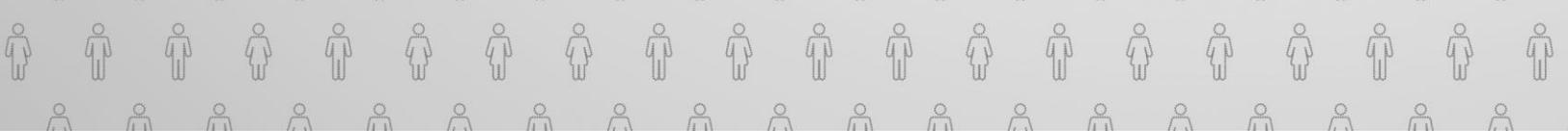
a. Print advertising

In the case of print advertising, which includes such items as placards, posters and pamphlets, the advertising must include the name and address of the printer, in addition to the name of the registered party or candidate on whose behalf it was ordered. There is no offence associated with failing to comply with this requirement; however, during every election, Elections New Brunswick receives numerous requests for clarification of this requirement and complaints that a registered political party or candidate has not complied with the requirement.

On consideration, Elections New Brunswick could not determine what purpose is served by this particular requirement and recommends its removal.

During the most recent provincial general election, Elections New Brunswick also received numerous complaints that print advertising - particularly large signs and billboards - did not include **any** information disclosing on whose behalf the advertising was ordered. This was of particular concern with regard to attack-style advertising as it was not readily apparent from the content of the advertising who was behind the advertising – be it a political party, candidate or third party. On investigation by Elections New Brunswick staff, it was discovered that these advertisements did, in fact, include the necessary disclosure information; however, it was in such a small font as to be virtually invisible to passing motorists.

It is our opinion such compliance with the strict letter of the law fails to uphold the spirit and intent of the legislation – to ensure the public can ascertain on whose behalf advertising has been placed. It is therefore recommended that the identification requirements be required to be of such reasonable size



as to be clearly visible to the intended audience of the advertising. In addition, it is recommended that the disclosure requirements apply to electronic and digital signs.

Recommendation 65: Remove the requirement for print advertising ordered on behalf of a registered political party, candidate, registered leadership contestant or registered nomination contestant to identify the printer.

- a. Amend subsection 73(1) and paragraph 73(4)(a) of the *Political Process Financing Act* to remove the requirement that print advertising bear the name and address of its printer.
- b. Amend subsection 50.1(1) and paragraph 50.1(4)(a) of the *Political Process Financing Act* to remove the requirement that print advertising bear the name and address of its printer.

Recommendation 66: Require the identifying information on print advertising to be clearly visible to the advertisements' intended audience.

Amend sections 50.1 and 73 of the *Political Process Financing Act* to require that the identifying information required to be included on print advertising be of such reasonable size as to be clearly visible to the intended audience of the advertising.

Recommendation 67: Ensure the advertising disclosure requirements for print advertising apply to electronic and digital signs.

Amend subsections 50.1(1) and 73(1) of the *Political Process Financing Act* to require that the identifying information required to be included on print advertising also apply to electronic and digital signs.

b. Internet advertising

Subsections 73(2) and (3) of the *Political Process Financing Act* prescribe the identifying requirements for published and broadcasted advertising:

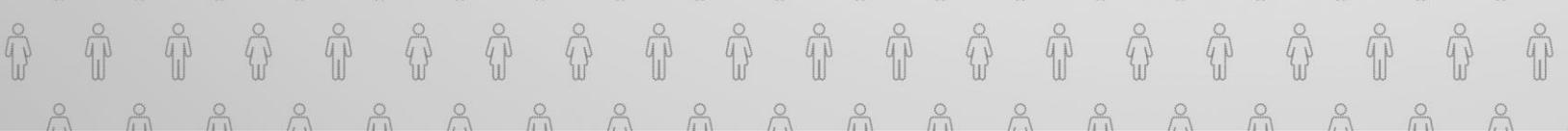
73(2) Every advertisement relating to an election published in a newspaper, periodical or other publication and ordered by a chief agent or an official agent or a person authorized by a chief agent or official agent shall bear the name of the registered political party or candidate on whose behalf it was ordered.

73(3) Every broadcast of a sponsored radio or television advertisement relating to an election and ordered by a chief agent or official agent shall mention the name of the registered political party or candidate on whose behalf it was ordered, at the beginning or the end of the broadcast.

Given the prevalence of political advertising on the internet, including on social media platforms, these provisions need to be updated to be inclusive of modern advertising mediums.

Recommendation 68: Expand the scope of advertising which requires identifying information to include advertising published or broadcasted on the internet.

- i. Amend subsections 50.1(2) and 73(2) of the *Political Process Financing Act* to ensure advertisements published on the internet or in an online publication are subject to the prescribed disclosure requirements.

- 
- ii. Amend subsection 50.1(3) and 73(3) of the *Political Process Financing Act* to ensure advertisements broadcast on the internet are subject to the prescribed disclosure requirements.

- c. Disclosure requirements for non-election advertising

As indicated above, section 50 of the *Political Process Financing Act* establishes spending limits for non-election advertising expenditures. There are no established disclosure requirements for this type of advertising and it causes unnecessary confusion for printers, broadcasters and publishers, as well as electoral participants and the public. For the sake of consistency, section 50 of the Act should be amended to include disclosure requirements for non-election advertising expenditures that mirror those in sections 50.1 and 73.

Recommendation 69: Impose on published or broadcasted non-election advertising the same disclosure requirements as are imposed on election advertising.

- a. Amend section 50 of the *Political Process Financing Act* to impose on the non-election advertising referred to in that section disclosure requirements that mirror the requirements imposed on election advertising in sections 50.1 and 73 of the Act and referred to above.
- b. Amend Schedule B to the *Political Process Financing Act* to add these new provisions to the list of categorized offences, and categorize the offences as a category C offence.

F. Contributions

i. *Election expenses of candidate*

Under section 71 of the *Political Process Financing Act*, a candidate may personally incur election expenses up to a total of \$2,000 “during the election period”. If these are not reimbursed to the candidate, the candidate is “deemed to have made a contribution equal in value to the amount of the [election] expenses.”⁵⁷

This amount was set in 1978 when the *Political Process Financing Act* was originally enacted. With consideration for inflation, and given the reduction of the annual contribution limit from \$6,000 to \$3,000 in 2017, it would seem reasonable to increase this limit to \$3,000.

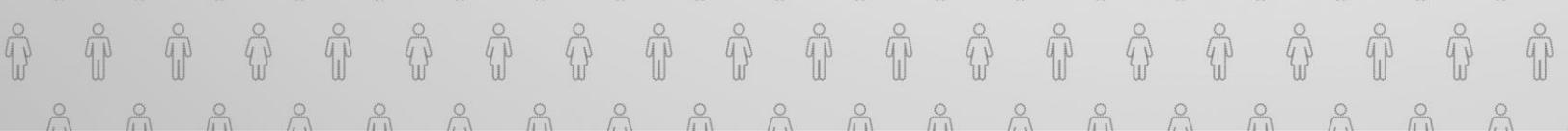
Recommendation 70: Increase the limit on election expenses that a candidate may personally incur to the same amount as the contribution limit of \$3,000.

Amend subsection 71(1) of the *Political Process Financing Act* to increase the limit on election expenses that a candidate may personally incur to \$3,000 and remove the reference to “during the election period” to reflect the change proposed below with respect to the definition of “election expenses”.

ii. *Anonymous contributions*

Sections 46 and 46.1 of the *Political Process Financing Act* require that every contribution to a registered political party, registered district association, registered independent candidate or leadership or nomination contestant be acknowledged by a receipt; and section 47 of the Act, essentially prohibits

⁵⁷ *Supra* note 36 at ss.71(2.1).



anonymous contributions of any amount. The prohibition on anonymous contributions does not easily facilitate simple fundraising activities such as “passing the hat” at public meetings and bake sales. The Supervisor routinely receives inquiries, usually from registered district association volunteers, regarding how to organize such events under the legislated rules or how to deal with contributions from such activities.

Federally, the *Canada Elections Act* authorizes anonymous contributions of \$20 or less and prescribes a record-keeping scheme for such contributions.⁵⁸ If anonymous contributions are collected during an event, the authorized agent has to keep track of the total amount collected and the number of contributors. Under subsection 366(2) of that Act, the following must be recorded:

- a. a description of the function;
- b. the date of the function;
- c. the approximate number of people at the function; and
- d. the total amount of anonymous contributions received.

We believe that it is advisable for New Brunswick to follow the federal example. It allows a simple exception to the general rule against anonymous contributions that facilitates simple grassroots fundraising and simplifies the record-keeping for such activities. It should be noted that subsection 38(1) of the *Political Process Financing Act* requires that all contributions be made out of the contributor’s own property. Therefore, in order to circumvent prescribed contribution limits, an individual could not provide money to others to contribute anonymously at such events.

Recommendation 71: Authorize anonymous contributions up to \$20.

Amend the *Political Process Financing Act* to authorize the making of and acceptance of anonymous contributions of \$20 or less at a meeting or a fundraising event. Such contributions would be authorized to a registered political party, registered district association, registered independent candidate, leadership contestant or nomination contestant. The person authorized to accept contributions would be required to record the following information:

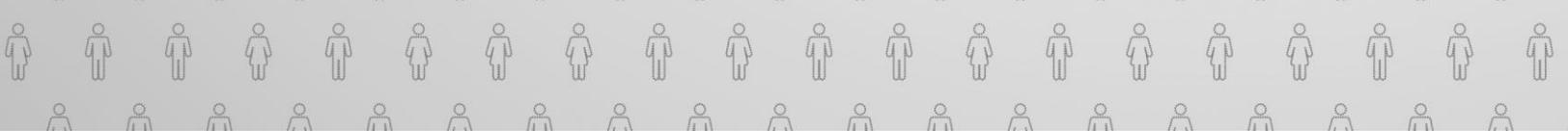
- i. a description of the event at which the contributions were collected;
- ii. the date of the event;
- iii. the approximate number of people at the event; and
- iv. the total amount of anonymous contributions received.

iii. Entrance fees

Subsection 2(1) of the *Political Process Financing Act* sets out a number of items that are not considered contributions under the Act. These include, at paragraph 2(1)(f), “an entrance fee to an activity or demonstration of a political nature” that is not more than \$10.

This exemption, along with the exemptions for annual dues for membership in a political party and the registration fee for a political convention, are designed to remove the necessity of complying with the administrative formalities associated with making a contribution under the Act, particularly in situations

⁵⁸ *Canada Elections Act*, S.C. 2000, c.E-2.01, s.366.



where a large number of people would be paying a relatively small sum at the same time. The limit of \$10 was established in 1978 when the Act was originally enacted.

In order to be consistent with the proposed limit for anonymous contributions and to account, in part, for inflation, it is recommended that the amount for an exempted entrance fee be increased to \$20.⁵⁹

Recommendation 72: Increase to \$20 the amount of an entrance fee that is not considered a contribution.

Amend paragraph 2(1)(f) of the *Political Process Financing Act* to increase to \$20 the entrance fee to an activity or demonstration of a political nature that is not considered a contribution under the Act.

iv. Cash contributions

Subsection 44(1) of the *Political Process Financing Act* requires that any contribution of money exceeding \$100 must be made by “cheque, credit card debit card or other order of payment drawn by the contributor on a chartered bank, trust company or credit union on an account in the name of the contributor.” This \$100 limit on cash contributions was set in 1978 when the *Political Process Financing Act* was originally enacted. It is recommended that this amount be increased to \$200 to account, in part, for inflation.

Further, guidelines issued by the Supervisor of Political Financing require that all contributions of money received by registered district associations be directly forwarded to and deposited by their respective registered political party.

Some parties have established banking services whereby the association is able to make a deposit of contributions to the bank account of the party at a remote branch reasonably accessible by the official representative of the association. In certain cases where a branch of the party’s bank is not reasonably accessible, a concession was made to permit contributions of cash only to be deposited in the local account of the association and then a cheque forwarded to the party for the total cash deposit. This cheque would be forwarded along with other contributions made by cheque.

The central processing of contributions is necessary to ensure compliance with the annual contribution limit of individuals, and it greatly streamlines the processing of contributions for both the political party and its district associations. It is recommended that this guideline be enshrined in legislation.

Recommendation 73: Increase limit on cash contributions to \$200.

Amend section 44 of the *Political Process Financing Act* to increase the limit on cash contributions from \$100 to \$200.

⁵⁹ According to the Report of the New Brunswick Commission on Electoral Reform, *A pathway to an inclusive democracy* (Fredericton, NB, March 1, 2017), Appendix B, the inflation adjustment factor at that time, from the enactment of the Political Process Financing Act on June 28, 1978 was 3.494.

Recommendation 74: Require contributions of money received by a registered district association to be deposited directly with its registered political party.

Amend section 45 of the *Political Process Financing Act* to require contributions of money received by a registered district association to be deposited directly with its registered political party. An exception would be permitted in the case of cash contributions if accessing a local branch of the political party's bank is not practicable for the registered district association.

v. Anonymized contributions

Anonymized contributions are distinct from the anonymous contributions discussed above. In order to protect the privacy of individuals who make small donations, the *Political Process Financing Act* does not require the public disclosure of annual contributions made by individuals of \$100 or less to registered political parties,⁶⁰ registered district associations,⁶¹ third parties⁶² and leadership or nominations contestants.⁶³ These contributions, however, are evidenced by a contribution receipt and are reported as a global figure on financial returns filed with Elections New Brunswick.

As with many of the other figures referred to above, this amount of \$100 was set in 1978 when the *Political Process Financing Act* was originally enacted. It is recommended that this amount be increased to \$200 to account, in part, for inflation.

Recommendation 75: Increase limit on anonymized contributions to \$200.

Amend the following provisions of the *Political Process Financing Act* to increase the limit on contributions the details of which are not subject to public disclosure from \$100 to \$200:

- i. clause 62.1(2)(b)(iii)(A);
- ii. subsection 63(2); and
- iii. subsection 84.9(5).

vi. Deemed contributions

Subsection 72(2) of the *Political Process Financing Act* provides as follows:

72(2) Subject to sections 2 and 48, any person who accepts for election expenses a price less than his regular price for similar work, merchandise or services outside the election period is deemed to have made a contribution equal in value to the difference between his regular price and the price accepted.

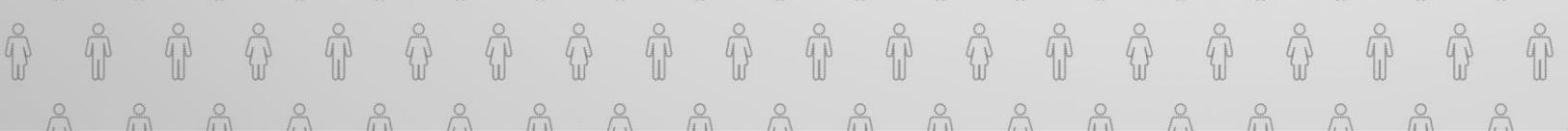
A similar deeming provision does not exist for discounts on work, merchandise or services that do not qualify as "election expenses". Corporations are no longer permitted to make contributions to registered political parties, registered district associations, registered independent candidates, leadership contestants or nomination contestants. However, in order to circumvent the prohibition on corporate contributions, a corporation may provide goods and services at a deep discount. Subsection

⁶⁰ *Supra* note 36 at s. 63(2).

⁶¹ *Ibid.*

⁶² *Supra* note 36 at s. 84.9(5).

⁶³ *Supra* note 36 at s. 62.1(2)(b)(iii)(A).



72(2) does not permit this with respect to election expenses, as the discount is deemed a contribution, which a corporation is prohibited from making.

In order to avoid this potential loophole and to eliminate an inconsistency between election and non-election contributions, it is recommended that the deeming provision in subsection 72(2) apply to discounts given on all expenditures. As a result, only an individual would be permitted to accept a price less than his or her regular price for work, merchandise or services that is an expenditure under the Act.

Recommendation 76: Deem a discount on non-election expenditures to be a contribution of property and services equal in value to the discount.

Amend the *Political Process Financing Act* to provide that, subject to section 48, a person is deemed to have made a contribution of property and services if the person accepts for non-election expenditures a price less than the price charged to the public at the same time for similar work, merchandise or services. The value of the contribution is equal in value to the difference between the regular price and the price accepted.

G. Independent candidates

i. Contributions to registered independent candidates

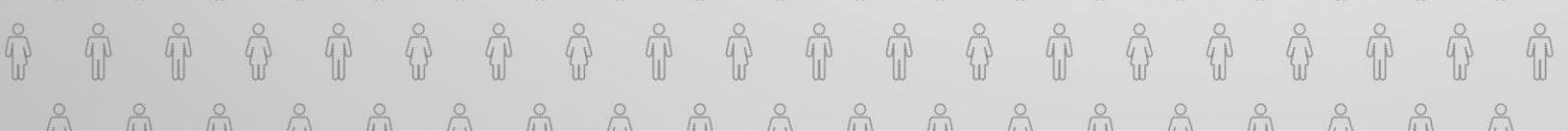
As indicated in Part I above, under the *Elections Act*, a registered independent candidate may remain registered after an election. Section 62 of the *Political Process Financing Act* clearly contemplated this possibility by requiring a registered independent candidate to file an annual financial return, in addition to the statement of election expenses required under section 81 of the Act. Further, section 28 of the Act permits registered independent candidates to “solicit, collect or accept contributions or financing, or incur expenditures other than election expenses.” This is not a privilege which is extended to official candidates of registered political parties or unregistered independent candidates.

Section 29 of the *Political Process Financing Act* provides as follows:

29 Subsequent to the polling day of the election at which he is a candidate, a registered independent candidate may collect contributions only up to an amount equal to an amount that his expenditures, including election expenses, up to and including polling day, exceeds the amount of the contributions received by him or on his behalf up to that date. [*Emphasis added*]

Section 29 expressly excludes a registered independent candidate from collecting contributions beyond what is necessary to off-set any expenditures incurred up to and including Election Day. This would seem to preclude an independent candidate who remains registered for a future election from collecting contributions for a future electoral campaign. Given the provisions referred to above from both the *Elections Act* and the *Political Process Financing Act*, there does not appear to be any reason to prohibit this activity.

It is our opinion that the restriction on the purpose for which a registered independent candidate may collect contributions should be removed. A registered independent candidate who continues to be registered will be required to file annual financial returns which will ensure the candidate’s financial



activities are transparent, and section 30 of the *Political Process Financing Act* provides a mechanism to deal with the assets of a registered independent candidate who ceases to be registered for any reason. As discussed in Part I above, it is also being recommended that the Chief Electoral Officer have the authority to initiate the cancellation of a registered independent candidate after an election. It is our opinion that these provisions provide adequate safeguards against whatever perceived mischief section 29 of the *Political Process Financing Act* was originally intended to prevent.

Subsection 50.01(4) of the *New Brunswick Income Tax Act*⁶⁴ does not permit a contribution made to a registered independent candidate outside of an election period to qualify for the political contribution tax credit under section 50.01 of that Act. If registered independent candidates are permitted to collect contributions at any time, there is no logical or legal justification to maintain this exclusion in the *New Brunswick Income Tax Act*.

Recommendation 77: Allow registered independent candidates to collect contributions as long as they are registered.

- a. Repeal section 29 of the *Political Process Financing Act*.
- b. Repeal subsection 50.01(4) of the *New Brunswick Income Tax Act*.

ii. Elimination of unregistered independent candidates

Currently, an independent candidate is not required to register under the *Elections Act* if the candidate does not intend to accept contributions or financing from others and will not spend more than \$2,000 of his or her own funds on election expenses. In the 2018 general election, only three independent candidates remained unregistered.

With the introduction of the financial agent model, it does not seem onerous to require each independent candidate to file a one-page registration document with Elections New Brunswick.

Recommendation 78: Require all independent candidates to register with Elections New Brunswick

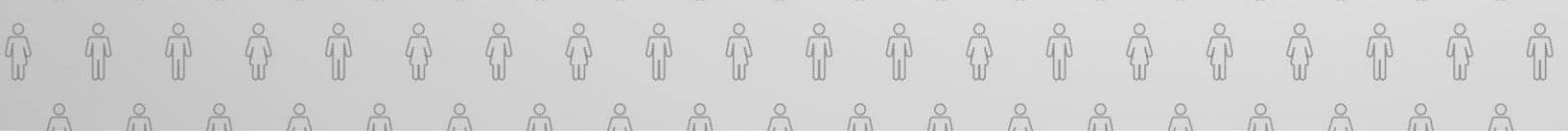
Eliminate all provisions in the *Political Process Financing Act* regarding unregistered independent candidates.

H. Financial reporting

i. Financial returns

Currently, the official agent of a candidate is required to submit a “statement of election expenses” in accordance with subsection 81(1) of the *Political Process Financing Act*. This statement is required to be submitted to the Supervisor within “60 days following the date fixed by the *Elections Act* for the return of the writ,” which is eleven days following ordinary polling day. The recent change to the date of a scheduled general election and the recommended adoption of the financial agent model make changes to the format of financial returns and their filing deadlines advisable.

⁶⁴ S.N.B. 2000, c. N-6.001.



In 2017, subsection 3(4) of the *Legislative Assembly Act* was amended to change the “fixed-date election” date from the fourth Monday in September to the third Monday in October.⁶⁵ This change will be effective for the next provincial general election in 2022, and impacts the dates that statements of election expenses are due under the *Political Process Financing Act*.

To illustrate, if the next provincial general election is held in accordance with the date fixed by the *Legislative Assembly Act*, the election will be held on October 17, 2022, and the date fixed for the return of the writs will be October 28, 2022. The statements of election expenses will be due to be submitted to the Supervisor no later than December 27, 2022. Due to the Christmas holiday season, we believe this date would be impractical for financial agents to meet and it would cause logistical difficulties for the staff of Elections New Brunswick.

With the adoption of the recommended financial agent model, we are recommending combining a candidate’s statement of election expenses and the annual financial return of a registered district association. This “comprehensive financial return” would be similar to the “joint financial return” used in 2018.

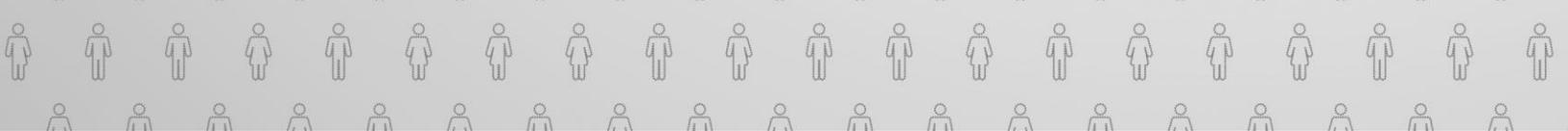
In order to simplify accounting and reporting processes during an election year, in 2018 the Supervisor created a “joint financial return” that is submitted jointly by a candidate’s official agent and an association’s official representative for circumstances in which the registered district association and its official candidate chose to use the association’s bank account to deal with the election expenses of its candidate. The joint financial return addresses both the election expenses of the candidate and the financial transactions of the association to the date of the return, and is submitted in accordance with the deadline under section 81 of the Act. An updated financial return on the same joint form is then submitted by the official representative of the association in accordance with section 60 of the Act.

It has been the Supervisor’s experience that the joint reporting process greatly simplifies reporting for registered district associations and their candidates, is more transparent for the public, and simplifies the examination process. In conjunction with adopting the financial agent model described above, it is recommended that a “comprehensive financial return” be adopted that is based on the existing “joint financial return”.

Finally, it is our opinion that the March 31 deadline for filing the annual financial return of a registered district association is later than is practically necessary and only provides an opportunity to procrastinate in filing the annual return.

A reasonable compromise for a comprehensive financial return would be a deadline of February 28. This results in an extension of the filing deadline for the statement of election expenses, while shortening the filing deadline for the annual return by one month. Financial agents would be free to file the return as soon after year-end as they wished in order to receive their reimbursement of election expenses more quickly after a general election.

⁶⁵ *An Act to Amend the Legislative Assembly Act*, S.N.B. 2017, c.33



In the case of a non-scheduled election, such as a by-election or a snap general election, the same comprehensive financial return template would be used; however, the current filing deadline of 60 days following the election period would remain unchanged. A financial agent would file a financial return covering the period commencing on January 1 of the calendar year and would file the return within 60 days following the election period.

Recommendation 79: Change deadline to submit statement of election expenses to accommodate the new date for scheduled elections and the new financial agent structure.

- a. Amend subsection 81(1) of the *Political Process Financing Act* to change the deadline for submission of the statement of election expenses to February 28 following the date fixed by the *Elections Act* for the return of the writ for a scheduled general election. The deadline for submission of the statement of election expenses would remain at 60 days following the date fixed by the *Elections Act* for the return of the writ for all other elections. Such a statement would include all transactions from January 1 of the calendar year.
- b. Amend section 60 of the *Political Process Financing Act* so the annual financial return of a registered district association or a registered independent candidate is due to be filed no later than February 28 of the following calendar year.

ii. Publication of statement of election expenses

Subsections 81(2) and 82(2) of the *Political Process Financing Act* provide as follows with respect to the publication of statements of election expenses received from official agents and chief agents:

81(2) Within ninety days of receiving the statement described in subsection (1), the Supervisor shall publish, in a form to be prescribed by him, a summary of each statement in *The Royal Gazette*.

82(2) Within ninety days after receiving the statement described in subsection (1), the Supervisor shall publish, in a form to be prescribed by him, a summary of such statements in *The Royal Gazette*.

The Supervisor can publish these summaries much more quickly than the prescribed timelines on the Elections New Brunswick website, and recommends that the Act be amended to reflect this modern reality.

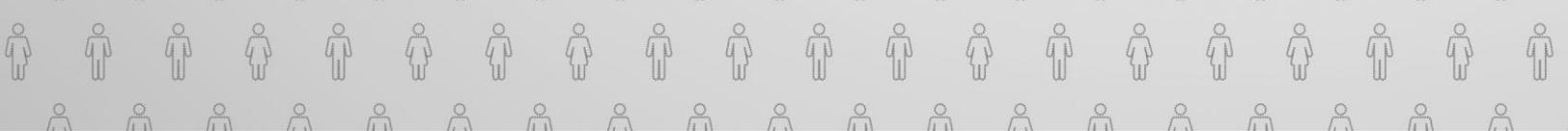
Recommendation 80: Require the Supervisor to publish a summary of each statement of election expenses on the Elections New Brunswick website.

Amend subsections 81(2) and 82(2) of the *Political Process Financing Act* to require the Supervisor to publish on the Elections New Brunswick website a summary of each statement of election expenses as soon as practicable after receiving the statement.

I. Compliance and enforcement

i. Investigative powers

Section 14 of the *Political Process Financing Act* prescribes the powers and duties of the Supervisor, which include determining if political parties, district associations, candidates and others are complying



with the Act, determining if contributions and expenses have been made or incurred in compliance with the Act, and receiving and examining returns, statements and reports filed under the Act. Although the Act imposes these responsibilities on the Supervisor, it does not provide the Supervisor with sufficient investigative powers to fulfill these responsibilities.

Sections 15 and 16 of the Act authorize the Supervisor to conduct an inquiry in the following circumstances:

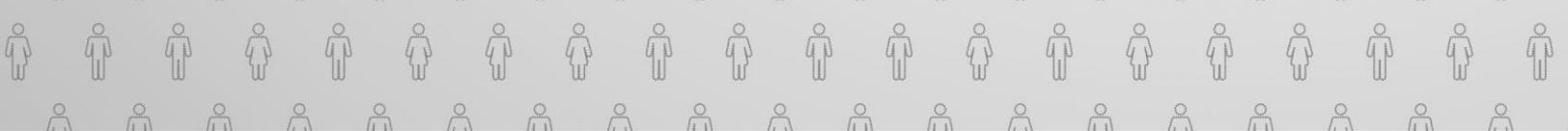
- i. on application of any person to determine if contributions, expenditures or election expenses have been made or financing provided in accordance with the Act; and
- ii. on the initiative of the Supervisor
 - a. to determine if contributions, expenditures or election expenses have been made or financing provided in accordance with the Act, or
 - b. to inquire into the expenditures of a registered political party if the Supervisor is not satisfied that the party is applying its annual allowance properly.

When conducting an inquiry in these circumstances, the Supervisor has all the “powers, privileges and duties” of a Commissioner under the *Inquiries Act*. However, except for a formal inquiry under section 15 or 16, there is no method provided in the Act to enable the Supervisor to obtain evidence or information from contributors nor does the Supervisor have the authority to compel the production of documents that are not otherwise required to be filed with a return.

An inquiry is an extremely technical and structured event. Witnesses are served with summonses and have the right to be represented by counsel; evidence is taken under oath; court stenographers are required to maintain a record of all proceedings. An inquiry will usually necessitate hiring an investigator and an inquiry lawyer. Inquiries often take months to organize and prepare for and can be extremely expensive. Costs of even a simple inquiry can range from tens of thousands of dollars to upwards of \$50,000 to \$100,000. This is an impractical and expensive method of fulfilling the Supervisor’s duties under the Act. Furthermore, due to the relevant evidentiary rules, evidence gained through an inquiry process may not be admissible evidence in a prosecution for an alleged offence under the *Political Process Financing Act*.

In order to effectively execute the Supervisor’s responsibilities under the *Political Process Financing Act*, it is our opinion that the Supervisor be provided with additional powers that could be exercised for the purposes of the Act, as opposed to under the narrow circumstances currently prescribed by the Act. These powers should provide the Supervisor with the authority to do the following:

- i. order a person to produce or provide the Supervisor with access to any relevant document in the person’s possession or control;
- ii. by summons, require a person to attend before the Supervisor to testify under oath or affirmation and produce any relevant document or thing in the person’s possession or control;
- iii. administer oaths and affirmations;

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- iv. enter and inspect any place relevant to an investigation and, in the course of the inspection, require a person to produce relevant documents, inspect or copy relevant documents or temporarily remove relevant documents for copying;
 - v. request the assistance of a peace officer for the purposes of exercising these powers and carrying out his duties and functions under the Act;
 - vi. apply to the court for a warrant if refused entry; and
 - vii. enforce a summons or order by applying to the court for an order to comply.

Such powers are consistent with the powers granted under provincial legislation to officials who are responsible for ensuring compliance with a regulatory scheme.

Recommendation 81: Provide the Supervisor with adequate investigatory powers to carry out his compliance responsibilities.

Amend the *Political Process Financing Act* to provide the Supervisor with those powers necessary to effectively execute the Supervisor’s compliance responsibilities under the Act. Specifically, amend the Act as follows:

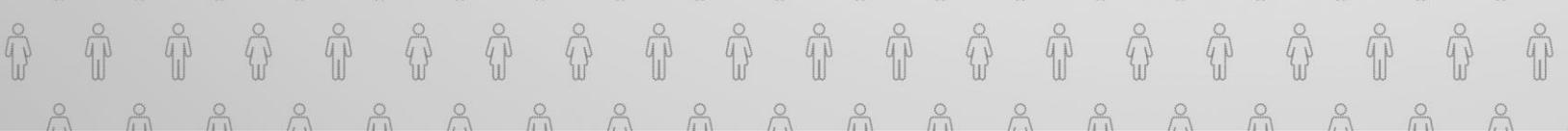
- a. amend section 15 to permit an investigation or an inquiry to be requested by any person;
- b. amend section 16 to provide the Supervisor with the powers referred to above for the purposes of an investigation under the Act and for the purposes of an inquiry held in accordance section 16;
- c. repeal section 18 except for the offence for obstructing a person exercising their investigative powers under the Act; and
- d. amend subsection 35(2) to authorize the Supervisor to conduct an investigation into or hold an inquiry into the expenditures of a registered political party related to its annual allowance.

ii. Enforcement powers

Delays in registered political parties, registered district associations and other entities under the *Political Process Financing Act* filing annual financial returns and other prescribed returns, statements and reports is an ongoing concern for Elections New Brunswick. It is readily apparent that the measures currently in place under the Act to encourage compliance are insufficient. Steps must be taken to reverse the trend of delinquent compliance with the Act.

Under the *Political Process Financing Act*, responsibility for filing the various financial returns and reports under the Act falls on the respective official representative, chief agent, official agent or chief financial officer. By virtue of subsections 88.1(1) and (2.1) of the Act, a responsible individual who fails to file a financial return or report within the prescribed period commits an offence under the *Provincial Offences Procedure Act*.⁶⁶ Subsections 88.1(2) and (2.2) of the Act authorize the Supervisor to “accept” from an official representative or chief financial officer alleged to have committed such an offence a payment of \$50 for each day that the return or report is late. Such a payment may be “accepted” either

⁶⁶ S.N.B. 1987, P-22.1



before or after proceedings have been instituted against the official representative or chief financial officer.

These “voluntary payments” are a form of administrative penalty. However, this administrative penalty scheme is outdated and ineffective. The purpose of an administrative penalty is to encourage compliance with an administrative scheme. The scheme set out in section 88.1 of the *Political Process Financing Act* does not authorize the Supervisor to impose a penalty, but rather appears to contemplate that a person who is alleged to have committed an offence under subsection 88.1(1) or (2.1) will voluntarily make a payment to the Supervisor to avoid prosecution. It is an ineffective tool for encouraging official representatives and chief financial officers to comply with their obligations under the Act.

Generally, the Supervisor works cooperatively with registered political parties, registered district associations, registered independent candidates, registered leadership and nomination contestants and their respective official representatives and agents to facilitate the filing of their financial returns in a timely manner, rather than pursuing prosecutions for late filings under subsection 88.1(1) of the Act. The Supervisor recognizes that, for the most part, the responsible individuals are volunteers. However, for delinquent filings, it would be useful for the Supervisor to have more effective tools at his disposal for encouraging compliance.

Therefore, it is proposed that new enforcement tools be added to the *Political Process Financing Act* which would apply to: annual and semi-annual financial returns of registered political parties, registered district associations and registered independent candidates; financial returns of registered leadership and nomination contestants, candidates and registered political parties; and advertising expenditure reports of registered third parties.

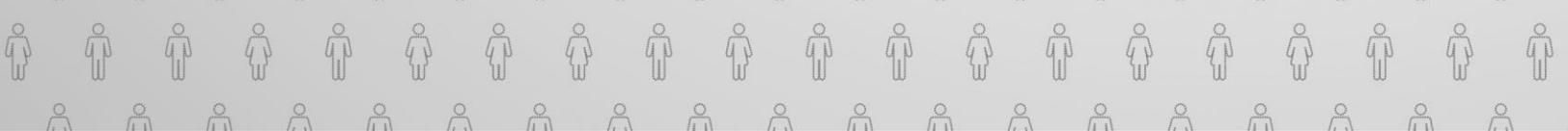
In addition to enhanced enforcement tools, it is also recommended that, as is done in other jurisdictions, registered political parties, registered district associations and third parties be held vicariously responsible for the acts or omissions of their officers, officials or agents.

Recommendation 82: Enhance the enforcement tools available to the Supervisor to encourage greater compliance with filing deadlines and other requirements under the Act.

Amend the *Political Process Financing Act* to provide additional enforcement tools to increase compliance with the Act:⁶⁷

- a. amend subsection 88.1(1) to expand its scope to the filing of a statement of election expenses under section 81 or 82 and to make the entity or person on whose behalf a return or statement is filed subject to the same offence as the official representative, official agent or chief agent who is responsible for the filing;
- b. amend subsection 88.1(2.1) to make the third party on whose behalf an advertising expenditure report is filed subject to the same offence as the chief financial officer;

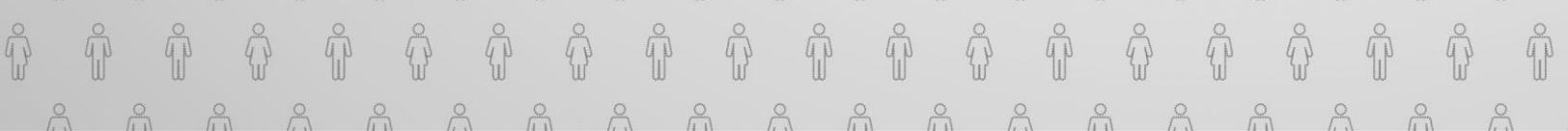
⁶⁷ The individuals subject to conviction for offences referred to below would change if the recommended reforms proposed in section C of this Part are adopted, and such changes would be accordingly made in any proposed legislation.

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- c. repeal subsections 88.1(2) and (2.2) to eliminate the “voluntary payment” of \$50/day;
 - d. amend the Act to permit a prosecution to be instituted against a political party, district association or third party in its own name and deeming the political party, district association or third party to be a person for the purposes of the prosecution;
 - e. amend the Act to make a political party, district association or third party vicariously liable for any act or omission of its officer, official or agent;
 - f. amend the Act to include a late filing fee scheme with the following elements:
 - i. applies to semi-annual and annual financial returns of registered political parties, registered district associations, and registered independent candidates; financial returns and statements of election expenses of registered leadership contestants, registered nomination contestants, candidates, and registered political parties; and advertising expenditure reports of registered third parties;
 - ii. a late filing fee of \$50 per day shall be assessed for each day a return, statement or report is late, to a maximum of \$3,000;
 - iii. the late filing fee shall be imposed on the applicable political party, district association, candidate, leadership or nomination contestant or third party, not the individual responsible for filing the return, statement or report;
 - iv. on application, authorize the Supervisor to extend the filing deadline by up to 30 days on the grounds of absence, illness, death, misconduct, or any other reasonable cause and, when so extending, issue a notice of non-compliance;
 - v. if a late filing fee is owed, it shall be deducted from any amount payable under the Act to the person or entity;
 - vi. if a late return, report or statement is filed within 30 days of the deadline and the late filing fee has been paid, there shall be no prosecution for an offence under section 88.1 of the Act; and
 - g. amend the Act to require the Supervisor to withhold quarterly payment of a registered political party’s annual allowance until the party has filed its semi-annual or annual financial return or, if the Supervisor has extended the filing deadline, withhold one-third of the quarterly payment until the financial return is filed.

iii. Compliance agreements

A tool used in a number of jurisdictions across the country to encourage compliance with political and election financing regimes is compliance agreements. Compliance agreements are used federally and in Nova Scotia, Manitoba, Nunavut and the Northwest Territories. Compliance agreements are just one tool used in these jurisdictions to address compliance and enforcement concerns. They do not replace prosecution or administrative penalty schemes, but are used in addition to these more traditional enforcement and compliance mechanisms.

In such schemes, the Chief Electoral Officer is provided with the authority to enter into a compliance agreement with anyone who the Chief Electoral Officer believes on reasonable grounds has committed, is about to commit or is likely to commit an act or omission that would constitute an offence under the



Act. Alternatively, if she or he has reasonable grounds to believe the matter is relatively minor and will not be repeated, the Chief Electoral Officer may send a notice of non-compliance to the person.

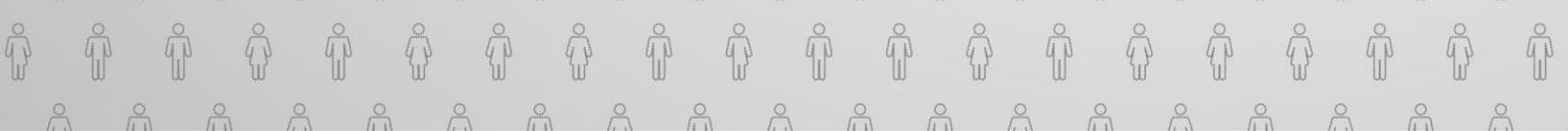
A compliance agreement is an agreement between the Chief Electoral Officer and the person who has breached the Act. The compliance agreement sets out terms and conditions that are considered necessary to ensure the person's compliance with the Act. A compliance agreement normally includes a statement in which the person admits responsibility for the act or omission that constitutes the offence under the Act. The admission of responsibility does not constitute a conviction by a court of law and does not create a criminal record.

To ensure transparency and enhance the public's trust in the process, some form of notice, such as a summary of the compliance agreement, should be made public. A notice of compliance agreement generally includes the name of the person who has breached the Act and the act or omission in question. For those less serious cases in which the Chief Electoral Officer chooses to issue a notice of non-compliance to a person who has breached the Act, the notice and information regarding the notice are not made public.

Recommendation 83: Provide the Supervisor with the authority to enter into compliance agreements and to issue notices of non-compliance.

Amend the *Political Process Financing Act* to provide the Supervisor with authority to enter into compliance agreements and to issue notices of non-compliance. The compliance agreement scheme would include the following elements:

- i. the Supervisor may enter into a compliance agreement or issue a notice of non-compliance where she believes on reasonable grounds that a person has committed, is about to commit or is likely to commit an act or omission that could constitute an offence under the Act;
- ii. the issuance of a notice of non-compliance would not preclude the Supervisor from taking any further action determined to be necessary to ensure compliance;
- iii. a compliance agreement may contain any terms and conditions considered necessary to ensure compliance with the Act, including undertakings related to training, community service and new administrative procedures;
- iv. a compliance agreement may include a statement by the contracting party admitting responsibility for the act or omission that constitutes the offence;
- v. that a compliance agreement was entered into and any admission of responsibility in the agreement would not be admissible in evidence against the contracting party in any proceedings;
- vi. if the Supervisor is of the opinion that a contracting party has breached a compliance agreement, the Supervisor would be required to serve a notice of default on the contracting party, informing the contracting party that a prosecution may be commenced or resumed;
- vii. if the Supervisor is of the opinion that the compliance agreement has been complied with, a notice to that effect will be served on the contracting party; and service of the notice would prohibit the commencement of or terminate any



prosecution of the contracting party that is based on the act or omission in question;

- viii. there shall be no public notice that a notice of non-compliance has been issued; and
- ix. on entering into a compliance agreement, the Supervisor shall publish on the Elections NB website a notice setting out the contracting party's name, the act or omission in question and a summary of the compliance agreement; and, on the disposition of a compliance agreement, the published information shall be updated to include such disposition.

iv. *Categorization of offences*

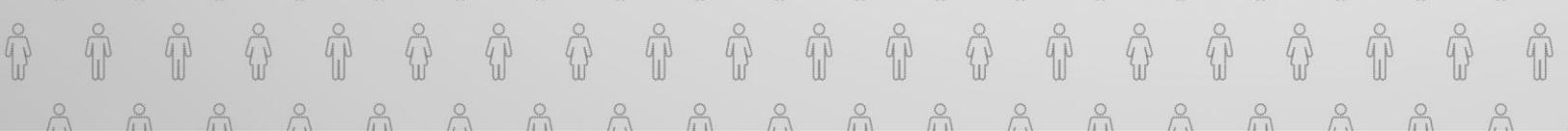
It is our opinion that there is an internal inconsistency which must be addressed regarding the manner in which some offences are categorized under the *Political Process Financing Act*. The scheme for the categorization of offences under the *Provincial Offences Procedure Act* is intended to ensure that offences under provincial legislation and across departments and agencies of a similar nature and severity are subject to similar punishment. We do not feel that this principle has been properly applied in the case of all offences under the *Political Process Financing Act*.

Failure to comply with or violation of the election advertising disclosure requirements prescribed by sections 50.1 and 73 of the *Political Process Financing Act* do not constitute an offence under the Act. Failure to comply with or violation of similar requirements with respect to election advertising by third parties not only constitutes an offence, but is a serious category H offence under the *Provincial Offences Procedure Act*. Such offences subject a person, on conviction, to a fine of not less than \$500 and not more than \$20,500, and a term of imprisonment of not more than 180 days.

This significant discrepancy in the manner in which the failure to comply with these two provisions is dealt with is unreasonable, unfair and indefensible. It is suggested that it would be appropriate for a failure to comply with or violation of subsections 50.1(1) to (4) and 73(1) to (4) of the *Political Process Financing Act* should be an offence of a similar category to the failure to comply with or violation of subsections 84.2(1) and (3); however, it is also our opinion that the offences related to subsections 84.2(1) and (3) are not properly categorized.

The Office of the Attorney General, which is responsible for the administration of the *Provincial Offences Procedure Act*, prepared a document to assist departments and agencies with the categorization of offences under their respective legislation. Category H offences are described as, "Serious Provincial offences, such as some offences related to human life or safety, commercial fraud, offences involving the integrity of the political system." It is our opinion that, although important, failure to comply with the requirements for identifying information on election signage does not rise to the level of "offences involving the integrity of the political system." By comparison, under the *Elections Act*, the only offences which rise to the level of category H or I are the corrupt practices of bribery (s.106), personation (s.107) and undue influence (s.108), all offences which truly involve the integrity of the political system.

It is our opinion that failure to comply with or violation of all these provisions is more akin to category C offences, which are described as, "Minor Provincial offences, such as breaches of administrative



obligations with some practical consequences, and some substantive minor offences.” For example, all but one of the offences related to “prohibited electioneering” under section 117 of the *Elections Act* are categorized as category C offences, which includes the prohibited advertising period on Election Day and the preceding day. It would be reasonable to categorize the offences in question similarly.

It should be noted as well that **all offences** under the *Political Process Financing Act* related to third party advertising are categorized as category H offences. It is recommended that the Supervisor review all offences under the Act related to third party advertising and ensure that the categorization of these offences is consistent with the categorization of similar offences under the *Political Process Financing Act* and the *Elections Act*.

Recommendation 84: Create category C offences for the failure to comply with or violation of the provisions prescribing the identification requirements for election advertisements on behalf of a registered political party or a candidate.

Amend Schedule B to the *Political Process Financing Act* to add subsections 50.1(1) to (4) and 73(1) to (4) to the list of categorized offences, and categorize the offences as a category C offence.

Recommendation 85: Change the category of offences for the failure to comply with or violation of the provisions prescribing the identification requirements for election advertising by third parties.

Amend Schedule B to the *Political Process Financing Act* to change the category of offence for subsections 84.2(1) and (3) to a category C offence.

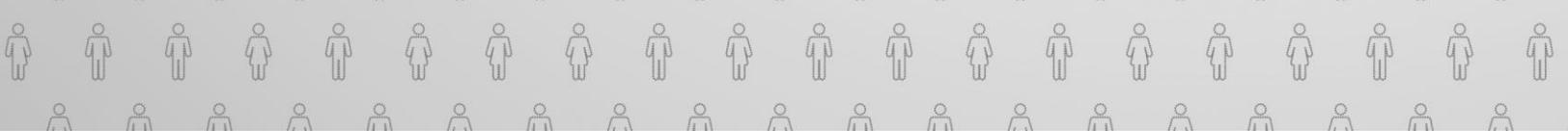
Recommendation 86: The Supervisor of Political Financing review all offences under the *Political Process Financing Act* related to third party advertising to ensure they are categorized in a manner consistent with similar offences under that Act and the *Elections Act*.

J. Financial reporting on de-registration

Section 30 of the *Political Process Financing Act* addresses the disposition of assets of a registered political party, registered district association or registered independent candidate on ceasing to be registered. Subsections 30(1) and (2) provide as follows:

30(1) If a registered political party, registered district association or registered independent candidate ceases to be registered under the *Elections Act*, all assets still held by or on behalf of it or him at the time of the cessation of registration shall be remitted forthwith to the Supervisor.

30(2) All money remitted to the Supervisor pursuant to subsection (1) and all money realized under subsection (3) shall be applied by him, pro rata, to the just debts of the political party, district association or independent candidate that has ceased to be registered and the balance, if any, shall be transferred to the Minister of Finance to be paid into the Consolidated Fund.



There is no requirement in the *Political Process Financing Act* or the *Elections Act* for a “de-registered” entity to file a final financial return on ceasing to be registered. The requirements in sections 58, 60 and 62 to file financial returns apply only to, respectively, registered political parties, registered district associations and registered independent candidates. If a political party, district association or candidate were no longer registered on the deadline to file a financial return, they could not be compelled under the Act to file such a return.

It is therefore recommended that on being notified of the cancellation of their registration under the *Elections Act*, a registered political party, a registered district association or a registered independent candidate be required to file a financial return that covers the calendar year to the date of the cancellation of their registration.

Recommendation 87: Require a registered political party, registered district association or registered independent candidate – on being notified of the cancellation of their registration – to file a final financial return.

Amend section 30 of the *Political Process Financing Act* to require a registered political party, registered district association or registered independent candidate to submit a final, unaudited, financial return on being notified of the cancellation of their registration under the *Elections Act*. The return should be on a form provided by the Supervisor, be prepared in accordance with the guidelines issued by the Supervisor and contain the information and be accompanied by the documents required by the Supervisor. The return will cover the period of the calendar year to the effective date of the registration’s cancellation and should be submitted to the Supervisor within 60 days after that effective date.

K. Third party election advertising

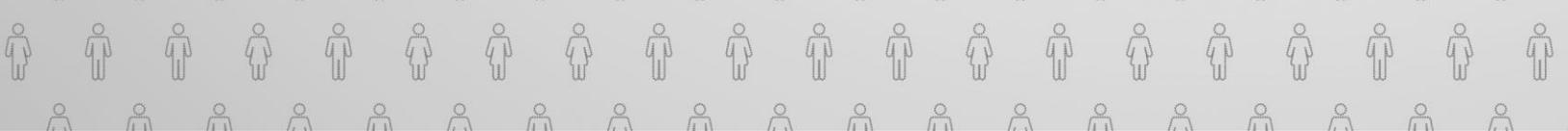
In 2008, amendments were made to the *Political Process Financing Act* to introduce a regulatory framework around third party election advertising.⁶⁸ These provisions took effect on January 1, 2010, and are set out at sections 84.1 to 84.9 of the Act. Since these provisions came into effect, three provincial general elections and four provincial by-elections have been held.

The legislation places spending limits and identification requirements on election advertising by third parties, who are defined as persons or groups other than registered political parties, registered district associations and candidates. Election advertising, in the context of third parties, is defined as follows:

“election advertising” means a message transmitted to the public by any means during a campaign period that promotes or opposes a registered political party or the election of a candidate or takes a position on an issue with which a registered political party or a candidate is associated, but does not include the following:

- (a) the transmission to the public of an editorial, a debate, a speech, an interview, a column, a letter, a commentary or news;

⁶⁸ *An Act to Amend the Political Process Financing Act*, S.N.B. 2008, c. 48.

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- (b) the distribution of a book, or the promotion of the sale of a book, for no less than its commercial value, if it was planned that the book be made available to the public regardless of whether there was an election;
 - (c) the transmission of a document directly by a person or a group to its members, employees or shareholders, as the case may be; and
 - (d) the transmission by an individual, on a non-commercial basis, of his or her personal political views via the Internet.

Limits are also placed on who may contribute to the election advertising expenses of a third party. In addition, third parties that spend more than \$500 on election advertising are required to register and to file advertising expenditure reports with the Supervisor of Political Financing.

Elections New Brunswick has seen a steady increase in the activity of third parties since the introduction of this legislation, with a corresponding increase in registered third parties and complaints from the public, political parties and candidates regarding the activities of third parties. For the September 2010 provincial general election, only five third parties registered with Elections New Brunswick, this increased to seven in 2014, and to 19 for the most recent provincial election held on September 24, 2018. During the 2018 provincial election, Elections New Brunswick received a significant number of complaints and inquiries regarding the online and social media presence and other communication activities of third parties.

With the experience that has been gained over several elections, Elections New Brunswick has identified some challenges in the legislation that it recommends be addressed.

i. Definition of “election advertising”

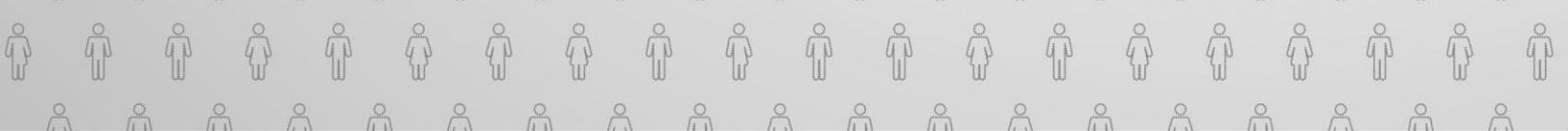
As indicated above, at section 84.1 of the *Political Process Financing Act*, “election advertising” is defined as follows with respect to third parties:

“election advertising” means a message transmitted to the public by any means during a campaign period that promotes or opposes a registered political party or the election of a candidate or takes a position on an issue with which a registered political party or a candidate is associated ... [Emphasis added]

The Supervisor of Political Financing has administered the third party election advertising provisions over the course of three provincial general elections. Over this time, the underlined text above has proven to be problematic. Successive Supervisors have discovered that applying the definition in practice may lead to an unfair situation for third parties.

Prior to an election, a third party intending to take a position on a particular issue of public policy may have no knowledge that a registered political party or a candidate is already associated with that issue or may become associated with the issue during the campaign period.⁶⁹ If no registered political party

⁶⁹ For the purposes of the third party advertising provisions in the *Political Process Financing Act*, “campaign period” is defined as “the period beginning with the issue of a writ and ending on polling day”.



or candidate associates with the issue during the campaign period, the third party's advertising would not meet the definition of "election advertising", and the third party would not be subject to the relevant provisions of the Act. However, if a registered political party or candidate is associated with the issue without the knowledge of the third party, or the registered political party or candidate suddenly "associates" with the issue at some point during the campaign period, the third party might then be in the unfortunate situation of having unknowingly incurred election advertising expenses in contravention of the Act because it did not register with the Supervisor in accordance with the Act or may have exceeded the spending limit.

This situation has occurred during each of the three provincial general elections that have been held since the legislation came into effect.

The definition of "election advertising" should be amended to provide greater clarity and fairness to third parties. It has been suggested that simply taking a position on "an issue of public policy" would be sufficiently clear; however, the use of "public policy" would be unnecessarily broad and could be interpreted to include any issue at any level of government - federal, provincial, or municipal - and thereby constitute an unreasonable limit on one's *Charter* right to freedom of expression.

Recommendation 88: Amend the definition of "election advertising" to provide greater clarity and fairness to third parties who advertise during a campaign period.

Amend the definition of "election advertising" in section 84.1 of the *Political Process Financing Act* as follows:

"election advertising" means a message transmitted to the public by any means during a campaign period that promotes or opposes a registered political party or the election of a candidate, or takes a position on an issue with which a registered political party or a candidate is associated or is encouraged by the message to become associated, but does not include the following"

ii. Registration and identification requirements

The identification requirements for third party election advertising are set out at section 84.2 of the *Political Process Financing Act*:

84.2(1) A third party shall identify itself in any election advertising that it places and shall indicate that it has authorized the advertising.

84.2(2) The identifying information required under subsection (1) shall include the following information:

- (a) the name of the third party; and
- (b) the name of the person responsible for the third party's books and records and his or her telephone number or address.

84.2(3) No third party shall transmit to the public any election advertising that may lead the public to believe that the advertising originates with a registered political party, a registered district association or a candidate.

84.2(4) Section 117 of the *Elections Act* applies with the necessary modifications to election advertising by a third party.

Failure to comply with either of the identification requirements in subsection 84.2(2) carries a significant penalty – on conviction for a first offence, one is subject to a fine of not less than \$500 and not more than \$20,500, and may be sentenced to a term of imprisonment of not more than 180 days.

During the 2018 provincial general election, Elections New Brunswick encountered numerous instances of third parties – both registered and unregistered – identifying themselves appropriately in their election advertising, but failing to comply with the requirement in paragraph 84.2(2)(b) to identify the person responsible for the third party's books. The Supervisor chose not to pursue charges for these violations for a number of reasons:

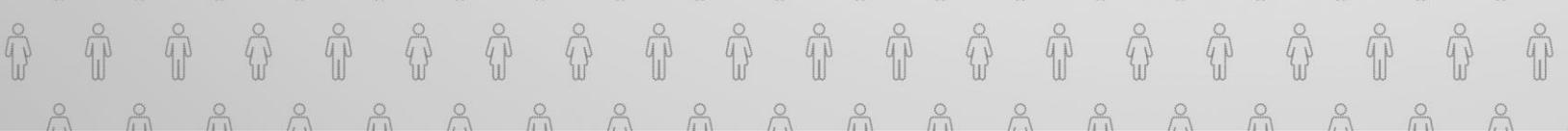
- i. regardless that the public had notice of the third party responsible for the advertising, on conviction for violating this provision, a third party may have been subject to a significant penalty;
- ii. there is no offence associated with violating the disclosure requirements for advertising placed on behalf of a registered political party or a candidate;⁷⁰
- iii. if a third party was registered, this information was available to the public on the Elections New Brunswick website; and
- iv. this provision was violated by most – if not all – third parties disseminating election advertising.

It is our opinion that this final point, in particular, is a strong indicator that the requirement is in need of reconsideration. However, it is acknowledged that, particularly in the case of third parties that are not individuals, the public is entitled to know not only the name of a third party but who is responsible for the third party. It is therefore recommended that, in addition to removing the requirement to identify the person responsible for the third party's books and records in its election advertising, all third parties intending to transmit election advertising during the campaign period would be required to register before they do so. However, an individual who is a third party should only be required to register after incurring election advertising expenses that exceed \$500, as is currently the case.

Recommendation 89: Remove the requirement to identify, in third party election advertising, the person responsible for a third party's books and records.

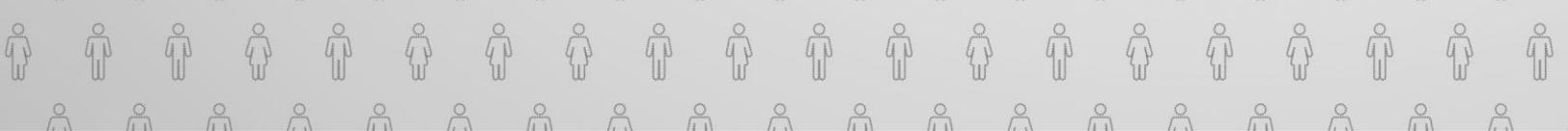
Repeal paragraph 84.2(2)(b) of the *Political Process Financing Act*.

⁷⁰ *Supra* note 36 at s. 73.



Recommendation 90: Require all third parties, other than individuals, to register with the Supervisor before transmitting election advertising.

Amend section 84.3 of the *Political Process Financing Act* to require a third party, other than an individual, to register as a third party before transmitting any election advertising during the campaign period. The registration requirements with respect to an individual who is third party should remain unchanged.



PART III – MUNICIPAL ELECTIONS ACT

1. Introduction

The *Municipal Elections Act*, S.N.B. 1979, c.M-21.01, was originally enacted in June 1979 and came into force on August 1, 1979. The *Municipal Elections Act* confers responsibility for the administration of the Act, direction and supervision of elections held under the Act and the enforcement of its provisions on the Municipal Electoral Officer, who, by virtue of section 5 of the Act, is the Chief Electoral Officer. The *Municipal Elections Act* sets out the rules and regulations for the conduct of the election of mayors and councillors of New Brunswick’s municipalities. In addition, plebiscites held under the *Local Governance Act*⁷¹ and the election of regional health authority boards and district education councils are conducted in accordance with the rules and regulations prescribed by the *Municipal Elections Act*.

In this Part, we will discuss issues relating to the operation of municipal elections by Elections New Brunswick. In addition to the substantive issues discussed in this Part, Elections New Brunswick is recommending that the *Municipal Elections Act* be repealed and replaced to accomplish the following objectives:

- A. A more user-friendly arrangement that follows the logical progression of an election;
- B. Use of consistent, plain language and contemporary legislative drafting techniques, including gender-neutral language;
- C. Correction of inconsistencies, anomalies and editorial errors that have been introduced over the life of the legislation; and
- D. Create consistency between the *Elections Act* and the *Municipal Elections Act*.

Other than identifying some of the changes necessary to create procedural consistency between the *Municipal Elections Act* and the *Elections Act*, the changes above have not been identified in this document in order to focus discussion on matters of substantive change. However, we welcome any suggestions you may have that will improve the *Municipal Elections Act*.

2. Recommended changes to municipal electoral processes

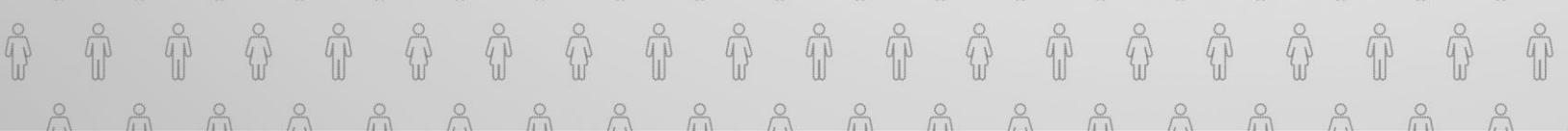
A. Municipal Electoral Officer

When the *Municipal Elections Act*⁷² was enacted in 1979, the Minister of Municipal Affairs was responsible for the general administration of the Act and the Municipal Electoral Officer was responsible to exercise general direction and supervision over the administrative conduct of elections held under the Act. Since that time, the Municipal Electoral Officer and Assistant Electoral Officers have been, respectively, the Chief Electoral Officer and Assistant Electoral Officers appointed under the *Elections Act*.⁷³

⁷¹ S.N.B. 2017, c.18.

⁷² S.N.B. 1979, c. M-21.01.

⁷³ *Ibid* at s. 5(1).



There is no need to continue to have two different titles under the *Elections Act* and the *Municipal Elections Act*. It is recommended that the term “Municipal Electoral Officer” used throughout the *Municipal Elections Act* be replaced with “Chief Electoral Officer” and that the term “Assistant Electoral Officer” used throughout the *Municipal Elections Act* be replaced with “Deputy Chief Electoral Officer”.

Recommendation 91: Replace references to “Municipal Electoral Officer” with “Chief Electoral Officer”.

Amend the *Municipal Elections Act* by replacing all references to “Municipal Electoral Officer” with “Chief Electoral Officer”, and by replacing all references to “Assistant Municipal Electoral Officers” with “Deputy Chief Electoral Officers”.

B. Municipal returning officers and staffing

When the *Municipal Elections Act*⁷⁴ was enacted in 1979, the Minister of Municipal Affairs was responsible for the general administration of the Act, including the appointment of deputy municipal electoral officers for each municipality. The Municipal Electoral Officer was responsible to exercise general direction and supervision over the administrative conduct of elections held under the Act.

In 1998, as part of the process of bringing all responsibility for municipal elections under the Municipal Electoral Officer, i.e. the Chief Electoral Officer, the Municipal Electoral Officer was given responsibility for the general administration of the *Municipal Elections Act*,⁷⁵ but the Lieutenant-Governor in Council was given the responsibility to appoint municipal returning officers.⁷⁶ Other than the appointment of municipal returning officers, Elections New Brunswick, under the direction of the Chief Electoral Officer, is responsible for all aspects of administering and conducting municipal elections, including having the municipal returning officers appoint all poll officials as are necessary to conduct elections. Until 2008, most municipal returning officers were full-time government employees of the department responsible for municipal affairs. However, due to increased workloads, since 2008 all municipal returning officers have been appointed from outside government.

As with returning officers appointed by the Lieutenant-Governor in Council under the *Elections Act*, Elections New Brunswick frequently receives complaints that municipal returning officers are appointed on a partisan basis by the government of the day and should be selected in another manner, that people from one party were selected over those from another, that poll workers were not able to actually do the work for which they were hired, and a multitude of other complaints. The following recommendations for amendment to the *Municipal Elections Act* address many of the same issues with respect to staffing dealt with above with respect to amendments to the *Elections Act*.

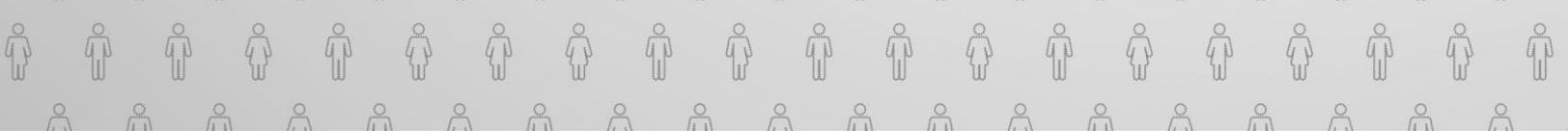
i. Competitive recruitment and hiring process

The Chief Electoral Officer, in her role as Municipal Electoral Officer, exercises general direction and supervision over the administrative conduct of municipal elections, and must enforce on the part of election officers, their fairness, impartiality and compliance with the *Municipal Elections Act*. The

⁷⁴ *Supra* note 15.

⁷⁵ *An Act to Amend the Municipal Elections Act*, S.N.B. 1998, c. 33, s. 2.

⁷⁶ *Ibid* at s. 4.



importance of the independence of the Chief Electoral Officer from government interference and influence is discussed above in Part I.

While the Municipal Electoral Officer is responsible for overall direction and supervision of the conduct of municipal elections, the Municipal Electoral Officer does not have complete authority to perform these tasks. Only the Lieutenant-Governor in Council has the authority to appoint municipal returning officers. Municipal returning officers are responsible for the administration and conduct of elections in the municipalities within their respective regions. A capable, competent and well-trained municipal returning officer is a significant factor in the success of an election in a municipality, or for a district education council or a regional health authority board. As is the case with returning officers in provincial elections, municipal returning officer are responsible for hiring, supervising and training municipal returning office and polling station workers; securing appropriate locations for the municipal returning offices and polling stations; administering the special voting process; administering the nomination process; dealing with members of the public, the media and candidates or prospective candidates; and managing disputes regarding the electoral process.

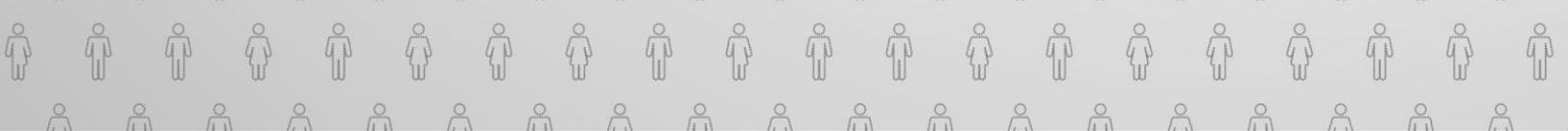
As is the case with provincial returning officers, municipal returning officers appoint their election clerks.⁷⁷ As discussed above in greater detail with respect to provincial elections, election clerks are the municipal returning officers' second-in-command. In addition to the many critically important functions they perform during an election, election clerks receive all of the same training as municipal returning officers. Elections New Brunswick is of the opinion that election clerks should be recruited and hired in the same manner as municipal returning officers.

Giving the Chief Electoral Officer the authority to appoint her key officials would also ensure that municipal returning officers and election clerks could be hired well in advance of an election, as opposed to the historical norm of municipal returning officers being appointed shortly before training for an election. The many advantages of the early hiring of these election officers is discussed in greater detail above with respect to **Recommendation 1**, including providing better quality service to electors and allowing for succession planning over the long term.

Recommendation 92: Chief Electoral Officer appoint municipal returning officers and election clerks.

1. Amend subsection 6(1) of the *Municipal Elections Act* so municipal returning officers are to be appointed by the Chief Electoral Officer. In selecting municipal returning officers, Elections New Brunswick will administer a formal competency-based hiring and evaluation process conducted well before an election, and will provide ongoing training between elections to municipal returning officers.
2. Municipal returning officers will be subject to a probationary period and, rather than the current open-ended appointment, will be hired for a fixed term that expires 60 days after polling day for the municipal general election following the appointment.

⁷⁷ *Supra* note 15 at s. 6(3).

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3. Amend section 6 of the *Municipal Elections Act* to authorize the Chief Electoral Officer to revoke the appointment of a municipal returning officer for cause.
 4. Amend section 6 of the *Municipal Elections Act* so election clerks are appointed by the Chief Electoral Officer. In selecting election clerks, Elections New Brunswick will administer a formal competency-based hiring and evaluation process conducted well before a municipal election, and will provide ongoing training between elections to election clerks. The municipal returning officer for each municipality would be an integral part of the team involved in the hiring and evaluation process for the election clerk in his or her municipality. Election clerks will be subject to a probationary period and will be hired for a fixed term that expires 60 days after polling day for the municipal general election following the appointment.
 5. Amend section 6 of the *Municipal Elections Act* to authorize the Chief Electoral Officer to revoke the appointment of an election clerk for cause.

ii. Expiration of municipal returning officer appointments

It is recommended above that a municipal returning officer's appointment expires 60 days following the polling day for the municipal general election which follows the municipal returning officer's appointment. Appointments will therefore expire during the summer. This will allow several months to appoint new municipal returning officers prior to the next set of municipal by-elections, typically held in October. Nevertheless, if this recommendation is adopted, it is further recommended that if a Notice of Election for a by-election is given under section 15 of the *Municipal Elections Act* while an existing municipal returning officer's appointment is current, that appointment should not be permitted to expire automatically while an election is underway.

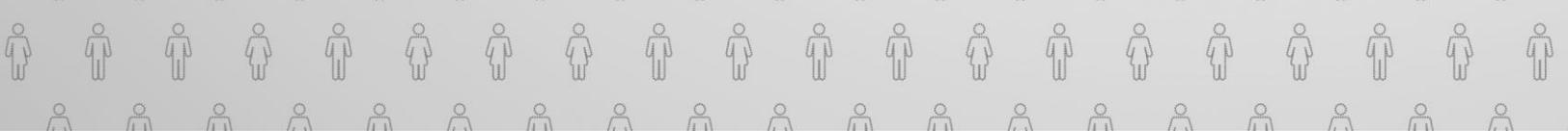
Recommendation 93: Continuation of municipal returning officer appointment

Amend section 6 of the *Municipal Elections Act* to continue a municipal returning officer's appointment if it would otherwise expire during a by-election. The appointment should be extended until 30 days following the making of the municipal returning officer's declaration for that election.

iii. Remuneration of youth election officers

As is the case under the *Elections Act*, section 22 of the *Municipal Elections Act* permits anyone 16 years of age or older to work as an election officer at a polling station. As discussed in Part I, while 16 and 17 year-old election officers work side-by-side doing the same tasks as older workers, they cannot be paid for work performed during regular school hours because section 17 of the *Education Act* does not permit anyone to employ a child during his or her school hours.

For the reasons set out with respect to **Recommendation 11** in Part I, it is recommended that high school students be permitted to be remunerated when they work during school hours as election officers at a municipal election.



Recommendation 94: Permit high school students to be remunerated when they work during school hours as election officers at a municipal election.

Amend the *Municipal Elections Act* or, in the alternative section 17 of the *Education Act*, to permit a child who is otherwise required to attend school under section 15 of the *Education Act* to be employed as an election officer under section 22 of the *Municipal Elections Act* if the child's absence from school has been approved in writing by the principal or designated representative of the child's school and by the child's parent or guardian.

iv. Family associates of candidates as election officers

Municipal returning officers manage large administrative electoral regions of the Province that contain multiple municipalities, one or more complete or partial school district subdistricts, and one or more complete or partial health region subregions. In a municipal general election, in any one electoral region there are multiple simultaneous elections underway at the same time, with overlapping boundaries.

Under section 22.1 of the *Municipal Elections Act*, no person who is a family associate of a candidate may be appointed, act or continue to act as an election officer in a municipality in which that candidate may be elected. During municipal general elections, when district education councils and regional health authority boards are also elected, section 36.3 of the *Education Act* and subsection 11(7) of the *Board Regulation – Regional Health Authorities Act* impose similar restrictions. When taken together, the restrictions are the following:

- No person who is a family associate of a municipal council candidate may be appointed, act or continue to act as an election officer in any municipality in which that candidate may be elected.
- No person who is a family associate of a district education council candidate may be appointed, act or continue to act as an election officer in any school district in which that candidate may be elected.
- No person who is a candidate or a family associate of a regional health authority board candidate may be appointed or act or continue to act as an election officer in any subregion in which that candidate may be elected.

The municipal returning officer and the election clerk are critical to ensuring that an election in a municipality is managed effectively. A person who is a family associate of a municipal council, district education council, or regional health authority board candidate should not be qualified to be appointed as a municipal returning officer or an election clerk to administer an electoral region in which these elections occur. However, both of these officials should be permitted to continue to act in their position if they are the family associate of a person who becomes a municipal council, district education council, or regional health authority board candidate in their electoral region after their appointment. Training for these two key positions is done months in advance of an election, and if a person to whom they are a family associate decides to become a candidate during an election, there would be insufficient time to hire a new municipal returning officer or election clerk.

Recommendation 95: Permit the family associate of a candidate to continue to act as a municipal returning officer or an election clerk.

Amend section 22.1 of the *Municipal Elections Act* to permit a family associate of a candidate to continue to act as a municipal returning officer or an election clerk for the municipality in which that candidate may be elected if the municipal returning officer or election clerk was appointed to that position before the candidate became a candidate for election. A similar amendment is required in the *Board Regulation – Regional Health Authorities Act*.

C. Candidates

i. Municipal returning officer responsibilities

Section 17 of the *Municipal Elections Act* sets out the procedure on the nomination of a candidate at a municipal election. Under subsection 17(2), the municipal returning officer shall not receive or act on a nomination paper unless:

- a. the paper bears the written consent of the candidate; and
- b. the municipal returning officer is satisfied that at least ten of the nominators is entitled to vote at the election at which the candidate is presenting for election.

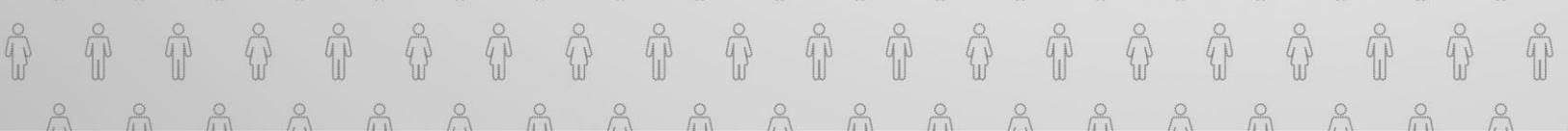
The candidate's consent to nomination included on the *Nomination Paper - Municipal Elections* (Form M 04 001) includes a signed certification that the candidate satisfies the candidate qualifications;⁷⁸ however, the legislation does not require the municipal returning officer, nor does the municipal returning officer have the authority, to satisfy himself or herself that the candidate is qualified to be a candidate at that election. The municipal returning officer is legally required to accept as *prima facie* evidence the candidate's certification that he or she is a duly qualified candidate.

This deficiency in section 17 of the Act, and the ramification of the deficiency, were demonstrated as recently as October 2017. After the close of nominations and after being deemed elected by acclamation in a by-election, it was determined that the new mayor-elect did not qualify as a candidate as he had not resided in the municipality for the required six months. It is likely that this situation and the problems that arose as a result could have been avoided had the municipal returning officer been authorized to satisfy himself that the candidate was qualified to stand for election in the same manner as he had to satisfy himself that the nominators were entitled to vote.

Recommendation 96: Require a municipal returning officer to satisfy himself or herself that a candidate is qualified to be a candidate at the election before receiving or acting on a nomination paper.

Amend subsection 17(2) of the *Municipal Elections Act* to require a municipal returning officer to satisfy himself or herself that the candidate is qualified to be a candidate at the election before receiving or acting on a nomination paper.

⁷⁸ *Supra* note 15 at s. 18.



ii. Candidate – one council position

Under the *Municipal Elections Act* there is no express prohibition on an individual being accepted as a candidate for more than one position on a municipal council. In practice, one person cannot hold more than one office at a time on a municipal council. However, despite this practical barrier, during the 2012 quadrennial elections, an individual did wish to run for both the mayor and a councillor position in a municipality. Clear legislation on this issue would prevent any confusion or ambiguity at nomination time during future elections.

Currently, a person can run for a municipal council, a district education council and a regional health authority board simultaneously. Each of these is considered to be its own election, and this practice should be allowed to continue.

Newfoundland and Labrador, Nova Scotia, Quebec, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia all restrict a candidate from running for more than one office in the same municipality in the same election. Nunavut and the Northwest Territories also restrict a candidate from running for more than one office in the same city, town, or village in the same election, but a candidate is permitted to run for more than one office in the same election if it is in a hamlet or charter community. Yukon prevents a person from holding office as a member of more than one municipal council at any one time.

Recommendation 97: Prohibit a person from being a candidate for more than one office in a municipality at the same election.

Amend the *Municipal Elections Act* so that in any one election:

- i. a person may not be accepted as a candidate for more than one office in a municipality in an election; and
- ii. a person may continue to be permitted to run for one office in a municipality, while simultaneously running as a candidate in a district education council election or a regional health authority board election.

D. Election advertising

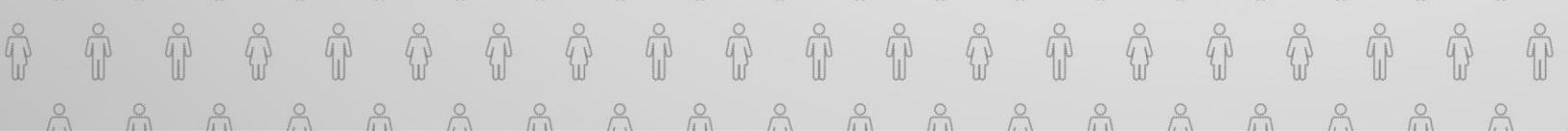
i. Disclosure requirements

The disclosure requirements with respect to election advertising during a municipal election are found at section 54 of the *Municipal Elections Act*:

54 Every printed advertisement, handbill, placard, poster or dodger having reference to an election shall bear upon its face the name and address of its printer and its publisher, and any person printing, publishing, distributing or posting up, or causing to be printed, published, distributed or posted up, any such document unless it bears upon its face such names and addresses commits an offence.

This section is problematic for a number of reasons:

- it is hard to determine what is the difference between a printer and a publisher;
- it speaks to restrictions on signs and handouts but does not apply to other advertisements such as newspapers; and

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- it applies to elections for candidates, but does not require the same disclosure for groups promoting or opposing a plebiscite response.

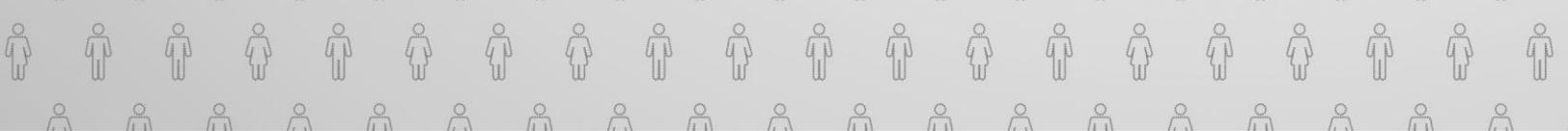
The requirement to disclose who was responsible for the production of an election or plebiscite related advertisement is important, but should reflect the reality of the differing methods of advertising. It is recommended that the rules respecting disclosure in municipal election advertising more closely align with the rules under section 73 of the *Political Process Financing Act* for election advertising during a provincial election, including the recommended changes outlined above in Part II with respect to **Recommendations 65 to 69**.

Recommendation 84 would create an offence under the *Political Process Financing Act* when the disclosure requirements are not included for advertising in provincial elections. If this recommendation is not supported for provincial elections, where tracking and disclosure of financial activity is mandated, it makes no sense for the same omission to be an offence in municipal elections where tracking and disclosure of financial activity is not mandated. If this failure to comply with the *Political Process Financing Act* does not become a category C offence in provincial elections, the existing offence provision under the *Municipal Elections Act* should be removed.

Recommendation 98: Revise municipal election advertising disclosure requirements to more closely align with the rules respecting election advertising during a provincial election.

Amend section 54 of the *Municipal Elections Act* to provide for the following with respect to election advertising during a municipal election:

- i. every printed advertisement, placard, poster, pamphlet, handbill or circular promoting or opposing a candidate in an election or a matter to be voted on at a plebiscite shall bear the name of the person on whose behalf it was ordered;
- ii. all identifying information required to be included in printed advertisements shall be of such reasonable size as to be clearly visible in the intended audience of the advertising;
- iii. all identifying information required to be included in printed advertisements shall also apply to electronic and digital signs;
- iv. every advertisement promoting or opposing a candidate in an election or a matter to be voted on at a plebiscite published in a newspaper, periodical or other publication shall bear the name and address of the person on whose behalf it was ordered;
- v. every advertisement promoting or opposing a candidate in an election or a matter to be voted on at a plebiscite published on the internet or in an online publication shall bear the name and address of the person on whose behalf it was ordered;
- vi. every broadcast of a sponsored radio or television advertisement promoting or opposing a candidate in an election or a matter to be voted on at a plebiscite shall mention the name of the person on whose behalf it was ordered, at the beginning or the end of the broadcast;
- vii. every broadcast on the internet of a sponsored advertisement promoting or opposing a candidate in an election or a matter to be voted on at a plebiscite shall mention the name of the person on whose behalf it was ordered, at the beginning or the end of the broadcast; and

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- viii. if **Recommendation 84** is not implemented to create a category C offence for failing to place advertising disclosure information on provincial election advertising, remove the category C offence under section 54 of the *Municipal Elections Act*.

ii. Restricted advertising period during an election

Similar to subsection 117(3) of the *Elections Act*, subsection 55(2) of the *Municipal Elections Act* prohibits the broadcast over radio or television, the publication in a newspaper, magazine or similar publication and the transmission by any means to telephones, computers, telecopier machines, or any other device capable of receiving unsolicited communication of any form of partisan election advertising on ordinary polling day or the day immediately preceding it in favour of or on behalf of any candidate.

In recent years, there has been a sharp increase in the number and frequency of plebiscites held to determine local support to incorporate or merge municipalities. While subsection 55(2) of the *Municipal Elections Act* expressly prohibits the broadcasting of radio or television messages advertising in favour of or on behalf of any candidate in a municipal election, it does not restrict advertising for or against an answer to a plebiscite question. Subsection 55(3) does expressly restrict the use of radio or television with respect to plebiscites during the restricted advertising period, but this restriction only applies to broadcasting outside New Brunswick. Therefore, there is no offense for broadcasting messages within New Brunswick for or against an answer to a question to be voted on at a plebiscite.

The *Municipal Elections Act* has contained similar provisions since 1973. As indicated above with respect to the *Elections Act*, modern day elections are run much differently than those of that era, and communication mechanisms such as *Facebook*, *Twitter* and the internet were never anticipated.

For the reasons explained in Part I with respect to **Recommendation 41** and because of the inconsistent rules with respect to plebiscites, there is no reason to retain the restriction on transmitting election advertising on Election Day and the Sunday prior.

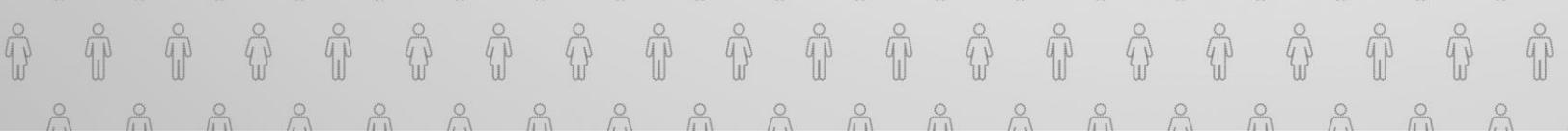
Recommendation 99: Remove the restricted advertising period on Election Day and the day immediately preceding Election Day.

Repeal subsections 55(2) and (3) of the *Municipal Elections Act* to remove the restriction to broadcast, publish or transmit election advertising on Election Day or the day immediately preceding it.

E. Determining ordinary residence

i. Restriction on ordinary residence

The qualifications of electors are set out at section 13 of the *Municipal Elections Act* and are the same as the qualifications set out at section 43 of the *Elections Act*. Similarly, the rules for determining an individual's residence – a key component of being a qualified elector – are set out at section 14 of the



Municipal Elections Act. These rules are also generally the same as those set out in the *Elections Act*,⁷⁹ except for the rules set out at section 46 of the *Elections Act*.

Section 46 of the *Elections Act* sets out circumstances in which a person “shall not be deemed” to be ordinarily resident in, or have gained a residence in, the Province or an electoral district. Section 46 provides as follows:

46(1) No person shall, for the purpose of this Act, be deemed to be ordinarily resident in the Province, if occupying quarters or premises that are generally occupied by him only during some or all of the months of May to October, inclusive, and generally remain unoccupied during some or all of the months of November to April, inclusive, unless

- (a) he is occupying such quarters in the course of and in the pursuit of his ordinary gainful occupation, or
- (b) he has no quarters in any other electoral district to which he might at will remove.

46(2) A person shall not be deemed to have gained a residence in the Province, or in an electoral district, if he has come into the Province for temporary purposes only, without the intention of making the Province, and some place in the electoral district, his home.

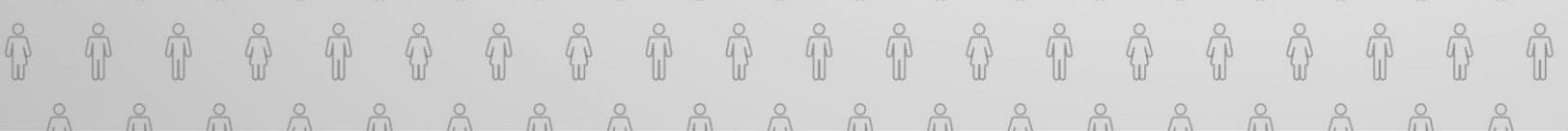
These provisions provide additional clarity around what qualifies one as an “ordinary resident” of the Province or an electoral district. In order to ensure consistency between municipal and provincial elections, it is recommended that section 46 of the *Elections Act* be replicated in the *Municipal Elections Act* with the appropriate modifications for the municipal context.

Recommendation 100: Add to the *Municipal Elections Act* provisions respecting circumstances that do not result in a person being ordinarily resident in the Province or a municipality.

Amend the *Municipal Elections Act* to add to the provisions dealing with rules for determining residence a provision substantially similar to section 46 of the *Elections Act*. A person would not be deemed to be ordinarily resident in the Province or a municipality if the person:

- i. occupies quarters or premises that are generally occupied by the person only during some or all of the months of May to October, inclusive, and generally remain unoccupied during some or all of the months of November to April, inclusive, unless the person has no quarters elsewhere in the Province to which the person might at will remove; or
- ii. has come into the Province for temporary purposes only, without the intention of making the Province, and some place in the municipality, his or her home.

⁷⁹ Supra note 1 at ss. 44 and 45.



ii. Ordinary residence of incarcerated electors

As is the case with the *Elections Act*, the *Municipal Elections Act* includes no rules as to the location of the ordinary residence of prisoners who are eligible to vote in an election.

In April 2004, the *Municipal Elections Act* was amended to remove the prohibition on voting by prisoners and persons found mentally incompetent. Such prohibitions at the federal level had been found to be unconstitutional and the provincial provisions were considered to be equally invalid. However, detailed procedures for prisoner voting were not included in the amendments.

In order to administer municipal elections since that time, the Municipal Electoral Officer has issued guidelines defining “ordinary residence” for inmates. These guidelines follow those outlined in subsection 251(2) of the *Canada Elections Act*; however, they have never been included in the *Municipal Elections Act*.

Recommendation 101: Define “ordinary residence” for incarcerated electors.

Amend the *Municipal Elections Act* to permit the place of ordinary residence of an incarcerated voter to be the first of the following places for which the voter knows the civic and mailing addresses:

- i. his or her residence before being incarcerated;
- ii. the residence of the spouse, the common-law partner, a relative or a dependant of the voter, a relative of his or her spouse or common-law partner, or a person with whom the voter would live but for his or her incarceration;
- iii. the place of his or her arrest; or
- iv. the last court where the voter was convicted and sentenced.

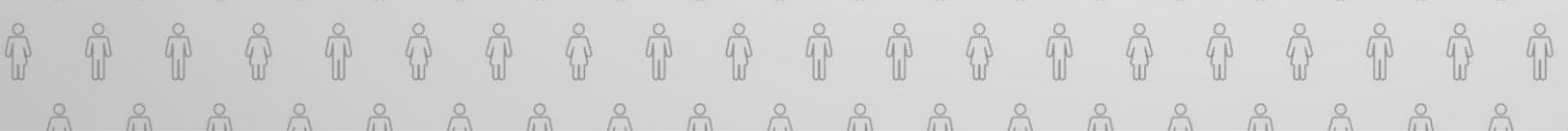
F. Voting

i. Deadlines to declare vacancies and order plebiscites

Under section 15 of the *Municipal Elections Act*, nominations close at two o’clock in the afternoon 24 days prior to polling day in a by-election. Further, under section 55(3) of the *Local Governance Act*, before a member of council may file nomination papers for any other office of council in a by-election, the member must resign his or her office as a member not less than 21 days before the day set for the close of nominations and notify the Municipal Electoral Officer.

Because of the requirement in subsection 15(3) of the *Municipal Elections Act* to publish a Notice of Election commencing the by-election, which includes a list of all the vacant positions and plebiscites, there is a practical need to prepare the information while ensuring the publication dates fall within the legislated period 14 to 25 days prior to the day set for the close of nominations.

Experience has shown that municipalities will often experience last minute vacancies on council, but under section 51 of the *Local Governance Act* they have up to two months to actually certify the vacancy and then notify the Municipal Electoral Officer. In addition, when community restructuring activities are underway, the Minister of Environment and Local Government or an effected municipality will often not finalize a plebiscite question required to determine local support until the last possible moment.



To allow by-election or plebiscite preparations to occur, and to provide current council members sufficient time to decide if they wish to run for another council seat, it is critical for Elections New Brunswick to receive notice of all vacancies and plebiscite questions to be voted on no later than seven days prior to the deadline for a member of council to resign his or her office to run in another role.

Recommendation 102: Set a legislated deadline to receive certified council resolutions declaring vacancies or to receive official notification of plebiscite questions in municipal by-elections.

Amend section 15 of the *Municipal Elections Act* to set a deadline of 28 days before the day set for the close of nominations in a by-election to receive all certified council resolutions declaring vacancies or ordering a plebiscite, and to receive all plebiscite questions ordered by the Minister of Environment and Local Government to determine local support for community restructuring projects.

ii. By-elections: Vote-by-mail

Under section 51 of the *Local Governance Act*,⁸⁰ vacancies on local government councils must be declared by council and notice provided to the Municipal Electoral Officer. Following the receipt of such notice, the Municipal Electoral Officer is required hold a by-election to fill the vacancy; however, there is no deadline to hold a by-election to fill a vacancy on a local government council. As a means to minimize by-election costs, Elections New Brunswick schedules by-elections to occur in May and October each year between general elections.⁸¹

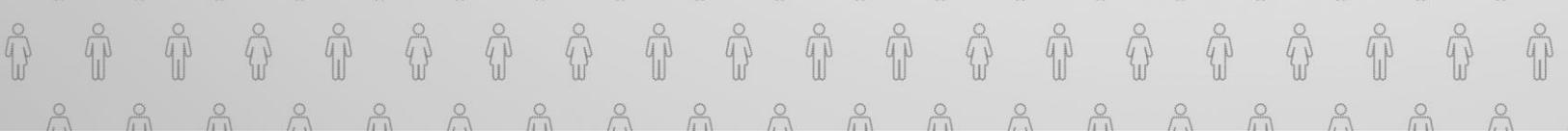
With any by-election, there are certain fixed costs to open and operate returning offices, publish legislated notices, activate systems and suppliers, etc. As required by the *Municipal Elections Act*, municipal returning officers are responsible to administer all electoral events in their regions. They must staff their returning offices, train workers, open polling stations, and conduct the election using the same procedures whether they are administering a general election involving multiple municipalities and thousands of electors or administering a single plebiscite involving 50 electors.

Since 2004, the number of by-election events has remained relatively constant at approximately 11 in a four-year period. The number of municipalities involved in one or more by-elections in these 11 by-election events varies from 87 to 100. In a number of cases, the same municipality required a by-election two to five times in one four-year period between general elections, due to new vacancies or a lack of candidates offering in previous by-elections. For example, the village of Alma required four by-elections between 2008 and 2012 and another four by-elections between 2012 and 2016.

In addition to municipal general elections and by-elections, the Municipal Electoral Officer is responsible for a number of other electoral events, specifically plebiscites and first-elections.

⁸⁰ S.N.B. 2017, c.18.

⁸¹ In accordance with subsection 51(4) of the *Local Governance Act*, by-elections are not held in the October immediately preceding a general election.



Under the *Community Incorporation and Restructuring Regulation - Municipalities Act*,⁸² the Minister of Environment and Local Government is required to order that a plebiscite be held of the qualified residents of an unincorporated area to determine the level of local support in the area for a proposed restructuring. Between 2004 and 2018, 23 plebiscites have been held in accordance with the *Community Incorporation and Restructuring Regulation*.

A first-election is an election held to elect the full council of a newly formed local government. First-elections are held as required by an Order in Council. Between 2004 and 2018, five first-elections have been held.

First elections and the restructuring plebiscites must be conducted by the Municipal Electoral Officer in the same manner as a municipal by-election. The same fixed costs to open and operate returning offices, publish legislated notices, activate systems and suppliers, etc. must be incurred, in addition to the more variable costs associated with operating and staffing polling stations.

As a means to reducing costs and easing the administrative burden associated with conducting election events, a “vote-by-mail” solution was examined for by-elections, plebiscites and first elections held in accordance with the *Municipal Elections Act* between general elections.

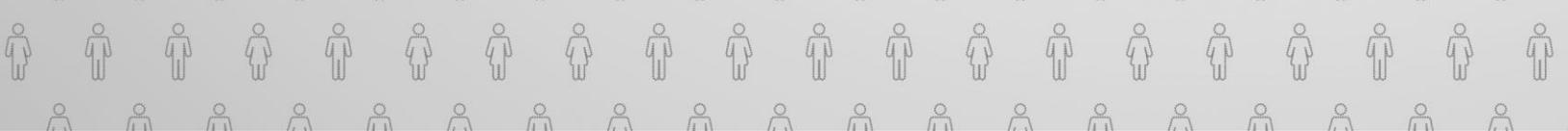
“Vote-by-mail” is used successfully in at least 101 Ontario municipalities and in St. John’s, NL, and has been used to administer three plebiscites in British Columbia for its 3.5 million voters. Elections New Brunswick already uses a mail-in special ballot procedure whereby individual electors can request a ballot be sent to them and they then return it by mail, but this process is done in a very limited fashion and only upon request.

Over the fiscal years from 2008-9 through 2014-15, annual by-election, first election and plebiscite costs totalled \$3,250,467, averaging \$464,352 per fiscal year. If the infrastructure had been in place to support a “vote-by-mail” solution, and if the same electoral events were administered by “vote-by-mail”, it is estimated that the total cost over the seven years would have been \$737,483, averaging \$105,355 per fiscal year. In fiscal year 2018-19, the total cost to Elections New Brunswick of conducting municipal by-elections was \$774,655. If a “vote-by-mail” solution were in place, it is estimated the total cost would have been \$180,650, for a total potential savings in one fiscal year of over \$594,000, or 76%.

In addition to general and targeted education campaigns, some of the procedural aspects of a proposed vote-by-mail solution are set out below.

- Four weeks prior to the deadline to return ballots, all registered electors would be sent a voting package consisting of the following:
 - o an outer envelope;
 - o instructions regarding how to vote by mail;
 - o a postage-paid return envelope;

⁸² N.B. Reg. 2005-95.

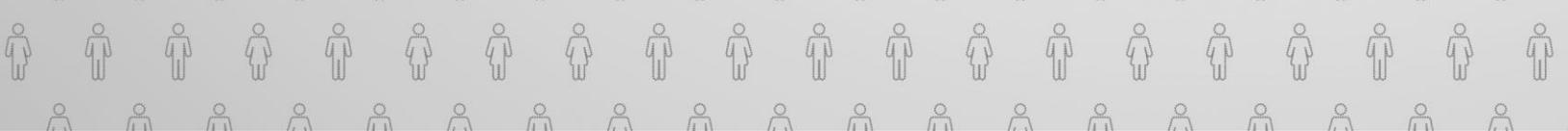
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- o a certificate containing a declaration signed by the elector voting, and space to submit a 'shared secret' being their birthdate or driver's license number;
 - o a secrecy envelope in which the marked ballot will be placed; and
 - o a ballot.
- Electors who did not receive a voting package could request a voting package by telephone until two weeks prior to the deadline to return ballots.
 - Persons eligible to become an elector on or before the last date and time when return envelopes must be received by Elections N.B could request a voting package and simultaneously provide requisite information to be added to the list of electors when the return envelope and certificate is returned.
 - By a particular date, the return envelope and its contents must be received at Elections N.B. to be considered.
 - As each return envelope is received, Elections N.B. officials would process its contents; secrecy envelopes containing ballots are left sealed and are placed into a ballot box.
 - Each properly signed and completed certificate would be examined to ensure the required information to vote is present. If an eligible elector has applied to be added to the list of electors, this addition would be first verified and completed.
 - Following the deadline to return ballots, Elections N.B. officials would open the secrecy envelopes and tabulate the ballots.
 - The Municipal Electoral Officer would declare the results of the election or plebiscite being held.

As part of the preliminary analysis of this proposal, costs for establishing a vote-by-mail process were examined. A preliminary estimate indicates that approximately \$650,000 would be required for technical and programming work and to purchase equipment such as automatic envelope opening machines and vibrating tables to process return envelopes. These one-time costs would be more than offset by the ongoing savings referred to above.

In order for the financial savings and administrative efficiencies to be realized from a vote-by-mail process for these events, it would be necessary for all electoral events held between municipal general elections – by-elections, restructuring plebiscites and first elections – to be administered using the vote-by-mail process. Simply adding the option for electors to use a vote-by-mail process while still opening returning offices and polling stations and training workers would not decrease costs. In fact, doing so would complicate messaging and increase costs, eroding the value of any process change.

Recommendation 103: Require that electoral events conducted in accordance with the Municipal Elections Act between general elections be conducted using a vote-by-mail process.

Amend the *Municipal Elections Act* to require that electoral events held under the Act between general elections be conducted using a vote-by mail process and to provide regulation-making authority to make a vote-by-mail procedures regulation.



iii. *Children in polling stations*

Similar to section 72 of the *Elections Act*, subsection 31(4) of the *Municipal Elections Act* lists the persons who may be present at a polling station on ordinary polling day or an advance polling day. In addition to specific election officers, polling officials, candidates and scrutineers, only the following persons may be present in a polling station:

- a voter engaged in or waiting to vote;
- a person assisting a voter in accordance with the Act; and
- any other person authorized by the Municipal Electoral Officer.

For the reasons set out with respect to **Recommendation 36**, it is recommended that children of voters engaged in or waiting to vote and students and their teachers be permitted to be present at a polling station on an ordinary polling day or an advance polling day at a municipal election.

Recommendation 104: Permit minor children of a voter and students and teachers to be present in a polling station on advance and ordinary polling days.

Amend subsection 31(4) of the *Municipal Elections Act* to permit the following persons to be present at a polling station on an ordinary or advance polling day:

- i. persons in the care of an elector engaged in or waiting to vote; and
- ii. at the discretion of and on such terms and conditions as specified in writing by the returning officer, any person or group of persons for educational purposes.

iv. *Additional voting opportunities*

Sections 38.1 to 39.5 of the *Municipal Elections Act* set out the additional voting opportunities that are provided to New Brunswick voters outside of the traditional voting opportunities on Election Day and advance polling days. As is the case during provincial elections, municipal voters who take advantage of one of the many additional voting opportunities vote by “special ballot” and one’s vote is taken by a pair of special voting officers. As discussed above in Part I, special ballots are used at additional polls established at treatment centres⁸³ and for individual visits at residences and acute care units of public hospitals.

Subsection 38.2(2) of the *Municipal Elections Act* provides for the Municipal Electoral Officer to prescribe the instructions for the conduct of an additional poll by special voting officers. However, section 39.3 prescribes a very clear process to be followed when one’s vote is taken in person by special voting officers. Unfortunately, it is not sufficiently flexible to deal with circumstances that might be encountered by special voting officers in these situations. In particular, the prescribed process would be unable to accommodate an elector who is in isolation in the acute care unit of a hospital or of a treatment centre. Further, given the number of potential variants, it would be difficult to provide for every possible scenario in legislation or in general instructions to special voting officers.

⁸³ Defined in the *Municipal Elections Act* to include nursing homes, special care homes, assisted living facilities, extended care units in public hospitals etc.

Recommendation 105: Authorize the Chief Electoral Officer to adapt the special ballot voting procedure to accommodate a voter placed in isolation in a hospital, a treatment centre or a private residence due to illness.

Amend the *Municipal Elections Act* to authorize the Chief Electoral Officer to adapt the procedures prescribed by sections 39.3 to enable a voter to vote if:

- i. the voter is to be issued a special ballot paper under subsection 39.3(4), and
- ii. the special voting officers are unable to deliver the ballot to the voter because the voter, due to illness, has been placed in isolation in a hospital, treatment centre or private residence.

G. Miscellaneous

i. Register of electors - access to multiple dwelling sites

Voters lists prepared, used and distributed in accordance with the *Municipal Elections Act* are prepared from information in the register of electors maintained by the Chief Electoral Officer under the *Elections Act*. As is the case under the *Elections Act*, municipal returning officers may still conduct targeted revisions of new subdivisions or areas with significant changes in population. In many cases, there is difficulty in accessing secure buildings, whether they are apartment buildings under the control of a landlord or condominiums with a home-owner association.

There is no provision in the *Municipal Elections Act* concerning access to these types of buildings; however, as discussed with respect to **Recommendation 19**, section 17 of the *Residential Tenancies Act* allows campaign teams to access buildings; however, there is no provision for an election officer, performing targeted revision on behalf of Elections New Brunswick, to be able to gain access to a secure building.

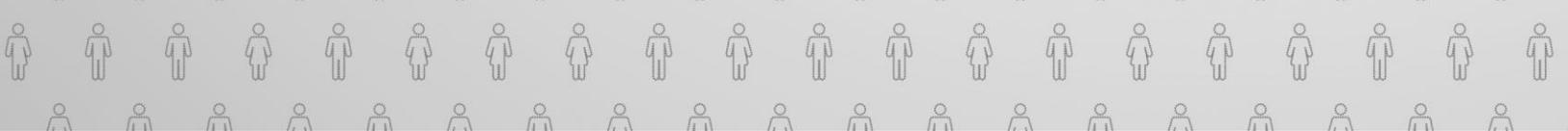
Recommendation 106: Require election officers to be granted entry to multiple-dwelling sites for the purposes of updating the register of electors.

Amend the *Municipal Elections Act*, in a manner similar to section 29 of Alberta's *Election Act*, as follows:

- i. Define a "multiple-dwelling site" as an apartment building, condominium building or other multiple residence building, or any site in which more than one residence is contained, including a mobile home park, gated community and any similar site;
- ii. On producing identification prescribed by the Municipal Electoral Officer, a person in control of a multiple-dwelling site shall permit an election officer to access a multiple-dwelling site between 9:00 a.m. and 9:00 p.m. for the purpose of updating the register of electors; and
- iii. A person to whom an election officer has produced identification shall not obstruct or interfere with, cause or permit the obstruction or interference with, the free access of an election officer to the residential units in a multiple-dwelling site.

ii. Judicial Recounts

Under the *Municipal Elections Act*, there is a two-step process for holding a recount. The first involves a recount by the respective municipal returning officer in the case that there is a difference of 25 votes or



less in the number of votes for the candidate declared elected and a candidate not declared elected.⁸⁴ A candidate who participated in a recount under section 41.1 or who lost an election by more than 25 votes may file a petition with a judge of The Court of Queen’s Bench of New Brunswick for a judicial recount.⁸⁵

The procedures for a judge to recount ballots are set out in subsection 42(5) of the *Municipal Elections Act*:

42(5) The judge shall review the instructions of the Municipal Electoral Officer as to how ballots were to be issued, marked and counted in the election, and shall examine the ballots cast and determine the votes cast for each candidate.

As discussed in greater detail in Part I above with respect to **Recommendation 38**, changes to special ballot voting procedures were made to allow for the use of tabulation machines. In the case of write-in ballots, and in some cases ballots found in the traditional cardboard ballot boxes used at additional polls, they must have a “replacement ballot” created. The process to create a replacement ballot is very specific, with witnesses from each candidate invited to be present, and original ballots being stored in a “replaced ballots envelope”.

A judge conducting a recount may wish to inspect the replaced ballots in order to verify that the replacement ballot process was done properly; therefore, specific authority needs to be given in the *Municipal Elections Act* for the replaced ballots envelope to be opened.

Recommendation 107: Permit judges to review “replaced ballots” during a judicial recount.

Amend subsection 42(5) of the *Municipal Elections Act* to direct the judge performing a judicial recount to open the envelopes or ballot boxes containing replaced ballots.

iii. Custody of elections documents

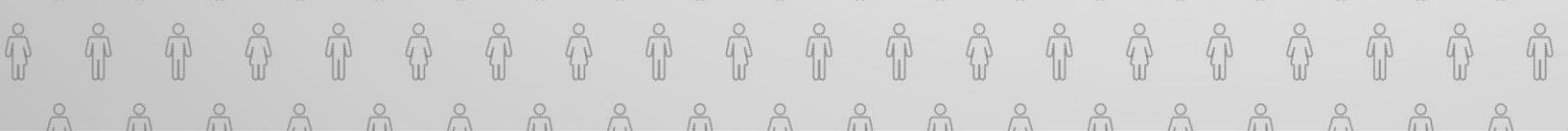
Section 43 of the *Municipal Elections Act* vests the property in all ballot box and election documents in the Crown and permits their destruction after 30 days, notwithstanding the *Archives Act*.⁸⁶ The Chief Electoral Officer is given express authority to use any information in the election documents for the purpose of updating the register of electors, but no other purpose is authorized for accessing these documents.⁸⁷ In the months following an election, the Chief Electoral Officer and his staff should be entitled to access the election documents in order to execute random, statistically significant validations of tabulation machine results and to review or audit the work performed by election officials. The purpose for performing such validations and reviews is discussed in greater detail in Part I with respect to **Recommendation 47**.

⁸⁴ *Supra* note 15 at s. 41.1.

⁸⁵ *Supra* note 15 at s. 42.

⁸⁶ S.N.B. 1977, c. A-11.1.

⁸⁷ *Supra* note 15 at s. 43(1.1).



Recommendation 108: Authorize the Chief Electoral Officer and his staff to inspect election documents in his custody.

Amend section 43 of the *Municipal Elections Act* to authorize the Chief Electoral Officer or any authorized member of his staff to inspect election documents returned to him under the Act.