

Report of the Chief Electoral Officer on Part I Adaptations for the 51st General Election



April 21, 2021

Honourable Derek Bennett
Speaker
House of Assembly
Main Floor, East Block
Confederation Building
St. John's, NL

Dear Speaker:

In accordance with section 10(3) of the **Elections Act, 1991** please find enclosed my report detailing the adaptations made by the Chief Electoral Officer to Part I of the **Elections Act, 1991**.

Best regards,



Bruce Chaulk, MBA, CPA, CMA
Chief Electoral Officer

Introduction

This report is provided in accordance with section 10(1) of the **Elections Act, 1991** (“Act”) and provides details about which sections of Part I of the Act were adapted based on the exigencies that arose during General Election 51.

At the outset, let me advise that prior to the election, Elections NL had secured additional resources for the provision of special ballot voting, hired additional staff, and obtained personal protective equipment to conduct the general election. Elections NL was reasonably prepared to safely conduct in person polling on February 13, 2021.

Despite our efforts, Elections NL had no control over the largescale refusal of staff to work at the polls on polling day because of the highly contagious Covid-19 UK variant. Furthermore, Elections NL had no control over the owners of properties rented for polling stations refusing to allow Elections NL to conduct a poll in their facilities on polling day because of the UK variant. Finally, at the time Alert Level 5 was announced on the evening of February 12, 2021, it was unknown how long the lockdown would continue, and if following the lock down election workers would be willing to resume their duties at a traditional polling station.

Although section 87 of the Act contemplates that a poll may not be able to open on a given day due to an obstruction or delay due to weather, it was not reasonable or practical to use this section to suspend polling one day at a time for an indefinite time for every poll. Despite the obvious problem of securing election workers and polling stations, suspending polling one day at a time would not permit Elections NL to provide adequate notice to the electors of the location of their polling station. Utilizing the special ballot provisions was the safest and most expedient option for the electorate.

The options available to Elections NL to conduct the vote were limited by the legislation. Interestingly, New Brunswick, has recently passed Bill 45, “An Act Respecting Municipal Elections in 2021”. It appears that although New Brunswick had a successful General Election in 2020 they learned from our experience and have included explicit language in Bill 45 that addresses “lockdown” and the powers of suspending and resuming the election process based upon Alert Levels. This explicit authorization is not present in our Act and adaptations were necessary.

Adaptations

The authority for the Chief Electoral Officer to adapt provisions of Part I of the Act is provided by section 10(1) of the Act which states:

Where during the course of an election it appears to the Chief Electoral Officer that, by reason of a mistake, miscalculation, emergency or unusual or unforeseen circumstance, a provision of this Part does not accord with the exigencies of the situation, the Chief Electoral Officer may, by particular or general instructions, extend the time for doing an act, increase the number of election officers or polling stations or otherwise adapt a provision of this Part to the execution of its intent, to the extent that he or she considers necessary.

The first adaptation of the Act was to permit, where requested by the Candidate or the political party, for a Candidate to file their nomination papers at Elections NL headquarters instead of with the returning officer in the District as required by section 68(1)(b). Elections NL then forwarded the nomination package to the returning officer for their review.

On February 12, 2021, the decision was made to suspend in person voting and pivot to a special ballot process for the balance of the election. At the time this decision was made, it was not possible to determine how long it would be until it would be possible to have in person voting. In 2020, the move from Alert Level 5 to Alert Level 2 took 100 days. In February 2021, the province, and particularly the Avalon region, was dealing with a highly contagious UK variant and the length of the shutdown and the impact it may have on the future ability to retain election workers and facilities was impossible to predict due to the anxiety around the variant and Covid spread. The only reasonable alternative at the time was to conduct the election using the special ballot provisions. While not ideal, this method of voting ensured the protection and safety of the electorate and Election NL workers.

The decision to move to special ballots for the balance of the election was accomplished by extending the time to apply for a special ballot. This was set initially at February 15, 2021 but was changed to February 19, 2021 to give electors additional time to apply. These changes were made in accordance with section 86(4) and extending the time in section 86(4) from 6pm to 8pm on that day.

To ensure that availability of technology would not be an issue for electors, it was decided to include the ability of an elector to call Elections NL to apply for a mail out ballot. This was done in accordance with section 86(3) of the Act and was considered to be an acceptable method to apply.

Section 86.4(4) requires the Chief Electoral Officer to set the time for the return of the completed ballot. The initial date was set with reference to a post mark date of March 5, 2021. However, the Act requires a deadline for the return of the completed kit. As such, the return date was set to be March 25, 2021 at 4pm.

Section 86.5(1) of the Act indicates that only the registered political parties that have membership in the House of Assembly at the time the writ is issued are permitted to have a scrutineer present for the counting of special ballots. Given the decision to complete the election exclusively by special ballot, non-affiliated candidates and the NL Alliance were permitted to appoint a scrutineer to witness the counting process. In an effort to balance transparency and safety of staff, Elections NL also established a virtual portal whereby a scrutineer could view the entire facility as well as review any ballots or declaration envelopes that were being rejected.

In accordance with section 134, advance polls are normally counted at the polling station after the polls close on polling day. As there was no in-person voting on polling day, the decision was made to have the ballot boxes returned to the Elections NL district returning office for safekeeping until returned to Elections NL headquarters. Instead of the advance polls being counted in the district by the deputy returning officer and poll clerk assigned to that particular poll, it was decided to have the ballots counted at Elections NL Headquarters utilizing senior staff that included returning officers, election clerks and special ballot officers. These counts were conducted over a period of 5 evenings from March 16th – 20th in the presence of Elections NL staff, scrutineers from three of the political parties, and the scrutineers for two of the non-affiliated candidates.

Section 153 requires the returning officer and election clerk for a particular district to perform the official addition of the polls. As the counts were all completed at Elections NL headquarters, the official addition was overseen by the Director of Election Operations and were completed by senior Elections NL staff in the presence of scrutineers from three of the political parties and scrutineers from two candidates.

Section 10(3) of the Act requires that the Chief Electoral Officer report to the speaker within 30 days after polling day instructions issued under section 10(1). It was not possible to produce that report within that timeline as the election was still in progress. To follow the intent of that section the date for the issuance of that report would be 30 days after March 27, 2021 which would be April 26, 2021.

The final instruction was with respect to the provision of the list of electors that is provided to the registered political parties on April 1 of each year in accordance with section 74(4)(a). As the official addition was held on March 30, 2021, it was not possible to have the list prepared for April 1. As the preparation process for the issuance of the list takes approximately 6 weeks it will be delayed until May 17, 2021.

Applicable Legislation

10. (1) Where during the course of an election it appears to the Chief Electoral Officer that, by reason of a mistake, miscalculation, emergency or unusual or unforeseen circumstance, a provision of this Part does not accord with the exigencies of the situation, the Chief Electoral Officer may, by particular or general instructions, extend the time for doing an act, increase the number of election officers or polling stations or otherwise adapt a provision of this Part to the execution of its intent, to the extent that he or she considers necessary.

(2) Notwithstanding subsection (1), the Chief Electoral Officer may not

(a) permit a nomination paper to be received by a returning officer on nomination day after the time provided for it to be received under this Part in respect of that day; or

(b) permit a vote to be cast before or after the hours fixed in this Part for the opening and closing of the poll on an ordinary polling day or on the days on which an advance poll is held.

(3) The Chief Electoral Officer shall, within 30 days of polling day, report to the speaker instructions issued under subsection (1).

(4) The speaker shall lay before the House of Assembly a report made under subsection

(3) within 5 days after receiving it or if the House of Assembly is not then sitting within 5 days after the House of Assembly resumes sitting.

68. (1) Ten or more electors qualified to vote in an electoral district for which an election is to be held may nominate a candidate for the electoral district

(a) by signing a nomination paper in the prescribed form stating the nominee's name, the place where he or she is ordinarily resident, and his or her address for service of process and papers under this Act and his or her political affiliation; and

(b) by filing the nomination paper with the returning officer between the date of the proclamation commencing the election and the close of nominations.

(2) A returning officer shall not refuse to accept a nomination paper for filing by reason of the ineligibility of the candidate nominated, unless the ineligibility appears on the nomination paper.

(3) A nomination paper that a returning officer has refused to accept for filing may be replaced by another nomination paper or may be corrected, except that a new or corrected nomination paper shall be filed with the returning officer not later than the time for the close of nominations.

74(4) The Chief Electoral Officer shall

(a) on April 1 of each year furnish to each political party registered under Part III a copy of the list of electors for the electoral districts involved in the election; and

86. (1) An elector who is qualified to vote at an election and who has reason to believe that he or she will have difficulty voting at an advance poll or at the poll on polling day may apply to vote by special ballot.

(2) A person who is detained in a penitentiary or jail in the province or who is in detention at the Waterford Hospital may vote only by special ballot.

(3) An application to vote by special ballot may be made by those methods that are acceptable to the Chief Electoral Officer.

(4) An application to vote by special ballot may be made to the office of the Chief Electoral Officer beginning not more than 4 weeks before the issue of the writ of election and ending at 6:00 p.m. on a day to be determined by the Chief Electoral Officer.

(5) An application to vote by special ballot shall contain the information that the Chief Electoral Officer may require, including

(a) the name of the applicant and the address of the applicant's residence in the province;

(b) proof of the applicant's identity by reference to documents of a class determined by the Chief Electoral Officer; and

(c) the applicant's mailing address

(6) A person who knowingly makes a false statement in an application under this section is guilty of an offence.

(7) Section 91 and subsections 92(2) and (3) shall not apply to a special ballot.

86.3 (1) On receipt of an application under section 86, the Special Ballot Administrator or his or her designate shall

(a) ensure that the applicant's name is on the list of electors for the polling division in which he or she would otherwise vote;

(b) if the application is in order, issue a special ballot kit to the applicant after the close of nominations; and

(c) cross out the name of the applicant as it appears on the list, noting in the margin "special ballot issued".

(2) Where an application is received from a person whose name does not appear on the list of electors for the polling division in which he or she resides, the Special Ballot Administrator or his or her designate shall, if satisfied that the person is qualified to vote,

(a) add the person's name to the list of electors;

(b) if the application is in order, issue a special ballot kit to the applicant after the close of nominations; and

(c) cross the person's name off the list and note in the margin "special ballot issued".

(3) Once an elector's application to vote by special ballot has been accepted, a special ballot kit shall be issued to the elector after the close of nominations.

(4) An elector who is issued a special ballot kit may only vote by special ballot.

86.4 (1) On receipt of the special ballot kit, the elector shall mark the ballot by forming the letter "X" with a pen or pencil of any colour within the space on the ballot containing the name and particulars of the candidate for whom he or she intends to vote.

(1.1) Where a special ballot does not list the name and particulars of each candidate, the special ballot kit shall include a document with the name and particulars of each candidate.

(2) Notwithstanding subsection (1), where the special ballot does not list the name and particulars of each candidate, the elector shall mark the ballot by printing with a pen or pencil of any colour, in the space provided, the name of the candidate, or the name of the candidate and the name of the political party of the candidate.

(3) After marking the ballot, the elector shall

(a) place the marked ballot in the ballot envelope;

(b) seal the ballot envelope;

(c) place the sealed ballot envelope in the declaration envelope;

(d) complete and sign the declaration;

(e) place the sealed declaration envelope in the return envelope; and

(f) seal the return envelope.

(4) The return envelope, when sealed, shall be forwarded to the Office of the Chief Electoral Officer so that it reaches the office before a time on a day prior to polling day to be determined by the Chief Electoral Officer.

(5) A special ballot kit shall be distributed to an elector by an election official only.

(6) A special ballot kit shall be returned to the Chief Electoral Officer by the elector or an election official only.

(7) Where a voter requires assistance in the completion of his or her special ballot, that assistance shall be provided by an election official only.

86.5 (1) The leaders of registered political parties having membership in the House of Assembly at the time the writ is issued shall each designate a representative, to act as scrutineer, who may be present during the verification of the declaration envelopes referred to in subsection 86.6(2) and during each stage of the procedure for the counting of the special ballots.

(2) The representatives designated under subsection (1) shall swear an oath or make an affirmation in the prescribed form to keep secret the results of the voting by special ballot.

(3) The Chief Electoral Officer may appoint those special ballot officers the Chief Electoral Officer considers necessary to assist the Special Ballot Administrator.

(4) The special ballot officers appointed under subsection (3) shall swear an oath or make an affirmation in the prescribed form to keep secret the results of the voting by special ballot.

87. (1) Notwithstanding paragraph 10(2)(b), where because of obstruction or delay due to weather, or where for another appropriate reason, a returning officer or a deputy returning officer is prevented or hindered from proceeding with or taking the poll in a polling division or in a part of a division, the returning officer may, with the prior approval of the Chief Electoral Officer, direct that the taking of the poll in that polling division or part be adjourned or deferred until the next day, not being Sunday or a holiday as defined in the Labour Standards Act, and the next succeeding day also, if necessary, in order to complete the taking of or to take the poll.

(2) Where the taking of the poll is adjourned or deferred under subsection (1), the returning officer shall, if the circumstances permit, post a notice of the adjournment or deferral as soon as possible afterward at a conspicuous place in the polling division concerned.

(3) Where the taking of a poll is adjourned or deferred under subsection (1), the taking of the poll shall be completed or the poll shall be taken on the day to which the taking has been adjourned or deferred.

(4) An adjourned or deferred poll shall be conducted in all respects in the same manner as is provided by this Part for the holding of the poll on the ordinary day of polling and is, in all respects and for all purposes, of the same effect as if it had been held on the ordinary day of polling.

134. At the hour fixed for the closing of the poll on the ordinary polling day, the deputy returning officer in charge of an advance poll, shall, in the presence of those candidates and scrutineers who may be present, open the ballot box, count the votes, and perform all other duties required of a deputy returning officer in charge of a polling station on the ordinary polling day.

153. (1) On the 3rd day after polling day, unless prevented by inclement weather and in that case on the next day when the weather permits, the returning officer, at the place, date and hour fixed for the official addition of the polls, and in the presence of the election clerk and of the candidates or their scrutineer, shall open the ballot boxes, and, from the official statements of the poll contained in them, together with the statements of the results of the voting by special ballot communicated under section 86.7, shall add together the number of votes given for each candidate.

(2) Where, at the official addition of the votes, none of the candidates or his or her scrutineer is present, the returning officer shall find at least 2 electors who shall remain in attendance until the official addition of the votes has been completed by the returning officer.