



Conduct of Saskatchewan's 29th General Election in the Context of Novel Coronavirus Disease: Recommendations¹

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I – Introduction

In recent weeks, I have liaised regularly with Chief Medical Health Officer Dr. Saqib Shahab, seeking guidance on how my office might reduce risks related to COVID-19 while conducting a general election. On his office's recommendation, I have also engaged a consultant with expertise in Infection Prevention and Control who will work closely with my staff to examine how our electoral procedures should be adjusted to diminish these risks. I will continue to rely on and require the advice of public health professionals in preparation for the 29th General Election. The following offers an overview of recommendations I made recently to the Government of Saskatchewan and the Legislative Assembly on how Elections Saskatchewan needs to prepare in the weeks ahead.

In offering these recommendations, I found it important to provide some key assumptions on which our planning has been based. These are:

Assumptions Guiding Planning for the 29th General Election

- 1) COVID-19 will be present and of concern to Saskatchewan's electoral stakeholders at the time of the general election and all electoral activities will be conducted in a manner consistent with Public Health Orders in place at the time;
- 2) Concerns about the presence of COVID-19 will not dissuade voters from voting in-person at a public polling location;
- 3) Concerns about the presence of COVID-19 will not dissuade election workers from being willing to conduct the election;
- 4) Greater capacity for absentee voting (voting by mail) and advance voting can be developed in time for the coming general election;
- 5) Government, opposition and other political party representatives will exhibit unprecedented trust and collaboration in order to meet Saskatchewan's constitutional mandate² of conducting a provincial election; and
- 6) The Chief Electoral Officer will be assigned unique authority through legislation to modify processes so as to facilitate the safety of voters, political party representatives, and election workers, and in order to comply with formal restrictions, reinforce the public's confidence, and diminish increased pressures on the election system to maintain its viability.

¹ This document outlines the recommendations provided to the Government of Saskatchewan and the Legislative Assembly by the Chief Electoral Officer on May 4, 2020. Regulations were issued in response on May 13, 2020.

² Section 4 of The Canadian Charter of Rights and Freedoms states that "No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members." The return of the writs for Saskatchewan's 2016 election took place on April 27, 2016.



The current circumstances are not ideal because of the limited time available to make necessary changes in order to reduce the potential for overwhelming the election system.³ Moving forward, however, modifications to our electoral processes will be made following a two-step process of planning—a *first* will focus on how components of the process should be adjusted to minimize the risk of spreading COVID-19 between electoral stakeholders and a *second step* will focus on ensuring the election system remains viable given the changes in step one. It is important to understand that every change to the election system has a cascading impact on voters, political stakeholders and election officials, which means that my office must establish its plan as soon as possible.

II – Three Areas where Elections Saskatchewan has Re-Thought How it Organizes Elections

In considering the components of Saskatchewan’s election system that must be adapted to reduce risk of exposure to COVID-19, three broad areas came up consistently, including *facilities* that are used in the conduct of a general election, *electoral procedures* that are followed over the course of an election, and the *people* that participate in a general election. A careful assessment has led to the conclusion that a number of changes must be made in advance of the 29th general election.

(1) Facilities to conduct a general election

With COVID-19 present, more space will be needed. We know that physical distancing has been a key component of “flattening the curve.” For this election, we need to seek every opportunity to increase the space available for voting. This strategy will depend both on the level of COVID-19 present and the phase of the *Re-Open Saskatchewan Plan*⁴ the province is in at the time. The reopening plan will offer guidance on the precautions that need to be taken and the number of people that will be allowed in a polling location at any one time.

By October 26, Saskatchewan may have moved through all five phases of the re-opening plan and reached a “new normal.” But because planning for polling locations occurs long before the writ period, many of the safeguards of earlier phases would remain in place during the election. While I will continue to liaise with and take advice from the Chief Medical Health Officer in order to make adjustments where possible, I must be clear that most precautions will be designed in the immediate weeks ahead and will remain part of electoral procedures for an October election regardless of the COVID-19 situation at the time.

Following review of our existing parameters, we have determined that physical distancing at the level recommended by public health officials is not achievable within our traditional system. This assessment has led to an important conclusion regarding facilities that are needed to conduct a general election—we require larger facilities than have traditionally been needed in order to physically distance voters, workers, and other stakeholders. This need focuses, first and foremost, on polling locations engaged during the advance voting period and election day, but it also includes space acquired for returning offices and at our head office facilities.

³ When referring to an “election system,” I am speaking of the process by which voters cast their ballot for their chosen representative and not how votes translate into seats in a legislative body, which I would refer to as an “electoral system.”

⁴ The Re-Open Saskatchewan Plan was released on April 23, 2020 and details five phases to gradually re-open businesses and services in the province. More details can be found here: <http://www.saskatchewan.ca/COVID19>.



(2) Electoral procedures (including forms of casting ballots)

With COVID-19 present, most electoral procedures must be reconsidered. Saskatchewan's current election system includes a number of approaches to casting a ballot. By legislation, each is a manual, paper-based process that involves a voter closely interacting with election officials to cast their ballot. While most voting takes place in-person on election day, there is also advance poll voting, voting in special facilities such as hospitals, remand centres, and personal care homes, as well as homebound voting and absentee voting. Moving forward, each of these methods will be assessed, adjusted to diminish the risk of spreading COVID-19, and then evaluated for any inefficiencies that have been introduced.

Our exact approach will depend again on the state of COVID-19 in the province and where the province is at with the *Re-Open Saskatchewan Plan*, taking on the guidelines the Government of Saskatchewan has created for retail businesses and applying them to voting processes.⁵ A polling location is not a retail business of course, but it does bear similarities – people enter the location, engage in a transaction with an employee and then leave.

During the advance voting period and on election day: Voting in person at a polling location is a process that traditionally involves exchanging physical items (e.g., voter ID, a ballot paper) and close interaction between the voter and election officials. Moving forward, Elections Saskatchewan will need to institute similar guidance for polling locations as those followed by retail businesses.

In other voting opportunities (homebound, hospital, and personal care homes): There are legislated procedures in place for other voting methods—such as homebound voting, hospital voting, personal care home voting—each of which provides important access to voters that might otherwise not be able to cast a ballot. With advice from our Infection Protection and Control consultant, Elections Saskatchewan will determine and set priorities for how best to adjust these voting methods in order to reduce the risk of transmitting COVID-19 without overextending the capacity of the current system.

For absentee voting: Some may advise that dramatically increasing the use absentee ballots is the solution to many of the challenges introduced by COVID-19. In fact, I have significant concerns about the absentee voting process in its present form and its capacity to address voter needs in this environment. Still, I know that greater demand for absentee voting is inevitable both because of decisions that Elections Saskatchewan will make to direct certain voters toward this option as well as voters choosing to vote by absentee ballot and avoid public polling locations. My concern is that an election where COVID-19 is present could well lead to an unmanageable increase in the number of voters applying for absentee ballots. Our absentee voting system was not designed for widespread use – it was created as an outlet for voters who may be away from home during advance and election day voting. My office will examine our absentee voting processes to determine how they could be modified to increase capacity and to what extent that capacity can be increased.

(3) Interaction with electoral stakeholders

The traditional manner by which Elections Saskatchewan interacts with electoral stakeholders will prove challenging in a COVID-19 situation where physical distancing and self-isolation are needed. Here, again, we will rely on the *Re-Open Saskatchewan Plan* for guidance on how to engage with these stakeholders. The Plan will offer guidance in areas such as how many people can be in any location at a given time.

⁵ These guidelines can be found online at <https://www.saskatchewan.ca/government/health-care-administration-and-provider-resources/treatment-procedures-and-guidelines/emerging-public-health-issues/2019-novel-coronavirus>.



All changes made in light of COVID-19 will be developed in consultation with the Chief Medical Health Officer and our operationally focused Infection Prevention and Control consultant. After these consultations, the Chief Electoral Officer will publicly issue guidelines and recommendations for how to move forward considering electoral best practice and public health and safety for voters, political stakeholders and our own Field Leadership Team and election officials.

Among voters: More than 812,000 residents of Saskatchewan were eligible to vote in the 2016 general election and around 434,000 voters cast their ballot using various voting opportunities, resulting in a turnout rate of 53.5 percent. The challenge ahead is that electoral procedures must be adapted to anticipate that COVID-19 will be present and that voters will, in some way, be impacted by every change that is made to these procedures. By October, Saskatchewan residents are likely to be used to physical distancing measures such as being instructed to stand two metres apart from each other and having to wait outside when a location has reached a certain capacity. With respect to determining a path forward, my office will continue to consult with our Infection Protection and Control consultant and the Chief Medical Health Officer to shape our procedures in order to diminish risk and ensure there is a safe voting environment

Among political stakeholders: While Elections Saskatchewan does not have direct authority over the day-to-day campaign activities of registered political parties and candidates, I believe the public will expect the Chief Electoral Officer to show leadership and offer guidance to political stakeholders in this regard. I am committed to working collaboratively to ensure that voters, political stakeholders and election officials are able to fulfill their important responsibilities while feeling safe.

Traditional campaign activities, such as debates, rallies, community meals, and appearances at public events, will be unlikely to be advised (or even possible, depending on restrictions on gathering size). Even door knocking may not be effective as voters are likely to not feel comfortable opening the door for unexpected visitors, even if physical distancing is respected and conversations happen from an appropriate distance. The work of candidate representatives during voting will also be affected by measures to preserve physical distancing. Traditionally, candidate representatives sit close to tables where voting takes place to observe the process for fairness and integrity—an important role. It is also common for candidate representatives to travel between locations, observing the process in each and picking up “bingo sheets” to document who has voted. In a process designed to reduce exposure to COVID-19, we will offer direction to registered political parties and independent candidates in ways to ensure physical distancing.

Among Field Leadership Team and other election officials: The FLT is responsible for direct administration of the election in the field and is already in place throughout the province. Further, there are more than 12,000 election officials responsible for administering voting on election and at advance polls, hospital polls, homebound voting, etc. Protecting these workers is a key concern. In addition to our concern for their safety, recruitment challenges will undoubtedly arise—working as an election official is temporary and the financial compensation is low.

We already anticipate that training of both our FLT and election officials will need to change. Our traditional multi-day conference-style events with FLT members will transition online and expanded support materials will fill gaps. For our 12,000 election officials, it would be untenable to conduct training any other way than in-person, although we are investigating avenues for reducing the in-person time that is required by introducing an online component.



III - Assistance from the Government of Saskatchewan and the Legislative Assembly

The Election Act, 1996 provides the Chief Electoral Officer (CEO) with a mandate to conduct a general election. In doing so, the CEO is given power to implement hundreds of procedures related to this kind of event. Some of the sections of this legislation are very prescriptive in their design, meaning that the CEO has little flexibility to change procedures to address current circumstances. In others, some latitude to adjust procedures is afforded. Under circumstances where COVID-19 is present, the complexity of implementing an election increases significantly and could lead quickly to the electoral event becoming unwieldy.

This section describes the assistance that my office will need in the days ahead from both the Government of Saskatchewan and Legislative Assembly if we are to move forward with planning and organizing a general election in October.

(1) Securing schools and other public facilities as voting locations for both advance voting and election day

Elections Saskatchewan requests unprecedented assistance from the Minister of Education, the Ministry of Education, and local school boards in order to secure schools as voting locations for both the advance voting period and on election day. In pursuing this approach, Election Saskatchewan will be able to more effectively protect Saskatchewan students, voters, election officials, and political party representatives. For this election, I request that all schools be closed on election day so that we can have exclusive access to and use of these facilities on that day.

I also strongly encourage, for this election, that Elections Saskatchewan be given access to schools for advance voting—advance voting would take place from 12 noon to 8 p.m., Tuesday, October 20 through Saturday, October 24. We have not relied on schools for advance voting in the past. In 2016, we used only 13 schools as advance voting locations. In schools where advance polls are held, we would require exclusive access to the gym for the entire advance voting period.

(2) Procuring personal protective equipment (PPE)

In preparation for the 2020 general election, Elections Saskatchewan will require access to significant numbers of personal protective equipment (PPE). While Elections Saskatchewan procures large quantities of materials for any electoral event, it does not have the experience or expertise necessary to purchase this kind of equipment. While not taking priority over the needs of frontline health care workers, I am requesting that Government make available their staff to facilitate the purchase of PPE for the coming election. In the event that all materials are not required, they would be returned for redeployment within the health system.

(3) Allowing electoral processes to be adapted to protect against the spread of COVID-19

I also recommend that the Legislative Assembly change election legislation to provide the Chief Electoral Officer (CEO) with explicit authority to adapt electoral processes under circumstances where a serious, contagious disease is present in Saskatchewan—whether province-wide or regionally. Given the fluidity of the circumstances and the very limited time until our general election, it is increasingly clear that targeted changes to specific sections which prescribe electoral procedures will not suffice. My office has determined that it will not be possible to offer guidance with respect to the detailed adjustments—quite literally, hundreds of elements—that will be required in advance of conducting the coming election.



To achieve this end, an amendment to section 7 of *The Election Act, 1996* that offers clarity that the CEO may use the authority within this section during a public health emergency or if a serious contagious disease is present in the province. I do not believe that the challenges posed by COVID-19 fall under the definition of an “accident, riot or other emergency” used in that section. Given that we cannot anticipate what the situation with COVID-19 will look like in October or where localized outbreaks may occur, I am not able at this time to offer the clarity with respect to how emergency powers may need to be used.

A further legislative amendment would be akin to the authority provided following our last election to modify advance voting processes contained in section 135.1 of the Act. Recognizing that there were many process changes and “unknown unknowns” with making modifications to allow for technology at the polls, it gave the CEO broad authority to modify sections of the Act. I recommend a similar section be introduced allowing the CEO—for this election only—to make modifications to the voting processes outlined in the Act in the interests of public safety and precaution.

(4) Ensuring informed decision-making via an Electoral Advisory Group

Finally, given the uncertainty surrounding this pandemic, I strongly recommend a process be established within which the calling of the general election can be reviewed and a final determination on holding it can be made with clarity and with transparency.

To-date, I have needed and will continue to rely on the advice of the Chief Medical Health Officer and his staff in order to plan for, organize, and implement the coming general election. But this advice differs from having to offer advice on whether the general election can proceed safely. My recommendation would be for the CEO to meet with an advisory group constituted of the Chief Medical Health Officer and Government and Opposition House Leaders at key times before the election to review the current landscape and identify key risks. In turn, the CEO would recommend to the Lieutenant Governor in Council whether to proceed to the next stage by drawing on input received from this group. I would also strongly recommend that a legislative path forward be established to offer clarity with respect to COVID-19-related circumstances that could unfold during the writ period. Legislation does not currently allow for a postponement of the general election at that time.

To reinforce and facilitate an environment of collaboration among electoral actors, I would recommend a change to section 7 (Chief Electoral Officer – emergency powers) of *The Election Act, 1996* that explicitly requires the Chief Electoral Officer to communicate publicly his advice to the Lieutenant Governor in Council on the viability of conducting an election in a public health emergency and following consultation with experts. The requirement for such transparency is not unusual⁶ and ensures that the CEO’s recommendations are distributed broadly to all electoral stakeholders.

⁶ To provide one example, the United Kingdom’s Political Parties, Elections, and Referendums Act 2000 requires the Electoral Commission be consulted with respect to changes to electoral law and gives the Commission authority to report on these.

