



Summary of Legislative Changes

March 5, 2020

In April 2018, *A Report on the Twenty-Eighth General Election, Volume IV, Chief Electoral Officer's Recommendations for Legislative Reform*, was published. Since that document was produced, *The Election Act, 1996* (the Act) has undergone two significant set of amendments, Bill 166 and Bill 202.

Many of the changes will be of interest to registered political parties, candidates as well as chief official agents and business managers. This document provides a brief overview of the changes made by Bill 166 and 202 but is not meant to be a comprehensive summary or a legal interpretation of the impact of the changes. For a complete listing of all changes, consult Bills 166 and 202 and an up-to-date version of *The Election Act, 1996*.

The Volume IV report mentioned above described a three-phase process for modernizing Saskatchewan's election system. This process would take place over three election cycles and three general elections.

The key steps included in Phase One were:

- Technology to streamline advance voting;
- Ability to pilot certain procedures; and
- A correction of various administrative inefficiencies and problematic requirements of current election legislation.

Bill 166: Pilots & Advance Voting Technology, Right to Access

Legislators addressed the first two key steps of Phase One in legislation that was passed by the Legislative Assembly with the support of both government and opposition in late 2018. Bill 166, *The Election Amendment Act, 2018* made a relatively small number of changes to *The Election Act, 1996* – these are briefly described below.

Authority to Conduct Pilot Projects

New sections 5.1 and 5.2 were added to the Act, authorizing the Chief Electoral Officer to test alternate procedures, equipment or technology during by-elections and general elections. At the time, the Chief Electoral Officer expressed concern with a requirement that any pilot project conducted during a general election must take place in all 61 of the province's constituencies.

Elections Saskatchewan

*301 – 3303 Hillside Street
Regina, Saskatchewan
Canada S4S 6W9

Telephone: 306.787.4000
Toll Free: 1.877.958.8683
Fax: 306.787.4052

Email: info@elections.sk.ca
Web: elections.sk.ca

Advance Voting Modification

Section 135.1 was added to the Act, allowing the Chief Electoral Officer to move forward with modified advance polls that would have incorporated technology such as ballot tabulators and electronic poll books. As described in Elections Saskatchewan's *Communique for Chief Official Agents* released on March 4, 2020, these plans have been suspended for the 29th General Election.

Right of Access

While not included in the Chief Electoral Officer's original list of recommendations, an amendment focusing on a candidate's right of access was included in Bill 166. *The Residential Tenancies Act* and *The Condominium Property Act* were amended to include language with respect to right to access common areas in multi-residential buildings. Section 283.1 was added to the Act requiring returning officers to provide confirmation of this right to access to third parties. Elections Saskatchewan worked in collaboration with the Ministry of Justice to develop an informational poster that will be displayed in every returning office as well as a form (E-420) that informs building owners and property managers of this right. Candidates and canvassers can download this form from the Elections Saskatchewan website.

Bill 202: Correction of Inefficiencies & Problematic Requirements

The third key step in phase one was to correct a large variety of administrative policy issues as well errors, omissions and incorrect references found in *The Election Act, 1996*.

In November 2018, the Chief Electoral Officer provided a memo to the Minister of Justice and Attorney General, the Honourable Don Morgan regarding a great number of "supplementary changes" that would aid the administration of elections. That memo can be found on the Reports and Publications page of the Elections Saskatchewan website - <https://www.elections.sk.ca/reports-data/reports-publications/>.

On November 27, 2019 Bill 202, *The Election Amendment Act, 2019* was passed by the Legislative Assembly with support from both government and opposition. The changes contained in Bill 202 were brought into force on January 31, 2020. Since that time, Elections Saskatchewan has been working to operationalize the many changes to forms, processes, manuals and guides necessary now that the legislation was in force.

A brief overview of the changes made by Bill 202 are included below.



Minor Changes

There were a variety of minor changes that will not have an impact on the work of candidates or registered political parties. This includes, for example, removing the requirement to “lock and seal” ballot boxes and replacing it moving forward with a reference to “sealing” only (ballot boxes do not have a locking mechanism). Other examples of relatively minor changes include replacing the words “black lead pencil” with “marking device” in the context of marking ballots and fixing a variety of typos and inconsistent or out-of-date references.

Regulatory Changes

The Election Forms (Chief Electoral Officer) Regulations were repealed and the Chief Electoral Officer now has the authority to change forms without the approval of the Lieutenant Governor in Council. This will allow Elections Saskatchewan to be more responsive and flexible when it comes to the design and use of certain forms.

Returning Officer Residency

The strict requirement that the returning officer reside in the constituency has been removed from section 9. The preference will be to have returning officers reside in the constituency they represent, but if a qualified candidate cannot be found, the Chief Electoral Officer will no longer need to use the emergency powers found in section 7 to authorize an out-of-constituency returning officer.

16 and-17-Year-Old Election Workers

Moving forward, 16 and 17-year-olds will be eligible to work as deputy returning officers and poll clerks. Elections Saskatchewan’s preference will be to pair younger workers with more experienced ones.

Voters Lists

The requirement to include the voters date of birth on the voters list has been removed. All voters lists used by election officials will now be sorted alphabetically by surname. Candidates and registered political parties can request a voters list arranged in geographic order.

Election Proclamations

Elections Saskatchewan will no longer be required to provide 10 copies of the election proclamation to each candidate. Section 34(4) now requires the returning officer to provide one copy to each candidate. Elections Saskatchewan is also no longer required to post proclamations in post offices in every constituency.

Hours of Advance Voting

Section 132 was amended to change the hours of advance voting from 3 p.m. to 10 p.m. on weekdays and 12 noon to 7 p.m. on weekends to be from 12 noon to 8 p.m. every day of the week. This change increases the total hours of advance

voting to 40 from 35. An amendment to section 129(2) allows Elections Saskatchewan to hold advance polls for a period of less than five days.

Occupation

The requirement to track occupation for voters has been removed. In addition, candidates are no longer required to provide their occupation on their nomination papers and candidate occupation has been removed from the ballot.

Audits and Elections Expense Reports

Section 222(2) has been amended to add a requirement for auditors to take any additional steps that are necessary to ensure the examination and report comply with the Act has been added. As a result of this change, a revised audit guide clarifying the responsibility to examine compliance with the legislation will be created. This audit guide will be supported by an accompanying Interpretation Bulletin outlining Elections Saskatchewan's expectations.

Section 261 has been amended to require the business manager to provide additional supporting documentation when they submit their election expense return. Section 261(2)(i)(iii) that requires business managers to provide bank statements for all of campaign bank accounts has been added. Section 261(2)(i)(iv) requiring the business manager to provide additional records, including but not limited to photographs or written scripts, that provide proof of content of any advertising that promoted the candidacy of the candidate has also been added.

Rates and Limits

Section 266 has been amended to clarify that claims for mileage expenses on election expense returns must be the same rates as those paid to members of the public service of Saskatchewan in order to be reimbursable as an election expense.

The calculation of expense limits for both candidates and registered political parties in sections 252 and 243 respectively has been amended to remove the calculation based on the number of names on the voters list. It is now a flat amount adjusted for inflation.

Party Administration

The Act has been changed in several places to allow the party leader to assign a designate or have the chief official agent sign in place of the party leader. Section 45 and section 230(1) have been amended to allow the chief official agent to endorse candidates for an election. Section 230(3) has been amended to allow any person designated by the leader to sign submissions updating information in the register pursuant to section 230(1).

A new section, 45(1.01), sets out that the party leader or chief official agent – not the candidate – provides direction to Elections Saskatchewan with respect to how the party's name or abbreviation is to appear on the ballot and all other election documentation.

Registration of a New Political Party

Several changes were made to the legislation as it pertains to the registration of a new political party in Saskatchewan. Section 224 has been amended in two ways. First, a new clause, section 224(2.1) has been added. This section requires that the required signatures on the petition must all have been collected within the six-month period preceding the submission of the petition. For clarity, this means that all required signatures must be collected and submitted within a six-month period.

Second, section 224(3) has been repealed and substituted with the following:

A political party may apply to be registered at any time during the period commencing on the day fixed for the return to a writ for a general election and ending on the day that is seven months before the polling day for the next general election.

Finally, section 225 has been amended to add a requirement for the Chief Electoral Officer to validate the signatures collected on the petition and to take any steps considered necessary to assess and verify the completeness of the application and petition.

Contributions

Contributor addresses has been added to list of information that chief official agents and business managers must now record. Sections 235, 236, 250 and 261 have all been amended to reflect this requirement. In addition, section 236(1) has been amended to require business managers to record the date on which each contribution is made.

Expenses

Section 247 has been amended to allow a registered political party to apply to the Chief Electoral Officer for permission to pay an invoice or a bill for election expenses that is still outstanding three months after polling day.

Section 248 and section 259, which defined petty expenses and their treatment have been repealed. Petty expenses are no longer a category of expenses to be reported on the expense returns.

Section 253 has been amended to require that all elections expenses incurred on behalf of a candidate must be authorized by the business manager. This section previously allowed individuals other than the business manager to incur expenses provided the individual used their own money and was not repaid.

The definition of "election expenses" in section 220 has been expanded to include the cost of acquiring telephone or internet service as an eligible election expense when incurred as part of the establishment of a campaign office for a candidate or registered political party. The costs associated with establishing a bank account for a campaign are also now included in the listing of eligible election expenses.

Penalties

A new section outlining the consequences for political parties or candidates who exceed the election expense limit has been added. Section 243.1 states that any reimbursement the political party is eligible to receive will be reduced by the amount by which the party's election expenses exceeded the prescribed limits. Section 252.1 states that any reimbursement the candidate is eligible to receive will be reduced by the amount by which a candidate's election expenses exceeded the prescribed limits.

In addition, section 263.1 provides the Chief Electoral Officer with the ability to levy a late filing fee of \$25 per day for each day (up to a maximum of \$750) that a candidate's election expenses return or supplementary election expenses return is not filed by the prescribed filing deadline, subject to any extensions granted. The reasons that a business manager can file for an extension to the prescribed filing deadline have been restricted through an amendment to section 263. This section now requires that a business manager encounter "unforeseen or extraordinary circumstances" and cannot "reasonably be expected to prepare and file any election expenses return" in order to apply for an extension to the filing deadline. Previously the wording of this section allowed a business manager to apply for an extension if they become "unable for any reason" to meet the filing deadline.

Election Expense Reimbursement

Section 265 has been amended to require reimbursement to be paid to either the candidate's constituency association or the registered political party. Election expense reimbursements will no longer be paid to business managers, except in the case of an independent candidate.

Use of Cell Phones in Polling Places

The restriction on the use of cellular phones and other communications devices in section 190 has been amended. The use of cellular phones and other communications devices are now permissible when used in accordance with the policy established by the Chief Electoral Officer. The use of an electronic device, including a smart phone, computer, smart watch or tablet, that is set to silent mode to email, text, or perform other tasks within a polling place is now permissible.

