

ELECTIONS SASKATCHEWAN
CHIEF ELECTORAL OFFICER'S ASSESSMENT

Toward an Improved Legislative Framework for Elections in Saskatchewan

Step One: Recommended Amendments for
Saskatchewan's 28th General Election

December 2013



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TOWARD AN IMPROVED LEGISLATIVE FRAMEWORK FOR ELECTIONS IN SASKATCHEWAN – STEP ONE: RECOMMENDED AMENDMENTS
FOR SASKATCHEWAN'S 28TH GENERAL ELECTION – CHIEF ELECTORAL OFFICER'S ASSESSMENT – 2013-2 (v1.0)

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Executive Summary

Saskatchewan’s provincial election law underpins the details of how every election is conducted. Given the importance of democratic processes related to voting, election law has tended to be highly prescriptive in nature. Saskatchewan is not an outlier in this regard.

The framework of electoral legislative authority in Saskatchewan is dated and no longer reflects societal expectations or current best practice compared to other jurisdictions across the country and around the world. Elections Saskatchewan is committed to facilitating a process whereby

the electoral legislative framework is modernized and updated to meet national and international standards.

This document recommends 15 necessary legislative amendments to be given priority by legislators so the related provisions can be efficiently implemented in advance of the next provincial general election, statutorily scheduled to occur on November 2, 2015.

These recommended amendments constitute the first of a two-process of identifying changes needed in the modernization of election law

in Saskatchewan. With an eye toward the 29th provincial general election, the second step will involve consideration of more far-reaching changes—changes that will take longer to implement than the amount of time available before writs of election must be issued for the 28th provincial general election.

In the short-term, Elections Saskatchewan recommends that the following 15 legislative changes be given priority attention during the coming legislative session.

1. Institute independent staffing model for Elections Saskatchewan.	9. Adjust advance voting days to better serve rural communities.
2. Facilitate greater access for disabled voters through homebound voting.	10. Ban the use (not possession) of cameras/phones in voting locations.
3. Introduce a permanent register of voters.	11. Increase flexibility in hiring election officers.
4. Streamline advance voting.	12. Provide the ability for 16 and 17 Year olds to work as poll clerks.
5. Streamline registration at voting locations.	13. Remove the Chief Electoral Officer’s duty to transport candidate scrutineers.
6. Increase the integrity of voting ID requirements.	14. Establish term limits for returning officers.
7. Permit a voter to deposit their own ballot.	15. Appoint election clerks on the same basis as returning officers.
8. Facilitate absentee voting for remote areas.	



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Province of Saskatchewan

About Elections Saskatchewan

Planning, organizing and implementing elections in Saskatchewan is overseen by what is commonly known as an election management body (EMB).

In Canada, an EMB is an independent, nonpartisan institution responsible for neutral election administration within a territorial, provincial or national jurisdiction. Each of these 14 jurisdictions operates as part of a constitutional democracy within our federal model of governance. The democratic rights of citizens are guaranteed in the Canadian Charter of Rights and Freedoms.

In this province, Elections Saskatchewan fulfills the EMB mandate, serving as secretariat to the statutorily-defined Office of Chief Electoral Officer. Elections Saskatchewan has a leadership team in Regina, as well as a field leadership team dispersed across the province's 61 newly defined constituencies. Voters within these constituencies will each elect a member of the Legislative Assembly of Saskatchewan in the upcoming 28th general election, scheduled for November 2, 2015.

Leading up to a general election, Saskatchewan's electoral service grows to include about 10,000 provincial residents from all walks of life, each serving the provincial electoral process by assisting with implementing a series of electoral events that are fundamental to sustaining Saskatchewan's democratic traditions.

VISION

Elections Saskatchewan's organizational vision is:

To be widely recognized as a professional, service-oriented and innovative election management body.

Elections Saskatchewan aims to obtain this recognition from provincial stakeholders, including the voting public, media, political parties, political candidates and elected members of the Legislative Assembly of Saskatchewan, as well as from organizational partners and election administrators in jurisdictions within and outside of the province.

ROLE AND MISSION

Elections Saskatchewan's role and mission is:

To serve democracy in Saskatchewan by ensuring the impartial and professional delivery of provincial electoral events.

Elections Saskatchewan's team is very much aware that their organization exists primarily to prepare, administer and conduct the full range of electoral events that are defined in provincial election legislation, which include general elections, by-elections, referenda, plebiscites, boundary redistributions and voter enumerations.

VALUES

In realizing its vision, Elections Saskatchewan is guided by six core values:

- Independence;
- Impartiality;
- Professionalism;
- Accountability;
- Innovation; and
- Service Orientation

These values are the foundation of every activity members of the organization perform.

GOALS

Over the period covering the next three years (2014-2016), Elections Saskatchewan has committed to achieving six strategic goals:

1. Attract and retain a competent, inclusive and performance-focused Elections Saskatchewan team;
2. Continuously improve electoral management and build institutional capacity through disciplined planning and applied best practice;
3. Facilitate the modernization of Saskatchewan's electoral legislative framework;
4. Innovate and improve services by leveraging technology;
5. Partner and collaborate with other organizations to enhance effectiveness in the delivery of electoral events and services; and
6. Increase public awareness and knowledge of the electoral process.

These goals guide work priorities and provide a focus for the activities necessary in realizing the organization's vision.

Responsibilities

The Head Office Leadership Team

The Chief Electoral Officer (CEO) is an independent officer of the Saskatchewan Legislature. As head of Elections Saskatchewan, the CEO ensures the fair and equitable conduct of operational, administrative and financial electoral practices. The CEO is assisted in these legislated responsibilities by a head office leadership team.

Elections Saskatchewan's primary responsibility is to maintain a state of provincial election readiness. To that end, Elections Saskatchewan must appoint and train the requisite numbers of supervisory returning officers (9), constituency returning officers (61) and election clerks (61) to ensure electoral preparedness throughout the government's mandate.

The Election Act, 1996 places a duty on the CEO to assist registered political parties, candidates, chief official agents and business managers to guarantee the Act's financial transparency and disclosure goals are met. Elections

Saskatchewan publishes guides for chief official agents and business managers to help them fulfill their administrative and financial reporting responsibilities and compile the necessary supporting documentation. The guides also help ensure annual financial disclosures are completed in accordance with both *The Election Act, 1996* and *The Political Contributions Tax Credit Act*.


Where applicable, Elections Saskatchewan is responsible for assessing and reimbursing election expenses paid from the province's general revenue fund. Elections Saskatchewan has a financial review system to certify public reimbursement of election expenses through the examination and audit of registered political parties' and candidates' expense returns and disclosure documentation. To promote transparency, expense return details are tabled in the Legislative Assembly.

Elections Saskatchewan is responsible for investigating offences under *The Election Act, 1996*. While the Act is

regulatory rather than criminal, the role of Elections Saskatchewan is to inspect, investigate and inquire about instances where contravention of the Act is suspected or alleged, as deemed necessary by the CEO. Since this responsibility is a matter of considerable discretion and is often initiated by complaints filed by interested parties, it is incumbent upon Elections Saskatchewan to consider whether any specific situation involves an abrogation of the overall purpose, policy rationale or legislative intent of the province's election legislation.

Elections Saskatchewan maintains an outreach program to ensure political stakeholders and the public are aware of important aspects of its mandate by responding to public inquiries and liaising with stakeholders, including registered political parties, candidates and their chief official agents and business managers.

The CEO reports annually to the Legislative Assembly of Saskatchewan on matters related to administering the Act. In addition to such annual



reporting, the CEO also prepares and tables reports in the Legislative Assembly on the administration and official results of all electoral events. Provincial election results are published in the *Statement of Votes (Volume I)* and its complement, the Report of the Chief Electoral Officer: *Campaign Contributions and Expenditures (Volume II)*. Official results and the administrative and financial reporting of constituency by-elections are included in individual *Statement of By-Election* reports.

Elections Saskatchewan's environment of public accountability is unique and complex due to the potential uncertainty of the provincial electoral cycle, the decentralized nature of electoral administration, and the interaction among registered political parties, candidates and voters. The integration of decentralized electoral processes among the province's political stakeholders rests with Elections Saskatchewan, using its centralized administrative leadership function and impartial application of the Act.

The Field Leadership Team

While central electoral administration is the responsibility of Elections Saskatchewan's head office leadership team, regional and constituency-level conduct of electoral events is the responsibility of a field leadership team.

Supervisory returning officers (SROs) represent different geographic zones of the province, comprising six or seven constituencies. They assist returning officers within those constituencies in performing their duties. SROs are directed by Elections Saskatchewan's central office and act as a liaison between the head office and the constituency returning officers. They are responsible for ensuring electoral events are administered and conducted to a consistently high standard across the province.

An important part of maintaining election readiness is having constituency returning officers for all of the province's 61 constituencies. The CEO appoints the constituency returning officers. Notices of all

such appointments or cancellations are published in *The Saskatchewan Gazette*. Returning officer vacancies are filled through an independent, merit-based and competitive recruitment process.

As representatives of Elections Saskatchewan, the 61 constituency returning officers are entrusted with upholding the neutrality of the province's electoral process within their respective constituencies. They are responsible for the localized administration, conduct and reporting of electoral proceedings: enumerations, general or by-elections, referendums and plebiscites, and the periodic redistributions of polling division boundaries.

1.0 Introduction

Election legislation underpins every aspect of implementing elections in democratic jurisdictions around the globe. It is the duty of election administrators to manage the electoral cycle and ensure that the delivery and conduct of all electoral events fully comply with the legal framework established for their jurisdictions.

Following an initial assessment, the Chief Electoral Officer of Saskatchewan has found that many aspects of the current election legislation diminish the opportunity for the province's election management body to conduct elections at the greatest level of efficiency, and according to electoral best practices and standards in

Canada and abroad. In February 2013, Elections Saskatchewan announced an approach to reform the province's election legislation framework¹. In doing so, it aims to complete a two-step assessment of this legal framework:

Step One: An initial step—the results of which are described below—evaluates the current legal framework in order to offer a limited number of recommendations on amending current legislation that focus on achieving greater efficiencies in implementing the 28th general election, scheduled to be held on November 2, 2015. After careful analysis, the Chief Electoral Officer proposes within this report a focused list of non-controversial recommendations that will allow greater efficiencies to be gained during the upcoming election. It will be important that these recommendations are given timely consideration so that all

changes can be in place well in advance of the general election, and adequate time is provided for planning, preparations, and training of election officials across the province.

Step Two: A second step in assessing Saskatchewan's legal framework will take a broader approach to considering how election administration should evolve in the years ahead. The last time that legislative provisions regarding provincial election administration were considered was more than a decade and a half ago, culminating *The Election Act, 1996*². In the coming year, Elections Saskatchewan will

begin a more comprehensive assessment of Saskatchewan's legal framework for election administration. Based on an electoral cycle planning approach, this second step will focus on offering recommendations on and facilitating the adoption of a modernization of Saskatchewan's election legislation framework which would ideally be introduced in Year 1 of the next electoral cycle. This step will include a comprehensive review of all of the existing components of Saskatchewan's provincial electoral legal framework, which are summarized in Table 1 below.

Step Two of the legal assessment process will include a comprehensive review of all the existing components of Saskatchewan's provincial electoral legal framework, which are summarized in the table on page 10.

¹ Michael D. Boda (2013). Election Administration in Saskatchewan: 'A Path for Renewal' – Estimates for Fiscal year 2013-2014. Regina: Elections Saskatchewan.

² *The Election Act, 1996*, Chapter E-6.01 of the *Statutes of Saskatchewan, 1996*.

TABLE 1: SASKATCHEWAN ELECTORAL LEGISLATIVE AUTHORITY FRAMEWORK
(to be assessed during Step Two)

Electoral Process	Applicable Legislation and/or Regulations
Setting electoral boundaries	<i>The Constituency Boundaries Act, 1993</i> - Chapter C-27.1 of the <i>Statutes of Saskatchewan, 1993</i> (effective June 22, 1993) as amended by the <i>Statutes of Saskatchewan, 1996</i> , c.E-6.01; 1997, c.31; 1998, c.P-30.11; 2005, c.L-11.2; 2007, c.6; 2012, c.6; and 2013, c.27. Also, <i>The Representation Act, 2002</i> - Chapter R-20.4 of the <i>Statutes of Saskatchewan, 2002</i> (effective June 28, 2003) and <i>The Representation Act, 2013</i> - Chapter R-20.5 (new constituency boundaries that come into effect on the day following the dissolution of the 27th Legislative Assembly).
Voter enumeration and voters list revision	<i>The Enumeration Regulations</i> - Chapter E-6.01 Reg 3 (effective August 12, 2011).
Political financing administration	<i>The Legislative Assembly and Executive Council Act, 2007</i> - Chapter L-11.3 of the <i>Statutes of Saskatchewan, 2007</i> (effective March 21, 2007) as amended by the <i>Statutes of Saskatchewan, 2008</i> , c.6; 2009, c.V-7.21; and 2012, c.20.
Dates for general elections to occur and the length of time after a Member of the Legislative Assembly resigns or dies by which a by-election must occur.	<i>The Legislative Assembly and Executive Council Act, 2007</i> - Chapter L-11.3 of <i>The Statutes of Saskatchewan, 2007</i> (effective March 21, 2007) as amended by the <i>Statutes of Saskatchewan, 2008</i> , c.6; 2009, c.V-7.21; and 2012, c.20.
Election administration	<i>The Election Act, 1996</i> - Chapter E-6.01 of the <i>Statutes of Saskatchewan, 1996</i> (effective January 1, 1997 except sections 272 to 276 – never proclaimed) as amended by 1998, c.12; 2001, c.P-15.2; 2003, c.C-11.1, R-8.2; and 7; 2003, c.15; 2005, c.L-11.2, M-36.1 and 12; 2007, c.6; 2009, c.16; 2011, c.5; 2012, c.C39.2; and Bill 121 made effective December 5, 2013.
Voter identification, schedule of fees, form of regular ballot (Form A) and form of write-in ballot (Form B), proclamation format and statement of returning officer format	<i>The Election Act Regulations</i> – Chapter E-6.01 Reg 1 (effective January 1, 1997) as amended by Saskatchewan Regulations 34/1999, 137/2005, 58/2011 and 70/2013.
Regulated forms pertaining to election (other than those specifically outlined in The Election Act Regulations)	<i>The Election Forms (Chief Electoral Officer) Regulations</i> - (Chapter E-6.01 Reg 2 (effective December 19, 1997) amended by Saskatchewan Regulation 47/2001 and 6/2006.
Petitions against undue return of election	<i>The Controverted Elections Act</i> - Chapter C-32 of <i>The Revised Statutes of Saskatchewan, 1978</i> (effective February 26, 1979) as amended by the <i>Statutes of Saskatchewan, 1983</i> , c.66; c.E-6.01; 2000, c.C-42.1; and 2004, c.65.
Referendums and plebiscites	<i>The Referendum and Plebiscite Act</i> - Chapter R-8.01 of The <i>Statutes of Saskatchewan, 1990-91</i> (effective September 10, 1991) as amended by the <i>Statutes of Saskatchewan, 1996</i> , c.E-6.01. Also <i>The Referendum & Plebiscite Regulations</i> - Chapter R-8.01 Reg 1 (effective September 10, 1991).
Time option area votes	The <i>Time Act</i> - Chapter T-14 of <i>The Revised Statutes of Saskatchewan, 1978</i> (effective February 26, 1978) as amended by the <i>Statutes of Saskatchewan, 1979-80</i> , c.M-32.01, 45 and 92; 1983, c.11, 27 and 77; 1983-84, c.49 and 54; 1986-87-88, c.35; 1989-90, c.54; 1990-91, c.28; 1996, c.E-6.01 and 32; and 2005, c.M-36.1.



2.0 Recommended Changes

Following the completion of the 27th general election in November 2011, Elections Saskatchewan began considering issues that it and various electoral stakeholders identified as most clearly diminishing the efficiency of the provincial electoral process. As part of a longer-term re-evaluation of Saskatchewan's entire framework of election law, this initial assessment focuses on changes within legislation that have been deemed most pressing.

Saskatchewan election legislation could be categorized as dated and overdue for a comprehensive assessment. That assessment will need to include stakeholder input and structured public discussion to provide an inclusive analysis of what is needed to modernize the organization and legislative framework to help ensure sustainable elections in the future. Implementing the results of such an assessment cannot possibly be achieved in the time available before the next general election, currently scheduled for November 2, 2015.

While planning for undertaking a longer-term and wider-scope process for assessing Saskatchewan's election law will run in parallel, this first step, described in this assessment report, focuses on the election system's most immediate needs.

After careful analysis, the CEO proposes a series of recommendations that will facilitate greater efficiency in implementing the upcoming general election, with the aim of serving the voters of Saskatchewan more effectively. These recommendations fall into three broad categories that focus on:

- Aligning Elections Saskatchewan's human resources policies with those of other election management bodies operating according to electoral best practice – nationally and internationally;
- Moving from periodically enumerating voters to voter registration arrangements that use a continuously updated permanent register of voters; and
- Diminishing the barriers that individual voters face in accessing the voting process.

These recommendations require timely consideration so that all changes are in place well in advance of the general election, allowing for the adequate planning, organizing and training of election officials across the province.

2.1 Institute Independent Staffing Model for Elections Saskatchewan

Currently, section 4.6 of *The Election Act, 1996* states that *The Public Service Act, 1998* applies to members of the staff of the Chief Electoral Officer (who are described as the persons required for the proper administration of the Act). The section contemplates that employees of the election management body will be swept into an employment system covering thousands of public service employees working for the Executive branch of the Government of Saskatchewan. As a consequence of a practice of obtaining order-in-council "unclassified" appointments for staff assigned to ongoing positions within Elections Saskatchewan, these staff members were excluded from the classified division of the public service.

In the judgment of the CEO, both section 4.6 of the Act and the order-in-council arrangements noted above are fundamentally inconsistent with electoral best practice and absolutely contrary to the globally established democratic principles of independent, nonpartisan electoral management. An independent CEO cannot afford any perception that electoral agency employees have been selected by

Executive Government or are in any way controlled by Executive Government.

It is not appropriate for Executive Government, or even a committee of the legislature that has a majority of governing party members, to be in control of human resources policies, administration or decision-making for the electoral agency. Because public service employment disputes have become an issue during some Canadian election campaigns, and sometimes even the cause of an election, it is also inappropriate for members of the CEO's staff to become members of a broad public service union or any grouping of employees that extends beyond the office of the Chief Electoral Officer.

Accordingly, the Act should be amended to specify that employees of the CEO are not members of the public service and are not covered by *The Public Service Act*. Statutory language to this effect (which also clarifies the meaning of "staff of the office") is set out in an Appendix to this assessment.

In connection with these amendments, it is important that employees of the CEO, once removed from the public service, are not deemed to be employees of the Legislative Assembly. For an election management body, this would involve an infringement on independence for the reasons discussed above.

2.2 Facilitate Greater Access for Disabled Voters through Homebound Voting

For reasons of illness, infirmity or immobility, some voters and their caregivers are unable to leave home to vote on polling day or at an advance poll. Current options for absentee mail-in ballot voting are quite involved and generally require the voter to leave home to photocopy identification that must accompany their application.

In order to provide better accommodation and accessibility, many other Canadian jurisdictions permit homebound voting in one form or another when personal attendance at a polling place is not possible due to disability. Following this lead, the CEO considers it advisable to introduce provisions for homebound voting into *The Election Act, 1996*.

It is recommended that the Act be amended to permit a voter to apply to vote at home if the voter is unable, by reason of disability, to leave home and attend in person at a polling place, or if the voter is providing care to such an individual and is unable to attend at a polling place. Upon determining that the applicant is eligible, the returning officer would arrange for the delivery of a homebound voting package to the applicant and the administration of homebound voting by an election official.

2.3 Introduce a Permanent Register of Voters

Only three provincial/territorial jurisdictions (Saskatchewan, Manitoba and the Yukon) still produce voters' lists by conducting a full door-to-door enumeration in advance of each election. The federal system, as well as the 10 other provinces and territories, have adopted the use of a permanent register of voters to maintain their lists on an ongoing basis.


The October 2013 Chief Electoral Officer's Assessment Report, *Toward a Permanent Register of Voters for Saskatchewan*³ is a detailed analysis of the costs and operational impact that introducing a permanent register would have in relation to continuing with enumerations. Ultimately, this assessment recommends that a permanent register of voters be introduced in the province. Further details with respect to legislative change requirements are available in a document containing drafting instructions.⁴ Please refer to these documents for further information.

2.4 Streamline Advance Voting

The Election Act, 1996 is unduly restrictive on allowing voters access to advance voting opportunities. Voting at an advance poll is limited by section 130 of the Act to three categories of voters – (i) a voter who believes that he or she will be absent from his or her ordinary residence on polling day, (ii)

³ Chief Electoral Officer (2013). *Toward a Permanent Register of Voters for Saskatchewan: A Chief Electoral Officer's Assessment*. Regina: Elections Saskatchewan, October 2013.

⁴ Elections Saskatchewan (2013). "Drafting Instructions: Amendments to *The Election Act, 1996* – Permanent Register of Voters." Regina: Elections Saskatchewan, November 6, 2013.



a voter who has a physical disability, and (iii) a voter who has certain election responsibilities as described in the section.

Further, a person wishing to vote at an advance poll is required by section 133 of the Act to make a voter's declaration which, as set out in Form DD of *The Election Forms (Chief Electoral Officer) Regulations*, contains an affirmation by the person that they will be necessarily absent from their ordinary residence on polling day or that they otherwise satisfy the criteria for advance voting under section 130.

At present, advance voting is not open to a voter who, for reasons other than absence from their ordinary residence (or physical disability or election responsibilities), expects to be unable to vote on polling day, or who simply finds it inconvenient to vote on polling day and would prefer to vote in advance. The present requirement for all advance voters to make a statutory declaration also slows down the voting process considerably, creates long line-ups, causes irritation for voters, candidates and election workers alike (resulting in numerous complaints every election) and is a detriment to efficient operations at advance polls.

With a declining number of voters participating in the democratic process, voting must be made more accessible to all Saskatchewan voters. To that end, these restrictions on advance voting should be eliminated

in order to encourage more people to vote and to make it more convenient for them to do so. In other jurisdictions across Canada, advance voting has been extended in duration and made more accessible to all voters. The experience of these jurisdictions is that each election sees a significantly larger proportion of voters taking advantage of this form of early voting for reasons of convenience and flexibility.

Accordingly, it is recommended that section 130 of the Act be amended to permit any voter who ordinarily resides in a constituency to vote at an advance poll for the constituency, with no special eligibility criteria. It is further recommended that the requirement in section 133 of the Act for advance voters to make a statutory declaration be eliminated.

2.5 Streamline Registration at Voting Locations

Prior to the 2011 general election, *The Election Act, 1996* was amended to include a set of inter-related provisions under which voters at the polling place are required to provide evidence of identity and ordinary residence. An anomaly exists in these provisions as they relate to voters whose names are not on a voters' list. Upon presenting themselves to vote, these voters are required to make a statutory declaration in addition to completing a registration form and showing satisfactory evidence of identity and ordinary residence.

The requirement for a statutory declaration appears to be a holdover from before 2011 when voters were not universally required to provide identification prior to being issued a ballot. It is recommended that this requirement be eliminated.

As there is subtle complexity in these provisions, further discussion may be helpful. In the case of a voter whose name does appear on a voters' list, that voter must present satisfactory evidence of his or her identity and ordinary residence before being given a ballot paper. This evidence consists of (a) an original piece of identification that shows the voter's photograph, name and civic address, and is issued by the Government of Saskatchewan, the Government of Canada or an agency of those governments; or (b) two pieces of information as prescribed by regulation, each of which establishes the voter's name and at least one of which establishes the voter's address of residence. As an alternative to providing satisfactory evidence of identity and ordinary residence, a voter whose name appears on a voters' list may make a voter's declaration under a process that permits confirmation of identity and ordinary residence by vouching. See subsection 65(2), section 71, and subsection 72.1(2) of the Act.

In the case of a voter whose name does not appear on a voters' list, there is presently a requirement for the individual to make a voter's

declaration before being given a ballot paper. This is specified in clause 65(3) (c) and section 68 of the Act. At first blush, one might conclude that the requirement for a statutory declaration is maintained because clauses 65(3) (a) and (b) of the Act seem to permit a deputy returning officer to accept lesser evidence of identity and ordinary residence from a voter whose name is not on a voters' list. (These clauses refer to the answering of questions from the deputy returning officer and the provision to the deputy returning officer of satisfactory information relating to identity and ordinary residence.) However, subsection 72(1) then states, in terms applicable to all voters (whether their names appear on a voters' list or not), that no individual is entitled to a ballot paper or to vote if the individual fails to provide satisfactory evidence of identity and ordinary residence in accordance with normal requirements (or if the individual fails to make a voter's declaration where required).

Accordingly, since a voter whose name does not appear on a voters' list must show satisfactory evidence of identity and ordinary residence in full compliance with the rules introduced prior to the last general election, the provision of a statutory declaration in addition to this should be dispensed with and replaced only with a requirement that a voter registration form be completed.

2.6 Increase the Integrity of Voting ID Requirements

For purposes of the voter identification provisions introduced in 2011, subsection 72.1(1) of *The Election Act, 1996* states that "address" means address as defined in the regulations. The accompanying *Election Act Amendment Regulations, 2011* provide that "address" means the residential mailing address or legal land description for the voter and "includes a post office box number if, in the opinion of the election officer, (a) the address for that post office box number is consistent with the address on the voters' list for that voter or individual, or (b) in the case of a voter or individual not on the voters' list, the address for that post office box number is consistent with the ordinary residency claimed by that voter."

The premise in the regulations that it would be possible for an election worker to establish a linkage between a person's residential address and a post office box they happen to rent or be assigned by Canada Post is flawed. In fact, an individual's post office box could be located in a constituency altogether different from where the person resides, such as where they work or go to school. Because of this, the definition of "address" is very problematic and created many difficulties at the polls in the last general election.

Therefore, it is recommended that the inclusion of a post office box number be eliminated from the definition. This will make it clear that a piece of government-issued photo identification (such as a Saskatchewan driver's license) that contains only a post office box number and no residential mailing address or legal land description is not sufficient in itself, and must be supplemented by another form of prescribed identification that contains a residential mailing address or legal land description.

It is further recommended that the definition of "address" be moved from the regulations and placed in the Act in order to be housed directly alongside related provisions.

2.7 Permit a Voter to Deposit their Own Ballot

Section 75 of *The Election Act, 1996* requires the deputy returning officer to deposit the ballot of the voter in the ballot box. More particularly, voters surrender their marked ballots, once completed, to the deputy returning officer who (a) without unfolding the ballot paper or in any way disclosing the names of the candidates or the mark made by the voter, examines the initials appearing on the ballot paper to ensure it is the same ballot paper that the deputy returning officer delivered to the voter; and (b) if it is the same ballot paper, removes and destroys the counterfoil (the number

on the counterfoil is used to facilitate correct annotation in the poll book and accurately record which voter has voted) and deposits the ballot in the ballot box.

This section should be amended to give the voter the option of depositing the ballot in the ballot box themselves or having the deputy returning officer do so. Many voters appreciate the symbolic value of depositing their own ballot at the completion of the voting process (and some see this as a way to better ensure the confidentiality of the vote) and they have done so for several decades when voting in federal elections.

2.8 Facilitate Absentee Voting for Remote Areas

In some sparsely populated and remote areas of the province, it is not feasible to locate a polling station within the polling division at a place that is convenient for voters. Many of these voters face the daunting task of travelling great distances to vote on polling day, or even greater distances to vote at an advance poll. To address these concerns, there should be provision in *The Election Act, 1996* for the designation of remote areas in which voters will have the option to be served by special mail-in ballots. Provisions of this nature are found in election legislation in Alberta and the Yukon.

It is recommended that the Act be amended (i) to permit a returning officer, with the approval of the CEO, to designate an area of the constituency with 25 or fewer voters as a remote area, and (ii) to provide that voters in a remote area may choose to vote by absentee ballot along the lines of the special voting provisions set out in sections 87 to 89 of the Act after being notified of their eligibility to do so by the returning officer.

2.9 Adjust Advance Voting Days to Better Serve Rural Communities

Section 31 of *The Election Act, 1996* sets out a timetable of events to be contained in an order of the Lieutenant Governor in Council commencing an election. In doing so, it states that an advance poll must be open for five days (see clause 31(3)(d)).

In urban constituencies, the five-day requirement works well. However, in rural constituencies it is not economically feasible or practical to set up an advance poll in small communities for the full five days. By introducing a measure of flexibility in the number of days that an advance poll is to be open, it would be possible to set up advance polls for one or two days in some smaller communities where there has been no advance voting, thus extending the advance voting opportunity to these rural voters.

For these reasons, it is recommended that section 31 of the Act be amended to permit advance polls to be held for less than five days at the discretion of the returning officer and with the prior approval of the CEO.

2.10 Ban the Use (not possession) of Cameras/Phones in Voting Locations

Subsection 190(6) of *The Election Act, 1996* states that no person shall bring into, or possess or use in, any polling place any cellular phone or other communication device. With the widespread adoption of mobile phones and smart phones, the prohibition has become unenforceable as it relates to possession.

The concern, however, is not that people bring these devices into a polling place, but rather the use of these devices. Talking, texting, emailing and taking photos on these devices are all actions that may interfere with the voting process or breach privacy or ballot secrecy provisions.

The Act should therefore be amended to prohibit the use of these devices in a polling place, but not the possession of them. An exception should be made for election officers communicating official election administration business via mobile phones.

2.11 Increase Flexibility in Hiring Election Officers

Under sections 10 to 13 and 20 of *The Election Act, 1996*, the election officials for an election include an election clerk for the constituency, enumerators for each polling division, deputy returning officers for each polling place, and poll clerks for each polling place. In all of these cases, the appointee must be a voter who resides in the constituency.

The above residency requirement is problematic. It has become increasingly difficult to find individuals who are interested, available and qualified to work as enumerators and poll officials. In some constituencies, despite the best recruitment efforts of returning officers and their staff, there have been extreme shortages of people available to fill these important roles, while neighboring constituencies sometimes having a surplus of individuals wanting to work as enumerators or poll officials. There have even been cases in which the CEO has been forced to take the extreme measure of drawing on the emergency power (section 7) of the Act in order to permit the use of poll officials from outside a constituency.

The problem can be particularly acute in constituencies with large numbers of polls in hospitals and personal care facilities. In that environment, there is a requirement for election officials who are suitable and qualified to deal with the unique needs of the sick and elderly. A similar situation occurs in remand facilities. They often have

guilds, volunteers or staff available to work as poll officials, yet these potential workers (being the most qualified for the task) often do not reside within the constituency in which the facility is located.

Several Canadian jurisdictions permit the appointment of qualified election workers from other constituencies and, in light of the above, it would be advisable for Saskatchewan to do the same.

To facilitate the recruitment of a sufficient number of the best and most willing election workers, it is recommended the returning officer, election clerk or deputy returning officer be given authority, with prior approval of the CEO, to appoint enumerators and poll officials who need not be residents of the constituency, but who otherwise satisfy the criteria for appointment as set out in the existing legislation.

2.12 Provide the Ability for 16 and 17 Year Olds to Work as Poll Clerks


Currently, all election officers are required to be eligible voters, which means they must be at least 18 years of age. Subsection 3(1) of *The Election Act, 1996* provides that a person who is not eligible to vote pursuant to the Act is not eligible to be appointed as an election officer. Voting age, as prescribed by section 16 of the Act, is 18 years of age.

It is becoming increasingly more difficult to find sufficient numbers of elections workers in all areas of the province and the pool of available workers is aging (with over 50 percent of election workers now over 60 years of age). Elections Saskatchewan believes that a reduction in the minimum age of poll clerks to 16 years of age will help with recruitment of polling day staff and may help rejuvenate the election workforce.

The involvement of younger poll workers may also help in getting more youth to take an active interest in democratic affairs and electoral democracy at a time when we are seeing a significant decline in voting among youth. It is estimated that only 25 percent of youth between the ages of 18 and 24 participate in elections.

There are many things election administrators, politicians and educators can do to better engage youth in the democratic process. One strategy is to get young people involved with elections at an earlier age in the hope that they will gain a better understanding of democracy, develop an interest in the importance of voting and become life-long voters. This can be done through the education curriculum and by involving young people more actively in the election process.

For example, the minimum age of candidate representatives was reduced from 18 to 14 in 2005 in an effort to involve younger people in the political process at election time.



This has worked quite well and there have been no concerns reported by returning officers or political parties with respect to the younger candidate representatives.

Another strategy employed by election administrators across the country is employing younger people on polling day. Four other jurisdictions permit 16 and 17 years olds to work in certain positions at election time. If similar changes were permitted in Saskatchewan, these young people would be employed as poll clerks – the most junior position – and paired with more experienced deputy returning officers on polling day.

With these considerations in mind, it is recommended that the minimum age for poll clerks be reduced to 16 years of age.

2.13 Remove the Chief Electoral Officer's Duty to Transport Candidate Scrutineers

Subsection 92(4) of *The Election Act, 1996* should be repealed. It requires the CEO to supply “means to transport the poll officials and any candidate’s representatives” to all mobile polls. In practice, all poll officials find their own way to the places where mobile polls are held. Further, it is not logistically practical or administratively appropriate for the CEO to be arranging rides for candidate’s representatives to mobile polls.

2.14 Establish Term Limits for Returning Officers

Returning Officers are appointed by the CEO under section 9 of *The Election Act, 1996*. Currently, there is no limit in the Act on the term of a returning officer’s appointment (although there is confirmation in the Act that the CEO may cancel the appointment of a returning officer who dies, is absent or is unwilling or unable to perform his or her responsibilities).

Many other Canadian jurisdictions have limits in their legislation on the term of the appointment of returning officers, ranging from four to 12 months following a general election. This promotes revitalization of the critical field management workforce. Upon expiration of fixed-term appointments, an open, merit-based recruitment process can be initiated to replace returning officers with less than satisfactory performance. Similarly, satisfactory performance can be recognized with a direct reappointment. All of this occurs in the exercise of the discretionary appointment power under the legislation.

With these considerations in mind, section 9 of the Act should be amended to provide that the term of a returning officer’s appointment ends six months after the return to the writ following a general election, unless the returning officer has been reappointed by the CEO.

2.15 Appoint Election Clerks on the Same Basis as Returning Officers

Currently, under subsection 12(1) of *The Election Act, 1996*, each returning officer appoints an election clerk for the constituency. According to subsections 12(8), the election clerk is required to assist the returning officer in performing the returning officer’s responsibilities; and according to subsection 12(9), the election clerk is required to assume performance of the returning officer’s responsibilities and may exercise the powers of the returning officer where the office of the returning officer becomes vacant, or in cases of death, absence or inability or unwillingness to perform on the part of the returning officer, unless and until the CEO appoints another returning officer.

Because the election clerk may be required to assume the returning officer role, they should be selected through the same competitive, merit-based recruitment process as the returning officer and possess similar abilities and qualifications. The election clerk appointment should therefore be made by the CEO, not the returning officer, and section 12 of the Act should be amended accordingly.

3.0 Conclusion

With the exception of recommendation #3 – Introduce a Permanent Register of Voters – the legal amendments recommended in this assessment document are non-controversial, brief and will present minimal complexity in terms of legal drafting effort.

Introducing a permanent voter registry represents a greater challenge in terms of the requirements of a legal amendment, as the provisions of voter registration extend through many sections of *The Election Act, 1996*.

In all cases, the CEO and other experts in election administration will be available to legislative counsel in order to develop precise and consistent

statutory provisions regarding each of the 15 legal change provisions recommended in this report.

In order to permit a professional and economic introduction of these recommended legislative changes, it would be beneficial if the electoral amendment legislation could be developed and introduced as a Bill, debated in the House, and passed into law before the summer of 2014.

Delays in addressing these recommended legislative changes will cause an inevitable increase in the costs of implementation. Disregarding these recommendations will result in sub-standard service levels for

provincial voters; increased compliance challenges for election officials; inefficient expenditures of public funds; numerous administrative problems being repeated; and large volumes of complaints being made by the public at the time of the next election.

The 28th provincial general election is scheduled for November 2, 2015. All electoral stakeholders – voters, candidates, political parties or election administrators – deserve to know what the electoral rules will be as far in advance as possible.

Appendix

Replace sections 4.5 and 4.6 of *The Election Act, 1996* (relating to staff and the application of public service legislation) with the following:

Application of Certain Acts to Chief Electoral Officer

- 4.5** (1) The Chief Electoral Officer is not a member of the public service of Saskatchewan.
- (2) *The Public Service Act, 1998* does not apply to the Chief Electoral Officer.
- (3) *The Public Service Superannuation Act, The Superannuation (Supplementary Provisions) Act* and *The Public Employees Pension Plan Act* apply to the Chief Electoral Officer, and all credits in any superannuation plan or fund established pursuant to those Acts for the Chief Electoral Officer and accumulated under those Acts, before the coming into force of this section, are preserved and continued in accordance with those Acts.
- (4) The employee benefits applicable to the public servants of Saskatchewan apply or continue to apply, as the case may be, to the Chief Electoral Officer.

Employees Generally

- 4.6** (1) The Chief Electoral Officer may employ any persons required for proper administration of this Act or that the Chief Electoral Officer considers necessary to assist the Chief Electoral Officer in carrying out his or her duties and fulfilling his or her responsibilities under this Act.
- (2) Persons employed by the Chief Electoral Officer are not members of the public service of Saskatchewan.
- (3) *The Public Service Act, 1998* does not apply to persons employed by the Chief Electoral Officer.
- (4) Except as provided in section 4.7:
- (a) *The Public Service Superannuation Act, The Superannuation (Supplementary Provisions) Act* and *The Public Employees Pension Plan Act* do not apply to persons employed by the Chief Electoral Officer;
- (b) the employee benefits applicable to the public servants of Saskatchewan do not apply to persons employed by the Chief Electoral Officer.

Staff of the Office

- 4.7** (1) In this section, “staff of the office” means employees of the Chief Electoral officer who are employed in the Chief Electoral Officer’s office and does not include election officers and election officials.
- (2) *The Public Service Superannuation Act, The Superannuation (Supplementary Provisions) Act* and *The Public Employees Pension Plan Act* apply to the staff of the office, and all credits in any superannuation plan or fund established pursuant to those Acts for the staff of the office and accumulated under those Acts, before the coming into force of this section, are preserved and continued in accordance with those Acts.
- (3) The employee benefits applicable to the public servants of Saskatchewan apply or continue to apply, as the case may be, to the staff of the office.

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