

# RECOMMENDATIONS FOR LEGISLATIVE AMENDMENTS

## OCTOBER 2006 RECOMMENDATIONS FOR AMENDMENTS TO THE *ELECTION ACT (THE ACT)*—SUBSTANTIVE

### Election Officer Recruitment

#### 1. Returning Officer and Election Clerk appointment process (updated)

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##### Background

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The Returning Officers who manage enumerations and elections are currently appointed by Order in Council. When the Writs of Election are issued, Returning Officers appoint their assistants, the Election Clerks, to support them throughout the election period. The Election Clerk is the Returning Officer's primary support during the election period and may be requested to fulfil the responsibilities of the Returning Officer if the Returning Officer is unable or unwilling to act. When this occurs, there is a strong probability that the Election Clerk could be called on to act with minimal notice, so it is essential that the Election Clerk is qualified to act, should the need arise.

Returning Officers and Election Clerks are the most visible election officers during an election and, therefore, must be perceived by voters, candidates and the political parties to represent an electoral system that is fair and impartial. Their independence in both fact and perception helps to assure the public of the integrity of election administration within the province.

The role of the Returning Officer has become increasingly complex over the years and the management of elections relies heavily on computer technology and automated processes. For example, the former process of manually collecting and transcribing the List of Electors has evolved into an automated process using a customized application to update data contained within a permanent Register of Electors. Managing this activity requires an understanding of database management, as well as an ability to monitor and advise a skilled team within a computerized environment. Similar automation has been introduced in the areas of election management and reporting.

Technological advancements improve the efficiency of program delivery to voters and candidates, while placing additional demands on Returning Officers and their staff members. This trend will continue to increase along with public expectations for service enhancements. Returning Officers and the Election Clerks who directly support them require the ability to manage effectively within this environment.

The working relationship between the Chief Electoral Officer and Returning Officers lacks accountability. An employer/employee relationship would ensure accountability by

Returning Officers, thus allowing the Chief Electoral Officer to establish and maintain appropriate performance measures to meet legislated requirements in a professional manner.

By legislation, Returning Officer appointments can occur two years following a general election and are terminated four months following a general election. The timeliness of appointments is essential to the effective orientation, training, preparation and, where necessary, replacement of Returning Officers. For the 2008 general election, returning officers could have been appointed as early as November 2006. Numerous requests were made for the timely appointment of returning officers during 2006 and 2007, but the first appointments were not made until December 19, 2007. The balance came on January 23, 2008, just over a week prior to the call of the 2008 election. This type of appointment timeframe limits the involvement of qualified individuals in activities which occur between events. A qualified, knowledgeable and impartial group of Returning Officers could make a valuable local contribution to activities that fall outside of the prescribed period, such as public education programs and the periodic registration of electors across the province.

The trend throughout the electoral community supports involvement of the Chief Electoral Officer in selecting Returning Officers. At the federal level, the *Federal Accountability Act* has transferred the responsibility for merit-based Returning Officer selection to Elections Canada. Other electoral jurisdictions including British Columbia, Manitoba, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Quebec and Saskatchewan have also moved to a system of hiring Returning Officers through an open, merit-based competitive process. Elections Ontario administers a testing process to prospective Returning Officers prior to their appointment by the Lieutenant Governor in Council.

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## **Recommendations**

Relevant Sections: 4, 9, 10, 47, 48

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- a. Authorize the Chief Electoral Officer to hire Returning Officers and Election Clerks through a merit-based competitive process – normally Election Clerks would move into vacant Returning Officer positions.**
- b. Permit hiring of a Returning Officer and Election Clerk from outside of the electoral division if no suitable candidate can be found within the area.**
- c. Expand the criteria to allow Returning Officer dismissal for cause at any time and apply the same dismissal policy to all election officers.**
- d. Extend the Returning Officer termination date to six months post-election to allow time for the thorough completion of all election activities.**
- e. Authorize the Chief Electoral Officer to extend the Returning Officer appointment period, where necessary to fulfil statutory obligations.**

## 2. Prohibition against political activity (revised)

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### Background

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Returning Officers are currently prohibited from engaging in political activity in support of a political party or candidate, and from making a contribution under the *Election Finances and Contributions Disclosure (EFCD) Act*. There is no similar restriction on partisan activity at the constituency association level.

All election officers, and particularly Returning Officers, must be completely non-partisan in fact and perception. The prohibition on political activity should include a restriction on constituency association level participation.

Since the Election Clerk may be called upon to replace the Returning Officer in the case of absence or inability to act, and because of the high profile of that position, the same prohibitions should apply.

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### Recommendations

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Relevant Section: 12

- a. **Expand the list of prohibited activities for Returning Officers to include participation at the constituency association level.**
- b. **Extend the prohibition against political activity to include Election Clerks.**
- c. **Prohibit Election Clerks from making contributions under the *EFCD Act*.**

## Role of the Returning Officer

### 3. Voting prohibition (revised)

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#### Background

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Returning Officers are prohibited from voting in provincial elections unless they are required to cast a tie-breaking vote at the Official Count. Other electoral jurisdictions including Canada, British Columbia, Manitoba, Newfoundland, Northwest Territories, Nunavut, Ontario, Quebec, Saskatchewan, and Yukon allow Returning Officers to vote. The Canadian Charter of Rights and Freedoms guarantees Canadian citizens the right to vote. This Constitutional right is compromised by prohibiting the Returning Officers from voting.

Any Returning Officer asked to cast a tie-breaking vote would experience a grievous violation of the rights accorded to all electors. The Returning Officer could not necessarily vote for the candidate of his or her choice, but would have to select one of the candidates tied with the highest number of votes. The Returning Officer could not cast a secret ballot, as other electors do. The Returning Officer could not decline to vote, as is the right of all other electors. Furthermore, the Returning Officer who refused

to cast a tie-breaking vote could be compelled by the Court to do so, through an Order of Mandamus.

Given that a tie vote would almost certainly result in an application for judicial recount, it would be far more practical and principled to legislate a mandatory application for judicial recount should the margin of victory be sufficiently narrow to warrant it. This currently occurs in other electoral jurisdictions including Canada, British Columbia, Manitoba, Newfoundland, Northwest Territories, Nunavut, Saskatchewan, Ontario, Quebec, and Yukon.

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**Recommendations**

Relevant Sections: 45, 105, 106, 107, 137, 143, 144, 147, 204

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- a. Repeal the prohibition on Returning Officer voting.**
- b. Include a mechanism to trigger an automatic application for judicial recount of all ballots or only disputed ballots, if the margin of victory is less than 25 votes.**
- c. Add a provision for an automatic by-election in the case of a tie following a judicial recount or appeal.**

#### **4. Involvement of federal Returning Officers in provincial elections**

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**Background**

Federal Returning Officers are ineligible to participate as election officers in any capacity. It is prudent to exclude their participation as provincial Returning Officers, due to the potential for conflicting priorities, should federal and provincial electoral events coincide. This risk would be mitigated if there was a fixed date for calling elections. It would benefit the provincial election process to include this group of qualified and trained persons. Parallel federal legislation permits this practice, and a number of provincial Returning Officers work in various capacities during federal elections. Provincial Returning Officers have indicated that their involvement as assistant federal Returning Officers enhances their skills and creates networking opportunities that facilitate hiring for provincial elections. Allowing federal Returning Officer participation at the provincial level would create additional opportunities through strengthened partnerships.

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**Recommendations**

Relevant Sections: 9, 46

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- a. Repeal the prohibition on federal Returning Officers' participation as election clerks, administrative assistants, supervisory deputy returning officers, registration officers, deputy returning officers or poll clerks.**
- b. Maintain the prohibition on federal Returning Officers' participation as provincial Returning Officers.**

## Establishment of a Fixed Election Date

### 5. Selection of the election date (updated)

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#### Background

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The current practice of establishing an election date through Order in Council causes significant challenges to electors, election officers, political participants and other stakeholders.

From a management perspective, a fixed election date would be advantageous for administration of the event. Elections Alberta would be able to secure advertising buys, recruit additional staff, and prearrange the acquisition and shipment of equipment and supplies. In the field, securing office space, polling places and supplies could be done in advance by providing a specific date when services would be required. With a known date for employment, a commitment of the approximately 15,000 staff required during the election could also be confirmed. An election called late in the week can incur costly overtime charges for weekend installation of telephone lines, and delivery of equipment, supplies and furniture for the 83 returning offices throughout the province. Knowing the date in advance can lead to cost savings by eliminating the necessity of urgent last minute requests that often occur when trying to secure services.

Fixed provincial election dates would offer many benefits to voters and to Elections Alberta in preparing for and administering these events. Knowing the date in advance:

- would enable voters to better plan for their attendance at the polls to vote on election day or at an advance poll,
- would enable voters to better plan and prepare for absentee voting,
- would permit Elections Alberta to confirm the availability of Returning Officers and their key staff,
- would enable Returning Officers to commit to dates for office and polling place rental, allowing them to secure the locations well in advance,
- may enable Returning Officers to select better locations for their returning offices and polling places and to better negotiate lease rates for such space,
- may enable Returning Officers to better negotiate rental rates for returning office furniture and furnishings, and
- would enable Elections Alberta to reserve telephone, cellular and fax numbers in advance for more timely publication of this information for the benefit of the public and political participants.

Schools are essential partners in the delivery of elections. Approximately half of polling stations are located in schools. School administrators have become more reluctant to allow their facilities to be used as polling places, often citing conflicts with planned

activities. Concern has also been expressed about students' security, given the extra traffic and the number of people who have access to the school on election day. Many school boards require schools to have a security plan. In the Calgary Public School Division, for example, Returning Officers were required to hire security staff in some schools that were used as polling places in the 2004 and 2008 Provincial General Elections.

A fixed election date would allow more time for advance planning by the school boards and enable them to make arrangements they felt were necessary for student safety, possibly including designating the date as a non-instructional day.

No detailed costing of the potential savings has been done. Potential cost savings may be expected because a fixed election date:

- would permit shorter duration leasing arrangements for equipment and furniture,
- would eliminate the need to commit to computer and facsimile equipment for a longer period than necessary, and eliminate costly storage charges while equipment is held awaiting deployment to Returning Officers,
- would avoid costly last-minute shipping of materials and supplies,
- would allow for timely training and eliminate the need for "refresher courses" for Returning Officers,
- may enable negotiation of better advertisement placement rates,
- could result in fewer premiums, overtime and higher cost urgent requests for services such as printing and communication service installation, and
- could reduce the reliance on courier rather than conventional mail.

Other electoral jurisdictions which have moved to a fixed election date include Canada, British Columbia, Saskatchewan, Manitoba, Ontario, New Brunswick, Prince Edward Island, Newfoundland, and Northwest Territories. It has also been a long-standing convention for all Alberta municipalities to conduct elections based on a fixed date.

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**Recommendation**

Relevant Sections: 9, 39, 52, 55 of the *Election Act*;  
3 of the *Legislative Assembly Act*

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- a. Elections Alberta currently has a system of planning and contingency preparations such that it can be ready to deliver an election event at any time, however, a fixed election date would facilitate the management of elections and provide improved service to voters. A fixed election date would be a welcome opportunity to increase efficiency and public awareness.**

## Staffing for Enumerations and Elections

### 6. Political parties' supplying enumerators (revised)

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#### Background

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Returning Officers are currently required to obtain the names of potential enumerators from the constituency associations established by the political party forming the Government, and from the political party that received the highest, or second-highest, number of votes at the last election. This process originated at a time when two enumerators were assigned to work together, and Returning Officers were asked to pair enumerators recommended by different political parties.

Having political parties recommend enumerators is very cumbersome and has the potential of raising the perception of incorporating political bias into the enumeration process. At the same time, it is difficult for constituency association volunteers to recommend qualified enumerators, when they themselves may not be familiar with current job requirements or when they themselves are competing to recruit reliable and competent individuals to work as campaign volunteers.

From a practical standpoint, many Returning Officers receive few names of potential enumerators who are available and qualified for the job. Some may defer hiring qualified people while waiting for the constituency associations' lists, thereby delaying their establishment and training of a full staff complement. Nonetheless, by law they must first contact the constituency associations by registered mail and wait for a response. This legal requirement to canvass constituency associations for enumerators caused additional time delays and compressed the time available to recruit enumerators in the "open market" for the planned target enumeration prior to the 2008 election. It is particularly difficult to recruit enumerators on a timely basis and conduct a meaningful enumeration when the Returning Officers themselves are not appointed until weeks before the election call.

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#### Recommendation

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Relevant Section: 23

- a. **Repeal the requirement to request names of enumerators from constituency associations and empower the Returning Officers to independently hire competent and reliable staff.**

## 7. Reducing the age requirement of poll clerks

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### Background

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All election officers, including poll clerks, must be eligible electors. The job of the poll clerk is a relatively straightforward one. Reducing the age requirement of poll clerks would offer a valuable opportunity to involve more youth in the election process who could share their experiences with their peers. Extending the involvement to youth may help to increase their participation when they are eligible to vote.

The difficulty of recruiting polling day staff will be exacerbated by the increasingly tight labour market in Alberta. Extending election employment to youth would increase the availability of interested and competent polling day staff and serve to balance the aging trend within the election officer pool.

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### Recommendation

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Relevant Section: 46

- a. **Reduce the age requirement of a poll clerk from eighteen to sixteen years.**

## 8. Staffing of poll clerk position

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### Background

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The job of the poll clerk is a relatively straightforward one. With the move to a pre-printed Poll Book, the job has been further simplified since the poll clerk only needs to record names and addresses of electors swearing in to vote on polling day.

Effective service to the electorate is still possible without staffing the poll clerk position at all polling stations. Returning Officers would have a smaller staff complement to manage, and with fewer election officers to recruit, could select the most competent persons to work on polling day.

Current provisions allow election officers to move between polling stations in a polling place, so effective back-up during busy times could be handled in that manner. Cost savings may result from the reduced staff complement.

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### Recommendations

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Relevant Sections: 73, 74, 77.2, 89

- a. **Empower Returning Officers to staff the poll clerk position on a discretionary basis in a polling place containing multiple polling stations.**
- b. **Add a specific provision to require the recruitment of a poll clerk in a polling place containing only one polling station to ensure security and back-up.**

## 9. Ineligibility of convicted persons to serve as election officers

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### Background

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Persons who have been previously convicted of indictable offences in the past ten years, where the potential penalty exceeded two years, are ineligible to work as election officers on polling day.

This may be a disproportionately strict exclusion for temporary staff. In contrast, applicants to the Alberta Public Service consent to a security clearance check, but are not necessarily deemed ineligible on the basis of a prior criminal record. In the public service, the deputy head may approve recruitment on a discretionary basis, considering issues like currency and severity of an offence, and anticipated risk given the responsibilities of a particular position.

Election officers employed on polling day have access to very limited elector information and work under close supervision. Their involvement is unlikely to pose a risk to the process or to electors.

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### Recommendation

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Relevant Section: 46

- a. **Repeal or soften the prohibition on previously convicted persons working as election officers.**

## Management of the Register and Lists of Electors

### 10. Data acquisition from public agencies

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#### Background

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The frequency of distribution of Lists of Electors has increased, as have allowable uses by authorized stakeholders. The provisions on distribution and ongoing use between elections contemplate that the Register is updated on an ongoing basis, so that Lists will contain current information on electors.

The Register concept was based on the premise that its database would be periodically updated from information supplied by public agencies which routinely collect such information in the normal course of business. It is essential that updates are provided on a timely basis, at a reasonable cost, and that the information being provided is sufficient to maintain a viable Register.

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**Recommendations**

Relevant Sections: 13, 18, 19, 20

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- a. **Clarify data access provisions to resolve paramountcy and privacy arguments with respect to other legislation.**
- b. **Strengthen the access provisions to allow the Chief Electoral Officer to prescribe the data elements, and data acquisition schedule, necessary for effective Register maintenance.**

## **11. Data elements contained in the Register (revised)**

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**Background**

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Effective Register management is dependent on acquiring information on individuals currently held by public agencies to:

- a. confirm elector eligibility,
- b. verify an individual's identification to facilitate electronic updates, and
- c. incorporate secure and stable data elements into the Register, to verify an elector's identity prior to updating information at the elector's request.

Currently, dates of birth, which are provided by voters on a voluntary basis, are used as a stable identification data element and are available for 81% of electors in the Register.

Middle initials are used as another data element. Replacing initials with middle names will address the varied preferences of electors for personal identification, and will facilitate database management by providing a more complete component for matching various external databases with Register data to update the Register of Electors.

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**Recommendations**

Relevant Section: 13(5)

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- a. **Expand the list of Register data elements to include Canadian citizenship status (one of the voter eligibility criteria).**
- b. **Authorize the collection of middle names for the Register, rather than middle initials.**

## **12. Address data contained in the Register (revised)**

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### **Background**

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Development of an accurate and up-to-date address base is essential for effective database management. Changes to elector information are facilitated using addresses as a static base. Identifying areas of new growth in a visual representation is essential to ensure completeness within the Register.

Currently, address collection and maintenance are limited to residential addresses. Obtaining non-residential addresses would facilitate the compilation of an effective address register and ensure that electors who are ordinarily resident in these types of accommodation are not overlooked during a data collection process.

The inclusion of non-residential addresses would also facilitate the search for potential polling places, Returning Officers' offices, and so on. Inclusion would also allow for the identification of electoral division assignment for non-residential addresses, which is often requested by owners or other interested parties with respect to a business or community building.

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### **Recommendations**

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Relevant Sections: 13(2)(b.1), 13(10)

- a. Add a requirement for public bodies to provide demographic and geo-spatial information, in addition to the personal information currently identified, on a cost-recovery basis.**
- b. Expand the collection of addresses to include those of non-residential buildings.**

## **13. Revision of Register data by an individual**

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### **Background**

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Persons or their agents are entitled to access their Register information to verify accuracy. No specific provision is included to allow them to request revision of their information outside of an enumeration or revision period.

Promoting easy, accessible self-registration within a secure environment will be a valuable tool for maintaining accuracy and currency in the Register.

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**Recommendations**

Relevant Sections: 13(5), 13(9), 13(11)

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- a. **Include a specific provision to enable electors to request they be added to the Register or that their Register information be revised at any time.**
- b. **Provide specific authority for self-registration of electors.**
- c. **Authorize the conduct of a province-wide registration of grade twelve students, as voters-in-waiting, on an annual basis.**

#### **14. Removal of elector information for Secure Special Ballot voters**

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**Background**

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Electors with a concern for personal security are able to vote in a secure manner by obtaining a Special Ballot from the Chief Electoral Officer. In such cases, voter information that would otherwise appear in the Special Ballot Poll Book used at the polls is replaced by a numeric identifier. The numeric identifier does not reveal the identity of the elector, nor the polling subdivision in which they reside, to anyone reviewing the Poll Book.

If the elector's name and address already appear on the List of Electors, steps must be taken to remove that information, since access to Lists of Electors is provided to candidates and political parties as well as to others wishing to view it within the offices of the Returning Officers.

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**Recommendation**

Relevant Section: 116.1

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- a. **Require election officers, political parties and candidates to delete or obscure personal information belonging to Secure Special Ballot voters from all copies of the List of Electors.**

## **15. Use of Poll Books containing the List of Electors**

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### **Background**

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Candidates or their official agents may request copies of Poll Books, for their own electoral divisions, during a 30 day period following an election. The Poll Books contain a List of Electors (all persons registered to vote) and are annotated to identify all persons who voted. There is currently no specific restriction placed on the use of that information.

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### **Recommendation**

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Relevant Section: 152

- a. Control the use of information contained in Poll Books, by candidates and their official agents, to electoral purposes only.**

## **Public Information**

## **16. Provision of election information to voters**

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### **Background**

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Research indicates that one of the reasons electors do not vote is because of a lack of access to necessary information about where, how and when to vote. Providing increased direction to these electors may reduce administrative barriers to voting and may serve to engage more electors.

Delivering information to each residence in the province on where, how and when to vote will provide valuable information to all electors, regardless of whether their personal information appears on a List of Electors. It will also provide contact information if they wish to find out if their name is included in the Register, or if they need additional information.

Two types of information are recommended:

- a. a brochure delivered to each residence, early in the election period, providing general information on how and when to vote; and
- b. a “where-to-vote” card delivered to each residence, prior to the Advance Polls, providing specific information on voting times and polling place locations.

Once an awareness of these resources has been established, they could potentially replace newspaper advertising. With dwindling subscription levels, newspaper advertisements may no longer be the most effective notification method.

- a. Add specific authorization for the Chief Electoral Officer to communicate with the public, using appropriate media, in order to provide information about the election process and their democratic right to vote.**

## **17. Disclosure of campaign advertisers (revised)**

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**Background**

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Every printed or electronic advertisement is currently required to contain the name of the sponsor. “Sponsor” is an ambiguous term, with no definition in *the Act*. Contacting the sponsors “John Smith” or “Friends of (candidate name)” is virtually impossible, should concerns arise, which effectively provides the sponsor with anonymity and distance from possible enforcement efforts, should they become necessary. Also, the current provisions dealing with sponsorship did not anticipate “attack” or “negative” advertising. The exemption from sponsorship or authorization for advertisements bearing the name of a registered political party or the name of a candidate would in no way identify who had placed or authorized an “attack” ad.

Greater transparency and consistency would be achieved by requiring that all advertisements placed by political entities include an authorization by the chief financial officer or official agent. Advertisements placed by third parties should also contain sponsorship information. Contact information for both should be available to the public via the Office of the Chief Electoral Officer.

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**Recommendations**

- a. Require that all advertisements placed by a political entity include an authorization by the chief financial officer or official agent.**
- b. Require that all advertisements placed by an individual or group other than a political entity, include name and contact information of the sponsor.**
- c. Require an individual or group other than a political entity, which advertises during an election period, to register with the Chief Electoral Officer.**

## 18. Restrictions on advertising (revised)

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### Background

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The current prohibition on advertising precludes placement of campaign advertisements in or on a building in which a polling place is located. There is no prohibition on advertising on the grounds of the polling place or on adjacent public property.

Expanding the area in which advertisements are prohibited would serve to avoid the perception of political interference and undue influence when electors attend voting stations. It would provide campaign workers and election officers with a clear set of guidelines for placement of advertising.

*The Act* is also silent with respect to the suspension of Government advertising during elections. Adding a restriction on Government advertising during the campaign period would enshrine current policy into legislation.

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### Recommendations

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Relevant Sections: 134, 135

- a. **Include distance limits for the placement of advertising near polling places.**
- b. **Authorize election officers to cause advertising to be removed that is in contravention of the distance limits.**
- c. **Define “advertising” in 1(1) to include all formats of advertising: electronic, paper, and all other materials.**
- d. **Delete the examples of campaign materials which appear in the *Act*, which provide only a partial listing of advertisements included in the proposed definition. Replacing the current examples with the term “advertising” will allow for a broader meaning and concise wording.**
- e. **Prohibit Government departments and agencies from advertising any information with respect to the activities of the department, with the exception of information that must be published in the interests of public health, safety or in accordance with legislation.**

## Voting Process

### 19. Confirmation of identity for Special Ballot voting (revised)

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#### Background

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The integrity of the List of Electors is a critical component in the conduct of a free and fair election process. The List is used both to facilitate the vote and to limit voting rights to eligible voters. Collection of information for the List must contain appropriate safeguards to assure stakeholders of the legitimacy of the information it contains. These safeguards must be balanced with the need to avoid an overly stringent data collection protocol that may erect unnecessary administrative barriers.

Compilation of the List has traditionally included the enumeration process, in which individuals provide information via personal contact with an enumerator. Additions to the List are permitted during a revision period and on polling day. These are also activities which involve personal contact with an election officer. The transparency afforded by personal contact is carried through to the voting process at advance polls, mobile polls and at the regular polls established to take the vote on polling day.

The Special Ballot presents an inconsistency in that an individual may obtain a ballot from a remote location, without this element of personal contact. Currently an individual may apply for a Special Ballot without providing identification. An individual who is not on the List of Electors is authorized to be added to the List at the time the Special Ballot is returned. Special Ballots may be sent across the world in response to a verbal or emailed request, with no real opportunity for verifying the identity or voting eligibility of the recipient.

Although widespread abuse has not been identified, this system is open to voting fraud, as was found in the 2004 general election.

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#### Recommendation

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Relevant Sections: 116, 118

- a. **Add a requirement for Special Ballot applicants to provide suitable identification or copies thereof before issuing a Special Ballot package.**

## 20. Transmission of Special Ballots (revised)

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### Background

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Legislation does not prescribe the means for provision and return of Special Ballots.

Past practice has been to permit political party volunteers to pick up Special Ballots from the Returning Officers' offices for delivery to electors and return to the Returning Officers with little or no control. This has occurred after the elector makes the necessary request by one of the means prescribed by *the Act*.

This affords the opportunity for political influence in the voting process. Having election officers transmit Special Ballots to and from electors, where transmission by mail is not appropriate, removes the opportunity for partisan interference in the voting process. If it is not possible for the Returning Officer to mail or hand-deliver a Special Ballot, pick up of the Special Ballot must be by the applicant or by a person designated on the application form. The person designated to pick up a Special Ballot on behalf of an elector should be required to provide satisfactory identification before the Special Ballot will be released to his or her custody.

According to *the Act*, an elector's name is marked off the voters list only after the Special Ballot is returned. The elector's name should be marked off the voters list at the time of issuance.

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### Recommendations

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Relevant Sections: 116, 118

- a. **Specify that Special Ballots are to be delivered and/or picked up by election officers if mail service is not appropriate.**
- b. **In the case of a voter who is unable to complete a Special Ballot independently, allow the election officer to provide assistance in completing the Special Ballot in the presence of the voter and a witness.**
- c. **Require suitable identification from any individual designated to pick up Special Ballot materials on an elector's behalf.**
- d. **Specify that the name of an elector issued a Special Ballot be marked off the voters list as having voted.**

## 21. Restrictions on Advance Poll voting (revised)

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### Background

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Prior to the 2004 election, electors wishing to vote at the Advance Polls were required to meet one of several criteria set out in *the Act* (disability, absence, or participation as an election officer or campaign worker which required their presence outside of their polling subdivision). Criteria were relaxed for the 2004 election to allow electors to vote in the Advance Polls if they believed that they would be unable to vote on polling day.

Parliamentary Counsel has advised that a person would have to be “unable” to vote, in the sense that they were lacking the ability or power to do so. A voter would not be eligible to use the Advance Poll if other options were inconvenient.

Advance Poll restrictions could be eliminated in an effort to make voting easier and more accessible through the removal of administrative barriers. This would accommodate the demanding and unpredictable schedules of electors who find that conflicting priorities keep them from voting during the prescribed hours on the one particular day designated for voting.

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### Recommendations

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Relevant Sections: 98, 99

- a. **Eliminate eligibility criteria associated with Advance Poll voting to enable any elector to vote at the Advance Polls.**
- b. **Amend the prescribed declaration so it does not require a reason for attendance at the Advance Poll, but confirms the elector’s eligibility and provides an undertaking that the elector has not already voted and would not attempt to vote again.**

## 22. Prohibition on voters depositing ballots into the ballot box

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### Background

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Voters are required to surrender their marked ballots, once completed, to the deputy returning officer. The deputy returning officer removes and destroys the counterfoil (which contains a unique number that could identify the ballot) and deposits the ballot into the ballot box. The number on the counterfoil is used to facilitate correct annotation of the Poll Book (to accurately record which voter has voted).

A number of voters have expressed the desire to deposit their own ballots, both to finalize the voting process and to ensure confidentiality of the vote. Other jurisdictions, including Canada, British Columbia, Manitoba, Ontario, New Brunswick, and Quebec, allow electors to deposit their ballots in the ballot box themselves.

Election officers are sometimes placed in the untenable situation of disallowing a practice that is permitted at other elections, or circumventing the law in an attempt to placate voters.

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**Recommendations**

Relevant Sections: 96, 101, 109

- a. **Authorize the voter to deposit his or her completed ballot into the ballot box, after the deputy returning officer has removed the counterfoil.**
- b. **In the case of voter assistance, authorize the voter or the friend of the voter to deposit the completed ballot into the ballot box, after the deputy returning officer has removed the counterfoil.**

## Ballot Content

### 23. Amendment to prescribed ballot content

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**Background**

Candidates are currently limited to providing a middle initial, rather than a middle name, for use on the ballot. This may not allow a candidate to be identified by the name of his or her choice. The legislation already seems to provide for a certain element of choice by allowing for nicknames on the ballot.

Allowing use of a middle name would address the perception of unfairness, since currently a candidate with a composite first name “Marylynn” would be permitted to use her name of choice, while a candidate with the first name “Mary” and middle name “Lynn” would not.

Ballots are currently required to include the printer’s name. Since ballots are currently printed on secure ballot paper, we are not aware of an operational reason for this practice.

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**Recommendations**

Relevant Sections: 83, 83(8)

- a. **Add a middle name to the list of name elements which may appear on the ballot.**
- b. **Repeal the requirement to include the printer’s name on the back of the ballot.**

## Inmate Participation

### 24. Inmate voting prohibition (updated)

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#### Background

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In *Byatt v. Alberta [Chief Electoral Officer]* [1998] A.J. 399, the Alberta Court of Appeal struck down an earlier provision of the *Election Act*, RSA 1980, that barred all prisoners from voting. The Court of Appeal decided it was contrary to section 3 of the Canadian Charter of Rights and Freedoms and that it was too sweeping a prohibition to be saved under section 1 of the Charter. However, the Court suggested that it would be possible to tailor a limitation on prisoner voting that would survive a Charter challenge. The Court suggested that if sentences of less than 10 days and sentences for failure to pay fines were excluded, the prohibition could well survive a Charter challenge. The Alberta Legislature followed this suggestion by the Court in enacting what is now section 45(c) of the *Election Act*. The majority of inmates in Alberta are now prohibited from voting. Only those imprisoned for ten days or less, or for non-payment of fines, are currently eligible to vote.

After *Byatt*, the Supreme Court of Canada gave very clear direction on the Charter Right of prisoners to vote in *Sauvé v. Canada* [2002] S.C.J. 66. The landmark Supreme Court decision, handed down in 2002, set aside the prohibition on inmates serving two years or more from voting in federal elections. The *Sauvé* decision viewed the disenfranchisement of prisoners as a violation of the Canadian Charter of Rights and Freedoms, stating that “democratic participation is not only a matter of theory but also of practice”. Current prohibitions on inmate voting in Alberta’s *Election Act* are unlikely to withstand a Court challenge. In view of the *Sauvé* decision, the musings of the Court of Appeal in *Byatt v. Alberta* regarding a tailored limitation have effectively been overruled. There is now little doubt that section 45(c) of Alberta’s *Election Act* would be found to be unconstitutional.

Under section 52 of the *Constitution Act*, the Constitution of Canada, including the Charter, is the supreme law of Canada and any law that is inconsistent with it is of no force and effect. In a number of cases, the Supreme Court has decided that if a statutory decision maker (e.g. Chief Electoral Officer) is expressly or impliedly required to decide questions of law, he can decide the constitutionality of any Act that he is called upon to administer. However, the Alberta Legislature has reacted to these decisions by adopting the *Administrative Procedures and Jurisdiction Act*. Part 2 of this Act removes the right of decision makers to decide constitutional questions except for a limited number of decision makers who are identified in the regulations. The Chief Electoral Officer is not one of the decision makers who is authorized to decide constitutional questions. Therefore, the Chief Electoral Officer does not have the jurisdiction to disregard section 45(c) on the grounds that it is contrary to the Charter. This will take a court to issue a declaration that the section is invalid.

A Court order to remove the prohibition during an election would create administrative challenges, raising questions about overall effectiveness of the electoral process. With a sufficient amount of lead time it would not be difficult to extend the franchise to institutionalized prisoners. Prisoners would vote by Special Ballot. Contingency plans were developed for this possibility during the 2008 general election.

In the *Sauvé* case, the same Supreme Court decision observed that a prohibition on an inmate's participation as a candidate may not be inappropriate. It is interesting to note that while Alberta's *Election Act* prohibits most inmates from voting, it does not preclude an inmate from being nominated as a candidate. Prohibiting the participation of inmates in that important role may respect the Court decision by restricting inmates' participation in the democratic process to an appropriate degree.

Other electoral jurisdictions including British Columbia, New Brunswick, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan, and Yukon have no restrictions on inmate voting. Although federal election legislation currently prohibits some inmates from voting, in practice, the franchise has been extended to include all inmates subsequent to the Court's ruling in the *Sauvé* case.

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**Recommendations**

Relevant Sections: 1(3), 45(c), 56, 57, 116(1)(c)

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- a. **Repeal the prohibition on inmates' voting.**
- b. **Expand the definition of inmates' ordinary residence to accommodate those with no fixed address at the time of arrest:**

**"The place of ordinary residence of an incarcerated elector is the first of the following places for which the elector knows the civic and mailing addresses:**

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

**The expanded definition is taken from the *Canada Elections Act*.**
  - c. **Prohibit inmates' nomination as candidates.**

## Time Limit on Collecting from a Candidate

### 25. Limitation of two months for collection of campaign debt/Monetary claims against a candidate (revised)

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#### Background

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A person who has a monetary claim against a candidate must submit it no later than two months after polling day, or the right to recover the claim is barred. This provision is intended to ensure that election expenses are fully accounted for prior to the filing of the candidate's financial statement within 4 months after polling day. However, this contravenes conventional business practice in the province, which allows for two years to collect amounts owing. This provision may penalize a person or business because of an administrative oversight. More importantly, it could be used as a mechanism to circumvent the disclosure provisions within the *EFCD Act*. A candidate could contract with a friendly supplier in relation to the campaign. An intentional delay in submitting an invoice would result in non-collection without, on the face of it, triggering a breach of sections 16 or 17 of the *EFCD Act*. The value of the product or service would not appear on the candidate's financial statement as either a monetary donation or a valued contribution.

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#### Recommendations

Relevant Sections: 210, 211

- a. **Revise the filing requirement to require candidates to record outstanding invoices as unpaid expenses.**
- b. **Bar claims in respect of election expenses that are not sent to the chief financial officer of the candidate within 3 months of polling day, unless the claim is approved by a court in any proceeding.**
- c. **Deem the amount of any claim barred under section 210 as a contribution.**
- d. **Remove section 210 from the *Election Act* and include it in the *EFCD Act*.**

## Chief Electoral Officer Duties and Powers

### 26. Investigative powers

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#### Background

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The Chief Electoral Officer or his representative may carry out an inquiry, conduct an examination, or conduct a periodic investigation under the *EFCD Act* and has all the powers of a commissioner under the *Public Inquiries Act*. There are no similar investigative or inquiry powers under the *Election Act*.

At the same time, a prosecution cannot be instituted pursuant to the *Election Act* without the consent of the Chief Electoral Officer. This places the Chief Electoral Officer in the untenable position of being expected to provide or withhold consent to a prosecution without being in a position to properly examine the matter to form an opinion as to whether or not the necessary facts exist to warrant a prosecution.

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#### Recommendations

Relevant Sections: 4(1)(b), 163.1 of the *Election Act*;  
5 of the *EFCD Act*

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- a. **Provide the Chief Electoral Officer with investigative powers under the *Election Act*.**
- b. **Add specific authority to enable the Chief Electoral Officer to conduct investigations by delegating authority to investigator(s) appointed by the Chief Electoral Officer for that purpose.**
- c. **Authorize the Chief Electoral Officer to compel the production of information from an individual or group, including but not limited to political entities, if the information is necessary in the course of the investigation.**
- d. **Add specific direction that an investigation shall be conducted in private.**

### 27. Time limit on prosecutions (revised)

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#### Background

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The Chief Electoral Officer must consent to any prosecution under *the Act*. Currently, a prosecution cannot commence more than two years following the date of commission of the alleged offence.

This restricts the pursuit of justice in situations where the offence is not identified well within the two-year timeframe. It requires that the alleged offence is detected or reported, the matter investigated, and sufficient time is available for the Chief Electoral Officer to form an opinion that prosecution is warranted before the matter is referred to Alberta Justice and Attorney General. At this point, the Minister of Justice may very well want to conduct a further examination of the matter before deciding whether or not to

institute a prosecution. Because of the restrictive nature of this timeframe, several critical dates have recently been missed by the Special Prosecutions and Regulatory Prosecutions branches.

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**Recommendations**

Relevant Section: 163.1

- a. **Extend the time limit on prosecutions, so that prosecution may commence up to one year following the date on which the Chief Electoral Officer believes that an offence has been committed.**
- b. **Require political parties and candidates to retain records related to a campaign for a period of 5 years.**
- c. **Require political parties and constituency associations to retain records related to annual activities for a period of 5 years.**

## **28. Recommendations to the Legislative Assembly**

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**Background**

The Chief Electoral Officer is responsible for providing guidance, direction and supervision respecting the conduct of elections and enumerations. The Chief Electoral Officer is required to submit a report concerning election and enumeration activities to the Legislative Assembly, via the Standing Committee on Legislative Offices, after each event. A reporting requirement also exists under the *EFCD Act*, for the Chief Electoral Officer to report to the Speaker of the Assembly on annual financial activities. Aside from this inconsistency in reporting structure which is addressed as the first recommendation under the section on the *EFCD Act*, there is no established mechanism for the Chief Electoral Officer to submit formal recommendations for legislative amendments to the Legislative Assembly.

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**Recommendation**

Relevant Section: 4(3)

- a. **Add specific direction for the Chief Electoral Officer to submit recommendations to the Legislative Assembly on an annual basis, in order to initiate dialogue concerning topical issues on a timely basis.**

## 29. Protection from legal action

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### Background

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Current legislation does not protect the Chief Electoral Officer from liability in fulfilling legislated responsibilities. Liability protection and indemnification should be accorded, as is the case with other Officers of the Legislature.

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### Recommendation

Relevant Sections: 4, 5 of the *Election Act*;  
60 of the *Freedom of Information and Protection of Privacy Act*;  
45 of the *Conflicts of Interest Act*;  
25 of the *Ombudsman Act*

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- a. **Include liability protection and indemnification for the Chief Electoral Officer and persons acting for or under his or her direction.**

## OCTOBER 2006 RECOMMENDATIONS FOR AMENDMENTS TO THE *ELECTION ACT (THE ACT)*—HOUSEKEEPING

### Addition of Definitions

#### 30. Definition of advertising

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##### Background

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No definition currently exists. Adding a definition would clarify that the term “advertising” is intended to include both electronic and print media when it appears in the *Election Act* and the *Election Finances and Contributions Disclosure (EFCD) Act*, and that legislated requirements and restrictions apply to all media.

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##### Recommendation

Relevant Section: 1(1)

- a. Add a definition of advertising which includes messages prepared for general distribution in print form, including information in a magazine, brochure, newspaper, billboard or poster, or in electronic form, including radio, television, telephone, Internet website or message, electronic mail, facsimile, or text message.

#### 31. Definition of declined ballot

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##### Background

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No definition currently exists for the circumstance in which a voter is issued a ballot but declines to mark it. The definition of a spoiled ballot in *the Act* does not apply to such a scenario.

A definition would reduce confusion for election officers, thereby increasing the accuracy of the unofficial count, and would reduce confusion for candidates, political parties and other stakeholders.

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##### Recommendation

Relevant Sections: 1(1), 107(2)

- a. Add a definition of a declined ballot to identify it as a ballot that has been returned by the elector to the deputy returning officer, with the indication that the elector does not wish to mark the ballot.

## 32. Definition of rejected ballot

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### Background

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No definition currently exists for the circumstance in which a ballot is rejected by the deputy returning officer at the unofficial count, based on criteria identified in *the Act*. The definition of a spoiled ballot in *the Act* does not apply to such a scenario.

Adding a definition would reduce confusion for election officers and scrutineers, thereby increasing the accuracy of the unofficial count, and would reduce confusion for candidates, political parties and other stakeholders.

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### Recommendation

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Relevant Sections: 1(1), 111(5)

- a. **Add a definition of a rejected ballot to identify it as a ballot that has been returned by the elector to the deputy returning officer, placed into the ballot box along with ballots returned by other electors, and which cannot be counted in accordance with section 111(5).**

## Senior Management Appointments

## 33. Deputy Chief Electoral Officer

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### Background

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Current wording implies that the appointment of the Deputy Chief Electoral Officer is outside of the *Public Service Act*. While this is true of the Chief Electoral Officer, it is not the case with the Deputy.

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### Recommendation

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Relevant Section: 5(1)

- a. **Clarify the wording to reflect the appointment of the Deputy Chief Electoral Officer pursuant to the *Public Service Act*.**

## 34. Compensation adjustment process for Chief Electoral Officer position

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### Background

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The Standing Committee on Legislative Offices has a statutory requirement to review the salary of the Chief Electoral Officer on an annual basis. Although a salary range is provided to establish a broad framework for this review, there is no established mechanism or comparators for an annual review. This is different from the existing practice for adjusting salaries of those positions at comparable levels which are created pursuant to the *Public Service Act*.

Establishing the salary of the Chief Electoral Officer through a legislative provision would eliminate the redundancy of conducting a similar review process to the one used to adjust the salary range of comparable positions within the public service. Linking the Chief Electoral Officer salary to an appropriate classification benchmark within the public service prevents salary adjustments that are out of step with public service guidelines, ensures timeliness of recognized adjustments and eliminates the need for Committee involvement in a routine process. Having the Standing Committee directly involved in the determination of salary and benefits for the Chief Electoral Officer could lead to the appearance that his independence could be compromised by that relationship.

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**Recommendation**

Relevant Section: 6

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- a. Establish a mechanism for annual review which entitles the Chief Electoral Officer to receive any benefits of office and economic adjustments to the salary range and to the salary that are provided generally to deputy ministers in the Alberta Public Service.**

## **Recruitment of Election Clerks and Administrative Assistants**

### **35. Administrative Assistant selection process**

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**Background**

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Administrative Assistants are currently limited to appointment in the electoral division in which they reside. This may not result in the selection of the most qualified person if there is a shortage of interested, capable individuals within a particular geographic area.

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**Recommendation**

Relevant Section: 47.1(1)

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- a. Allow for appointment of an Administrative Assistant from outside of the electoral division, with the prior written approval of the Chief Electoral Officer, if no suitable candidate can be found within the area.**

### **36. Retention of the oaths of election officer**

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**Background**

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Prescribed oaths completed by Election Clerks and Administrative Assistants are currently required to be attached to the Writ of Election. Retaining these oaths along with those of all other election officers would streamline this part of the administrative process. All oaths are retained by the Chief Electoral Officer in accordance with legislation, in order to facilitate post-election access and review, as required.

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**Recommendation**

Relevant Sections: 47(4), 47.1(3)

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- a. Repeal the requirement for attaching the oaths to the Writ of Election.**

### **37. Hiring of family members by the Returning Officer**

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**Background**

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Recruitment of election officers must be equitable in both fact and perception. Following sound recruitment principles within an open, merit-based process supports that objective.

In past, some Returning Officers wished to hire spouses or other immediate family members to perform the role of Election Clerk or Administrative Assistant. This carried the potential for criticism of nepotism. It also carried the risk of losing all or most key election staff within the electoral division, in the event of a family emergency.

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**Recommendations**

Relevant Sections: 47, 47.1

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- a. Prohibit the recruitment of immediate family members by the Returning Officer, for the role of Election Clerk.**
- b. Prohibit the recruitment of an Administrative Assistant who is an immediate family member of the Returning Officer or Election Clerk.**

***Note: These amendments will not be necessary if the recommended amendment for the recruitment of Returning Officers and Election Clerks by the Chief Electoral Officer is made, in which case, the Chief Electoral Officer would issue a directive to this effect.***

## Candidate Nomination Process

### 38. Requirement for the filing of original documents (revised)

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#### Background

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Past practice has been to require submission of the original Nomination Paper, rather than a faxed or emailed copy. Having an original document allows the Returning Officer to confirm that information wasn't tampered with. It also ensures sufficient clarity of nominators' signatures and address information for Returning Officers to satisfy themselves that all requirements have been met.

Filing this important document in original format, should be a legislated requirement rather than internal policy.

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#### Recommendation

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Relevant Section: 61

- a. **Specify that original documents must be filed when submitting Nomination Papers.**

### 39. Method for submitting a nomination deposit (revised)

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#### Background

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Legislation currently allows candidates to tender a \$500 nomination deposit in cash, by certified cheque or by money order.

If the practice of requiring a nomination deposit is to continue, accepting cash could pose a security risk for Returning Officers who could potentially receive large sums of money. It also eliminates the ability to trace and replace a deposit if one should be stolen or misplaced.

Also, if the practice of requiring a nomination deposit is to continue, political parties have expressed interest in writing a single cheque for the deposits of all their candidates. *The Act* specifies that the deposit accompany the Nomination Paper.

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#### Recommendations

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Relevant Sections: 61, 62

- a. **If the requirement for a candidate nomination deposit continues, repeal the option for candidates to provide a cash deposit. Limit the methods of tender to certified cheques or money orders.**
- b. **If the requirement for a candidate nomination deposit continues, permit deposits to be pre-paid by endorsing registered political parties.**

## 40. Nomination deposit refund (revised)

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### Background

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The *EFCD Act* defines a contribution, and what constitutes a contribution. If a candidate expends “personal funds” for the nomination deposit, that constitutes a contribution, and an expense, and must be recorded as such. Candidates are currently entitled to receive a tax receipt for this contribution.

Since all deposits, including a candidate’s personal funds contributed to his or her campaign, must be deposited into a campaign account, the nomination deposit comes from campaign funds and not the candidate’s personal funds. Therefore, a refund should be directed to the campaign and not the candidate. Returning the nomination deposit refund to the candidate could result in a situation where a tax receipt is issued to the candidate for a contribution (nomination deposit) when the contribution (nomination refund) is ultimately returned to the candidate. Directing the refund to the campaign is consistent with the intent of the legislation and ensures that the return of funds is appropriately recorded on the financial statement.

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### Recommendations

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Relevant Sections: 62 of the *Election Act*; 1(1)(e), 17(5) of the *EFCD Act*

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- a. **If the requirement for a candidate nomination deposit continues, direct that a full or partial nomination deposit refund shall be returned to the chief financial officer, on behalf of the campaign, or to the party.**
- b. **Include a reference to section 17(5) of the *EFCD Act*, which defines money paid by a candidate from his or her personal funds as a contribution.**

## 41. Candidates ceasing to be nominated

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### Background

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Current wording implies that only those candidates who were nominated by a constituency association cease to be candidates if they fail to file nomination papers. All candidates cease to be nominated if they fail to file nomination papers by the close of nominations, and this should be clarified.

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### Recommendation

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Relevant Section: 59(3)(a)

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- a. **Revise the section reference from 1(1)(c)(iii) to 1(1)(c) to reflect that all candidates who fail to file nomination papers by the close of nominations cease to be nominated.**

## Effective Date of Legislative Amendments

### 42. Implementing legislative amendments (revised)

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#### Background

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The *Act* does not establish a timeframe for implementing legislative changes. Sufficient time is required to implement changes, particularly those identified as substantive. Modifications to resources, training, forms, guides and public information must be planned and executed in a methodical manner in order to effectively communicate and implement the desired change.

Legislation in some jurisdictions directs that amendments will not apply to an election if the Writ is issued within a certain time period. For example, British Columbia sets the timeframe at six months and Manitoba, at ninety days.

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#### Recommendation

Relevant Section: No reference in *the Act*

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- a. **Direct that an amendment to this *Act* does not apply to an election for which a writ is issued within 6 months after the amendment comes into force.**

# **OCTOBER 2006 RECOMMENDATIONS FOR AMENDMENTS TO THE *ELECTION FINANCES AND CONTRIBUTIONS DISCLOSURE (EFCD) ACT*—SUBSTANTIVE**

## **1. Annual reporting**

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### **Background**

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Inconsistencies appear in the reporting requirements pursuant to the *Election Act* and the *EFCD Act*. Reporting on provincial enumerations and elections is directed to the Standing Committee on Legislative Offices, whereas annual reporting on financial activities is directed to the Speaker of the Legislative Assembly.

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### **Recommendation**

Relevant Section: 4

- a. Standardize reporting requirements by directing all reporting to the Legislative Assembly through the Speaker.**

## **2. Candidates' nomination deposits (revised)**

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### **Background**

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The process for refunding candidates' nomination deposits was revised prior to the 2004 election. Candidates received half of their deposit back for filing a financial statement within the prescribed timeline, and half for receiving the most votes, or 50% or more of the votes received by the candidate with the highest number of votes.

Previously, candidates who paid their own nomination deposits and obtained a refund simply returned the refund to their own funds. They expected to continue this practice in the 2004 election. Funds for nomination deposits from a candidate's personal funds should always have been recorded as a contribution and an expense, but this reporting practice has been inconsistently applied.

All contributions made to registered parties, registered constituency associations and registered candidates during an annual or campaign period generate an official receipt and result in an Alberta Tax Credit to the contributor. In the case of a \$500 contribution, the resulting Alberta Tax Credit would be \$300. It is important to note that when candidates file their nomination papers and provide the \$500 nomination deposit, it becomes a campaign expense and if the candidates paid the deposit from their own funds, it becomes a campaign contribution which is eligible for a tax credit. In the scenario where a candidate receives a refund and returns it to his or her own funds, the candidate is able to receive a tax benefit despite the fact that the contribution was returned. To ensure that candidates are not able to benefit from this situation, any return of the nomination deposit should be paid to the chief financial officers and not be

refunded back to the candidates by either Elections Alberta or the candidates' campaign funds.

Clarity is required to ensure that this process is understood and to ensure that compliance with the legislation is enforced.

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**Recommendations**

Relevant Sections: 1(1)(e), 17(5) of the *EFCD Act*;  
62 of the *Election Act*

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- a. **If the requirement for a candidate nomination deposit continues, clarify that a nomination deposit paid by the candidate out of his or her own funds becomes a contribution, and must be recorded as such.**
- b. **If the requirement for a candidate nomination deposit continues, clarify that any refund of the nomination deposit or portion thereof, is provided to the chief financial officer in a cheque made payable to the campaign or party. This amount cannot be paid back to the candidate as a refund but can only be used for paying expenses occurring during the campaign period.**

### **3. Excess and prohibited contributions (updated)**

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**Background**

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A chief financial officer is required to notify the Chief Electoral Officer, in writing, if an excessive contribution, a contribution from a prohibited corporation, or a contribution which does not belong to the contributor has been accepted in contravention of *the Act*.

The *EFCD Act* enables the Chief Electoral Officer to apply a penalty to the person, corporation, trade union or employee organization responsible for an excessive contribution, or a contribution made by a prohibited corporation. The penalty applied by the Chief Electoral Officer must be an amount equivalent to the amount by which the contribution or contributions exceeded the amount permitted under the *EFCD Act*. There is no similar provision for the application of a penalty to a contributor who has made a contribution using funds that did not belong to the contributor.

There is also no consequence for a political entity that knowingly solicits and accepts a prohibited contribution. This is in contrast to the provision dealing with excessive contributions where there is a provision that applies to the registered party, constituency association or candidates.

There is also no provision requiring the recipient to return or surrender an excessive contribution, a prohibited contribution, or a contribution not belonging to a contributor.

In the case of anonymous contributions in excess of \$50, which cannot be returned to the contributor, funds are paid to the Chief Electoral Officer for deposit to the General Revenue Fund.

- a. **Expand the penalty provisions to empower the Chief Electoral Officer to apply a penalty to a contributor using funds that did not belong to the contributor.**
- b. **Require the recipient to return or surrender funds:**
  - i. **in the amount above the contribution limit in the case of an excessive contribution,**
  - ii. **in the full amount in the case of a prohibited corporation, and**
  - iii. **in the full amount in the case of a contribution not belonging to the contributor****to either the contributor or to the Chief Electoral Officer for deposit to the General Revenue Fund.**
- c. **Include a penalty provision for political entities that knowingly solicit or accept prohibited contributions.**

#### **4. Identification of controlled corporations (revised)**

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##### **Background**

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The concept of the prohibited corporation was introduced in 1984. It was initially restricted to provincial corporations and their subsidiaries. The *EFCD Act* was amended in 2004 to introduce the current definition of “prohibited corporation”, which includes municipalities. In introducing second reading of the amendments, Minister Hancock referred to the fact that the amendments were being made at the request of the Chief Electoral Officer. The Minister said:

*“Other changes will clarify that public institutions and their subsidiaries, such as municipalities, regional health boards, school boards, are prohibited from making political contributions”*

It is likely that the cross reference in section 1(3) of the *EFCD Act* to section 256 of the *Income Tax Act* was included to achieve this result, but it has not achieved the clarity sought in this area. A number of subsidiaries of municipalities have taken the position that the rules against prohibited corporations making contributions do not apply to them. Alberta Justice (Special Prosecutions) agrees with those corporations and has declined to prosecute cases of contributions by municipal subsidiaries. The definition of “prohibited corporations” should be amended so that there can be no question of its application to subsidiaries of municipalities and Metis Settlements. These amendments to the *EFCD Act* could be as follows:

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**Recommendations**

Relevant Sections: 1(1)(l), 1(3), 1(4), 3

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- a. **Amend the definition of a prohibited corporation to expressly include corporations controlled by municipalities and Metis Settlements.**
- b. **Add a clear definition of what “controlled” means. It should be defined to mean a situation where a majority of the voting shares are held by the municipality, directly or through a trust, or where the municipality appoints all or a majority of the members of the corporation. (Model language can be found in the *Municipal Government Act*, section 1(2)).**

## **5. Consistent use of the principle of ordinary residence**

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**Background**

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The legislation prohibits contributions from persons who are normally resident outside of Alberta. There is no specific definition of the term “normally resident”, leaving it open for interpretation.

Ordinary residence is specifically defined in the *Election Act* as being determined with the application of a series of rules. Replacement of “normally” with “ordinarily” resident would more clearly identify the group of persons prohibited from making contributions under the *EFCD Act*.

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**Recommendations**

Relevant Section: 16

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- a. **Replace the term “normally” with “ordinarily” resident.**
- b. **Include a definition of “ordinarily resident”, which is consistent with the definition in the *Election Act*.**

## **6. Information required for financial statements**

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**Background**

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Chief financial officers of registered parties and registered constituency associations are required to prepare and file financial statements.

The requirement that “proper records be kept of all income” excludes any mention of the requirement to keep proper records of all expenses, assets and liabilities.

Sections relating specifically to financial filing requirements of constituency associations also make no reference to reporting of assets and liabilities.

Specific mention of expenses, assets and liabilities will clarify the requirement for proper completion of financial statements.

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**Recommendation**Relevant Section: 30(a), 42(1)(b)

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- a. Expand the listing of proper records to include those related to expenses, assets and liabilities.**

## **7. Fund-raising events (revised)**

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**Background**

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Section 23(3)(b) provides a short-hand way for political entities to apportion expenses and contributions from fund-raising functions. Currently, if the individual charge is \$50 or less, it is not considered to be a contribution unless the contributor requests that it be so considered. In such a case, half is considered to be a contribution and half is considered to be an expense. If the charge is more than \$50, \$25 is allowed for expenses and the balance is considered to be a contribution.

However, the provisions are somewhat outdated since it has not been changed since the *EFCD Act* was proclaimed in 1978. Consideration should be given to adjust the expense portion of the fund-raising ticket price to be more representative of the actual cost per person of the function. As costs for events have increased with inflation, the flat rate of \$25 for expenses may not be reflective of the true costs of different kinds of fund-raising events.

Other jurisdictions in Canada with fund-raising function provisions vary from stating that any funds raised at fund-raising events are not to be considered as contributions, to 25% of the price of the ticket to be considered as an expense and the 75% balance of the price to be considered as a contribution.

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**Recommendation**Relevant Section: 23(3)(b)

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- a. Consideration should be given to revise s. 23(3)(b) to state that if the individual charge is between \$51 and \$100, the expense portion of the ticket price would be \$25 and, if the individual charge is over \$100, the expense portion would be 25% of the ticket price.**

## 8. Records of contributions (updated)

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### Background

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Section 32 describes the records that are required to be maintained by the recipient of contributions. Currently the *EFCD Act* requires recording the name, address of the contributor and amount of the contribution. There is no requirement for recording the date the contribution was received by the recipient. It is not possible to enforce contribution rules which restrict contribution amounts on an annual and campaign period basis without knowing when contributions were received.

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### Recommendation

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Relevant Section: 32

- a. **Add date received to the list of information to be recorded in sections 32(1), 32(3)(b) and 32(4)(b).**

## 9. Time limit on prosecutions (updated)

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### Background

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The Chief Electoral Officer must consent to any prosecution under the *EFCD Act*. Currently, a prosecution cannot commence more than two years following the date of commission of the alleged offence.

This restricts the pursuit of justice in situations where the offence is not identified well within the two-year timeframe. It requires that the alleged offence is detected or reported, the matter investigated, and sufficient time is available for the Chief Electoral Officer to form an opinion that prosecution is warranted before the matter is referred to Alberta Justice and Attorney General. At this point, the Minister of Justice may very well want to conduct a further examination of the matter before deciding whether or not to institute a prosecution. Because of the restrictive nature of this timeframe, several critical dates have recently been missed by the Special Prosecutions and Regulatory Prosecutions branches.

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### Recommendations

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Relevant Section: 52(3)

- a. **Extend the time limit on prosecutions, so that prosecution may commence up to one year following the date on which the Chief Electoral Officer believes that an offence has been committed.**
- b. **Require political parties and candidates to retain records related to a campaign for a period of 5 years.**
- c. **Require political parties and constituency associations to retain records related to annual activities for a period of 5 years.**

**OCTOBER 2006 RECOMMENDATIONS FOR  
AMENDMENTS TO THE *ELECTION FINANCES AND CONTRIBUTIONS  
DISCLOSURE (EFCD) ACT—HOUSEKEEPING***

**10. Significance of registration**

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**Background**

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There is an important distinction in the *EFCD Act* between the various political entities (political parties, candidates, and constituency associations) and “registered” political entities. This distinction has not been consistently observed in the drafting of the current *EFCD Act*.

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**Recommendation**

Relevant Sections: Listed below

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**a. Add the term “registered” to the following:**

- **Section 4(1)(b)(i) – to constituency association**
- **Section 5(3) – to party, constituency association and candidate**
- **Section 9(2)(a)(iii) – to constituency association**
- **Section 10(1)(b), 10(3), 10(4) – to constituency association**
- **Section 10(5) – to constituency association and candidate**
- **Section 43(2) – to constituency association**

**11. Powers of Chief Electoral Officer vs. duties of political entities**

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**Background**

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Under section 5, Powers of the Chief Electoral Officer, there is a provision that deals with the retention of records by political entities. Retention of political entity records is not a power of the Chief Electoral Officer. This provision should be removed and placed elsewhere in the *EFCD Act*.

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**Recommendation**

Relevant Section: 5(4)

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**a. Move clause 5(4) to another section of *the Act*, possibly as section 6(7).**

## 12. Update Terminology

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### Background

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There are several instances of out-dated terminology used in the *EFCD Act* which should be changed.

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### Recommendations

Relevant Sections: 10(12), 15(2), 51(3), 40(1)(a)

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- a. Update all references to the Provincial Treasurer with Minister of Finance.
- b. Change “treasury branch” to “Alberta Treasury Branches (ATB Financial)”

# **JANUARY 2007 RECOMMENDATION FOR AMENDMENT TO THE *ELECTION FINANCES AND CONTRIBUTIONS DISCLOSURE (EFCD) ACT*—SUBSTANTIVE**

## **13. Regulation of leadership contests**

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### **Background**

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This recommendation would have been included along with the Chief Electoral Officer's October 31, 2006 recommendations for amendments had it not been for the fact that one of the registered political parties was in the process of holding a leadership contest at the time. It was felt that it would not have been appropriate to have weighed into the public debate regarding the regulation of leadership contests by making a formal recommendation at the time.

There are 4 jurisdictions in Canada that regulate leadership contests including British Columbia, Manitoba, Ontario and Canada. The Royal Commission on Electoral Reform and Party Financing recommended that there be public financial disclosure rules for leadership contests in the interests of promoting integrity and fairness in the electoral process.

It was acknowledged by the Commission that leadership selection is the purview of political parties and the rules should not be too restrictive or intrusive so as to impair a political party's ability to establish its own rules and procedures. The Commission specifically recommended that there be spending limits, financial disclosure, political tax credits, and financial agents to keep records and file disclosure reports for leadership contestants.

The selection of a leader for a political party is very significant considering the importance of a leader in the electoral success of a political party and a leader's impact on public policy. Campaign finance legislation in Alberta does not currently extend to leadership selection and there are no legislative requirements for leadership contestants. The selection of a leader is and should remain primarily an internal party matter, however, there is merit in having basic legislative requirements for leadership contestants as they relate to public disclosure.

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### **Recommendations**

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Relevant Section: 2

- a. Delete reference to leadership campaigns and conventions in the exclusions listed in section 2.**
- b. Minimal regulation of leadership contests should include appointing a financial officer and filing financial disclosure reports with the Chief Electoral Officer for leadership contestants.**