



**DISCUSSION PAPER ON PROPOSED CHANGES TO
THE *LOCAL AUTHORITIES ELECTIONS ACT***

Department of Municipal and Community Affairs
Government of the Northwest Territories

December, 2008

Table of Contents

| | <u>Page</u> |
|-------------------------------------------------------------|-------------|
| Introduction | 1 |
| Background | 1 |
| The Working Group | 2 |
| The Amendment Plan | 3 |
| Principles | 3 |
| <u>Part 1 - Issues for You to Consider</u> | |
| 1. Residency requirement | 4 |
| 2. Eligibility and indebtedness | 4 |
| 3. Shorten the election calendar | 5 |
| 4. Notice of plebiscite question | 5 |
| 5. Period for withdrawing nomination | 5 |
| 6. Alternate voting methods | 6 |
| 7. Increasing voting opportunities | 7 |
| 8. Proxy votes | 7 |
| 9. Deadlines for proxy vote forms | 7 |
| 10. Electronic vote counting | 8 |
| 11. Tie votes | 8 |
| 12. Recount votes | 9 |
| 13. Prohibiting candidate advertising in the voting station | 9 |

| | | |
|-----|-----------------------------------------------|----|
| 14. | Campaign contributions | 9 |
| 15. | Inducing votes | 10 |
| 16. | Additional corrupt practices | 10 |
| 17. | Role of the Chief Municipal Electoral Officer | 10 |
| 18. | Role of the CMEO in controverted elections | 11 |
| 19. | Penalties for election offences | 11 |
| 20. | Other changes | 12 |

Part 2 - Administrative Changes to the Act

| | | |
|------|-------------------------------------------------------------------|----|
| 2-1 | Include the eligibility criteria on the nomination paper | 13 |
| 2-2 | Damaging or destroying election signs will be an offence | 13 |
| 2-3 | Removing election signs | 13 |
| 2-4 | Removing candidate signs after the election | 13 |
| 2-5 | Clarify the rules for eligibility for criminals and professionals | 14 |
| 2-6 | When to post the voter's list | 14 |
| 2-7 | Making nomination forms public documents | 14 |
| 2-8 | No written request for mobile voting stations | 14 |
| 2-9 | Notifying the CMEO of by-elections and plebiscites | 14 |
| 2-10 | Clarify that ballots must be counted at the voting station | 14 |

Summary of Questions

Introduction

The *Local Authorities Elections Act* (the *Act*) governs municipal and local education authority elections in the Northwest Territories. This paper is about making changes to the *Act* to make municipal and local education authority elections smoother and easier to run.

The paper is divided into two parts. The first part contains information about changes that need to be made to the *Act* and questions for you to answer about the kinds of changes you would like to see. The second part contains information about other changes that we believe should be made.

This paper is not about which Government of the Northwest Territories (GNWT) agency is the best one to take care of municipal and local education authority elections. This paper focuses solely on amendments that are needed to the *Act* to improve the ability of municipal and local education authorities to hold elections.

Background

A version of the *Act* first came into force in the mid-1960s and was separated out in the mid-1980s into the form of the statute that we have now. Very few changes have been made to it since that time. Over the years, it has become clear that there are parts of the *Act* that could work better to take advantage of new technologies and improved electoral processes. The Department of Municipal and Community Affairs administers the *Act*.

The Northwest Territories Association of Communities (NWTAC) have made annual resolutions about changes that are needed to the *Act*. Returning Officers have made complaints and comments about their frustrations with the *Act*, and over the years the Chief Municipal Electoral Officers (CMEO) have noted issues with the *Act*. In addition, there have been a number of court cases about issues that have arisen such as eligibility to run for office.

The Working Group

MACA staff conducted the basic research including gathering together the following information:

- all of the NWTAC resolutions;
- NWT court cases;
- similar legislation in other provinces and territories;
- the notes and recommendations of current and previous CMEOs;
- notes of Returning Officers who raised issues;
- United Nations and other international institution background papers on democratic principles and practises for local elections.

With direction from the Deputy Minister of MACA, a Working Group was formed to provide advice and direction on amendments to the *Act*. The Working Group includes:

| | |
|--------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| NWTAC: | Yvette Gonzales (Executive Director) |
| LGANT: | Brian Desjardins (Executive Director), Evelyn Storr (Hamlet of Aklavik), Roy Scott (Town of Fort Smith), Debbie Gillard (City of Yellowknife) |
| MACA: | David Kravitz, CMEO - Chair of the Working Group Mike Drake and Eleanor Young - Deputy CMEOs Emerald Murphy, Legislation Advisor |

The Working Group examined the issues and the research and discussed approaches for preparing a Discussion Paper for public consultation.

The first question the Working Group looked at was whether the *Act* needs a complete overhaul or whether discrete amendments are required. The Working Group recommends discrete amendments because the foundations of the *Act* are sound, and support the fundamental principle that local authorities - not the central government - are the best able to ensure democracy at the local level. As well, there must be a central authority (the office of the CMEO) to provide support and, where necessary, independent objective authority, to local authorities to ensure that the democratic standards of fairness and participation are met.

This Discussion Paper sets out the main problems in the *Act*. We want to get comments and suggestions from everyone with an interest in local elections- municipal officials, district education officials, returning officers, and voters.

The Amendment Plan

This Discussion Paper will be widely circulated in the N.W.T. We encourage you to think about the issues and send us your responses to the questions posed, as well as any comments or concerns by February 28, 2009.

The responses will be tabulated and analyzed, and the Working Group will prepare a report to the Minister of MACA, containing its final recommendations for amendments to the Act. On direction from the Minister, a legislative proposal containing the proposed amendments will be prepared for consideration by Cabinet and, ultimately, the Legislative Assembly.

Principles

The principles that guide local elections processes in the NWT are the same underlying democratic principles followed by virtually every jurisdiction in Canada. The basic principles are:^{*}

1. The persons entitled to vote must be ascertainable and fixed by rules;
2. The electors must be informed by reasonable notice if and when there is to be an election;
3. All officers engaged in the conduct of an election must be solemnly sworn properly to fulfill their duties;
4. On polling day the ballot must be rigidly a secret one;
5. An elector may vote once only;
6. The proper majority vote decides the election;
7. The election must be an honest one free from intimidation, bribery, treating or corrupt and wrongful practices.

^{*} Rogers, Ian MacF., Q.C., The Law of Canadian Municipal Corporations, 2nd ed., 1971 as updated (serial), at p. 136. See also, International Institute for Democracy and Electoral Assistance, *International Electoral Standards: Guidelines for reviewing the legal framework of elections*, 2002, jointly developed by International IDA and the Office for Democratic Institutions and Human Rights (ODIHR) of OSCE in Warsaw.

Part 1 - Issues for You to Consider

This Part contains issues for discussion and comment. Each issue identifies the problem, some background information, and some questions for you to consider.

1. Residency requirement

Section 17 of the *Act* states that the residency requirement is that a person must have been a resident of the electoral district for at least 12 consecutive months before election day. This has been a source of confusion, because it is not clear whether "consecutive" excludes people who have been away temporarily during the period for, e.g., medical treatment or education. By contrast, the Yukon clearly allows for temporary absence during the 12 month period.

Should the residency requirement be clearly modified to allow for temporary absences?

Circle: Yes No

2. Eligibility and indebtedness

Persons cannot run for municipal council if they owe \$500 or more to the municipality for more than 90 days (s. 20(1)(d)) or if they hold the controlling interest in a company that has a similar debt. As well, they cannot run if they have not paid all of their municipal taxes before December 31st of the year in which the taxes were levied.

There are no such restrictions on persons who wish to run for a district education authority. Thus far, these issues only affect district education voters in Yellowknife because Yellowknife is the only municipality that advances money, not yet collected, based on property taxes assessed for schools.

Should the rules about indebtedness apply to persons who wish to run for a district education authority, that is, a person cannot run for the district education authority if he or she owes (or holds the controlling interest in a company that owes) a debt of \$500 or more for more than 90 days to the municipality?

Circle: Yes No

3. Shorten the election calendar

Section 11 of the *Act* sets out the requirements for the election calendar. The least amount of time in which an election may be held (from the time of opening nominations to the voting day) is seven weeks. Federal elections are held in 45 days and Territorial elections are held in 28 days.

(a) *Do we need a 2-week nomination period, or would 1 week be enough time for people interested in running, to complete their nomination process?*

Circle: 1 week 2 weeks

(b) *Is the current 5 week period from the close of nominations to elections, too long?*

Circle: Yes No

(c) *The election period should be at least 21 days and no more than 45 days.*

Circle: Yes No.

4. Notice of plebiscite question

The provisions of the *Act* (at section 7) do not provide clear direction in conducting this type of vote as it does not describe what procedures are required. It has been suggested that, for the sake of consistency, plebiscites be subject to the same rules as elections for municipal council and district education authorities, including notice requirements.

Should the requirements for notice of plebiscite questions be the same as for municipal and district education authority elections?

Circle: Yes No

5. Period for withdrawing nomination

A Returning Officer is the person appointed and paid by the municipality to organize and run the election. Duties include verifying nominations, appointing deputy returning officers to assist, establishing "voting stations" (polls), advertising their location, arranging for the printing of ballots, ballot boxes, instructions to voters, directly supervising the election, counting the ballots, etc.

Returning Officers need the authority to reprint ballots, extend the period of nominations when a candidate withdraws or dies, and postpone the election if necessary. If a candidate dies after the nomination period, there is no authority in the *Act* to remove the name of the person. The *Act* only allows the candidate to withdraw within 48 hours of the close of nominations. But after the close of nominations there are five weeks during which the nomination stands.

(a) *Should Returning Officers or the CMEO have the authority to reprint ballots, when a candidate involuntarily withdraws or dies?*

Circle: Yes No

(b) *Should the CMEO should have the authority to (check all that apply):*

___ *Extend the nomination period, when a candidate dies or withdraws.*

___ *Reschedule the election.*

6. Alternate voting methods

A "proxy vote" is a ballot cast by a person authorized by the voter, to vote on his behalf. Section 53 of the *Act* enables a person who has reason to believe that he or she will be unable to vote either at an advance vote or on election day, to fill out an application and give the name of the person who will cast his or her vote. The *Act* only allows a person authorized to act as a proxy to do so for a maximum of three voters. Because votes are secret, there is no way for a person who gives a proxy (the voter) to make sure that the vote was cast in the way the voter wanted.

The only alternate voting method now available to voters is proxy votes. This method has been criticized over the years because of the potential for abuse.

Municipal governments need to have the authority to decide the kind of alternate voting method to offer.

Should municipalities be able to make bylaws about the kind of alternate voting methods to offer to voters?

Circle: Yes No

7. Increasing voting opportunities

The *Act* limits opportunities for voters who want to vote but can't attend an advance poll or election day. Returning Officers suggested they could have the

discretion to accept votes from the date that nominations close until Election Day, so that people who are unable to vote at either the advance poll or on Election Day could vote. This would be especially helpful for voters who work on a rotational basis outside the community.

Giving people additional opportunities to vote may have a cost factor because the Returning Officer will have to be available to accept the votes. As well, the voting station has to be advertised.

Question - what are your views? Check as many as you want:

- (a) *Returning Officers should have the option to decide if people can vote in the Returning Officer's office;*
- (b) *The Act should make Returning Officers give people the option of voting in the Returning Officer's Office at certain times and days before the election;*
- (c) *Municipalities should be able to make the rules about increasing voter opportunities;*
- (d) *Alternate suggestions (make as many as you wish. Add additional sheets if necessary:*

8. Proxy votes

Many concerns have been raised about the misuse of proxy votes. The *Act* allows a person to cast 3 proxy votes in addition to their own vote. If enough alternate voting methods are available as discussed in Question 7, proxy voting may not be necessary.

Should proxy voting should be eliminated?

Circle: Yes No

9. Deadlines for proxy vote forms

The *Act* allows proxy votes, but is silent on a deadline for people to pick up the forms and return them to the Returning Officer.

If proxy voting continues, should deadlines be set for picking up and delivering the proxy vote forms to the Returning Officer?

Circle: Yes No

10. Electronic vote counting

The *Act* contains no provision to enable the use of electronic vote counting. Some municipalities would like to use vote counting equipment. Many municipalities in the provinces use a variety of electronic voting systems, with a high degree of accuracy.

Should municipalities be able to use electronic vote counting if they pass a bylaw authorizing electronic vote counting?

Circle: Yes No

11. Tie Votes

If there is a tie vote now, the *Act* requires the Returning Officer to write the names of the tied candidates on separate pieces of paper, put the papers in a receptacle, and draw one piece of paper. The name of the candidate on that piece of paper wins. Most other provinces and territories have the same system, or give the opportunity for a run-off election. Run-off elections are paid for by the municipality.

Should municipalities be able to create a bylaw that would allow a run-off election where there is a tie vote?

Circle: Yes No.

*If you answered "No" to the question above, how should tie votes be handled?
Check the option you prefer*

___ *The present system of the Returning Officer marking two pieces of paper with the candidates' names and drawing them out of a receptacle;*

___ *There should be a run-off election automatically;*

___ *Other (describe)* _____

Must vacate the seat they were elected to;

Can't run for office again for _____ terms;

Pay a fine of up to \$_____.

15. Inducing votes

Section 106 of the *Act* prohibits candidates from making promises or providing money, food, drink, or employment to voters. In the Yukon and Saskatchewan, the prohibition is broadened to prohibit "a reward of any kind".

Should the prohibition be broadened to make it an offence for anyone to promise a reward of any kind in return for a vote?

Circle: Yes No

16. Additional corrupt practices

The *Act* does not include a number of practices that are considered corrupt election practices in other jurisdictions. Those include providing misleading and incorrect election information to candidates and voters, and campaigning on election day.

Should corrupt election practices be expanded to include (check all that should apply):

Providing misleading information

Removing/defacing election signs and posters

Campaigning on election day

17. Role of the Chief Municipal Electoral Officer

The *Act* restricts the role of the CMEO now to advising Returning Officers. The CMEO has no authority to direct Returning Officers and this causes confusion and stress for Returning Officers who may receive contradictory advice from local officials. The lack of authority of the CMEO is contrasted with the authority given to the Chief Electoral Officer (CEO) in the *Elections and Plebiscites Act* (the law

that governs Territorial elections). There, the CEO may issue instructions to election officers on any matter under the Act, as well as exercise a number of powers assigned, such as extending the time for doing any act, increasing the number of election officers at voting stations, or adapting any provision of the Act to the extent necessary in urgent and unplanned circumstances that would prevent the proper conduct of an election.

Should the CMEO have increased powers to give direction to Returning Officers and other powers to ensure that elections are conducted in accordance with the Act?

Circle: Yes No

18. Role of Chief Municipal Electoral Officer in controverted elections

A "controverted election" is an election where the truth of the election is denied, that is, the outcome of the election is questioned because of election irregularities such as the ballots not being clearly printed or people not being allowed to vote.

The Act requires that anyone seeking a new election must submit a petition to the Returning Officer or the CMEO and, with the consent of all the candidates, apply to a judge to either cancel the election in whole or in part, and order a new election. These provisions are very onerous and expensive. There are times when municipalities want to postpone an election such as in the case of a community emergency such as a search and rescue operation, or where a respected elder has passed away and the community needs to attend the funeral and grieve.

Should the CMEO have the authority to stop or postpone an election, rather than requiring the agreement of all candidates and go to a judge for a ruling?

Circle: Yes No

19. Penalties for election offences

Section 111 of the Act sets the maximum penalty for an election offence at a maximum of \$5,000, and in default of payment, to a maximum jail term of one year. If the person who commits the offence is a member of municipal council or the district education authority, in addition to the fine or jail, the person must cease to hold office.

Should the penalties be increased and expanded?

Part 2 - Administrative Changes to the Act

There are a number of changes to the *Act* that can be classified as "administrative" in nature. By that we mean that the issues identified are not controversial, and changes to the *Act* to deal with the issues can be made easily. Some of the issues have been identified by Returning Officers and other local election officials; others have been identified by the Chief Municipal Electoral Officer.

The following changes are proposed as administrative changes.

2-1 Include the eligibility criteria on the nomination paper

The eligibility criteria for both nominating a person, and for seeking election, can be included in the nomination package, as an exhibit to the statutory declaration that nominees and nominators must sign. This change will ensure the nominators and the nominees read the eligibility criteria and state that they have read it, before they sign the nomination papers.

2-2 Damaging or destroying election signs will be an offence

There are no provisions in the *Act* now about damaging or destroying election signs in local authority elections. Section 26 of the *Elections and Plebiscites Act* makes damaging or destroying election signs an offence. The change will make it an offence to damage or destroy municipal election or local education authority signs.

2-3 Removing election signs

The Returning Officer now has no authority to force candidates to move or remove signs that interfere with the election. For example, the Returning Officer has no authority now to move a sign that is too close to the voting station, or a sign that interferes with a voting station sign. This change will give Returning Officers the authority to make candidates move or remove signs that interfere with the election.

2-4 Removing candidate signs after the election

Some communities already have bylaws that force candidates to remove their signs after the election. This new provision will make it an offence if candidates do not remove their signs within 72 hours of the election.

2-5 Clarify the rules for eligibility for criminals, and professionals

Now the *Act* mixes together the eligibility rules for convicted criminals, and members of certain professions and occupations. This section will be reorganized to separate the kinds of personal conduct that make a person ineligible to run for office (certain types of criminal records), from the profession or occupation that make a person ineligible to run (for example, judges).

2-6 When to post the voter's list

Section 24(2) of the *Act* is confusing as it can be misread to mean the 30 day requirement can be avoided. This section of the *Act* will be changed so that the voter's list must be posted at least 30 days before election day, and the Returning Officer may re-post the list as it is updated.

2-7 Making nomination forms public documents

The *Act* is unclear whether nomination papers are public documents. This change will clarify that nomination papers are public documents, and the Returning Office must make nomination papers available for viewing by the public.

2-8 No written request for mobile voting stations

This change will clarify that applicants for a mobile voting station do not have to make a written application. If the Returning Officer rejects the application, written reasons for the rejection must be provided to the applicant.

2-9 Notifying the CMEO of by-elections and plebiscites

There is no requirement in the *Act* for municipal governments to notify the Chief Municipal Electoral Officer when a by-election or plebiscite is held. This change is important so the CMEO is aware of the scheduled by-election or plebiscite, and can be ready to deal with any questions or issues that come up.

2-10 Clarify that ballots must be counted at the voting station

Although there is no rule in the *Act*, the current practise is to count ballots at the voting station. Clarifying this requirement in the *Act* will prevent disputes.

Do you have any questions or concerns about any of the subjects in Part 2?

Please mail or email your answers and/or comments to:

David Kravitz
Chief Municipal Elections Officer
Suite 400
5201 - 50th Avenue
Yellowknife, NT X1A 3S9

Email: David_Kravitz@gov.nt.ca
Please write Discussion Paper Response in the subject line.

If you would like to receive a copy of the report on the consultation results, please send your name, address and/or email address to David Kravitz at the address above.

Summary of Questions

Please mail or email your answers and/or comments to:

David Kravitz
Chief Municipal Elections Officer
Suite 400
5201 - 50th Avenue
Yellowknife, NT X1A 3S9
Email: David_Kravitz@gov.nt.ca
Please write Discussion Paper Response in the subject line.

Questions:

1. Residency requirement: Should the residency requirement be clearly modified to allow for temporary absences?

Circle: Yes No

2. Eligibility and indebtedness: Should the rules about indebtedness apply to persons who wish to run for a district education authority? That is, a person cannot run for the district education authority if he or she owes (or holds the controlling interest in a company that owes) a debt of \$500 or more for more than 90 days to the municipality?

Circle: Yes No

3. Shorten the election calendar
 - (a) Do we need a 2-week nomination period, or would 1 week be enough time for people interested in running, to complete their nomination process?

Circle: 1 week 2 weeks

 - (b) Is the current 5 week period from the close of nominations to elections, too long?

Circle: Yes No

 - (c) The election period should be at least 21 days and no more than 45 days.

Circle: Yes No

4. Notice of plebiscite question: Should the requirements for notice of plebiscite questions be the same as for municipal and district education authority elections?

Circle: Yes No

5. Period for withdrawing nomination

- (a) Returning Officers or the CMEO should have the authority to reprint ballots, when a candidate involuntarily withdraws or dies?

Circle: Yes No

- (b) The CMEO should have the authority to:

- (i) extend the nomination period, when a candidate dies or withdraws

Circle: Yes No

- (ii) reschedule the election

Circle: Yes No

6. Alternate voting methods: Should municipalities be able to make bylaws about the kind of alternate voting methods to offer to voters?

Circle: Yes No

7. Increasing voting opportunities: check as many as you want:

___ Returning Officers should have the option to decide if people can vote in the Returning Officer's office;

___ The *Act* should make Returning Officers give people the option of voting in the Returning Officer's Office at certain times and days before the election;

___ Municipalities should be able to make the rules about increasing voter opportunities;

____ Alternate suggestions (make as many as you wish. Add additional sheets if necessary):

8. Proxy votes: Should proxy voting should be eliminated?

Circle: Yes No

9. Deadlines for proxy vote forms: if proxy voting continues, should deadlines be set for picking up and delivering the proxy vote forms to the Returning Officer?

Circle: Yes No

10. Electronic vote counting: should municipalities be able to use electronic vote counting if they pass a bylaw authorizing electronic vote counting?

Circle: Yes No

11. Tie votes

Should municipalities be able to create a bylaw that would allow a run-off election where there is a tie vote?

Circle: Yes No

If you answered "No" to question 11(a) above, how should tie votes be handled? (please circle your choice)

(a) The present system of the Returning Officer marking two pieces of paper with the candidates/ names and drawing them out of a receptacle;

(b) There should be a run-off election automatically;

(c) Other (describe): _____

12. Recount votes

- (a) Should there be an automatic recount in the case of a tie ("equality of votes")?

Circle: Yes No

- (b) Should municipalities be able to make bylaws about when to have a recount when votes are close (for example, the winning candidate received 2 votes more than the next candidate):

Circle: Yes No

13. Prohibiting candidate advertising in the voting station: should a person's refusal to remove buttons, badges, etc., be an offence?

Circle: Yes No

14. Campaign contributions:

- (a) Should municipalities have the power to make bylaws to require candidates to report campaign contributions and expenses?

Circle: Yes No

- (b) If you answered yes to question 14(a) above, what should the penalty be? (check all that you want to apply)

___ Must vacate the seat they were elected to;

___ Can't run for office again for ___ terms;

___ Pay a fine of up to \$_____.

15. Inducing votes: should the prohibition on inducing votes be broadened to make it an offence for anyone to promise a reward of any kind in return for a vote?

Circle: Yes No

