

Report of the Chief Electoral Officer on

# RECOMMENDATIONS FOR LEGISLATIVE CHANGE

MAY 2022

# **Report of the Chief Electoral Officer**

Recommendations for Legislative Change

May 2022





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May 30, 2022

Honourable Raj Chouhan  
Speaker of the Legislative Assembly  
Province of British Columbia  
Parliament Buildings  
Victoria, British Columbia  
V8V 1X4

Dear Mr. Speaker:

I have the pleasure to present the *Report of the Chief Electoral Officer on Recommendations for Legislative Change, May 2022*. This report is submitted to the Legislative Assembly in accordance with section 13(1)(d) of the *Election Act*.

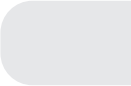
Respectfully submitted,

**Anton Boegman**  
Chief Electoral Officer  
British Columbia

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# INTRODUCTION

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The 2020 Provincial General Election was unlike any other in British Columbia's history. It was our first election held during a pandemic<sup>1</sup> and during a province-wide state of emergency. It was also our first unscheduled election since 2001. An unprecedented number of voters voted by mail, and voting places operated under pandemic response protocols. There was an extraordinary shift in voter behaviour—for the first time, more voters voted at advance voting and by mail than on election day. Despite significant administrative challenges, the election was safe, secure, and accessible thanks to tremendous efforts from election officials, voters, and political participants across the province.

The *Election Act* establishes the legislative framework for provincial elections in B.C. It sets out the authorities, procedures and rules necessary to hold fair, transparent and secure elections. It also provides the Chief Electoral Officer (CEO) with the ability to vary from the provisions of the legislation, if necessary, because of extraordinary circumstances, an emergency or a mistake. This flexibility was used during the 2020 election, to ensure that the election could be administered safely and successfully during the pandemic.

Following each election, Elections BC conducts a comprehensive post-event review. We review our processes to identify what went well and what could be improved. Some improvements can be accomplished administratively, while others require legislative change to put in place.

Based on our post-election review, this report highlights two priority recommendations for legislators to consider. While these recommendations arose from a unique and unprecedented election, we believe they will strengthen our democratic processes in any future election.

The priority recommendations are:

1. Improve the accessibility, efficiency and integrity of the vote-by-mail process
2. Update ballot adjudication criteria to address recent trends

In addition to these priority recommendations, this report contains technical recommendations and includes an addendum to our 2020 recommendations report on cyber threats to electoral integrity. The technical recommendations aim to address recurring administrative problems that could be resolved through legislative change. Brief explanations of these challenges and recommendations for resolving them are contained in the “Additional Technical Recommendations” section, starting on page 9. An updated analysis of issues regarding digital communications and disinformation is found on page 18.

Our post-election review also identified several public policy issues related to B.C.'s electoral law. The requirement for neutral, non-partisan electoral administration makes it inappropriate for the Chief Electoral Officer to make specific public policy recommendations. However, Elections BC is uniquely positioned to identify public policy issues for legislators to consider. These issues will be brought forward in a subsequent report to the legislature.

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<sup>1</sup> — The novel coronavirus was first identified in December of 2019. The World Health Organization declared a global pandemic on March 11, 2020. B.C.'s COVID-19 provincial state of emergency under the *Emergency Program Act* was declared on March 18, 2020 and ended on June 30, 2021, though many public health orders and regulations remained in effect after the state of emergency was lifted.

# THE ELECTION ADVISORY COMMITTEE

We consulted with the Election Advisory Committee when developing the recommendations contained in this report. The *Election Act* establishes an Election Advisory Committee to advise the Chief Electoral Officer on the functioning of the Act.

The Election Advisory Committee consists of:

- the Chief Electoral Officer, who chairs the committee,
- two representatives of each registered political party represented in the Legislative Assembly, and
- one representative of each additional registered political party that endorsed candidates in at least one half of the electoral districts in the most recent general election.

Members of the Legislative Assembly cannot be members of the Election Advisory Committee.

The Chief Electoral Officer must consult the Election Advisory Committee in a number of instances, including before making a recommendation to the Legislative Assembly to amend the *Election Act*. The Election Advisory Committee was consulted on March 1, 2022 regarding the recommendations contained in this report.

The members of the Election Advisory Committee at the time of consultation on this report were:

|                          |                                     |
|--------------------------|-------------------------------------|
| <b>BC Liberal Party</b>  | Cameron Stolz<br>Lindsay Coté       |
| <b>BC NDP</b>            | Heather Stoutenburg<br>Jordan Reid  |
| <b>Green Party of BC</b> | Jeremy Valerioté<br>Jonina Campbell |

# PRIORITY RECOMMENDATIONS

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## Recommendation 1: Improve the accessibility, efficiency, and integrity of the vote-by-mail process

### Background

Mail-in voting has been part of provincial elections in B.C. for over 30 years. Up until 2020, voting by mail was primarily used by voters away from the province during an election. For example, in the 2017 provincial election Elections BC received 11,628 requests for vote-by-mail packages. Almost 70% of these were from voters who would be out of B.C. on election day, most of whom voted by mail before they left the province. About 900 packages were sent to Canadian addresses outside B.C., and about 1,100 were sent to international addresses.

In 2020, the number of vote-by-mail package requests was unprecedented and vastly exceeded anything seen previously. Within the first 48 hours of the election call, 98,000 packages had been requested, which is likely more than all of the requests in every B.C. provincial election since voting by mail was introduced in 1988. Because of the pandemic and the large number of package requests, the profile of voters voting by mail was different: almost all package requests came from voters in B.C. Out of 724,279 packages requested in 2020, only 709 were received from voters overseas.

Several factors drove the increase in voting by mail. Many voters preferred to vote remotely during the pandemic. The option for any voter to vote by mail was emphasized in our public awareness campaign, and there were public health travel restrictions in place when the election was held. Many voters in B.C. were also familiar with the vote-by-mail process, having used it to vote in previous referendums or plebiscites that were conducted entirely by mail<sup>2</sup>. This shift could represent a trend in future post-pandemic elections.

In a survey conducted by the Consortium on Electoral Democracy (CDEM) during the 2020 election, 55% of respondents said they were at least somewhat likely to vote by mail in the next non-pandemic provincial election. The survey also indicated that voters who had voted by mail in the past said they were more likely to vote by mail in the future<sup>3</sup>.

It remains to be seen whether interest in voting by mail will remain at the very high level we saw in 2020. Regardless, a number of enhancements can be made to the current process to provide a higher level of service to voters. Our recommended changes are outlined below.

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2 — Province-wide, mail-based referenda were held in B.C. in 2011 and 2018. A regional plebiscite was held by mail in the lower mainland in 2015.

3 — Mark Pickup, Laura B. Stephenson and Allison Harell, 2020 British Columbia Election Study.



## Modernizing how voters prove their identity when voting by mail

Legislation establishes a number of integrity checks in the current vote-by-mail process. Voters must sign a declaration that confirms their identity and eligibility to vote. Another individual must witness this declaration. Voters who register in conjunction with voting by mail, or who need to update their registration to a different electoral district, must also prove their identity and residential address by including physical photocopies of acceptable ID in their returned vote-by-mail package.

Both authentication methods are dated. They have been in place since the mid-1990s, before the development and widespread adoption of secure digital technologies. Both methods proved problematic during the 2020 Provincial General Election.

The witness declaration ran counter to public health restrictions, and could have presented a barrier to voters who were self-isolating. As a result, an exception to this requirement was made by an Order of the Chief Electoral Officer. Instead of providing a witness signature, voters provided their birthdate on their vote-by-mail package to confirm their identity. This is a best practice that has been integral to past provincial vote-by-mail events. Using a birthdate as a shared secret allowed us to efficiently confirm the voter's identity, ensure they had only voted once, and ensure that an individual did not vote using another voter's voting package. Given the success of this method in 2020, we recommend that voters provide their birthdate when voting by mail in future elections, instead of providing a witness signature.

Another challenge in 2020 was the requirement for voters who were registering or updating their information to provide physical photocopies of acceptable identification in their vote-by-mail package. While this method was workable, it was administratively burdensome for voters and election officials. Access to a photocopier or printer is not universal and pandemic conditions exacerbated this barrier. Physical copies of identification documents have to be reviewed manually as part of the package screening process, which is inefficient and increases package processing times. Various solutions exist which could give voters the option of proving their identity and residential address digitally when they request a vote-by-mail package, eliminating the need to provide physical copies of identification documents. For example, some Canadian jurisdictions allow voters to upload a photo of acceptable identification when they request a vote-by-mail package. There are also procedures for secure digital identity verification used by other B.C. public sector programs that could be adapted for this purpose.

We recommend that legislators give the Chief Electoral Officer the authority to establish procedures for voters who are registering or updating their registration in conjunction with voting by mail to prove their identity and place of residence. The legislative framework should provide flexibility for the CEO to keep these procedures in line with advances in technology.

## Providing voters with more options for returning their vote-by-mail package

In 2020, voters could return their vote-by-mail package by mail, or in person at any Service BC location, district electoral office or voting place. Previously in provincial elections voters could only return their voting package in person to the district electoral office that issued the package. The ability to return a package to a voting place or Service BC location was established in 2020 through an emergency Order of the Chief Electoral Officer. This order was put in place during the pandemic to increase accessibility, and make returning a voting package on time as easy as possible. The additional return options were particularly beneficial for voters who requested their package late in the campaign, when it was too late to return the package by mail.

Currently the *Election Act* only allows a vote-by-mail package to be returned by mail or in person to any district electoral office in the province. We recommend amending the Act to allow voters to return their voting package to any voting place. We also recommend legislators allow the Chief Electoral Officer to establish other return locations, such as Service BC centres, through CEO regulations. This would carry forward the successful model used in 2020 and provide enhanced opportunities for future innovation. For example, this would enable Elections BC to establish secure, 24-hour ballot drop-boxes in locations that may require additional service options. In support of this recommendation, the *Election Act* would need to allow election officials to process vote-by-mail packages “as soon as possible” after receipt, instead of “immediately upon receipt” as the Act currently requires. The Act should also be amended to establish a clear definition of when a voter has voted by mail. This would provide certainty to voters who complete a voting package but then decide to vote in person instead.

## Definition of when a voter has voted

Section 274 of the *Election Act* currently defines proof that a voter has voted, but does not clearly define when a voter has voted. The interpretation of this varies by voting opportunity based on current practice. Voters at each voting opportunity or option complete a series of requirements and steps to receive and complete their ballot. In practice, completing these steps is recognized as fulfilling the voting process. For example, a voter voting in person is considered to have voted when their marked ballot is deposited into the ballot box. A voter who votes by mail is considered to have voted when their vote-by-mail package is received by Elections BC prior to the close of voting, although they may have marked their ballot or mailed their voting package days or weeks earlier.

At every voting opportunity and option, the voter must declare that they are entitled to vote in the election and have not previously voted in the election. In 2020, some voters who mailed their vote-by-mail package were concerned that it would not arrive before the close of voting and went to a voting place to vote there instead. Under the current rules, it was unclear whether they could truthfully declare that they had not already voted in the election, as they did not know whether Elections BC had already received their vote-by-mail package. Additional clarity around when a voter is considered to have voted will reduce confusion for voters and election officials when completing the voting declaration and increase the integrity of the voting process.

Creating a definition of when a voter has voted would also establish a clear foundation for developing a correction process for vote-by-mail packages, as discussed below.

Furthermore, the definition of proof that a voter has voted under section 274 currently does not include vote-by-mail packages returned in person at a district electoral office under section 107(2). As these packages are treated the same as packages returned by mail, this technical oversight should be addressed.

## Recommendations

- Amend section 274 to include vote-by-mail packages returned in person at a district electoral office under section 107(2) as proof that a voter has voted.
- Amend the Act to specify that a voter has voted when they either deposit their ballot into a ballot box or tabulator, or return their vote-by-mail package by depositing it into the mail or at an authorized drop-off location.

## Enabling the correction of inadvertent errors that would otherwise disenfranchise voters

While the overall error rate for mail-in ballots in 2020 was extremely low, voters do make mistakes when voting by mail. Voting by mail is an unsupervised voting opportunity that takes place without the in-person guidance of election officials. As a result, election officials do not have the opportunity to correct inadvertent errors made by voters when completing their package<sup>4</sup>. Allowing voters to correct a mistake on their voting package would be a beneficial enhancement to the vote-by-mail process.

In 2020, errors observed included transcription errors when entering a birthdate as a shared secret on a certification envelope, and returning voting materials outside of the certification envelope. Both types of errors were also observed in past vote-by-mail events, such as the 2018 Referendum on Electoral Reform and the 2015 Metro Vancouver Transportation and Transit Plebiscite. Because of improved instructions and voting package design, the error rate in 2018 was much lower than in 2015. The same voting package design was used in 2018 and 2020<sup>5</sup>.

Modeled on similar processes in other jurisdictions, the Electoral Reform Referendum 2018 Regulation included a process to correct voter errors on vote-by-mail packages. The *Election Act* does not currently allow for this. We recommend the *Election Act* be amended to establish a correction process for incorrectly completed vote-by-mail packages and certification envelopes containing absentee ballots, based on the correction process used in 2018. This would allow us to contact a voter if they make a mistake completing their vote-by-mail package and give them an opportunity to correct it. For example, if a voter forgot to include their birthdate, or forgot to sign their certification envelope, we would contact them to give them an opportunity to provide the missing information necessary to make their vote count.

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4 — In the 2020 Provincial General Election, 7,824 vote-by-mail packages did not meet the legislated screening requirements. These packages were set aside and not counted. This figure represents 1.3% of the 604,111 packages returned by the deadline.

5 — The rate of packages set aside was 4.81% in 2015, 0.76% in 2018, and 1.3% in 2020.

## Custom ballot and instructions for vote-by-mail

Accessible voting opportunities are integral to B.C. elections. Voters can vote through a variety of voting opportunities, from when an election is called up until voting closes on election day. Both write-in ballots (where the voter writes the name of the party or candidate of their choice) as well as ordinary ballots (that show the candidate's name and party affiliation) are widely used. Write-in ballots are used at voting opportunities that take place before candidate nominations close, and for vote-by-mail packages requested before candidate nominations close.

Voters voting by mail with a write-in ballot complete unique steps. For example, in order to write the name of the candidate or party of their choice, they must identify the candidates running in their electoral district on the List of Candidates<sup>6</sup>. Furthermore, when completing their vote-by-mail package these voters are not instructed and supervised by election officials, so it is important to provide them with clear and concise instructions.

Including custom instructions on the paper that contains the ballot is an effective tool to get voters to complete their ballot correctly. However, section 86(5) of the *Election Act* requires write-in ballots to be prepared in the form prescribed by regulation. Given the unique instructional needs for voting by mail with a write-in ballot, and the fact that write-in ballots are used at other voting opportunities, our recommendation is to provide the Chief Electoral Officer with the authority to set a different write-in ballot form for vote-by-mail, than that used for in-person voting.

### Recommendations

In summary, our recommendations to address the issues discussed above and increase the accessibility, efficiency, and integrity of the vote-by-mail process are:

- Use the voter's birthdate as a shared secret to confirm a voter's identity on their vote-by-mail package in place of a witnessed signature.
- Authorize the Chief Electoral Officer to specify or prescribe how voters must prove their identity and residential address when registering to vote in conjunction with voting by mail.
- Allow voters to return their vote-by-mail package in person to any voting place, and authorize the Chief Electoral Officer to establish additional in-person drop-off locations via regulation.
- Allow election officials to process returned vote-by-mail packages "as soon as possible", rather than immediately upon receipt as the *Election Act* currently requires.
- Establish a correction process for vote by mail packages similar to that established in the Electoral Reform Referendum 2018 Regulation.
- Establish a clear definition for when a vote-by-mail voter has cast their ballot.
- Provide the CEO with the authority to set a different write-in ballot form for vote-by-mail.

<sup>6</sup> — Voters who request a vote-by-mail package after candidate nominations close receive a voting package that includes an ordinary ballot with the names of the candidates running in their electoral district.

## Recommendation 2: Update the criteria for adjudicating ballots to address recent trends

### Background

In B.C.'s Westminster-style parliamentary system, voters vote for a candidate running in their electoral district. Voters use a write-in or ordinary ballot depending on the voting opportunity, and ballots are adjudicated based on criteria established in section 123 of the *Election Act*. The Act defines specific cases where ballots must be rejected:

- marking more than one choice on an ordinary ballot,
- making no mark on a ballot,
- marking a ballot with identifying information, or,
- writing the name of a candidate or party not running in the voter's electoral district on a write-in ballot (this includes writing the name of a party leader on a write-in ballot, if the party leader is not running in the voter's electoral district).

Where ballots are not specifically rejected, the Act establishes that voter intent is key when adjudicating ballots. For example, section 123(c) states that write-in ballots with misspelled candidate or party names should not be rejected, as long as they clearly indicate the voter's intention to vote for a candidate in their electoral district. For ordinary ballots, any clear, non-identifiable mark for a candidate is counted.

In modern election campaigns, however, party leaders are increasingly synonymous with their party and its campaign. They are the focus of the party's advertising and messaging to the public. While voters do not directly vote for a party leader in our parliamentary system (they vote for their local candidate), many voters think they are voting for a party leader when they cast their ballot. The intent of a voter who writes the name of a party leader on a write-in ballot is clear, even if the leader is not running in the voter's electoral district. They want it to count for that leader and party. To establish this clearly in our elections, legislative change would be necessary.

In 2020 a large number of voters requested vote-by-mail packages before candidate nominations closed, which meant they received a write-in ballot in their package. As a result we received many questions about how to complete write-in ballots, as well as questions about write-in ballots marked with the name of a party leader. Currently, we accept write-in ballots with the name of a party leader only if the leader is a candidate in the voter's district. If a write-in ballot was marked with the name of a party leader, and that leader was not running in the voter's district, the write-in ballot would be rejected.

### Recommendation

The Chief Electoral Officer recommends updating the criteria for ballot adjudication under section 123 of the *Election Act* to make explicit that:

- writing the name of a political party leader on the ballot should be considered equivalent to writing their political party's name, and therefore counted towards the party's candidate in that district.
- writing the name of a candidate in a different electoral district, other than a party leader, on the ballot should result in that ballot being rejected.

# ADDITIONAL TECHNICAL RECOMMENDATIONS

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In addition to the priority recommendations outlined above, we identified a number of technical issues during the 2020 election that legislative change could remedy. These technical recommendations fall under the categories of administration, accessibility, transparency, enforcement, and service.

- **Administration**
  - Secrecy sleeves
  - Statutory advertising
  - Specified dates and times
  - Counting authority
- **Accessibility**
  - Provisions for voters needing assistance to mark their ballots
  - Residents of site-based voting areas
- **Transparency**
  - Public inspection of documents
  - Publication of administrative monetary penalties
- **Enforceability**
  - Ensuring an effective enforcement model
- **Service**
  - Improving the candidate nomination process
  - Reimbursement cheques being addressed to the financial agents directly

## Administration

### Secrecy sleeves

Absentee and mail-in ballots are put into secrecy envelopes, which are then put into certification envelopes. The secrecy envelope separates the voter's marked ballot from their personal information on the certification envelope. Certification envelopes are used to confirm the voter's eligibility and ensure they only vote once. When certification envelopes are opened, the secrecy envelope inside is removed and separated before being opened. This makes it impossible to tie the voter's vote back to their certification envelope and preserves the secrecy of the vote.

An unsealed secrecy sleeve serves the same function as a secrecy envelope. Secrecy sleeves are easier and faster for election officials to open, and they are less expensive and easier to produce than secrecy envelopes.

Elections BC used secrecy sleeves in the mail-based 2018 Referendum on Electoral Reform, and in the vote-by-mail package used in the 2020 Provincial General Election. An Order of the Chief Electoral Officer was required to vary from existing legislation to allow the use of a secrecy sleeve in 2020.

#### **Recommendation**

Amend section 87 to allow the use of a secrecy sleeve or a secrecy envelope.

### Statutory advertising

The *Election Act* currently requires that the Chief Electoral Officer publish a notice of election within eight days of an election being called. The notice must be published on the internet, in newspapers circulating in the affected electoral district(s), and in other media including television and radio. In the case of an unscheduled election call, it may be challenging to schedule publication in certain media in some parts of the province within this window. For example, it is becoming more challenging to publish newspaper ads in affected electoral districts within a certain timeframe, given changes in the media industry.

#### **Recommendation**

Amend section 28 to require that notice of an election be published as soon as possible after an election call, rather than within a set timeframe.



## Specified dates and times

Section 280 of the *Election Act* gives the Chief Electoral Officer the power to issue Orders to vary from the Act if necessary because of an emergency, mistake or extraordinary circumstance. For example, Order 008-2020 modified processes for voting by mail during the 2020 Provincial General Election. Among other modified procedures, this Order allowed voters to return their voting packages in person at Service BC offices. However, some Service BC offices are closed on weekends, and General Voting Day for the 2020 election fell on a Saturday.

Under the *Interpretation Act*, if a day that is specified for doing an act in a business office falls on a holiday or a day that the office is not open during regular business hours, the day specified is considered to be the next day the office is usually open.

Dates, times and deadlines that occur during the election and campaign periods are time sensitive. The close of voting must occur at the same time across the province to ensure the integrity of the election. Under the provisions of the *Interpretation Act*, a voting package returned to a Service BC office on the Monday following a Saturday General Voting Day could be considered to be received before the close of voting, even though the voter could have completed it after the close of voting and preliminary election results were announced.

### Recommendation

Amend section 280(2) to specify that dates and times during the election period that are specified in the *Election Act* or in Orders of the Chief Electoral Officer are exempt from section 25.5 of the *Interpretation Act*, unless otherwise stated.

## Counting authority

Currently section 129 of the *Election Act* specifies that preparations for final count and the count itself must be conducted by the district electoral officer, who may be assisted by election officials. Similarly, section 136 specifies that recounts may be conducted by the district electoral officer at final count. The Chief Electoral Officer does not have the authority to conduct final count or any recounts. These counts may only be conducted by the district electoral officer and their delegated staff.

The Chief Electoral Officer has the authority to count ballots returned by mail and Assisted Telephone Voting ballots at a central location during initial count. If Elections BC headquarters staff are unable to count all of these ballots at initial count, the remaining ballots must be returned to the electoral district for which they were cast so the district electoral officer may count them at final count. Sorting, mailing and receiving these ballots at district electoral offices is resource-intensive and time consuming. It would be more efficient for the Chief Electoral Officer to have the authority to conduct final count and recounts for ballots from these two voting options at Elections BC headquarters or a designated central location. The proposed central counting proceedings should include opportunities for candidate and party representatives to observe and object to counting decisions, in line with other provisions in the Act.

### Recommendations

- Authorize the Chief Electoral Officer to conduct final count for ballots administered under the remote voting provisions of the *Election Act* (sections 106, 108 and 108.01).
- Authorize the Chief Electoral Officer to conduct a recount of ballots considered under remote voting provisions of the *Election Act* counted during initial count, similar to the powers in section 136(1)(a) and (b).
- Ensure designated representatives of registered political parties entitled by s. 119(2)(d) to observe counting proceedings conducted by the Chief Electoral Officer have the same rights and responsibilities as candidate representatives, for initial count, recounts and final count.



## Accessibility

### Provisions for voters needing assistance to mark their ballots

While the Act includes provisions for voters who are unable to mark a ballot in a voting place or unable to complete their mail-in voting package to be assisted by an election official (if present), another individual or a translator, there are no equivalent provisions for voters who require assistance or translation when voting in a district electoral office. There are also minor inconsistencies in the provisions regarding assistance during mail-in voting.

#### Recommendations

- Amend section 109(1)(a) to ensure the assistance provisions apply to voters who attend to vote at a district electoral office—which is defined as an “alternative voting option” under the Act—as well as a “voting opportunity”.
- Amend section 109.01 to add a requirement that an individual assisting a voter to complete their vote-by-mail package must record their name on the voter’s certification envelope.
- Clarify that the requirement for a solemn declaration under section 269 does not apply to assistance and translation services provided to voters using vote-by-mail packages.

### Residents of site-based voting areas

The Chief Electoral Officer may establish site-based voting areas (SVAs), where special voting opportunities are administered under general voting rules. SVAs are residential care facilities—that is, they provide both medical care and a permanent home to their residents. Prior to an election, district electoral officers work with SVA administrators to ensure that resident lists are complete and accurate. Given the challenges faced by residents of these facilities, it can be difficult for them to access the usual range of identification documents—such as drivers licences, utility bills or tenancy agreements—commonly used by other voters. Moreover, documentary proof of a voter’s address is not practically needed when voting is, by definition, being administered at their residence.

#### Recommendation

Amend the Act to remove the requirement for voters who are residents of a site-based voting area to prove their residential address when voting at the opportunity administered at their SVA. These voters would be required to present identification proving their name only.

# Transparency

## Public inspection of documents

Elections BC publishes electoral financing information online in the Financial Reports and Political Contributions System (FRPC). Information available in this system includes reports filed by political parties, candidates, leadership contestants and others, as well as political contribution amounts and contributor names. Because the retention periods for these records is not specified under legislation, they are retained indefinitely.

Although some information, like these records, is publicly accessible online in FRPC, other documents are only available for public inspection in person at Elections BC's headquarters in Victoria. While these records are available to any member of the public who wishes to access them, doing so is not practical for the majority of B.C.'s population who may be several hours and a flight or ferry ride away. An individual who wishes to access a public document in this way is also required to complete a privacy policy that is acceptable to the Chief Electoral Officer, though other information is available in FRPC without any such barriers.

Personal information is redacted before the documents are made available for public inspection, though the redaction process is not standardized under legislation. Establishing classes of information for redaction, such as home address and personal contact information, would ensure that privacy concerns are addressed and that documents are redacted consistently.

## Recommendations

- Specify the retention periods for documents and files in Elections BC's Financial Reports and Political Contributions System (FRPC).
- Amend the following sections to remove the requirement to make documents available for public inspection at the office of the Chief Electoral Officer, and replace with a requirement to publish these documents on an Elections BC authorized internet site during the required retention period, as applicable.
  - Sections 59(2) and (5), 80, 149, 162, 209(6), 211(5), 215.01, 250
- Authorize the Chief Electoral Officer to make Regulations to establish classes of information that may be redacted on documents that are published or made available for public inspection.
- Remove the requirement for an individual to submit a privacy policy acceptable by the Chief Electoral Officer before accessing documents or records available for public inspection, other than voters lists.

## Publication of administrative monetary penalties

The *Election Act* establishes administrative monetary penalties for some cases of non-compliance with the Act. The Chief Electoral Officer has the authority to determine whether non-compliance has occurred and, if so, the amount of the penalty within ranges established by the Act. Currently, the Chief Electoral Officer is required to publish notice in the BC Gazette that an administrative monetary penalty has been applied “as soon as possible”, and Elections BC publishes administrative monetary penalty notices on its website as well as in the BC Gazette. With the introduction of new administrative monetary penalties in 2019, Elections BC anticipates a higher volume of penalties to be published in the future. Publication on a regular basis on Elections BC’s website would be a more efficient tool for public notification of these penalties.

### Recommendations

- Amend section 216 to replace the current requirements for publication of administrative monetary penalties in the Gazette with a requirement to publish this information on an Elections BC authorized internet site and in the annual report of the Chief Electoral Officer.
- Amend the requirement to publish notice of an administrative monetary penalty “as soon as possible” with a requirement to publish notice on a regular schedule (e.g. monthly or quarterly).

# Enforceability

## Ensuring an effective enforcement model

Having an effective and workable enforcement model is critical to applying the *Election Act* equitably, administering elections freely and fairly, and deterring noncompliance with legislated rules. The Act currently establishes both offences and administrative monetary penalties (AMPs) for different types of non-compliant activities. The Chief Electoral Officer has discretion to apply a quasi-criminal or an administrative approach to violations of the Act, leading to an offence or a monetary penalty, as appropriate.

Offences are reserved for more serious cases of noncompliance. They typically require a long investigation, must meet criminal offence evidentiary requirements, necessitate a determination by Crown Counsel on whether to lay charges, and result in a Court trial.

The Chief Electoral Officer administers AMPs based on an assessment of the non-compliant activity. They are time-efficient, administratively fair, and allow for flexibility based on mitigating factors. When there are inadvertent contraventions of the Act, or those that do not meet criminal offence standards, an AMP may be a more appropriate measure.

It is critical that the Chief Electoral Officer's "toolbox" of regulatory mechanisms is flexible, fit for purpose, and able to be applied efficiently and fairly. The following recommendations are intended to ensure that mandatory requirements for political participants under the Act are always enforceable through specific provisions.

## Recommendations

- Amend section 233 to add authority for the Chief Electoral Officer to issue takedown orders for digital advertising on Final Voting Day.
- Amend the Act by adding provisions that authorize:
  - penalties for candidates who submit nomination documents that have been fraudulently completed;
  - late filing requirements for initial and subsequent disclosure reports;
  - penalties for political parties that fail to report nomination contest information supplied by the deadline;
  - penalties for violating rules prohibiting advertising on Final Voting Day, placing election advertising within 100 meters of a voting place, and advertising using another organization or individual's property;
- At the Chief Electoral Officer's discretion:
  - an option to enter into a public censure or compliance agreement instead of applying an administrative monetary penalty, in certain cases; and
  - an option for administrative monetary penalties in some cases of multiple or corrupt voting.

## Service

### Improving the candidate nomination process

The candidate nomination process as currently defined under the *Election Act* is a prescriptive, multi-step process. Prospective candidates are required to file nomination papers either directly with Elections BC before an election is called (standing nominations) or with the district electoral officer for the candidate's district after the election call (ordinary nominations).

Occasionally, Elections BC receives nomination papers that are incomplete or filled out incorrectly. There are currently no provisions under the Act for Elections BC to correct administrative errors or omissions in nomination documents when the prospective candidate is not physically present. For example, if a candidate forgets to complete a field on the nomination form, the entire nomination document must be resubmitted. A more efficient process would allow us to contact the candidate to correct administrative errors or complete accidental omissions, without requiring the candidate to complete new nomination papers. Similarly, Elections BC is not permitted to complete administrative corrections on financial reports submitted by candidates, leadership contestants or political parties. Political participants must resubmit the reports or file an amendment to correct any errors, even those that are small or clerical in nature.

This process for correcting errors can cause delays in accepting a candidate's nomination. Nominations that begin as standing nominations cannot be completed as ordinary nominations. This means that a candidate that files nomination papers with inadvertent errors using the standing nomination process must correct those errors before an election is called. If they are unable to complete their nomination papers before the writs are issued, they must file new nomination papers using the ordinary nomination process if they wish to become a candidate.

#### Recommendations

- Amend sections 56 and 57 to allow the Chief Electoral Officer and their appointed officials to correct deficient nomination documents.
- Amend Part 10 to add a provision allowing the Chief Electoral Officer and their appointed officials to correct deficient financial reports.
- Amend section 57 to allow for nominations commenced during the standing nomination period to be completed during the ordinary nomination period.

## Reimbursement cheques being addressed to the financial agents directly

Candidates and political parties may be reimbursed from the consolidated revenue fund for certain election expenses. However, the Act states that these public fund reimbursements are to be paid to the financial agent rather than the candidate or political party. This contravenes standard financial practices, creates opportunities for fraud, and is inconsistent with the legislative financial framework.

### **Recommendation**

Amend s. 215.04(4) and (5) of the Act to allow for election expense reimbursement payments to be made directly to a candidate's campaign account or to a political party. This would reduce the potential risk involved in issuing payments to financial agents for significant amounts of money and promote accurate accounting of public funding that eligible candidates and political parties may receive.

# ADDENDUM: DIGITAL COMMUNICATIONS, DISINFORMATION AND DEMOCRACY REPORT GAP ANALYSIS

The Chief Electoral Officer published a report in May of 2020 recommending updating the *Election Act* to ensure B.C.'s electoral process remains fair and transparent in the era of digital campaigning. The report recommended taking proactive measures to protect the electoral process from cyber threats to electoral integrity that have occurred in other jurisdictions.

Our review into potential cyber threats and the risks they pose to electoral integrity began in the summer of 2018, following the publication of an interim report on disinformation and fake news by the U.K. parliament's Digital, Culture, Media and Sport (DCMS) committee. The DCMS report's revelations around digital campaigning and the Cambridge Analytica scandal, coupled with increased media coverage around digital threats to elections, galvanized us to conduct a detailed review of the risks posed to B.C. elections.

We reviewed B.C.'s current campaign financing and election advertising legislation in the context of cyber threats to electoral integrity as part of our work. While many provisions in our legislation are equally effective regardless of whether campaigning is digital or analog, certain aspects require changes to ensure the regulatory framework is fully fit for purpose in today's digital landscape.

The current risk environment has continued to evolve since the publication of that report, and we continue to monitor emerging trends in this space. Concerted disinformation campaigns were a significant factor in the 2020 U.S. presidential election, and have taken on additional gravity in the era of COVID-19.

While these threats were not widely observed in B.C.'s 2020 provincial election, the risks they present to our electoral process are real. In 2021 Canada's Communications Security Establishment (CSE) warned that it is "very likely that Canadian voters will encounter some form of foreign cyber interference (i.e., cyber threat activity by foreign actors or online foreign influence) ahead of, and during, the next federal election"<sup>7</sup>. Similar threats have been seen in other Canadian jurisdictions as well. During Alberta's 2021 civic elections and provincial referendum, social media posts impersonating the province's election agency appear to have disseminated false information with the intention of damaging the agency's credibility.

The following additions to our 2020 recommendations are intended to give Elections BC the tools it needs to more effectively regulate digital campaigning and mitigate the risks of cyber threats to electoral integrity.

## False statements about vendors and contractors

Our first recommendation in the 2020 report proposed restrictions on intentionally impersonating or making false statements about political parties, candidates or Elections BC. The Chief Electoral Officer recommends extending this recommendation to protect vendors and contractors providing services to the Chief Electoral Officer from intentional impersonation or false statements in order to provide an additional layer of security for electoral administration.

7 — "Cyber Threats to Canada's Democratic Process", Communications Security Establishment, July 2021, <https://cyber.gc.ca/sites/default/files/2021-07/2021-threat-to-democratic-process-3-web-e.pdf>.

The restrictions on false statements about service providers could be similar in scope to those added to the *Canada Elections Act* before the 2019 federal election. Legislators would need to carefully consider what type of restrictions are appropriate and demonstrably justifiable in a free and democratic society with the right to free expression guaranteed by the *Canadian Charter of Rights and Freedoms*.

## False statements about election results

Our second recommendation in the 2020 report proposed restrictions on deliberate disinformation about the electoral process including, but not limited to, voting eligibility, dates, times and locations. While the goal of these restrictions is to prevent disinformation that could result in voters being unable to exercise their franchise, observations of elections outside British Columbia have shown an increasing trend towards disinformation that is intended sow distrust in democratic processes, and to call the results of the election into doubt. To address this, and for greater certainty, the Chief Electoral Officer recommends that restrictions be established against deliberate false statements and disinformation about election results. Legislators would need to craft these restrictions in such a way that they do not limit legitimate activities established in the *Election Act*, such as requesting recount on the basis of an incorrect ballot account. Restrictions should exempt satirical expression, and could also be limited to false statements that were knowingly made with malicious intent.

## Prohibiting advertising on non-compliant platforms

Recommendation 6 in our 2020 report addressed the issue of digital platform compliance with the *Election Act*. The Act establishes Elections BC's authority to "remove and destroy" non-compliant election advertising. This authority is difficult to enforce for digital advertising. Elections BC is unable to remove content hosted by digital platforms without the platform's assistance. In an election, digital content that contravenes the *Election Act* may continue to cause harm if it is not removed quickly. There is currently no impact on a platform should they fail to act in a timely fashion. Given the size and economic power of the major online platforms, the current penalties in the Act are insufficient to ensure digital platform compliance.

In our 2020 report, the Chief Electoral Officer recommended establishing specific timeframes within which digital platforms must remove non-compliant advertising and establishing a duty of care for digital platforms that obliges them to minimize the harm caused by non-compliant content. We also recommended instituting significant and meaningful fines for digital platforms that fail to remove non-compliant content within the established timeframe, or fail to meet their duty of care.

Legislators may wish to consider further mechanisms to minimize the harm caused by non-compliant advertising. This could include providing the Chief Electoral Officer with the authority to prohibit advertisers from sponsoring election advertising on platforms that have repeatedly failed to takedown non-compliant advertising, or repeatedly failed to meet their duty of care. This would help address the risk of platforms outside of Canada refusing to abide by B.C.'s election advertising rules (by prohibiting political participants from placing ads on any such platform). Such prohibitions could apply to digital and traditional media platforms that repeatedly publish non-compliant advertising and fail to take appropriate steps.





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