

Chapter 17

AN ACT RESPECTING NUNAVUT ELECTIONS

(Assented to June 9, 2011)

The Commissioner of Nunavut, by and with the advice and consent of the Legislative Assembly, enacts as follows:

PART 1

Nunavut Elections Act

1. **The *Nunavut Elections Act* is amended as set out in this Part.**
2. **(1) Subsection 2(1) is amended as follows:**
 - (a) **the definition of "official voters list" is repealed;**
 - (b) **the definition of "polling station" is amended by striking out "official";**
 - (c) **the definition of "preliminary voters list" is repealed;**
 - (d) **the following definition is added in alphabetical order:**

"vote" means to vote in an election; (*vote*)

3. **Section 4 is repealed and the following substituted:**

Residence rules

4. (1) For the purposes of this Act, the place of residence of a person shall be determined by reference to all the facts of the case and by the provisions of this section, as far as they are applicable.

Place of home or dwelling

- (2) The residence of a person is the place of the person's home or dwelling in which he or she actually resides.

Absence for temporary purpose

- (3) A person does not lose residence in the place of the person's home or dwelling by leaving it for a temporary purpose, including
 - (a) the pursuit of education at an educational institution, whether inside or outside Nunavut; or
 - (b) temporary employment at a place, whether inside or outside Nunavut.

Limit on absence for temporary purpose

- (4) A person who leaves his or her home or dwelling for more than 10 months is considered to have lost residence in that place, except in the case of a full time student who is attending an educational institution and working toward a degree, diploma or certificate.

Selection of residence

(5) A person to whom subsection (3) applies may, instead of the place of the person's home or dwelling, select the place where the person is temporarily residing as his or her place of residence.

Homeless persons

(6) The residence of a person who has no home or dwelling is any place offering food or lodging where the person usually sleeps or takes meals.

Single residence

(7) A person may have a residence in only one place and, if a person maintains a home or dwelling in more than one place, the person must select one home or dwelling as his or her place of residence.

Prisoners

(8) Despite subsections (3), (4) and (5), a person who is confined to a penal or correctional institution shall select one of the following places of residence:

- (a) the person's place of residence before being confined; or
- (b) the place where the person's family resides.

Deemed residence

(9) A place of residence selected by a person under this section shall be deemed to be the place in which the person resides.

Change of residence during general election

(10) A person who changes his or her place of residence from one constituency to another after the day the writ is issued in a general election may vote in the constituency to which he or she moved by registering to vote in that new place in accordance with section 65.

Residence for by-election

(11) No person is entitled to vote at a by-election unless he or she is resident in the constituency on the day the writ is issued and continues to be resident in the constituency until election day.

Seasonal residence

(12) No person is to be considered resident in a home or dwelling that the person occupies seasonally for a period not exceeding a total of 180 days a year, unless at the time of an election the person has no residence in any other place.

4. (1) Subsection 11(1) is repealed and the following substituted:

Right to be a candidate

11. (1) Subject to this section, every person has a right to be a candidate in an election if, on election day, the person is qualified to vote in the election.

(2) The following is added after subsection 11(1):

Eligibility of non-resident candidates

(1.1) Despite being prohibited from voting in a constituency pursuant to subsection 9(2), a person who does not reside in the constituency is eligible to be a candidate in the constituency if, on election day, the person otherwise meets the requirements of section 7 and subsections (2) to (4).

(3) Subsection 11(2) is amended by

- (a) in the English version, adding "or" at the end of the paragraph (e); and**
- (b) repealing paragraph (f).**

(4) The following is added after subsection 11(2.1):

Ineligible candidates – non-compliance

(2.2) A person is not eligible to be a candidate if, on the day the person files his or her declaration of candidacy,

- (a) the person signed a compliance agreement in respect of a previous election;
- (b) the person did not comply with the compliance agreement; and
- (c) the period of time between the date of non-compliance, as determined by the Integrity Commissioner, and election day is five years or less.

(5) Subsection 11(3) is amended by striking out "until after" and substituting "until 5 years after".

5. Section 14 is repealed and the following substituted:

Decennial adjustment

14. A Boundaries Commission must be established for Nunavut every ten years commencing in 2022.

6. Section 15 is repealed.

7. (1) Subsection 43(1) is amended by striking out "preliminary" wherever it appears.

(2) Subsection 43(2) is amended by striking out "Preliminary voters" and substituting "Voters"

8. Section 54, and the heading "Preliminary Lists of Voters" immediately preceding it, are repealed and the following substituted:

Voters Lists

Issue of voters list

54. (1) The Chief Electoral Officer shall compile the voters list for each constituency without delay after the writ is issued.

Contents of voters lists

(2) The voters list must set out the qualified voters in the constituency, based on the most accurate information compiled under subsection 43(2).

Accuracy of information

(3) The Chief Electoral Officer shall take reasonable measures to verify the accuracy of information incorporated into a voters list.

Form of voters list

(4) The voters list shall be in the approved written or electronic form and arranged by alphabetical order, address or whatever other method is most convenient.

9. Section 55 is repealed and the following substituted:

Sending copies of voters list

55. (1) The Chief Electoral Officer shall, after compiling the voters list, send copies of it as follows:

- (a) one copy to each candidate in the constituency who requests it;
- (b) one copy to each returning officer.

Posting copy of list

(2) A returning officer shall, after receiving the voters list from the Chief Electoral Officer, post a copy of it in his or her office.

10. Section 57, and the heading "Changes to Preliminary Voters List" immediately preceding it, are repealed and the following substituted:

Changes to Voters List

Notice of voters list

57. A returning officer shall, immediately upon issue of the writ, give public notice of the voters list that includes

- (a) the name of the returning officer;
- (b) the place and times where voters can inspect the voters list;
- (c) the manner of making changes or objections to the voters list; and
- (d) the place and times for the determination of objections to the voters list.

11. Section 58 is repealed and the following substituted:

Duty of returning officer

58. (1) A returning officer shall, during the election period, continually revise the voters list for the constituency by

- (a) recording voters who were omitted from the voters list;
- (b) correcting voter information in the voters list; and
- (c) striking persons who are not entitled to be on the voters list.

Adding to voters list

(2) A returning officer shall add a voter to the voters list, or correct the information on the voters list, where

- (a) a proper registration card for the voter is received by the returning officer; or
- (b) the voter applies in person to the returning officer, provides identification and establishes that he or she is qualified to vote and is entitled to be on the voters list.

Striking from voters list

(3) A returning officer shall, in accordance with the directions of the Chief Electoral Officer, strike a person from the voters list where it is established to the satisfaction of the returning officer that

- (a) the person desires to be struck from the voters list;
- (b) the person has moved from the constituency;
- (c) the person is being added to a voters list for another constituency;
- (d) the person is not qualified to vote in the constituency;
- (e) the person has died; or
- (f) the name of the person appears more than once on a voters list.

12. Section 59, and the heading "Objection to Preliminary Voters List" immediately preceding it, are repealed and the following substituted:

Objection to Voters List

Objection to voters list

59. (1) Any individual who believes that a person on a voters list is not qualified to vote, may object to the inclusion of that person on the voters list by applying to the Chief Electoral Officer before the 20th day before election day.

Objection

(2) An application under subsection (1) must be in the approved form and include

- (a) the name of the applicant;
- (b) the postal address and phone number of the applicant;
- (c) the name of the person to be struck; and
- (d) the grounds for striking the person from the voters list.

Burden of proof

(3) Any individual objecting to the inclusion of a person on a voters list has the burden of proving that the person should be struck from the voters list.

13. Section 60 is repealed and the following substituted:

Notice to person

60. (1) Where an apparently valid objection is made under section 59, the Chief Electoral Officer shall, by the most expeditious means available, take reasonable steps to notify the person who is the subject of the objection of

- (a) the name of the individual making the objection;
- (b) the grounds for the objection;
- (c) the time and manner of responding to the objection; and
- (d) the evidence necessary to override the objection.

Determination of objection

(2) The Chief Electoral Officer shall, no later than the 17th day before election day,

- (a) consider the objection and any response made to it;
- (b) make whatever investigation the Chief Electoral Officer considers necessary;
- (c) make a decision on whether the person should be struck from the voters list; and
- (d) give written notice of the decision to the individual making the objection and the person who was the subject of the objection.

Revision of voters list

(3) The voters list must be revised where necessary to accord with the decision of the Chief Electoral Officer.

14. Section 61 is repealed and the following substituted:

General power

61. The Chief Electoral Officer may revise the voters list in any case where the Chief Electoral Officer is satisfied that it is necessary to strike duplicate names or to correct inaccurate information.

15. Section 62, and the heading "Certified Statement of Revisions" immediately preceding it, are repealed.

16. Section 63, and the heading "Official Voters List" immediately preceding it, are repealed and the following substituted:

Sending Voters List to Candidates

Distribution of voters list

63. No later than the 20th day before election day, the Chief Electoral Officer or the returning officer shall send a copy of the most accurate voters list to each candidate in the constituency.

17. Section 64 is repealed.

18. Section 65, and the heading "Registration on Election Day" immediately preceding it, are repealed and the following substituted:

Registration at Place of Voting

Right to register to vote

65. (1) Any voter who is not on the voters list for the constituency may register to vote if the voter

- (a) attends a central polling place, a polling station or other place for voting; and
- (b) establishes his or her identity, place of residence and right to vote in the constituency and signs a registration form, in accordance with the regulations.

Registering voters

(2) Where a voter complies with subsection (1), the deputy returning officer, or other election officer designated for this purpose, shall

- (a) complete the registration form in accordance with the regulations;
- (b) add the voter to the voters list; and
- (c) send the attached copies of the registration form in accordance with the distribution requirements of the form.

19. Section 66 is repealed and the following substituted:

Final voters list

66. (1) The Chief Electoral Officer shall, as soon as possible after election day, prepare a final voters list for the constituency by

- (a) recording voters who were omitted from the voters list, including those who registered in accordance with section 65;
- (b) correcting voter information in the voters list; and
- (c) striking persons who are not entitled to be on the voters list.

Distribution to member

(2) The Chief Electoral Officer shall send a copy of the final voters list to the member elected for the constituency.

20. Subsection 67(1) is repealed and the following substituted:

Public Access

67. (1) Subject to subsection (2), a returning officer shall keep available in the returning officer's office a copy of the voters list and shall permit any person to inspect it during office hours during the election period.

21. Paragraph 75(1)(c) is repealed and the following substituted:

- (c) the person is ineligible to be a candidate under paragraph 11(2)(a), (b), (c) or (d) or subsection 11(2.1), (2.2) or (3).

22. (1) The French version of subsection 75.1(1) is amended by striking out "raisons", wherever it appears, and substituting "motifs".

(2) Subsection 75.1(4) is amended by striking out "nominations" and substituting "candidacy".

(3) Subsections 75.1(5) to (9) are repealed and the following substituted:

Ballots

(5) The Chief Electoral Officer shall prepare the ballots on the basis of his or her decision under subsection (4).

Review of Chief Electoral Officer's decision

(6) Despite the period set out in subsection 216(3), the person whose candidacy was rejected may, within 7 days after being notified of the decision, make an application for judicial review of the Chief Electoral Officer's decision under subsection (4).

Hearing

(7) The application for judicial review must be heard and determined as soon as practicable.

Continuation of election

(8) The election shall continue on the basis of the decision of the Chief Electoral Officer under subsection (4), unless the court orders that the election be cancelled.

Cancellation of election

(9) The court may order that the election be cancelled and that the Chief Electoral Officer conduct a new election in that constituency, if satisfied that the person whose candidacy was rejected is entitled to that relief.

New election

(10) If the court orders that the election be cancelled under subsection (9), the Chief Electoral Officer shall

- (a) fix a new election day;
- (b) issue a writ for the new election; and
- (c) conduct the new election in the usual manner.

Provisions applicable to cancelled election

(11) For greater certainty, the cancellation of an election does not exempt any person from the provisions of this Act otherwise applicable in respect of that election, including obligations in respect of contributions and election expenses.

- 23. Subsection 76(1) is amended by striking out "nominated to be a candidate" and substituting "filing a declaration of candidacy".**
- 24. The English version of paragraph 86(3)(b) is amended by striking out "nomination paper" and substituting "declaration of candidacy".**
- 25. Paragraph 93(a) is amended by striking out "the numbered list of voters" and substituting "that part of the polling record".**
- 26. Subsection 100(3) is amended by striking out "preliminary".**
- 27. Subsection 101(3) is amended by striking out "Friday, the third day before".**
- 28. (1) Subsection 112(2) is amended by striking out ", or another sign that clearly indicates which candidate the voter has chosen," and substituting "or checkmark".**
- (2) The English version of subsection 112(3) is amended by striking out "able" and substituting "unable".**
- 29. (1) Subsection 119(1) is amended by striking out "whose name appears in the official list of voters" and substituting "who is on the voters list for the constituency".**
- (2) Subsection 119(3) is repealed and the following substituted:**

Where voter not on voters list

(3) A voter may vote in the office of the returning officer, even if the voter is not on the voters list, by registering in accordance with section 65.

- 30. Subsections 120(1) and (2) are repealed and the following substituted:**

Voting by telecommunications device

120. (1) A voter who has the right to vote in a constituency may vote by means of a telecommunications device, including a radio, telephone or Internet telephony device, if the voter

- (a) is able to communicate with the office of the returning officer by means of a telecommunications device;
- (b) requests the returning officer to provide an opportunity to vote by this method; and
- (c) establishes that he or she

- (i) is unable to vote by any other method because of the voter's remote location, and
- (ii) the voter had no other means of voting before going to this remote location.

Procedure

- (2) The procedure for voting by a telecommunications device is as follows:
- (a) the returning officer or a deputy returning officer designated for this purpose shall receive the voter's vote by the device in the presence of another election officer;
 - (b) the voter's identity must be established to the satisfaction of the returning officer or deputy returning officer;
 - (c) a reasonable degree of secrecy in the choice of candidate must be maintained, given the possibly open nature of the communications; and
 - (d) the returning officer or deputy returning officer who receives a voter's vote shall mark the voter's choice of candidate on a special ballot and place it in the secrecy envelope, certification envelope and return envelope, in the prescribed manner, on the voter's behalf.

31. Subsection 122(3) is repealed and the following substituted:

Recording names of voters

(3) As soon as the returning officer receives the polling record from a mobile poll, the returning officer shall record the names of all voters who voted at the mobile poll for the purpose of ensuring those voters are excluded from subsequent voting opportunities.

32. Section 123 is amended by

- (a) **striking out** "whose name appears on the official list of voters" **and substituting** "who is on the voters list" **in subsection (1); and**
- (b) **striking out** "whose name appears on an official list of voters" **and substituting** "who is on the voters list" **in subsection (2).**

33. (1) The English version of paragraph 131(2)(c) is amended by striking out "candidates" and substituting "candidate".

(2) Subsection 131(5) is repealed and the following substituted:

Rejection of ballots

(5) When counting the ballots, the deputy returning officer shall reject any ballot that was

- (a) not supplied by the Chief Electoral Officer;
- (b) not marked in favour of a candidate;
- (c) marked in favour of more than one candidate;

- (d) not marked with only a cross or checkmark;
- (e) marked in a place other than the circular space provided; or
- (f) marked in a way that might identify the voter.

(3) Subsection 131(6) is amended by

- (a) in the English version, striking out "or" at the end of paragraph (a);**
- (b) in the English version, striking out the period and adding "; or" at the end of the paragraph (b);**
- (c) in the French version, striking out the period and adding a semicolon at the end of paragraph (b); and**
- (d) adding the following after paragraph (b):**
 - (c) did not initial the ballot.

34. Subsection 133(1) is amended by striking out "statement of the poll" and substituting "polling record".

35. Subsection 135(5) is amended by adding "or the Chief Electoral Officer" after "the returning officer".

36. Subsection 141(3) is amended by striking out "copies of the poll" and substituting "an accurate copy of it".

37. Subsection 143(3) is amended by

- (a) in the English version, adding "and" at the end of paragraph (a);**
- (b) striking "; and" and substituting a period at the end of paragraph (b);**
- (c) repealing paragraph (c).**

38. Subsection 148(3) is amended by

- (a) in the English version, adding "or" at the end of paragraph (b); and**
- (b) repealing paragraph (c).**

39. Subsection 154(2) is repealed and the following substituted:

Grounds of application

- (2) An application to void an election may only be made on the grounds that
- (a) the elected person was not qualified or entitled to be a candidate;
 - (b) the elected person has not complied with this Act;
 - (c) another person has not complied with this Act and that non-compliance affected the result of the election; or
 - (d) an act or omission of an election officer affected the result of the election.

40. Subsection 160(1) is repealed and the following substituted:

Declaration that election of candidate void

160. (1) The judge may declare that an election is void where the judge determines that one or more of the grounds in subsection 154(2) have been established.

41. Subsection 166(3) is repealed and the following substituted:

Granting access

(3) The Chief Electoral Officer shall provide access for the person requesting a document referred to in subsection (2) to inspect the document, unless the Chief Electoral Officer considers that

- (a) the request is frivolous or vexatious;
- (b) the requested document is sealed inside a ballot box;
- (c) the requested document has been destroyed under subsection 165(3); or
- (d) the requested document contains information that should not or must not be disclosed for the same reasons as are applicable to records of a public body under the *Access to Information and Protection of Privacy Act*.

42. Subsection 170(4) is repealed and the following substituted:

Bank account

(4) A financial agent shall

- (a) open an account at a bank or, where no bank exists where the financial agent resides, at an approved institution; and
- (b) deposit in that account all contributions of money collected on behalf of the candidate.

43. (1) Paragraph 181(1)(a) is repealed and the following substituted:

- (a) send, before the end of the post election period, the receipt books to the Chief Electoral Officer; and

(2) Subsection 181(3) is amended by striking out "returned" and substituting "sent".

44. Subsection 182(1.2) is amended by adding ", (2.2)" after "11(2.1)".

45. The English version of subsection 191(3) is amended by adding "than" after "no later".

46. Section 196 is repealed and the following substituted:

Annual report

196. (1) The Chief Electoral Officer shall submit to the Speaker an annual report for each fiscal year no later than July 1 following the end of the fiscal year.

Contents of annual report

- (2) The annual report shall include, in particular,
- (a) a summary of the Chief Electoral Officer's activities during the fiscal year;
 - (b) a summary of any matter that, in the opinion of the Chief Electoral Officer, should be brought to the attention of the Speaker;
 - (c) a report on the appropriateness of the Tariff of Fees and the cost of all activities paid out of the Consolidated Revenue Fund; and
 - (d) recommendations to improve this Act and the election process.

Laying report before Legislative Assembly

(3) The Speaker shall, at the first opportunity, lay a copy of the Chief Electoral Officer's annual report before the Legislative Assembly.

47. Section 197 is repealed and the following substituted:

Election report

197. (1) The Chief Electoral Officer shall submit to the Speaker a report on the conduct of each general election and by-election no later than 280 days after the date of the writ.

Contents of election report

- (2) The election report shall include, in particular,
- (a) the number of votes cast for each candidate at each polling station;
 - (b) the number of rejected ballots;
 - (c) the number of names on the final voters list;
 - (d) any complaints made by or on behalf of a candidate in an election;
 - (e) the details of any instance where the Chief Electoral Officer exercised the power to adapt this Act during an election period or extended the voting period;
 - (f) a list of all returning officers and assistant returning officers with their names and addresses and their constituencies; and
 - (g) a summary of the complaints, investigations and prosecutions under this Act and their outcome.

Laying report before Legislative Assembly

(3) The Speaker shall, at the first opportunity, lay a copy of the Chief Electoral Officer's election report before the Legislative Assembly.

48. Subsection 198(5) is amended by striking out "(4)" and substituting "(6)".

49. Section 204 is repealed and the following substituted:

Appointment of other election officers

204. The returning officer shall, as soon as possible after the issuance of the writ, appoint a deputy returning officer and a poll clerk for each polling station.

50. Section 205 is amended by

- (a) **adding "or a poll clerk" after "registration clerk" in subsection (1); and**
- (b) **in the English version, striking out the first "be" in that portion of subsection (2) preceding paragraph (a).**

51. Subsection 230(1) is repealed and the following substituted:

Nature of agreement

230. (1) A compliance agreement is an agreement whereby a person who is alleged to have committed an offence agrees, in exchange for the stay of any prosecution in respect of the offence, to one or more of the following:

- (a) to pay a sum of money, including restitution and damages, to one or more specified recipients;
- (b) to make an apology, including both public and private apologies;
- (c) to seek atonement in accordance with Inuit Qaujimajatuqangit;
- (d) to perform community service;
- (e) to do or refrain from doing any action agreed upon.

52. (1) The English version of paragraph 231(1)(d) is amended by striking out "and".

(2) Subsection 231(3) is repealed and the following substituted:

Written offer

(3) The Integrity Commissioner shall send a notice to the person referred to in subsection (1) informing the person of the following:

- (a) that a compliance agreement is being offered and the time limit on the offer;
- (b) the proposed terms and conditions of the compliance agreement;
- (c) that the person has a right to be represented by legal counsel;
- (d) that a summary of the compliance agreement will be publicly disclosed.

(3) Subsection 231(5) is repealed and the following substituted:

Protection of rights

(5) The Integrity Commissioner shall give a person to whom a compliance agreement is being offered a reasonable opportunity to consult with legal counsel.

(4) The English version of subsection 231(7) is amended by striking out "voluntary".

(5) The following is added after subsection 231(9):

Publication

(10) The Integrity Commissioner shall publish, in the manner and form that he or she considers appropriate,

- (a) the name of any person who signed a compliance agreement;
- (b) the act or omission in respect of which the compliance agreement was made; and
- (c) a summary of the compliance agreement.

53. Section 232 is repealed and the following substituted:

Notice of compliance

232. (1) If the Integrity Commissioner is of the opinion that the compliance agreement has been complied with, the Integrity Commissioner shall send a notice to that effect to

- (a) the person who signed it;
- (b) the Chief Electoral Officer;
- (c) the police; and
- (d) the prosecutor.

Notice of non-compliance

(2) If the Integrity Commissioner is of the opinion that a person has not complied with a compliance agreement, the Integrity Commissioner shall send a notice to that effect and that proceedings may be instituted or resumed in respect of the original act or omission to

- (a) the person who signed it;
- (b) the Chief Electoral Officer;
- (c) the police; and
- (d) the prosecutor.

Publication of compliance or non-compliance

(3) After determining whether a person did or did not comply with a compliance agreement, the Integrity Commissioner shall publish, in the manner and form that he or she considers appropriate, a notice that sets out

- (a) the name of the person who signed it;
- (b) the act or omission in respect of which the compliance agreement was made;
- (c) a summary of the compliance agreement; and
- (d) whether or not, in the opinion of the Integrity Commissioner, the person has complied with the compliance agreement.

Access to Information and Protection of Privacy Act

(4) The requirement to publish information under this section and section 231 applies despite any provisions to the contrary in the *Access to Information and Protection of Privacy Act*.

54. Paragraph 240(1)(a) is amended by striking out "180 days" and substituting "one year".

55. The English version of subsection 269(2) is amended by striking out "The amount of" and substituting "The amount".

PART 2

Public Service Act

56. The *Public Service Act* is amended as set out in this Part.

57. Subsection 34(11) is repealed and the following substituted:

Election official

(11) An employee may be appointed to serve as an election officer under the *Nunavut Elections Act* where no other suitable person is available for that position in the community and the Chief Electoral Officer is satisfied that there is no conflict with the duty of impartiality under section 207 of that Act.