

Election Advisory Committee Minutes

1 March 2022

9:30 a.m. – 12:00 p.m.

Meeting conducted via Zoom video conference originating at
the Office of the Chief Electoral Officer

PRESENT

Committee Members (alphabetically by political party name)

- Heather Stoutenburg, BC NDP
- Jordan Reid, BC NDP
- Cameron Stolz, British Columbia Liberal Party
- Lindsay Coté, British Columbia Liberal Party
- Jeremy Valeriote, Green Party Political Association of British Columbia
- Jonina Campbell, Green Party Political Association of British Columbia

Elections BC Staff

- Anton Boegman, Chief Electoral Officer (Chair)
- Charles Porter, Deputy Chief Electoral Officer, Electoral Finance & Operations
- Yvonne Koehn, Deputy Chief Electoral Officer, Corporate Services
- Aidan Brand, Director, Corporate Planning & Strategic Initiatives
- Alexandra Ashcroft, Executive Coordinator (minutes)

Meeting commenced at 9:33 a.m.

1. Welcome and Introductions

Anton Boegman, Chief Electoral Officer (CEO), opened the meeting. He stated that he was joining the meeting from Elections BC's office, which is located on the traditional territories of the Lekwungen speaking people, the Esquimalt and Songhees First Nations. Anton acknowledged with respect their stewardship of the lands he was on. He also welcomed attendees, and asked Elections BC participants, committee members and guests to introduce themselves.

Anton reviewed the agenda, and then described the role of the Election Advisory Committee (EAC) as established by sections 14 - 16 of the *Election Act*. He drew specific attention to Section 16 (2) of the Act, which identifies specific instances of where consultation with the EAC is required: before making recommendations to amend the Act, before establishing CEO regulations, and before publishing notice of early implementation of legislative amendments. He identified that all three of these would apply to today's meeting.

2. Recommendations for legislative change following October 24, 2020 Provincial General Election

Anton provided background information about the 2020 Provincial General Election as it was unlike any other in British Columbia's history. The election was held on short notice during the COVID-19 pandemic and during a province-wide state of emergency. Voting places operated under pandemic response protocols and an unprecedented number of voters voted by mail. Furthermore, 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 the tremendous efforts from election officials, voters, and political participants across the province.

Anton also informed members that following each election, Elections BC conducts a comprehensive post-event review. The review includes surveying key stakeholders, as well as carrying out a detailed internal review to identify what went well and what could be improved. Some of the improvements identified from the 2020 Provincial General Election can be accomplished administratively, while others require legislative change.

Following this explanation, Anton provided context to the 2020 post-event review, which was shaped by two key factors. First, Elections BC had just received the significant and historic amendments to the *Election Act* in 2019. While these changes had not been fully implemented for a provincial election, any new recommendations resulting from the review of the 2020 election have to integrate with the 2019 amendments. Second, assessment and analysis had to be focused in order to ensure recommendations address issues that are expected in the future, rather than a reaction to the unique circumstances of the 2020 election.

Based on the review of the 2020 election, Elections BC identified two priority recommendations, as well as a number of technical recommendations for legislators to consider.

Anton then began presenting the recommendations, starting with the first priority recommendation which is aimed at improving the accessibility, efficiency, and integrity of the vote-by-mail process. The tremendous vote-by-mail increase in 2020 was driven by several factors including health and safety reasons, convenience, and voter familiarity with the vote-by-mail process. It remains to be seen whether interest in voting by mail will remain at the high level seen in 2020. Regardless, a number of key enhancements can be made to improve the efficiency of vote by mail processes, to increase accessibility and service levels to voters, and to enhance electoral integrity.

One of the recommended enhancements is to modernize how voters prove their identity when voting by mail. The legislation establishes a number of integrity checks in the current vote-by-mail process. Voters sign a declaration that confirms their identity and eligibility to vote and a different individual witnesses 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. These methods were problematic during the election as both of these authentication methods have been in place since the mid-1990s, before the development and widespread adoption of secure digital technologies.

Instead of providing a witness signature, voters can provide their birthdate on their vote-by-mail package to confirm their identity. This is an international best practice that has been integral to past provincial vote-by-mail events. Using a birthdate as a shared secret

allows Elections BC to efficiently confirm a voter's identity, ensure they only vote once, and prevent an individual from voting using another voter's voting package. This model was used in 2020 under a CEO Order, because securing a witness signature went against public health requirements for many voters during the pandemic. Given the model's success, Elections BC is recommending that the use of a voter's birthdate as a means of proving identity should replace the current requirement of providing a witness signature on vote-by-mail packages.

Following that explanation, Anton described another recommended vote by mail enhancement based on the 2020 election. In 2020, the requirement for voters who were registering or updating their information to provide physical photocopies of acceptable identification proved to be challenging. While this method was workable, it was administratively burdensome for voters and for Elections BC officials. Physical copies of identification documents had to be reviewed manually as a part of the package screening process, which was inefficient and increased package processing times. Furthermore, access to a photocopier or printer is not universal and pandemic conditions exacerbated this barrier.

Given that a number of secure digital solutions exist, Elections BC is recommending that the CEO be given the authority to establish identity verification requirements for vote by mail. This would include the ability for voters to prove their identity and residential address digitally when they request a vote-by-mail package online, eliminating the need to provide physical copies of documents.

Anton also presented the recommendation to improve the accessibility of vote-by-mail by providing voters with more options for returning their vote-by-mail package. Currently, voters can only return their vote-by-mail package by mail or in person at a district electoral office. In 2020 because of the unprecedented use of vote-by-mail, voters had both of these options, as well as the opportunity to return their vote-by-mail package in person at any voting place or Service BC location. These additional channels were established through emergency CEO order, and were particularly beneficial for voters who requested their package late in the campaign, when it was too late to return their package by mail. To ensure this accessibility is maintained, Elections BC recommends that voters be allowed to return their voting package to any voting place in the province, as well as defined locations (such as Service BC centres) that can be specified by the CEO. Consequentially, in order to enable implementation of these changes, Elections BC is also recommending that election officials be able to process vote-by-mail packages "as soon as possible" rather than "immediately upon receipt" as the Act currently requires.

Additional vote-by-mail enhancement recommendations discussed by Anton included formalizing a process for the correction of inadvertent errors that would otherwise disfranchise voters, establishing a custom write-in ballot for vote-by-mail, and establishing a definition for when a voter has "cast" their vote-by-mail ballot.

The overall error rate for mail-in ballots in 2020 was extremely low, but voters do make mistakes when voting by mail. Voting by mail is an unsupervised voting opportunity, in which there is no opportunity for election officials to fix inadvertent errors made by voters when completing their package. Elections BC successfully piloted a correction process in two previous provincial vote-by-mail events, and it is a best practice internationally with respect to vote-by-mail.

Allowing voters to correct a mistake on their voting package would be a beneficial enhancement to the vote-by-mail process. For example, if a voter forgot to include their

birthdate, or forgot to sign their certification envelope, after receipt Elections BC could contact them to offer an opportunity to provide the necessary information to ensure their vote could be considered. To ensure Elections BC can count as many ballots as possible, Elections BC is recommending the Act be amended to establish a formal correction process for incorrectly completed vote-by-mail packages and certification envelopes.

The final vote-by-mail recommendations presented also address issues identified in 2020 that have broad application in future elections.

Anton expressed that creating a custom ballot and instructions for vote-by-mail is an important part of accessibility. Voters voting by mail have different information needs, are required to complete different steps, and are not instructed and supervised by election officials. Therefore, Elections BC's recommendation is to provide the CEO with the authority to set a different write-in ballot form for vote-by-mail.

Furthermore, Anton emphasized that establishing a clear definition for when a vote-by-mail voter has cast their ballot would help support clear communications with voters, as well as support integrity by reducing the potential for multiple voting by voters that use this option.

Discussion Questions

- Question: Has Elections BC considered clarifying the vote-by-mail data provided to parties?
 - Answer: The challenge with capturing vote-by-mail participation data is that it is not available in an accurate format until vote by mail packages have been received and processed. Thus, a voter can cast their vote by mail, but Elections BC will not know they have voted until the receipt and processing steps have taken place (which may be days after the voter has put their package in the mail). Establishing a clear definition for when a vote-by-mail voter has voted will help with that. In addition, some of the other processes envisioned in the *Election Amendment Act, 2019* will allow for early processing of vote-by-mail ballots, which may make participation information available earlier than previously.
- Question: What would the correction process look like if a voter sent an incomplete package?
 - Answer: Elections BC piloted a correction process used in other jurisdictions during the 2018 Referendum. Voters who sent incomplete packages were contacted by a priority-post letter, or in some cases a phone call, and were presented with a correction opportunity.
- Question: In the past, has there been participation information for those who have incomplete ballots?
 - Answer: Elections BC reports on valid votes and rejected ballots, and for vote by mail, also reports on package requests and packages received. Often times the voter information from an individual who has an incomplete package is unknown until after the close of voting, so Elections BC cannot contact these voters to make the correction. Through the proposed correction process, Elections BC hopes to identify these issues earlier and provide a correction opportunity before the close of voting.

- Question: How or why does the write-in ballot need to be different for vote-by-mail?
 - Answer: The part of the ballot where the voter would mark their choice would look identical; the only difference would be in the instructions. Providing custom instructions on the paper that contains the ballot is effective in getting voters to complete their ballot correctly. So the section the voter fills in (to vote) will be identical, but the instructions will be customized based on the voting opportunity.
- Question: Have you thought about asking voters to provide their email or phone number on the certification envelope itself in the event of any issues?
 - Answer: Elections BC asks for that information when the voter requests their vote-by-mail package. It is important information to collect on the front end so Elections BC is able to contact the voter if there are any challenges providing them with their vote-by-mail package.

After the discussion, Anton presented the second priority recommendation which is to establish clarity and consistency on how write-in ballots are adjudicated. Elections BC adjudicates ballots based on criteria established in section 123 of the *Election Act*. The Act establishes that voter intent is key when interpreting 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.

In modern election campaigns, party leaders have increasingly become synonymous with their party and its campaign. They are the focus of a large portion of the party's advertising and messaging to the public. While voters do not directly vote for a party leader in B.C.'s Westminster-style parliamentary system, many voters think that they are voting for a party leader when they cast their ballot. For this reason, the intent of a voter who writes the name of a party leader on a write-in ballot is likely clear, even if the leader is not running in the voter's electoral district. This position was reinforced during the judicial recount in West Vancouver-Sea to Sky during the 2020 election. Basing his assessment on the Supreme Court of Canada Opitz decision, the presiding justice in the recount decided to accept ballots marked for a party leader as votes for the candidate running in that district.

After the priority recommendations, Anton turned the floor over to Charles Porter and Yvonne Koehn to present the technical recommendations.

Charles spoke to the technical recommendations related to administration, accessibility and integrity.

The administrative recommendations Charles presented included:

- Amending s. 87 to allow for the use of a secrecy envelope or sleeve, instead of just an envelope. Sleeves provide the same level of security while reducing costs and processing time.
- Amending s. 28 to require a notice of election be published as soon as possible after an election call, rather than within the current set 8-day timeframe. In an unscheduled election call, it is challenging or impossible to schedule publication in parts of B.C. within eight days, given reduced newspaper publication frequency.
- Ensuring times set under the *Election Act*, or by a CEO s. 280 order during the election period, are not subject to the *Interpretation Act*, which shifts dates forward

when they fall on a holiday or a non-business day. Dates, times and deadlines that occur during the election period are time-sensitive and certainty is required.

- Authorizing the CEO to conduct final count and recounts for ballots administered under the remote voting provisions of the *Election Act* (sections 106, 108, and 108.01). Currently in the *Election Act*, only District Electoral Officers and their staff, not the CEO or headquarters staff, may prepare for or conduct final count or conduct recounts. As such, current practice has evolved to work around this issue. When Elections BC HQ staff assist with final count preparations, they are appointed as election officials by the local District Electoral Officer (DEO) adding burdensome administration. Furthermore, ballots from remote voting opportunities, such as vote-by-mail, are centrally received by Elections BC but must be sent to DEOs for counting. Sorting, mailing and receiving these ballots at district electoral offices is time and resource-intensive. If the CEO were authorized to count centrally, results would be available sooner.

The accessibility recommendations Charles presented included:

- Amending s. 109(1)(a) to extend the assistance and translation provisions to voters at a district electoral office. Currently, assistance provisions set out for a “voting opportunity” would not apply during district electoral office voting, which is technically an “alternative voting option”.
- Amending s. 109.01 to require an individual assisting in the completion of a vote-by-mail package to record their name on the voter’s certification envelope. This will establish consistency between vote-by-mail and other voting opportunities.
- Amending the Act to exempt Site-based Voting Area (SVA) residents from proving their residential address when voting at the opportunity established for their SVA. Instead, these voters would be required to present identification proving only their name. SVAs are residential care facilities, providing both medical care and a permanent home to their residents. It can be difficult for these voters to access usual forms of ID in a care setting. Furthermore, documentary proof of address is not practically needed when voting is being administered at the voter’s home.

The integrity recommendation Charles presented was:

- Amending s. 72 to prohibit candidate representatives from communicating the results of counting until the conclusion of initial count on Final Voting Day.

Discussion Questions

- Question: In reference to the integrity recommendation, what would be considered the conclusion of initial count?
 - Answer: The conclusion of initial count would be once the official results are released from Elections BC.
- Question: What challenge does this recommendation address?
 - Answer: With the rapid flow of information in the modern world, mixed with misinformation and disinformation, Elections BC wants to ensure that only accurate results from Elections BC as a trusted information source are communicated to the public when Elections BC is confident a result has been achieved through the appropriate process. Elections BC does not want social media posts announcing a candidate has won prior to the official result being made public.

- Question: Is Elections BC looking to prevent the communication of results from individual voting places to party staff or to prevent candidates from declaring they are a winner prematurely?
 - Answer: The issue is public communication of results or partial results through sources other than the Elections BC website, which is where the official results will be posted. Elections BC does not want candidate representatives providing live results on social media from a voting place when a count is ongoing.

- Question: If the results at a particular voting place are late, is Elections BC recommending that candidates cannot make comments until a winner is declared by Elections BC?
 - Answer: Language is key for this recommendation. The intent is not to prevent candidates from making comments, or from provincial media from “calling a race”, but to prevent the dissemination of specific results that have not been released publically. If initial count is complete at a voting place, then the results are reported and publically available. If initial count is ongoing at a voting place, Elections BC does not want that information made available to the public.

- Question: Following the count of a ballot box, scrutineers are provided with a statement of votes from Elections BC. What is the problem with sharing that information publically?
 - Answer: We will consider this question. Thank you for the feedback on this recommendation; we will take a closer look at all aspects of this recommendation. Please provide any further comments once the recommendations summary document is shared after the meeting.

Following the discussion questions, Yvonne spoke to the technical recommendations related to service, transparency and enforceability.

Yvonne presented the following service recommendations:

- Amending the Act to allow candidates to complete their standing nomination package during the ordinary nomination period if they start their nomination submission during the standing nomination period. This will provide candidates more flexibility without any administrative drawbacks.
- Amending the Act to allow the CEO or appointed officials to correct nomination and financial documents on behalf of the candidate or political participants that contain minor errors or omissions. The reasoning behind this recommendation is that resubmitting documents can cause delays in acceptance of a nomination and is a burden to political participants who must resubmit or amend financial reports to address minor errors or omissions. Currently, minor errors can only be corrected by candidates who file their nomination papers in person at the DEO Office.
- Removing the requirement for acclaimed or appointed nomination contestants to file a signed statement attesting that they did not incur any expenses or receive political contributions for the nomination contest. This requirement is a burden to political participants without any significant benefit or transparency for the public.

Yvonne presented the following transparency recommendations:

- Amend the Act to require that Elections BC publish financial reports and data that are currently posted to Elections BC's Financial Reports and Political Contributions System (FRPC) as an extension of the provisions designed for in-person public inspection of these materials. The ability to disclose financial report and contribution information through publication rather than public inspection would provide greater clarity on the legal bounds regarding these disclosures. Guidance from legislators on retention periods could help balance transparency and contribution privacy considerations.
- Prescribe classes of personal information such as home address, personal contact information and signature for redactions. This would ensure privacy concerns are addressed and documents are redacted consistently, because currently there is limited authority for the CEO to redact information before it is made public in FRPC or on the Elections BC website.
- Remove the provision that requires the submission of a privacy policy acceptable by the CEO before accessing public inspection material, except for voters lists and participation information.
- Instead of Elections BC publishing a notice of an Administrative Monetary Penalty (AMP) in the Gazette as soon as possible, publish AMP information periodically on the EBC website, as well as in the annual report. This would be a more efficient tool for public notification of these penalties, which is important as Elections BC anticipates a higher volume of penalties to be published in the future with the introduction of new administrative monetary penalties in 2019.

Yvonne presented the following enforceability recommendations:

- Given the short time frames surrounding Final Voting Day advertising contraventions, advertising takedown powers for digital platforms would be an important tool to support the CEO's enforcement of the Act. Currently, the CEO has no powers to compel the take down of non-compliant ads on Final Voting Day.
- To ensure the mandatory requirements for political participants under the Act are always enforceable through specific provisions, it is critical that the CEO has a flexible, fair and effective "toolbox" of regulatory mechanisms. The Act currently establishes both AMPs and offences for different types of non-compliant activity; however, some requirements of the Act have no applicable penalty for contravention and others only have the option for offence investigation. AMPs are relatively time-efficient and allow for flexibility based on mitigating factors. Offences typically require a longer investigation, a determination by Crown Counsel on whether to lay charges, and a trial in Court. Furthermore, they are reserved for more serious cases of non-compliance. As such, Elections BC is recommending amendments that would authorize:
 - penalties for fraudulent nomination documents;
 - late filing requirements for disclosure reports;
 - penalties for party failure to report nomination contest info;
 - AMPs for ads on Final Voting Day, ads & campaigning within 100m of a voting place, advertising using another organization's or individual's property;
 - AMPs in cases of unintentional multiple or corrupt voting; and
 - an option to enter into a public censure or compliance agreement instead of applying an AMP.

Anton thanked Charles and Yvonne for their presentations and proceeded with the final part of this agenda item, a review of public policy considerations for legislators and enhancements to Elections BC's 2020 Digital Communications, Disinformation and Democracy report.

Anton emphasized while it is not the role of Elections BC to take a position on public policy, Elections BC is uniquely positioned to identify issues related to existing public policy and bring these issues to the attention of legislators. Some changes to public policy may enhance the ability of the CEO to enforce the *Election Act*, or provide remedies to known issues. In raising these items, Elections BC acknowledges the sole authority of legislators to make laws pertaining to electoral democracy in British Columbia.

The first consideration Anton highlighted is the number of nominator signatures required by candidates. Currently, the *Election Act* requires candidates to gather 75 signatures from nominators as a part of their application package. Nominators must be voters in the electoral district the prospective candidate wishes to run in. This threshold has been a requirement in B.C. since 2008, and while thresholds vary across other Canadian jurisdictions, B.C.'s threshold is on the higher end of the scale. Further, recent feedback from candidates and parties indicated that the number of nominator signatures required was a barrier to participation. For these reasons, Elections BC suggests that legislators may wish to examine whether this threshold is still appropriate for B.C.

The second consideration Anton highlighted is the creation of a mechanism that would allow the writs of an election to be withdrawn during an extreme emergency. Elections BC's experience administering an election during the COVID-19 pandemic highlighted the importance of the Chief Electoral Officer's emergency powers under the *Election Act*. While these powers are broad and substantive, in relation to the election schedule they only enable the Chief Electoral Officer to modify the timing of an action under the *Election Act*, or establish a new date for that action to take place. They do not allow for the writs of election to be withdrawn in an extreme emergency that could make it unsafe to hold an election or severely limit accessibility of the electoral process, such as a major natural disaster.

The last public policy consideration Anton presented in this section of the agenda relates to voters list access. The voters list contains personal information of all registered voters in the province and is provided to authorized electoral participants to assist in communicating with voters and in campaigning to support increased voter participation. Due to the sensitivity of this information, recipients are required to implement a privacy policy around their use of the voters list.

The evolving national and international political environment highlights these privacy considerations, as well as concerns about personal safety. Federally in 2019, the Canadian Nationalist Party became a registered federal political party. This party promotes white nationalist views, and its founder and leader was charged with wilful promotion of hate. Under the *Canada Elections Act*, Canada's Chief Electoral Officer was compelled to provide the party access to the National Register of Electors. If a similar party emerged in B.C., Elections BC would be required to do the same.

At the local level in Alberta in 2021, a mayoralty candidate threatened to arm himself and go to the homes of healthcare workers, which raised concerns about access to the voters list. As a result, the city decided not to share the lists with any candidates.

For these reasons, Anton explained Elections BC will be highlighting this issue for legislators to consider. Anton also expressed that legislators may wish to create reasonable limits on access to the voters list where there is reason to believe that use of the list may compromise voter safety.

During the final section of the recommendations for legislative change presentation, Anton focused on enhancements to Elections BC's 2020 Digital Communications, Disinformation and Democracy report.

The first recommendation in the Digital Communications, Disinformation and Democracy report proposed restrictions on intentionally impersonating or making false statements about political parties, candidates or Elections BC. Elections BC will recommend extending this to protect vendors and contractors that provide services to the Chief Electoral Officer from intentional impersonation or false statements. Elections BC believes this will provide an additional layer of security for electoral administration.

Another recommendation in the 2020 report focused on establishing specific timeframes within which digital platforms must remove non-compliant advertising, and establishing a duty of care for digital platforms to minimize the harm caused by non-compliant content. Elections BC 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. However, following further review, Elections BC feels additional compliance measures would be appropriate. As such, Elections BC is recommending the CEO be given the authority to prohibit a digital platform from carrying election advertising if they have consistently demonstrated non-compliance with the period for takedown and duty of care provisions. This would impose a significant penalty on platforms that fail to come into compliance with the *Election Act*.

Discussion Questions

- Question: Why is Elections BC only targeting digital platforms?
 - Answer: The focus in the report was the digital environment. In the analogue world, Elections BC has effective tools to resolve compliance issues. For example, Elections BC has the ability to take down or cover up signs. In the digital world, Elections BC does not have the same ability. Elections BC works with digital platforms and they are largely supportive, but depending on where the platform is hosted, it may be almost impossible to remove non-compliant advertising.
- Question: What is the necessity of write-in ballots? If there is a scheduled election, are write-in ballots still required or is there a way to hold ballots until candidates are nominated?
 - Answer: Write-in ballots are required when voters need to vote prior to the close of the nomination period. For example, there may be voters who are leaving the province shortly after an election is called. Elections BC's would like to reduce the use of write-in ballots as much as possible moving forward. For example, a planned enhancement to the online vote-by-mail package request system is to ask voters if they want their package held (if there is sufficient time) until ordinary ballots are ready for their electoral district.

Anton thanked EAC members for their attention as he, Charles, and Yvonne presented the recommendations and public policy considerations. He also informed members that they would receive a summary of recommendations for legislative change following the meeting and Elections BC would be pleased to accept their feedback by close of business on March 8, 2022.

3. Implementation of *Election Amendment Act, 2019*

Anton introduced two new regulations resulting from Bill 43 – *Election Amendment Act, 2019* which was passed with unanimous support from legislators and received Royal Assent on November 28, 2019. This Act implemented in its entirety the May 2018 Report on Recommendations for Legislative Change tabled by the Chief Electoral Officer following the 2017 Provincial General Election. A key theme of the *Election Amendment Act, 2019* was to enable greater flexibility by replacing a number of prescriptive sections of the *Election Act* with CEO regulations.

The two regulations under consideration, copies of which were emailed to committee members yesterday, are:

- the Vote Counting Regulation; and
- the Ballot Form Regulation

Vote Counting Regulation

The Vote Counting Regulation establishes the following:

- requirements for transcription for instances where a ballot cannot be interpreted by vote-counting equipment;
- requirements for the quality assurance process for vote counting equipment; and
- the requirements for a DEO when conducting a manual recount of ballots under s. 136, including requirements for preparing and delivering ballots to a DEO conducting a recount in another electoral district.

Section 1 defines the *Election Act* as the Act Elections BC is concerned with in the regulation. Sections 2 and 3 set out the circumstances in which ballots may be transcribed at initial count, as required under section 120.01 (5)(a) of the *Election Act*, and the procedures that must be followed during the transcription process.

Under the *Election Act* (s. 79.04(5)), vote-counting equipment must be programmed to notify the voter if the ballot is unreadable when it is inserted. The voter would then be able to get a new ballot and mark it in such a way that it can be read, or they can cast their ballot without a valid candidate selection, knowing that it will be rejected.

As this notification and correction process exists in the legislation, the transcription process outlined in the regulation only applies to ballots that are inserted into the vote-counting equipment during initial count without the voter present. The regulation sets out three circumstances where this could occur.

First, write-in ballots will have to be transcribed onto ordinary ballots in order to be inserted into vote-counting equipment. Ordinary ballots inserted into the vote-counting equipment that are damaged in such a way that the vote-counting equipment cannot read them, or contain a clear mark that cannot be read, will also need to be transcribed onto an appropriate ordinary ballot for the voter's electoral district. This could occur without the voter present if the ballot was placed into an auxiliary compartment when the voter voted. For example, in the case of a long line-up, power outage, or if the ballot was placed in a certification envelope (e.g. in the case of mail-in ballots that are specified for counting during initial count).

The transcription process will take place during preparations for initial and final count. Ballots may only be transcribed if the voter's intent is clear. If the voter's intent is not clear, a ballot is not eligible for transcription, and would be rejected at the count. Candidates and candidate representatives that are entitled to be present at initial count and final count may observe the transcription procedure.

Section 4 of the regulation establishes a process that allows candidates or candidate representatives to object to the transcription of a ballot. Objections can only be made at the time of transcription, the decision of the election official is final (subject to a recount), and appropriate documentation must be completed. If a ballot is not accepted for transcription, the existing provisions under the *Election Act* to object to a rejected ballot would still apply.

Section 5 of the regulation establishes the quality assurance process required for vote-counting equipment under s. 120.02 (1) of the Act. The Quality Assurance (QA) process must take place after the completion of initial count. The QA process will incorporate two steps:

- logic and accuracy testing of at least one piece of vote-counting equipment used during initial count in each electoral district; and
- a hand count of the ballots counted during initial count by a selected piece of vote-counting equipment in each electoral district.

At least one piece of vote-counting equipment per electoral district must be selected for the post-initial count logic and accuracy testing step and the hand count step of the QA process. If the CEO specifies that ballots in certification envelopes will be considered under the authority of section 115 (2) of the Act, then at least one piece of vote-counting equipment used to count these ballots must be selected for the logic and accuracy testing step of the QA process.

The logic and accuracy test involves using the vote-counting equipment to count the ballots in a set of marked test ballots, and comparing a record of the expected results of the count with the record produced by the vote-counting equipment. The hand count step involves conducting a hand count of the ballots associated with a single piece of vote-counting equipment and comparing the results produced by the hand count to the record produced by the equipment at initial count.

The DEO must consider the results of the QA process when deciding whether a DEO recount will take place, and the results of the QA process must be reported to the Chief Electoral Officer.

Sections 6 and 7 establish the requirements for recounts conducted by DEOs. One of the advantages of the modernized election administration brought into law by the *Election Amendment Act, 2019* is that tabulators can count ballots from any district in the province, rather than needing to be sent to their "home" district for counting during final count. However, this presents some complexities around arranging for recounts, which are addressed by Section 6 of the regulation.

Section 6 sets out the procedures that must be followed if a DEO conducting a recount requires the original ballots that were counted in another electoral district to be sent to their office for the purposes of the recount. This process requires the DEOs of the districts where ballots subject to recount were cast to create and retain copies of the ballots, and deliver the originals to the DEO conducting the recount.

Section 7 sets out the procedures to be followed by the DEO in conducting a recount under section 136 of the Act. The ballots must be counted by hand, without using vote counting equipment, per the criteria in sections 122 and 123 of the Act. Candidates and candidate representatives may be present and may object to the acceptance or rejection of a ballot. An election official who considered a set of ballots at initial count is not permitted to participate in a recount of those ballots during a DEO recount.

Discussion Questions

- Question: Can you please speak to the rights of candidate representatives in respect to processes you described?
 - Answer: Elections BC will provide opportunities for candidate representatives to watch the processes described. The procedures currently in place for scrutineers in voting places will remain and access to voting places as per the current legislation will be maintained.

Ballot Form Regulation

The Ballot Form Regulation establishes the form of ordinary ballots, which can be used with vote-counting equipment, and the form of write-in ballots. The requirements for the ballots are set out in section 86 of the Act, and the ballot forms provide sample text and placeholder text for example purposes.

Section 1 of the regulation sets out a required definition. While sections 2 and 3 establish the ballot forms that are prescribed for the purposes of s. 86 (2) and (5) of the Act.

The ordinary ballot form, which will appear as Schedule 1 of the regulation, is populated with the following text:

- placeholder text for the year, event title, electoral district and EDC (Electoral District Code)
- instructions on how to mark the ballot
- sample candidate names, arranged in alphabetical order by surname
- sample political party names and wording to indicate if a candidate has requested to be shown as "independent"

The write-in ballot form, which appears as Schedule 2, is populated with the following text [subject to change]:

- "Provincial Event" heading
- "Write-in Ballot" heading
- instructions on how to mark the ballot
- "I vote for" text
- warning against reproduction of ballot

Discussion Questions

- Question: This is a question regarding ordinary ballots. The Act says an individual votes by filling in the blank space provided on the ballot opposite the name of the candidate they would like to vote for. However, I noticed the instructions say to mark the ballot with an X or to fill in the circle. Are those the only markings the tabulator can read?

- Answer: Our recommended marks are an X or filling in the circle, but the tabulator will have a threshold to detect marks within the sensor area. It is a low threshold, but if the ballot cannot be read the tabulator and technical officer present will alert the voter who will then have the opportunity to mark the ballot correctly. Furthermore, if a ballot was placed into an auxiliary compartment (rather than a tabulator), in the transcription process it could be determined that the voter's intent is clear and transcribed so the tabulator can interpret their vote.

Anton informed members that Elections BC would be pleased to accept their feedback on the regulations by close of business on March 4, 2022.

Impact on future by-elections

The final agenda item Anton discussed with EAC members was the impact of the completion of Elections BC's implementation of the *Election Amendment Act, 2019* on future by-elections.

When the *Election Amendment Act, 2019* received Royal Assent at the end of November 2019, not all elements of that legislation came into force. These primarily related to Elections BC's implementation of the modernized voting place. In early February this year, Anton wrote to the Attorney General requesting that Cabinet bring into force all remaining provisions of the *Election Amendment Act, 2019* as soon as possible. Once this is complete, Elections BC will be in a position to deposit the final two regulations of that Act, which were reviewed today, and will be ready to administer a by-election under this model.

The *Election Act* has a provision that amendments to the Act do not apply for six months, unless consultation is had with the EAC and early readiness is Gazetted. As this is the case, Anton signaled Elections BC's intent to Gazette early readiness as soon as possible to EAC members.

With a by-election pending in Vancouver-Quilchena, this is a very important opportunity for B.C. to have its first election under the new modernized model. This model will not only provide significant benefits to voters in terms of increased accessibility and an improved voter experience at the voting place, but it will also enable Elections BC to provide close to real-time voter participation information to campaigns to support their get out the vote efforts. It will also see the first use of tabulators to count paper ballots, and thus will see results from initial count produced and reported within minutes of the close of voting on election night.

The first elections under this new model will be a new experience for voters, campaigns and Elections BC. Elections BC will make sure there is information and communications on the changes to expect. Elections BC also plans to use voter exit-surveys to capture their initial perspectives. This, along with lessons learned sessions with parties and other stakeholders, will allow for any corrections prior to the next scheduled provincial election in 2024.

Discussion Questions

- Question: Will updated forms and guides be available in the coming weeks so campaigns, candidates, and candidate representatives have current information?

- Answer: This is currently under development and it is our intention to have a full suite of information available.
- Question: This is a question not related to anything presented today. Currently, when rebate cheques are sent by EBC, they are sent to Financial Agents in their personal name. This creates administrative problems and opportunities for malfeasance. Going forward, can rebate cheques be made in the party's name rather than the Financial Agent's name?
 - Answer: This is a good point and Elections BC will look into it.
- Question: This question is in regards to timelines to submit for claim reimbursements. Instead of the hard deadline, would it be possible to have a late filing timeline?
 - Answer: Currently, there is an ability to receive extensions for filings if Elections BC is made aware of extenuating circumstances.

4. Closing Remarks

Anton thanked committee members for their comments and asked that they provide any feedback on the two regulations discussed by end of business March 4, 2022 and feedback on the recommendations by end of business March 8, 2022.

The meeting was adjourned at 11:27 a.m.