

1995 BILL 221

Third Session, 23rd Legislature, 44 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 221

JUDICIAL ELECTIONS ACT

MR. HLADY

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 221
Mr. Hlady

BILL 221

1995

JUDICIAL ELECTIONS ACT

(Assented to , 1995)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Interpretation

1(1) In this Act,

- (a) "candidate" means a person
 - (i) who is nominated as a candidate,
 - (ii) who is nominated by a registered political party for endorsation as the official candidate of that party, or
 - (iii) who, on or after the date of issue of a writ for an election, declares himself to be an independent candidate at the election;
- (b) "council" means a council as defined in the *Local Authorities Election Act* and includes the council of the City of Lloydminster;
- (c) "elected authority" means an elected authority as defined in the *Local Authorities Election Act* and includes the council of the City of Lloydminster;
- (d) "election officer" means an election officer under the

Election Act or an officer under the *Local Authorities Election Act*, as the case may be;

(e) "electoral division" means an electoral division under the *Electoral Divisions Act*;

(f) "judge" has the same meaning as in the *Provincial Court Judges Act*;

(g) "judicial district" means a judicial district established pursuant to section 21 of the *Court of Queen's Bench Act*;

(h) "justice" means a judge of the Court of Queen's Bench as set out in section 3 of the *Court of Queen's Bench Act*;

(2) For the purposes of this Act, a document that is required to be filed with the Chief Electoral Officer is filed when it is actually received by the Chief Electoral Officer.

(3) Except as provided in this Act, words and phrases used in this Act have the meanings given to them in the *Election Act*.

PART 1

GENERAL

Definitions

2 In this Part,

(a) "deputy returning officer" means a deputy returning officer under the *Election Act* or a deputy under the *Local Authorities Election Act*, as the case may be;

(b) "polling day" includes election day as defined in the *Local Authorities Election Act*;

(c) "polling place" includes voting station as defined in the *Local Authorities Election Act*;

(d) "returning officer" means a returning officer under the *Election Act* or the *Local Authorities Election Act*, as the case may be.

Submission
to Privy
Council

3(1) Persons declared elected as justices under this Act shall have their names submitted by the Government of Alberta to the Minister of Justice for Canada as persons who may be appointed to the Court of Queen's Bench for the purpose of filling vacancies relating to the judicial district in which a justice is to be appointed.

(2) A judge elected under this Act, unless otherwise disqualified from remaining in office or removed from office, holds office from the date of taking the oath of allegiance and the judicial oath prescribed by the *Oaths of Office Act* until election day of the second general election, held pursuant to the *Local Authorities Election Act*, following that judge's election under this Act.

Application of
Election Act

4(1) For the purposes of this Part, sections 52.1, 52.2, 62, 142 to 146 and Parts 5 to 9, except sections 179(2)(c) and 204, of the *Election Act* apply to an election under this Act as if it were a general election under the *Election Act*.

(2) An election under this Act shall be conducted for the judicial district in which the vacancy in either the Provincial Court or the Court of Queen's Bench occurs and that judicial district shall consist of the electoral divisions falling within that judicial district.

(3) If an electoral division falls in more than one judicial district, the Lieutenant Governor in Council may by order, made concurrently with the order made under section 5, specify the judicial district in which the electoral division shall be included.

Authorization
to commence
election

5(1) If there are one or more vacancies in the Court of Queen's Bench relating to Alberta or the Provincial Court, an election may be commenced at any time by the passing of an order of the Lieutenant Governor in Council

(a) setting out whether the election under this Act is to be held

(i) separately on a date provided for in the order,
or

- (ii) in conjunction with the general elections under the *Local Authorities Election Act*;
 - (b) authorizing the Lieutenant Governor to issue a writ of election in the prescribed form addressed to the Chief Electoral Officer and prescribing the date of the writ;
 - (c) setting out the number of persons to be elected;
 - (d) appointing nomination day;
 - (e) appointing the day on which voting is to take place if voting is necessary.
- (2) Where an election under this Act is to be held separately on a date provided for in the order under subsection (1), the order
- (a) shall appoint the 14th day after the date of the writ issued under subsection (1)(b) as nomination day, and
 - (b) shall provide that, if voting is necessary, the 14th day after nomination day or, if the 14th day is a holiday, then the next following day not being a holiday, shall be the day on which voting is to take place.
- (3) Where an election under this Act is to be held in conjunction with a general election under the *Local Authorities Election Act*, the order under subsection (1)
- (a) shall be made not later than the 2nd Monday in September,
 - (b) shall appoint the 4th Monday in September as nomination day, and
 - (c) shall appoint the 3rd Monday in October as election day, if voting is necessary.

Issue of writ

6 On receipt of a writ under section 5, the Chief Electoral Officer shall endorse on it the date on which he received it and shall

- (a) advise each returning officer that a writ has been issued,

and

(b) transmit a copy of the writ to each returning officer.

Eligibility as
election
officers

7 A judge or a justice may not be appointed as an election officer for the purpose of conducting an election under this Act.

Eligibility for
nomination

8 A person is eligible to be nominated as a candidate in an election under this Act if

(a) on the day the nomination paper with respect to nomination as justice is filed, the person

(i) meets the qualifications set out in the *Judges Act of Canada*,

(ii) is not a Member of the House of Commons or Senate of Canada, and

(iii) is not a Member of the Legislative Assembly,

(b) on the day the nomination paper with respect to nomination as a judge is filed, the person

(i) meets the qualifications set out in the *Judges Act of Canada*,

(ii) is not a Member of the House of Commons or Senate of Canada, and

(iii) is not a Member of the Legislative Assembly,

(c) in the case of an election under this Act that is being held in conjunction with the general elections under the *Local Authorities Election Act*, the person is not a candidate at a general election under that Act,

(d) the person is not prohibited from being a candidate for an election under the *Election Act* under section 52.1, 52.2, 173 or 175 of that Act,

- (e) the person is not prohibited from being a candidate for an election under this Act under section 52.1, 173 or 175 of the *Election Act*, as those sections apply to this Act, and
- (f) the person is and has been ordinarily resident in Alberta for at least 6 months immediately preceding polling day.

**Nomination
of candidates**

9(1) At any time following publication of the proclamation referred to in section 34 or 46 and prior to 2 p.m. of the date fixed for the closing of nominations, 1500 or more electors may nominate a person eligible to be a candidate as a candidate by signing a nomination paper in the prescribed form and filing it with the Chief Electoral Officer.

(2) The signatures of the electors nominating a candidate shall be witnessed by another elector who shall complete the required affidavit prior to the filing of the nomination papers.

(3) A person who is a candidate by virtue of section 1(1)(a)(ii) or (iii) and who does not file his nomination papers prior to the time set for the closing of nominations ceases to be a candidate on the closing of nominations.

**Official
agents of
candidates**

10(1) Each person being nominated as a candidate shall appoint an elector to be his official agent on his nomination and shall include the name, address and telephone number of the person so appointed in the appropriate place on the nomination form.

(2) The duties of an official agent are those prescribed by the candidate.

(3) The official agent shall not perform the duties of the chief financial officer unless he is the candidate's chief financial officer.

(4) If it becomes necessary to appoint a new official agent, the candidate shall immediately notify the Chief Electoral Officer in writing of the name, address and telephone number of the person so appointed.

Filing
nomination
papers

11(1) A nomination paper is not valid unless

- (a) it states an address within Alberta at which documents may be served and notices given respecting the candidate,
 - (b) it contains the appointment, name, address and telephone number of the official agent of the person being nominated,
 - (c) it states that the person being nominated
 - (i) is eligible under section 8 for nomination, and
 - (ii) consents to his nomination,
 - (d) it states whether the person being nominated is an independent candidate or is the officially endorsed candidate of a registered political party,
 - (e) it is accompanied by an affidavit in the prescribed form of each elector who witnessed the signatures of the electors nominating the candidate,
 - (f) the candidate is a registered candidate under the *Election Finances and Contributions Disclosure Act* for the purposes of an election under this Act,
 - (g) it is accompanied by a deposit of \$4000,
 - (h) it is signed by the candidate, and
 - (i) it is filed with the Chief Electoral Officer prior to 2 p.m. of the date fixed for the closing of nominations.
- (2)** If the person being nominated is the candidate of a registered political party, he shall, at the time of filing his nomination paper, file a certificate in the prescribed form stating that the person is a candidate for that registered political party.
- (3)** On the filing of a valid nomination paper, the Chief Electoral Officer shall give a receipt in the prescribed form, which is proof of receipt of the deposit and of the filing of the nomination paper.

**Deposit of
candidate**

12(1) The Chief Electoral Officer shall not accept a deposit tendered under section 11(1)(g) unless it consists of

- (a) Bank of Canada notes,
- (b) a certified cheque or certified bill of exchange,
- (c) a bank or postal money order, or
- (d) a combination of any of those forms.

(2) The deposit received under section 11(1)(g) shall be refunded to the candidate if he

- (a) is elected,
- (b) obtains a number of votes equal to at least 1/2 of the total number of votes obtained by the candidate elected with the least number of votes, or
- (c) withdraws within 48 hours after the filing of his nomination paper.

(3) If a candidate dies after being nominated and prior to the closing of the polling places on polling day, the deposit shall be refunded to the candidate's personal representative.

(4) A deposit that is not refunded under this section shall be deposited in the General Revenue Fund.

**Information
to be
provided to
candidate**

13 The Chief Electoral Officer, on filing the nomination paper of a candidate, shall provide to the candidate the name, address and telephone number of each returning officer.

**Election by
acclamation**

14 If the number of candidates nominated in a judicial district by the closing of nominations equals or is less than the number of persons to be elected, the Chief Electoral Officer shall

- (a) immediately declare the candidate or candidates elected, and
- (b) make his return in the prescribed form certifying the

election of the candidate or candidates.

Necessity of election **15** An election under this Act is necessary if the number of candidates in a judicial district nominated by the closing of nominations exceeds the number of persons to be elected.

Withdrawal of candidate **16(1)** At any time after the filing of his nomination paper but not later than 96 hours before the opening of the polls on polling day, a candidate may withdraw by filing with the Chief Electoral Officer a declaration to that effect signed by the candidate and having his signature witnessed.

(2) If after a candidate withdraws the number of candidates equals or is less than the number of persons to be elected, the Chief Electoral Officer shall proceed in accordance with section 14.

(3) If

(a) a candidate withdraws after the ballots are printed, and

(b) there remain more candidates than the number of persons to be elected,

the Chief Electoral Officer shall advise each returning officer of the withdrawal and, if there is sufficient time, the returning officer shall prepare a notice of withdrawal and distribute a copy to each deputy returning officer, who shall post it in a conspicuous location in his polling place.

(4) When there is insufficient time to prepare and distribute a notice of withdrawal under subsection (3), the Chief Electoral Officer, when advising the returning officers of the withdrawal, shall instruct each of them to cause a notice of the withdrawal to be prepared by hand, and each deputy returning officer shall post the notice in a conspicuous location in his polling place.

Death of candidate **17(1)** If a candidate dies after being nominated and prior to the closing of the polling places on polling day, the election under this Act is cancelled.

(2) Nomination of candidates previously filed remain valid for a period of 6 months following the date the election is cancelled.

Close of
nominations

18(1) At 2 p.m. on the date fixed for the closing of nominations, the Chief Electoral Officer shall, at the place fixed for the filing of nominations,

- (a) declare the nominations closed,
- (b) announce the names of all officially nominated candidates,
- (c) announce the name, address and telephone number of each candidate's official agent, and
- (d) announce the polling date and the date, time and place at which the official results of the election will be announced.

(2) On complying with subsection (1), the Chief Electoral Officer shall, as soon as possible,

- (a) make available a list of the candidates to each candidate or his official agent, and
- (b) publish in the prescribed form the names and addresses of the candidates' official agents in one or more newspapers of general circulation
 - (i) in each electoral division, in the case of an election held in accordance with Part 2, and
 - (ii) in each local jurisdiction, in the case of an election held in accordance with Part 3.

Contents of
ballots

19(1) Every ballot used in an election shall contain a brief explanatory note stating the maximum number of candidates who can be voted for in order not to make the ballot void.

(2) Separate ballots shall be used for the election of judges of the Provincial Court of Alberta and the election of persons whose names are to be submitted for appointment as Justices of the Court of Queen's Bench of Alberta.

(3) The name of each candidate shall be printed on each ballot.

(4) The names of the candidates shall be printed on the ballot as follows:

(a) the candidate's

(i) given name,

(ii) initials, or

(iii) nickname

or any combination of them;

(b) the candidate's surname shall appear following the given name, initials or nickname, as the case may be;

(c) the candidates' names shall be listed in alphabetical order by surname;

(d) no titles, degrees, prefixes or suffixes may be included with a name.

(5) The ballot shall be in the prescribed form unless the ballot is prescribed pursuant to a by-law made under section 84 of the *Local Authorities Election Act* that was approved pursuant to section 45 of this Act.

Printing of
ballots

20(1) The Chief Electoral Officer shall have the ballots for use in the election printed.

(2) The printer shall deliver to the Chief Electoral Officer with the printed ballots a completed and executed Affidavit of Printer in the prescribed form.

(3) The Chief Electoral Officer shall provide each returning officer with a sufficient quantity of ballots and shall maintain a record of the number provided.

(4) Each returning officer shall maintain a record of the quantity of ballots provided to the deputy returning officers.

(5) This section does not apply in a jurisdiction where the elected authority passes a by-law under section 84 of the *Local Authorities Election Act* and the by-law is approved under section 45 of this Act.

**Conduct of
official
tabulation**

21(1) Each returning officer shall, within 4 days after the vote has taken place, submit to the Chief Electoral Officer the Statement of Official Results prepared by the returning officer.

(2) The Chief Electoral Officer shall add together the results of the counts set out in the Statements of Official Results prepared by the returning officers in order to determine which candidate or candidates received the most votes.

(3) The Chief Electoral Officer shall give written notice to each candidate or his official agent of the place, date and hour of commencement of the addition referred to in subsection (2).

(4) If it appears on the addition of the votes that 2 or more candidates received the same number of votes, and if it is necessary for determining which candidate is elected, the Chief Electoral Officer shall write the names of those candidates separately on blank sheets of paper of equal size and of the same colour and texture and, after folding the sheets of paper in a uniform manner and so that the names are concealed, shall deposit them in a receptacle and direct some person to draw one of the sheets, and the Chief Electoral Officer shall declare the candidate whose name appears on the drawn sheet to have one more vote than the other candidate or candidates, as the case may be.

(5) The drawn sheet shall be sealed in an envelope marked with the words "Declared Vote" and kept separate from the other ballots.

(6) On completing the addition, the Chief Electoral Officer shall provide to each candidate or his official agent a Certificate and Return in the prescribed form indicating the number of votes for each candidate and the name of the candidate or candidates to be declared elected pursuant to section 22.

(7) On complying with subsection (6), the Chief Electoral Officer shall prepare the Tabulation of Official Results.

**Announce-
ment of
official results**

22(1) The Chief Electoral Officer shall attend at the place, date and time stated in the election proclamation to announce the official results of the election under this Act and declare which candidate or candidates are elected.

(2) Where only one person is to be elected, the candidate with the highest number of votes shall be declared elected.

(3) Where more than one person is to be elected, the candidate with the highest number of votes shall be declared elected and the candidate with the next highest number of votes shall be declared elected and so on until the number of candidates to be elected at the election under this Act are declared elected.

(4) The Chief Electoral Officer shall retain the Statements of Official Results and the Tabulation of Official Results for a period of 10 days after announcing the official results of the election under this Act to allow for possible appeals or applications for a recount of the votes.

Disclaimer

23(1) A candidate who has been declared elected under this Act may, by filing a disclaimer in the prescribed form with the Chief Electoral Officer, request

(a) that his name not be submitted to the Minister of Justice for Canada, or

(b) that, if his name has been submitted, the submission of his name be withdrawn.

(2) Subject to subsection (3), if a disclaimer is filed under subsection (1), the election of that candidate is void and a new election shall be held to elect another person.

(3) The filing of a disclaimer under subsection (1) does not affect any application for an appeal or recount by another candidate or the right of that other candidate to be declared elected if his application or appeal is successful.

Appeal and
recount

24(1) Notwithstanding section 142 of the *Election Act*, for the purposes of this Act,

- (a) an appeal may be commenced within 8 days after the date the Chief Electoral Officer announces the results of the official count and declares one or more candidates elected;
- (b) an appeal from a decision of the Chief Electoral Officer may also be made in relation to the addition of the results contained in the Tabulation of Official Results;
- (c) the Chief Electoral Officer shall also be given notice of the time and place appointed for hearing and determining the appeal.

(2) Notwithstanding section 143 of the *Election Act*, for the purposes of this Act,

- (a) where a recount of the votes is required, the Chief Electoral Officer shall attend at the time and place appointed for hearing and determining the appeal but the Court shall determine which election officers, if any, are required also to attend;
- (b) where the application is limited to a decision of a returning officer, only the returning officer and the Chief Electoral Officer are required to attend;
- (c) the Chief Electoral Officer shall bring all the ballot boxes and documents required for the purposes of disposing of the matter.

(3) Notwithstanding section 144 of the *Election Act*, for the purposes of this Act, the judge shall also hear and determine appeals from the decision of the Chief Electoral Officer.

(4) The judge shall verify and, if necessary, amend the Tabulation of Official Results.

(5) Notwithstanding section 145 of the *Election Act*, for the purposes of this Act,

- (a) on conclusion of the appeal, the judge shall immediately certify the result to the Chief Electoral Officer, who shall

declare elected the candidate or candidates who, taking into account all appeal results, received the highest number of votes;

- (b) on conclusion of a recount, the judge shall immediately certify the result to the Chief Electoral Officer, who shall, on the 3rd day thereafter, unless he is served with a notice of appeal within that period, declare elected the candidate or candidates who received the highest number of votes pursuant to the recount;
- (c) if on a recount an equality of votes exists for 2 or more candidates, the vote drawn pursuant to section 21(4) shall be counted.

(6) Notwithstanding section 146 of the *Election Act*, for the purposes of this Act,

- (a) the Chief Electoral Officer shall also be served with a notice of appeal and shall be notified of the date of the hearing,
- (b) subsection (5)(c) applies,
- (c) on determination of the appeal, the Registrar of the Court of Appeal shall immediately certify the result to the Chief Electoral Officer, who shall then declare elected the candidate or candidates who received the highest number of votes pursuant to the appeal, and
- (d) if a decision of the Court of Appeal is successfully appealed to the Supreme Court of Canada, then on receipt by the Chief Electoral Officer of a certified copy of the judgment of that Court, the Chief Electoral Officer shall declare elected the candidate or candidates who received the highest number of votes pursuant to the appeal.

Publication of
elected
candidates

25(1) Subject to subsection (2), 8 days after the candidate or candidates are declared elected the Chief Electoral Officer shall submit a notice of the name of the candidate or candidates declared elected under this Act for publication in the next issue of The Alberta Gazette.

(2) If there is an appeal in accordance with sections 142 to 146 of the *Election Act* as those sections apply to this Act, the names of the persons declared elected shall be published after the expiration of the appeal period.

Application of
Part 7 of
Election Act

26 For the purposes of this Act,

- (a) the reference in section 179(1) of the *Election Act* to "a candidate as the member of the Legislative Assembly for an electoral division" is deemed to be a reference to a candidate at an election under the *Judicial Elections Act*;
- (b) the reference in section 179(2)(b) of the *Election Act* to "section 147" is deemed to be a reference to section 25 of this Act.

Candidate
contributions

27 For the purposes of this Act, the reference in section 206 of the *Election Act* to "section 15(1)(b)(ii) and (4) of the *Election Finances and Contributions Disclosure Act*" is deemed to be a reference to section 15.1(1)(b)(ii) and (3) of the *Election Finances and Contributions Disclosure Act*.

Archives

28 The Chief Electoral Officer shall provide a copy of the writ, the Tabulation of Official Results and the Statements of Official Results to the Provincial Archives after each election under this Act.

Regulations

29(1) The Lieutenant Governor in Council may make regulations respecting forms, notices and oaths to be used for the purpose of an election under this Act.

(2) The Lieutenant Governor in Council may make regulations respecting any matter not provided for or not sufficiently provided for in this Act, but any regulation made under this subsection ceases to have effect after the last day of the next ensuing session of the Legislature.

(3) Where an election under this Act is held in conjunction with a general election under the *Election Act*, a form, oath or notice prescribed under the *Election Act* may be combined with a form,

oath or notice, as the case may be, prescribed under this Act, and the form, oath or notice is valid for both the general election under the *Election Act* and the election under this Act.

(4) Where an election under this Act is held in conjunction with general elections under the *Local Authorities Election Act*, a form, oath, statement or notice prescribed under the *Local Authorities Election Act* may be combined with a form, oath, statement or notice, as the case may be, prescribed under this Act, and the form, oath, statement or notice is valid for both the general elections under the *Local Authorities Election Act* and the election under this Act.

(5) Regulations made under the *Local Authorities Election Act* apply to an election held in accordance with Part 3 as if it were a general election under the *Local Authorities Election Act*.

1989 cS-11.5 s29;1991 c23 s2(68)

PART 2

ELECTION HELD ON DATE FIXED BY ORDER

Application of this Part **30** Where an election under this Act is to be held on a date provided for in an order under section 5, Part 1 and this Part apply to the election under this Act.

Application of Election Act **31(1)** Except as provided in this Part, Parts 3 and 4 of the *Election Act* apply to an election held separately on a date fixed in an order under section 5 as if it were a general election under the *Election Act*.

(2) For the purposes of this Part, sections 36, 37, 51, 52, 53 to 61, 78, 79, 97, 108(5)(a), 122 to 128, 136(5) and (6), 137, 137.1, 147 and 149.1 of the *Election Act* do not apply.

List of electors **32** The list of electors compiled and revised under the *Election Act* shall be the list of electors for an election under this Act.

Appointment
of returning
officers

33 The returning officers appointed under the *Election Act* shall be the returning officers for the purposes of an election under this Act.

Publication of
election
proclamation

34(1) The Chief Electoral Officer shall, as soon as possible following the making of the order referred to in section 5, publish by proclamation in the prescribed form in respect of each electoral division

- (a) the place, dates and hours for considering applications for revisions to the list of electors,
- (b) the place and hours fixed for the nomination of candidates and the date fixed for the closing of nominations,
- (c) the place, dates and hours fixed for voting at an advance poll if voting is necessary,
- (d) the date of polling day and the hours at which the polling places will open and close if voting is necessary,
- (e) the place, date and time for announcing the results of the official tabulation, that date being the 10th day after polling day, and
- (f) the name, address and telephone number of the returning officer.

(2) The proclamation referred to in subsection (1), a map of the electoral division indicating the numbered polling subdivisions, and a list of the locations of the polling places shall be published by

- (a) posting a copy of each in the office of the returning officer, and
- (b) publishing a copy of each in one or more newspapers of general circulation within the judicial district.

(3) A returning officer may post additional copies of the proclamation, map and list of locations at any other places in the judicial district where he considers they will be reasonably safe from damage and will serve to provide information to the public.

(4) If the information as published is or becomes inaccurate for any reason, the Chief Electoral Officer shall

- (a) publish details of the correction in the newspapers in which the proclamation was published under subsection (2), and
- (b) immediately provide to all candidates or their official agents written details of the correction.

Voting
procedure

35(1) The deputy returning officer shall, without inquiring or ascertaining for whom a voter intends to vote, instruct the voter to

- (a) proceed to one of the polling booths and there, with the marker provided, mark his ballot by placing an "X" in the space opposite the name of the candidate or candidates of his choice,
 - (b) refold the ballot so that the initials, the words "Judicial Election" and the year of the election on the back of the ballot and the number on the back of the counterfoil can be seen without unfolding it, and
 - (c) hand the folded ballot to the deputy returning officer.
- (2) An elector may not vote for more than the number of persons to be elected.
- (3) The deputy returning officer, without unfolding the ballot, shall in full view of the voter and all present
- (a) ascertain by examining
 - (i) the initials, and
 - (ii) the number on the counterfoil,that it is the same ballot that he provided to the voter,
 - (b) remove and tear up the counterfoil, and
 - (c) place the ballot in the ballot box.

Exception to section 108(5) of Election Act **36** Notwithstanding section 108(5)(d) of the *Election Act*, for the purposes of this Part, the deputy returning officer shall reject and place in a rejected ballot envelope any ballot that contains votes for more candidates than the number of persons to be elected.

Exception to section 115 of Election Act **37** Notwithstanding section 115 of the *Election Act*, for the purposes of this Part, a voter may mark only the name of the candidate or candidates, as the case may be.

PART 3

ELECTION HELD IN CONJUNCTION WITH MUNICIPAL ELECTIONS

Application of this Part **38** Where an election under this Act is to be held in conjunction with the general elections under the *Local Authorities Election Act*, Part 1 and this Part apply to the election under this Act.

Application of Local Authorities Election Act **39(1)** Except as provided in this Part, sections 4, 12 to 20, 35(2), 35(3), Parts 2 and 3 and sections 152 to 159 of the *Local Authorities Election Act* apply to an election under this Act held in conjunction with the general elections under the *Local Authorities Election Act* as if it were a general election under the *Local Authorities Election Act*.

(2) For the purposes of this Part, sections 41 to 44, 47(2) and (3), 49, 50, 62, 63, 70, 71, 73, 88(2) and 95 to 99 of the *Local Authorities Election Act* do not apply.

(3) Notwithstanding section 1(3) of this Act, words and phrases used in this Part have the meanings given to them in the *Local Authorities Election Act*.

1989 cS-11.5 s39;1991 c23 s2(68)

Councils to conduct vote **40(1)** Where an election under this Act is to be held in accordance with this Part, every council, except the council of a summer village, shall conduct a vote of the electors residing in the municipality for the purposes of the election under this Act.

(2) The council shall conduct the vote notwithstanding that a

general election under the *Local Authorities Election Act* is not required in that municipality on that day.

(3) If the council has entered into an agreement with one or more elected authorities in the same area for the conduct of a general election under the *Local Authorities Election Act*, the elected authority that is responsible for the conduct of the general election under the agreement shall conduct the vote for the purposes of the election under this Act and has all the rights, powers and duties of the council to conduct the vote.

(4) The Minister of Municipal Affairs is responsible for conducting the vote of the electors residing in an improvement district, settlement under *The Metis Betterment Act*, special area, summer village, new town or Indian reserve or a park as defined in the *National Parks Act* (Canada) and for the purposes of an election under this Act has all the rights, powers and duties of a council to conduct the vote including the authority to appoint returning officers and other election officers.

(5) The Minister of Municipal Affairs may enter into an agreement

- (a) with any elected authority in the area or in an area adjacent to the improvement district, settlement under *The Metis Betterment Act*, special area, summer village, new town or Indian reserve or park as defined in the *National Parks Act* (Canada), or
- (b) with the advisory committee of an improvement district or special area, the board of a settlement association, the board of administrators of a new town or the council of a summer village

to conduct the vote on the Minister's behalf, and the elected authority, advisory committee, board of administrators and council are authorized to enter into such an agreement.

(6) An elected authority, advisory committee, board of administrators, board of a settlement association or council that enters into an agreement under subsection (5) has all the rights, powers and duties of the Minister to conduct the vote.

(7) In accordance with the regulations under section 29, payments shall be made to elected authorities and other bodies that conduct a vote for the purposes of an election under this Act.
1989 cS-11.5 s40;1991 c23 s2(68)

Electors list **41** The list of electors, if any, for a municipality compiled and revised under the *Local Authorities Election Act* shall be the list of electors for conducting a vote for the purposes of an election under this Act in that municipality.

Electors in summer village **42** In the case of a summer village, only residents of the summer village are entitled to vote at an election under this Act.

Appointment of officers **43(1)** The officers and constables appointed under the *Local Authorities Election Act* for the general elections under that Act are officers for the purposes of an election under this Act.

(2) The officers have the duties and the necessary powers under the *Local Authorities Election Act* to conduct an election under this Act, except where inconsistent with this Act.

Voting subdivisions and stations **44(1)** The voting subdivisions and voting stations established for the purposes of the general elections under the *Local Authorities Election Act* are the voting subdivisions and voting stations for the purposes of the election under this Act.

(2) Notwithstanding subsection (1), where voting subdivisions and voting stations do not coincide with the judicial district in which an election under this Act is being held, the Lieutenant Governor in Council may make an order specifying which voting subdivisions and which voting stations fall within a judicial district.

Voting machines **45** If an elected authority makes a by-law under section 84 of the *Local Authorities Election Act* that is applicable to the conducting of a vote of electors for the purposes of an election under this Act, the by-law, with respect to its application under this Act, is not valid unless it is approved by the Minister of Municipal Affairs.

Publication of
election
proclamation

46(1) The Chief Electoral Officer shall as soon as possible following the date of the order referred to in section 5 publish by proclamation in the prescribed form in respect of each municipality

- (a) the place and hours fixed for the nomination of candidates and the date fixed for the closing of nominations,
- (b) the date of election day and the hours at which the voting stations will open and close if voting is necessary,
- (c) the place, date and time for announcing the results of the official tabulation, that date being the 10th day after election day, and
- (d) the name, address and telephone number of the returning officer.

(2) The proclamation referred to in subsection (1) shall be published by

- (a) posting a copy of it in the office of the returning officer, and
- (b) publishing a copy of it in one or more newspapers of general circulation within the municipality.

(3) A returning officer may post additional copies of the proclamation at other places in the municipality where he considers they will be reasonably safe from damage and will serve to provide information to the public.

(4) If the information as published is or becomes inaccurate for any reason, the Chief Electoral Officer shall

- (a) publish details of the correction in the newspapers in which the proclamation was published under subsection (2), and
- (b) immediately provide to all candidates or their official agents written details of the correction.

Marking of
ballots

47(1) On receiving a ballot from the officer presiding at the voting station, the elector shall forthwith proceed into the voting compartment provided and shall mark the ballot by placing an "X" on the right-hand side opposite the name of the candidate of his choice.

(2) After marking the ballot, the elector shall fold the ballot so as

(a) to conceal the names of the candidates and the marks on the face of the ballot, and

(b) to expose the initials of the officer issuing the ballot at the voting station,

and immediately after leaving the voting compartment shall, without delay and without showing the front to anyone, deliver the ballot so folded to the officer supervising at the ballot box.

(3) The officer supervising at the ballot box shall, without unfolding the ballot or in any way disclosing the marks made by the elector on the ballot, verify the initials on the ballot and deposit the ballot at once in the ballot box.

(4) After the ballot is deposited in the ballot box, the elector shall forthwith leave the voting station.

(5) This section, except subsection (4), does not apply in a jurisdiction where the elected authority passes a by-law under section 84 of the *Local Authorities Election Act* and the by-law has been approved under section 45 of this Act.

Exception to
section 45 of
Local
Authorities
Election Act

48 Notwithstanding section 45 of the *Local Authorities Election Act*, for the purposes of this Part the deputy returning officer shall post a copy of the bulletin referred to in section 86(1)(c) of the *Election Act* and copies of sections 116 and 117 of the *Local Authorities Election Act*.

Entries in
voting
register

49(1) For the purposes of this Part, a reference to "judicial candidate" shall be included in the register referred to in section 59 of the *Local Authorities Election Act*.

(2) The officer shall, with respect to each elector who receives a

ballot, denote on the register that the elector received a ballot for the purpose of voting under this Act.

Incapacitated elector at home	<p>50 For the purposes of this Part, if an elected authority provides under section 79 of the <i>Local Authorities Election Act</i> for the taking of votes of electors who because of physical incapacity are unable to attend a voting station or an advance voting station to vote, the resolution applies in respect of taking a vote for the purposes of an election under this Act.</p>
Advance vote	<p>51(1) An elected authority who is conducting a vote under this Act shall provide for the holding of an advance vote in respect of an election under this Act.</p> <p>(2) An advance vote may be held on any day after the 4th Monday in September, but not within 24 hours of election day.</p>
Official count of returning officer	<p>52(1) The returning officer may publish unofficial results of the counting of ballots after an election under this Act as the results are received from voting stations.</p> <p>(2) Each returning officer shall add together the ballot accounts as prepared by the deputy returning officers.</p> <p>(3) On complying with subsection (2), the returning officer shall prepare the prescribed Statement of Official Results.</p>
Retention of ballot boxes	<p>53 For the purposes of this Part, the ballot boxes referred to in section 101 of the <i>Local Authorities Election Act</i> shall be retained for 3 months.</p>
Regulations	<p>54 The Lieutenant Governor in Council may make regulations</p> <p>(a) modifying the provisions of the <i>Election Act</i> and the <i>Local Authorities Election Act</i> and the regulations under those Acts to make them applicable to the requirements of this Act, including adding to and declaring any provisions of those Acts and regulations to be or not to be applicable to an election under this Act;</p>

- (b) prescribing the duties and powers of the Chief Electoral Officer in connection with an election under this Act;
- (c) generally respecting any other matters and things relating to the holding and conduct of an election under this Act that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

PART 4

CONSEQUENTIAL AMENDMENTS

55(1) *The Provincial Court Judges Act is amended by this section.*

(2) *Section 1(a) is repealed and the following is substituted:*

(a) "judge" means

(i) a judge of the Provincial Court appointed under this Act prior to the coming into force of the *Judicial Elections Act*, or

(ii) a judge elected under the *Judicial Elections Act* and includes a chief judge, a deputy chief judge, assistant chief judge and supernumerary judge:

(3) *Section 2(1) is repealed.*

(4) *Section 2(2) is amended by striking out "appointed".*

(5) *Section 11(1)(a) is repealed and the following substituted:*

(a) advise the Attorney General on programs for the training of judges,

(6) The following is added after section 17:

17.1 The Lieutenant Governor in Council may, upon the advice of the Judicial Council, make regulations providing for the training of judges.