

# **2002 Annual Report**

**Including conduct of the Lac du Bonnet by-election  
March 12, 2002**



December 4, 2003

The Honourable George Hickes  
Speaker of the Legislative Assembly  
Room 244 Legislative Building  
Winnipeg, Manitoba  
R3C 0V8

Dear Mr. Speaker:

I have the honour of submitting to you my Annual Report on the activities of Elections Manitoba including the conduct of the March 15, 2002 by-election in Lac du Bonnet. This report is submitted pursuant to subsection 10(2) of *The Elections Act* and subsection 99(1) of *The Elections Finances Act*. In accordance with subsection 10(3.1) of *The Elections Act* and subsection 99(2.1) of *The Elections Finances Act*, post-election and annual reporting under these statutes have been combined.

The applicable legislation states that the Speaker shall lay the report before the Legislative Assembly within five sitting days if the Assembly is in session or, if not, within 15 days after the beginning of the next session.

Pursuant to subsection 10(3) of *The Elections Act* and subsection 99(3) of *The Elections Finances Act*, an annual report that contains recommendations for amendments to these Acts stands referred to the Standing Committee on Legislative Affairs for consideration of those matters. Furthermore, these subsections provide that the Committee shall begin its consideration of the report within 60 days after the report is laid before the Assembly.

Respectfully yours,

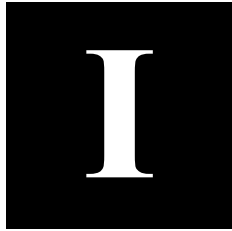


Richard D. Balasko  
Chief Electoral Officer

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# INTRODUCTION AND HIGHLIGHTS

Section 10(2) of *The Elections Act* requires an annual report to be made on the work done under the direction of the Chief Electoral Officer and that after each election or by-election a report regarding the conduct of an election be made. Section 99(1) of *The Elections Finance Act* requires an annual report to be made on the administration of that legislation.

This publication fulfills these annual requirements under both statutes and also reports on the conduct of the by-election held in Lac du Bonnet on March 15, 2002.

Section 142(2) of *The Elections Act* requires a book containing poll by poll results of an election or by-election be published. Printed copies of the Statement of Votes for the Lac du Bonnet by-election are available from Elections Manitoba, and a PDF version of the book is available for download from [www.electionsmanitoba.ca](http://www.electionsmanitoba.ca)

In 2002, Elections Manitoba focussed on preparing for the 38<sup>th</sup> General Election. Staff were hired and trained, new manuals were produced to address amendments to legislation, and software was reviewed, revised and tested. The Lac du Bonnet by-election proved to be a timely opportunity for an initial implementation of these innovations. An updated version of the Voter Enumeration Software (VES) was used in the Lac du Bonnet returning office, and for the first time the office was outfitted with a dial-up connection for communicating with head office. It was also a chance to implement the new 33-day election calendar.

Training of the newly recruited Returning Officers for the General Election began in May of 2002. Technology has become an increasingly important component of election operations, and for the first time Returning Officers were required to partake in a day-long seminar on the VES software and new automated payroll system.

On the finances side, major initiatives in 2002 included addressing the latest changes to *The Elections Finances Act*, and a review of the new compliance assistance program that was launched in 2001.

According to *The Elections Act*, a Manitoba voters list may be used for the purpose of conducting or administering school and municipal elections. Several requests for this information were received from towns, municipalities and school divisions in 2002. Based on this increased interest, Elections Manitoba decided to contact all school divisions and municipalities in the province. A total of 60 towns, municipalities and school divisions took advantage of this opportunity.

Part II of this report outlines the ongoing annual activities at Elections Manitoba. Part III provides insight into the conduct of the Lac du Bonnet by-election held on March 12, 2002. Legislative Changes are discussed in Part IV and preparations for the 38<sup>th</sup> General Election are discussed in part V. Part VI details recommendations for the Legislative Assembly to consider to amend the current legislation.



# ANNUAL ACTIVITIES

## Registration of Political Parties

Outside of an election, a political party may become registered by filing with Elections Manitoba an application for registration, a financial statement, and a petition signed by not fewer than 2,500 persons who were eligible voters during the most recent general election prior to the application. During a general election a political party may be registered by filing an application for registration, a financial statement, and by endorsing five or more candidates. A registered party must disclose information for the following officers: the leader, president, chief financial officer, and auditor.

A registered political party may issue official tax receipts for contributions and have its name printed on the ballots with the names of the candidates endorsed by the party. Once registered, a political party's name and abbreviation are protected under *The Elections Finances Act* in that other registered political parties may not use the name or abbreviation.

During 2002, there were seven registered political parties in Manitoba. The names of the registered political parties and their Chief Financial Officers are listed in Table 1A. A comparison of the number of registered political parties from 1980–2002 is shown in Table 1B.

**Table 1A**

**Registered Political Parties (2002)**

Political Party	Date of Registration	Registration Number	Chief Financial Officer	Date of Appointment
CPC-M	Apr. 30, 1999	P-9905	Glen Wreggitt	April 30, 1999
GPM	Aug. 28, 1999	P-9907	Pamela Sanford	April 1, 2001
Lib.	Dec. 12, 1980	P-8003	Sudhir Sandhu	December 4, 2001
LPM	Mar. 9, 1988	P-8808	Don Ives	December 30, 1993
MP	Aug. 28, 1999	P-9906	Warren Goodwin	May 4, 2001
NDP	Nov. 17, 1980	P-8001	Tom Milne	September 2, 1997
PC	Nov. 25, 1980	P-8002	Gordon A. Horne	August 12, 1999

Unofficial abbreviations used in this report for registered political parties:

- CPC-M Communist Party of Canada – Manitoba
- GPM The Green Party of Manitoba
- Lib. Manitoba Liberal Party
- LPM Libertarian Party of Manitoba
- MP Manitoba Party
- NDP New Democratic Party of Manitoba
- PC The Progressive Conservative Party of Manitoba

**Table 1B**

**Yearly Comparison of Registered Political Parties**

<b>Year</b>	<b># of Registered Political Parties</b>	<b>Year</b>	<b># of Registered Political Parties</b>
1980	3	1992	7
1981	3	1993	7
1982	5	1994	7
1983	5	1995	4
1984	6	1996	4
1985	7	1997	4
1986	7	1998	4
1987	7	1999	7
1988	8	2000	7
1989	8	2001	7
1990	7	2002	7
1991	7		

**Political Party Annual Statements and Returns for Contributions**

The chief financial officer of a registered political party must file an audited financial statement with the Chief Electoral Officer each year. This statement must set out the income, expenses, assets and liabilities of the party. The statement excludes, however, income and election expenses for an election or by-election campaign period.

The statements for 2001 were required to be filed by April 1, 2002. The Communist Party and the Libertarian Party filed statements on April 8, 2002, after the filing deadline. The PC Party and the New Democratic Party filed statements in May, before the expiry of respective extended deadlines. The Manitoba Liberal Party filed in June by its extended filing deadline.

A detailed list of contributors is filed with the annual financial statement and discloses the name, address and amount of aggregate contributions of \$250.00 or more made to the political party by any person or organization in that year. The annual financial statement excludes as income any contributions received during the campaign period of an election or by-election, as these contributions are reported as income on the election period statement.

The 2002 registered political party annual financial statements are filed in the year 2003. As a result, the summary of the 2002 financial statements and the summary of contributions received by registered political parties will be published in the 2003 Annual Report.

A summary of the 2001 annual financial statements of the registered political parties is contained in Table 2 and a summary of the contributions received by registered political parties in 2001 is found in Table 3.

According to section 70(1) of *The Elections Finances Act*, all statements and returns filed with the Chief Electoral Officer are public information and are open to inspection by anyone at any time during regular office hours.



**Table 2**

**Registered Political Party Annual Financial Statements (2001)**

	<b>CPC-M\$</b>	<b>GPM\$</b>	<b>Lib.\$</b>	<b>LPM\$</b>	<b>MP\$</b>	<b>NDP\$</b>	<b>PC\$</b>
<b>Income and Expenses</b>							
Contributions <sup>1</sup>	7,358	3,674	92,909	825	140	630,586	387,292
Transfers	1,044	90	0	0	0	2,663	40,875
Other Income	1,947	0	72,395	25		60,574	119,574
Total Income	10,349	3763	188,798	850	140	693,823	547,741
Expenses	9,547	4208	297,824	1226	230	681,044	943,113
Surplus (Deficit)	802	(444)	(109,026)	(376)	(90)	12,779	(395,372)
<b>Assets and Liabilities</b>							
Assets	1,220	878	664,704	547	164	345,557	562,551
Liabilities	2,714	5	79,420	225	0	69,062	376,598
Net Worth (Deficit)	(1,494)	873	585,284	322	164	276,495	185,953

Financial Statements filed Apr 08/02 Mar 25/02 Jun 12/02 Apr 08/02 Mar 26/02 May 02/02 May 01/02

<sup>1</sup> Excludes contributions received during the election period.

**Table 3**

**Contributions Received by Registered Political Parties (2001)<sup>1</sup>**

	<b>CPC-M</b>	<b>GPM</b>	<b>Lib.</b>	<b>LPM</b>	<b>MP</b>	<b>NDP</b>	<b>PC</b>	<b>Total</b>
<b>\$250.00 or More</b>								
Total value \$	4,388	625	49,417	0	0	330,040	243,716	628,186
<b>\$25.00 to \$250.00</b>								
Total value \$	2,546	2,401	42,738	825	100	283,258	133,680	465,548
<b>Less Than \$25.00</b>								
Total value \$	424	648	754	0	40	17,288	16,278	35,432
<b>Total of all</b>								
<b>Contributions \$</b>	<b>7,358</b>	<b>3,674</b>	<b>92,909</b>	<b>825</b>	<b>140</b>	<b>630,586</b>	<b>393,674</b>	<b>1,129,166</b>

<sup>1</sup> Includes all contributions received during the year, including the election period.

**Advisory Committee**

The Advisory Committee established under *The Elections Finances Act* [ss.4(1)] is comprised of one appointed representative from each registered political party. It is also customary to include the chief financial officers of registered political parties.

The Chief Electoral Officer may meet with the Committee to seek its advice on the proper administration of *The Elections Finances Act*. Although a decision or recommendation by the Advisory Committee is not binding on the Chief Electoral Officer, the advice of the Committee members is of considerable benefit.

In 2002, the Advisory Committee met to discuss issues for future legislative amendments and to get feedback from the parties regarding the new compliance assistance program.

**Table 4**

**Advisory Committee Members (2002)**

<b>Party</b>	<b>Committee Member</b>
Communist Party of Canada – Manitoba	Darrell Rankin
Libertarian Party of Manitoba	Don Ives
Manitoba Liberal Party	Kevin Lamoureux
Manitoba Party	Roger Woloshyn
New Democratic Party of Manitoba	Georges Alevizos
The Green Party of Manitoba	Markus Buchar
The Progressive Conservative Party of Manitoba	Paul Staats

**Ad Hoc Committee**

Although not required under the legislation, an Ad Hoc Committee on *The Elections Act* was established in 1990 to encourage exchanges between the registered political parties and Elections Manitoba.

The Ad Hoc Committee meets regularly to review and discuss new procedures and policies that Elections Manitoba plans to introduce in upcoming elections. In addition, the Committee reviews operational issues raised by the political parties. The Committee also meets to exchange information following elections to provide Elections Manitoba with feedback from a political party perspective as to which practices worked well and which could be improved for a future election.

In June 2002, the Ad Hoc Committee met to discuss preparations for the next general election and to update parties on changes to legislation.

**Table 5**

**Ad Hoc Committee Members (2002)**

<b>Party</b>	<b>Committee Member</b>
Communist Party of Canada – Manitoba	Darrell Rankin
Libertarian Party of Manitoba	Clancy Smith
Manitoba Liberal Party	Kevin Lamoureux
Manitoba Party	Roger Woloshyn
New Democratic Party of Manitoba	Becky Barrett Tom Milne
The Green Party of Manitoba	Markus Buchar
The Progressive Conservative Party of Manitoba	Jim Moore Campbell Alexander Louise Dacquay

**Constituency Associations**

The person responsible for the finances of a constituency association must file a return each year with the Chief Electoral Officer. The return must disclose the

name and address of all contributors whose aggregate annual contributions totaled \$250 or more to the constituency association. A party-by-party summary of annual contributions of \$250 or more to constituency associations for 2002 is shown in Table 6A. A yearly comparison of total contributions for \$250 or more to all constituency associations is shown in Table 6B.

Constituency associations may not issue receipts for income tax purposes. Constituency association returns are public information. They are available for inspection at Elections Manitoba.

**Table 6A**

**Contributions of \$250 or More to Constituency Associations (2002)**

	CPC-M <sup>1</sup>	GPM <sup>1</sup>	Lib.	LPM <sup>1</sup>	MP <sup>1</sup>	NDP	PC
Total Number of Constituency Associations	0	0	57	0	0	57	57
Number Reporting Contributions of \$250 or more	0	0	0	0	0	3	2
Contributions \$250 or more	\$0	\$0	\$0	\$0	\$0	\$2,300	\$7,373

<sup>1</sup> The Communist Party of Canada – Manitoba, The Green Party of Manitoba, Libertarian Party of Manitoba and the Manitoba Party do not have Constituency Associations.

**Table 6B**

**Yearly Comparison of Constituency Associations Reporting Contributions of \$250 or More**

Year	# of Constituency Associations	# Reporting Contributions of \$250 or more	Total Contributions of \$250 or more
1985	154	11	\$34,446
1986	163	12	\$27,635
1987	161	6	\$9,152
1988	181	8	\$23,633
1989	187	2	\$2,472
1990	176	6	\$6,807
1991	172	2	\$925
1992	171	0	\$0
1993	171	0	\$0
1994	171	3	\$1,312
1995	171	1	\$2,039
1996	171	0	\$0
1997	171	4	\$10,536
1998	171	4	\$5,690
1999	171	8	\$11,637
2000	171	5	\$7,323
2001	171	4	\$1,895
2002	171	5	\$9,673

## Candidates' Campaign Deficits

Contributions of \$250 or more made to a candidate's campaign deficit after a campaign period must be reported to the Chief Electoral Officer. During the 1999 General Election, 52 candidates reported a campaign deficit. By the end of 2002, 50 of the 52 deficits from 1999 had been eliminated.

Candidates' deficits may be eliminated in ways other than through contributions of \$250 or more. These include transfers from a political party; contributions of less than \$250; and by reimbursement of election expenses. A candidate who pays from his or her own resources towards eliminating a deficit has made a contribution. It must be reported if the aggregate of the amount is \$250 or more in any year.

On an annual basis, the Office of the Chief Electoral Officer monitors those candidates with outstanding deficits. This process continues until deficits are cleared. Deficits returns are public information and are available for inspection at Elections Manitoba.

## Manitoba Tax Credit Program

Amendments in 2002 to *The Income Tax Act (Manitoba)* increased the tax credit that may be claimed by individuals making monetary contributions to registered political parties or registered candidates. The essential change is that the first \$200 contributed is eligible for a political contribution tax credit at the rate of 75 per cent. Prior to the amendments, 75 per cent was calculated on the first \$100 contributed.

The amount that can be deducted from tax payable is:

- a) 75% of the amount contributed if the amount contributed does not exceed \$200;
- b) \$75 plus 50% of the amount by which the amount contributed exceeds \$200 if the amount contributed exceeds \$200 but does not exceed \$550; and
- c) if the amount contributed exceeds \$550, the lesser of
  - i) \$300 plus 33 $\frac{1}{3}$ % of the amount by which the amount contributed exceeds \$550; or
  - ii) \$500;

if the payment is supported by a proper income tax receipt.

The total value of tax credits for 2001, the most current year for which total information is available, is \$564,245. From 1982 to 2001, the tax credits claimed on individual and corporate returns amounted to \$14,827,145.

**Table 7**

**Manitoba Tax Credits Claimed For Political Contributions (1982 - 2001)\***

<b>Tax Year</b>	<b>Individual Returns \$</b>	<b>Corporate Returns \$ Credits \$</b>	<b>Total</b>
1982	293,500	54,200	347,700
1983	429,200	47,300	476,500
1984	520,400	69,000	589,400
1985	642,900	90,100	733,000
1986	863,356	119,598	982,954
1987	476,617	65,708	542,325
1988	1,115,750	136,091	1,251,841
1989	642,722	68,720	711,442
1990	1,019,617	93,542	1,113,159
1991	470,509	54,817	525,326
1992	512,373	38,387	550,760
1993	539,930	87,426	627,356
1994	634,297	91,109	725,406
1995	1,038,872	123,903	1,162,775
1996	558,774	87,700 *	646,474 *
1997	560,071	71,617	631,688
1998	553,526	82,243	635,769
1999	1,229,513	116,735	1,346,248
2000	562,901	99,876	662,777
2001	537,700	26,545 **	564,245
<b>Total Tax Credits claimed since 1982</b>	<b>\$13,202,528</b>	<b>\$1,624,617</b>	<b>\$14,827,145</b>

\*Previously reported amount for 1996 corporate tax credits corrected by Manitoba Finance

\*\*Credits claimed by corporations for contributions prior to 2001

**Compliance Assistance and Public Disclosure**

Elections Manitoba is required by legislation to assist the following with compliance: auditors, candidates, chief financial officers, constituency associations, official agents and political parties. Assistance is provided by:

- organizing information sessions throughout the province for campaign managers, candidates and official agents before and during an election;
- posting information on the website;
- meeting one-on-one with official agents and party representatives;
- offering a financial subsidy for auditors to consult with official agents on record-keeping;
- answering telephone, written and email inquiries (extended hours are offered during an election);
- issuing periodic reminders to participants;
- providing customized software and printed materials (e.g. guidelines) to auditors, candidates, chief financial officers, official agents and registered political parties.

Another statutory responsibility of the Chief Electoral Officer concerns public information. The statements, returns, registers and records must be available to the public. The same holds true for copies of *The Elections Finances Act*. This information is open to public inspection during regular office hours at Elections Manitoba, 200 Vaughan Street, Winnipeg, Manitoba.

*The Elections Finances Act* directs that statements and returns filed with the Chief Electoral Officer be available for public inspection upon receipt. Statements and returns are made available for public inspection as they are received. The review of a particular statement or return may not have been completed and as such the information available for inspection may not be complete. If the review has been completed, a final version is placed in the public inspection file. The statement and return as originally filed is also available. Academics, members of the media and, in particular, political representatives inspect these documents and records.

For people unable to attend the office, information can be mailed upon request. Election results and financial information, in summary form, are available on Elections Manitoba's website. The election information can be reviewed several ways, including by political party affiliation and by electoral division. In addition, political party annual financial statements and the Elections Manitoba Annual Report are available on the website. Updated information is added to the website, as it becomes available.

## **Public Information**

Returning Officers were a valuable resource as schools program presenters in 2002. With the help of these additional presenters the office was able to conduct more presentations, more often. In past years, presentations were limited to the months of May and June when summer students were available to conduct them. Now presentations are offered throughout the school year. The program has also expanded geographically. In 2002 almost 100 presentations were made, not only in Winnipeg but also in rural Manitoba and several remote, northern communities. With the appointment of Returning Officers now being made by the Chief Electoral Officer, Elections Manitoba has been looking for individuals with strong public presentation skills who can continue with this work throughout the province on a year-round basis.

In September 2002, staff from Elections Manitoba met with staff from the Manitoba's Department of Education to see if the opportunity existed for Elections Manitoba to be involved with designing a lesson plan. At the time, the Department of Education was just beginning to look at revising the Senior 1 (grade 9) and Senior 4 (grade 12) curriculum. The department was open to working with Elections Manitoba, and further discussions were planned for 2003.

## **Shared Code of Ethical Conduct**

In the 1999 Annual Report it was noted that Manitoba's Commission of Inquiry into alleged infractions of *The Elections Act* and *The Elections Finances Act* recommended that all political parties voluntarily prepare and implement a code of ethics by December 31, 2001. The recommendation went on to say that if a code is not implemented by that date, a standard code should be made compulsory by legislation. This recommendation was discussed with political parties and it was agreed that, apart from parties own codes of ethics, a common code of ethical conduct could be developed that would foster confidence in the integrity and fairness of the electoral process. Such a code was developed through consensus with the political parties.

Six of the seven registered political parties have now adopted the code of ethics. The Libertarian Party has chosen not to adopt the code of ethics on principle.

## **Cooperation with Other Jurisdictions**

As in previous years Elections Manitoba participated in several projects with other jurisdictions including the sharing of manuals, materials and policies.

The annual Canadian Election Officials conference was hosted this year by Elections Saskatchewan in Regina. At the conference an agreement was made among all the provincial and federal offices to develop an online resource library which will enable all the provincial election offices and Elections Canada to efficiently and quickly share information and research any election related question. Elections Manitoba was instrumental in putting together a prototype and demonstrating the benefits of such an undertaking. Work continues and a target of early 2004 has been set for the completion of the web site. Input and funding will be shared by all jurisdictions.

With municipal elections being held in October, 2002 many municipalities and school divisions made requests for customized copies of voters lists for their jurisdiction. Elections Manitoba was able to accommodate these requests through the provisions stated in section 163.1(1) of *The Elections Act* which permits use of a provincial voters list, "*for the purpose of a federal, municipal or school election by the respective authority.*"



# LAC DU BONNET BY-ELECTION

On February 8, 2002 the Chief Electoral Officer issued the writ of election to the Returning Officer for the electoral division of Lac du Bonnet, pursuant to Order in Council number 53/2002. The member for the electoral division, Mr. Daren Praznik, had resigned his seat earlier that day. Nominations were set to close on February 26 and the by-election was directed to take place on March 12, 2002.

The Statement of Votes for the by-election was published in September, 2002. Statistics and other information concerning voter registration, nominations and voting are contained in that publication. Printed copies are available through Elections Manitoba and a PDF file is available for download from [www.electionsmanitoba.ca](http://www.electionsmanitoba.ca)

## Operational Conduct of the By-election

### Staff and Training

In 2000, an amendment to *The Elections Act* was made directing the Chief Electoral Officer to appoint Returning Officers. This amendment came into force on January 1, 2001 and was implemented through an open, merit-based, competitive selection process. The position in the electoral division of Lac du Bonnet was among the first to be advertised. Following selection interviews, Violet Mozil was the first Returning Officer appointed by the Chief Electoral Officer in December, 2001.

### New Election Calendar

This was the first election to be held on a 33-day election calendar. As expected, much was learned about the challenges a Friday start poses to opening a returning office and training enumerators. A detailed, pre-writ plan for services, suppliers and personnel was a necessity.

With the new election calendar, the enumeration period was lengthened from 10 to 14 days and revision was shortened from 10 days to four days. Advance polls were held for six days rather than seven, however, the poll was open each day for 12 hours of voting rather than 11 hours as it had been previously.



## **Voter Registration**

A new version of the 1999 general election Voter Enumeration System (VES) software was used in the Lac du Bonnet by-election. Data entry of enumeration records was done solely in the returning office, which gave Returning Officers better control over the timely and secure production of the voters list. The updated VES software also had the ability to produce a CD following enumeration, and again at the close of revision. The CDs were distributed to candidates in the field.

## **Reporting Tools in the Returning Office**

A dial-up connection between the returning office and Elections Manitoba was used to pilot a daily tracking system for enumeration and revision. This system proved to be an exceptional management tool for both the Returning Officer and Elections Manitoba. Further development of this electronic management tool was planned for use in the next general election.

## **Mapping**

Enhancements to rural maps had been a focus at Elections Manitoba in 2001. The by-election was the ideal opportunity to showcase the newly developed maps which included more detailed roadways, as well as the sections of each township. These proved to be a valuable tool for enumerators and feedback was received for even further improvements.

## **Voting**

Weather forecasts called for snow on election day in some parts of the electoral division of Lac du Bonnet. As snowfalls are not uncommon during March, Elections Manitoba made arrangements with the Department of Highways and Transportation and the municipalities for early snow removal at polling places within the division. Cooperation from these organizations was very much appreciated by Elections Manitoba.

Election day was March 12, 2002. Voter turnout for the by-election was 59.3 per cent. The following table shows voter turnout at the previous 11 by-elections:

**Table 8**

**Voter Turnout in Previous By-Elections**

<b>By-election</b>	<b>Voter Turnout</b>
Lac du Bonnet	59.3%
Kirkfield Park 2000	54.87%
Tuxedo 2000	46.03%
Charleswood 1998	41.82%
Portage la Prairie 1997	55.27%
Osborne 1993	53.77%
Rossmere 1993	58.11%
Rupertsland 1993	35.26%
St. Johns 1993	44.48%
The Maples 1993	56.40%
Crescentwood 1992	61.21%
Portage la Prairie 1992	53.81%

Average voter turnout for the above by-elections is 51.69 per cent.

Over the same period the average voter turnout in general elections was 68.78 per cent.

**Financial Administration of the By-election**

During the 2000 by-elections, an MS Access-based data entry payroll program was developed that could be used in conjunction with the payroll service provider's system. On a bi-weekly basis the Returning Officers would input the election workers' claims and forward this information on a payroll disk along with the input forms to Elections Manitoba. The information received was processed through another relational database review program. The input forms were verified against the program reports to ensure the data was accurate. Once the review and approval processes were completed by Elections Manitoba, the payroll data was converted to the payroll service company's format and sent to them for the production of the paycheques. This type of automated payroll system was used again in the Lac du Bonnet by-election. Further improvements to the program and process came to light and will be implemented for the next general election.

The costs to administer the 2002 by-election are divided into two categories: Electoral Division and Elections Manitoba Office. These costs are summarized on the following pages in Tables 9 and 10.

**Table 19****Summary of Expenditures****Election Officials Fees and Travel****Fees:**

Returning Officers and Assistant Returning Officers	\$12,891
Enumeration officials	15,755
Poll officials	16,212
Other election officials	2,612
Payroll benefits	2,938
Payroll service charges	2,559
<b>Subtotal</b>	<b>\$52,967</b>

**Training:**

Enumeration officials	\$915
Poll officials	2,025
<b>Subtotal</b>	<b>\$2,940</b>

**Travel:**

Returning Officers and Assistant Returning Officers	\$1,019
Enumeration officials	6,784
Poll officials	5117
Other election officials	717
<b>Subtotal</b>	<b>\$13,637</b>

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**Total Election Officials Fees and Travel** **\$69,544**

**Office Expenditures:**

Courier	\$1,456
Office rental	3,350
Office supplies	235
Polling place rental	3,125
Postage	429
Printing	3,628
Computers	18,207
Furniture	4,007
Repairs and maintenance	225
Supplies – paper	279
Telephone	1,554

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**Total Returning Office Expenditures** **\$36,495**

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**Total Electoral Divisions Operations Expenditures** **\$106,039**

**Table 10****Summary of Elections Manitoba Office Expenditures**

Advertising	\$22,159
Computer costs	777
Courier	1,378
Furniture and equipment rental	905
Office supplies	497
Printing	6,586
Postage	677
Professional fees	21,135
Salaries	48,270
Telephone	3,724
Travel	3,009
Accommodations	575
Food & Beverage	1,264
Other	190
<b>Total Elections Manitoba Office Expenditures</b>	<b>\$111,146</b>
<hr/>	
<b>Total By-election Expenditures</b>	<b>\$217,185</b>

## Campaign Finances

### Review of By-election Financial Statements and Returns

The filing deadline for candidate and political party election statements and returns for the by-elections was June 12, 2002. The returns for Gerald Hawranik and Mike Hameluck were filed on July 3, 2002 and July 12, 2002 respectively – both within their extended filing deadlines. George Harbottle's return was filed on June 27, 2002, after the filing deadline. The New Democratic Party's return was filed on June 11, 2002. Both the Progressive Conservative Party and the Manitoba Liberal Party filed returns on August 12, 2002, within their extended filing deadlines. Summaries of the returns are provided in the following tables.

Registered political parties qualify for a 50 per cent reimbursement of actual election expenses in each electoral division if their endorsed candidate in that electoral division receives a minimum of 10 per cent of the valid votes cast. Candidates receiving a minimum of 10 per cent of the valid votes cast qualify to receive a 50 per cent reimbursement of their actual election expenses. The spending limits for candidates and their reimbursements paid are shown in Table 11. The spending limits for registered political parties and their reimbursements paid are shown in Table 12.

Total reimbursement paid for the by-election was \$73,698 which was comprised of \$39,279 for political parties and \$34,419 for candidates. In some instances, part or all of a candidate's reimbursement is paid to the candidate's endorsing political party depending upon the candidate's campaign deficit or surplus status. In addition, an auditor is paid a subsidy of up to \$600 for auditing the

financial statement of a candidate or a registered political party. Subsidies paid to auditors totalled \$2,400.

*The Elections Finances Act* allows for one half of an election expense reimbursement otherwise payable to a candidate's campaign or to a registered political party to be paid as an advance within 15 days of filing a financial return. All advances were paid within 15 days as required.

**Table 11**  
**Summary of Candidate Income, Expenses, Assets, Liabilities, Spending Limits and Reimbursements for the 2002 By-Election**

<b>Lac du Bonnet</b>	<b>Mike Hameluck NDP</b>	<b>George Harbottle Liberal</b>	<b>Gerald Hawranik PC</b>
<b>Assets and Liabilities</b>			
Assets	0	1,374	136
Liabilities	17,483	9,321	11,293
<b>Surplus (Deficit)</b>	<b>(17,483)</b>	<b>(7,947)</b>	<b>(11,157)</b>
<b>Income</b>			
Contributions	0	7,709	17,870
Transfers	10,261	950	0
Other	0	926	0
Total Income	10,261	9,585	17,870
<b>Expenses</b>			
Election expenses	27,341	17,266	24,821
Non-Election expenses	403	266	4,206
Transfers	0	0	0
Total Expenses	27,744	17,532	29,027
<b>Surplus (Deficit)</b>	<b>(17,483)</b>	<b>(7,947)</b>	<b>(11,157)</b>
<b>Spending Limits</b>			
Advertising	6,963	6,963	6,963
Overall	34,041	34,041	34,041
<b>Reimbursements</b>			
Candidate	13,671	7,701	6,956
Party	0	771	5,320
<b>Total Reimbursement</b>	<b>13,671</b>	<b>8,472</b>	<b>12,276</b>

**Table 12**

**Political Parties Summary of Income, Election Expenses, Reimbursements  
and Spending Limits for the 2002 By-Election**

<b>Lac du Bonnet</b>	<b>Lib \$</b>	<b>NDP \$</b>	<b>PC \$</b>
<b>Income and Expenses</b>			
Contributions <sup>1</sup>	39,658	140,618	106,702
Transfers	0	0	0
Other	12,415	22,473	27,625
<b>Total Income</b>	<b>52,073</b>	<b>163,091</b>	<b>134,327</b>
<b>Election Expenses</b>			
Election Expenses	33,102	31,591	13,866
Transfers	1,381	6,063	3,087
<b>Total Expenses</b>	<b>34,483</b>	<b>37,654</b>	<b>16,953</b>
Surplus (Deficit)	17,590	125,437	117,374
<b>Spending Limits</b>			
Advertising	20,115	20,115	20,115
<b>Overall</b>	<b>40,230</b>	<b>40,230</b>	<b>40,230</b>
<b>Reimbursements</b>			
Direct Reimbursement <sup>2</sup>	16,551	15,795	6,933
Transferred Reimbursement <sup>3</sup>	771	0	5,320

1 Contributions include money received and the value of donations-in-kind

2 Only three political parties qualified for reimbursement. The amount reimbursed was 50 per cent of actual election expenses (total election expenses less donations-in-kind)

3 Candidate reimbursement transferred to political parties as per section 76 of the EFA

# IV

## LEGISLATIVE CHANGES

### Summary of EA Changes in 2002

As reported in the 2001 Annual Report, in December of that year two bills were passed amending *The Elections Act*. Both of these bills received Royal Assent in 2002.

Bill 9, *The Canadian Forces Personnel Act* (Amendments Relating to Voting Rights and Driving Privileges), received Royal Assent on July 17, 2002. This Bill makes an exception to the requirement of qualified voters to have resided in the province for six months immediately before election day. It allows Manitoba residents who are members of the Canadian Forces, and the people who live with them, to vote when posted outside the province, even if the posting is for more than six months.

Bill 34, *The Charter Compliance Act* added the definition of 'common-law partner' to *The Elections Act*. *The Charter Compliance Act* received Royal Assent on August 1, 2002.

### Summary of EFA Changes in 2002

*The Elections Finances Act* was amended in 2002. The main areas covered by these amendments were:

- spending and contribution limitations in party leadership contests held by registered political parties (Bill 46)
- increased payments to auditors and less onerous requirements for recording minimal value donation in kind contributions (Bill 10)

Bill 46, *The Elections Finances Amendment Act*, received royal assent on August 9, 2002, with the Act coming into force six months later, on February 9, 2003.

The following is a summary of the amendments:

- A registered political party must inform the Chief Electoral Officer of the date of any leadership contest and the names of the contestants.
- Contestants must appoint both an official agent and an auditor.
- Maximum contributions to any combination of leadership contestants is \$3,000 and only individuals normally resident in Manitoba may contribute. This contribution limit is separate from the individual \$3,000 contribution limit for contributions to political parties, candidates and constituency associations.

- No contributions can be made or expenses incurred before the political party officially announces the contest.
- No tax receipts can be issued for contributions to leadership contestants.
- Thirty days after the contest, each contestant's official agent must file with the Chief Electoral Officer an audited statement and a statement of contributions received.
- Advertising expenses of a leadership contest, whether incurred by a contestant or by the political party, are not included in the political party's annual advertising limit.
- Political parties, constituency associations and candidates cannot transfer money, goods or services to contestants.
- A contestant who has a surplus at the end of a contest must transfer it to the political party. Except in this circumstance, contestants cannot make transfers to political parties, constituency associations and candidates.
- A contestant with a deficit at the end of the contest must continue to report (annually) contributions and other sources of income used to reduce the deficit.
- An auditor's fees for leadership contestants are to be reimbursed to a maximum of \$600.

Bill 10, *The Elections Finances Amendment Act* came into effect on December 12, 2002.

The following is a summary of the amendments:

- The maximum amount paid to auditors by the Province of Manitoba for the audit of various statements required to be filed under *The Elections Finances Act* has increased as follows:
  - To audit a party's annual financial statement under s.59 – \$16,000 or such lesser sum as deemed reasonable by the Chief Electoral Officer
  - To audit a party's election financial statement under s.60 – \$30,000 or such lesser sum as deemed reasonable by the Chief Electoral Officer
  - To audit a candidate's election financial statement under s.61 – \$1,500 or such lesser sum as deemed reasonable by the Chief Electoral Officer
  - To audit a leadership contestant's financial statement under s.61.1 – \$1,500 or such lesser sum as deemed reasonable by the Chief Electoral Officer
- The above are the maximum amounts that will be paid by the Province of Manitoba. Auditors will be paid after submitting a bill for the full amount of audit services provided and after a statement has been filed, if the audit meets the requirements of the Act. In most cases auditors will be paid sooner than in past. Previously, auditors had to wait until the review of a financial statement was completed before receiving payment. No payment will be considered until the required financial statement (including an



auditor's report) and an auditor's invoice have been submitted to Elections Manitoba.

- The Act is now clearer that auditors donating their services with respect to the audit of a financial statement have not made a donation in kind contribution. Before the amendment some auditors may have had concerns about making prohibited contributions for donating their audit services.
- Candidates with a surplus may now retain more of the surplus in order to pay for the services of an auditor to audit the candidate's financial statement (for an amount that an auditor bills in excess of the maximum amounts paid under the Act).
- There are less onerous requirements for recording donation in kind contributions. Individuals normally resident in Manitoba (and only such individuals) may make two donation in kind contributions of less than \$15 in a year to each candidate, constituency association, registered political party or leadership contestant without the contributions having to be recorded under the Act. A third such contribution by an individual in a year, regardless of value, must be recorded. What this means is that any of the entities listed above must keep track of the number of donation in kind contributions of less than \$15 an individual makes in a year to know when the threshold of two has been reached.



# ELECTION READINESS

## **Impact of Legislative Changes**

Since the 37<sup>th</sup> General Election, changes to *The Elections Act* have impacted policies and procedures at Elections Manitoba. The following are highlights of the changes that needed to be prepared for prior to the 38<sup>th</sup> General Election.

### **Appointment of Returning Officers by the Chief Electoral Officer**

The most significant impact was Returning Officer recruitment. The process of advertising, interviewing and appointing Returning Officers and Assistant Returning Officers was the focus for much of 2002 and continued into 2003.

### **Minimum election period changed to 33 days**

The change in the election calendar from a minimum of 36 days to 33 days necessitated the adjustment of manuals, forms, and processes.

### **Unpaid Leave of Absence**

With the introduction of the provision of unpaid leave of absence for election officials and political party volunteers to take part in the democratic process during an election, policies and procedures needed to be developed and implemented.

### **Campaign Access/Election Signs**

To aid in compliance of an amendment allowing candidates and their representatives to enter multiple residences and communities and to have signs displayed in apartment and condominiums complexes, contact was made with property management companies and condominium boards to educate them on the new provisions.

### **Canadian Forces on duty out of province**

During 2002 communication with the Armed Forces laid the ground work for implementing this amendment for the next general election. Through cooperation with the Judge Advocate General, information was prepared in advance to be ready to send to service personnel overseas as soon as an election was called.

### **Definition of Common Law Partners**

Training material was adjusted to ensure Returning Officers understood this additional provision which was introduced to comply with the Charter of Rights.

## Staffing and Training of Returning Officers

During the period of October 2001 through 2002 and into early 2003, much of the focus at Elections Manitoba was directed towards the recruitment of Returning Officers and Assistant Returning Officers for the 57 Electoral Divisions within the province. During that time, 825 applications were received and 459 interviews were conducted by two interview boards. These interviews took place in Winnipeg and four additional locations throughout the province.

With new provisions in *The Elections Act* providing for election officials to apply for an unpaid leave of absence in order to perform their duties, where applicable, Returning Officers and Assistant Returning Officers were asked to apply to their employers as soon as possible. A total of 27 of the successful applicants applied to their employers for a leave. Only two of the 27 leaves were appealed by the employer. Under the legislation, an employer may apply to the chairperson of the Manitoba Labour Board to request an exemption, if the employer believes granting the leave would be seriously detrimental to his or her operations. As per *The Elections Act*, the chairperson of the Manitoba Labour Board and the Chief Electoral Officer appointed a retired judge to decide the two applications. Both leaves were approved by the retired judge.

Training began in May 2002 with a one-day orientation and mapping session held in various locations throughout the province. Following these sessions, Returning Officers were assigned the tasks of re-configuring the polling subdivisions in their Electoral Division and completing various pre-writ preparations. Deadlines for these tasks were to be met in order for each Returning Officer and Assistant Returning Officer to successfully complete their probation period.

In 1998, *The Elections Act* was changed to increase the size of each polling subdivision from approximately 250 voters to 350 voters. Due to the possibility of an election occurring under either old or new electoral division boundaries, the re-drawing of polling subdivisions was not completed prior to the September 1999 general election. Efforts were made to limit the reduction of poll locations so as not to inconvenience the voters. With the increase in the size of the polls the number of polls was reduced by just over 300, with attendant efficiencies and cost savings. However, there were only 69 fewer polling *places*, a reduction of just .08 per cent.

The valuable experience of the Lac du Bonnet by-election being the first election under the new 33-day calendar and therefore called on a Friday confirmed the need for preparations to be firmly in place before the election call. Returning Officers were given a list of activities they could do in this pre-writ period. These included:

- compiling a list of potential enumerators and making initial contact with them
- contacting polling places
- making contact with potential office staff
- locating available office space which could be used as a returning office

- arranging for a training site for use on the weekend the election is called
- making initial contact with furniture rental companies and ballot printers
- developing various action plans which can be implemented when the election is called. These include Writ Day plans, enumeration plans, multiple residence plans and institutional plans

During September and October, several intense, three-day training courses were conducted on processes and procedures. Participants were instructed to become familiar with manuals and forms prior to the sessions as many of the Returning Officers and Assistant Returning Officers were being involved in the electoral process for the first time. Training included all phases of the election, as well as communications, training election officials, finances in the returning office and a presentation by the Manitoba Human Rights Commission. Each evening during these sessions, a demo model of the Election Software was presented to small groups which allowed participants to have some time for hands on experience on the computers.

## **Information Systems & Technology**

In 2002, final enhancements were made to the new Voter Enumeration System (VES) based on its first production use in the Lac du Bonnet by-election. This MS Access system now handles all aspects of enumeration in a returning office – voter data entry, production of paper and electronic versions of the preliminary and revised voters lists, office personnel tracking, reporting of enumeration status and numbers, and polling day results posting. In addition, another MS Access system was updated to manage returning office staff payroll in the field. During an election, these systems will reside in each of the 57 returning offices and transmit data to Elections Manitoba via dial-up Internet connections.

A third MS Access system was being finalized for candidates to produce their Form 922 financial returns. This data entry system allows the candidate or official agent to enter all of the candidate's income and expenses for both election and non-election periods. The system produces various reports and contributors lists, as well as a final copy of the 922 return in both hard copy and electronic versions. The electronic version is importable to Elections Manitoba's Election Management Information System (EMIS) to save data entry time. When a candidate is registered during an election, they will receive a Filing Disk on CD to install and use on their own PC.

Designs for various real-time, web-based reports for management staff were started in 2002 to track information posted from the returning offices via VES. During an election these reports will allow head office to track progress during the various phases of the election.

Plans were also started on a return processing system for the candidate and party election financial statements, which are required to be filed three months after polling day. Surpluses or deficits in spending, spending limits, contribution types, and any reimbursement amounts will be tracked by this system. Many return review status reports will be available for management.

A record keeping system is planned for use by the candidates to track their expenses via invoice entry, which will allow assignment of these expenses to proper election accounts.

## **Advertising**

During an election, Elections Manitoba advertises in newspapers, on TV and on radio. Much of the content of these ads is determined by the legislation and themes and design are occasionally updated. As a result of amendments, new content was required for a future general election. Before consulting with an advertising agency, Elections Manitoba conducted research to evaluate public attitudes toward Manitoba's electoral system. PRA Inc. was hired to conduct four focus groups: two each with youth (16-25 years of age) and adults (26 and older). The groups were held both in Winnipeg and outside the city. The information gathered from this research was used to develop new themes for the advertising campaign.

Using the knowledge gained from the focus testing, the creative design firm of Deschenes Regnier developed a new Voters Guide, and new TV, radio and newspapers ads. Work with Deschenes Regnier continued into spring of 2003.

## **Website**

Extensive work was done in 2002 on Elections Manitoba's website. The site's navigation was completely revamped, and additional information was made available including finance related forms and schools program information. By the end of the year, the redesign was on track for a spring 2003 launch.

The site was also moved to a new service provider who could accommodate the increased usage expected during the 38<sup>th</sup> general election. A new URL was registered in preparation for the launch: [www.electionsmanitoba.ca](http://www.electionsmanitoba.ca)



# Recommendations

## ***The Elections Act***

The outstanding recommendations from the 2001 Annual Report are set out on the following pages. Where applicable, updates to the recommendations have been made. Therefore, this represents the entire, consolidated list of recommendations for legislative amendments.

**Following the 38<sup>th</sup> General Election other potential recommendations have been recognized and are presently being examined and researched and will be forwarded in the 2003 Annual Report.**

### **Voting Entitlements**

#### **Qualification for Voters List (six-month residency rule) [s. 32 (1) and 35 (1)]**

**Background:** In section 35 (1) of *The Elections Act*, Rule 2 states, "*A person does not lose residence in the province by leaving the province for a definite purpose during a definite period of less than six months, if he intends to return to the province and reside within the province after that period.*"

Significant improvements to voter enfranchisement were made to *The Elections Act* in 1998, with the introduction of absentee voting. Absentee voting was well received across the province during the 1999 general election. An eligible voter located anywhere outside the province can vote in a Manitoba provincial election by using a special blank ballot, provided the voter has not left the province for more than six months. An eligible voter within the province who is temporarily away from his or her home electoral division for less than six months and, consequently, unable to attend advance or regular polls in his or her home electoral division, may also vote using an absentee ballot.

*The Canadian Forces Personnel Act*, which was given Royal Assent on July 17, 2002, exempts

Manitoba residents who are members of the Canadian Forces from the six-month residency period. The amendment to *The Elections Act* allows Manitoba residents who are members of the Canadian Forces, and the people who live with them, to vote while posted outside the province.

However, it was also recommended that the requirement under *The Elections Act* for six-month residency be reviewed, particularly as it relates to otherwise qualified voters who may be absent from the province for more than six months, yet intend to return to Manitoba within a specified time.

During an election, students can be affected by the residency requirement. Elections Manitoba's interpretation of the six-month residency requirement, as it pertains to students, is based on a 1981 decision of the Provincial Judges Court. Currently, if a student is attending a program of studies outside the province for six months or more, he or she would not be qualified to vote. However, if the student returns home from outside the province within six months, the six-month residency 'clock' begins anew, once the student resumes studies outside the province.

During the 1999 general election, students and their families expressed concerns that the six-month residency requirement should not apply to people studying outside the province. It was felt that a student who is unable to return home within a six-month period should still be permitted to vote by absentee ballot. The Ad Hoc Committee for *The Elections Act* recommended that a five-year exemption apply to students, public servants and employees of international organizations.

In British Columbia, an eligible voter does not lose residency if he or she is engaged in the service of the government of British Columbia or

Canada. There is no specific time limit set for BC's residency exemption.

In Ontario, an eligible voter who ceases to reside in the electoral division within two years before election day is entitled to vote there, provided he or she lives in Ontario for at least 12 consecutive months before moving from the province; he or she intends to reside in Ontario again; and his or her last Ontario residence was in the electoral division. The two-year limit does not apply to a person absent from Ontario in the service of the Government of Ontario or the Government of Canada, or to attend an educational institution.

In Québec, an eligible voter may exercise his or her right to vote from outside that province for two years after his or her departure. However, the two-year limit does not apply to a voter who is posted outside Québec to a position with the government of Québec or Canada, or to a voter who is posted outside Québec to a position with an international organization of which Québec or Canada is a paying member.

In Saskatchewan, an eligible voter loses residency if he or she moves away from Saskatchewan and intends to remain outside Saskatchewan for at least five years.

For federal elections, the residency exemption applies to the staff of international organizations of which Canada is a paying member. The exemption extends to employees in the public service of Canada or a province, who are posted outside Canada. The residency exemption also applies to eligible voters who live outside Canada for less than five years and intend to return to Canada.

In Canada, British Columbia, Ontario and Québec, eligible voters who are spouses and family members of the category of employees listed above are also exempt from the normal residency rules.

**1. Recommendation:** That the six-month residency requirement be extended to a period of several years for the following people who are otherwise eligible to vote:

- employees of the Federal Public Service or Manitoba Civil Service or international organizations who have every intention of returning to live in Manitoba upon the conclusion of their employment;
- students living outside of the province, who have every intention of returning to Manitoba; and
- the immediate family of any such workers or students.

### **Caregiver of a homebound voter [s.101 and 102]**

**Background:** A few instances arose during the by-elections in 2000 and 2002 where the caregiver of a homebound voter would have been served better if a provision existed in *The Elections Act* to allow the caregiver to use the homebound voting provisions.

During the 1999 general election, Returning Officers received requests from caregivers to vote at home. Many of these caregivers were spouses and other family members who, except for occasional relief by home care workers, were confined to their homes to care for their disabled partner or family member. This respite did not always coincide with a voting day, especially if the relief was not available on a weekly basis.

**2. Recommendation:** That *The Elections Act* be amended to enable the qualified caregivers of homebound voters, who are otherwise unable to attend advance or regular polls, to use the homebound voting method.

### **Special circumstances [s. 101 and 102]**

**Background:** During every election, on the Sunday and Monday before election day, calls are received by Elections Manitoba from qualified voters whose circumstances have changed. They explain that they will not be able to attend their polling place location on election day. The most common situations heard are:

1. The voter has been called out of town unexpectedly, either on business or personal

matters, and the absentee application deadline was the previous Saturday.

2. A voter is released earlier than expected from the hospital, where he or she had intended to cast a ballot. The voter is physically unable to go to his or her designated polling place location and the homebound voter application deadline was the previous Saturday.

Though the number of people in circumstances such as these is not exceptionally large (perhaps an average of one or two per division), there is no voting opportunity in place for them.

Voters with personal security concerns may apply, then vote, anytime up to and including election day. They may vote either at the regular poll or by presenting themselves at the returning office. Alternatively, they may use the homebound voting poll.

Similar voting options to the ones described above could accommodate people with 'special circumstances'. By using the homebound poll, the voter who leaves the hospital early could arrange to have the ballot delivered by the Returning Officer. If distance is a factor, this might need to be done by someone designated by the Returning Officer.

3. **Recommendation:** That sections 101 and 102 be amended to extend the homebound voting provisions to voters with 'special circumstances'. In such cases, the Returning Officer must be satisfied that a voter has missed the deadlines for other voting options due to unforeseen circumstances and would otherwise be unable to vote. This opportunity would only be available through the returning office on the Monday before election day.

#### **Residency of disadvantaged individuals [s. 35 (1)]**

**Background:** Prior to the 1999 Election, Elections Manitoba developed a policy to address the issue of residency for people who live in temporary residences (e.g. hostels). The policy states, "A temporary residence or establishment

*where the voter is provided with food or lodging or other social services (including soup kitchens, shelters, hostels or similar institutions) shall be considered not to be the place of residence of a voter unless the voter has no residential quarters in any other electoral division to which, on polling day, he or she may go, in which case the voter's temporary quarters are deemed to be the place where the voter is ordinarily resident."* (*The Canada Elections Act* contains a provision similar to Elections Manitoba's policy.)

4. **Recommendation:** That the determination of temporary residential quarters be incorporated in *The Elections Act*, as outlined above.

#### **Voters List**

##### **Authorized signatures and delivery to Returning Officers [s. 36 (1 & 2)]**

**Background:** During the 1999 general election, a new way of producing the Voters List was used. Data entry operators entered the voter's name and address on a computer template. This replaced the practice of having each Enumerator type his or her own Voters List. The Voters List was then reproduced in the returning office, instead of having it prepared by a commercial printer. In some rural electoral divisions, data entry operators were arranged on a regional basis. Currently, *The Elections Act* states that the Enumerator shall sign the Voters List. During the 2000 and 2002 by-elections the Voters Lists were data entered in the returning offices. This same problem was experienced especially in the rural areas when the enumerators were in some cases far removed from the returning office location. While the signature of the Enumerator remains an important concept, it would be more efficient to permit either the Enumerator or the Returning Officer to sign the finalized Voters List.

5. **Recommendation:** That *The Elections Act* be amended so that, where required, the Returning Officer may sign the Voters List for an Enumerator.



## **Safeguarding the Voters List [s. 156 (1); 156 (2); 158; 163.1 (1); and 164]**

**Background:** In the 1995 Statutory Report, it was recommended that, "[*The Elections Act*] be amended so that the Chief Electoral Officer may take such steps as deemed necessary to safeguard proper use of the Voters List and that subsections 156 (1) and 156 (2) specifically allow the Chief Electoral Officer and Returning Officers to make control entries on the list."

Protection of personal information is an important public concern. Amendments are necessary to ensure that Voters Lists are being used properly and to ensure that the privacy of voters is respected.

- 6. Recommendation:** That subsections 156 (1), 156 (2) and section 158 specifically exempt the Chief Electoral Officer and Returning Officers in order to permit control entries to be made on the Voters List. In addition, the Chief Electoral Officer should be permitted to take such steps as deemed necessary to safeguard proper use, and detect misuse, of the Voters List.

## **Use of the Voters List [s. 163.1 (1) and 164]**

**Background:** The Voters List contains the names, addresses and, where provided, phone numbers of voters. Section 163.1(1) of *The Elections Act* is worded in such a way as to make it an election offence to misuse the Voters List without stating clearly what constitutes authorized use of the list. Provisions to guard against misuse, and clarify how the lists may or may not be used, should be added. The elections legislation of Canada, British Columbia and Québec jurisdictions are specific regarding acceptable uses of Voters Lists. Now that the Voters List is available in electronic form, it is recommended that this section of *The Elections Act* be more specific.

- 7. Recommendation:** That section 163.1(1) be revised to be more specific as to use of the Voters Lists to include the following:

- That there be a clause stating, in a positive manner, who may have access to, and use of, the Voters List. In addition, personal information recorded on the Voters List may only be used for purposes consistent with the following statutes: *The Elections Act*; *The Elections Finances Act*; a referendum conducted under *The Balanced Budget, Debt Repayment and Taxpayer Protection Amendment and Consequential Amendments Act* ("*The Balanced Budget Act*"); *The Local Authorities Elections Act*; *The City of Winnipeg Act*; *The Canada Elections Act*; and any related Regulations pertaining to these Acts.
- That the Chief Electoral Officer may enter into an agreement with any body governed by the above statutes to share Manitoba Voters List information under conditions appropriate to the use of the list. For the purpose of ensuring the protection of personal information recorded on the list, the Chief Electoral Officer may impose conditions, restrictions and safeguards on the use of Voters List information.
- That an election officer may require a person wishing to inspect a copy of a Voters List, or record pertaining to the Voters List, to provide a signed statement that the person will not use personal information included in the Voters List or record, except for a purpose permitted by *The Elections Act*. This requirement should also extend to any individual or organization on whose behalf the person is inspecting the Voters List or record.

## **Access to communities by election workers [s. 174]**

**Background:** In 2000, two amendments to Bill 17, *The Elections Amendment Act*, were passed at the report stage. The amendments to section 174.2 of *The Elections Act* established the right of candidates and their representatives to enter communities for the purpose of canvassing or distributing election campaign material. The

provisions in section 174 should be extended in order to ensure access to all communities by Enumerators and election officers including the Returning Officer.

- 8. Recommendation:** That section 174 be amended to include access provisions to all communities by Enumerators and election officers.

## Offences

### False entries or statements [s. 156 (2)]

**Background:** Currently, section 156 (2) of *The Elections Act* makes it an election offence to make a false statement, knowingly, on a Voters List. This provision should be expanded to make it an election offence to make a false entry or false statement, knowingly, on any election papers used under *The Elections Act*.

The integrity of the electoral process is undermined if people make false statement on any oaths or forms related to an election. Sections 81 and 82 of *The Elections Finances Act* prohibit the filing of false documents and false information. Similar provisions should be included in *The Elections Act*.

The elections acts of British Columbia, Canada, Newfoundland and Yukon address the issue of a false entry, oath or statement and misleading information.

- 9. Recommendation:** That there be a specific election offence for people who make false entries or false statements on any election papers used in *The Elections Act*, including poll books used at the poll and nomination papers filed by candidates.

### Influencing votes [s. 145]

**Background:** This section of *The Elections Act* deals with the inducement of voters and candidates.

The question often arises whether driving voters to the polls or inviting voters to a barbeque are 'benefits' that are prohibited under section 145.

An overly broad interpretation of this section should be prevented. It should be stated explicitly that 'benefits' are not acceptable if there is a 'corrupt intent'. This would help candidates, registered political parties and the public. This would be similar to a concept expressed in section 147 that deals with "treating" for the purpose of corruptly influencing another person.

- 10. Recommendation:** That section 145 be amended to clarify the term 'benefit' by making it an offence to offer, agree to, or receive a benefit 'with a corrupt intent'.

### Obstruction of election officers (Part 7: Voting)

**Background:** Currently, provisions exist in *The Elections Act* [s. 30.3 (2)] making it an offence to obstruct an Enumerator in the performance of his or her duties. Many other jurisdictions (e.g. British Columbia, Canada, Québec, Yukon) have extended their legislation to make it an offence to obstruct any election officer.

- 11. Recommendation:** That a person who impedes or obstructs an election officer in the performance of his or her duties is guilty of an election offence.

### Political activities on polling day/campaigning within 50 metres of polling place [s. 111 and 112]

**Background:** In the 2000 and 2002 by-elections, and in past general elections, some people expressed confusion about political campaigning on election day. In order to provide clarity, changes need to be made to sections 111 and 112 of *The Elections Act*.

Subsections 111(1) and (2) are intended to prohibit political campaigning within 50 meters of the entrance to polling place locations. Presently, *The Elections Act* prohibits circulars, etc. "*within or within 50 meters of the entrance of a building in which there is a polling place [location].*" The provisions also apply to advance poll voting, whether in a separate polling place location or in the returning office, and to absentee voting taking place at the returning office. Presumably, this section was written to prevent

the last-minute influence of a voter by a political party or candidate while the voter was entering a polling place location.

The Returning Officer and candidates often locate their offices within 'strip malls'. If the term "building" is interpreted to mean the entire strip mall, returning offices and candidate campaign offices would not be permitted within the same strip mall because they would, by definition, be in the same building.

If, as in Alberta, the individual leasehold units within a mall are considered to be "the building", the two offices would only need to be located at least 50 metres apart. The 50 metres from the entrance of the returning office (polling place location) could be considered as the shortest distance a person would be able to travel between the two polling place locations within that mall.

Clarification of the term "building" would also be helpful to prohibit campaigning within 50 metres of the entrance to the polling place location for polling places located in residential complexes.

**12. Recommendation:** That sections 111 and 112 be amended to provide for exceptions to the effect that:

Polling place locations are often established in a residential complex or building containing interlocking units, offices, stores or other premises. In such cases, the prohibition of signs, etc. should apply to the polling place location, and to a 50-metre distance from the entrance of the polling place.

## Voting Provisions

**Ballots: how to mark a regular ballot [s. 92 (3)]; and ballots to be rejected/marks allowed on ballot [s. 116 (1) & (2)]**

**Background:** On occasion, ballots with frivolous markings are debated at the count or recount as to whether or not they are valid. This occurred after the 1999 general election. One such ballot featured the name of a rock star, another was marked with a 'happy face'. A Court of Queen's Bench judge rejected both ballots. The decisions

were upheld in the Court of Appeal. (Québec legislation clearly rejects a ballot that bears fanciful or injurious entries.)

**13. Recommendation:** That *The Elections Act* be amended to make it clear that frivolous markings will result in the ballot being rejected.

## Return of writ [s. 140 (1)]

**Background:** Currently, section 140 (1) (b) of *The Elections Act* states that the writ is returned "*immediately after the 10th day after announcing the result of the count.*" This enables the deadline for applying for a judicial recount to pass as specified in section 131(1.1). It states that the deadline for an application for recount is "*not later than eight days after the Returning Officer of the electoral division announces the results.*"

With rapid communication methods in place, the writ could be returned immediately after the deadline for an application for recount. Such a change would enable elected Members of the Legislative Assembly to take office and Ministers to be sworn in two days earlier.

**14. Recommendation:** That section 140 (1) be amended to state that the writ be returned as soon as the period for the application for recount has ended.

**Election signs on public property: date by which signs should be down [no reference in *The Elections Act*]**

**Background:** For a few weeks following the 1999 general election, several complaints were received from the public about campaign signs left on boulevards by candidates.

In Québec, the election legislation states that all election posters and billboards must be removed not later than 15 days after election day, failing which they may be removed by the local municipality or by the owner of the property, at the expense of the party or candidate concerned.

In Manitoba, the current provisions for the removal and penalties for signs and posters within 50 metres of a polling place location work

reasonably well. In other words, provisions for the removal of election signs on public property after polling day should be based on section 111 (2) and (3) of *The Elections Act*. As discussed with the Ad Hoc Advisory Committee, a deadline of seven days after election day seems reasonable. This would not apply to signs on private property.

**15. Recommendation:** That election signs and posters must be removed from public property by the candidate or registered political party responsible for posting the sign or poster within seven days after election day. Every person or registered political party failing to do so would be guilty of an offence with penalties in line with the penalties found in section 111(3).

#### **Senior Deputy Returning Officers [s. 21 (2)]**

**Background:** According to *The Elections Act*, a polling place location requires more than three polls in order for a Senior Deputy Returning Officer to be appointed. In past elections, some polling place locations hosted only three polls. In these cases, a Senior Deputy Returning Officer would have been useful, especially in polling place locations where only one poll official had election day experience.

Currently, only one Senior Deputy Returning Officer can be appointed per polling place location. Some polling place locations (e.g., schools) host eight to 12 polls within one building. It would be advantageous in such polling place locations to appoint two Senior Deputy Returning Officers.

**16. Recommendation:** That section 21(2) be amended to make it possible for a Returning Officer to appoint a Senior Deputy Returning Officer for a polling place location where there are three or more polls, and that the Returning Officer may also appoint more than one Senior Deputy Returning Officer in a polling place location where it is warranted.

#### **Homebound ballot voting: delivery [s. 101 and 102]**

**Background:** The role of a Returning Officer has evolved to include more managerial responsibilities than it did in the past. The Returning Officer now has less time to accomplish some of the tasks that were traditionally part of the job. One such task is administering the vote to homebound voters. *The Elections Act* states that, if the Returning Officer is satisfied an applicant meets the requirements to be a homebound voter, "*the Returning Officer shall deliver or mail*" a homebound voting kit to the voter. Because homebound voters often require assistance, it has been found that home delivery is the most viable way to administer the ballot in these cases. As this task can often be very time consuming due to the circumstances involved with many homebound voters, time does not always allow a Returning Officer to deliver and administer the vote. By allowing either the Assistant Returning Officer or a designate to administer this voting opportunity, homebound voters will be better served. The Returning Officer would still retain the responsibility to approve applications for homebound ballots.

**17. Recommendation:** That section 102 (1) be amended to read, "*the Returning Officer shall deliver or cause to be delivered*" a homebound voting kit to allow, when necessary, another person to deliver and administer the vote to those who have met the requirements to vote at home.

#### **Administrative Issues**

##### **Plain language [no references in *The Elections Act*]**

**Background:** The principles of plain language are being used as sections to *The Elections Act* are amended. However, many sections remain more complex and wordy than they need to be. *The Elections Act* is an important statute and, therefore, it is essential that it be understood by candidates, election officials and the public. Clear language will also benefit people who have difficulty reading. At the July 4, 2002 meeting of the Standing Committee on Privileges and

Elections, a commitment was made, over the medium term, to re-write *The Elections Act* in plain language so the public can understand it.

**18. Recommendation:** That *The Elections Act* be re-written in plain, gender-neutral language.

**Statement of account [s. 122]**

**Background:** The responsibility for completing and certifying statements of account for all fees and expenses of poll officials and rent - and then delivering or mailing the statements to the Returning Officer – does not belong to the Deputy Returning Officer. Moreover, these duties are not completed at the polling place location, as stated in *The Elections Act*. The statements of account and rents are an administrative duty of the Returning Officer and are completed in the returning office.

**19. Recommendation:** That section 122 be repealed.

# ***The Elections Finances Act***

## **Contributions**

### **Proceeds from commercial activities [s.1 definition of 'contribution'; no other definitive references in *The Elections Finances Act*]**

**Background:** *The Elections Finances Act* does not specify how the proceeds from a commercial activity should be treated. Specifically, this issue relates to the extent to which a portion of a commercial sale may be considered a contribution. Any portion considered a contribution is relevant because it impacts the issuance of tax receipts and contribution limits by source (only individuals) and by amount (maximum of \$3,000).

A commercial activity, such as the sale of merchandise, involves two variables. One variable is the acquisition cost or value of the item being sold and the other is the proceeds received, or selling price, for the item being sold. The determination of the acquisition cost depends on whether the merchandise is purchased directly by the seller or provided to the seller as a 'donation in kind' and valued accordingly pursuant to existing provisions [s. 40 (1) and 40 (2)]. However, *The Elections Finances Act* does not specify how to treat any net profit that is the residual of the selling price less the cost to acquire the item.

Under *The Elections Finances Act*, a 'contribution' is defined as "...money paid or a 'donation in kind' provided, without compensation..." A commercial transaction involves money paid in exchange for an item of merchandise (assuming it is a merchandise sale). At first glance, the definition of 'contribution' may not be met where merchandise is received for money paid. In other words, this appears to be a transaction. This seems reasonable where the proceeds from the sale equal the cost of the goods to the seller. For example, the sale of political party merchandise at a price of \$350 where the cost to the political party to acquire the merchandise is \$350 would not result in a contribution.

However, where proceeds from the sale exceed the cost to acquire the merchandise, a net profit arises. This makes sense from the seller's perspective and in fact may be what drives the sale of merchandise in the first place. It could be argued that the net profit element of the transaction meets the definition of contribution as the purchaser has paid money, without compensation, for the net profit element of the transaction. For example, the sale of political party merchandise at a price of \$350 where the cost to the party to acquire the merchandise is \$250 would result in a net profit (and presumably a contribution) of \$100.

Equating profit from the sale of merchandise to a contribution is conceptually consistent with the way in which 'fundraising' is dealt in *The Elections Finances Act* by recognizing both compensation and contribution portions. For example, the purchase of a fund raising dinner ticket involves compensation in terms of the dinner as well as an element of contribution. A fund raising function "means any social function held for the purpose of raising money..." The initial difficulty in adopting this treatment for commercial transactions is the determination of whether a commercial sale may be interpreted to be a 'social function' under *The Elections Finances Act*.

A more significant difficulty with this approach, assuming the definition of fundraising function were amended to include commercial activity, is the resulting overstated value of the contribution portion as determined under subsection 38(2), being 75% of the selling price, along with the overstated value of the tax receipt. For example, using the social fundraising formula, the sale of party merchandise at a price of \$350 where the cost to the party to acquire the merchandise is \$250 would result in a contribution of 75% of \$350, or \$262.50.

Commercial sales are also distinct from such social fundraising functions as dinners because the net profit on a fundraising dinner ticket is not known in advance due to unknown variables, including the number of tickets sold and the number attending the dinner. Because of these unknown variables associated with social

fundraising events, the 75% contribution and 25% contribution formula was incorporated out of practical necessity. In the case of merchandise sales the acquisition and selling costs are both known at the point of sale.

- 1. Recommendation:** The method for dealing with proceeds from commercial transactions should be clear and specific in the legislation, particularly because of its impact on source and amount contribution limits and tax receipting. For the purpose of *The Elections Finances Act*, it is recommended that the residual of the selling price, less the cost to acquire an item, be considered a contribution.

In addition, *The Elections Finances Act* should consider whether a minimum threshold should be in place below which commercial sales for single or several items are not considered to include contributions for the purposes of *The Elections Finances Act*. A parallel exists in section 38 (3) where an individual charge of less than \$15 for a fundraiser, and where multiple charges totaling less than \$45 (individual charge must also be less than \$15), are not contributions, according to *The Elections Finances Act*.

#### **Candidate registration deadline [s. 25; 27; and 29 (1)]**

**Background:** Under *The Elections Finances Act* [s. 25], a registered candidate may issue income tax receipts for cash or near-cash contributions. A candidate may submit an application for registration and, provided the nomination papers have been filed properly, he or she is registered.

Subsection 29 (1) of *The Elections Finances Act* states that a candidate's registration terminates at the end of the campaign period. The campaign period ends two months after election day. The present interpretation is that an application for registration must be submitted by the end of the campaign period. This interpretation has been disputed, however, and *The Elections Finances Act* should be clear with respect to the deadline.

To do otherwise may permit registration applications for previous elections.

- 2. Recommendation:** That *The Elections Finances Act* specify that no application for registration be considered if it has been submitted after the end of the candidacy period.

#### **Tracking candidates' actual deficits [s. 68 and 75 (1)]**

**Background:** *The Elections Finances Act* [s. 68] requires that a candidate submit an annual report on the balance of his or her 'campaign deficit' arising from an election, until the campaign deficit is eliminated. The contribution details must be disclosed where there has been a contribution of \$250 or more towards a candidate's 'campaign deficit'.

The determination of a campaign deficit does not include non-election expenses incurred by a candidate (but does include election expenses incurred). An example of a non-election expense would be an expense incurred for 'thank-you' signs after the election. As such, a candidate's actual deficit (assets less liabilities) may often be larger than the candidate's campaign deficit. A candidate may receive contributions to eliminate his or her actual deficit but is only required to report until the campaign deficit is eliminated.

A candidate should be required to report each year on the balance of his or her actual deficit until the actual deficit has been eliminated. All contributions towards a candidate's actual deficit should be reported but only contributions of \$250 or more would be publicly disclosed. This is important both to ensure public disclosure of all political contributions and to ensure that the \$3,000 annual contribution limit is applied. Tracking an actual deficit would not change the existing requirements in *The Elections Finances Act* [s.75] concerning the calculation of a 'deficit'. That section determines how a candidate's reimbursement of election expenses is distributed.

- 3. Recommendation:** That subsection 68 of *The Elections Finances Act* refer to an 'actual deficit'. The amount of an actual deficit for a candidate should be defined

as the total of a candidate's liabilities plus the candidate's loan interest and bank charges, as determined in section 75 (1), which exceeds the candidate's assets plus any reimbursement payable under section 72 (as varied by section 73).

## Reporting

### Independent candidates's candidacy period [s. 1]

**Background:** *The Elections Finances Act* should clarify the date a person becomes an independent candidate. Currently, a person who is not endorsed by a registered political party becomes an independent candidate by declaring himself or herself to be a candidate in the next election. This is done by written notice to the Chief Electoral Officer. Past experience indicates that an independent candidate will likely not be aware of the necessity of proper notification.

The candidacy period is important since candidates' campaigns must file a financial statement for that timeline. Furthermore, income tax receipts for contributions to candidates' campaigns may only be issued for the candidacy period.

- 4. Recommendation:** That *The Elections Finances Act* clarify that the candidacy period for an independent candidate begins on the date a person publicly declares himself or herself to be an independent candidate. This would not require filing a notice in writing with the Chief Electoral Officer.

### Authorizations for candidate and constituency association advertising [s. 54 (2)]

**Background:** All advertisements sponsored by a registered party must display an authorization by the party's chief financial officer. An official agent must authorize a candidate's advertisements that appear during an election period.

Advertisements for candidates and constituency associations that run outside of an election period are required to be included in a party's annual advertising limit. However, it is unclear who is

required to authorize the advertisements, or whether an authorization is required at all.

Advertisements for candidates and constituency associations that run outside of an election period should display an authorization, primarily for reasons of public disclosure and compliance. The general public should have knowledge of the sponsor of a political advertisement. Displaying authorizations will assist political parties in ensuring that the advertisements of their candidates and constituency associations are included in the parties' annual spending limits. In addition, advertisements for candidates appearing outside of an election period often become advertisements used during an election period, for which an authorization is required.

- 5. Recommendation:** That advertising sponsored at any time by a constituency association display an authorization by the person responsible for the finances of a constituency association. In addition, all advertising sponsored at any time by a candidate's campaign should display an authorization by the candidate's official agent.

### Information and documentation [s. 83]

**Background:** *The Elections Finances Act* [s. 83] makes it an offence for any person or organization to fail to file a required statement or return, or to file a statement or return that substantially fails to disclose required information. Financial agents (i.e. chief financial officers, constituency treasurers, official agents) who are required to file statements and returns need to have all relevant information necessary to file, in compliance with section 83. There may be officers or others associated with candidates' campaigns, constituency associations and political parties who have financial information or documents necessary to ensure a complete statement or return. However, for various reasons, the information or documents are not provided to the financial agent responsible for filing. The result may be an inaccurate statement or return. *The Elections Finances Act* should require officers and others to give financial agents the necessary information, to ensure that a financial statement or return is complete and accurate.



Failure to provide such information should be a general offence.

In addition, a general, anti-avoidance provision applicable to all sections of *The Elections Finances Act* should be considered. The provision would make it an offence to engage in any activity designed to circumvent any provision or purpose of *The Elections Finances Act*. A specific, anti-avoidance provision exists in *The Elections Finances Act* [s.51(4)]. It deals with the allocation of election expenses between a political party and a candidate during an election period.

**6. Recommendation:** That officers or others associated with candidates' campaigns, constituency associations and political parties be required to provide financial agents with all the necessary information or documents. This measure would ensure a complete and accurate statement or return. In addition, it would assist financial agents with their filing responsibilities. Failure to provide such information should be a general offence. Finally, *The Elections Finances Act* should contain a general, anti-avoidance provision, applicable to all sections.

#### **Child care expenses [s. 1(g) definition of 'election expenses']**

**Background:** A recommendation in the 1995 Annual Report of the Chief Electoral Officer regarding candidate personal expenses was addressed partially by amendments in 1998. Briefly, the recommendation was that there be a separate personal expense category similar to that in the Canada Elections Act, and that *The Elections Finances Act* should define the items that should be included in this category. Child care and disability expenses were recommended to be included as personal expenses. In addition, it was recommended that personal expenses be excluded from being election expenses but should be eligible for reimbursement.

The 1998 amendments for 'candidate personal expenses' were essentially as follows:

- Reasonable disability expenses of a candidate were excluded from being election expenses, as recommended, but made reimbursable at 100%.
- Reasonable child care expenses of a candidate were recognized as election expenses so that they are reimbursable but also subject to the spending limits. It had been recommended that reasonable childcare expenses of the candidate be excluded as election expenses (i.e. not included in the spending limits), but reimbursable.

Recognizing child care expenses as election expenses may create an inequity and put some candidates at a disadvantage. Some candidates with responsibility for child care will incur child care expenses, which must be included as election expenses. Even though these expenses would be reimbursed, they reduce the amount that may be spent due to the spending limits. Others without child care responsibility would not be in this position.

**7. Recommendation:** That the additional and unique, reasonable costs incurred by a candidate for child care expenses as a result of an election be excluded as 'election expenses'. These costs, however, should be eligible for reimbursement.

#### **Independent candidate's excess reimbursement [s. 75 (2) & (3); and 76]**

**Background:** Where an independent candidate has a surplus (or where receipts equal expenditures) and has qualified for a reimbursement of election expenses, subsection 76 (b) states that no reimbursement is payable. There appears to be an inequity when considering the payment of an endorsed candidate's reimbursement where the endorsed candidate has a surplus. In the latter situation, the endorsed candidate's reimbursement is paid to his or her endorsing political party. The funds paid to the endorsing political party could be available to the candidate in subsequent elections or may indirectly provide benefit to the candidate. An independent candidate who has qualified but who does not receive a reimbursement because of his

or her surplus status would not have funds available for a future campaign or otherwise receive a benefit.

A possible solution to this situation would be to hold the independent candidate's reimbursement in trust similar to the requirements under subsections 75 (2) and (3) concerning an independent candidate's surplus. An endorsed candidate's surplus is paid to his or her endorsing political party and an independent candidate's surplus is held in trust for possible future use.

- 8. Recommendation:** That subsection 76 (b) of *The Elections Finances Act* be amended such that a reimbursement for an independent candidate with a surplus be held in trust by the Chief Electoral Officer. The same provisions that exist in subsection 75 (3) for an independent candidate's surplus held in trust should apply to a reimbursement held in trust, namely that it be held in trust for the independent candidate's use in the next following election. The reimbursement held in trust would be paid to the Consolidated Fund if the independent candidate does not run in the next following general election.

#### **Reimbursement for transferred goods and services [s.44 (6); 71 (2); and 75]**

**Background:** Under section 44 (6) of *The Elections Finances Act*, transferred goods used as election expenses are election expenses of the transferee. It has been a longstanding interpretation that these election expenses are reimbursable to the transferee. *The Elections Finances Act* does not provide for a reimbursement to be paid to a political party on anything but a political party's election expenses. [s.71(2)].

If, for example, a political party purchases brochures and transfers them to a candidate's campaign, which are then used by the campaign in an election period, the campaign must report the cost as an election expense. The campaign, if eligible, would receive a 50% reimbursement of the cost. The transferee receives the reimbursement even though the transferor actually purchased or paid for the brochures.

In addition, a candidate's campaign may be left with surplus funds when it seems that one of the purposes of *The Elections Finances Act* is to leave a campaign with a zero balance. The additional surplus funds may occur because the surplus calculation in section 75 must consider all election expenses including those under section 44 (6) where no money has been paid by the campaign. Election expenses recorded as 'donations in kind' are not included in the surplus calculation.

It seems appropriate that the election expenses are reported by the transferee (i.e. the candidate in the above example). It would also seem appropriate that the entity purchasing the brochures (i.e. the political party in the above example) would receive the reimbursement assuming that the entity is eligible for reimbursement and the goods or services are used as election expenses by the transferee. The Advisory Committee was not strongly in favour of addressing this issue, but did not oppose it.

- 9. Recommendation:** That *The Elections Finances Act* [s.44 (6)] be amended to specify that the reimbursement for transfers be paid to the transferor if the transferor is eligible for reimbursement, and if the transferred goods or services are used as election expenses by the transferee. Where the transferee is a candidate's campaign, *The Elections Finances Act* should be further amended to exclude transferred goods transactions from section 75 ('deficit calculation').

#### **Offences**

##### **Administrative fines [no references in *The Elections Finances Act*]**

**Background:** The 1995 Annual Report of The Chief Electoral Officer on *The Elections Finances Act* recommended that there be administrative fines for essentially administrative infractions. The recommendation has not been addressed by legislative amendment and remains relevant.

Most of the penalties and enforcement provisions of *The Elections Finances Act* involve prosecution. A system of administrative fines or penalties may be more appropriate for some essentially administrative infractions. For example, if a candidate's financial statement is not filed by the deadline [s.61], or if information necessary to clarify or verify a political party's annual return has not been filed by the deadline specified [s. 57 (2)], a daily penalty for each day beyond the filing deadline could be instituted on an administrative fine schedule. There should be a maximum amount specified, which should be less than the maximum amount of any fine specified [s. 83]. *The Elections Finances Act* would authorize the Chief Electoral Officer to institute administrative fines including the authority for collecting if the fines are not paid. In some cases, an administrative fine may be more effective for ensuring compliance with *The Elections Finances Act* and would also be less costly than a prosecution. The right to prosecute should still be maintained if administrative penalties were not effective in causing the return or information to be filed. An administrative fine or a prosecution may be imposed, but not both.

The Royal Commission has recommended that administrative fines be part of the enforcement provisions of federal election law. Administrative fine provisions exist in such jurisdictions as British Columbia and Newfoundland. The Chief Electoral Officer of Canada has recommended the decriminalization of such offences as late filing of expense returns, which are deemed to be of an administrative nature.

In addition, the Royal Commission has recommended that voluntary compliance agreements be used, where warranted, in place of prosecutions. The Canada Elections Act was amended to include such agreements.

Voluntary compliance agreements, compliance letters and other enforcement processes in lieu of prosecutions should be expanded further, in certain instances, and considered as possible amendments to *The Elections Finances Act*.

**10. Recommendation:** That section 98 of *The Elections Finances Act* be amended to allow the Chief Electoral Officer to direct that administrative fines be paid for certain administrative infractions. The authority should apply only to those sections of *The Elections Finances Act* where statements and returns are required to be filed and where information has been requested.

In addition, the Chief Electoral Officer should have the authority to enforce collection in the event administrative fines have not been paid. The authority to prosecute must be retained in the event that the administrative fines do not result in the necessary statement, return or information being filed. It should be clear that either an administrative fine may be imposed or a prosecution pursued, but not both. The administrative fine should be a daily amount for each day that a statement or return or requested information is beyond a required deadline to a specified maximum. Administrative fines should be disclosed to the public.

Finally, where appropriate, other enforcement processes in lieu of prosecutions should be expanded further and considered as possible amendments to *The Elections Finances Act*.

**Reimbursement must be used to settle debts [no references in *The Elections Finances Act*]**

**Background:** The intent of *The Elections Finances Act* is that election expense reimbursement payable to the official agent of a candidate or to the chief financial officer of a registered political party should be used to reduce or eliminate the respective campaign debts. At present, there is no explicit requirement to do so.

Circumstances exist where a candidate's reimbursement funds (i.e. funds from the public treasury) for election expenses in the 1999 general election may not have been used by the official agent to pay outstanding liabilities of a candidate's campaign. This matter was referred to

the Winnipeg Police Services and charges were laid against the official agent.

The appointment of a person to the position of official agent as required by *The Elections Finances Act* [s.10 (3.3)] and *The Elections Act* [s.53], along with the official agent's duties described in *The Elections Finances Act* [s.10 (4)], has the effect that the official agent acts on behalf of the candidate and is responsible for the finances of a candidate. *The Elections Finances Act* [s.55 (1)] requires that financial claims against a candidate be forwarded to the candidate's official agent. Subsection 55 (3) of *The Elections Finances Act* states that, with few exceptions, only the official agent may pay financial claims. Furthermore, *The Elections Finances Act* [s. 77] requires that the candidate's election expenses be reimbursed to the official agent. Similar provisions exist with respect to the chief financial officer of a registered political party. These requirements exist to ensure that the official agent is responsible for the financial affairs of a candidate's campaign. It follows that the candidate's election expenses reimbursement would be used to reduce or eliminate the debts of a candidate's campaign. However, *The Elections Finances Act* should state explicitly that reimbursement funds are to be used for that purpose.

It may be sufficient to clarify that the official agent must deposit reimbursement funds to the candidate's campaign account and to require that the funds be used to eliminate the campaign debts of a candidate. In addition, it should be an offence to do otherwise.

Another option would be to pay reimbursement funds to the candidate and require that the candidate use the funds to eliminate the candidate's campaign debts. The candidate continues to have responsibilities under *The Elections Finances Act* after an official agent has filed the financial return. The candidate often assumes responsibility for settling any remaining debts if the campaign does not have sufficient funds. The candidate must also report on a yearly basis the details of any loan balance or deficit and must maintain campaign records for at least five years. In any event, a reimbursement for election

expenses should be deposited into an account in a financial institution maintained for the purpose of a candidate's campaign.

**11. Recommendation:** That *The Elections Finances Act* state explicitly that the reimbursement funds payable to a candidate's campaign for election expenses be used to eliminate a candidate's campaign debts. In addition, failure to do so should be an offence under *The Elections Finances Act*. The reimbursement may be made payable to the official agent as is currently required. As an alternative, it may be better to have the reimbursement payment made to the candidate for deposit into an account in a financial institution maintained for the purpose of a candidate's campaign.

**Expense documentation filed with candidate's audited statement [no references in *The Elections Finances Act*]**

**Background:** Typically, when reviewing candidates' audited statements, it is necessary to request further documentation for some, if not all, of the amounts reported on the statements.

During the 2000 Kirkfield Park and Tuxedo by-elections, candidates' campaigns were requested in advance of the filing deadline to provide copies of receipts and vouchers for all expenses (election and non-election) at the same time as filing a candidate's audited statement (Form 922).

It was anticipated that filing supporting documentation for all expenses at the time of filing Form 922 would result in more efficient and timely reviews of financial returns. In those cases where receipts for all expenses were filed at the time of filing a financial statement, the result was a more timely and efficient review of a financial statement. Federal candidates must file all documents evidencing expenses set out in the candidates' returns including bank statements, deposit slips and cancelled cheques. *The Elections Finances Act* for Manitoba should contain provisions similar to the Canada Elections Act.

**12. Recommendation:** That an official agent file with a candidate's audited statement documents (or copies) evidencing all expenses reported on the statement including invoices, vouchers, bank statements, deposit slips and cancelled cheques.

### Administrative Issues

#### Requirement to File Certificate with Minister of Finance [s.71(1); s.72(1); s.73.1(2); s.73.1(5); s.74(1)]

**Background:** In order to pay a reimbursement of election expenses of a qualified candidate or registered political party, *The Elections Finances Act* requires the Chief Electoral Officer to file a certificate with the Minister of Finance. The certificate is authorization to process the reimbursement payment. In 1999 there was a fundamental change to the Department of Finance payment system for all departments and agencies of the government. The system of centrally processing all voucher payments, including reimbursement payments, was replaced by decentralized processing. This change has meant that there is no longer the requirement to file documentation centrally for each payment and, instead, the documentation must be kept by the office processing the payment. The requirement in *The Elections Finances Act* to file a certificate with the Minister of Finance is no longer required.

**13. Recommendation:** That *The Elections Finances Act* be changed so that there is no requirement to file a certificate with the Minister of Finance authorizing a reimbursement payment.

#### Registration of Party Logo [s.15; s.18(2); s.19(2)]

**Background:** A recent Bill (Bill 3, 1997) to amend *The Elections Finances Act* contained provisions to register logos. It was decided at the Committee stage of the Bill that *The Elections Finances Act* should not have such provisions and most, but not all, references to registered logos were removed. The remaining references to logos in *The Elections Finances Act* cause confusion. Since *The Elections Finances Act* does not permit

logos to be registered, the remaining references should be removed.

**14. Recommendation:** That references to logos in *The Elections Finances Act* be removed.

Incorrect References [s.72(3) (a) and s.73.1(1) & (2)]

**Background:** Section 72(3) (a) of *The Elections Finances Act* refers to a candidate's reimbursement paid being subject to subsections 73(1) and sections 75 and 76. This list should also include reference to section 77 since this section, similar to the previous sections, modifies the reimbursement payment in some way.

Section 73.1(1) of *The Elections Finances Act* authorizes the payment of an election expense reimbursement to a qualified political party that has provided required information. This includes "...a return regarding contributions under section 62..." There is no such return required for a party election statement but there is with a party's annual statement. The reference in this section is incorrect and should be removed.

**15. Recommendation:** That in clause 72(3)(a) of *The Elections Finances Act* a reference to section 77 should be added and "...and a return regarding contributions under s.62..." should be deleted from subsections 73.1(1) and (2).

Fund raising function references [s.38]

**Background:** Subsection 38(2) of *The Elections Finances Act* should state that it is subject to subsection 38(3). This 'subject to' wording is necessary to clarify the intention that subsection 38(2) does not apply where a ticket price is less than \$15.

**16. Recommendation:** That subsection 38(2) of *The Elections Finances Act* state that it is subject to subsection 38(3).

# Other Acts Relevant to the Conduct of Elections

**Referendum regulations [The Balanced Budget, Debt Repayment and Taxpayer Protection Amendment and Consequential Amendments Act ('The Balanced Budget Act') and The Manitoba Hydro Act]**

**Background:** *The Balanced Budget Act* states that a referendum must be held for certain tax increases as outlined in subsection 10(1). This subsection reads as follows:

Referendum required for tax changes -

[10(1)]. Subject to subsection (2), the government shall not present to the Legislative Assembly a bill to increase the rate of any tax imposed by an Act or part of an Act listed below, unless the government first puts the question of the advisability of proceeding with such a bill to the voters of Manitoba in a referendum, and a majority of the persons who vote in the referendum authorize the government to proceed with the changes:

- (a) *The Health and Post Secondary Education Tax Levy Act*
- (b) *The Income Tax Act*
- (c) *The Retail Sales Tax Act*
- (d) Part I of *The Revenue Act*

*The Manitoba Hydro Act* states that a referendum must be held before the Legislative Assembly can present a bill to privatize the corporation and is outlined in subsection 15.3(1). This subsection reads as follows:

No privatization without referendum -

[15.3(1)]. The government shall not present to the Legislative Assembly a bill to authorize or effect a privatization of the corporation unless the government first puts the question of the advisability of the privatization to the voters of Manitoba in a referendum, and the privatization is

approved by a majority of the votes cast in the referendum.

Both Acts instruct the Chief Electoral Officer to conduct and manage the referendum in the same manner as an election under *The Elections Act* with any necessary modifications. These instructions are in subsections 11(1) of *The Balanced Budget Act* and 15.3(2) of *The Manitoba Hydro Act*.

In order to be ready to conduct a referendum, preparations have been based on a careful review and modification of *The Elections Act*. Many provisions of *The Elections Act* are readily transferable to a referendum. However, some provisions of *The Elections Act* are not readily transferable and, in some cases, *The Elections Act* does not contemplate certain consequences of referendums. Subsection 11(3) of *The Balanced Budget Act* and subsection 15.3(4) of *The Manitoba Hydro Act* address this requirement by providing for regulations to be made. The Acts also allow for the possibility that the subject of campaign finance be included in either a Referendum Act or regulations. These subsections read as follows:

*The Balanced Budget Act:*

Regulations re. procedures -

[11(3)]. The Lieutenant Governor in Council may make any regulations that the Lieutenant Governor in Council considers necessary respecting the referendum process to give effect to subsection 10(1), including, without limiting the generality of the foregoing,

- (a) governing the preparation of a Voters List;
- (b) governing the expenses, if any, that may be incurred, and the contributions, if any, that may be made, and by whom, in connection with a referendum;
- (c) where greater certainty is required, modifying to the extent necessary the provisions of *The Elections Act* to make them applicable to the requirements of a referendum.

*The Manitoba Hydro Act:*

Regulations re procedures -

[15.3(4)]. The Lieutenant Governor in Council may make any regulations that the Lieutenant Governor in Council considers necessary respecting the referendum process to give effect to this section, including, without limitation, regulations

- (a) governing the preparation of a Voters List;
- (b) governing the expenses that may be incurred and the contributions that may be made, and by whom, in connection with a referendum, including placing limits on such expenses and contributions and establishing registration and reporting requirements for persons or organizations who make such contributions or incur such expenses;
- (c) where greater certainty is required, modifying to the extent necessary the provisions of The Elections Act to make them applicable to the requirements of a referendum.

The following questions need to be addressed in either an Act or regulation:

- How and when, precisely, is the referendum question established?
- What is the duration of the referendum period given that no nomination period exists?
- Are there to be referendum committees? How are they to be established, registered and/or regulated? May referendum committees appoint scrutineers to be present at the polls?
- Would there be unique referendum recount rules?
- Who may apply for a recount?
- May referendums and elections be held simultaneously?
- Does the same tariff for payment of officers apply?

- Are there to be "referendum" offences?

General elections also have campaign finance provisions for such participants as candidates and political parties. Referendums should contain similar provisions for campaign finances.

In general, campaign finance provisions are concerned with money and other resources, and the impact they have on the electoral process and public policy. People with access to abundant resources have a significant advantage over people who do not. A key to campaign finance laws involves minimizing resource differences. Legislation often contains provisions for public financial support; spending limits and accepting contributions; public disclosure of finances; and for participants to register and have an agent. In addition to these, provisions must exist for the independent administration and enforcement of such laws.

In Manitoba, *The Elections Finances Act* contains campaign finance provisions for candidates, constituency associations and registered political parties. Such provisions are related primarily to elections. The third party provisions have been passed but have not been proclaimed. Court challenges in other jurisdictions have raised questions about the constitutionality of laws that impose regulations including disclosure provisions and spending limits on third parties.

Groups and individuals participating in a referendum (i.e. referendum committees) should be required to display an authorization on sponsored advertisements. As with elections, voters in referendums have a right to know who is participating and attempting to sway their vote.

In addition, referendum committees should be required to appoint a financial agent and register with the Chief Electoral Officer if there is financial activity above a threshold amount.

Undoubtedly, additional issues could arise.

Referendum legislation exists in several Canadian electoral jurisdictions. Québec has all pertinent subjects included in its Referendum Act. Alberta, British Columbia and Saskatchewan have a

minimal number of subjects included in their respective legislation and deal with most matters by regulation. Canada deals with most subjects in its legislation. Ontario has taxpayer protection legislation similar to Manitoba.

Over time there has been momentum towards the increased possible use of referendums. The Balanced Budget, Debt Repayment and Taxpayer Protection Act and The Manitoba Hydro Act, respectively, received Royal Assent on November 3, 1995 and on July 6, 2001. The November 27, 2002 Speech from the Throne, indicated that a new referendum requirement will be introduced in the Legislature to ensure that the Manitoba Public Insurance Corporation cannot be sold without the consent of Manitoba citizens – although to date nothing has been passed in the Legislative Assembly. As reasons grow for the possible use of referendums, so to does the need to have rules clearly articulated by all Members via the Legislative Assembly.

In the interim, Regulations should be articulated under the existing referendum legislation.

1. **Recommendation:** That a Referendum Act be developed. The Act should deal with the administrative conduct of referendums and campaign finance provisions.

### ***The Controverted Elections Act [all sections]***

**Background:** Certain court procedures outlined in *The Controverted Elections Act* have expired and the language is antiquated. In addition, *The Controverted Elections Act* should be reviewed to ensure that it corresponds to any amendments made to *The Elections Act* in recent years.

2. **Recommendation:** That all sections of *The Controverted Elections Act* be reviewed and revised. Consideration should be given to incorporating a revised version into *The Elections Act* (as was done in the *Canada Elections Act*). The amendments should take into account new court procedures and the current provisions in *The Elections Act*.

### ***The Electoral Divisions Act [s. 10(2)]***

**Background:** Elections present significant, often unpredictable, challenges. The 37<sup>th</sup> General Election was no exception. Elections Manitoba staff and Returning Officers needed to ensure that it could be run on either the old or new electoral boundaries. Working under two possible sets of maps meant pre-election training of additional Returning Officers and Assistant Returning Officers, some of whom would not be needed depending on which boundaries were used. This duplication resulted in extra pre-writ costs. In the end, an amended version of *The Electoral Divisions Act* received Royal Assent on April 27, 1999. The new boundaries came into effect at the call of the 37<sup>th</sup> Provincial General Election.

The Electoral Divisions Boundaries Commission anticipated this issue, among others, as part of its report in December 1998, stating:

*"... the Legislative Assembly may also wish to consider formally defining in [The Electoral Divisions Act] the timing of the implementation of the report of the Boundaries Commission as is the case, for example, in the federal legislation."*

3. **Recommendation:** That the Legislative Assembly consider formally defining in *The Electoral Divisions Act* the timing to implement the report of the Boundaries Commission.

### ***The Legislative Assembly Act***

**Background:** Over the past few elections, Elections Manitoba has received suggestions that a set date for elections should be implemented. In addition, submissions have been made to support various systems of proportional representation.

The representatives of two registered political parties also brought forward similar suggestions during post election meetings of the Ad Hoc Committee on The Elections Act, held in Spring 2000.

In 2000, legislation in British Columbia was passed to set the General Election date. The fixed election date amendment to the Constitution Act received Royal Assent on August 27, 2001 and



took effect on December 9, 2002. General Elections in BC must now be held on the second Tuesday in May in the fourth calendar year following the previous general election.

At the time of writing, the subject of proportional representation is being reviewed in several jurisdictions.

In British Columbia, on September 20, 2002, the government retained Gordon Gibson as a consultant to develop guidelines on how the Citizens' Assembly on electoral reform should be set up and operate. His recommendations were delivered to the BC government in December of 2002, and Dr. Jack Blaney was appointed as Chair. The assembly will assess all possible models for electing MLAs, including preferential ballots; proportional representation; and the current first-past-the-post system. Assembly members are currently being selected at regional meetings and public hearings will begin in the spring of 2004. Should the Citizens' Assembly recommend changes to the current electoral system, that option would be put to a province-wide referendum in conjunction with the next BC general election.

In Prince Edward Island, the Legislative Assembly commissioned a report on proportional representation. The report was tabled in the PEI Legislature in Spring 2002. It reviewed various types of proportional representation systems currently being used in Belgium, Germany, Switzerland, France, Ireland, New Zealand, Malta and Iceland and outlined three possible proportional representation scenarios for consideration. Following tabling of the report, the Premier established a one-man Commission to look at proportional representation. Commissioner Norman H. Carruthers held several meetings across Prince Edward Island during the spring and early summer and expects to provide his report to the Premier by the end of 2003.

In Québec, both the National Assembly and the Government of Québec have established commissions to hold public hearings, province-wide, on various electoral subjects, including proportional representation. The new provincial government announced that a bill will be

prepared, and probably submitted for study by a parliamentary commission, in the spring of 2004. The bill will likely include the topic of electoral system reform, including elements of proportional representation.

The Law Commission of Canada has begun public consultations on electoral reform. The Commission is studying alternatives to the current voting system. One of the alternatives is proportional representation.

**4. Recommendation:** The above matters are not dealt with by *The Elections Act* or *The Elections Finances Act* but, rather, *The Legislative Assembly Act*. At this point, they are referred to the Legislative Assembly for consideration.