



# Modernizing New Brunswick's Electoral Legislation Feedback Summary

October 2019

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## Summary of Feedback

I wish to begin by thanking everyone who took the time to review the discussion document Elections New Brunswick issued in June 2019, and for providing your feedback. With its 108 recommendations, this was not a quick read and, given the topics covered, the document would predictably have a narrow focus of interest. We were uncertain as to what level of participation to expect.

I am pleased to see that feedback came from a wide-range of contributors. As expected, the political parties, which are most directly impacted by the majority of changes being proposed, had plenty of comments and suggestions to share. We also heard from former candidates, party officials, returning officers and election officials, a municipal association, as well as members of the general public.

It was also rewarding to have my team's efforts in this modernization project acknowledged by some who offered feedback:

- “The approach outlined in Elections New Brunswick’s Discussion Paper is likely to create a fairer electoral system that eliminates the troubling loopholes and ambiguities that exist in the current legislation.”
- “In our opinion, it is a long overdue process and we recognize the recommendations are well thought out.”
- “We believe the process you initiated is necessary. We support your effort and are comfortable with the initial direction your team is proposing.”

In preparing this summary document, it was purposefully decided not to identify or attribute the source of any of the comments, reactions and recommendations that were submitted. For the purpose of brevity, feedback included in this summary has been edited down, but the utmost has been done to capture the intent and preserve the spirit of the feedback provided.

It should be noted that not all feedback we received is included in this document, particularly in the case where the responses in general were either favourable or neutral. In addition, many of the respondents did not provide feedback on each and every recommendation.

## 1. ***Elections Act***

### **Depoliticization of Staff Hiring**

The recommendations that elicited the most feedback involved the depoliticizing of the process currently in place for the appointment of returning officers, election clerks and other election officials. Of all the recommendations in the discussion document, these received, by far, the strongest endorsement from respondents.

- “I would like to see that the Chief Electoral Officer have the authority to hire the RO and the Election Clerk for a period of (2) provincial and municipals elections (max) as well other key election officials.”
- “Firmly support the fact that the ROs and the Clerk be chosen by the CEO, completely in favour of this. Note: Important that the Election Clerks be chosen in coordination with the RO.”
- “It is necessary to find a way of eliminating favouritism and political partisanship from the process of selecting electoral employees and hire people with the qualities we need to conduct this activity of primary importance to our province and our democracy.” (*office translation*)
- “I am in strong favour of ROs and Clerks being appointed by ENB. This position should be based on merit. Experience and know how are fundamental to this position.”
- “The creation of a non-partisan, career, professional corps will do much to ensure those in contact with voters are trusted, reliable and able to answer questions.”
- “I am in complete agreement with this recommendation in part but I think that the returning officer should have input into the choice of his or her election clerk.” (*office translation*)
- “Without a doubt, appointing people in returning offices should not be done by the party in power. This was nonsense in the past and is still unacceptable at this time.”

### **Participation of Youth**

There was also unanimous support expressed by those who submitted feedback on the recommendations related to encouraging greater participation and engagement of young New Brunswickers in the electoral process. Recommendations around youth participation include expanding the role for student workers at the polls; ensuring student workers are paid for all their work; allowing children and students to observe the process at the polls; and establishing a “register of future electors”.

- “I have always and will always be 100% behind hiring young election workers.”
- “Young people must be involved.” (*office translation*)
- “Children in the polling station – fully agree with this recommendation.” (*office translation*)
- “Any steps that encourage youth involvement in any of our societal institutions should be commended and encouraged.”
- “I support permitting high school students remuneration (pay for full day).”
- “Paying high school students – Very good recommendation that should have been implemented a long time ago.” (*office translation*)
- “We surely recognize the intent to encourage engagement of the future electors, but recommendation 20 suggests the gathering of unnecessary information and increases the potential for abuse. In any case, the risks associated with this recommendation should be seriously scrutinized before going forward.”

### **Security of Voters’ List**

Recommendations 14 to 18 proposed changes to enhance the security of voter information and access to the List of Electors by parties and candidates. The importance of elevating the security of voter information was acknowledged by most respondents, but some did urge caution in determining the best path forward.

- “We agree a privacy policy from each party should be filed with ENB. However, we are concerned involving the Integrity Commissioner’s office is unnecessarily cumbersome for small organisations.”
- “This could impact how information systems are used and must be considered carefully. This could complicate data collection; however, if it is limited to extreme or safety concerns it probably will be fine.”
- “To balance the need for voter information, we agree individuals should have the ability to opt-out of voters list distribution. This could be used to balance the concern individuals have regarding political parties having their personal information.”
- “I think you would have a large number of voters opting to have the information made unavailable to political parties.”
- “All parties that have received lists should be required to advise elections NB who they have issued the lists to and for what purpose.”

## **Election Advertising**

Proposed changes related to election advertising rules, including ending the restricted advertising period, received mixed reaction from respondents.

- “Waiving these restrictions will simplify matters and prevent penalties for behavior that occurs anyway.”
- “I agree with violations of certain advertising provisions being offences rather than illegal practices, but would like to emphasize that enforcement of offences needs to be carried through.”
- “We believe this will help remove barriers to increasing voter participation and eliminate unnecessary effort and resources spent on compliance and enforcement.”
- “Allowing advertising on Election Day proper is a big change. We will need to be cautious here.”
- “There is no logical justification for exempting some forms of communication from the limit on electoral advertising by political parties and candidates when third parties are not granted the same exemptions.”
- “I do not support getting rid of the restriction on advertising on Election Day and the day immediately preceding Election Day because when negative advertising is posted in this timeframe there is no opportunity left to counter it before the vote.”

## **2. *Political Process Financing Act***

Not surprisingly, the majority of the feedback relating to recommendations impacting New Brunswick’s current political financing rules was submitted by the political parties and individuals with direct involvement with the *Political Process Financing Act*.

### **Creation of Financial Agent**

The recommendations related to the proposed creation of a financial agent who would be accountable for compliance for both the district association as well as the candidate’s campaign during an election garnered strong reactions, ranging from cautious support to vehement opposition.

- “It is the opinion of (*name deleted*) that a Financial Agent responsible and liable for all elements of the association and campaign organization is simply not possible to fill with volunteers. Nor would it be fair or responsible to create a position that would be expected to take on these duties.”

- “While they can still delegate authority, this would require review on how it may impact volunteers and the party constitution.”
- “This recommendation caused me the most consternation of anything in the document. I would like to see the Financial Agent of the party given some flexibility to assign others to the role of Financial Agent on an interim basis such as for an election and to not be responsible for filing returns for this period.”
- “The discussion paper should acknowledge the dynamics and complexities surrounding the Financial Agent's role and the possible difficulties of recruiting volunteers, particularly in rural areas.”
- “The recommendation to entrust the Financial Agent’s responsibility in the president’s position raises many questions.”

### **Third Party Advertising**

There were strong opinions expressed on the recommendation to amend the definition of “election advertising” as it related to third parties. Political parties and third parties presented contrasting points of views that, for the most part, did not focus on the proposed changes to the definition, but addressed broader issues related to election advertising by third parties.

- “We advocate for an advertising restriction for any third party that weighs in on public opinion or attempts to influence the direction of government. These limits could include smaller limits for riding specific concerns or larger limits for provincial wide matters.”
- “The main issue here is that outside of election periods there are no real limitations on donations and spending regarding third parties. A third party can receive money outside the election period and not have to report it, then spend it as they please during the election period. Whether third parties are regulated year round like parties, or some other solution, we are uncomfortable with the status quo.”
- “Should a labour dispute occur during an election period, any such advertising may therefore be captured by the definition of “election advertising” despite the fact that it may have nothing to do with the election itself. The expenses related to this advertising would then be subject to the PPFA’s election advertising expense limit of \$14,619.57. This is an unfair and presumably unintended consequence of both the PPFA’s current drafting and the proposed amendment to the language of section 84.1.”

- “The current wording limits the application of the exception to “documents” that are transmitted by a group to its members; thereby creating unnecessary ambiguity...The effect of this unnecessary ambiguity is to impose artificial restraints on a trade union’s ability to communicate with its members based solely on the medium through which it transmits the message.”

## **Compliance and Enforcement**

The proposed recommendations to provide the Chief Electoral Officer with enhanced tools to assist with the compliance and enforcement of political financing rules were supported generally; however, one respondent cautioned against penalizing a party who was attempting to comply with the financing rules and another expressed general concern with some of the recommendations.

- “If a party is attempting to comply, withholding a portion of its allowance or imposing fines which drain bank balances could potentially result in insufficient funds to maintain staffing levels or to pay auditor fees creating a vicious downward spiral making compliance even more difficult.”
- “We agree with Elections New Brunswick that it is appropriate to categorize all offences in relation to a failure to comply with the identification requirements set out in the PPFA as Category C offences, regardless of who has committed the offence.”
- “Unless the government is confident the supervisor (who would also be the chief electoral officer) and their subordinates would proceed in a fair manner, the powers ought not be granted.”
- “Leaves whether a compliance agreement was breached or not the opinion of the Supervisor, as opposed to some other objective measure.”
- “(deleted) supports recommendations 84 and 85, which seeks to introduce consistency in the categorization of offences.”
- “Support the move to provide the Chief Electoral Officer with greater enforcement tools.”

## **Small Contributions**

The proposed relaxing of rules related to fundraising and the requirements for tracking and reporting of small contributions were generally viewed as a reasonable approach that would simplify the accounting process for political parties.

- “We have no issue with this recommendation.”
- “While the reason for banning anonymous contributions made sense and was probably correct, many seemed unaware of the restriction which made enforcement by a party on Registered District Associations difficult and created many a headache.”
- “Requires review for the financing loopholes it could create.”

### 3. ***Municipal Elections Act***

The eighteen recommendations identified under the *Municipal Elections Act* received the least amount of feedback. In a number of cases, the recommendations are identical to ones included in the proposed amendments to the *Elections Act*, so such feedback was interpreted as applying to recommendations made with respect to both Acts.

#### **Vote-by-Mail**

There was mixed opinion on recommendation 103, requiring municipal by-elections to be conducted using a vote-by-mail process.

- “I do not support requiring that electoral events between general Municipal elections be conducted by a vote-by-mail process. There are too many problems that can happen by mail.”
- “It would have to be ensured, however, that implementing this voting method in the province, where there is a higher percentage of seniors and rural people than in Ontario or British Columbia, would not reduce the participation rate.” (*office translation*)
- “Reservations with voting by mail...just wondering if it would work.”
- “Probably a very forward-looking idea that would reduce costs but I am not completely sold on it.” (*office translation*)
- “Not sure about this one, but I can see your point especially cost savings.”
- “I extend my support for the recommendations contained in Modernizing New Brunswick’s Electoral Legislation, with the exception of Recommendation 103.”



#### **4. *Additional Recommendations***

##### **Recommendations requiring further consideration**

To ensure this was a fully open and transparent process, respondents were permitted to provide additional recommendations that fell outside of those identified in the discussion document. A number of respondents who provided feedback put forward thoughtful ideas for consideration, which are summarized below in no particular order.

These additional recommendations will be further examined by Elections New Brunswick as we move forward to the next step in amending the three Acts under examination. In all likelihood, some of these suggestions will be included in the final recommendations for amendments which are made to Government. Others may not require legislative amendments, but can be changed through directives of the Chief Electoral Officer or by regulation.

- “Recommend that the cut-off of voting at returning offices on Election Day be changed to match polling stations so that electors in line at 8 p.m. are allowed to cast their vote.”
- “Recommend that no documents used in the voting should be accessed prior to the passing of the recount and appeal period.”
- “I would strongly suggest that Elections NB remove 2nd chance ballot scrutiny from tabulation machine programming. Leave the possibility of over-vote and blank ballots as the sole responsibility of the voter.”
- “I would suggest that Elections NB consider reducing the number of nomination signatures required or simply accept as sufficient the candidate’s declaration of consent and qualifications.”
- “The current disclosure of donor information, including home addresses, should be considered sensitive and protected information.”

##### **Recommendations outside of Elections New Brunswick’s mandate**

Some ideas put forward in response to the discussion document fall under the umbrella of broader public policy and are outside of the mandate of the Chief Electoral Officer. With regard to these suggestions, it would not be appropriate for me to take a position or to make recommendations for or against their implementation. Additionally, in some instances, the implementation of a suggestion would require the expenditure of additional public funds.

I do feel, however, that it is important that the legislators have the opportunity to review these additional suggestions from the public in order to determine if they should be studied further by legislators or Government.

- “Can there be a request for one piece of identification, even when the person brings their VIC card? The current process lacks in transparency and prone to making errors.”
- “Concern about the lack of requirement to show ID at the polling stations...anybody can walk in with a VIC card.”
- “It is not fair to have a minimum percentage threshold of 15% of the vote in order to be entitled to get any election reimbursement back. If everyone got back the amount attached to each vote, as used in the calculation, then it would not be an "all or nothing".”
- “We would request that you suggest to government that it bring the bill forward to be examined by the Standing Committee on Law Amendments.”
- “To bring its effectiveness in line with the 21st Century, and preferably today, the Annual Allowance budget should be increased to reflect inflation.”
- “Compliance Options: (1) Elections NB to provide funding for such [financial] staff, similar to that available for reimbursement of audit expenses.(2) Have Elections NB hire qualified staff directly and assign them to registered political parties.”
- “Several factors crucial to the modernization of electoral legislation are not included in the discussion paper, including transparency and control of municipal electoral expenses ...we regret that the report does not raise that issue.” (*office translation*)

## 5. **Next Steps**

The feedback and suggestions received will now be closely reviewed and considered for inclusion in the proposed amendments that I intend to bring forward to Government to modernize the *Elections Act*, the *Political Process Financing Act* and the *Municipal Elections Act*.

As Chief Electoral Officer, it is my duty to make recommendations for amendments to the legislation for the better administration of the electoral and political financing processes. The ultimate fate of the amendments that I will propose rests with Government, the Executive Council, and the elected representatives of the Legislative Assembly of New Brunswick.

As noted above, one contributor suggested that the proposed amendments I bring forward be referred by Government to the Standing Committee on Law Amendments for a thorough discussion.

It is my hope that the importance and value of the work Elections New Brunswick has undertaken through this exercise will be recognized by the decision-makers whose support will be needed in order to implement the recommendations that I will make for modernizing New Brunswick's electoral legislation.