

AFTER THE VOTE

COUNTING THE BALLOTS

**SCHEDULE,
S. 22**

When voting has ended and the last voter has left the Voting Station, ballot counting can begin. Before counting begins, the door should be closed and no one should enter or leave until the count is complete. Election Officers and either the candidate or his or her agent (but not both) may be present. The Returning Officer must not allow any candidate or agent to disrupt, or rush the vote count. Take your time and be thorough.

Examining the Ballots

**SCHEDULE,
S. 23**

Before the ballots can be counted, they must be unfolded and examined. As they are examined, they can be separated into piles for easier counting.

**SCHEDULE,
S. 23**

The Returning Officer or Deputy Returning Officer will reject any ballot that is

- not initialed by an Election Officer
- showing votes for more than are to be elected
- improperly marked, including any identifying mark of the voter

Objections

**SCHEDULE,
S. 24, 25**

If a candidate or agent makes an objection to a ballot, a number should be written on the back of the ballot and it should be set aside. The Election Officer must consider each objection and decide whether the ballot should be allowed or rejected [or disallowed].

**SCHEDULE,
S. 25**

A numbered List of Objections should be prepared, showing against each number what is the objection to the ballot and the Election Officer's decision. "Allowed" or "disallowed" must also be written on the back of the ballot.

Advance Vote

The ballot box for the advance vote should be opened first, the results of the count recorded and all the ballots put aside where they cannot be confused with the ballots for the election day vote.

Votes for Mayor

S. 76

The Mayoral votes should be counted next. When counting the votes for Mayor, the ballots for each candidate can be placed in separate piles. If someone is a Candidate for both Mayor and Councillor, the successful Mayoral Candidate must be determined before the Councillors' votes are counted. If a candidate for Mayor, has also run as councillor, the votes the candidate received for "councillor" are NOT counted. *[This does not apply to cities, towns and villages.]*

Votes for Councillors

S. 76 Do not count votes for the successful Mayoral Candidate who also ran as a Councillor.

Other Votes

S.76 The Act refers to "Other Votes". These are the last ballots to be counted and include votes for Local Education Authorities and votes regarding any question posed to the voters by the Council or by the Minister of Municipal and Community Affairs.

Counting ballots

Balance ballots not votes. Votes, unless they are on ballots for one position i.e. Mayor, will not balance. It is impossible to balance votes for councillors.

Breaking Tie Votes

S.75 In the event of a tie where two or more candidates receive the same number of votes, the Returning Officer is to enter one additional ballot in the name of each person in the ballot box and draw one additional ballot. The candidate's name which is drawn is declared to have won the election having one more vote than the other candidates.

Sealing the vote results

It is the responsibility of the Returning Officers to ensure the ballots are protected from any manipulation or changes. Envelopes containing the Voters List, and all ballots must be sealed.

Declaration of Election Results

S. 76 The Returning Officer, at the end of the vote, must publicly declare the results of the election including the number of votes each candidate received. He or she may do this by posting a notice of results in a public place or by broadcasting the results over the radio.

The Mayor is declared, followed by councillors, education district members and voter questions.

S. 76 The Returning Officer, immediately after the votes are counted, shall send a Certificate of Results of the Election to each candidate in Form 11, showing the total number of votes each candidate received and who was declared elected.

S. 77 The Returning Officer also sends a Certificate of Election in Form 5 to each candidate who was elected.

[See Appendix for sample Certificate of Results of Election and Certificate of Election]

RECOUNTS

- S. 80** A candidate or voter may request a recount. If a candidate challenges the results he or she applies in writing to the Returning Officer for an *Administrative Recount*. If a voter challenges the results of the election, he or she applies to a judge of the Supreme Court of the NWT for a *Judicial Recount*.

Administrative Recount

- S.80** A candidate must apply, in writing, to the Returning Officer for an administrative recount within 72 hours after the voting stations are closed. On this request, the reasons for asking for a recount must be stated. If the Returning Officer feels the grounds are reasonable he or she must conduct the recount.

Reasonable grounds might include a close result, a possible miscount, or a large number of rejected ballots. Once decided, the Returning Officer must provide at least twelve hours notice to all involved in the initial count (i.e. Election Officers and all of the candidates who may be affected by the count) the time and place and location where the recount will be conducted.

- S. 81, 82** At the time specified for the recount, the Returning Officer counts the ballots in the same way that they were originally counted. After the recount, the Returning Officer will correct the results and issue new certificates, as necessary. The contents of the ballot box(es) should then be put back, the box(es) locked and sealed and the candidates and the public notified of any changes in the results.

Judicial Recount

- S. 83** Any voter has fourteen days after the results of the election are initially declared to apply, by originating notice, to a judge for a judicial recount, regardless of whether an administrative recount has already been conducted or not. The application must be to a judge of the Supreme Court of the Northwest Territories.

- S.83** If the judge feels that there are reasonable grounds for conducting a recount, he will set the time and place for it. The voter (applicant) will then be responsible for giving at least seven days notice of the date, time and place of the recount to the municipality and all persons the judge directs should be notified.

S. 84 **SCHEDULE s. 9**

The SAO is responsible for bringing the sealed ballot boxes to where the recount will be conducted. He or she must also be present during the recount.

- S. 84** After examining the ballots and hearing other evidence, the judge will decide on the results of the election.

If there are changes to the results, the Returning Officer is then responsible for amending the Certificates of Election and Results and distributing them again as he or she would after an administrative recount.

CONTROVERTED ELECTIONS

Application for a New Election

- S. 86** An application for a new election is forwarded to a Supreme Court Judge by the Chief Municipal Elections Officer. It is made on the basis of procedural error or inadvertence, which, if continued, will result in an invalid election. The Returning Officer must obtain the consent of all affected candidates. This application is made prior to the closing of the polls. Upon hearing the application, a Judge may order a new election, in whole or in part. There can be no question that corrupt practices are involved. That is the subject of the next section.

Election Petition

- S.89** Any voter or the municipality may question the validity of an election or the right of a person to sit on the Council by petitioning to the Supreme Court of the Northwest Territories, on any of the following grounds:

Corrupt practices were committed during the election.

- A member was not eligible to be a candidate on the day of the election.
- A member was elected in violation of the *Local Authorities Elections Act*.
- A member has become disqualified from serving on the Council.
- A person was appointed when not eligible to be a candidate.

The petitioner has two months from election day to petition the court, except if challenging the qualifications of a member to be on Council, which can be done at any time during the member's term of office.

The petitioner is responsible for serving a copy of the election petition on all respondents within ten days of filing the petition. Any Election Officer may be required to respond to the petition by appearing before the judge.

At the conclusion of the trial, the judge will declare

- which persons were duly elected
- whether the election was invalid
- whether a member is disqualified
- whether a new election is required
- whether a corrupt practice was committed and if so, the nature of it, who committed it and whether any candidate was aware of the actions and consented to them.

SIGNS

- S. 109** Candidates must remove all electioneering posters, placards and signs from public property

within 14 days after Election Day. If they are not removed by then, the municipality may remove them and charge the Candidate for the cost of removal.

DESTRUCTION OF ELECTION MATERIALS

SCHEDULE, S. 29

As soon as possible, after the election, the Returning Officer should hand over the sealed ballot boxes and election materials to the SAO. The Sao is responsible for their safekeeping until it is time to destroy them. He or she should store them in a safe place with the seals intact.

S. 79

Any time, after three months from election day, the SAO must then destroy the ballots and election materials from the election in the presence of two witnesses, *unless he or she is aware that there are legal proceedings regarding the election, such as a recount or election petition.*

S. 79

After the election materials and ballots are destroyed, the SAO must make a declaration in Form 12 specifying the date, time and place that the materials were destroyed.

TROUBLESHOOTING

The following are the most common questions asked by Returning Officers during the election process and the advice given to them by this department.

Question: What should a Returning Officer do if he or she, or a voter, feels that a person is not eligible to be a candidate or to vote in a municipal election?

If there are doubts about eligibility, a Declaration of Eligibility must be called for. If the Declaration is not made and delivered on time, those are grounds - and the *only* grounds - for refusing to accept the nomination.

The same principle applies to the eligibility of voters, particularly with regard to residence. It is not for the Returning Officer to determine whether a person has the appropriate 12 months residency. If there is a doubt, a Declaration of Eligibility should be required. If it is forthcoming, the voter may vote. Only if the Declaration is not made can the voter be refused a ballot.

Question: Is a Nomination Paper that has been faxed acceptable?

A Nomination Paper that has been faxed by the candidate to one or both of the nominators is acceptable, so long as the Nomination Paper is submitted to the Returning Officer before the deadline for accepting nominations has passed. The original Nomination Paper is given to the Returning Officer when available.

Question: What happens if a Nomination Form is filled out improperly and the intended Candidate is listed as one of the Nominators instead and one of the Nominators as the Candidate? Can the intended Candidate's name be listed on the Ballot anyway?

If the error is realized before Nominations close, the Nomination Form can be corrected and resubmitted. However, if the error is realized after the time for nominations has passed, the person whose name is listed in error, as the Candidate, must be listed as a Candidate on the Ballot. The Returning Officer does not have the authority to change what is on the Nomination Form, nor does he or she have the authority to extend deadlines for the doing of anything.

Question: Should a ballot that has been marked outside the box be rejected?

The Act provides that a voter shall mark his or her ballot with an "X" *or* other mark clearly indicating his or her choice opposite the name of the candidate of his or her choice.

The Act does not indicate whether the mark should be inside a box or not. So long as it is clear that a voter intended to vote for a certain candidate then the ballot probably should not be rejected. If the mark is between the names so that a determination cannot be made whom the vote was intended for, the ballot will be rejected.

Question: If the voting station and the local radio station are located within the same building, but in separate rooms or areas, and a candidate campaigns over the radio during voting, is this considered a corrupt practice as stipulated in subsection 106(k)? Subsection 106(k) states that "every person commits a corrupt practice who intentionally conducts electioneering in a voting station or posts or places advertising or electioneering signs or material in, on, over or in the immediate vicinity of a voting station.

A voting station is defined by the Act as "the place where a voter casts his or her vote." The Local Authorities Election Act does not provide the same blackout for campaigning as the Territorial or Federal Elections. Provided the radio is not heard within the polling station, and no other electioneering is conducted physically outside the polling station, a charge of corrupt practice may not stand. This section is currently under recommendation for amendment.

Problem: What happens if the Returning Officer resigns during the election process?

If the Returning Officer resigns after the eight weeks before Election Day, the SAO must, by default, be required to do the duties of the Returning Officer. Because the SAO becomes the Returning Officer by default, he or she does not need to be appointed by Council as the Returning Officer. The SAO becomes the Returning Officer where the council fails to appoint another person at the eight-week deadline period.

Problem: Can a candidate withdraw his or her nomination?

A candidate can only withdraw his or her nomination under two conditions. These are

1. If the nomination is withdrawn within 48 hours after nominations close and
2. If there are the same number or more candidates as there are vacancies to be filled on Council.

For example, if a candidate decides to withdraw after the nominations have closed (including the extra 7 days for keeping nominations open because of a lack of candidates) and his or her withdrawal would leave only 3 candidates for 4 vacancies, then his or her withdrawal would not be accepted.