

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

SELECT COMMITTEE ON ELECTIONS

MODERNIZING ONTARIO'S
ELECTORAL LEGISLATION

1st Session, 39th Parliament
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The Honourable Steve Peters, MPP
Speaker of the Legislative Assembly

Sir,

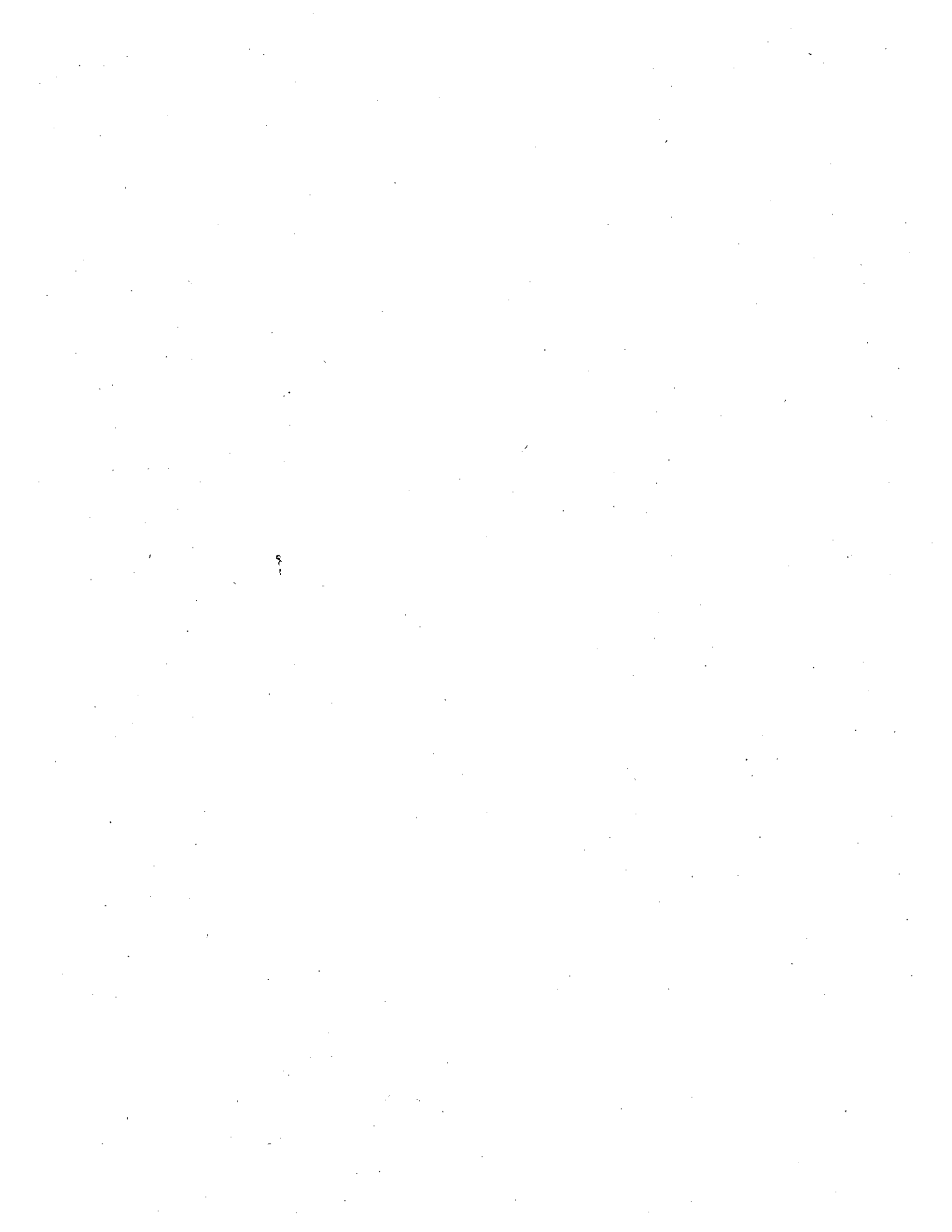
Your Select Committee on Elections has the honour to present its Report and commends it to the House.

A handwritten signature in black ink, appearing to read "Greg Sorbara".

Greg Sorbara, MPP
Chair

Queen's Park
June 2009

SELECT COMMITTEE ON ELECTIONS
COMITÉ SPÉCIAL DES ÉLECTIONS
Toronto, Ontario M7A 1A2



**MEMBERSHIP OF THE
SELECT COMMITTEE ON ELECTIONS***

1st Session, 39th Parliament

GREG SORBARA
Chair

HOWARD HAMPTON

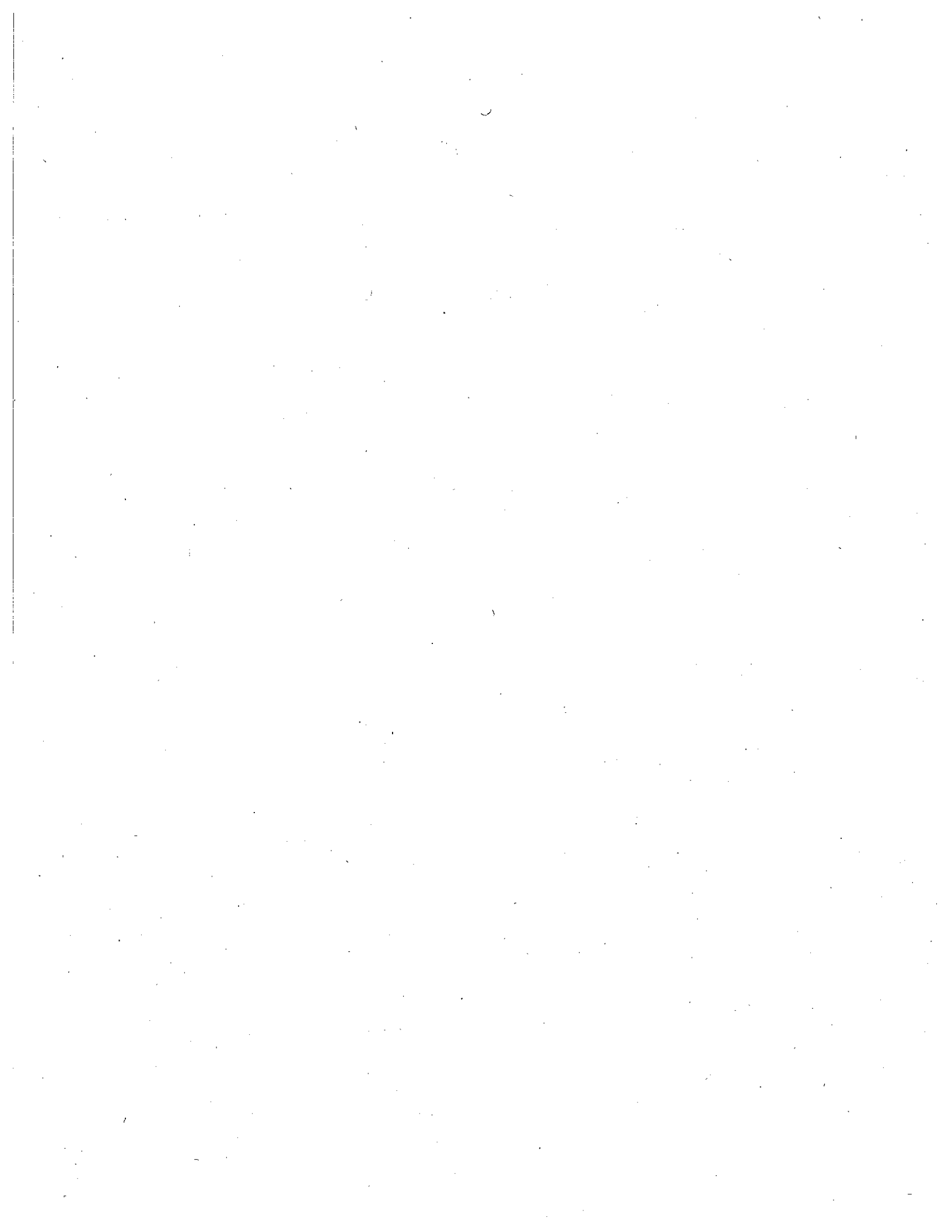
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INTRODUCTION

Mandate

In a representative democracy, the significance of the legislation that establishes and maintains the electoral system cannot be overstated. All parties – political or otherwise – and all citizens have a fundamental interest in the quality and continuing relevance of the provisions in these statutes.

On June 11, 2008, the House ordered the appointment of a Select Committee on Elections to consider Ontario's electoral legislation, assess its effectiveness, and to report its recommendations concerning these Acts. The Order of the House setting out the Committee's mandate, membership, and terms of reference reads as follows:

That a Select Committee on Elections be appointed to consider the current effectiveness of the Election Act, the Election Finances Act and the Representation Act in the preparation, administration and delivery of elections in Ontario, and to report to the House its opinions, observations and recommendations concerning amendments to these Acts; and

That the Committee may present or, if the House is not sitting, may release by depositing with the Clerk of the House, interim reports; and

That the Committee shall present or, if the House is not sitting, shall release by depositing with the Clerk of the House, its final report to the Assembly no later than the last day of the Spring session of 2009; and

That the Committee have authority to meet at the call of the Chair; to call for persons, papers and things; to employ counsel and staff; and, as the Committee deems relevant to its terms of reference, to commission reports and adjourn from place to place; and

That in the event of, and notwithstanding, any prorogation of the House before the presentation of the Committee's final report, the Committee shall be deemed to be continued to the subsequent Session or Sessions and may continue to meet during any such prorogation; and

That the Committee may examine any other matter it deems relevant to its terms of reference; and

That the Committee shall be composed of two Government members, one member of the Official Opposition, and one member of the Third Party. It shall be chaired by a member of the Government. The membership of the Committee including the identification of the Chair shall be filed with the Clerk of the Assembly by the Whips of the recognized parties no later than Thursday June 26, 2008.

Meetings and Submissions

The Committee met in open and closed session between August 2008 and May 2009. The Committee heard first from Mr. John Hollins, recently retired as Ontario's Chief Electoral Officer (2001-08). Chief Electoral Officer, Greg Essensa, accompanied by Loren Wells, Deputy Chief Electoral Officer and Jonathan Batty, Director, Election Finances and Counsel for Elections Ontario met with the Committee only a few months after Mr. Essensa's appointment. Mr. Essensa and Ms. Wells returned at a later date to present a more detailed set of recommendations for the Committee's consideration. At the Committee's invitation, Mr. Essensa and Mr. Batty appeared before the Committee to discuss the regulation of third party advertising. A delegation from the Accessibility for Ontarians with Disabilities Act Alliance, led by Mr. David Lepofsky, Ms. Catherine Tardik, and Mr. John Rae, brought advice about making Ontario's electoral process fully accessible to persons with disabilities and responded to questions from Committee members.

Written briefs were submitted by several interested parties. The Committee had invited returning officers to share observations about their experiences of administering Ontario's election legislation and received a strong response from election officials in all parts of the province. Following Mr. Essensa's second appearance, the Committee received additional feedback from many returning officers.

Goals and Principles

The Committee came quickly to an understanding that its mandate was to propose amendments, where necessary, that would update and modernize, but not fundamentally reform, Ontario's electoral legislation. At the same time, the Committee concluded it would be ideal to combine all three Acts into one, and set itself the goal of presenting a draft bill to that effect along with its report to the Legislative Assembly. The presentation of this report without such a bill does not reflect a change of heart by the Committee, but

the recognition that the time to complete that undertaking was not available to the Committee.

Consolidating the *Election Act* and the *Election Finances Act* into a single statute was one goal that Chief Electoral Officer Greg Essensa – who is tasked with administering both Acts – asked the Committee to consider when making its recommendations. In addition to modernizing the electoral process, a purpose already adopted by the Committee, Mr. Essensa suggested the following three goals:

- clear language, so that electoral laws can be easily understood by all stakeholders;
- flexibility, so that the Chief Electoral Officer may respond to the needs of local communities and adapt to changing circumstances; and
- cost-effectiveness, so that electoral legislation uses taxpayer money as efficiently and effectively as possible.¹

The Committee also recognized that not all goals are fully complementary. The integrity of the electoral system, which cannot be sacrificed, may place limits on the degree to which flexibility is desirable or possible; enhancing voting opportunities for all Ontarians may be more appropriate than adopting the most cost-effective option.

The Committee adopted as an informal rule the desirability, all else being equal, of harmonizing Ontario's electoral legislation with federal electoral law. To do so has the potential to reduce confusion among Ontario electors and result in fewer issues or challenges at the polls on polling day. It is also consistent with the harmonization of provincial and federal electoral district boundaries and names, to the extent this remains the case.

Acknowledgements

The Committee wishes to thank all those who appeared before it for their observations and advice, in particular, Ontario's Chief Electoral Officer, Mr. Greg Essensa, and his predecessor, Mr. John Hollins. The Committee is also grateful to all those who communicated in writing or by email, especially Ontario's returning officers, and the Information and Privacy Commissioner, Dr. Anne Cavoukian. The Committee benefited from all the representations it received, including those that addressed matters that fell outside its mandate.

¹ Office of the Chief Electoral Officer, *Chief Electoral Officer's Submission to the Select Committee on Elections* (Toronto: Elections Ontario, February 4, 2009), pp. 2-3.

Finally, the Committee wishes to thank Legislative Assembly staff who assisted the Committee in carrying out its mandate – in particular the Clerk of the Committee, Trevor Day, and the Committees Branch for administrative support and procedural advice, and the Research Officer, Larry Johnston, and the Legislative Research Service for research and report writing services.

MODERNIZING ONTARIO'S ELECTORAL LEGISLATION

Although the Committee received advice from many sources on how best to update Ontario's electoral legislation, its discussion and deliberations focused on the government's proposals, presented by the Chair, and on complementary proposals made by Ontario's Chief Electoral Officer. The matters on which the Committee has chosen to report are presented in the order of their possible placement within a single electoral Act, an order that reflects, to some degree, their logical place in the electoral process.

I. MANAGING ELECTORAL BOUNDARIES

Independent Boundaries Commission

Ontario's electoral system returns members to the Ontario Legislature from 107 electoral districts as determined under the *Representation Act, 2005*. Prior to 2005, the names and boundaries of all of Ontario's electoral districts were defined as being the names and the boundaries of Ontario's federal electoral districts, a correspondence that was to continue; any redistribution that changed the boundaries (and/or the names) of Ontario's federal electoral districts would apply to its provincial electoral districts, effective with the first dissolution of the Legislative Assembly following the first anniversary of the draft representation order putting the federal boundaries into effect.

Federal electoral boundaries are reviewed after each decennial Census under the terms of the *Electoral Boundaries Readjustment Act*. The 2001 Census put in motion this process that ultimately produced the 2003 Representation Order, establishing the redistributed electoral districts that would come into effect for any election held after August 25, 2004. Concerning Ontario, the Representation Order increased the number of members from 103 to 106, and in doing so decreased northern Ontario's representation from 11 seats to 10, and increased southern Ontario's share from 92 to 96 seats.

During the 2003 Ontario election campaign, the Liberal Party promised, if elected, to maintain northern Ontario's representation at 11 seats. This was subsequently accomplished with the enactment of the *Representation Act, 2005*. Under the Act, the electoral district boundaries for northern Ontario remain those in effect for the 2003 election (i.e., those defined by the federal 1996 Representation Order), while the boundaries for southern Ontario are those established by the 2003 Representation Order (increasing the total to 107 districts).

Under the *Representation Act, 2005*, Ontario's electoral districts are no longer tied to changes in the federal electoral districts.² The federal redistribution process set in motion by the 2011 Census will have no impact on Ontario's electoral boundaries under current legislation. Quite apart from federal changes, population data available at Ontario's last general election revealed considerable differences in the size of electoral districts in southern Ontario. The additional fact that Northern Ontario's districts were determined using 1991 Census data suggests Ontario will need to identify a process for redistribution sooner rather than later.

Redistribution of ridings is carried out by independent Boundaries Commissions, established by statute at the federal level and in every province and territory except Ontario. In most provinces and territories (as at the federal level) a specific statute establishes and provides terms of reference for the Boundaries Commission. In Quebec, this is accomplished under the *Election Act*, and in Nova Scotia under the *House of Assembly Act*. On the three occasions in which Ontario has established a Boundaries Commission (1962, 1973, and 1983), it has been by an order or resolution of the House.

Proposal

The Committee considered the proposal that Ontario's electoral legislation

- 1. (a) establish a permanent Boundaries Commission comprised of the Chief Electoral Officer, a Justice of the Ontario Supreme Court, and an academic;**
- (b) provide that the Commission review Ontario's electoral boundaries on a regular, established schedule;**
- and**
- (c) authorize the Commission, using federal electoral district boundaries as a base line, to make any necessary adjustment to a system of coterminous boundaries that is consistent with the principle of effective representation, in light of any special requirements the Province may identify.**

² It should be noted that at the time the *Representation Act, 2005* was enacted, the Legislature could not presuppose the result of a possible referendum on changing Ontario's electoral system, to be held in conjunction with the 2007 general election. Such a referendum was held in 2007, without obtaining a result that would have compelled the introduction of legislation for a new electoral system. A change in Ontario's electoral system would almost certainly have required electoral districts to be configured on a different basis than under the current system, and in all likelihood on a basis that would have been incompatible with maintaining coterminous provincial and federal election boundaries.

The Committee's discussion focused on the composition of the proposed Commission, the extent of the Commission's power to determine electoral boundaries, and the general criteria that the Commission would use to justify deviations from an electoral quotient, and/or to depart from the baseline of federal electoral district boundaries.

It is noted that Ontario's three previous Boundaries Commissions were each composed of the Chief Electoral Officer, a justice, and an academic.

The two most recent Ontario Commissions were supplied with an electoral quota that was $\pm 25\%$ of the average provincial population,³ except where prescribed criteria justified a further departure. These criteria varied (albeit with considerable overlap) from one Commission to another; establishing such criteria is an important step in the creation of a permanent Boundaries Commission. The goal of achieving provincial districts as coextensive as possible with federal districts was recommended by the 1970 Select Committee on Election Laws, but was not included in the terms of reference for the 1973 and 1983 Commissions. In both years, northern Ontario was guaranteed a minimum of 15 seats (in Legislatures of 125 and 130 Members, respectively). All three Ontario Commissions were informed by the goal of including, where possible, the whole of any one municipality within one electoral district, particularly in districts with rural communities.

Previously, the work of each Ontario Commission was completed with the introduction of a government bill establishing the new electoral district boundaries. In most Canadian jurisdictions, legislation is introduced to implement the boundaries recommended in the commission's final report or embodying the terms of the draft bill or representation order presented in the report. In some cases (e.g., federally), the Act establishing the commission and its terms of reference also provides that the commission's final product, such as a draft⁴ representation order, takes effect without the passage of legislation.

³ The margin of $\pm 25\%$ is a criterion in Canada and five provinces; within the provinces and territories only Nunavut permits a larger deviance ($\pm 30\%$).

⁴ The term "draft" should not be understood as indicating that this list of electoral districts and their boundaries is subject to further revision; rather, it remains a draft order until it comes into effect, which, under the federal legislation, is once at least one year has passed between the date of the proclamation of the draft order and the date that Parliament is dissolved for a general election. In 2003, the federal draft representation order was proclaimed in force on August 25, to become effective on the first dissolution of Parliament that occurs after August 25, 2004.

II. PROFESSIONALIZATION OF SERVICE DELIVERY

The Committee heard from the Chief Electoral Officer and his predecessor about the importance of professionalizing Ontario's election workforce in order to enhance opportunities for Ontario electors and improve their voting experience. Service delivery during a general election relies on the activity of more than 70,000 workers who must be hired, trained, and managed in the performance of their duties within a compressed time frame. The Committee was told of the challenges in finding a sufficient number of individuals who are willing and capable of serving as election workers:

It is becoming increasingly difficult to recruit qualified individuals who are able to handle long hours and who have the problem-solving skills required to function in a fast-paced, high pressure election environment.⁵

Appointment of Returning Officers

The administration of an election in an electoral district is the responsibility of the returning officer. This individual must set in motion and coordinate a complex series of tasks – including the hiring, training and management of more than 500 workers – which must be completed within a set of fixed deadlines. As the Chief Electoral Officer has noted, “it is an extremely stressful and demanding role.”⁶

At present, the Lieutenant Governor in Council appoints the returning officer for each electoral district. The returning officer serves for life, or until he or she resigns, with the permission of the Chief Electoral Officer, or until he or she is removed from office in one of two ways. The Lieutenant Governor in Council may remove from office a returning officer who is incapable of performing satisfactorily his or her duties under the Act. The Chief Electoral Officer may remove from office a returning officer who fails, in the opinion of the Chief Electoral Officer, to discharge his or her duties under the Act.

The returning officer is responsible, in turn, for appointing the election clerk, who assists the returning officer in his or her duties and may act in the returning officer's stead if he or she is unable to continue in that position during an election.

⁵ *Chief Electoral Officer's Submission to the Select Committee on Elections*, February 4, 2009, p. 13.

⁶ *Ibid.*, p. 12.

Chief Electoral Officer Essensa has noted that the *Election Act* “does not provide a clear set of qualifications for a returning officer,” and fails to specify “clear criteria which allow for the removal of returning officers who the Chief Electoral Officer feels have not adequately performed their duties.”⁷ Mr. Essensa’s recommendation (which echoes a similar proposal by his predecessor) is that Ontario’s electoral legislation make

the Chief Electoral Officer responsible for selecting Returning Officers and Election Clerks through a transparent, non-partisan process where individuals are chosen on merit, based on their qualifications and experience.⁸

Proposal

The Committee considered the proposal that Ontario’s electoral legislation

- 2. (a) provide for the appointment by the Lieutenant Governor in Council through an order-in-council of a returning officer for each electoral district, for a definite term of office (to be prescribed in the legislation);**
- (b) require that the appointment is made on the advice of the Chief Electoral Officer; and**
- (c) give the Chief Electoral Officer primary responsibility for the recruitment of candidates for the position.**

Mr. Essensa’s submission was helpful in indicating the growing role of the Chief Electoral Officer since the mid-1980s in the appointment process for returning officers. Prior to the 1999 and 2003 elections, the Chief Electoral Officer met with candidates for the position to explain the responsibilities of the position and the time commitment involved in meeting them. Before the 2007 election, Elections Ontario tested potential appointees on their knowledge of Ontario’s electoral process and legislation.

The Committee supported expanding the role of the Chief Electoral Officer in the appointment process, but also concluded that there are advantages to retaining the practice of appointing (and dismissing) returning officers by Order-in-Council.

⁷ Ibid.

⁸ Ibid.

Election Clerk

Under the current legislation, each returning officer is responsible for appointing an election clerk, who serves, in effect, as the assistant returning officer. If, during an election period, the returning officer dies, is disqualified, or refuses or is unable to perform his or her duties and has not been replaced, the election clerk will assume the returning officer's duties. As noted, Mr. Essensa proposed that the Chief Electoral Officer should become responsible for the appointment of the election clerk; his submission to the Committee suggested that the runner-up in the proposed merit-based competition to select a returning officer would be appointed as the election clerk.

While Ontario's returning officers generally supported Mr. Essensa's recommendations to the Committee, many expressed concern about losing control over the appointment of the election clerk. Returning officers underlined the importance of personal compatibility in their relationship with the election clerk, and believe that they are best suited to judge who should be their "right hand".

Proposal

The Committee considered the proposals that Ontario's electoral legislation

3. Provide that an election clerk for each electoral district be appointed by the Chief Electoral Officer on the advice of and in consultation with the returning officer for the district.

4. Change the titles of "returning officer" and "election clerk" to "district electoral officer" and "deputy district electoral officer," respectively.

Depoliticizing the Appointment of Poll Workers

The returning officer is currently responsible for staffing the polling locations, both during the advance polling period and on polling day. The Act requires the returning officer to appoint a deputy returning officer and a poll clerk for each polling place. In the 2007 election, each electoral district averaged about 240 polling places.

In addition to requiring that poll officials be electors in the electoral district, the legislation requires that they be appointed so as to represent two different political interests. If possible, deputy returning officers are to be

appointed from a list supplied by the candidate of the registered party represented by the government of the day, and poll clerks are to be appointed from a list supplied by the candidate of the registered party of a political interest other than the government that received the highest or next highest number of votes at the most recent election.

The candidates who may supply these lists of poll workers have until 10 days before polling day to do so; at that point, having received lists or not, the returning officer must appoint poll workers. Appointments may be made before this time if a candidate has supplied a list or has advised the returning officer that such a list will not be supplied. In many cases, the designated candidates will not supply a sufficient number of names for the returning officer to staff the polling stations fully. Nonetheless, the returning officer may be constrained to wait until 10 days before polling day to hire other individuals. At this point in the campaign period, the returning officer is busy with other responsibilities, including advance polling. Hiring this late in the process leaves little time for ensuring that poll workers are properly trained and ready for polling day.

Mr. Essensa has recommended that the residency requirement for poll officers be removed, and that the returning officer in each electoral district be permitted to appoint the election officials who will report to him or her. A non-partisan hiring process would enable returning officers to begin recruitment and hiring at the outset of the writ period and thereby free up more time during the final days before polling day.⁹ Mr. Hollins had also urged the Committee to consider a hiring process for poll officials that is “merit-based and according to the returning officers’ schedule.”¹⁰

Proposal

The Committee considered the proposal that Ontario’s electoral legislation

5. (a) eliminate the rules that currently apply to the appointment of poll officials, including the requirement that a poll official reside in the electoral district, and in particular, any rule regarding the appointment of deputy returning officers and poll clerks from lists provided by the prescribed candidates up to 10 days prior to Election Day; and

⁹ Ibid., p. 14.

¹⁰ Committee *Hansard*, October 30, 2008, p. EL-12.

(b) make returning officers responsible, under the direction of the Chief Electoral Officer, for hiring and training poll workers.

The Committee supported providing returning officers with the ability to appoint and adequately train poll officials in a timely fashion.

Remunerating Election Officials (Schedule of Fees)

The rates at which election officials are remunerated are set out in Table 1 (the "fee schedule") of O. Reg. 244/07 (Fees and Expenses), made under s. 112 of the *Election Act*. The regulation provides for annual indexation (on April 1) of the amounts in Table 1 to the rate of inflation for the previous calendar year. The regulation also provides that the Chief Electoral Officer may direct that certain amounts be increased, subject to prescribed limits and conditions.

One of the issues frequently raised by returning officers in their submissions to the Committee was the inadequacy of the fee schedule. Part of the criticism was that levels are too low for the work provided, but of equal or greater concern to the returning officers is the difference in the fees paid for positions; in their view, this does not reflect a corresponding difference in the amount and complexity of the work involved.

Proposal

The Committee considered the proposal that Ontario's electoral legislation

6. Make the Chief Electoral Officer responsible for

(a) establishing the wages for election workers, consistent with appropriate labour market rates; and

(b) reporting on position descriptions and salaries in the post-election report.

The Committee supported providing the Chief Electoral Officer with the ability to provide compensation to election officials that is commensurate with the tasks that they are required to perform and which will attract individuals who are qualified and motivated to do the work involved.

III. THE PERMANENT REGISTER OF ELECTORS FOR ONTARIO (PREO)

Ontario is one of nine jurisdictions in Canada with a permanent voters list or register of electors. The Chief Electoral Officer was charged with establishing and maintaining a permanent register of electors under amendments to the *Election Act* that came into force on January 1, 1999. The Permanent Register of Electors for Ontario (PREO) has now been used in three elections (1999, 2003, and 2007).

A permanent register of electors seeks to avoid the necessity of conducting an enumeration to create a list of electors every time the writs for an election are issued.¹¹ At the same time, the challenge shifts to keeping a permanent list accurate in light of deaths, changes of address, changes of name, immigration and emigration, and new voters coming of age. In his report on the 2003 election, then Chief Electoral Officer John Hollins indicated that about 1.5% of the data in the PREO changes each month. An accurate, up-to-date list is necessary in order to preserve the integrity of the electoral process, to minimize challenges and last-minute registrations that could clog the voting machinery on polling day, to allow all eligible electors to receive notifications about the election and their polling places, and to provide accurate data on voter turnout.

It is important then, that the electoral legislation provide the Chief Electoral Officer with the tools necessary to update the PREO. Most of the information contained on permanent registers of electors is derived from other government entities, and is often dependent on the obligation that electors have to update their relevant data with these entities. Ontario's Act requires the PREO to be updated with respect to all Ontarians at least once in each calendar year, and as soon as possible following the issue of a writ for a general election (unless the most recent updating was within two months of the day the writ is issued). The Chief Electoral Officer is provided with a number of ways of obtaining information:

- [by] tak[ing] any steps that he or she considers necessary to ensure that it [the permanent register] is as accurate as reasonably possible (s. 17.1(1));
- by obtaining it [information] from any source that he or she considers reliable, including . . .
 - i. the Chief Electoral Officer of Canada,
 - ii. the government of Canada and its agencies,
 - iii. the government of Ontario and its agencies,

¹¹ It is also consistent with shorter, rather than longer, election periods.

- iv. any municipality in Ontario and its local boards (s. 17.1(4)para.2);
- by having research carried out by registration agents . . . including without limitation mailings, telephone calls, e-mails and personal visits to the homes of persons who may be electors who are not named, or not correctly named, in the permanent register (s. 17.1(4)para.3);
 - by having information packages distributed at locations where they are likely to come to the attention of electors who are not named, or not correctly named, in the permanent register (s. 17.1(4)para.4);
 - by having an enumeration conducted under section 18, if the Chief Electoral Officer is of the opinion that the permanent register will not be sufficiently complete and accurate if updating is based only on information obtained under [the preceding sources] (s. 17.1(5)para.5); and
 - by using any other technique that the Chief Electoral Officer considers will assist in updating the permanent register (s. 17.1(4)para.6).

[Also,] the Chief Electoral Officer shall establish and maintain an electronic system to allow electors to verify and confirm information about themselves in the permanent register (s. 17.1.1(1)).

In addition, the Act requires any entity identified in s. 17.1(4)para.2.iii (government of Ontario and its agencies) and s. 17.1(4)para.2.iv (any municipality and its local boards) to provide the Chief Electoral Officer upon request, with information for the purpose of verifying the accuracy of the PREO.

Enumeration

Of the nine jurisdictions with a permanent register of electors, all but Canada have retained the option of enumeration as a means of providing a comprehensive updating of the register. However, in addition to the information-gathering powers described above, Ontario's legislation also has a section requiring that in each calendar year in which a general election is scheduled to be held under subsection 9(2) (the four year fixed-date cycle), the Chief Electoral Officer will carry out a targeted registration program, to be completed before the writs are issued. This program is aimed at improving the register's accuracy regarding the following criteria:

- electors who have moved;

- persons who have reached the age of 18, but are not named in the register;
- new citizens of Canada not named in the register;
- electors who have died but are still named in the register; and
- any other matter that the Chief Electoral Officer deems relevant.

The program may be conducted for any electoral district or any part of an electoral district. The techniques by which registration agents appointed for this purpose may gather information are extensive and include “any other technique the Chief Electoral Officer considers will further the targeted registration program.” (s. 17.14(6)4.)

Finally, during the writ period, returning officers, subject to the approval of the Chief Electoral Officer, may appoint revising agents to enumerate qualified electors of a particular portion of an electoral district whose names do not appear on the list of electors.

Proposal

The Committee considered the proposal that Ontario’s electoral legislation

7. Remove any reference to “enumeration” and rely on targeted registration prior to the writ period and the appointment of revising agents following the issue of writs for an election.

The Committee’s views on the proposal to eliminate references to enumeration and rely on targeted revision/registration were mixed. One Member emphasized his party’s opposition to eliminating enumeration; another noted the absence of any provision requiring the Chief Electoral Officer to respond favourably to a returning officer’s request for resources to conduct a targeted revision.

IV. IMPROVING THE VOTING PROCESS

At the heart of the electoral legislation is the process by which electors attend a poll and cast their ballots. Both Mr. Essensa and Mr. Hollins have spoken about enhancing opportunities for Ontario electors to vote. The Committee supports that goal when achieving it is consistent with preserving, if not strengthening, the integrity of the voting process. Replacing proxy voting in favour of special ballots (see below) offers an example of how both ends can be served.

The Committee determined early in its deliberations that it had no interest in and would not be considering proposals for remote electronic voting (e.g., voting by phone, fax or Internet). Two views of the voting process have informed the consideration of proposals and recommendations put before the Committee. One view emphasizes ensuring that all electors, wherever they reside, have the same opportunity to vote. The other view – captured by Mr. Hollins's phrase, "multi-channel voting" – focuses on providing electors with numerous ways of voting, each with "its own built-in security."¹²

Advance Polls

Under amendments brought in prior to the 2007 general election, Ontario's election law provides more advance polling opportunities than any other jurisdiction in the country. (Conversely, Ontario has been the only jurisdiction not to allow voters who will be or expect to be absent on election day and during the advance polling period to vote by special (mail-in) ballot – discussed further below.) For a general election held under subsection 9(2), advance polls must be held at the returning office for 13 days, starting 18 days prior to polling day (if the ballots have been printed), and at the returning office and designated other locations for 10 days, starting 15 days prior to polling day. The number of advance poll locations in addition to the returning office is approved by the Chief Electoral Officer, and advance polls are open from 10 a.m. to 8 p.m. or "during such hours as are determined by the Chief Electoral Officer." (s. 44(6)).

Almost every returning officer who corresponded with the Committee addressed the issue of advance polling, and most noted the challenge of staffing and administering advance polls. A common suggestion was to provide for fewer days and shorter hours, compensated for by having more locations.

Providing adequate advance polling opportunities is often difficult in electoral districts that have many communities spread over large distances. The returning officer and Chief Electoral Officer must determine in which of these communities it is feasible to hold advance polls for the 10 days required under the statute. Electors in the remaining communities in such a district will need to travel to these designated locations to access an advance poll; some electors may not be able or willing to do so. The current statute does not allow a returning officer in such a district to provide a roving advance poll, for example, that might be held in several communities for one or two days during the advance polling period.

¹² Committee *Hansard*, October 30, 2009, p. EL-14.

Proposal

The Committee considered the proposal that Ontario's electoral legislation

8. Provide the Chief Electoral Officer with the ability, in consultation with the returning officer, to determine the number of days, polling hours, and polling locations for advance polling that will meet the needs of electors in a district.

Concern about the government's proposal was expressed as opposition to any attempt to limit or reduce the availability or number of advance polls. One Member suggested that an acceptable minimum number of polling days be included in the legislation. Another Member proposed that the Chief Electoral Officer might be given the discretion to increase the number of polls, but the number of polls would need to be consistent and the hours of polling uniform in all districts.

Proxy Voting and Special Ballots

Electoral legislation commonly provides a remedy for the elector who is unable to be present at a poll on polling day or during the advance polling period. Included in this category of electors are those normally resident in the jurisdiction but who are, for one reason or another, abroad (or out-of-province). Under current legislation, proxy voting is the only process available to an Ontario elector who is unable to vote on polling day or during the advance polling period. Chief Electoral Officer Greg Essensa and his predecessor John Hollins have expressed concerns about the provisions that permit voting by proxy. Describing proxy voting as a "complex, cumbersome process that is rarely used," Mr. Essensa further identified its drawbacks:

Proxy voting forces electors to give up the secrecy of their vote since they are required to select another eligible elector to vote on their behalf. Electors have no guarantee that the person they entrusted with their vote has actually cast the ballot in accordance with their wishes.¹³

Apart from Ontario, only Yukon and Nunavut permit proxy voting.

In addition, Ontario is the only jurisdiction among Canada, the provinces, and the territories not to permit mail-in or special ballots for at least some

¹³ *Chief Electoral Officer's Submission to the Select Committee on Elections*, February 4, 2009, p. 5.

class(es) of eligible electors. While the special ballot may be the only means by which an elector serving abroad or temporarily resident outside the jurisdiction is able to vote, in almost all jurisdictions (Quebec being the most notable exception) *any* eligible elector may apply to vote by special ballot.

Proposal

The Committee considered the proposal that Ontario's electoral legislation

- 9. (a) eliminate provisions that permit voting by proxy;
and**
- (b) include special voting rules (i.e., voting by special ballot), modelled on provisions in the *Canada Elections Act*.**

Having noted the potential of a special ballot process to address the specific circumstances of many electors, including persons who are housebound, postsecondary students living in residence, and electors temporarily residing or vacationing outside the province, the Committee supported Ontario adopting a special ballot process, modelled as closely as possible on provisions in the *Canada Elections Act*. The legislation would permit any eligible Ontario elector to apply to vote by special ballot. The Committee also supported removing from Ontario's electoral legislation the provisions that allow electors to vote by proxy.

Service Delivery Enhancements

Like many other Canadian jurisdictions, Ontario continues to employ a voting model incorporating two poll officials using a pen-and-paper list-based recording scheme to manage

- the verification of an elector's eligibility to receive a ballot;
- the delivery of a ballot to the elector;
- the marking of that ballot by the elector; and
- the return of that ballot to a poll official, who examines the ballot before returning it to the elector, who places it in the ballot box in the presence of both poll officials.

A complete description of this service delivery model would include other details of the process that are prescribed in the Act.

Chief Electoral Officers have argued that the prescriptive nature of this model prevents them from introducing improvements to the balloting process, improvements that would enhance the voter's experience and employ resources more efficiently and effectively. In every electoral district, there are more polling divisions than there are voting locations. In the 2007 general election, for example, 28,244 polling places (27,596 election day and 648 advance polls) were provided in 9,090 voting locations. Even though, at a given voting location, there might be several pairs of poll workers on hand, each pair may only process the electors whose names appear on the list for their polling division; each elector may only approach the poll workers for the poll to which he or she has been assigned.

More efficient models are possible, and have been adopted in other jurisdictions. A "bank teller" model was described to the Committee. In it, all electors arriving at a voting location would be served by the first available poll worker in each stage of the process. Initially, the elector would attend a station where his or her eligibility to receive a ballot would be verified. The elector would then bring that confirmation to a second station, receive a ballot, and then move to an available place to mark the ballot. Finally, the ballot would be placed in the appropriate ballot box in the presence of another worker. A separate station might be dedicated to dealing with polling day registrations or resolving challenges about proof of identity.

In such a process, the distinction between deputy returning officer and poll clerk might no longer apply. This distinction between the poll workers and the prescriptive nature of the Act regarding their duties and roles in the voting exercise may reflect, at least in part, the political basis of their appointment.

Proposal

The Committee considered the proposal that Ontario's electoral legislation

10. (a) allow the Chief Electoral Officer, in consultation with representatives of Ontario's political parties and with returning officers, to incorporate new tools and methodologies in the polling process;

(b) eliminate provisions that prevent the application of innovations that would deliver better service to electors while preserving the integrity of the system; and

(c) replace the positions of deputy returning officer and poll clerk with the position of election worker.

Concerns expressed by Committee members in the discussion of these proposals included uncertainty about how the legislative provisions to address them might be worded, and whether or not such changes would eventually lead to electors being permitted to vote from any voting location in their electoral district. The Committee members agreed that any service delivery model implemented must continue to accommodate scrutineers in a manner satisfactory to all parties.

Mobile Polls

Section 14 of the *Election Act* provides that a polling place will be provided in an institution of 20 or more beds in which chronically ill or infirm persons reside, or in a retirement home of 50 or more beds. Subsection 14(2) also permits the deputy returning officer and poll clerk "to attend upon the electors at their bedsides or otherwise for the purpose of receiving their ballots." Following this canvass of the residents, "the poll officials may continue the poll in one location until full opportunity has been given for all resident electors to vote." (14(3))

Proposal

The Committee considered the proposal that Ontario's electoral legislation

11. (a) provide the Chief Electoral Officer and returning officer with the ability to establish mobile polls, as needed, and determine the voting hours of such polls; and

(b) model this section of the legislation on provisions for mobile polls in the *Canada Elections Act*.

Under subsection 538(5) of the *Canada Elections Act*, a returning officer may establish a polling division that consists of two or more institutions "where seniors or persons with a physical disability reside." When such a division has been constituted, the returning officer may, under subsection 125(1), establish "a mobile polling station to be located in each of those institutions successively." The returning officer must set the hours that the mobile polling station will be located at each of the institutions and provide candidates with notice of that itinerary.

Mobile polls are generally regarded as a more efficient use of resources than staffing a poll at each institution for regular polling hours. In the Northwest Territories, a mobile poll may visit an elector who is housebound. The *Canada Elections Act* includes a provision that permits a housebound voter who is unable to read, or who is unable to complete a special ballot, or who, on account of a physical disability, is unable to visit the returning office, to apply to have an election official visit the elector's home and, in the presence of a witness, assist the elector in voting.

The Committee was generally receptive to the idea of a mechanism that would bring a ballot to the housebound elector, whether or not this is regarded as a "mobile poll". Reservations were expressed with respect to the mobile poll that successively attends two or more institutions. One concern was the absence of a fallback provision to address the elector who is resident in the institution and wishes to vote but finds that he or she has missed the mobile poll. A more fundamental objection was that polls in institutions should have the same hours as regular polls, in keeping with the principle of providing equal access to all electors.

Identification Documents

In 2007, the *Election Act* was amended to require electors to produce proof of identity in order to receive a ballot at the polling place, and proof of identity and proof of place of residence when seeking to register and receive a ballot at the polling place. The Act also provides that the Chief Electoral Officer "shall . . . determine what document or class of documents constitutes" proof of identity and proof of place of residence.

Both Mr. Hollins and Mr. Essensa have indicated that Elections Ontario wishes to include the photo Ontario Health Card as a document that provides proof of identity and residence. Concern has been raised that the *Personal Health Information Protection Act, 2004 (PHIPA)* limits the ability of election officials to ask electors to produce the health card for identification purposes.

A close reading of subsection 34(4) of *PHIPA* indicates that it proscribes "requiring" the presentation of the health card. Federal practice in Ontario during the general election of 2008 suggests that identifying and promoting the use of the health card as an identification document is consistent with *PHIPA*. On this interpretation, Ontario election officials *are* permitted to ask electors to show provincially-issued identification cards, including health cards, so long as there is no requirement to produce the health card. This view was shared by Ontario's Privacy Commissioner, Dr. Anne Cavoukian, who wrote to the Committee as follows:

The current practice of allowing the use of Ontario health cards as an *optional* proof of identification in Ontario elections is consistent with the provisions in *PHIPA*. I am not aware of any reason why these provisions, or the current practice, should be changed.¹⁴

Proposal

The Committee considered the proposal that Ontario's electoral legislation

12. Permit individuals to use their health card as identification for the purposes of voting.

The Committee supports Ontario electors continuing to be able to use their photo health card in order to establish their identity and/or place of residence.

Vouching

Section 51 of the *Election Act* permits an elector whose name is on the polling list and who is able to provide proof of his or her identity to vouch for an elector whose name was omitted from the polling list. This provision may be applied only in a rural polling division (under s. 12(1) each returning officer is required to divide the electoral district into urban and rural polling divisions as directed by the Chief Electoral Officer). Under s. 51(2), an elector may vouch for more than one elector.

The procedure provided for in section 51 is an example of vouching for the purposes of registering an elector. Vouching for this purpose is also permitted under the *Canada Elections Act*, and the election Acts in Saskatchewan and New Brunswick. Canada and Saskatchewan also permit an elector whose name is on the polling list and who is able to provide proof of his or her identity to vouch for an elector whose name is on the list but is unable to provide satisfactory proof of identity. These are examples of vouching for the purposes of receiving a ballot.

In his report on the 2007 election, Chief Electoral Officer John Hollins suggested that section 51 is an anachronism, that retaining this process "compromises the integrity of the voting and does not treat all electors equally. This situation merits legislative change."¹⁵ During the 2007

¹⁴ Letter to the Committee, April 20, 2009 (emphasis by Dr. Cavoukian in the original).

¹⁵ Elections Ontario, *Placing the Elector at the Centre of the Process*, Report on the 39th General Election in the Province of Ontario (Toronto: Elections Ontario, June 2008), p. 43.

election, section 51 was rendered inoperative because of the decision that no polling divisions would be designated as rural polling divisions.

Many of Ontario's returning officers have experience working in federal elections where, as noted, vouching is possible in all polling divisions. Many of these election officials have found vouching provisions to be very helpful, an observation they shared with Elections Ontario and with the Committee. In his appearance before the Committee, Mr. Hollins recommended that an elector with proper proof of identity be allowed to vouch for one other person, both for the purposes of receiving a ballot and for the purposes of registration.

Mr. Essensa's submission to the Committee suggests that section 51 (vouching for the purposes of registration) be amended to apply to all electoral districts, and that vouching for the purposes of receiving a ballot also be permitted.

Proposal

The Committee considered the proposal that Ontario's electoral legislation

13.(a) permit an elector whose name is on the polling list and who is able to produce acceptable proof of identity to vouch for the identity of an elector whose name is on the polling list so that he or she may receive a ballot, or to confirm for the purpose of registration the identity of an eligible elector whose name does not appear on the polling list;

(b) require the elector who was vouched for (the vouchee) to sign a declaration;

(c) add to the list of offences under the Act, signing a false declaration under this provision; and

(d) establish that an elector may vouch for no more than two electors.

Both opposition party Members reported that their caucuses were divided on this issue. One Member suggested that vouching works better in a rural polling division where the population changes less frequently. Another Member noted a strong desire that electors produce identification, offset by the recognition that vouching may provide a means of enfranchising homeless persons. In this respect, it was suggested, the proposed limit (that

one elector may only vouch for two electors) could prove to be problematic.

Clarifying Student Residency

In his post-election report, then Chief Electoral Officer John Hollins recommended that Ontario's legislation follow the lead of the *Canada Elections Act* in permitting university and college students to designate their residence for the purposes of voting. Currently, under subsection 1.1(2), Ontario's Act states that "the place where a person's family resides is also his or her residence, unless he or she moves elsewhere with the intention of changing his or her permanent lodging place." The provision in the federal Act to which Mr. Hollins referred states that "the place of ordinary residence of a person is the place that has always been, or that has been adopted as, his or her dwelling place." (s. 8(1))

Proposal

The Committee considered the proposal that Ontario's electoral legislation

14. Make it easier for students to choose where they live for the purposes of voting.

Committee members agreed with the principle of permitting postsecondary students studying away from home to identify the electoral district in which they are resident for the purpose of voting.

Testing Voting and Vote-Counting Equipment and Alternative Voting Methods

Section 4.1 of the *Election Act* permits the Chief Electoral Officer during a by-election to employ voting equipment, vote-counting equipment or alternative voting methods different than those required by the Act. This "piloting provision" was employed, for example, in advance polls for the March 2009 by-election in the electoral district of Haliburton-Kawartha Lakes-Brock to test ballot-marking equipment that permits electronic tabulation of ballots and incorporates an accessibility feature that allows persons who might not otherwise be able to mark their own ballot to do so.

Proposal

The Committee considered the proposal that Ontario's electoral legislation

15. Permit the Chief Electoral Officer, in consultation with the advisory committee (appointed under s. 4.3 of the *Election Act* and) comprised of members appointed by the registered political parties, to test voting and vote-counting equipment and alternative voting methods in both general elections and by-elections.

Discussion of this issue revealed concerns about extending the Chief Electoral Officer's ability to pilot new methods and technologies to include general elections. One objection was that there should be uniformity across the province in how electors vote, which would be compromised if the testing in a general election were to take place in some districts and not others. Another concern was the weakness of the proposed direction to the Chief Electoral Officer (i.e., "in consultation with the advisory committee"). By contrast, for example, s. 18.1 of the *Canada Elections Act* permits the Chief Electoral Officer to "test an electronic voting process for future use in a general election or a by-election," but also prescribes that "such a process may not be used for an official vote without the prior approval of the committees of the Senate and of the House of Commons that normally consider electoral matters."

Commissions and/or Committees

The Chief Electoral Officer noted his authority to make recommendations he considers advisable to the Acts that he administers in his annual report to the Legislative Assembly. He has proposed that the Chief Electoral Officer also be given the statutory authority to study and report on all matters related to the field of election administration, election finance and voter registration. Mr. Essensa believes that his office should also have the authority to study and report on any policy issues that affect the general administration of federal, provincial and municipal elections in Ontario, and the power to hold meetings and symposia on education-related topics. Finally, Mr. Essensa has recommended that the Chief Electoral Officer be granted the authority to assemble a body of experts to study and consult on contribution, expense, spending and advertising rules.

Proposal

The Committee considered the proposal that Ontario's electoral legislation

16. Permit the Chief Electoral Officer to establish Commissions and/or Committees from time to time to

examine the ongoing modernization of the voting process and the rationalization of election services.

A strong objection to this proposal was raised on the basis that innovation or change, if it is needed, should be considered by a Committee of the Legislative Assembly.

V. IMPROVING ACCESS FOR PERSONS WITH DISABILITIES

Representatives of persons with disabilities met with the Committee to discuss efforts to make Ontario's elections fully accessible. The group, members of the Accessibility for Ontarians with Disabilities Act Alliance (AODA Alliance), reminded the Committee that during the 2007 election campaign, each political party committed to achieving an accessible election action plan. They also shared with the Committee their views on how such a plan might be put into place and realized. In addition, the Committee was informed of service delivery gaps in the provision of accessible voting opportunities for persons with disabilities during the 2007 election.

Put most simply, the vision of the AODA Alliance is a system in which all persons with a disability may not only vote, but be able to verify independently how they have voted. It is this outcome that matters, they emphasized, not the technology that may be used to achieve it.

A theme stressed by the AODA Alliance group was the importance of having election officials consult with members of their community. One service delivery gap explained to the Committee was that many of the polling locations selected by returning officers for the 2007 general election and identified as accessible turned out, on polling day, to be less than fully so.¹⁶ According to a former Elections Ontario employee, returning officers lacked training in how to assess the accessibility features of locations, and lacked knowledge of best practices from other jurisdictions. The AODA Alliance suggested that potential voting locations be identified at a much earlier date (particularly for elections held under s. 9(2) of the Act), and that the community of persons with disabilities be consulted to assess the accessibility of locations prior to their confirmation as polling places.

The AODA Alliance suggested that measures such as pre-selecting voting locations sufficiently in advance of elections and permitting persons with a

¹⁶ The other service delivery gap described was the failure of updated TTY services (which enable persons who are deaf, deafened or hard of hearing to directly communicate with others over the phone) to work properly during election day.

disability to assess them should be put into legislation. More generally, the group asked that legislation include mandatory steps toward achieving accessibility and monitoring measures to ensure compliance takes place:

We're confident that their [Election Ontario's] intentions are good, but . . . we have learned that leaving it to voluntary action, not legislative guarantees, will not provide accessibility.¹⁷

In summing up, the AODA Alliance asked the Committee to accept the 2011 general election as the deadline for putting an end to inaccessible ballots, inaccessible polling stations, and inaccessible all-candidates' debates.

Use of Technology

Subsection 55(1) of the *Election Act* permits an elector who is unable to read, or with a disability that prevents him or her from voting as otherwise prescribed in the Act, to apply for assistance in marking his or her ballot. Under this provision, the deputy returning officer may mark the elector's ballot as he or she directs, in the presence of the poll clerk, and place it in the ballot box. Subsections 55(2) to 55(5) detail a process, similar to that in subsection 55(1), whereby a friend of the elector may accompany the elector to the voting screen and mark the ballot as the elector directs. Both Mr. Hollins and Mr. Essensa have noted that these arrangements compromise the secrecy of the elector's vote.

Proposal

The Committee considered the proposal that Ontario's electoral legislation

17. Permit the Chief Electoral Officer to use or adapt new technologies to assist persons with disabilities to vote.

During the Committee's deliberations, one Member expressed support for this proposal, but also for retaining the option available under subsections 55(2) to 55(5) – "friend of the elector." The Committee decided to invite the Chief Electoral Officer to share Elections Ontario's experience piloting new technology in the March 2009 by-election in Haliburton–Kawartha Lakes–Brock. The Committee's discussion with the Chief Electoral Officer highlighted several issues:

¹⁷ Mr. David Lepofsky, Committee *Hansard*, April 28, 2009.

- the small number of electors who used the accessibility features in the electronic ballot tabulation technology being tested;
- the cost of the technology;
- the need to train election officials in administering the technology;
- the likelihood of improvements in technology and any impact of this consideration on decisions to buy or lease such technology; and
- the possibility of sharing technology (and costs) with other levels of government.

Mobile Polls / Special Ballots

The government's proposals to adopt provisions permitting mobile polls and special voting rules, patterned in each case on provisions in the *Canada Elections Act*, if adopted, would offer alternative voting methods for persons with a disability that currently are not available. Committee members supported including a provision such as s. 243.1 of the federal Act, which allows a housebound elector with a physical disability to apply to have an election official visit the elector's home and assist the elector in voting (noted above).

Transfer Certificates

Under subsection 24(1.1), electors who could vote more conveniently in another polling division (than the one in which they reside) because their mobility is impaired by a disability or by some other cause may apply, up to and including the day immediately preceding polling day, for a transfer. This does not accommodate persons with disabilities who discover on polling day that the polling location to which they have been assigned is not sufficiently accessible.

Proposal

The Committee considered the proposal that Ontario's electoral legislation

18. Permit electors with a disability to apply, up to and including polling day, to transfer to a more accessible polling location.

The Committee supported extending the transfer application period to include polling day.

VI. MODERNIZING ELECTION FINANCE RULES

Ontario's Chief Electoral Officer has noted that consolidating the *Election Act* and the *Election Finances Act* would eliminate inconsistencies in the provisions that govern the nomination, registration and endorsement of candidates. Both Mr. Essensa and his predecessor Mr. Hollins have recommended that the legislation also be updated to reflect modern banking and accounting practices.

Corporate Credit Cards

Under the *Election Finances Act*, donations to political parties may be made by individuals, corporations that are not registered charities, and trade unions. Cash donations may not exceed \$25. Amounts in excess of \$25 may be made only by personal cheque, a money order signed by the contributor, or, in the case of money contributed by an individual, a credit card in the name of the individual contributor.

Proposal

The Committee considered the proposal that Ontario's electoral legislation

19. Permit corporate donations to political parties, constituency associations, candidates, and leadership candidates to be made with corporate credit cards.

The Committee supported permitting the use of corporate credit cards for corporate donations.

Emerging Financial Transaction Technologies

Chief Electoral Officer Greg Essensa told the Committee that limits on the use of modern technology for fundraising are "a source of frustration for contributors and political entities alike," and suggested that the legislative framework should "allow[s] for the transparencies and efficiencies that many modern banking practices could provide."¹⁸ Examples he cited of such practices included the use of debit cards and online donations.

Proposal

The Committee considered the proposal that Ontario's electoral legislation

¹⁸ Committee *Hansard*, December 4, 2008, p. EL-26.

20. Permit, by regulation, and in consultation with the Chief Electoral Officer, the use of emerging financial technologies where appropriate.

The Committee supported regulations permitting the adoption of appropriate modern banking practices, including the electronic transfer of funds.

Planned Giving, Estate Donation

Proposal

The Committee considered the proposal that Ontario's electoral legislation

21. Permit registered political parties to receive contributions from estates, providing clear definitions and establishing a maximum contribution.

Committee members felt that more information was needed, such as how such contributions are handled in other jurisdictions (legislation provides little guidance), what the proposed maximum would be, and how such a limit could be enforced.

Electronic Receipting

Proposal

The Committee considered the proposal that Ontario's electoral legislation

22. Include provisions that would permit electronic receipting for registered political parties, riding associations, and candidates. (The Chief Electoral Officer would provide software applications and training to CFOs and financial agents to issue receipts promptly for online donations.)

The objective of this proposal is to increase transparency and openness within the election financing process. Riding associations would report on a quarterly basis.

Committee members felt more discussion of this proposal was required. Concern was expressed on behalf of one party about the extra reporting burden placed on campaign volunteers, with concern from another party about the capacity of Elections Ontario to handle the flow of information that would be generated.

Establishing Campaign Expense Limits

Under subsections 38(1) and 38(3) of the *Election Finances Act*, the limits in campaign expenses that a party and candidate may incur, respectively, are determined by multiplying the applicable prescribed amounts by the number of electors in all the districts in which the party has an official candidate, and the number of electors in the district in which the person is an official candidate. The “number of electors” in each case is the number of eligible electors as determined by the Chief Electoral Officer under the *Election Act*. Section 64 of the *Election Act* provides that:

Immediately following polling day, the Chief Electoral Officer shall determine the number of electors that were entitled to vote in each electoral district and, as soon as possible thereafter, shall furnish a certified statement thereof to each candidate in the electoral district.

In other words, the number of electors for the purposes of calculating the limit on campaign expenses is not determined until after the campaign is over. Candidates and parties are left uncertain about how much they may spend and run the risk of violating the law if they overestimate the number of electors and spend accordingly.

Proposal

The Committee considered the proposal that Ontario’s electoral legislation

23. Designate “the number of electors” for the purpose of calculating campaign expense limits to be the higher of (a) the number of electors in the permanent register of electors for an electoral district at the time the writ for an election is issued and (b) the number of electors entitled to vote in the electoral district, as determined by the Chief Electoral Officer immediately following polling day.

The Committee supported removing uncertainty (and jeopardy) from the parties’ and candidates’ campaign finance budgeting.

Advertising Blackout

Several jurisdictions have an advertising blackout period, usually consisting of polling day and the day before polling day. Ontario and Quebec also have an immediate post-writ blackout period of one week. The development of new electronic media and the digital transfer of information have meant that definitions of what constitutes advertising may be incomplete.

Proposal

The Committee considered the proposal that Ontario's electoral legislation

24. Clarify what constitutes paid political advertising by amending the definitions so that the blackout period applies to any transmission to the public of paid political advertising, including all paid advertisements on radio, television, in print dailies, and on the Internet.

The Committee concluded that the potential use of the Internet for last-minute advertising requires its inclusion within the blackout provisions, notwithstanding any difficulty that might arise in enforcing them.

Polling Day Blackout on New Election Survey Results

Ontario is one of seven jurisdictions in Canada with a blackout period for political advertising that includes polling day. Canada and British Columbia extend the blackout on polling day to include the transmission to the public of the results of any election survey that have not previously been transmitted to the public.

Proposal

The Committee considered the proposal that Ontario's electoral legislation

25. Include a ban on the transmission to the public in an electoral district on polling day before the close of all polling stations in the district of the results of any election survey that have not previously been made available to the public.

The Committee supported including in Ontario's electoral legislation a ban on the transmission to the public on polling day of the results of any election survey that have not previously been made public.

Third Party Advertising

Amendments made in 2007 to the *Election Finances Act* included new sections 37.1 to 37.13, which address third party¹⁹ advertising during an election period (i.e., beginning the day the writ for an election is issued and ending on polling day). These provisions included the following requirements:

- Third party advertisers spending more than \$500 on election advertising must register with the Chief Electoral Officer.
- All registered third party advertisers must report on their expenses and contributions within six months of polling day.
- Contributions made for third party advertising purposes in the period that begins two months prior to the issue of the writ and ends three months after polling day must be reported.

The 2007 general election was the first to be held with these provisions in place.

In his presentation to the Committee on May 7, 2009, Chief Electoral Officer Greg Essensa identified the following issues for the Committee's consideration:

- Should Ontario adopt third party spending limits (following the lead of Canada, British Columbia, and Quebec)?²⁰
- Should Ontario adopt third party contribution limits?
- Should Ontario attempt to limit third party advertising spending to the amounts a third party raises prior to and during an election?
- Should Ontario adopt stricter registration and anti-collusion provisions?

¹⁹ "Third party" is defined under the Act as "a person or entity, other than a registered candidate, registered constituency association or registered party." (s. 1).

²⁰ Provisions regarding third party advertising have been passed in Manitoba (but remain unproclaimed), and in New Brunswick (coming into force January 1, 2010).

Proposal

The Committee considered the proposal that Ontario's electoral legislation

26. Include provisions that apply to third party advertising similar to those in place in other Canadian jurisdictions.

The Committee took notice of the provisions that apply to third party advertising in other Canadian jurisdictions and commends them to the government for consideration in any revision of Ontario's election finance legislation.

VII. BETTER ENFORCEMENT OF THE ACT**Administrative Penalties**

Under subsection 2(g) of the *Election Finances Act*, the Chief Electoral Officer must report to the Attorney General any apparent contravention of the Act. Under subsection 53(1) no prosecution shall be instituted without the Chief Electoral Officer's consent. Mr. Essensa has argued that the election statute needs to provide the Chief Electoral Officer with a greater range of administrative measures to secure compliance with the Act, rather than forcing him or her to rely on the prosecution of offences.

Proposal

The Committee considered the proposal that Ontario's electoral legislation

Permit the Chief Electoral Officer to use administrative penalties or fines for violations of the Act on an appropriate scale, with an appeals process to Divisional Court.

In his submission to the Committee, Mr. Essensa included a schedule of the types of administrative penalties he believes the Chief Electoral Officer should be able to wield.

Committee members from all parties noted concerns within their caucus about the effect of using administrative penalties such as those proposed by the Chief Electoral Officer. Some of these, it was felt, would constitute a heavy-handed approach to apparent violations that might simply be errors committed by volunteers. The concern was also expressed that smaller parties may not always have the resources needed to meet all the filing requirements by the prescribed deadlines.

OTHER RECOMMENDATIONS

As noted earlier, the Committee's initial hope was to provide with its report a draft bill incorporating its recommendations. For this reason, its primary focus was on the government's proposals for change to Ontario's electoral legislation. In addition, the government tabled recommendations of a non-legislative character, which the Committee took note of, but did not reach a conclusion on. These recommendations, presented below, generally take the form of advice to the Chief Electoral Officer to consult with other stakeholders on issues of mutual interest.

Use of Schools as Polling Locations

A number of reasons combine to make schools, from the perspective of election officials, an ideal voting location. School boards, principals and teachers, and parents don't always share this enthusiasm for situating polls in schools. Security issues, disruption to pupils' daily program, congested parking lots, and elevated traffic levels in the immediate vicinity are among their concerns.

Under s. 13(4), a school board (along with other designated entities) is required, upon the request of the returning officer, to make any premises under its control available as a polling location. On the other hand, school administrators have obligations under the *Education Act* with respect to student safety and security, and access to school premises by unauthorized persons.

Recommendation

The Committee considered the recommendation that

27. The Chief Electoral Officer work closely with the Ministry of Education to review communications approaches to build stronger support with school boards for ongoing use of schools and examine ways in which students might become engaged in this democratic process while maintaining the toughest of security measures in place.

Postsecondary Students

Uncertainty respecting the application of the definition of "residence" for electoral purposes to postsecondary students living in residence makes it essential that Elections Ontario communicate to these individuals what their

options are under the electoral legislation. In addition, a general election may be the first opportunity that many postsecondary students have had to vote. The Chief Electoral Officer has obligations under the Act to provide the public with information about the electoral process, the right to vote, and how to be a candidate, as well as to prepare information packages for new electors.

Recommendation

The Committee considered the recommendation that

28. The Chief Electoral Officer work closely with the Ministry of Training, Colleges and Universities, Colleges Ontario, and the Council of Ontario Universities to develop a standardized communications outreach strategy to postsecondary students.

Persons with Disabilities

The dialogue between members of the AODA Alliance and the Committee, discussed above, revealed a need for more consultation and cooperation between Elections Ontario and members of the community of persons with disabilities.

Recommendation

The Committee considered the recommendation that

29. The Chief Electoral Officer continue to work closely with the community of persons with disabilities on developing additional services, such as

(a) information, e-mail access and special ballot registration forms available on the Elections Ontario website;

(b) a sign-language DVD with open- and closed-captioning for people who are deaf, deafened, or hard of hearing; and

(c) other services and service enhancements proposed by representatives of the community of persons with disabilities.

PROPOSALS FOR ELECTORAL LEGISLATION

I. MANAGING ELECTORAL BOUNDARIES

Independent Boundaries Commission (pp. 5-7)

1. (a) establish a permanent Boundaries Commission comprised of the Chief Electoral Officer, a Justice of the Ontario Supreme Court, and an academic;
- (b) provide that the Commission review Ontario's electoral boundaries on a regular, established schedule; and
- (c) authorize the Commission, using federal electoral district boundaries as a base line, to make any necessary adjustment to a system of coterminous boundaries that is consistent with the principle of effective representation, in light of any special requirements the Province may identify.

II. PROFESSIONALIZATION OF SERVICE DELIVERY

Appointment of Returning Officers (pp. 8-9)

2. (a) provide for the appointment by the Lieutenant Governor in Council through an order-in-council of a returning officer for each electoral district, for a definite term of office (to be prescribed in the legislation);
- (b) require that the appointment is made on the advice of the Chief Electoral Officer; and
- (c) give the Chief Electoral Officer primary responsibility for the recruitment of candidates for the position.

Election Clerk (p. 10)

3. Provide that an election clerk for each electoral district be appointed by the Chief Electoral Officer on the advice of and in consultation with the returning officer for the district.

Position Titles (p. 10)

4. Change the titles of “returning officer” and “election clerk” to “district electoral officer” and “deputy district electoral officer,” respectively.

Depoliticizing the Appointment of Poll Workers (pp. 10–12)

5. (a) eliminate the rules that currently apply to the appointment of poll officials, including the requirement that a poll official reside in the electoral district, and in particular, any rule regarding the appointment of deputy returning officers and poll clerks from lists provided by the prescribed candidates up to 10 days prior to Election Day; and

(b) make returning officers responsible, under the direction of the Chief Electoral Officer, for hiring and training poll workers.

Remunerating Election Officials (Schedule of Fees) (p. 12)

6. Make the Chief Electoral Officer responsible for

(a) establishing the wages for election workers, consistent with appropriate labour market rates; and

(b) reporting on position descriptions and salaries in the post-election report.

III. THE PERMANENT REGISTER OF ELECTORS FOR ONTARIO (PREO)**Enumeration (pp. 14–15)**

7. Remove any reference to “enumeration” and rely on targeted registration prior to the writ period and the appointment of revising agents following the issue of writs for an election.

IV. IMPROVING THE VOTING PROCESS

Advance Polls (p. 16–17)

8. Provide the Chief Electoral Officer with the ability, in consultation with the returning officer, to determine the number of days, polling hours, and polling locations for advance polling that will meet the needs of electors in a district.

Proxy Voting and Special Ballots (pp. 17–18)

9. (a) eliminate provisions that permit voting by proxy; and

(b) include special voting rules (i.e., voting by special ballot), modelled on provisions in the *Canada Elections Act*.

Service Delivery Enhancements (pp. 18–20)

10. (a) allow the Chief Electoral Officer, in consultation with representatives of Ontario's political parties and with returning officers, to incorporate new tools and methodologies in the polling process;

(b) eliminate provisions that prevent the application of innovations that would deliver better service to electors while preserving the integrity of the system; and

(c) replace the positions of deputy returning officer and poll clerk with the position of election worker.

Mobile Polls (pp. 20–21)

11. (a) provide the Chief Electoral Officer and returning officer with the ability to establish mobile polls, as needed, and determine the voting hours of such polls; and

(b) model this section of the legislation on provisions for mobile polls in the *Canada Elections Act*.

Identification Documents (pp. 21–22)

12. Permit individuals to use their health card as identification for the purposes of voting.

Vouching (pp. 22–24)

13. (a) permit an elector whose name is on the polling list and who is able to produce acceptable proof of identity to vouch for the identity of an elector whose name is on the polling list so that he or she may receive a ballot, or to confirm for the purpose of registration the identity of an eligible elector whose name does not appear on the polling list;

(b) require the elector who was vouched for (the vouchee) to sign a declaration;

(c) add to the list of offences under the Act, signing a false declaration under this provision; and

(d) establish that an elector may vouch for no more than two electors.

Clarifying Student Residency (p. 24)

14. Make it easier for students to choose where they live for the purposes of voting.

Testing Voting and Vote-Counting Equipment and Alternative Voting Methods (pp. 24–25)

15. Permit the Chief Electoral Officer, in consultation with the advisory committee (appointed under s. 4.3 of the *Election Act* and) comprised of members appointed by the registered political parties, to test voting and vote-counting equipment and alternative voting methods in both general elections and by-elections.

Commissions and/or Committees (pp. 25–26)

16. Permit the Chief Electoral Officer to establish Commissions and/or Committees from time to time to examine the ongoing modernization of the voting process and the rationalization of election services.

V. IMPROVING ACCESS FOR PERSONS WITH DISABILITIES**Use of Technology** (pp. 27–28)

17. Permit the Chief Electoral Officer to use or adapt new technologies to assist persons with disabilities to vote.

Transfer Certificates (p. 28)

18. Permit electors with a disability to apply, up to and including polling day, to transfer to a more accessible polling location.

VI. MODERNIZING ELECTION FINANCE RULES**Corporate Credit Cards** (p. 29)

19. Permit corporate donations to political parties, constituency associations, candidates, and leadership candidates to be made with corporate credit cards.

Emerging Financial Transaction Technologies (pp. 29–30)

20. Permit, by regulation, and in consultation with the Chief Electoral Officer, the use of emerging financial technologies where appropriate.

Planned Giving, Estate Donation (p. 30)

21. Permit registered political parties to receive contributions from estates, providing clear definitions and establishing a maximum contribution.

Electronic Receipting (pp. 30–31)

22. Include provisions that would permit electronic receipting for registered political parties, riding associations, and candidates. (The Chief Electoral Officer would provide software applications and training to CFOs and financial agents to issue receipts promptly for online donations.)

Establishing Campaign Expense Limits (p. 31)

23. Designate “the number of electors” for the purpose of calculating campaign expense limits to be the higher of (a) the number of electors in the permanent register of electors for an electoral district at the time the writ for an election is issued and (b) the number of electors entitled to vote in the electoral district, as determined by the Chief Electoral Officer immediately following polling day.

Advertising Blackout (p. 32)

24. Clarify what constitutes paid political advertising by amending the definitions so that the blackout period applies to any transmission to the public of paid political advertising, including all paid advertisements on radio, television, in print dailies, and on the Internet.

Polling Day Blackout on New Election Survey Results (pp. 32–33)

25. Include a ban on the transmission to the public in an electoral district on polling day before the close of all polling stations in the district of the results of any election survey that have not previously been made available to the public.

Third Party Advertising (pp. 33–34)

26. Include provisions that apply to third party advertising similar to those in place in other Canadian jurisdictions.

RECOMMENDATIONS FOR THE CHIEF ELECTORAL OFFICER

Use of Schools as Polling Locations (p. 35)

27. The Chief Electoral Officer work closely with the Ministry of Education to review communications approaches to build stronger support with school boards for ongoing use of schools and examine ways in which students might become engaged in this democratic process while maintaining the toughest of security measures in place.

Postsecondary Students (pp. 35–36)

28. The Chief Electoral Officer work closely with the Ministry of Training, Colleges and Universities, Colleges Ontario, and the Council of Ontario Universities to develop a standardized communications outreach strategy to postsecondary students.

Persons with Disabilities (p. 36)

29. The Chief Electoral Officer continue to work closely with the community of persons with disabilities on developing additional services, such as

(a) information, e-mail access and special ballot registration forms available on the Elections Ontario website;

(b) a sign-language DVD with open- and closed-captioning for people who are deaf, deafened, or hard of hearing; and

(c) other services and service enhancements proposed by representatives of the community of persons with disabilities.

APPENDIX A

**DISSENTING OPINION OF THE PROGRESSIVE CONSERVATIVE MEMBER
OF THE COMMITTEE**

Dissenting Opinion on the Report of the Select Committee on Elections

Norm Sterling, MPP

Progressive Conservative Member of the Select Committee on Elections

The PC Caucus endorses Recommendation 26 of the Committee to limit third party spending in Ontario, but wants to make certain that this recommendation is implemented. Third party advertising has been recognized as a serious problem in Canada by our Federal Parliament and by five Provinces: British Columbia, Quebec, New Brunswick, Manitoba and Alberta.

Ontario has a law, but it is very weak in that it only requires registration and reporting of contributions for 6 months of the election year. As the Chief Electoral Officer of Ontario, Mr. Essensa told the committee, "This allows third parties to build advertising war chests but not to report on the source of those contributions at an earlier time."

Some Canadian jurisdictions have enacted limits on third-party spending. They range from a low of \$300 in Quebec to a high of \$183,300 federally.

In Ontario there is no limit. In the last provincial election, the third-party advertiser "Working Families" spent more than \$1 million on advertising during the writ period. They raised \$1.4 million solely from trade unions.

Because of the way Ontario's election finance laws are written it is impossible to know how much was raised and spent prior to the issuance of the election writ.

Election laws have been enacted to ensure a level playing field between politicians and their respective parties; to ensure that elections are held in a free and fair manner and that they are open and transparent. As third-party advertisers become more involved in electoral events it is necessary to ensure that they are governed by those same laws and that the laws are designed in such a manner as to recognize that elections are contested by individuals who put their names forward as candidates for public office and, in most cases, the political parties to which they belong.

Third-party advertisers have a legitimate role to play in the democratic process but they need to be open and transparent and should not have a freer hand to influence the political process than the individuals and parties who take part in the election. Further, it is also important to ensure that such third parties are truly independent, and are not subject to undue influence from any registered candidate or political party in the conduct of the advertising campaigns.

Therefore, the PC Caucus recommends, in concert with Recommendation 26 that the Legislative Assembly enact a law that:

- Restricts third party spending
- Restricts third party contribution
- Requires timely reporting of third party contributions, whenever donations are made.
- Provides for better enforcement of existing law to ensure that third party spending is not used to circumvent election finance laws, including stronger anti-collusion provisions.

Further, we recommend that the Legislative Assembly of Ontario establish an all-party committee, with equal representation from all three parties, to propose draft legislation to address these issues.

APPENDIX B

**DISSENTING OPINION OF THE NEW DEMOCRATIC MEMBER
OF THE COMMITTEE**

The Dissenting Opinion of the NDP
Select Committee on Elections

**Recommendations and
Supporting Arguments**

**For the Chair
Of the Select Committee on Elections**

**Submitted to the
Select Committee on Elections**

June 16, 2009

Introduction

In general, the NDP remain disappointed by the government's failure to use this committee to examine a wide range of electoral reforms. It was frustrating for the NDP to discover early during this committee process that the committee would be used to process the government "wish list" and nothing more. In hindsight, the government should have simply introduced legislation with its desired changes to existing electoral law. All in all, the committee was a disappointing, frustrating and largely irrelevant exercise.

1. Election financing

The NDP had high hopes for this committee in the early stages. It was our hope that the committee would consider the Manitoba, Quebec and Federal election financing approach. In the NDP's view, interest group financing shouldn't determine election outcomes.

Quebec, Manitoba and the government of Canada have banned corporate and union donations to political parties. In the NDP's view It's time for Ontario to do the same. Politics should be about standing up for citizens not about who has the most money.

Corporate donors are quite explicit about why they give the money they do: they want to shape government policy and access to politicians to press their views. Asked why he attended a \$10,000 a plate Liberal fundraiser developer Silvio de Gasperis said bluntly, "I wanted to speak to Dalton about my (development) issue in Pickering. I knew the reason I was there."

Political parties have grown overly dependent on corporate donations and, in chasing big corporate donations have ignored average citizens – a fact that's been even been noted by corporate titans like former Royal Bank CEO Robert Taylor, "Financially effective as it may be, the current system of corporate fundraising doesn't help with (the) broader purpose (of) continuing the democratization of our politics."

Corporate donations allow CEOs and majority shareholders to donate money two ways, through both corporate and individual donations, while average citizens can only donate as individuals. This makes donation limits unenforceable and, ultimately, farcical.

.Here's how things work in other jurisdictions:

- **Federally**, each party receives 50% of expenses incurred, if it obtains 2% of valid votes overall or 5% of valid votes in electoral districts where it ran a candidate
- **In Quebec**, if a party receives 1% of votes, the Party receives 50% of incurred expenses, to a maximum of \$0.60 per elector for all electoral divisions in which it ran candidates.
- **In Manitoba**, If a party obtains 10% of valid votes, it receives lesser of 50% of expenses limit and 50% of actual expenses
- **In Saskatchewan**, If a party obtains 15% of valid votes, it receives 50% of incurred expenses for all electoral divisions in which it ran candidates

Contribution limits for unions and corporations

- **In Ontario**, contributions from unions and corporations are allowed and the limit from a person, corporation or trade union is as follows:
 - To each party: \$7,500 per year x indexation factor
 - To each constituency association: \$1,000 per year x indexation factor
 - To constituency associations of any one party: \$5,000 per year x indexation factor
 - To each candidate: \$1,000 per campaign x indexation factor
 - To candidates endorsed by one party: \$5,000 total per campaign x indexation factor

In contrast, other jurisdictions have the following rules in place:

- **Federally**, contributions from unions and corporations are banned and contributions from individuals are as follow: \$1,000 total per year to each registered party; \$1,000 total per year to the ridings and candidates of each registered party; and \$1,000 total to the leadership contestants in a particular leadership contest.
- **In Quebec**, contributions from unions and corporations are banned and the limit is \$3,000 total from any individual to each party, independent member and independent candidate
- **In Manitoba**, contributions from unions and corporations are banned and the limit is \$3,000 in a calendar year from an individual to candidates,

constituency associations or registered political parties or any combination of them; and \$3,000 in leadership contest period to one or more contestants

2. Rules enabling Citizen Assemblies and Citizen Juries must be changed.

The current approach allows the Minister of Democratic Renewal to establish a "representative body" of electors to meet and discuss any matter the Minister determines.

This resulted in a ridiculously high bar in the past referendum which consisted of:

- A yes vote at least 60 per cent of all the valid referendum ballots cast; and
- A yes vote in more than 50 per cent of the valid referendum ballots cast in 60 per cent of ridings - at least 64 electoral districts
- The double standard in terms of setting such a high bar was put nicely by Fair Vote which said
 - "no Government raises the bar for its own legislation, which often has far-reaching effect on the lives of Canadians. No politician has ever refused to accept a seat in Parliament or a provincial legislature due to failure to win 60 per cent of the votes – many gladly take their seats despite winning less than 50 per cent or even less than 40 per cent of the votes in their ridings. In fact, thanks to the current voting system, most "majority" governments in Canada gain power without winning a majority of votes."
- The NDP believes that 50% plus one should be sufficient in all referenda.

3. A full and complete enumeration must be undertaken before every election

- Election after election has reveals that the permanent list is woefully inadequate and systematically excludes many voters particularly tenants and low income voters.
- The Liberal 2003 platform noted "The permanent voters list, used for the first time in the last provincial election, created serious problems that led

to poor turnouts in low-income and high-rental-density areas, as well as among young Ontarians.” (The Ontario Liberal Plan for Democracy, p. 5) Unless the list is completely updated before every election Ontario will continue to exclude young, low-income and urban Ontarians from the democratic process.