



huu ay aht

ANCIENT SPIRIT, MODERN MIND

## **ELECTRONIC VOTING REGULATION**

Provisions of the Election Act, HFNA 2011  
relevant to the enactment of this Regulation: section 49.  
Provisions of the Referendum and Recall Act HFNA 2011 relevant  
to the enactment of this Regulation: section 51 (1)



# REGISTRY OF LAWS CERTIFICATION

I certify that the *Electronic Voting Regulation* was passed by Executive Council on:

May 11<sup>th</sup>, 2023  
John Jack on behalf  
(Deputy) Chief Councillor, Robert Dennis

I certify that the *Electronic Voting Regulation* is enacted as law on:

May 11<sup>th</sup>, 2023  
Ta'yii Hawilth on behalf  
Ta'yii Hawilth, Derek Peters

I certify that the *Electronic Voting Regulation* came into force on:

May 11, 2023  
CBauer  
Coraleah Bauer, Law Clerk



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## PART 1 - INTERPRETATION

### Definitions

- 1 (1) In this regulation:
- “**Act**” means the *Election Act*, HFNA 2011;
- “**ballot**” means a paper ballot, a mail-in ballot or an electronic ballot;
- “**ballot item**” means each elected office to be filled in an election or referendum question in a referendum;
- “**electronic ballot**” means a ballot prepared in accordance with section 6;
- “**electronic ballot box**” means a database in the system where electronic ballots are recorded, designed in accordance with section 7;
- “**electronic voting**” means voting via the internet or telephone in accordance with this regulation;
- “**PIN**” means a unique personal identification number issued to an eligible voter for electronic voting;
- “**secondary credential**” means information about an eligible voter that is stored securely in the system;
- “**system**” means the technology, including software, designed to meet the requirements of this regulation;
- “**system election official**” means an individual appointed under section 2.
- (2) For greater certainty, for the purpose of applying the provisions of this regulation to
- (a) a general election or a by-election, an expression used in this regulation has the same meaning as in the Act,
- (b) a referendum, an expression used in this regulation has the same meaning as in the *Referendum and Recall Act*, HFNA 2011.

## PART 2 - SYSTEM ELECTION OFFICIAL

### System election official

- 2 (1) The commissioner must appoint, in accordance with section 20 of the Act, an individual to act as system election official at least 30 days before voting day.
- (2) For greater certainty, a system election official appointed under this section is an election official under the Act.
- (3) The system election official is responsible for

- (a) establishing the technology, including software, for electronic voting; and
  - (b) administering, maintaining, monitoring and performing audits of the system.
- (4) For greater certainty, for the purposes of carrying out its duties under subsection (3), the system election official must have access to the system beyond the access necessary to vote by electronic voting.

### PART 3 - ELECTRONIC VOTING

#### Electronic voting days

- 3 The commissioner must conduct electronic voting from 8 a.m. nine days before voting day until 8 p.m. on voting day.

#### Notice of electronic voting

- 4 The commissioner must give notice to eligible voters of the opportunity to vote by electronic voting at least 29 days before voting day.

#### Information package

- 5 The commissioner must include a PIN and instructions on how to vote by electronic voting in the mail-in ballot packages mailed under section 48 (2) of the Act.

#### Style of electronic ballot

- 6 (1) For a general election and a by-election,
- (a) an electronic ballot to be marked using an electronic device other than a telephone must
    - (i) include a photograph of the candidate opposite each candidate's name on the ballot, and
    - (ii) provide a box to the right of each candidate's name for the eligible voter to click indicating his or her vote,
  - (b) an electronic ballot to be marked using a telephone must provide the eligible voter with
    - (i) audio for each candidate's name, and
    - (ii) an opportunity to review and confirm their vote before it is recorded in the electronic ballot box.
- (2) For a referendum,
- (a) an electronic ballot to be marked using an electronic device other than a telephone must
    - (i) contain the information required by section 13 (a) and (b) of the *Referendum and Recall Act*, HFNA 2011, and
    - (ii) provide a box to the right of each referendum question for the eligible voter to click to mark the ballot either "Yes" or "No",

- (b) an electronic ballot to be marked using a telephone must provide the eligible voter with
  - (i) audio for the information required by section 13 (a) and (b) of the *Referendum and Recall Act*, HFNA 2011, and
  - (ii) an opportunity to review and confirm their vote before it is recorded in the electronic ballot box.
- (3) An electronic ballot must be designed so that the eligible voter's identity cannot be ascertained after the electronic ballot has been recorded in the electronic ballot box.

#### **Electronic ballot boxes**

- 7 Electronic ballot boxes must be designed within the system to
  - (a) be able to be electronically sealed,
  - (b) permit electronic ballots to be recorded but not deleted, and
  - (c) not be opened unless the electronic seal is clearly indicated as having been broken by the system election official.

#### **Sealing of electronic ballot box**

- 8 (1) Before any electronic ballots are recorded in the electronic ballot box, the system election official must cause the system to generate a report that indicates the electronic ballot box is empty and then ensure the electronic ballot box is sealed in such a manner that electronic ballots can be recorded but not deleted and the electronic ballot box cannot be opened unless the electronic seal is clearly indicated as having been broken by the system election official.
- (2) The system election official must ensure the integrity of the electronic ballot box and that the electronic ballot box is secure at all times, free from any tampering, during electronic voting and until the commissioner makes a direction under section 19.

#### **Rules for electronic voting**

- 9 The commissioner, with the assistance of the system election official, may make written rules regarding
  - (a) how an eligible voter may vote by electronic voting,
  - (b) the administration of electronic voting, and
  - (c) the counting and tallying of votes cast by electronic voting.

#### **Process for electronic voting**

- 10 (1) When an eligible voter wishes to vote using electronic voting, the system must
  - (a) verify that person's identity by requiring their PIN and at least one secondary credential,
  - (b) verify on the official voters list whether or not the eligible voter has already voted in that election for each ballot item, or has forfeited the right to vote in the election under section 57 (6) of the Act,



- (c) if the individual is an eligible voter and has not already voted in that election for each ballot item, and has not forfeited the right to vote in the election under section 57 (6) of the Act, issue an electronic ballot to the eligible voter for each ballot item on which that eligible voter has not yet voted,
  - (d) issue electronic ballots in a manner that ensures the secrecy of the ballot and protects the secrecy of the eligible voter's vote,
  - (e) provide to the eligible voter, in the form approved by the commissioner, instructions for marking the electronic ballot,
  - (f) permit the eligible voter to mark the electronic ballot and record it in the electronic ballot box,
  - (g) permit the eligible voter to record their ballot without marking it or having only partially marked it, and
  - (h) indicate on the official voters list that the eligible voter has voted as soon as the electronic ballot is recorded in the electronic ballot box.
- (2) The system must be designed so that on voting day election officials are able to monitor the official voters list in real time, indicate on it who has voted in person and mark if an eligible voter forfeits the right to vote under section 57 (6) of the Act.

#### **Rules for accepting and rejecting electronic ballots**

- 11** The system must be designed so that
- (a) subject to subsection (b), each vote cast on an electronic ballot is accepted and counted as a valid vote,
  - (b) a vote cast on an electronic ballot is rejected as invalid if it is recorded in the electronic ballot box without any marks,
  - (c) an eligible voter is prompted if they are about to record an electronic ballot in the electronic ballot box with fewer marks than votes permitted for that ballot under the applicable Act, and given the option to go back and make additional marks before recording the electronic ballot in the electronic ballot box,
  - (d) an eligible voter who attempts to record an electronic ballot with no marks is advised that their ballot will be rejected as invalid and given the option to go back and make additional marks before recording the electronic ballot in the electronic ballot box, and
  - (e) an eligible voter cannot make more marks on the ballot than votes permitted for permitted for that ballot under the applicable Act.

#### **Individuals needing assistance to mark their electronic ballot**

- 12** Where an eligible voter is unable to vote by electronic voting because of a disability or difficulty with reading or writing, the eligible voter may enlist the assistance of another individual to enter the eligible voter's PIN and secondary credential, mark the eligible voter's electronic ballot and record it in the electronic ballot box.

**Replacement PIN**

- 13** (1) If an eligible voter did not receive a PIN, has lost his or her PIN or the PIN does not work, the commissioner, after seeking the advice of the system election official, may direct the system election official to issue a new PIN to the eligible voter to allow the eligible voter to vote only if
- (a) the commissioner is satisfied that the individual is an eligible voter who has not already voted in that election for each ballot item, and
  - (b) if applicable, the system election official has cancelled the original PIN assigned to that eligible voter such that the original PIN cannot be used for electronic voting.
- (2) The system election official must maintain a record of the original and any replacement PIN assigned to each eligible voter until the end of the retention period under section 18.

**Suspension of electronic voting**

- 14** (1) Electronic voting may be suspended by the commissioner or the system election official if the commissioner or the system election official considers that
- (a) the health or safety of persons is at risk, or
  - (b) the integrity of the voting is at risk.
- (2) If the system election official suspends voting under subsection (1), the system election official must
- (a) immediately notify the commissioner of the suspension, and
  - (b) follow any directions given by the commissioner in relation to the suspension.
- (3) Voting may be suspended under subsection (1)
- (a) to a later time on the same day, or
  - (b) to a day and time to be set by the commissioner.
- (4) While voting is suspended under subsection (1), the system election official must make all reasonable efforts to ensure
- (a) the electronic ballot box, electronic ballots and other election materials are secured, and
  - (b) the integrity of the election is not compromised.
- (5) The system election official must give notice to persons affected by any suspension of voting under this section as directed by the commissioner or, in the absence of such direction, in any manner the system election official considers necessary or advisable in the circumstances.

**PART 4 - AFTER ELECTRONIC VOTING CLOSES****List of persons who voted by electronic voting**

- 15** (1) As soon as reasonably practicable after the close of electronic voting, the system election official must

- (a) cause the system to generate a list of all eligible voters who voted by electronic voting, and
  - (b) deliver a printed or electronic copy of the lists under subsection (a) to the commissioner.
- (2) The list of eligible voters who voted by electronic voting prepared in accordance with subsection (1) (a) is proof that an individual on the list voted in that election.

#### **Procedures for counting electronic ballots**

- 16**
  - (1) All electronic ballots recorded in an electronic ballot box by the close of electronic voting on voting day must be counted in accordance with this section.
  - (2) At the close of voting on voting day, the commissioner must determine whether an eligible voter has voted by both electronic voting and mail-in ballot, in which case any mail-in ballot received from that eligible voter must be set aside and not counted.
  - (3) At the close of voting on voting day, the system election official must cause the system to generate a report for each ballot item that contains
    - (a) the ballot item,
    - (b) the number of valid votes for each candidate or referendum question, as applicable,
    - (c) the number of ballots for which marks were accepted as valid votes,
    - (d) the number of ballots rejected as invalid, and
    - (e) any other information the commissioner may reasonably require.
  - (4) The system election official must certify and provide a copy of the report generated in accordance with subsection (3) to the commissioner.
  - (5) The report in respect of each ballot item provided to the commissioner in accordance with subsection (4) is the ballot account for the electronic ballot box in respect of that ballot item for the purposes of section 63 of the Act.

#### **Conduct and accuracy of voting**

- 17** If the system election official has any concerns with the accuracy of the official voters list, the report generated under section 17 (4), or the conduct of electronic voting for the election, the system election official must immediately report those concerns to the commissioner.

#### **Retention period for electronic voting materials**

- 18** The system election official must ensure the integrity of all information specific to electronic voting in an election, including the information required to be maintained under sections 13 (2) and 8 (2), and that such information is secure at all times, free from any tampering until the commissioner makes a direction under section 19.

**Disposal of electronic voting materials**

- 19** Subject to sections 74 and 75 (3) of the Act, 90 days after an election is finally decided, the commissioner may direct the system election official to destroy the information retained by the system election official under section 18.

**PART 5 - GENERAL****Commencement**

- 20** This regulation comes into force on the date of its enactment.