AUXILIARY REPORT OF THE CHIEF ELECTORAL OFFICER: ISSUES ARISING FROM THE 2019 GENERAL ELECTION



25 March 2022

The Honourable Frederick Blake Junior Speaker Northwest Territories Legislative Assembly PO Box 1320 Yellowknife, NT X1A 2L9

Dear Mr. Speaker,

In March 2021, the Legislative Assembly directed the Chief Electoral Officer to provide research and recommendations on electoral matters identified by the Standing Committee on Rules and Procedures, arising from the Committee's review on the Chief Electoral Officer's Report on the Administration of the 2019 Territorial General Election. The House further directed that the Chief Electoral Officer respond within six months. I apologize for the delay in responding, this was the earliest possible time to respond following my appointment last November.

This report addresses those subjects and includes recommendations for consideration, including one additional recommendation stemming from the recent by-election.

I respectfully submit this auxiliary report.

Stephen J. Dunbar

Chief Electoral Officer of the Northwest Territories

Introduction

On February 23, 2021, the Standing Committee on Rules and Procedures tabled its *Report on the Chief Electoral Officer's Report on the Administration of the 2019 Territorial General Election*. The Committee made 19 recommendations in its report, which were subsequently adopted by the Legislative Assembly on March 30, 2021.

Three of those recommendations directed Elections NWT to undertake additional research and to report back to the Legislative Assembly within six months:

- Recommendation 10: investigate how other provinces or territories allow residents to cast votes from any polling station;
- Recommendation 15: undertake a review of best practices on election reporting and return to the Legislative Assembly with the findings of that review and any potential amendments to the Elections and Plebiscites Act; and
- Recommendation 17: undertake a review of the requirements to publicly disclose a Candidate's
 residential address and return to the Legislative Assembly with the findings of that review and
 any potential amendments to the Elections and Plebiscites Act.

This report responds to these requests for additional information, and includes one further recommendation following the recent Tu Nedhé-Wiilideh by-election.



Casting a Vote from Any Polling Station

Recommendation 10: investigate how other provinces or territories allow residents to cast votes from any polling station

Background

The Chief Electoral Officer was directed to undertake research on how other Canadian jurisdictions allow residents to cast votes for their home electoral district from any polling station. This recommendation came from a submission that raised a concern that in the event an elector in a multi-district community went to the wrong poll and was turned away or redirected to another poll, that elector may be discouraged from voting. The Committee flagged concerns with the impact such a change may have on counting, especially if a vote was cast in a different community and those ballots would need to be sent to the correct polling district for counting.

Elections NWT set out the following questions to guide research into this area:

- 1. Is an elector allowed to cast a ballot at a polling station outside of their home district, for the candidates in their home district?
- 2. How are the votes counted, and transmitted to the home district?
- 3. What are the impacts on the ability to count votes in a timely fashion?
- 4. When are the official results reported?

Is an elector allowed to cast a ballot at a polling station outside of their home district, for the candidates in their home district?

Only British Columbia currently allows voters to cast a ballot at any polling station in the province for their home district at any time during the election. Alberta, New Brunswick, Nova Scotia, and Quebec allow for votes to be cast during the early voting period only, using a variety of methods. Manitoba and Saskatchewan are looking to introduce a new model in their next general elections – Saskatchewan a "vote anywhere" model for a limited number of polls, and Manitoba a "vote anywhere in your electoral district" model.

In the Northwest Territories, the only opportunity to vote outside an elector's home district has been through absentee ballots, or through a multi-district poll under section 136.1 of the Act. Multi-district polls have traditionally been used at correctional facilities or large work camps outside of established communities.

How are the votes counted, and transmitted to the home district?

There is no clear standard. In four jurisdictions, the votes are counted electronically through tabulators, although only two jurisdictions transmit that information electronically to the home district. Two jurisdictions manually count and transmit the results from election headquarters to the home district, although Nova Scotia has noted that they are looking at moving to an electronic system for their 2025 general election.

Multi-district poll ballot boxes are physically shipped to Elections NWT headquarters at the close of the poll, where the ballot box is kept securely until the close of polling day. The Chief Electoral Officer or an election officer assigned to do so is responsible for counting the ballots after the close of polls. The results of the poll are sent to each Returning Officer responsible.

What are the impacts on the ability to count votes in a timely fashion? When are the official results reported?

There are only two jurisdictions that currently allow electors to vote anywhere up to polling day. Of those, only British Columbia's vote anywhere model allows for votes to be cast outside of the elector's home district. Some of the voting places in the province do not have adequate internet connectivity to allow for real-time reporting after the close of polls. Out of district polls from locations without tabulators are placed in certification envelopes to be counted at the final count, about a week after polling day. Elections BC estimates that the final count will take approximately 5-6 days under their new model, compared to the old model in which official results took 13 days to compile.

An internet connection is essential to the timely counting and reporting of results, and the use of electronic tabulators is becoming more widely adopted across Canada. The following graphic from Elections Manitoba shows how an elector's voting experience would not greatly change, although the technological requirements for an elections agency are much higher than currently used by and available to Elections NWT.

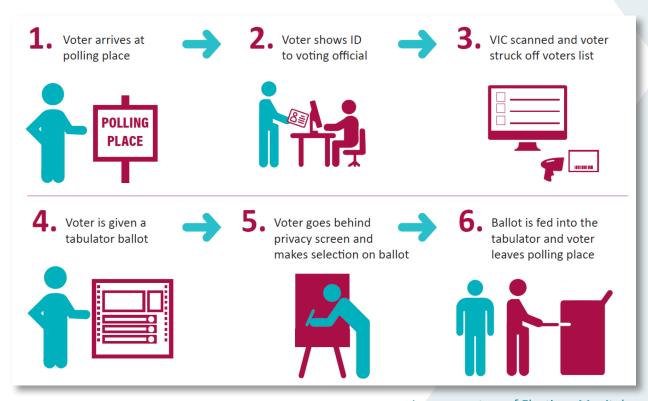


Image courtesy of Elections Manitoba

Options

There are a few options that Elections NWT could look at implementing on a trial basis for the 2023 territorial general election.

Given that the process being used in other jurisdictions is likely not needed in the Northwest Territories at this time, due to both cost and technical constraints, I am not prepared to adopt the technology required to permit a vote anywhere model without more research. This includes the ability to print ballots at the polling station, and electronic tabulators to count and transmit those results. In the 2019 election, 538 absentee ballots were cast, with the vast majority using the online ballot option. This was a little over 4% of all ballots cast in the election. New Brunswick, as the smallest jurisdiction that uses the vote anywhere model, saw almost 65,000 special ballots cast (17%), including 7,025 electors (1.8%) who voted for their home district from another district. With the dispersed nature of NWT communities, it is likely that Elections NWT would be dealing with, at most, a couple hundred ballots. This is manageable without the use of tabulators.

Vote Anywhere – Advance Voting Opportunities

Elections NWT could look at a vote anywhere model for voting in the office of Returning Officers. An active internet connection would be required for the Returning Officer to verify that the elector is on the voter's list for their home district. A write-in ballot would have to be used, as we do not have the resources to print ballots in Returning Offices, and it is not feasible to send ballots for every electoral district to every Returning Office. A list of candidates for each electoral district could be printed and provided to each office, for electors to reference when casting their vote. These ballots would essentially be treated as absentee ballots, and would be sent to Elections NWT headquarters, in the same way that mail-in ballots are during general elections. After the close of the polls, an election officer at Elections NWT is responsible for counting those votes and informing the appropriate Returning Officers of the totals.

Vote Anywhere – Multi-District Communities

Inuvik, Hay River and Yellowknife are the multi-district communities, meaning that there is more than one electoral district in each of those communities. During the advance voting period, there have traditionally been shared offices for the Returning Officers, so if an elector chooses to vote early, there is only one office to attend, and they will be directed to the appropriate desk to cast their vote. On polling day, however, the polling stations must be located in the electoral district, so there are seven separate polling places in Yellowknife, and two each in Inuvik and Hay River. Provided each polling place has an internet connection, it would be possible to trial a vote anywhere model on polling day for those communities. The out of district ballots would either have to be counted at the polling station where they were cast, and the results communicated to the appropriate Returning Officer, or an election worker would have to pick up the ballots from each polling station and deliver it to the Returning Office at the end of polling day to be counted with the votes that had been cast in the Office of the Returning Officer during the advance voting period.

¹ Report of the Chief Electoral Officer, 40th General Provincial Election https://www.electionsnb.ca/content/dam/enb/pdf/2020-prov-rpt.pdf

Recommendation

I recommend that Elections NWT trial a vote anywhere model during advance voting in the Offices of the Returning Officers. Instructions to this effect may be issued under section 144(2) of the Act, although legislative amendments may be required under sections 132, 133 and 146, although a new section may be preferable.

If Elections NWT is to undertake a vote anywhere model for multi-district communities, this will require legislative amendments, most likely similar to section 136.1: Voting At A Multi-District Poll.

TABLE 1

	Allowed to vote at any polling station	When? Counted		Transmitted	Reported				
NT	Not permitted								
АВ	Only during advance voting, using tabulators	Up to 1 week prior to polling day	Electronic	Electronically	Polling Day				
ВС	Yes	Any time during election period	Electronic	Counted in riding where it was cast	it Week after				
МВ	Yes in electoral district, starting in 2023, using tabulators. Province wide starting 2027	Any time during election period	Electronic		Polling Day				
NB	Only through special ballot at Returning Office		Electronic	Electronically	Polling Day				
NL	Not permitted								
NS	During Early Voting Period, moving to digital ballot process for 2025		Manually	Physically	Polling Day				
NU	Not permitted								
ON	Not permitted								
PE	Not permitted								
QC	During Early Voting Period	Up to 4 days before polling day	Manually	Physically	Polling Day				
SK	Looking to trial in next general election								
YT	Not permitted								

Best Practices in Election Reporting

Recommendation 15: undertake a review of best practices on election reporting and return to the Legislative Assembly with the findings of that review and any potential amendments to the Elections and Plebiscites Act

Background

The Chief Electoral Officer was directed to undertake research on best practices on election reporting from Canadian jurisdictions.

This recommendation came from a submission that flagged the changes in style and content in Official Results Reports from Elections NWT over the past several elections. Some polls have been combined due to small numbers, and the introduction of online voting in 2019 was not differentiated from mailin ballots, nor from other advance voting opportunities, such as voting in the Office of the Returning Officer, or at advance polls held in communities without a resident Returning Officer.

Section 265 of the Act currently states:

265. (1) The Chief Electoral Officer shall, without delay after an election or a plebiscite, submit to the Speaker a report setting out, by polling division,

- (a) the number of votes cast for each candidate or each response to a plebiscite question;
- (b) the number of declined ballots;
- (c) the number of rejected ballots;
- (d) the number of names on the list of electors; and
- (e) any other information that the Chief Electoral Officer considers should be included.

Issue

Elections NWT has moved from a table format to a more visual representation of official results since 2007 – examples from the past four territorial general election official results reports are on the following pages. The requirements as laid out in the Act have not changed since the Act was introduced in 2006, and mirrors the provisions found in the *Elections Act* of 1988.

A scan of official results from other jurisdictions shows no real consistency, although some jurisdictions do include more information through open data spreadsheets. A sample of three jurisdictions is included.



Nahendeh

Returning Officer: Rita Cazon, Fort Simpson, NT

Bob Hanna, Fort Simpson, NT Arnold Hope, Fort Simpson, NT Kevin Menicoche, Ft. Simpson, NT Keyna Norwegian, Ft. Simpson, NT

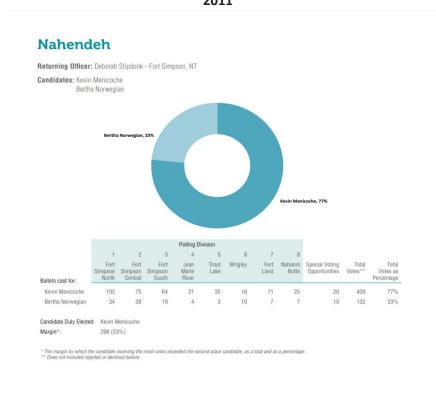
Polling Division

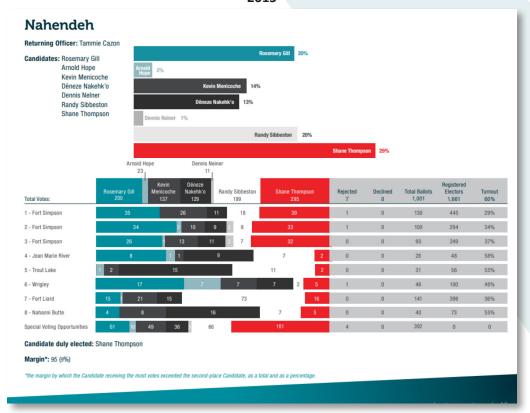
Ballots cast for:	1 Fort Simpson North	2 Fort Simpson Central	3 Fort Simpson South	4 Jean Marie River	5 Trout Lake	6 Wrigley	7 Fort Liard	8 Nahanni Butte	Advance Poll - Fort Liard	Special Voting Opportunities	Total	Percentage of Votes
HANNA, Bob	18	11	11	0	0	5	0	0	0	26	71	7.94%
HOPE, Arnold	31	28	30	5	9	20	27	3	17	33	203	22.71%
MENICOCHE, Kevin	118	106	74	22	38	18	57	46	19	50	548	61.30%
NORWEGIAN, Keyna	20	9	14	0	0	4	7	0	1	15	70	7.83%
Rejected Ballots	0	0	0	0	0	0	0	0	0	2	2	
Declined Ballots	0	0	0	0	0	0	0	0	0	0	0	
Total	187	154	129	27	47	47	91	49	37	126	894	
Voters on Official List	348	337	232	53	60	101	369	69			1569	
Voter Turnout	53.74%	45.70%	55.60%	50.94%	78.33%	46.53%	24.66%	71.01%			56.98%	

Special voting opportunities include voting in the office of the Returning Officer, special ballots and special mobile polls.

Elected candidate: Kevin Menicoche Majority: 345 votes (38.59%)

2011



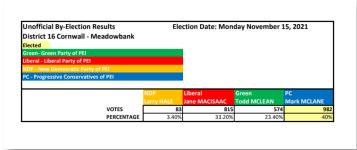




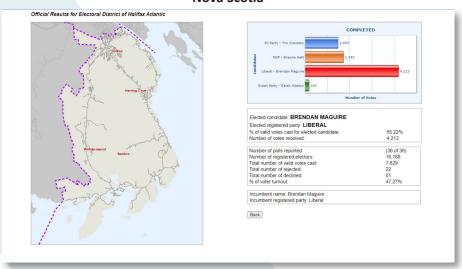
Nunavut



PEI



Nova Scotia



Context

Due to the small population sizes in NWT electoral districts, some voting opportunities are not well attended. Advance polls held in some communities have had fewer than 5 people attend. In the 1999 Official Results Report, the Aklavik advance poll is reported separately, listing 4 ballots cast. All were cast for the same candidate. If a campaign knew who had voted in advance, the secrecy of those elector's votes is now compromised.

During the 2019 election, there was limited use of online absentee ballots in some electoral districts – one district had only one vote cast through the online platform. Similarly, special mobile polls may only serve one or two electors in any given riding. Reporting such a small number of votes independently of other special voting opportunities could result in some electors' votes being identifiable.

Should the Legislative Assembly determine that special voting opportunities should be reported separately in the official results reports, it would be advisable to have a minimum threshold that would need to be met for that to account for a separate line in the official results report.

Recommendation

I recommend against being over prescriptive in the reporting requirements under section 265. Elections NWT is committed to the principles of open data and will be working to ensure future reports contain as much information without compromising the secrecy of the vote.



Publicly Disclosing Addresses

Recommendation 17: undertake a review of the requirements to publicly disclose a Candidate's residential address and return to the Legislative Assembly with the findings of that review and any potential amendments to the Elections and Plebiscites Act

Background

Section 96 of the Act requires addresses of candidates and official agents to be published and displayed, as part of the grant of a poll, "in a conspicuous place in each community in the electoral district, and that it is maintained there until the close of the poll on polling day for the election." Under section 97, the CEO must publish the notice, including addresses, at the earliest possibility. The candidate financial report required under section 256 requires that the address of any contributor to be reported. It has been the practice of Elections NWT to include contributor's addresses in the summary reports required under section 260 that are posted to the Elections NWT website.

While the recommendation was specific to the disclosure of a candidate's residential address, Elections NWT has taken a broader approach to the research, given the Act also requires the disclosure of Agent's addresses, and the practice of disclosing contributor's addresses.

Issue

Elections NWT has received a small number of complaints on the publishing of addresses, primarily those of contributors. In discussions with the Information and Privacy Commissioner, Elections NWT will no longer be including contributors' addresses in the posted summary documents, although candidates' financial reports will still need to report contributors' addresses, as under section 239(2) of the Act, a person must reside in the Northwest Territories to be eligible to donate to a political campaign.

Context

A review of what is published in other jurisdictions is included below as Table 2. Seven jurisdictions do not publish physical addresses of candidates, with another two jurisdictions stopping this practice in the future. The NWT is one of three jurisdictions that publishes the address of agents; and one of four jurisdictions that publishes the addresses for donors.

The Act requires that a candidate, agent, and contributor must be a resident of the Northwest Territories, but not resident in the electoral district in which the candidate is running.

Discussion

The recent events in Ottawa show that political discourse in Canada has the potential to become increasingly divisive. There have been cases in the last couple of years where prominent politicians have had to deal with protestors outside their homes,²³ or been subject to stalking ⁴.

While communities in the North are small, and residents may generally know where their elected representatives live, it is not universally true. A distinction should be made between the public responsibilities and presence of an elected official, and their personal, private life. A requirement to publicize their home address may act as a barrier to someone seeking public office. A candidate who is unsuccessful in seeking office should have every right and expectation to the privacy afforded any other resident.

The argument could be made that by disclosing the residential address of a candidate allows voters to know that the candidate is a resident of the territory. There are a couple of sections of the Act that are applicable to address this point. Section 80 deals with the nomination of a candidate, which includes the requirement:

(d) indicate the residential address, the mailing address if different from the residential address, and a telephone number for the person being nominated;

A Returning Officer would not be permitted to accept a prospective candidate's nomination papers if a residential address was outside of the Northwest Territories, as section 79 of the Act lays out who is eligible:

(c) has been ordinarily resident in the Northwest Territories for a period of at least 12 months on the day his or her nomination paper is filed.

Section 324 lays out that it is a major election offence to submit nomination papers knowing that the candidate is ineligible to run for office. Penalties include a fine of up to \$5,000, imprisonment of up to a year, and immediately upon conviction is disqualified from being elected, holding office as a Member or any appointment by the Commissioner, and is barred from voting for 5 years.

A review of Elections NWT files did not reveal any prosecutions under section 324. In 2004, the Legislative Assembly Board of Management filed a complaint with the then Conflict of Interest Commissioner regarding the ordinary residence of a sitting Member, who was alleged to be residing in Alberta.⁵ The Board also directed that provisions of the *Legislative Assembly and Executive Council Act* and the then in force *Elections Act* to clarify the requirement to continue to reside in the Northwest Territories after being elected to the Legislative Assembly. The Member later resigned before the Conflict of Interest Commissioner's investigation was complete, and the complaint was dismissed as a result.

Protests outside the homes of Ottawa and Calgary Mayors

⁵ August 27, 2004 – Board of Management files Complaint with Conflict of Interest Commissioner https://web.archive.org/web/20060514214834/http://www.assembly.gov.nt.ca/housebusiness/newsreleases/newsreleases2004.html



² Doug Ford (Ontario) can't get into his home: https://globalnews.ca/news/8465322/doug-ford-protesters-home-covid/

³ Don't hold your protest outside politician's homes https://ottawasun.com/opinion/editorial-dont-hold-your-protest-outside-politicians-homes

⁴ Shannon Phillips (Alberta) was monitored by police officers while a minister: https://www.cbc.ca/news/canada/calgary/lethbridge-police-service-kaycee-madu-shannon-phillips-1.6301633

There would appear to be limited value in publishing a candidate's residential address. The loss of privacy for the candidate is likely not outweighed by the public interest of disclosing the location of the candidate's home. There are measures in place to ensure that a candidate is eligible, and penalties exist in the event someone runs for office who is not eligible. None of these require the candidate's home address to be made public.

Official Agents

While it can certainly be argued that a candidate is a public figure during the campaigning period, the official agent of that campaign is not. The official agent is responsible for the management of the campaign finances and reporting. The official agent can perform certain actions on behalf of the candidate under the Act, such as filing nomination papers or receiving the list of electors.

Section 87 of the Act requires that an official agent resides in the Northwest Territories, and their residential and mailing address is required as part of the nomination package of the candidate they are representing.

Any campaign material must include a name and phone number, so that the public may ask questions of that campaign. Similar to candidates, there appears to be limited value in publishing an official agent's residential address as part of the proclamation of a poll.

Contributors

As noted earlier, any contributor to a campaign must disclose their residential address to that campaign, so the official agent can properly report all donations, financial or otherwise, in the financial report required under section 256. Any contribution that exceeds \$100 in value must include the name and address of the contributor. Anonymous donations under \$100 can be accepted to a maximum of \$1,500 total. Any anonymous donation over \$100 cannot be accepted, nor any anonymous donation that would result in that campaign receiving over \$1,500 in anonymous donations.

It has been the practice of Elections NWT to include, as part of the summary report required by section 260, the addresses of the contributors. The Act does not specifically require the summary to include addresses, and in response to complaints received and advice from the Information and Privacy Commissioner, Elections NWT will no longer be including addresses in Candidate Financial Report Summaries posted on the Elections NWT website. The public is still entitled to come view any candidate's financial report in full at the Elections NWT offices, as is required under section 271(e).

Recommendation

I recommend that the *Elections and Plebiscites Act* be amended to remove the requirement to publish a candidate's or official agent's residential address under sections 96 and 97, and to substitute the community of residence.

Elections NWT will no longer publish residential addresses of candidates, official agents or contributors as part of the summary reports required under section 260, and will list only the community of residence.

TABLE 2

	Candidate's address	Agent's Address	Donor's address	Notes	
NT	Yes	Yes	Yes*	It has been the practice to disclose the address of donors, but there is no legislated requirement to do so.	
АВ	Yes	Yes	Yes		
ВС	No	Partial	No	A service address must be provided for the financial agent. The electoral district of candidates, agents, and donors is published.	
МВ	Yes	No	No	Candidates may request to not have their address disclosed. There are plans to remove the requirement entirely.	
NB	Yes	Yes	Yes	There are plans to stop publishing candidates' addresses in the future.	
NL	No	No	No	Only the community of the donor is published.	
NS	No	No	No	Only the community of the donor is published.	
NU	Partial	Partial	Partial	PO Box and postal codes are published	
ON	Partial	No	No	Candidate's address is available for public inspection.	
PE	No	No	No	Only the community is disclosed for candidates, agents, and donors.	
QC	Yes	No	No	Candidates' addresses are disclosed on the proclamation.	
SK	Yes	Partial	Yes	Only the community of the agent is published.	
YT	No	No	No	Only the community is disclosed for candidates, agents, and donors.	

Register of Future Electors

Background

One issue that came up during the recent Tu Nedhé-Wiilideh by-election was that anyone who turned 18 after the 2019 general election was not on the voters list. Only four electors under the age of 21 cast ballots, all of whom were registered during the by-election, either by registering online, or by swearing an oath to an election officer in the community.

Issue

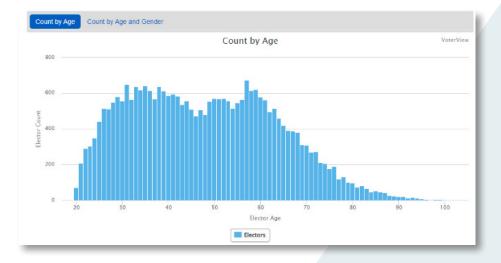
Election agencies from across the country have been looking at how to better engage young voters to ensure that they are registered to vote when they come of age. One method, currently used in eight jurisdictions, is a Register of Future Electors, which allows youths aged 16 and 17 to register with the elections agency. Upon turning 18, those electors can be transferred to the general voter's list.

Context

Alberta, British Columbia, Manitoba, Nova Scotia, Nunavut, Ontario, Prince Edward Island and Yukon all currently have legislated authority to create a register of future electors. The minimum age to be registered across all jurisdictions is 16. These jurisdictions use various methods to register future electors, including through education datasets, government service offices, and drivers' licences. Some jurisdictions contact these voters upon their 18th birthday, to confirm their address and ensure that the information is still up to date.

Discussion

As of July 1, 2021, there were 1,659 adults between the ages of 18 and 20 in the NWT⁶. However, there are only 73 registered electors in the same age brackets, 70 of whom were eligible to vote in the 2019 territorial election. The three electors aged 19 were all registered during the 2021 and 2022 by-elections. There are no electors aged 18 currently in the Register of Territorial Electors. We currently have limited methods to try and find these electors to register them. This age group historically has had low turnout across the country, creating a register is one step towards engaging with youth before they come of age to vote.



⁶ NWT Bureau of Statistics



Recommendation

I recommend that the *Elections and Plebiscites Act* be amended to allow Elections NWT to create a Register of Future Electors, allowing youth aged 16 and 17 years old to register with the same information as permitted under section 54(2).

If you would like this information in another official language, call us. English

Si vous voulez ces informations dans une autre langue officielle, contactez-nous. French

Kīspin ki nitawihtīn ē nīhīyawihk ōma ācimōwin, tipwāsinān. Cree

Tłı cho yatı k' \dot{e} \dot{e} . Dı wegodı newo dè, gots'o gonede. Tłı cho

Perihtł'ís Dëne Sųłiné yati t'a huts'elkër xa beyáyati thezą zat'e, nuwe ts'ën yółti. Chipewyan

Edi gondi dehgáh got'je zhatié k'éé edatł'éh enahddhę nide naxets'é edahlí. South Slavey

> K'áhshó got'į ne xədə k'é hederi zedį htl'é yeriniwę ní dé dúle. North Slavey

Jii gwandak izhii ginjìk vat'atr'ijąhch'uu zhit yinohthan jì', diits'àt ginohkhìi. Gwich'in

> Uvanittuaq ilitchurisukupku Inuvialuktun, ququaqluta. Inuvialuktun

 $\dot{\mathsf{C}}^\mathsf{b}\mathsf{d} \wedge \mathsf{C}^\mathsf{b}\mathsf{d}^\mathsf{c} \wedge \mathsf{C}^\mathsf{b}\mathsf{d}^\mathsf{c} \wedge \mathsf{C}^\mathsf{b}\mathsf{d}^\mathsf{c} \wedge \mathsf{C}^\mathsf{b}\mathsf{d}^\mathsf{c} \wedge \mathsf{C}^\mathsf{b}\mathsf{d}^\mathsf{c} \wedge \mathsf{C}^\mathsf{c} \wedge$

Hapkua titiqqat pijumagupkit Inuinnaqtun, uvaptinnut hivajarlutit. Inuinnaqtun

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