Report to the MNO

On

Election 2012

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Chief Electoral Officer

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June 14, 2012
Executive Summary

Pursuant to Section 42.4 of the MNO Electoral Code, we are responding to the requirement to provide to the PCMNO “...a full written report on all relevant aspects of the election for the position the candidate is appealing.” This report also meets the requirement set out in Article 4 to “prepare an official election report to the citizens of the MNO”.

The report is divided into three principal sections. The first deals with the results of the Election; the second with objections and appeals and the third with recommendations for the conduct of future elections.

Election Results

Close to 2300 MNO citizens participated in Election 2012, the majority by mail-in ballot. Of potential voters at the 14 polling stations approximately 10.4% chose to vote. In contrast 27.2% of eligible mail-in voters cast their ballot, almost three times the rate of those listed at the polls.

For the MNOVC, there were three acclamations and three offices for which no nominations were received. In terms of MNOYC, there were four acclamations and five offices without nominations. And finally for the PCMNO there were seven acclamations and eight contested elections. Acclamations and winning candidates are listed in the report.

Objections and Appeals

The Chief Electoral Officer received three objections and these in turn resulted in two appeals, one from Mr. Roger Giroux and a second from Ms. Juliette Denis. The appeal from Mr. Giroux was sent to the Chief Electoral Officer (CEO) and not the PCMNO as prescribed by the Election Code. It will be up to the PCMNO on how they wish to deal with this matter. Should the PCMNO decide to send his appeal to an independent investigator the CEO’s recommendation would be as follows:

- The Chief Electoral Officer believes that Mr. Giroux’s appeal is without merit and recommends that the Independent Investigator should reject his call for a by-election for the office of Secretary Treasurer.

The CEO’s recommendation on the appeal of Ms. Denis, which was sent to the PCMNO within the prescribed time period, is as follows:

- The Chief Electoral Officer recommends that the Independent Investigator i) reject Ms. Denis’ demand for an investigation into aspects of her election and instead ii) call for a by-election between Ms. Denis and Mr. Sarrazin, the timing and terms of which should be set by the Chief Electoral Officer.

Recommendations for Future MNO Elections

The Chief Electoral Officer and his Deputy make the following recommendations for the effective organization and conduct of future MNO elections:
Recommendation No. 1: improve the accuracy and completeness of the List of Electors well prior to the Election by:
   a) Having Community Councils do phone surveys of all of its members beginning 6 to 8 months before the election in order to update the list to include e-mail addresses
   b) Using the Métis Voyageur well before the election to urge citizens to update their information held in the Registry
   c) Providing a four week period in the Electoral Code between publishing the Preliminary List of Electors and the Final List (the period is now 20 days)
   d) Developing a list of electors eligible to vote for the youth representative on the PCMNO as well as the members of the MNOYC
   e) Developing a list of voters eligible to vote for candidates for offices on the MNOVC
   f) Ensuring that all boundary issues have been clarified before the next election is called.

Recommendation No. 2: improve the nomination procedures and timelines by:
   a) Appointing the CEO a year or so prior to the election so that he or she can make efforts to publicize the upcoming election with the goal of having fewer acclamations and fewer offices for which there are no candidates
   b) Utilizing the following means, among others, to publicize the upcoming election and invite citizens to consider running for office: the MNO web site; successive issues of the Voyageur; posters in Community Council offices; social media to attract youth; and creative use of e-mail
   c) Ensuring that MNO staff remain neutral throughout the election by prohibiting them from signing nomination papers, being part of campaign teams or serving as electoral officers
   d) Lengthening the nomination period to four weeks

Recommendation No. 3: improve the election campaign for future elections by:
   a) Lengthening the campaign period to five weeks
   b) Encouraging candidates to provide basic information about their experiences and campaign platforms through the MNO website and the Voyageur
   c) Encouraging Community Councils to have all candidate meetings
   d) Developing a Code of Conduct for members of Community Councils and for candidates during the election campaign
   e) Providing investigative powers and sanctions for the CEO to deal with allegations of inappropriate behaviour

Recommendation No. 4: improve the voting process by
   a) Adopting one voting methodology that best meets the following criteria: encourages a high participation rate among eligible voters, is cost-effective and has a low risk of voter fraud.
   b) Investigating two years before the next MNO election whether the best approach is internet voting or mail-in ballots
   c) Adding procedures to the Electoral Code to guide the administration of either internet voting or mail-in ballots
   d) Adopting procedures should mail-in ballots be the chosen methodology to address the following:
      i. Security of mail-in ballots received by the MNO
      ii. Monitoring the firm responsible for sending out the mail-in ballots
Providing a means to deal with non-delivery of ballots by Canada Post or some other agency

The counting of mail-in ballots

e) Dropping the last two sentences in the Elector’s affirmation statement (Article 5.7 in the Code)
f) Providing for discretion on the part of the Chief Electoral Officer to count a ballot sent to Ottawa in the case of an individual who has been left off the voters’ list because of an administrative error on the part of MNO staff and who makes a declaration to the effect that he or she lives in the area serviced by the poll.

Recommendation No. 5: improve the recount, objections and appeals procedures by

a) Including in the Code a precise threshold for a recount (e.g. where the margin of victory is less than 1% of total votes cast)
b) Charging an appropriate fee for a candidate asking for a recount above that threshold, a fee that is only refundable if the recount changes the result of the election
c) Charging a fee for objections and appeals, a fee that is refundable only if the objection or appeal is upheld or is judged to be neither frivolous nor vexatious by the CEO or the independent investigator
d) Clearing up several ambiguities in this Article of the Code relating to objections and appeals and in particular giving the CEO the power to call for a by-election, subject to review by the independent investigator.

Recommendation No. 6: Make changes to the Electoral Code Part A that follow from the five recommendations above and that also correct a number of smaller editorial or timing issues
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I. Introduction

Pursuant to Section 42.4 of the MNO Electoral Code, we are responding to the requirement to provide to the PCMNO “...a full written report on all relevant aspects of the election for the position the candidate is appealing.” This report also meets the requirement set out in Article 4 to “prepare an official election report to the citizens of the MNO”.

To meet these two requirements, we have divided this report into three principal sections. In the first we provide a brief overview of the Election 2012 including how we organized ourselves to perform our function as the administrators of the Election, our correspondence with the candidates during the Election, the results of the Election and some of the principal challenges we faced. To keep this Section brief, we make liberal use of Annexes.

In the second Section, we deal with each of the three objections we received and two appeals. Our treatment of the two appeals includes recommendations to the Independent Investigator on how he or she might handle them. And in the third and final section we present our recommendations for how future MNO Elections might be conducted.

II. Brief Overview of Election 2012

A. Appointment and Organization

We were appointed by the PCMNO in late 2011 and had our first team meeting in early January 2012. We made most of the decisions jointly with Mr. Graham handling the bulk of the administrative matters. We relied heavily on Jane Brennan, the MNO Registrar throughout the election, given the importance of the MNO Registry to our work. Hank Rowlinson was also a valuable resource up until he was nominated as a candidate, as he had the corporate memory for previous MNO elections. Minutes of our key meetings are attached as Annex A.

Our overall objective was to administer the election in a manner that was fair, impartial, transparent and consistent with the MNO Electoral Code: Part A, which is included in Annex B. Among its many virtues, the Code establishes clear timelines for all the principal aspects of the election, timelines that we were able to meet with only one small exception. The exception was the posting of the Final List of Electors on April 20, a deadline we missed by a few hours. Given that the Code called for Amendments to the List of Electors to close the same day, this deadline was impossible to meet.

In addition to the Code, some of our work was influenced by past practice including the following:

- The number and location of polls
- The initial location of the towns, cities and other locales to receive mail-in ballots (some of these were changed following feedback from Community Councils to the original list we posted)
- The total number of ballots to be printed
- The number of ballots and ballot boxes distributed to each poll
- Some of the report and other templates that formed part of the administration of the election.

Another key element to the administration of the election was the Returning Officers and Poll Clerks at each of the 14 polls. They administered both the advance poll, which took place on May 5, and the poll on Election Day, May 7. The MNO provided modest honoraria for their work - $300 for Returning Officers and $200 for Poll Clerks. A list of the 28 individuals who served in these roles is provided in Annex C. Their recruitment proved rather painless, a tribute to the spirit of volunteerism that pervades the MNO.

Closer to the election we sent out to the Election Officers a number of e-mails containing instructions on the performance of their roles. We also had a very successful teleconference call a few days before the Advance Poll to go over key aspects of the election and to provide an opportunity for them to pose questions. Included in Annex C is a copy of some of the e-mail correspondence with the Election Officers as well as speaking notes for the teleconference call.

**B. Communications with the Candidates**

One of the activities we undertook to achieve a fair and transparent election consistent with the Code was frequent election updates to the candidates via e-mails. We sent out eight of these updates in total, seven before the election and a final update to announce the results. Annex D contains copies of each to these updates.

One of the functions that these updates served was to announce changes to some aspects of the administration of the election. For example, we had originally decided to have a May 4 cut-off for mail-in ballots to be post-marked but decided to change this as evidence of the tardy delivery of mail-in ballots by Canada Post mounted. We also used these updates to announce important decisions we had taken – for example, in the distribution to candidates of voters lists and in the conduct of the counting of mail-in ballots on May 14.

Following the announcement of the candidates and prior to the Advance Poll on May 5, we received complaints from two candidates. The first candidate asserted that his opponent did not meet the criteria for running for elected office in the MNO, an assertion that we investigated and that in our judgement proved to be unfounded. We have not included the relevant correspondence as this complaint did not lead to an objection or subsequent appeal under the Code.

In the second instance, we received a lengthy complaint from one of the candidates to which we responded by noting that many of her assertions were either inaccurate or not supported by any compelling evidence. Since this complaint was then followed up by an objection after the election, we have included the correspondence in the Section dealing with objections and appeals (see the subsection on Annette Chretien and Annex F).
C. Election Results

Election 2012 involved three MNO bodies: i) the MNO Veterans Council (MNOVC); ii) the MNO Youth Council (MNOYC); and the Provisional Council of the MNO (PCMNO).

MNOVC

On April 22 the Chief Electoral Officer, following the close of nominations, declared the following acclamations:

- Chair, Guy Mandeville
- Treasurer, Christopher Plummer
- Sergeant at Arms, Greg Garratt

The following offices received no nominations:

- Secretary
- Women’s Representative
- Senator

MNOYC

On April 22, the Chief Electoral Officer declared the following acclamations:

- Representative Region 2, Janine Landry
- Representative Region 3, Brianne Gosselin
- Representative Region 8, Nicholas Delbaere-Sawchuk
- Representative Region 9, Alexander Young

The following offices received no nominations:

- Representative Region 1
- Representative Region 4
- Representative Region 5
- Representative Region 6
- Representative Region 7

PCMNO

On April 22, the Chief Electoral Officer declared the following acclamations:

- Councillor Region 1, Theresa Stenlund
- Councillor Region 2, Cameron Burgess
- Councillor Region 3, Marcel Lafrance
- Councillor Region 4, Ernest Gatien
- Councillor Region 8, Anita Tucker
- Councillor Region 9, Peter Rivers
- Youth Representative, Mitchell Case
The remaining offices on the PCMNO were contested and on May 15 the Chief Electoral Officer declared that the following candidates had received the largest number of votes:

- President, Gary Lipinski
- Chair, France Picotte
- Vice Chair, Sharon McBride
- Secretary Treasurer, Tim Pile
- Councillor Region 5, Juliette Denis
- Councillor Region 6, JoAnne Wass
- Councillor Region 7, Pauline Saulnier
- Post-Secondary Representative, Jennifer Henry

Annex E contains the results of the contested offices of the PCMNO by poll and by mail-in ballot. Of particular significance is the one vote margin separating Ms. Juliette Denis and Mr. Maurice Sarrazin in the race for Councillor Region 5. Based on this narrow margin Mr. Sarrazin requested a recount on May 15. (Had Mr. Sarrazin not requested a recount, the CEO would have ordered one.) The recount was subsequently held on May 20 and did not change the result. Subsequently the Chief Electoral Officer declared Ms. Denis the winner of the election for Councillor Region 5.

Annex E also contains a table indicating the potential electors for each poll and the actual number (close to 2300 citizens) who voted. In addition, the table displays the total number of potential Mail-in electors and the actual number of mail-in ballots received. There are at least two salient observations that derive from this table: first the wide variation in the participation at the polls, ranging from 25.3% of the electors in Fort Frances to 4.6% of the electors in Sault Ste. Marie.

The second important point from the table is that mail-in participation rate is much higher (almost 3 times) than the overall participation rate at the polls: 27.2% versus 10.36%.

**D. Principal Challenges**

In administering this election we faced the following principal challenges:

1) The timelines in the Electoral Code were too tight to provide for proper campaigning and the administration of an effective mail-in ballot process

2) We were unable to ascertain the extent to which mail-in ballots were not delivered by Canada Post (as opposed to being treated as junk mail by respondents and to respond adequately to complaints of non-delivery because of the tight timelines provided for in the Code

3) The List of Electors derived from the MNO Registry was not sufficiently current, especially with regards to addresses

4) Having two modes of voting – physical polls and mail-in ballots – proved to be challenging for both us as administrators of the Election and for some voters.

5) We did not have a budget to organize and run the election; this is important if the Chief Electoral Officer is to be independent from the MNO administration

These challenges and other factors produced letters of objection from three different candidates. These objections then led to two appeals, the focus of the next Section of the Report. We will then return to
these challenges in the final section of the report where we make recommendations for the conduct of future MNO elections.

III. Objections and Appeals

Article 42 of the Code provides for a two stage appeal process. In the first stage, a candidate can object to the announced results respecting his or her election in writing to the Chief Electoral Officer. The Code however sets out a number of parameters which such an objection must meet. Section 42.1 makes very clear two types of objections that a candidate cannot pursue:

- An election in which he or she was not a candidate; or
- The entire MNO election in general

Section 40 is also relevant. It states that no election is void provided that the election was conducted in accordance with the Code and that “the irregularity, failure, non-compliance or mistake did not materially affect the result of the election” by reason of a number of conditions including

- “An irregularity on the part of an election officer or in any of the proceedings preliminary to the poll”; and
- “Non-compliance with the provisions of the Electoral Code relating to the taking of the poll or the counting of the votes or with regards to limitations of time”.

In the second stage, a candidate may appeal the decision of the Chief Electoral Officer to the PCMNO, which then must appoint an independent investigator to hear the appeal.

Following the election we received three letters of objection. We examine each in turn along with two related appeals. As provided for in the Code, the Chief Electoral Officer makes specific recommendations on the two appeals.

A. Letter of Objection from Annette Chretien

On April 27, 2012, Ms. Annette Chretien wrote Mr. DeVillers alleging that he was in breach of his responsibilities under the Code outlined in Article 4.1 b of the Code whereby he shall “ensure that all election officers in the conduct of their duties and in compliance with this Electoral Code conduct the election using the guiding principles of fairness and impartiality”. She also mentioned a number of other “serious omissions and irregularities in the voter’s list, ballot boxes and mail-in controversy”. In his reply Mr. DeVillers vigorously denied her assertions (the exchange of correspondence is attached in Annex F.)

Following the election, Ms. Chretien submitted a number of objections in a letter dated May 24, 2012. Some of these were similar to those raised in her April 27 correspondence. Mr. DeVillers replied on May 29, 2012, rejecting all of her objections and noting that most related to the entire MNO election in general, objections specifically prohibited by the Code. Further he noted that the wide difference in vote count between her opponent and herself meant that objection related specifically to her candidacy, if meritorious, would not have affected the outcome of the election. (The exchange of correspondence is included in Annex F.)
Ms. Chretien did not submit an appeal.

**B. Letter of Objection from Roger Giroux and Subsequent Appeal**

Mr. Roger Giroux, a candidate for the office of Secretary Treasurer, sent Mr. DeVillers a letter dated May 17 containing a number of objections to the election. Some of his objections were based on inaccurate assumptions. Others were aimed at the MNO election in general and not his particular candidacy. Still others did not meet the critical standard outlined in Article 40 of having a material effect on his election given the margin of victory that the winning candidate received. Mr. DeVillers replied on May 23 citing all of these reasons for rejecting his objections. The exchange of correspondence is contained in Annex G. Note that in his concluding paragraph Mr. DeVillers’ advised Mr. Giroux that “Pursuant to the Electoral Code you have the right to appeal my decision in this letter by writing to the PCMNO on or before June 10th.”

Mr. Giroux appealed Mr. DeVillers’ decision in a letter dated June 6, 2012 (see Annex G). Oddly, he sent his appeal letter to Mr. DeVillers and not to the PCMNO (the letter arrived at the MNO Election e-mail box at 6:59 pm on June 9). Since Mr. Giroux’s actions are contrary to the Code, it will be up to the PCMNO on how they propose to deal with this matter. Should the PCMNO decide to forward his appeal to an independent investigator, then the Electoral Code requires background information from the CEO along with a recommendation. This now follows.

In his letter of appeal Mr. Giroux argued that there should be a by-election for the position of Secretary Treasurer and in addition that one of the candidates, Mr. Richard Sarrazin, should be disqualified. In making his argument for a by-election, he stated that

- “apparently significant numbers of people ...did not get a mail-in ballot”
- The distribution of harvester renewal forms at the North Bay polling station signed by the brother of one of his opposing candidates materially affected his election
- Security issues surrounding the handling of the mail-in ballots require a “full disclosure and investigation” to determine whether his many allegations have merit.

Mr. Giroux was defeated by a margin of 137 votes. There is nothing in his initial letter of objection and his subsequent appeal that would lead to the conclusion that such a margin might be overcome had certain aspects of the election not happened. We maintain that his concerns about the security of the mail-in ballots are overstated as are his allegations about the effect of the availability of the harvester cards, which Mr. DeVillers stopped as soon as he received a complaint from Mr. Giroux early on May 7, the day of the election. In terms of the mail-in ballot issue, he lost soundly in the three polls in Region 9, one of the areas where we received a significant number of complaints of mail-in ballots not being delivered. This would appear to counter his argument that he would have made up substantial ground in this Region and Region 8. Judging by the poll results his strongest support lay in parts of northern Ontario.

Finally in calling for “full disclosure and investigation” Mr. Giroux appears to be implying that some important information is in the possession of the CEO, information that is not being disclosed to him. This is simply not true. We have no information pertaining to his election that we have not disclosed.
In conclusion the Chief Electoral Officer believes that Mr. Giroux’s appeal is without merit and recommends that the Independent Investigator should reject his call for a by-election for the office of Secretary Treasurer.

C. Letter of Objection from Maurice Sarrazin and Subsequent Appeal from Juliette Denis

Mr. Maurice Sarrazin and Ms. Juliette Denis were candidates for the office of Councillor Region 5, a race won by Ms. Denis by a single vote. This margin of victory was confirmed following a recount. Mr. Sarrazin subsequently wrote a letter of objection (see Annex H) in which he stated among other things that nine ballots that were cast during the election but not counted (they were returned by the election officers unopened to Ottawa) should be counted. In a reply to Mr. Sarrazin, Mr. DeVillers noted that of the nine ballots in question, four were subject to a serious irregularity, an irregularity that could have materially affected the outcome of the election, given the one vote margin of victory. Here is what he had to say on the matter (Annex H contains the two letters in question):

In these cases, the names of these individuals first appeared on the Preliminary List of Electors and then did not appear on the Final List. We have ascertained that the reason for this was due to data management activities conducted by the Registry staff at MNO headquarters, activities unconnected to the election but which inadvertently caused these individuals to be dropped from the Final List of electors. Of even more concern is that there may well have been others similarly affected of whom we are unaware.

There was a further irregularity (not part of nine ballots in dispute) that occurred that is also troubling and one that could have materially affected the results of your election. In this case a person from Region 4 was allowed to cast a ballot at the Sudbury poll station, through no fault of the Returning Officer.

Mr. DeVillers concluded as follows:

Because of these irregularities and the one vote margin between candidates I judge that the only fair way to proceed is to call a by-election under the following conditions:

- The by-election should have only two candidates – Mr. Maurice Sarrazin and Ms. Juliette Denis, who have already been nominated
- The election should be by mail-in ballot to minimize costs and ensure a high participation rate among electors
- The timing of the election will be set by the Chief Electoral Officer once any appeal processes have been concluded.

In an e-mail dated June 4, Mr. Sarrazin concurred with Mr. DeVillers decision to hold a by-election. On the other hand Ms. Denis decided to appeal the decision to the PCMNO as provided for in the Code (see Annex H)\(^1\). In essence she made two arguments: first, there should “full disclosure to determine if there

\(^1\) Mr. Sarrazin stated to us that Ms. Denis had no right under the Code to file an appeal. The Chief Electoral Officer then sought a legal opinion, which confirmed Ms. Denis’s right to appeal.
is any other evidence which might otherwise support that I am entitled to retain the position of elected PCMNO Region 5 Regional Councillor and thereby avoid the need for a by-election”; second, in the absence of such evidence, she argues that the by-election should not be by mail-in ballot as recommended by Mr. DeVillers and the timing of the by-election should be “postponed to September”. We look at each argument in turn.

In arguing for ‘full disclosure and the investigation of the facts and documents related to [her] election”, Ms. Denis is vague on what such an investigation might focus and how it would affect the results of the election. In our view, the call for such an investigation amounts to a request for a ‘fishing expedition’ in the hopes that something might turn up. In the absence of more precision on her part on both what should be investigated and how the results of such an investigation might confirm her election in light of the irregularities noted in Mr. DeVillers’ letter to Mr. Sarrazin, we believe that such a request should be denied. Further, in calling for “full disclosure and investigation” Ms. Denis appears to be implying that some important information is in the possession of the CEO, information that is not being disclosed to her. As in the case with Mr. Giroux we have no information pertaining to her election that we have not disclosed.

In terms of the conditions for the by-election she notes that an election based solely on mail-in ballots would be a “totally different election than the original election” and has the potential to “put me at an even greater disadvantage ...especially in light of the expected high participation rate in relation to significant irregularities and/or problems I encountered during the recent election”. She goes on to list the “irregularities” as follows:

- Not all citizens received a mail-in ballot and there is no provision in the Electoral Code to mail another ballot to a citizen who has not received a ballot by a specific date.
- Names that appeared on the preliminary list did not appear on the final list and that this might reoccur during an all mail-in ballot process.
- There were inadequate security measures relating to the handling of the ballots at MNO headquarters.
- The secrecy of the mail-in ballots might have been compromised by the two students who opened the envelopes in full view of the scrutineers and candidates present.
- Ballots should be mailed to an independent third party and kept securely prior to be being opened before candidates and scrutineers.

In making these arguments, Ms. Denis is pointing to problems with the Code itself. There is nothing in the Code that relates to or governs the mail-in ballot process. Further, the timelines set out in the Code are just too short to properly conduct a mail-in ballot election. In addition, she points to problems with the Electors Lists, problems directly attributable to the challenge of a small, underfunded organization trying to maintain an accurate list of its Métis citizens.

We believe that her arguments about security and secrecy surrounding the counting of the mail-in ballots are simply overstated. These are suppositions based on no evidence of any malfeasance.

In her letter, Ms. Denis also notes three other points which do not appear to be directly linked to conditions around the holding of a by-election. The first is that there was a lack of impartiality on the part of the Presidents of the North Bay Métis Council and the Mattawa Métis Council. Second, there was “intimidation and unfounded malicious comments about some candidates, which necessarily included myself, on the part of a Senator of the North Bay Métis Council”. And third, there was a
“serious violation of some articles of the MNO Electoral Code at the North Bay Polling Station which potentially materially affected the result of my election”.

We believe that many of the points Ms. Denis makes in her letter of appeal reinforce the need for a by-election. Further, some of her criticisms about the mail-in ballot process can be addressed in setting out the conditions for a by-election in that the timing of the various stages are no longer set by the Electoral Code. Thus more time can be taken to ensure that the Preliminary list of Electors is given proper scrutiny and addresses are updated. Further, more time can be allotted to the campaign itself. And finally the actual handling of the mail-in ballots and their counting can be modified to take into account some of her criticisms (even though we believe her criticisms wildly overstate any risks from the practices we utilized). Thus we would concur with her recommendation that the election take place in the late summer and early fall and that certain procedures could be modified in administering the mail-in ballots. Given that she and her opposing candidate received exactly the same number of votes from the mail-in ballots we see no reason to believe that Ms. Denis would be disadvantaged by an all mail-in ballot election, suitably modified.

In conclusion, the Chief Electoral Officer recommends that the Independent Investigator i) reject Ms. Denis’ demand for an investigation into aspects of her election and instead ii) call for a by-election between Ms. Denis and Mr. Sarrazin, the timing and terms of which should be set by the Chief Electoral Officer.

IV. Recommendations for Future MNO Elections

One of the tasks we agreed to undertake was to develop recommendations on how future elections might be more effectively conducted. This is the focus of this final section of our report. We proceed in the same sequence as the election unfolds – starting with the list of eligible voters and moving through the various stages from nominations, to the campaign itself, to the voting process and finally to the objections and appeal process. We conclude with a short section on changes we propose to the MNO Electoral Code.

A. List of Electors

A central issue in the administration of any election, whether in Canada or abroad, is the quality of the voters list. The challenges in keeping such a list current are enormous for any jurisdiction, let alone one like the MNO with very limited resources, a large geographic area and a complex legal context. Such challenges become even more pronounced when mail-in ballots are used extensively. So problems are inevitable. That said, it is fair to conclude that problems with the MNO list of Electors likely had a material impact on only one of the electoral contests – that of Councillor Region 5. Nonetheless improving the quality and comprehensiveness of the MNO List of Electors should be a top priority for the next MNO election.

Another problem with the List of Electors is that there is no way to easily distinguish those eligible to vote for candidates vying for offices of youth and Veterans. This was not an issue for Election 2012 since there were either acclamations or no nominations for these offices. This could change in subsequent elections.
A final problem with the list of electors had to do with unclear boundaries between regions seven and eight. This and any other boundary issues should be cleared up before the next MNO election.

Our specific recommendation is as follows:

**Recommendation No. 1:** the PCMNO should make efforts to improve the accuracy and completeness of the List of Electors well prior to the Election by:

a) Having Community Councils do phone surveys of all of its members beginning 6 to 8 months before the election in order to update the list to include e-mail addresses

b) Using the Métis Voyageur well before the election to urge citizens to update their information held in the Registry

c) Providing a four week period in the Electoral Code between publishing the Preliminary List of Electors and the Final List (the period is now 20 days)

d) Developing a list of electors eligible to vote for the youth representative on the PCMNO as well as the members of the MNOYC

e) Developing a list of voters eligible to vote for candidates for offices on the MNOVC

f) Ensuring that all boundary issues have been clarified before the next election is called.

**B. Nomination Procedures and Timing**

Given the number of acclamations and offices for which no nominations were received, a greater effort in future elections should be directed at publicizing the upcoming election. This might best be done by the Chief Electoral Officer rather than the PCMNO and the CEO should therefore be appointed earlier in the election cycle – perhaps a year before the election date. Initiatives might include, among other things, publicizing the election in successive issues of the Voyageur, using posters in Community Council Offices, posting information on the MNO website months in advance of the election and making better use of social media to increase youth participation.

In reviewing the nomination papers of the candidates for Election 2012, we found a number that had relied on MNO staff to sign their nomination papers. We judge this practice to be contrary to the principle that staff must remain neutral throughout the election. Furthermore, candidates asking staff to sign nomination papers might place some in an awkward position. In addition, should future MNO elections have physical polls and electoral officers, then MNO staff should not be appointed to these positions. The issue here is not so much a breach of neutrality. Rather electoral officers can find themselves in conflict with candidates and such a situation is not conducive to productive working relationships following the election.

The Code calls for the nomination process to begin on April 1 and end on April 20. We found that, to ensure prospective nominees met all of the requirements of the Code, there needed to be a certain amount of back and forth communication with many of them. For this reason extending the nomination period to four weeks instead of three would appear to be justified.

These comments lead to the following recommendation:

**Recommendation No. 2:** improve the nomination procedures and timelines by:
a) Appointing the CEO a year or so prior to the election so that he or she can make efforts to publicize the upcoming election with the goal of having fewer acclamations and fewer offices for which there are no candidates

b) Utilizing the following means, among others, to publicize the upcoming election and invite citizens to consider running for office: the MNO web site; successive issues of the Voyageur; posters in Community Council offices; social media to attract youth; and creative use of e-mail

c) Ensuring that MNO staff remain neutral throughout the election by prohibiting them from signing nomination papers, being part of campaign teams or serving as electoral officers

d) Lengthening the nomination period to four weeks

C. The Election Campaign

Like the nomination process, the electoral campaign period needs to be lengthened. In Election 2012, the list of candidates was posted on April 22, two weeks before the Advance Poll on May 5, followed by the Election on May 7. Mail-in ballots were counted on May 14. This timetable left little time for organizing campaign activities like all candidate meetings, mail-outs and phone blitzes. We propose that the campaign period be lengthened to five weeks.

During the campaign we had a number of phone calls from MNO citizens asking for information about the candidates. These callers seemed particularly interested in the backgrounds of candidates and their campaign platform. We were at a loss to direct these callers to any source of information that might help them with their choice. Consequently, the CEO should give each candidate an opportunity on the MNO web site to list their experiences and campaign platforms as well as through an appropriately timed edition of the Voyageur.

Also during the campaign and in several letters of objection to the election results, we received reports of alleged inappropriate behaviour on the part of Community Council members. The Code is silent on this aspect of the campaign. The general principle should be that Community Councils as a collectivity should be neutral during the campaign but individual members may be part of campaign teams so long as they do not use Community Council resources (such as office space, phones, e-mails, staff time or copying equipment). Similarly candidates should not use any MNO resources or systems to aid their campaign. A related problem is that the CEO has no powers to sanction any inappropriate campaign activities in the Code.

These observations lead to the following recommendation:

Recommendation No. 3: improve the election campaign for future elections by:

a) Lengthening the campaign period to five weeks

b) Encouraging candidates to provide basic information about their experiences and campaign platforms through the MNO website and the Voyageur

c) Encouraging Community Councils to have all candidate meetings

d) Developing a Code of Conduct for members of Community Councils and for candidates during the election campaign

e) Providing investigative powers and sanctions for the CEO to deal with allegations of inappropriate behaviour
D. Voting Process

Having two voting methodologies – one at a physical poll and the second by mail-in ballots – proved confusing to many citizens and difficult to administer. The goal should be to choose one voting methodology that best meets the following criteria: encourages a high participation rate among eligible voters, is cost-effective and has a low risk of voter fraud. The participation rate of mail-in ballots in Election 2012 was almost 3 times that of the fourteen polls and would appear to be the best candidate at the moment. That said, voting by internet is being used in some jurisdictions and this approach is likely to grow in popularity as internet methodologies improve and as internet access increases. The MNO should undertake a study two years before the next election to determine whether internet voting or mail-in ballots is the best way to go.

Whatever methodology is chosen the Code needs to develop procedures to ensure a fair and impartial election. The current Code is virtually silent on mail-in ballots. Should mail-in ballots be the chosen, then the Code needs to address a variety of issues including security, monitoring the mail-out contractor, procedures for handling complaints about non-delivery of mail-in ballots to citizens, and the counting of mail-in ballots.

We received a number of complaints about the elector affirmation that eligible voters had to sign before voting, either at the polls or by mail-in ballot. In our view it is not desirable to ask voters to agree to “the aims and objectives of the MNO as stated in the Statement of Prime Purpose”. Canadians, for example, as a condition of voting are not asked to agree with the Canadian Constitution. Similarly pledging allegiance to the MNO may be an appropriate condition for citizenship but not as a fundamental condition for voting.

Should the MNO decide to have physical polls at the next election and have electoral officers, then the Code should be amended to provide for some discretion on the part of the CEO to count a ballot sent to Ottawa because the individual voter is not on the Electoral list for that poll. If the individual is not on the poll list because of an MNO administrative oversight, the CEO should have the discretion to count this ballot. The individual as in other elections in Canada should be able to make a declaration that he or she resides in the area in which the poll is serving.

This leads to the following recommendation:

Recommendation No. 4: improve the voting process by

a) Adopting one voting methodology that best meets the following criteria: encourages a high participation rate among eligible voters, is cost-effective and has a low risk of voter fraud.

b) Investigating two years before the next MNO election whether the best approach is internet voting or mail-in ballots.

c) Adding procedures to the Electoral Code to guide the administration of either internet voting or mail-in ballots.

d) Adopting procedures, should mail-in ballots be the chosen methodology, to address the following:

   i) Security of mail-in ballots received by the MNO
   ii) Monitoring the firm responsible for sending out the mail-in ballots
   iii) Providing a means to deal with non-delivery of ballots by Canada Post or some other agency
   iv) The counting of mail-in ballots

e) Dropping the last two sentences in the Elector’s affirmation statement (Article 5.7 in the Code)
f) Providing for discretion on the part of the Chief Electoral Officer to count a ballot in the case of
an individual who has been left off the voters’ list because of an administrative error on the part
of MNO staff and who makes a declaration to the effect that he or she lives in the area serviced
by the poll.

E. Recount, Objection and Appeal Procedures

The Code contains a short Article for recounting ballots in close electoral contests but it should be
amended to require an automatic recount based on a defined threshold, say where the margin of
victory is less than 1% of total votes cast for the office in question. The Code should also specify a fee
for any recounts above that threshold, should a candidate request one. The fee should be refundable
only if the recount changes the results of the election.

To discourage frivolous or vexatious objections and appeals, there should be an appropriate fee charged
for both objections and appeals. The fee should be refundable only if the objection or appeal is upheld
or in the judgement of the CEO or independent investigator the objection or appeal was worthy of
consideration.

Under the current Code there are a number of ambiguities in the Articles dealing with Objections and
Appeals including the following:

- Whether a candidate can make an appeal of a decision by the CEO on an objection raised by his
  or her opponent
- Whether the PCMNO can refuse to appoint an independent investigator based on the
  judgement by the CEO that the appeal is frivolous or vexatious
- The nature of the powers of the CEO under this Article. For example, the CEO should have the
  power to call for a by-election, subject to the review by the independent investigator.

This leads to the following recommendation:

Recommendation No. 5: improve the recount, objections and appeals procedures by

a) Including in the Code a precise threshold for a recount (e.g. where the margin of victory is less
   than 1% of total votes cast)
b) Charging an appropriate fee for a candidate asking for a recount above that threshold, a fee that
   is only refundable if the recount changes the result of the election
c) Charging a fee for objections and appeals, a fee that is refundable only if the objection or appeal
   is upheld or is judged to be neither frivolous nor vexatious by the CEO or the independent
   investigator
d) Clearing up several ambiguities in this Article of the Code relating to objections and appeals and
   in particular giving the CEO the power to call for a by-election, subject to review by the
   independent investigator.

F. Changes to the Electoral Code

The above recommendations 1 to 5 have implications for changes to the Electoral Code. These include
the following:
• Lengthening the election timetable on several fronts
• Ensuring that there are separate electoral lists for veterans and for youth
• Having an automatic ‘trip wire’ for a recount
• Inserting a fee for recounts above the trip wire
• Inserting a fee for objections and appeals (refundable if successful or if judged not to be frivolous or vexatious))
• Removing several ambiguities in the Article 42 on Objections and Appeals
• Having only one mode of voting – whether by mail-in ballot or by internet
• Developing a comprehensive Article for mail-in ballots (or alternatively for voting via the internet)
• Making changes to the affirmation statement
• Developing a code of conduct for Community Councils and for Candidates
• Developing rules for MNO staff participation in the election
• Adding a clause giving discretion of the Chief Electoral Officer to allow a ballot to be counted if it is clear that a mistake has been made by MNO officials in putting together the list of electors

Other suggested changes to the Electoral Code tend to be more editorial in nature and include the following:
• Correct the numbering of various Articles in the Code
• Article 6.1: the posting of the notice for nominations should also be on the MNO website
• Article 6.3: add the adjective “registered” before citizen to be consistent with the definitions
• Article 7.3: specify that the preliminary list of electors sent to each Community Council will contain only the electors within the boundary of the Community Council
• Articles 7.4 and 7.5: adjust the timing of these two clauses so that the posting of the Final List occurs at least one day following any final revisions to the Preliminary List
• Article 10.1: clarify that the posting of the list of candidates should be at the offices of each Community Council (and not the regional council office)
• Article 13.4: add the rule that MNO staff should not serve as election officers
• Article 24.3: remove the word “locked” from the phrase “it [the ballot box] shall be locked and sealed”
• New Article: add a list of conditions for candidates to receive a list of electors for campaign purposes. Specifically the candidate must sign a letter to the CEO agreeing to the following:
  o Keeping the list secure at all times
  o Using the list only for the purposes of the election
  o Destroying the list once the election is over
  o Sharing the list only with campaign workers or contractors and only for election purposes

**Recommendation No. 6:** Make changes to the Electoral Code Part A that follow from the five recommendations above and that also correct a number of smaller editorial or timing issues.
List of Annexes

Annex A: Minutes of the Electoral Team Meetings

Annex B: MNO Electoral Code: Part A

Annex C: List of Election Officers and Correspondence with them

Annex D: Correspondence with the Candidates

Annex E: Election Results

Annex F: Letter of Objection from Ms. Chretien and Response from Mr. DeVillers

Annex G: Letter of Objection from Mr. Roger Giroux, Response from Mr. DeVillers and subsequent Appeal from Mr. Giroux

Annex H: Letter of Objection From Mr. Maurice Sarrazin, Response from Mr. DeVillers and Subsequent Appeal from Ms. Denis