

# **Métis Nation of Ontario, Election 2012**

## **Report of the Independent Investigator**

This investigation deals primarily with the appeals of Mr. Roger Giroux, candidate for position of Secretary Treasurer, the letter of objection from Mr. Maurice Sarrazin, candidate for the position of Councilor, Region 5 and the subsequent appeal of Ms. Juliette Denis also a candidate for the position of Councilor, Region 5. To a lesser extent I deal with some of the issues raised by Annette Chretien, despite her not officially appealing her result.

I have been provided by the Chief Electoral Officer, Mr. Paul DeVillers, minutes of the MNO Election team meetings, a copy of the MNO election Code, copies of correspondence between the Appellants and the Chief Electoral Officer, and a copy of the Chief Electoral Officers official report on the election and subsequent appeals. I requested additional information and most of that was provided to me on the 13<sup>th</sup> of July, 2012.

I have been retained to initiate this investigation pursuant to 42.6 of the MNO Electoral Code (hereafter the Code).

I should say at the outset, that my investigation is itself bound by the terms of the Code. In particular, article 42.2 of the Code specifies that:

“For greater certainty no individual candidate may object to or appeal

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

At the same time, my inquiry is permitted by Article 42.7.d to “make recommendations to the PCMNO with a view to improving future MNO election procedures”.

My interpretation of these articles is that section 42.2 limits the avenues for legitimate appeal by a candidate. That is, each candidate who is appealing must ensure that their appeal relates directly to the an election in which he or she was a candidate, and cannot, by virtue of subsection ii, appeal on the basis of issues arising from the MNO election process as a whole. I understand Article 42.7 to provide me with a wide scope of inquiry with which to examine the election process and to make recommendations about the process of future elections.

For an overview of the entire 2012 election, the final results, and an initial report on the appeals and complaints arising from the 07 May 2012 election, I direct the reader to the Chief Electoral Officers’ official report.

I will proceed in two parts. First, I will discuss a number of issues dealing with the election process in general terms, and which have been considered by the Chief Electoral Officer in his correspondence with

the appellants and Ms. Chretien, who as I said earlier, did not officially appeal her election result. Second, I will deal with the remaining substantive issues that go directly to the fairness and outcome of the two appellant's election results.

## **Part I – General issues arising from the MNO election of May 07, 2012**

### **A) The Voter List**

Article 7 and its various subsections set out the requirements for the generation and issuance of a voters list. Article 7.3 requires the posting of a preliminary list of electors by April 01 in the year of the election. Article 7.4 requires the posting of a final revised list of electors by April 20<sup>th</sup>.

The voter list is an essential component of the election process. It serves two main purposes. First, the electoral list is a definitive account of who may vote in the election, and where those electors must vote. Article 27.1.B states that "the returning officer shall ascertain whether the name of the elector is on the list of electors and if it is not, the returning officer shall not permit the elector to vote." Thus, the list of electors is the final word on who may vote. Additionally, as elector lists are drawn up by region, and the poll clerk has only a list of electors from that region, the elector list determines who may vote in any given region or poll. This can mean that someone who is eligible to vote in one region can be turned away from another region, as was the case, for example, with an MNO employee who left her home region for work related reasons and found herself on election day in another region.<sup>1</sup> Because that voter was not in her home region, she was denied the right to vote in the region where she was working.

The second purpose of the electoral list is to provide the candidates a list of potential supporters and a means of sending materials to those electors. It is imperative that candidates receive the lists in a timely fashion and as importantly, that they receive the electoral list in a fashion that permits candidates to utilize the lists for the purpose of developing a database of electors. One of the appellants and another candidate who did not appeal their electoral result both complained about the relatively short amount of time between receipt of the electoral list and the advance poll. There were also some complaints about the pdf format in which the electoral list was supplied.

The timelines are set out by the Code: a final list of electors is to be made public on April 20, and the election is on 07 May. That is a short time line. This year, the Chief Electoral Officer released the list of electors a few hours late, but this delay was compounded by the release of a revised list on April 27<sup>th</sup><sup>2</sup>.

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<sup>1</sup> Appellant M. Sarrazin also provides an email attesting to similar treatment (denial of the right to cast a ballot) by someone who tried to vote in a different region. The email's author asserts that he was assured he would be able to vote in a region other than the one to which he had been, but was no longer, a resident. Upon arriving at the poll in his new location, he was informed he could only vote in the poll closest to his former address.

<sup>2</sup> The Chief Electoral Officer asserts that his office released the electoral lists to community council Presidents just a few hours after the midnight deadline of April 20. However, the Chief Electoral Officer goes on to concede that the list was not sent to candidates until the 22<sup>nd</sup> of April, but it must be noted that the Code only requires by virtue of Article 7 that the list be sent to the community council offices. The revised list was not received until a week after the April 20 deadline.

Both lists were made public in pdf format which, I understand, is not well suited to use as a database. However, the Code does not specify the list be in any particular format, and it is certainly within the purview of the Chief Electoral Officer to make the list available in whatever format he or she chooses.

The short delay in the release of the initial list of electors did not materially affect the candidates. Release of a revised list one week later than is required by the MNO electoral Code is a troubling development. Candidates received the revised list of voters a mere 10 days before the election, and only 8 days before the advance poll. Given that Canada Post has a turnaround time of at least three days, this leaves precious little time to organize mailouts to prospective voters. Tempering this, however, is the fact that the revised list contained the names of voters for whom there was no address, and so to whom no mailouts could be sent. The short time frame from posting of the revised list to the date of the advance poll thus did not impair any of the candidates.

This is not to say that the publication of the revised list was not without issue. In correspondence with appellant M. Sarrazin, the Chief Electoral Officer writes:

... 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.

The Chief Electoral Officer is right to regard this as an issue of concern. Electors were denied the right to vote due to 'data management activities' that occurred after the posting of the list of electors. The number of eligible electors left of the revised list is at present unknown.<sup>3</sup> I have acquired both the final (April 20) and revised (April 27) lists of electors, but the limited scope of hours of my retainer do not permit a full investigation.

The Chief and Deputy Electoral Officer are well aware that the integrity of the voter list is central to any democratic election. Without the list being accurate, timely, and up to date, the legitimacy of most any election can be called into question.

It was also noted by a complainant that Gary Lipinski, incumbent President, was able to send his campaign materials as early as April 24. There was an allegation that this could only have resulted from Mr. Lipinski having privileged and advanced access to the electoral list. It is very likely that President Lipinski sent out his campaign materials early because he maintains his own database of supporters as is common among seasoned politicians, and that no candidate had 'privileged access' to the list of electors. To confirm this hunch, I contacted President Lipinski by email on 13 July 2012. In an email

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<sup>3</sup> I am assured by way of correspondence with the Chief Electoral Officer that very few, perhaps only four persons, were 'lost' between the final and revised list of electors. While these numbers are small, losing even a single voter to these circumstances cast distrust on the electoral system even where there is no chance that these votes could materially affect the election. The fact that one election, for Councilor Region 5, was decided by a single vote only underscores the fact that the loss of a single voter to technical errors has the potential to change the outcome of an election.

reply, President Lipinski categorically denies any 'privileged access' to the list of electors. He states that he received the list of electors on the same date and at the same time as the other candidates, but that at that point he had already engaged –at his own expense –a professional mail out services provider. That provider had been contacted and was 'ready to go' as soon as the list of electors was released. President Lipinski's team worked all night, and had the mail outs ready to go at first light. President Lipinski further iterates that he has been working in politics for 18 years, has an extensive network of contacts, and friends and associates that he can organize to run an effective, speedy campaign. This, I must note, is the mark of an experienced politician, and that experience and network of contacts is an advantage, but it not an advantage based on his status as an incumbent. To the extent that President Lipinski has an advantage over other candidates, that advantage lies in his experience and long service to the Métis Nation of Ontario. I find that the allegation of privileged access to the list of electors is baseless.

#### B) Irregularities at the advance and regular polls

Conduct at the polling station during the regular and advanced polls is set out by the Code in articles 19-29. Complainant A. Chretien, appellant R. Giroux, and appellant Ms. Denis complained of conduct at the advance and regular polls. Their allegation was that the polling clerk and/or returning officer offered pre-signed Harvest Renewal Forms to voters prior to their casting ballots. Further, the forms were signed by the Captain of the Hunt who was himself a candidate in the election. Complaints were made to the Chief Electoral Officer who says that he immediately put a stop to the practice, and upon investigation, discovered that the alleged activity occurred only on voting day (and not during the advance ballot), and was likely to have occurred while only a relatively few voters cast votes.

The Chief Electoral Officer does not disagree with the complainant and appellant that such conduct occurred and this is clearly a violation of Article 20 which details the precise materials permitted at the polls. In response to these allegations, the Chief Electoral Officer conducted a further investigation and informed me by way of a signed letter dated 22<sup>nd</sup> June 2012 that:

- 1) Signed Harvester Renewal cards were available at both the advance poll and early on Election Day;
- 2) The cards were brought to the attention of voters after they had voted;
- 3) The electoral officers were not involved in the distribution of the forms; and
- 4) The Chief Electoral Officer put a stop to this practice as soon as he heard about – around 10:30 on the morning of May 07, 2012.

These are, all parties will admit, violations of Article 20. Most troubling, of course, was the fact that the Harvest Renewal Forms were pre-signed by the Captain of the Hunt, and a candidate for Secretary Treasurer, Richard Sarrazin. Mr. Sarrazin was one of three candidates for the position of Secretary Treasurer, including one of the appellants, Mr. Giroux. Both of these candidates, however, were defeated by Mr. Tim Pile.

I must consider this issue in the context set out at the start of this discussion, namely, does this undermine the entire MNO election (in which case it cannot be a possible avenue of appeal according to article 42.2.ii,) or is it an issue that could affect the outcome of a race in which the appellant was a candidate, in which case it is an eligible avenue for appeal.

I find that a reasonable elector could potentially be influenced by the presence of a pre-signed Harvester Renewal Form: this is a serious violation of Article 20. It is contended by the Chief Electoral Officer that no forms were distributed prior to electors casting their votes, and that the forms were provided to electors only after they cast their ballots. If true, this would certainly dampen the severity of the violation of Article 20, but would still in all material respects be a violation of Article 20 which lays out in precise detail the materials permitted at the polling station. Mr. Sarrazin should never have allowed his pre-signed Harvest Renewal Forms to make their way to the polling station, and of course, neither the polling clerk nor returning officer should have permitted this to occur, not for one day, not for one hour.

However, I note that to the extent that the North Bay polling station saw only sixty-nine votes cast. Forty-six were cast in favor of Mr. Sarrazin. Even were all votes cast for Mr. Sarrazin, his position would only improve by 23 votes, not nearly enough to overcome the more than two hundred vote difference between him and the winner Mr. Pile. As for Mr. Giroux, were he to have secured all of his existing voters, plus all the votes that went to Mr. Sarrazin, Mr. Giroux's vote total would not be enough to surpass those of Mr. Pile.

I therefore hold that despite the clear violation of Article 20 at the North Bay polling station, the violation could not have materially affected the outcome of the election for the appellant Mr. Giroux.

#### C) Issues related to Mail in Ballots

Given the considerable geography of the province of Ontario, and the need for some flexibility to ensure that electors are given the chance to vote in a world where we are all busy, mail in ballots are essential parts of the democratic process. In the 2012 MNO election, one region, Region 8, was conducted entirely by mail in ballot. In almost every region, mail in ballots exceeded, often by a considerable degree, ballots cast in person. Indeed, mail in ballots were much more likely to be cast: 27.2% participation for mail in ballots versus just 10.36% cast in person. However, the difference in these percentages is likely affected by the April 27 issuance of a revised voter list. That list contained more than 3000 names of persons without mailing addresses, and who were assigned polling stations on the basis of their affiliation with the various Community Councils. It is unlikely that a significant number of these additional 3000 members cast votes because without mailing address they could not receive notification of the election on May 07. The addition of those 3000 names, combined with the likelihood that those 3000 persons did not vote, reduce the total percentage of ballots cast in person but by how much we cannot know.

Article 15.5 of the Code provides that “mail in ballots may be provided to electors in isolated communities that do not have a polling station.” Beyond this, the electoral Code provides little guidance with respect to mail in ballots.

Mail in ballots in the 2012 election were distributed to those electors who were determined to be more than 30 minutes’ drive from a polling station. The exception was region 8, Toronto and York, where every elector was sent a mail in ballot and no polling station was established. Because Region 8 was entirely a mail in ballot, and because the Regional Representative for Region 8 won by acclamation, there is just no way to know how many, if any, votes were cast from Region 8. I trust that the mail in procedures for Region 8 were followed, the ballots were delivered, and many votes were cast, but we cannot know that. Indeed, the same is true for other Regions as well. For example, we know that Regions 5, 6 and 7 had mail in votes cast because those voters also voted for a Regional Representative, but there is no way to determine the rate of return for mail in ballots in any region where the Regional Representative won by acclamation, and therefore was not present on the mail in ballots. What we do know, is that overall, only 3% of the mail in ballots were returned to MNO as a result of improper or outdated addresses and that the average rate of return of mail in ballots was near 30%.

The Chief Electoral Officer originally determined that May 04, the day before the advance poll was conducted, would be the post mark date cut off for the return of mail in ballots. That date was later extended to May 14 in order to allow more mail in ballots to arrive, and was the last possible date before the Code determined date for any recounts (Article 36.1). These decisions appear to have been made as policy choices, within the ambit of the Chief Electoral Officer’s discretion, but otherwise not explicitly determined by the electoral Code.

There were issues with the mail out ballots, and I have largely addressed these above. I do not believe that these issues cast doubt upon the election process or its results, though improvements could certainly be made and the Chief Electoral Officer has already made recommendations to address the current procedural shortcomings.

#### D) Counting of the ballots and related procedures

The procedures for the casting of ballots, the handling of ballot boxes, the secrecy of voting, the procedure on election and advance polling days, etc. are set out in Articles 19 – 35. I am confident that with respect to the handling of the ballots, their tabulation, and secrecy all relevant procedures were followed. The one issue that was highlighted by complainants, and which stands out as troubling, was the lack of security tape with which to secure the ballot boxes. Clear plastic tape was substituted. Given the high degree of scrutiny of the ballots, I am confident no issues arise from this, though in future, of course, proper security tape should be provided.

**Part II – The appeal by Mr. Giroux, the letter of objection from Mr. Sarrazin; and the subsequent appeal of Ms. Denis.**

A) Mr. Roger Giroux, candidate for position of Secretary-Treasurer

Mr. Giroux ran a campaign for the position of Secretary-Treasurer. He finished second in a field of three, capturing 682 votes out of 2151 votes cast for the position. The position was won by Mr. Tim Pile (819 votes) with Mr. Richard Sarrazin coming in a close third with 650 votes. 137 votes separated Mr. Giroux from the first place finisher Mr. Pile.

Mr. Giroux's correspondence with the Chief Electoral Officer discloses numerous objections. In his letter of May 17, Mr. Giroux raises the following issues:

- 1) Most of region 8 did not receive a mail in ballot, and the entire region was mail-in. List of Electors was not received by April 20, 2012 as required by section 7.4.
- 2) Breach of sections 4.1 (conduct of electoral officers); 20 (materials at polling stations) and 27 (general procedure at polling station).
  - a. 20.1- polling clerk/returning officer were offering blank (but signed) Harvest Renewal Forms. The forms were signed by the Captain of the Hunt who was himself a candidate (like Mr. Giroux) for secretary-treasurer. The practice occurred on May 5 and 7.
  - b. 20.2- the forms were 'likely equivalent to having campaign material at the polling station.'
  - c. 27- by offering the forms prior to voting, the candidate (via the polling officer) may have influenced voters. 4.1 requires fairness and impartiality.
- 3) No proper seals on ballot boxes, contrary to section 17.1
  - a. Boxes should have been sealed and initialed to prevent any tampering
  - b. The tape provided was clear tape, which could be tampered with
- 4) Other issues
  - a. 25.6 – no requirement that scrutineers affix their initials along the sealed edge of envelopes containing advance polls, and this means that there could be tampering.
  - b. Mail in ballots were received at the MNO office, not by a third party. The ballots were not put into sealed containers, and there was no list of electors at the count of mail in ballots. Also, the verification of names happened too quickly to be effective.
  - c. "unfair and discriminatory practices / intimidation on the part of some Community Councils Elected Officers." Prevented candidates from meeting with candidates and failing to distribute campaign material of all candidates. Also, mentions intimidation.
  - d. Lack of criteria for determining who would receive a mail in ballot. Citizen from region 4 allowed to vote in region 5. Unrealistic time lines set out in the Electoral Code. Brief periods prevent province wide campaigns, and this advantages incumbents. Long wait times on May 05, and a 2 hour wait for receipt of voter list in alphabetical order.

In a letter of June 06, Mr. Giroux officially appeals the election result and raises the following issues:

- 1) A significant number of people did not receive a mail in ballot, specifically voters in regions 8 and 9.
- 2) Mr. Giroux alleges that the names of electors who appeared on the preliminary list were not on the subsequent final list. Distribution of Harvesters' Renewal Forms at the North Bay Polling Station. Complainant alleges that the presence of these forms could constitute a bribe. Mr. Giroux provides affidavits attesting to the presence of renewal forms on May 05 (s. 25.1 advance) and May 07.
- 3) Mr. Giroux also raises issues around the security measures with respect to the ballot boxes.

Following receipt of these letters of complaint, Mr. Giroux was contacted in writing by the Chief Electoral Officer. The Chief Electoral Officer addresses each of the issues raised by Mr. Giroux, and the substance of these responses are provided in the Chief Electoral Officer's Report to the PCMNO on Election 2012. I have also addressed many of these issues in Part 1 of this report and need not address them again here.

Two issues remain. First, how many mail in ballots were received from Regions 8 and 9? And, secondly, how many persons were removed from the voter list between the issuance of the elector list on April 22<sup>nd</sup> and the issuance of the revised list of April 27<sup>th</sup>?

- a) As I have reported in part 1, it is significant that there is no way to track the return of mail in ballots in those Regions where the Regional Representative win by acclamation. In those regions where the Regional Representative is contested, voters must cast a vote for a regional representative, and in so doing, voters reveal the region from which they have voted because you can only vote for a representative from your own region. There is, therefore, simply no way to address the substance of Mr. Giroux's complaint that a number of people did not receive mail in ballots.<sup>4</sup> The Chief Electoral Officer reports that 30 envelopes were returned unopened from the Region 8 area out of a total of 1124 ballots sent out. The return of at least some unopened envelopes suggests that the mail out of ballots did in fact occur. Further investigation into four towns and cities in Region 9 revealed 28 returned envelopes out of 158 ballots sent out. This suggests that the list of electors in Region 9 is particularly deficient since the rate of returned ballots is 18% compared with 3% for the province as a whole.

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<sup>4</sup> In correspondence with the Deputy Chief Electoral Officer, I have been informed that there is a way to determine, very roughly, how many votes were cast in each region. The process involves cross checking the voter affirmations against the final revised voter list. This process would be extremely time consuming and could involve a large margin of error given the likelihood of multiple persons in a variety of regions all having the same name. There were also very few, possibly only one complaint, by an elector who did not receive a ballot, and again, this at least strongly suggests that mail in ballots did go out in Region 8, and that few if any electors were denied the right to vote due to their not having received a mail in ballot.



But, again, the principal problem here is the inability to track the originating region from so many of the votes cast. More than 5000 ballots were sent out by mail and more than 1386 mail in ballots were cast. It is very difficult to say with any certainty how many votes were cast by mail in each of the Regions save for Regions 5 and 6. It is therefore not possible to adequately address Mr. Giroux's complaint that few mail in ballots were received in Regions 8 and 9.

- b) Mr. Giroux alleges that some names that originally appeared on the final elector list issued on April 22 were removed from the revised final elector list issued on April 27<sup>th</sup>. This issue is not addressed in correspondence with Mr. Giroux, but the Chief Electoral Officer does address the issue in correspondence with another appellant, Mr. Sarrazin. As I outlined in Part 1, the Chief Electoral Officer writes:

... 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.

Mr. Giroux's complaint is, as I understand it, that persons who would have supported him were denied their right to vote due to what the Chief Electoral Officer terms unrelated 'data management activities.' In his correspondence with the Chief Electoral Officer, Mr. Giroux complains about a lack of disclosure, and the Chief Electoral Officer in return replies that there is nothing more to disclose.

The fact is that votes are secret and so there is nothing more to disclose to Mr. Giroux. I presume that Mr. Giroux has in his possession the original 'final' list of electors, and the final revised list of electors. It would be possible for Mr. Giroux to go through both sets of list to determine how many persons were 'lost' between the two lists.<sup>5</sup> It goes without saying that either the Chief Electoral Officer, his staff, or I could do the same. I am unable to complete this task in the limited time of my contract, though I did do some random searches to no avail. However even if we had a number, say 285 persons were dropped from the list, there is no way to know how many people would have voted for Mr. Giroux. The Chief Electoral Officer asserts in correspondence to Mr. Giroux that "there is an exceedingly low probability that had Canada Post delivered all of the mail in ballots in Regions 8 and 9, with a rate of return of mail in ballots of fewer than 30% you would have been able to make up the difference" of 137 votes. I am very much less certain of the math.

To me, the issue must be decided on a threshold issue: Are Mr. Grioux's complaints caught within the ambit of section 42.2.ii "no individual candidate may object to or appeal ...the entire MNO election."

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<sup>5</sup> In correspondence with the Deputy Chief Electoral Officer I am assured that the MNO Registrar is certain that only four names were dropped between the initial list of electors (April 22<sup>nd</sup>) and the final revised list of April 25.

The two substantive issues (the number of mail in ballots cast in regions 8 and 9; and the removal of names from the final revised voter list) are issues that go to the heart of the MNO election process in general, and not to Mr. Giroux's election results in particular. I do believe that Mr. Giroux has raised valid issues, but the issues concern the MNO election in general, and not his result in particular.

I therefore affirm the decision of the Chief Electoral Officer and deny Mr. Giroux's appeal.

- B) Letter of objection from Mr. Sarrazin; and the subsequent appeal of Ms. Denis, candidates for the office of Councilor, Region 5.

The race for the office of Councilor, Region 5 was unusually close. A one vote margin separated the candidates. A recount was ordered, and still, a single vote separated the Mr. Sarrazin (210 votes) from Ms. Denis (211 votes).

On 25 May 2012 Mr. Sarrazin sent a letter of objection to the Chief Electoral Officer. Mr. Sarrazin objected to the announced result, citing a number of reasons. I set these out below.

- Eligible votes were not counted because the elector's name was not on the final revised list of electors.
  - Mr. Sarrazin produced four statements by electors to that effect.
  - One voter was given incorrect information, and as a result, his vote was not counted, and Mr. Sarrazin produced an email by the elector to this effect.
- Multiple elector lists were produced instead of just one.
  - This is a misreading of the MNO Electoral Code. The Chief Electoral Officer deals handily with this matter in his correspondence with Mr. Sarrazin, and no more need be said here.

Nine votes were sent to Ottawa but were not counted. These votes were not counted because while electors were allowed to cast the votes, the electors' name did not appear on the voter list for the poll in which they were cast. The MNO Electoral Code is clear that in order to be counted, the elector must appear on the poll at which they are voting. It is also clear that at least some of the ballots cast should have been counted – the names appear on the preliminary list, but not on the final revised list.

The votes should have been counted, but they were not. The votes were not counted because the MNO Electoral Code allows no discretion at the poll: either a name is on the list of electors for that poll, or it is not, and if it is not, the vote cannot be counted.

There is nothing in the Code that permits the Chief Electoral Officer to overturn a factual finding by a returning officer with respect to whether or not a vote should be counted if the voter's name does not

appear on the list of electors for that poll. The Chief Electoral Officer, like the polling officer, is bound by the terms of the Code.

In a letter of May 30<sup>th</sup>, the Chief Electoral Officer sent out a reply to Mr. Sarrazin's letter of objection. In that letter, the Chief Electoral Officer determines that the nine votes represent irregularities that could have materially affected the outcome of the election for Region 5 Councilor, and that these irregularities were not with respect to the entire MNO electoral process, but rather, were irregularities that materially affected the result of the election in Region 5 to which Mr. Sarrazin was a candidate. The Chief Electoral Officer then determined that a by-election be held, that the by-election should be conducted entirely by mail in ballot, and that the date of the election be put off until the fall of 2012.

Mr. Sarrazin promptly agreed to that result.

On 03 June 2012, Ms. Denis wrote to MNO President Gary Lipinski, appealing the decision of the Chief Electoral Officer to hold a by-election. Ms. Denis cites the following reasons for her appeal:

- a) A need to determine if there is any other evidence that might support her victory in the May 07 election, thus avoiding the need for a by-election.
- b) If no such evidence is forthcoming, Ms. Denis asserts that an all mail in ballot is a substantially different election, and that the all mail in ballot would prejudice her chances of winning.
- c) A number of citizens did not receive mail in ballots for the May 07 vote.
- d) The names of voters on the preliminary list of electors were not present on the final revised list of voters, and subsequently, these votes were not counted.
- e) There were security issues with the ballot boxes
- f) The verification procedure moved too quickly.
- g) The ballots may not all have been secret.
- h) Senator Greenwood may have worked to minimize Ms. Denis' campaign while supporting that of Mr. Sarrazin.
- i) The presence of signed Harvester Renewal Forms at the polling station was a violation of the MNO Electoral Code.

Some of these issues have previously been canvassed (issues c, d, e, f, g, i) and I need not address them here. Ms. Denis wishes to have determined whether there is any other evidence that might support her victory. I do not see that there is any information that is being withheld to Ms. Denis, and so cannot see what other evidence there might be. It is incumbent upon an appellant to state clearly the reasons for his or her appeal. Thus, in the absence of some indication about what evidence Ms. Denis knows or suspects to exist, this avenue of appeal cannot be sustained.

Ms. Denis' call to reconsider the Chief Electoral Officer's decision to have an all mail in ballot by-election must be rejected. Ms. Denis asserts that an all mail in ballot would be "totally different than the original election" and has the potential to put her at "an even greater disadvantage." Given that both candidates received 105 mail-in ballots in the 07 May 2012 election, it is difficult to understand how a by-election run entirely by mail in ballot would disadvantage Ms. Denis or advantage Mr. Sarrazin.

With respect to Ms. Denis' assertion about the overtly political actions of the Senator Greenwood, I feel quite strongly that, as evidenced by Senator Greenwood's email, the Senator was attempting to influence voter behavior. While that may or may not be a violation of the Senator's office, it was not a violation of the MNO electoral code, and so cannot bear upon my decision.

In light of these findings, I affirm the decision of the Chief Electoral Officer to hold a by-election for the office of Councilor, Region 5, and also affirm the Chief Electoral Officer's decision to hold the election solely by mail in ballot, and that the by-election shall be limited to the candidates Denis and Sarrazin.

#### **SUMMARY:**

- 1) I find that the MNO 2012 election was conducted pursuant to the MNO Electoral Code and by-laws.**
- 2) I find that although regularities occurred, none materially affected the outcome of the entire MNO electoral process.**
- 3) I affirm the decision of the Chief Electoral Officer to deny the appeals of Mr. Giroux and Ms. Denis for reasons provided above.**
- 4) I find that the appeals of Ms. Denis and Mr. Giroux were neither frivolous or vexatious**

#### **Recommendations:**

- 1) I agree with all six of the recommendations of the Chief Electoral Officer in his Report to the PCMNO On Election 2012. I urge they be implemented as soon as possible, and certainly more than a year before the next MNO election.
- 2) As I have indicated in my Report, it would be very helpful to be able to track the region in which each mail in ballot is cast. Doing so would not compromise the secrecy of the ballot, but would allow the Chief Electoral Officer to easily and decisively respond to allegations that mail in ballots were not sent out to the various regions, and would also permit the generation of precise figures regarding the numbers of votes cast in each region. Given that the Chief Electoral Officer is recommending moving to a single voting system (either all Internet or all Mail in ballots) – and this is a recommendation I fully support – it is imperative that the Chief Electoral Officer be able to generate precise figures for the distribution of votes in each of the regions and for each of the positions.
- 3) I do not think that it would compromise voter secrecy if the mail in ballots were identified by a region. Doing so would allow more accurate statistical information about the election and thus better identify those regions where more must be done to maintain an accurate list of electors. I recommend that mail in ballots be designed so as to make it possible to determine from which region a vote was cast. The time lines for sending out and receiving mail in ballots should be set

out in the Code itself. The Chief Electoral Officer could be given the authority to modify these timelines in case of emergency or extenuating circumstances, provided that the Chief Electoral Officer's reasons be compelling.

- 4) The list of electors is vital to the candidates. Without the elector list, candidates are unable to provide campaign materials to electors in a timely fashion, and this could compromise future elections. The list of electors should be issued considerably earlier than it is now (Chief Electoral Officer Recommendation #1(c)) and should be provided in a format that is more readily manipulated into a database format for use by the candidates.
- 5) Related to Recommendation 4 , the MNO electoral Code should be changed to specify that the list of electors be provided to the candidates, not just the community councils, by a date well prior to election day.

I want to add that although there were numerous allegations of violations of the Code, the Chief and Deputy Chief Electoral Officers appear to have conducted themselves admirably. This is a very difficult task especially given the limited resources of their office. They responded quickly to the complaints and appeals of candidates who availed themselves of the appeal process provided by the MNO Electoral Code.

Democracy is always in the details, and I believe that the Recommendations put forward by the Chief Electoral Officer, in addition to those I have made, will produce a better election. Future elections will see new issues arise, but I trust that the MNO had developed a workable, fair, and just process for managing disputes and allegations.



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Independent Investigator, Professor Douglas Sanderson  
28 July 2012