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Kate White
Chair, Special Committee on Electoral Reform
35th Legislative Assembly

Dear Madame Chair,

SUPPLEMENTARY INFORMATION – REFERENDUM VOTING

This letter is to thank you for the opportunity to present to the Special Committee and provide input into your deliberations.

I also would like to provide supplementary information regarding considerations for any potential referendum vote regarding electoral reform. As noted during the hearing, there is no *Elections Act* or other statutory instrument regarding a mandate for Elections Yukon to oversee or administer a referendum or plebiscite vote.

The one mention of referendum and plebiscite in the *Elections Act* relate to Part 1.01, Register and List of Electors. Section 49.01 (1), Interpretation, indicates that Part 1.01 (Register and List of Electors) authorizes, under an enactment, the use of the register for “official electoral purposes”. This includes elections, referendum and plebiscites.

As such, it authorizes a list of electors to be used for a referendum or plebiscite. There is no chief electoral officer authority or responsibility for the oversight and conduct of a referendum or plebiscite vote.

This was not always the case. The *Public Government Act*, which received assent in 1992, provided for the chief electoral officer to be responsible for the conduct of referenda. It provided direction for resolutions, qualification of electors, concurrency with elections, and regulation authority. It also repealed the *Plebiscites Act*. The *Public Government Act* was repealed in 1995. It was not replaced.

The current *Plebiscites Act (2002)* provides for the Commissioner-in – Executive Council to make regulations for a plebiscite including procedures and defining the public for the purposes of a plebiscite. It makes no reference to referendum nor does it assign any responsibility for the conduct of the vote.

Notwithstanding, if a referendum or plebiscite vote was enacted, it would likely fall to Elections Yukon to administer. The electoral bodies of British Columbia, Prince Edward Island, and Ontario were responsible to administer referendum votes in their jurisdiction.

For Elections Yukon, the permanent register and the expanded list of electors, improved and referendum-friendly technology, a flexible electoral management system, and established processes all serve to support the mandate for referendum administration. A network of stakeholders and channels of communication are in place. With the ongoing school referendums, there is now territorial field testing of referendum vote administration.

Elections Yukon offers the following considerations if a tasking for a referendum vote is contemplated.

- **Authority:** Notwithstanding statutory provisions regarding mandate, authority and direction to the chief electoral officer would be in the form of an Act or regulation.

The referendum in PEI was established in 2018 under an Electoral System Referendum Act. It is a 24-page document which provides detailed direction for the conduct of the referendum vote. In their case, a Referendum Commissioner was appointed by the Legislative Assembly to guide the referendum process. Engaging the public, public education, and registration of third party advertisers was part of their mandate. The Commissioner could not override the chief electoral officer's authority.

The Chief Electoral Officer was responsible for the conduct of the vote and the count.

In BC, the Electoral Reform Referendum Act 2018 and Referendum Regulation provided the administrative framework and direction regarding the conduct of the election. It indicated Elections BC was responsible for the administration of the referendum vote and the reporting of results. Elections BC was also responsible for public awareness. This included non-partisan and neutral information about the vote and the voting systems on the ballot.

The 2007, the Ontario referendum on electoral reform was conducted by Elections Ontario. Elections Ontario was also responsible for public information and instructed to ensure electors receive clear and impartial information about the referendum.

For Elections Yukon, the public awareness responsibility is an option given existing communication channels, neutrality in engaging with proponents and opponents, and the non-partisan nature of the office. For the current school referendum vote, electors look to a credible non-biased and single point of contact for information regarding what the vote means.

- Referendum or Plebiscite: Referendums and plebiscites are different statutory tools and may have different processes and methods of voting. Determination of a plebiscite or referendum is a consideration.

A referendum gives people (in this case electors) the opportunity to vote directly on a specific issue. It is typically binding.

A plebiscite, sometimes called an advisory referendum, gives people (may be restricted to electors) the opportunity for an expression of opinion. It is not binding but may be used to influence policy.

PEI held a plebiscite vote on election reform in 2016. It was held between elections and was not binding. In 2019 PEI held a referendum vote in 2019 during their provincial election. The results were binding on government only if a threshold of more than 50% of ballots received voted the same way and, in at least 60% for the districts, more than 50% of the ballots cast voted in the same way.

- Eligibility to Vote: Eligibly to vote in a territorial election is based on being an elector meeting the qualifications on polling day. In the Yukon, elector qualifications for age are based on polling day. Polling day is the day fixed for the election; typically, the Monday 31 days after the issue of the writ. For eligibility, the final day of referendum voting could be considered polling day.

A plebiscite vote may offer additional eligibility. PEI held a plebiscite vote on election reform in 2016. It was not binding and looked for an expression of opinion. The enactments allowed otherwise qualified 16 and 17 year olds could vote in that plebiscite. This was based on the fact they would be aged 18 for the next territorial election which could potentially be held using the voting systems subject to the referendum.

For the Yukon, plebiscite eligibility could consider otherwise qualified 16/17 year olds and/or Yukon residents who not meet the 12-month residency period. This recognizes that during a minority or coalition

government, a fixed election date may not represent the duration of the legislature. As such, any additional eligibility should not be based on the fixed election date.

- Ways to Vote: If a referendum was held during a general election, two separate ballots would typically be issued. Both ballots would be provided – for special ballots, at Advance Polls, and on Polling Day. The PEI referendum in 2019 used a perforated ballot. Referendum voting followed the same process and criteria as their provincial vote.

Elections BC held a referendum vote in 2018 outside an election period using a mail-in vote. Mailed ballots were sent to all registered electors. Over 1.4 million ballots were returned by the deadline (42.6% of electors).

During the lead up to the vote, a campaign promoted awareness and registration. Unique voting packages sent to all registered electors with pre-printed certification envelopes. Ballots could be mailed back or dropped off at a number of locations. Additional options to register to update or receive mail in ballots were available.

Elections Yukon is familiar with the Elections BC referendum process as part of inter-jurisdictional exchanges. Mail in referendum voting is currently being used in Yukon for the eight school attendance areas where referendums are being held.

For a referendum vote outside the election period, mail-in ballot process should be considered. This allows central, clear, expedient and cost-effective administration.

- Timelines for a Referendum Vote: For Elections Yukon, the conduct of a referendum vote would typically follow four phases: referendum regulation development, readiness planning, pre-event public awareness and registration, and the referendum period.
 - Referendum Regulation Development (As required): During this phase, Elections Yukon would provide input and support to regulators and committees as appropriate in the development of any regulations. Internal planning would commence.
 - Readiness Planning (6 months): This would follow any enactment and include training, process and supporting material review, communication and awareness planning, and stakeholder engagement.
 - Pre-Event Awareness (2 months): This lead up would focus on the registration of electors and awareness of the referendum – processes to vote, the question(s), and the non-partisan explanation of the options on the ballot. Readiness work would continue. This could include a mail out to all electors as a Referendum Information Card and Voters Guide.

Mail out of packages to all registered electors (rural areas first) would begin just prior to the start of the referendum period and continue over the first week.
 - Referendum Period (6 weeks): During this period the focus is on the administration of the ballots, service to electors (ongoing awareness), and compiling and release of results.

- Thresholds: In both the recent PEI and BC referendums, thresholds were established to make the referendum binding. It provided thresholds for both an overall percentage of valid votes needed (50% + 1 voters) on the same question and either a percentage of the electoral districts (60%) or number of districts with ballots votes the same way. Plebiscites would not require thresholds.

- Referendum Advertisers: Many jurisdictions have regulations for third party advertising. This is to provide a level playing field for those who wish to support or oppose a change in the electoral system.

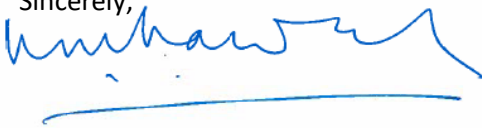
Elections BC and Elections PEI, among others, have extensive regulations for registered and non-registered advertisers during a referendum; this includes eligibility to register, contribution limits, expense limits, residency requirements of contributors, social media, financial agents, and reporting.

There are no statutory provisions or other requirements in Yukon regarding referendum advertisers. For a potentially binding referendum vote, some element of regulation may be a consideration.

Early notification of any potential Elections Yukon involvement or input in the administration of a referendum vote would be appreciated. If you require additional information, please do not hesitate contact me at (867) 667-8683

For your information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Max Harvey", with a horizontal line underneath it.

Max Harvey
Chief Electoral Officer