

Brief to the Special Committee on Electoral Reform (SCER)

Respectfully submitted September 2022 by

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Honourable members of the Special Committee on Election Reform,

It is time to improve our democratic system in the Yukon. In many aspects, the voting system has yielded good results, but it frustrates and excludes a significant number of Yukoners.

Following are my suggestions for election reform in the Yukon.

Table of Contents

1. KISS – Keep It a Simple System.....	2
2. No E-Voting, Please.....	3
2.1. E-Voting Undermines Trust.....	3
2.2. Online Voting Fails to Celebrate the Importance of Voting.....	4
2.3. Let's Take a Breath – Speed of Voting Machines is Unnecessary.....	5
3. No Forced Voting.....	5
4. No Recalls.....	6
5. Let's Vote on Weekends.....	6
6. Let's Protect our Election Officers.....	7
7. Let's Provide Better Working Conditions for our Election Officers.....	7
8. Let's Upgrade to Fair Results – Proportional Representation.....	8
8.1. Proportional Representation – Open Party List.....	9
8.2. MMP.....	9
9. Thank you.....	10

1. KISS – Keep It a Simple System

I have had the opportunity to serve as an **election officer in numerous elections** on all levels (local, regional, provincial, territorial, federal, First Nations) from Coast to Coast in a range of roles. My submission draws on the lessons I was allowed to learn.

To be clear, I do not represent or speak for Election Yukon or any other election authority I have worked for in the past. My submission only sums up my personal point of view, informed by my own, first hand experience. Also, I have no membership in or allegiance to any political party.

The most important lesson I have learnt from serving tens of thousands of voters on the "front lines" over many years, it is this: Keep It a Simple System. That does not mean we have to keep the current system. We can, of course, have a simple system that leads to fair and proportional results.

But I **strongly advise against any voting system that involves the ranking of candidates**. While such systems have their advantages on paper, those are lost outside academic exercises. They do not lead to fairer results in real life.

For large parts of the electorate, a ranking system would be **too complicated** and may even lead to unintended results. For many voters, seniors and voters with disabilities, it is already a physical challenge to place one correct check mark on a ballot paper. If they had to rank candidates, they would be prone to mistakes, or might even **abstain from voting out of intimidation or frustration**.

Which would be a very sad outcome of any election reform.

An even larger number of electors would simply be **overwhelmed by the task** of deciding which party they oppose more than the next, so that they could rank them correctly. That, again, leads to frustration and eventually elector apathy.

Nobody wants to feel like an idiot. If a voter experiences that at the polls, against the best intentions of everyone involved, they will likely stay home the next time. Any ranking system increases that risk.

Fringe parties, which voters had never heard of, might be ranked in the middle, giving them more weight than voters actually intended to.

Keep in mind that we have a considerable number of electors who can not functionally read and write. Also, there is always a number of voters who are not sober. The best way to prevent random rankings is to **not have rankings**.

At the same time, some more involved voters might try to game the system, or rank some extreme fringe parties' candidates on second and third place, in a (futile) attempt to strengthen their first vote in comparison to a strong competitor, although they don't actually

regard the fringe parties as their second or third best choice. Such "strategic voting" could lead to the unintended (!) election of political extremes.

Worse yet, many voters would never find out how exactly their vote influenced the result, i.e. what party or candidate(s) their ballot ended up being counted for. That is highly **unsatisfactory** for any voter.

The concept of "Reduce to the max" applies perfectly to our elections.

Having said that, keeping it simple does **not** mean that the Yukon has to stick to the current first-past-the-post system. **Simple and fairer** options than the status quo are available (see chapter 8 Let's Upgrade to Fair Results – Proportional Representation).

2. No E-Voting, Please

In my civil life, I have been professionally observing and reporting on information technology inventions and innovations for over two decades. In my line of work, I have followed electronic voting and its particular application online voting.

Electronic voting machines and online voting come with many perils and very high cost. Today, "IT security" is a contradiction in terms. Any electronic system is insecure.

With online voting, there are problems with voter identification, checks and balances, lack of a paper trail and thus no real judicial recount, no guaranteed secrecy of the vote (who is watching over your shoulder while you vote, who is secretly monitoring your computer), undue outside influence (malware, family member, employer, vote buying, etc.) and so on.

And when it comes to the secrecy of the vote, the "protection" is only encryption. In the best of cases, encryption is not intended to and does not protect anything for the long run. Encryption imply buys time until the encryption is cracked. However, even in five or ten years from now, it is nobody's business who voted for whom in the past.

Also, the cost of acquiring, verifying, installing, protecting and updating the required IT systems and data connections would be enormous. We would only use them every few years, and IT gets old very quickly. In addition, we would have to train Election Officers in the use of these machines, which would make recruiting more difficult and require additional payment for additional training. All of that would be an inefficient use of tax payer's money.

2.1. E-Voting Undermines Trust

Even if we magically could solve all those problems, we would still face two insurmountable obstacles: Success of any democratic election depends on the **voter's trust** in the system. The opportunity to attend the counting of ballots, and raise alarm if improprieties are suspected, is paramount.

If the results come out of a black box that no mere mortal is able to control, voter's trust in the election process will plummet further than it already has. That not only lowers voter turnout, but **undermines the entire democratic process**.

Electronic machines open an attack surface to those who strive to undermine the democratic system. This would, again, lead to lower voter turnout, frustration and political apathy.

Furthermore, as a former resident of the Halifax Regional Municipality (HRM), I can attest to numerous shortcomings of an online voting process. Most visible were the many envelopes with voting codes that lay in the lobby of all apartment buildings during election time. Anyone could take those envelopes and use the codes to vote numerous times.

Former residents of those buildings are still on the electors list, and thus receive voting codes in the mail. Current inhabitants of the relevant apartments place the envelopes in the lobby, so that Canada Post returns them to the election authority. But that means that it is very easy to collect dozens of voting codes from the lobby of any one apartment complex. Again, this undermines Canadian's confidence in a robust and trustworthy voting system.

As a result, voter turnout is very low. When E-Voting was introduced in Halifax in 2008, the voter turnout dropped from an average of 50% (1995, 2000, 2004) to an average of 36% in the four elections since (2008, 2012, 2016, 2020). So before e-voting, the voter turnout was higher by about 40% (14 percentage points).¹

As an election officer in Victoria, British Columbia, in 2018, I experienced first hand that the use of ballot scanners lead to hours long lineups for thousands of voters. While the scanners saved time after the close of the polls, a traditional manual count would have meant a vastly superior service experience for voters, higher voter turnout (because some electors came and left immediately when they saw the huge lineups), and less stress for election officers during the entire day.

Furthermore, some ballots were rejected by the ballot scanner as invalid that would have been perfectly valid in a manual count, simply because the wrong type of pen having been used to mark the ballot. These ballots could not be counted, because they would have been judged to a different standard than computer-readable ballots.

2.2. Online Voting Fails to Celebrate the Importance of Voting

In a human's life, **important events are regularly underscored by ceremonies.** We exchange rings, attend convocations, light candles, award plaques, swear oaths, pour water on babies or colour certain body parts, and so on. Most of our ceremonies are public acts. They bring Canadian families and neighbours together.

Elections are very important events, and they have traditionally been underscored by the **ceremonial act of casting a ballot.** These are community events. Although your choice is secret, the casting of your ballot is a public event. "I am here to vote" is a personal political statement, and, when done in the company of others, **a community celebration of freedom and democracy.**

1 HRM Mayoral Election results obtained from <https://www.halifax.ca/city-hall/elections/past-election-results>

If voting becomes as easy as liking something on Social Media, electors will, over time, perceive it as of similar insignificance.

Another aspect that is lost with online voting is the opportunity to teach children about voting by taking them along to a polling place. If voting becomes an "online experience", we stand the risk of losing a significant part of the next generation of voters, because they will not have shared in that experience as children.

The counting of paper ballots, likewise, has many ceremonial aspects. Every ballot is taken, by hand, inspected, and counted. Every voter's expression is awarded the same attention. Other people than the Deputy Returning Officer are watching. And, if shove comes to push, a judge can repeat the process to verify the result, or correct it, if necessary.

Moving to online voting would completely remove that ceremonial aspect, as well as the transparency it brings, and soon Canadians would forget how important the act of voting is. Likewise, the community celebration of freedom and democracy would be much diminished, if not lost entirely. Furthermore, with online voting, the public act of voting would be lost.

As there would be no paper trail, no judge could undertake a meaningful verification. All of that would **undermine public trust** in the election system.

2.3. Let's Take a Breath – Speed of Voting Machines is Unnecessary

With voting machines, ballot scanners, or online voting, there would also be no counting "ceremony", **so no-one could observe the counting of votes.**

Voting machines at polling stations would only solve some of the aforementioned aspects, but would carry additional risks compared to traditional paper ballots. Machines would be difficult to use for some voters; they might confuse some voters; they could be hacked; the polling station would have to close if electricity is lost; polling stations would need costly redundant broadband data connections, generally unavailable in the Yukon; distributed denial of service attacks (DDoS) over data connections could easily bring chaos to an election night; the machines might break down or run out of ink (for the paper trail) or have paper jams, etc. And, of course, these machines, their secured transport, secured storage, and secured installation would cost a lot of money, require additional vehicles, and Election Officer training.

The only advantage of an electronic system is a faster result at the end of the polling day. However, this speed is really unnecessary. After months of campaigning, we can very well wait a few extra hours for the result. It is really not worth the huge effort, expense, and risk required to introduce voting machines or online voting.

3. No Forced Voting

I oppose any fines for electors who do not vote. It is sad if a fellow citizen can not or does not want to vote. But there is no point in forcing them to do so. In the best of cases, they spoil a ballot. But they may vote for some extreme party they don't really support, simply because they are angry that they must vote. This helps no-one and skews the election result.

In a free, democratic society, voting should be a cherished right, not an imposed burden.

4. No Recalls

Recall elections are costly and a massive distraction. Where they exist, they are usually abused as an attempt to redo the election, rather than fix a grave and unexpected problem with an individual politician.

Given our small numbers of residents, it would be too easy to abuse a recall process.

The Yukon does not need recall elections.

5. Let's Vote on Weekends

From my experience as a recruiter and instructor of Election Officers, I can say that the current Section 221 of the Yukon's Elections Act is not ideal. It sets polling day to be a Monday, but not a holiday. While that is in line with historical custom, it is not the best rule for the 21st century.

In fact, a Sunday or holiday would be a much better polling day. That would make it easier (and probably cheaper) to find suitable locations for polling stations. It would make it much easier to find qualified Election Officers to work at polling locations. In select locations, it would make it easier and cheaper to find parking, thus increasing accessibility. For most Yukoners, it would be easier to find the time to vote, they would not have to take time off work, and voter turnout would be better distributed throughout the day, resulting in shorter lineups. Also, voters could more easily bring their children along, which provides for an important learning experience.

Election Canada's Chief Elections Officer has recommended #to move federal polling days to Sundays:²

Polling day

(...) Having polling day on a weekday has a number of consequences. Polls must be open before and after work to give people sufficient time to vote. This means that, for long periods of the day, the poll may be nearly empty and then there is a large rush at the end of the day, which, given the inflexibility of the present process, leads to problems for poll workers and frustration and delays for electors. Having polling day on a weekday also greatly reduces the number of qualified personnel available to operate polling stations.

Australia, New Zealand and a number of European countries have their polling day on a weekend, and Canada should consider a similar move. Weekend polling may make the vote more accessible for some Canadian electors — although it should be noted that Elections Canada's consultation with electors with disabilities underlined

² Quoted from: *An Electoral Framework for the 21st Century: Recommendations from the Chief Electoral Officer of Canada Following the 42nd General Election*, Chapter 1
https://www.elections.ca/content.aspx?section=res&dir=rep/off/rec_2016&document=p3&lang=e#p3_d

the importance of para-transportation services being available on a weekend polling day, were this change to be made.

Weekend voting would also increase the availability of qualified personnel to operate polling stations and of accessible buildings, such as schools and municipal offices, for use as polling places. While schools can present ideal locations for voting, concerns about student safety make it increasingly difficult for Returning Officers to obtain access to schools for voting while students are on the premises. For all these reasons, Elections Canada believes that having polling day on a weekend would better serve Canadians.

While we already offer both advance voting and special ballots in the Yukon, the official polling day still draws the largest turnout (60.2% of all votes in 2021). So the choice of day is of importance.

6. Let's Protect our Election Officers

Too often, Election Officers are subject to threats and abuse. That makes it more difficult to recruit Election Officers.

Federal law protects federal Election Officers in their line of duty. Section 479 (8) of the Canada Elections Act makes that clear:

Peace officer protection

(8) Every election officer has, while exercising their powers or performing their duties under this section, all the protection that a peace officer has by law.

To the extent legally possible, a new Yukon Election Act should include a clause to the same effect. In addition, the Yukon Government and Elections Yukon should liaison with the RCMP before every election to remind and inform all RCMP officers of their special duty to protect Election Officers.

7. Let's Provide Better Working Conditions for our Election Officers

Recruiting Election Officers is difficult for a variety of reasons. Polling on weekdays, unattractive pay, very long work hours, absence of childcare for the long hours, no provision of food or drink, no scheduled breaks, serious responsibilities, twelve month residence requirement, and too often verbal abuse and threats.

Work days for Election Officers are extremely long. Polling hours are typically twelve hours per day. However, Election Officers have to arrive much earlier to prepare the polling location, and they have to stay longer – not only to accommodate voters who arrived before closing time but are still in line (which can take hours), but also to complete documentation, secure ballots and ballot papers, and clean up. 15 hours are normal, if no unforeseen challenges arise – not counting time spent travelling to and from the polling location.

On Polling Day, the working hours are especially long, as ballots have to be counted after the last voter has voted at a polling location, then documentation has to be completed, materials

have to be packed up (or disposed of), then ballots, urns, and materials have to be returned to the Returning Office.

It is not helpful, that exhausted humans have to count the votes at the end of a series of very long days. A new Act should **allow for part-time Election Officers**. Why can't Election Officers take shorter shifts of maybe 7 or 8 hours, and then hand over to a rested colleague for the remainder of the day?

The general pay of minimum wage plus \$3/hour for Yukon Election Officers (without any benefits) is a far cry from the usual Yukon Government payment level. Even a Deputy Returning Officer is only paid \$275 per day – at 15 hours (not counting travel time), that is even less than minimum wage plus \$3/hour.

These pay levels are below the lowest entry pay level offered by the Yukon Government in real life, which come with much shorter hours, scheduled breaks, and added benefits.

The base hourly **wage for Election Officers should be at least double the minimum wage**.

Abolishing the residence requirement would allow Elections Yukon to hire recently arrived residents of the Yukon, as well as residents of other parts of Canada (especially Atlin and Lower Post).

8. Let's Upgrade to Fair Results – Proportional Representation

The current first-past-the-post system is unfair and undemocratic. It is not only unfair to voters who can not influence the composition of the legislature merely because they live in the wrong electoral district, it is also unfair to candidates and MLAs.

As the committee is well aware, in the most recent territorial election, the distribution of votes between the three political parties was very different from the distribution of seats.

Also, for example, one MLA was elected with 37.65% of valid votes in their electoral district. That means 62.35% of voters wanted a different candidate to represent them. At the same time, candidates in four other electoral districts received a higher percentage of votes but were not elected. Similar issues arise when we look at absolute numbers of votes.

We can conclude: **While all votes count in our current system, too many votes do not matter.**

This is undemocratic – not because a small number of voters can make a huge difference, but because it depends on where you happen to live if your vote is one of those that can make a huge difference.

It frustrates voters, but also citizens who consider running in an election. It is almost impossible for new political movements or parties to enter the legislature, even when they have sizable support from Yukoners. As a result, few political movements or parties come into

formal existence. To wit, there was only a single independent candidate in our most recent territorial election, Jan Prieditis.

That results in less competition in the political sphere. And competition has many benefits. In a political context, it makes most parties and politicians work harder and try harder to come up with better ideas and more inclusive proposals. As a society, we are at a loss if we do not have those smaller political forces to question the political mainstream, and to drive established parties and politicians to improve their game.

The perfect solution does not exist. The least bad system is Proportional Representation. I urge you to move democracy ahead and **bring us Proportional Representation**.

8.1. Proportional Representation – Open Party List

I prefer an open party list system. Voters would pick one party. Additionally, they would have the option to express their preference for a particular candidate from a party list; if one candidate receives a significant number of preferential votes, that candidate would move to the top of their party's list, likely securing them a seat.

In order to keep extreme fringe parties out and ensure efficient procedure in the legislature, lists that receive less than a certain percentage of the total vote, should not win any seats. I would set that level at least at 5%. As long as the legislature has less than 21 seats, the threshold level should be 6%.

To ensure representation of First Nations, a number of seats could be guaranteed to First Nations candidates. Alternatively, the Yukon could have a Chamber of Elders with strong First Nations representation and representatives from the communities, similar to the federal Senate.

The Open Party List system has many advantages: Every Yukoner's vote will have the same weight. Similarly, the number of votes required to win a seat would be more uniform, and, in any case, not depending on the voter's or candidate's exact address.

While we have not had by-elections in the Yukon, they may happen any time under our current system. A party list system removes that costly risk. If a seat becomes vacant, the next candidate on their party's list would take it.

That way, the legislature would always be fully "staffed" as no seats would be vacant for months at a time. Constituents would not miss out on representation just because an MP passes away or resigns. Also, the cost of by-elections would be saved.

8.2. MMP

A Mixed Member Proportional System would also be a good voting system. Every voter would receive two ballot papers: One to vote for a party list, and one to vote for an individual candidate from the voter's electoral district. The individual candidate chosen could be of a different party (or no party) than the party list chosen by the voter. Ideally, a run-off election would be held if a candidate received less than 50% of the votes in their riding.

This way, the Yukon's legislature would proportionally represent Yukoner's votes, while all Yukoners would have a local representative. The exact number of seats in the legislature would fluctuate slightly from election to election, but that is merely a problem of furnishing desks.

On the other hand, it makes voting slightly more complicated. It would be important to have these two votes on separate ballot papers, i.e. each voter would receive two ballot papers on which they would make one decision each.

Also, from my point of view, the importance of local representation is over-exaggerated in the discussion. From my experience as an Election Officer, I can attest to the fact that, even in the current system, most voters vote by party affiliation. Electors often don't even know the name of the person they want to vote for, but they know which party they prefer. The famous case of the 2011 federal election, where a candidate was elected in a riding they had never even set foot in, is the proof in the pudding.

Whichever of the two proportional representation systems you decide for, they will yield higher voter turnout in the long run than the current first-past-the-post system.

9. Thank you

Thank you for your attention and the hard work you have put in over the recent months.

Please give the Yukon an improved election system with proportional representation.

Daniel Sokolov