Information for Municipal and Rural Community Election or By-Election Candidates

M 04 301
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This information is a general guide to the election process for those interested in becoming candidates in a municipal or rural community election or by-election. If you have questions that are not answered here, contact either the Municipal Returning Officer for your area or Elections NB in Fredericton, at 1-888-858-8683 (VOTE), or the Elections New Brunswick website at http://www.electionsnb.ca.

For information on the role of municipal or rural community councils, contact your local municipal office, or the Capacity Building Branch of the Department of Environment and Local Government, at 506-453-2690, or their website at http://www2.gnb.ca/content/gnb/en/contacts/dept_renderer.139.html.

Section references here refer to the *Municipal Elections Act* when dealing with a particular matter.

Who Can Be a Candidate? (Section 18)

General Requirements: To be a candidate in a municipal or rural community election or by-election, a person must be:

- 18 years of age on or before election day;
- a Canadian citizen;
- a resident of the province and the municipality or rural community for at least six months before election day; and
- In a municipality that is divided into wards for election purposes, a person is not qualified to be nominated as a candidate for councillor for a ward unless he is a resident of that ward when he is nominated.

People Who Cannot Be Candidates: An officer of a municipality or a full time employee of a municipality or a person who is on leave of absence from such office or employment cannot be a candidate in that municipality or rural community. A judge, an election officer, or a person who has been disqualified for municipal office under federal, provincial, or municipal election laws, may not be a candidate anywhere.

People Who May Not Be Able To Be Candidates: Some public sector employees are restricted from engaging in political activity, even at a local level, or may need prior approval from their employer before filing nomination papers. If you work in the federal or provincial public service, check the following information:

Federal Public Service Employees (this information is provided by the Public Service Commission of Canada):

> NOTICE TO FEDERAL EMPLOYEES
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> Are you a federal public servant thinking of being a candidate in a municipal election?
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> In most federal public service organizations, an employee may seek nomination as, or be, a candidate in a municipal or provincial election before or during the election period, only if the employee has obtained permission from the Public Service Commission of Canada (PSC) to do so. This means that until a federal employee has obtained permission from the PSC, no declaration of candidacy or candidacy-related activities may be undertaken. The PSC may grant permission, with or without conditions, only if it is satisfied that seeking nomination as, or being, a candidate will not impair or be perceived as impairing the employee's ability to perform his duties in a politically impartial manner.
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> Before engaging in any non-candidacy political activity, an employee should assess his own circumstances. The PSC also encourages employees to consult their manager or their organization's designated political activities representative.
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> A list of the designated political activities representatives for organizations subject to these rules and other information on Political Activities are available at www.psc-cfp.gc.ca under the "Political Activity" section. You can also contact the PSC at 1-866-707-7152, or pa-ap@psc-cfp.gc.ca.

New Brunswick Public Service Employees:

Other than the restrictions mentioned above on municipal employees running for office in the municipality in which they work, there is no general restriction on New Brunswick public service employees running for municipal offices. However, it may be considered inappropriate or create a significant conflict of interest for some positions. If you work in the public sector and are interested in running for local office, consult senior management in your department or agency before filing nomination papers.

Nomination Papers (Section 17)

Nomination papers must be completed and returned to the office of the Municipal Returning Officer for the municipality or rural community where the person will be a candidate (not your local municipal offices) on or before the time and day fixed for the close of nominations.

Nominations close at 2:00 p.m. as follows:

- for quadrennial elections, on the Friday, the thirty-first day before polling day. If this day is on a holiday, nominations will close on the Thursday, the thirty-second day before polling day; or
- for a by-election, on the Friday, the twenty-fourth day before polling day. If this day is on a holiday, nominations will close on the Thursday, the twenty-fifth day before polling day.

Do not leave filing to the last minute, in case corrections or additions are needed in your papers, as **no nomination papers can be accepted after the deadline under any circumstances**.

Fill out the Nomination Paper carefully and completely. Each Nomination Paper must include the following:

- the candidate's name, civic address, and occupation;
- the office for which the candidate is offering;
- the candidate's certification of his or her name, civic address, and occupation and address for service as shown on the nomination paper is correct as stated;
- The candidate's certification that he or she:
  - is a Canadian citizen;
  - will be eighteen years of age or more as of the day of the election;
  - will have been ordinarily resident in the municipality or rural community for at least six months immediately before the election; and
  - expects to be ordinarily resident in the Province and in the municipality or rural community on election day, and if a candidate for a councillor in a ward, is resident of that ward when he or she is nominated;
- the consent of the candidate and the signature of the witness to the consent of the candidate;
- the signatures of at least ten (10) nominators who are qualified voters in the municipality or rural community and ward, if applicable, where the candidate is offering; and
- a completed certification of the witness or witnesses who obtained the nominator's signatures.

Each signature must be witnessed and the witness cannot be a nominator unless another person witnesses him or her. The candidate may collect and witness nominator signatures, but may not nominate himself or herself. Each witness who collects signatures must complete a separate declaration. Relatives of a candidate may be nominators if they are qualified voters. The returning officer will check the list of nominators on the list of electors to determine if they are qualified to vote in your area. If a nominator has moved recently, ask them to call the returning office to update their information so that they are listed at their current address.

The name of a candidate will appear on the ballot as it is spelled on the Nomination Paper. No prefixes (e.g., Mr, Mrs, Dr) are used on the ballots. A nickname is permitted if it is in brackets and is printed on the Nomination Paper as the candidate wishes it to appear on the ballot.

Once it has been checked for completeness, the Municipal Returning Officer will sign or initial the nomination paper of a candidate to indicate that the nomination is accepted.

After Nomination

Withdrawal of a Candidate (Section 17): After nomination, a Candidate who decides not to run may withdraw his or her nomination at any time not later than 5:00 p.m. on the third day after nominations close. A person withdraws by giving the Municipal Returning Officer a written statement that they are withdrawing as a candidate, signed by the candidate and two witnesses who are qualified voters in the municipality. Any votes cast for a candidate who has so withdrawn are null and void.

Death of a Candidate (Section 17): If a candidate dies after the close of nominations and before the closing of the polls on election day, the Municipal Electoral Officer for the Province will countermand the election for the affected office, and fix new dates for the nomination of candidates and a postponed election. The new election day will be not more than three months after the original election date. Candidates already nominated do not need to resubmit nomination papers, but additional candidates may be nominated. If the candidate who died was a candidate for a ward, the countermand and postponed election will apply only for that ward.

Acclamations (Section 19): If in a municipality no more candidates than are required for an office are nominated, or fewer candidates than are required for an office are nominated, each candidate is deemed elected by acclamation at the close of nominations, and declared elected by acclamation on election day without holding the poll.

Election Advertising and Campaigning (Sections 54, 55, and 31.2)

There are no restrictions on how much money candidates for municipal elections may spend on campaigning, and no requirements for filing any statements of donations received or money spent. However, there are some restrictions on campaign activity:

Black Out Period: After midnight of the Saturday night before the election until after the polls are closed on polling day, no election speeches, entertainment, or advertising may be:

- broadcast by any radio or television station (in or outside Canada);
- published in any newspaper, magazine or similar print media;
- transmitted by any means to any telephones, telecopiers, computers, or other communication devices capable of receiving unsolicited communications;

in favour of or on behalf of any candidate. However, this does not prohibit a bona fide news broadcast or news publication referring to or commenting upon a speech or containing any excerpts from a speech.

Polling Day: On Election Day, no advertising or campaigning of any kind may be done from or be posted on any moving motor vehicle. In addition, there may be no advertising or campaign material of any kind placed within thirty metres (100 feet) of any premises in which a polling station is located. "Polling station" means a building, or a portion of a building, secured by a municipal returning officer for the taking of the votes of electors on the ordinary polling day or an advance polling day. Candidates and one appointed scrutineer per polling station - but not their other agents, representatives or family members -- are allowed to be in any poll at any time on any polling day (ordinary or advance), as long as they do not engage in any kind of campaigning or interfere with voters or the polling process.

Advance Poll Days: There may be no advertising or campaign material on any property within thirty metres (100 feet) of the premises in which an advance poll is being held. In addition, any advertising or campaigning using loudspeakers from a motor vehicle must not be able to be heard within thirty metres of the building where an advance poll is being held.

Printed Advertising: All election signs, posters, handbills or other printed materials must include the name and address of the printer and publisher on the face of the document. It is an offence to not include this information.

Placement of Election Signs: The Department of Transportation controls where or if signs may be placed on highway rights-of-way. Under the *Highway Advertisements Regulation-Highway Act*, election signs are not permitted on Level I and Level II access controlled highways (four-lane or two-lane). However, they are permitted within the highway right-of-way of other highways. In the interest of safety, any signs that are attached to a DOT sign, guard rail or bridge, installed within the median, or installed such that they reduce sight lines or visibility, will be removed immediately.

Municipalities may also have sign by-laws that control where or when election signs may be placed.

Both Aliant and NB Power ask candidates not to use utility poles to post campaign signs. While the practice may seem harmless, there are some potential safety concerns:

- The signs themselves present a safety hazard for employees who must climb poles to complete their work;
- The metal staples or clamps used to put up the signs often remain in the poles long after the election is over. These items could cause an employee to lose his or her footing while climbing and could also be a hazard for the general public who may happen to brush the pole while walking by.
- Staples or clamps will cause a pole to degrade faster than it should, therefore making them more susceptible to damage, requiring maintenance or possibly replacement.

Media at the Polls: Representatives of print or broadcast media may go into a poll to record the vote of a ***mayoral*** candidate, if:

- a permission form has been obtained from the Municipal Returning Officer in advance;
- the candidate has agreed;
- no interviews are conducted in the polling station; and
- the media representatives and candidate leave the polling station as soon as the candidate has cast his or her ballot.

Lists of Electors (subsection 12.1(2))

Using form M 04 101, *Application for a Copy of the List of Electors*, a candidate may purchase a copy of the List of Electors for his or her municipality or rural community or ward from the Municipal Returning Officer for a fee of $0.02 per name on the list. Candidates must ensure that the list will only be used by themselves or persons acting on their behalf for legitimate campaign purposes during the current election, will not be used by themselves or anyone acting on their behalf for any purpose after the election, and that any copies of the list will be destroyed after the election. Under subsection 12.1(5), it is an offence to use the list for a purpose other than specifically provided.

Scrutineers (Section 23)

A candidate may appoint one qualified voter to be a scrutineer at each polling station (including advance polls) while the votes are cast and counted. Scrutineers are not paid by the Province, and there must not be more than one scrutineer for a candidate at a polling station at any time. A copy of the *Appointment and Oath of Scrutineer* form and an information sheet for scrutineers is enclosed with this material.

Reporting Results and Declarations of Election (Section 41)

Voting results determined and reported after the polls close on election day are "unofficial results". On the second day following the election, the Returning Officer will determine the official number of votes for each candidate and any plebiscite question, and declare the official results of the elections by completing a *Declaration After the Poll Has Been Taken* for each election for which the returning officer is responsible. A copy of the *Declaration* will be given or mailed to each candidate and the original returned to Elections NB. A copy will be provided to the clerk of the affected municipality, and published in the Royal Gazette.

Tied Votes (Section 41(3))

If there is a tie in the number of votes for two or more candidates for the same office, the Municipal Returning Officer will recount the votes cast for such candidates in the presence of not less than two qualified voters (normally the affected candidates) and declare a winner.

If the vote remains tied after the recount, if the candidates agree, the Municipal Returning Officer will resolve the tie by putting the two names in a box and drawing one out, with the candidate whose name is drawn being declared elected. If the candidates do not agree on this method to resolve the tie, the Municipal Returning Officer will make a request to a judge for a recount.

Initial Recounts at the Municipal Returning Office (Section 41.1)

If there is a difference of not more than twenty-five votes between the votes for a candidate elected and a candidate not elected, the candidate who was not declared elected may apply to the Municipal Returning Officer for a recount of the votes. The application must be filed within ten days after the election, and the recount will be held at the returning office within ten days after the application. There is no charge for such a recount.

If this recount results in a tied vote, if the candidates agree, the Municipal Returning Officer will resolve the tie by putting the two names in a box and drawing one out, with the candidate whose name is drawn being declared elected. If the candidates do not agree on this method to resolve the tie, the Municipal Returning Officer will make a request to a judge for a recount.

If the returning office recount does not result in a tie, and the candidates agree on the results, the Municipal Returning officer shall either confirm the initial Declaration of Election, if the result (in terms of the candidate elected) has not changed, or issue a new Declaration of Election if the recount determines that a different candidate was elected.

If the returning office recount does not result in a tie, and the candidates *do not agree* on the results, the candidate not declared elected may apply for a judicial recount. The candidate may request a recount of all the ballots cast, or a recount only of ballots on which the candidates could not agree as to whether or how they should be counted.

Judicial Recounts (Section 42)

A candidate who has participated in a recount at the Municipal Returning Office but is not satisfied with the results, or a candidate who has lost an election by more than twenty-five votes but has reasons to believe the results as reported may not be correct, may apply to a judge of The Court of Queen's Bench for a judicial recount. The application must be made within ten days of completion of the returning office recount or within ten days of the election, as applicable. The candidate may request a recount of all the ballots cast, or a recount only of ballots on which the candidates could not agree as to whether or how they should be counted.

If satisfied that there is reason to hold a recount, the judge will notify the affected candidates and election officials, and the recount will be conducted as soon as possible, normally within two weeks of the election. If the final result is a tie, it will be resolved by drawing one of the candidate's names out of a box.

Where the recount changes the election results so that a different candidate is declared elected than was originally declared elected, the costs of the recount are paid by Elections New Brunswick. If the recount does not change the candidate declared elected, the costs of the recount are paid by the candidate requesting the recount.

Swearing In (subsections 10(1) and 33(2) of the Municipalities Act)

All newly elected candidates are required to take an oath of office. The form for the oath of office is established by Regulation 2001-40 under the *Municipalities Act* and must be used by all municipal and rural community elected officials.

The oath of office cannot be taken in the ten days following an election. In cases where a petition has been filed to have a recount of the votes for the office of mayor or of councillor, the candidate elected to the office cannot take the oath until the recount has been completed and one of the candidates is finally declared elected.

The oath of office must be taken at or before the first meeting of the newly elected council for a quadrennial election. In the case of by-elections, the swearing in is done within 6 days of the end of the recount application period, or in the case of acclamations, as soon as the candidate is declared elected after election day. The Clerk of the municipality or rural community will notify successful candidates of the time and place for the swearing in ceremony.

First-Time Council Members

Most municipalities hold an orientation session for their newly elected councils shortly after the elections. These orientation sessions are very beneficial for getting newly elected councillors acquainted with the culture and environment of the municipality or rural community, and the responsibilities of mayors and councillors.

Information for Scrutineers

Role of Scrutineers: A scrutineer ensures for a candidate that voting at a given poll is properly carried out.

A scrutineer must be appointed in writing, using the M 04 201, *Appointment of Candidate's Representative* form. This form is provided to each candidate and is available on the Elections NB website at http://www.electionsnb.ca. Each scrutineer must bring their Appointment of Scrutineer form to the polling station, and give it to the Poll Supervisor in charge of that polling station, who will take their Oath of a Scrutineer. A Scrutineer may be present any time the poll is open or the votes are being counted, and if present at least fifteen minutes before the poll opens, may examine the ballot papers and any other materials or equipment relating to the poll. Each candidate may have only one scrutineer at each polling station in the municipality.

At the polling station, a scrutineer may object to a person's voting if they have reason to believe the person is not qualified to vote, is voting under someone else's name, or is otherwise not acting in accordance with the *Municipal Elections Act.* **The scrutineer must direct any concerns or questions to the election officer dealing with an elector.** If a scrutineer believes that a person is not entitled to vote, an objection should be made to the election officer ***before*** the person is given a ballot. The election officer will then require the person to take an oath as to their qualifications to vote. If the person refuses to take the oath they will not be allowed to vote, but if they take the oath they must be allowed to vote. The Voter List Officer or Poll Revision Officer will note any such objection in a Record of Objections, which remains with the Lists of Electors after the poll.

For most elections and by-elections, all ballots are counted by vote tabulation machines, but for some small by-elections ballots may be counted by hand. Where ballots are counted by hand, the Municipal Electoral Officer will issue instructions on how to count ballots, and a scrutineer may object to any ballot, or part of a ballot, on the grounds that the counting process does not follow the instructions.

A scrutineer who has concerns about the conduct of activities in a polling station should make the Municipal Returning Officer aware of such concerns as soon as possible.

Scrutineer Behaviour: A scrutineer may not:

- wear or carry anything to indicate any affiliation with a particular candidate;
- use a cell phone or other telecommunication device in the polling station;
- talk to voters in the polling area, either before or after they have voted; nor
- do anything else that would impede the smooth flow of the election process.

A scrutineer not following these rules may be removed from the polling station by the Poll Supervisor at the polling station.