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Counting and Special Voting Rules

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CONFERENCE ON MEXICO-CANADA-UNITED STATES ELECTORAL SYSTEMS

COUNTING AND SPECIAL VOTING RULES

ELECTION OFFICERS:

Scrutineers:

Scrutineers of advance, mobile, ordinary polls and special ballots cast in returning office are responsible for the preliminary addition of the votes, which is done at the polling stations or in the returning office and in the presence of agents of candidates, or other electors.

Poll clerks:

Poll clerks' duties during the count are to assist the scrutineers.

Central Poll Supervisors:

Where a central polling place is established comprising four or more polling stations, a returning officer may appoint a Central Poll Supervisor. One of his/her duties is to report to the returning officer by telephone all results at the polls within his/her central polling place and to gather all ballot boxes and deliver them to the returning officer's office (if distances permit) following the completion of the count, on polling day.

AGENTS OF CANDIDATES OR WITNESSES:

The candidates' agents (maximum of two for each candidate) who are present at the close of the poll have the right to observe the counting procedure (but not to participate in the counting).

If an agent or witness leaves before the counting of the votes is completed, he/she may not return nor be replaced.

If no agents are present, the scrutineer appoints two witnesses.

HOLDING OF COUNT FOR:

Advance polls:

WHERE? In the same place where the advance polls were held or at the place specified on the Notice of Advance Poll.

WHEN? At 8 p.m. on the **ORDINARY** polling day (election day)

WHO MAY BE PRESENT?

The scrutineer, the poll clerk, no more than two agents of each candidate, the candidates or witnesses if no agents are present.

HOLDING OF COUNT FOR:

Mobile polls:

WHERE? The returning officer will tell the scrutineer where to proceed with the counting of the ballots. It will be one of the following possibilities: the last location of the mobile polling station, OR the office of the returning officer, OR the office of the additional assistant returning officer, OR a convenient regular polling place near the final institution visited.

WHEN? The count must begin at 8 p.m. or as soon as possible thereafter. If the scrutineer has to travel to another location for the counting of the ballots, he must travel to that location as quickly as possible after the close of the poll at the last institution. If the count is carried out at the last institution, it must begin as soon as the poll closes, but not before 8 p.m.

WHO MAY BE PRESENT?

Candidates and those agents of candidates who are present at the close of the poll have the right to observe the counting procedure. If no candidates are represented at the polling station, at least two electors must be present besides the scrutineer and the poll clerk.

HOLDING OF COUNT FOR:

Special ballots cast in Returning Officer's office:

WHERE? In the office of the returning officer.

WHEN? At 8 p.m. on the ORDINARY polling day (election day).

WHO MAY BE PRESENT?

The scrutineer, the poll clerk, a candidate or his agent. If no agents are present, the returning officer must appoint two witnesses.

HOLDING OF COUNT FOR:

Ordinary polls:

WHO MAY BE PRESENT?

Candidates and those agents of candidates who are present at the close of the poll have the right to observe the counting procedure. If no candidates are represented at the polling station, at least two electors must be present besides the scrutineer and the poll clerk.

PROCEDURES FOR THE COUNT:

1. The count of the votes for the advance polls and the mobile polls begins at the same time as the ordinary polls, that is at 8 p.m. on polling day.
2. Immediately after the close of the poll, the scrutineer shall:
 - (a) Count the number of electors recorded as having voted and enter this number on the statement of votes.
 - (b) Count the spoiled ballot papers, place them in a special envelope and indicate the number of spoiled ballot papers on the envelope and seal it.
 - (c) Count the unused ballot papers undetached from the books of ballot papers, place them in a special envelope and indicate the number of unused ballot papers and seal it.
 - (d) Check the number of ballot papers supplied by the returning officer against the number of spoiled ballot papers, the number of unused ballot papers and the number of electors from the list indicated as having voted in order to ascertain that all ballot papers are accounted for.
 - (e) Open the ballot box and empty its contents on a table; and
 - (f) Count the ballot papers in the following way:
 - Unfold one paper at a time and make sure that his initials are on the back. As the scrutineer opens each ballot, he/she calls out the name of the candidate for whom it has been marked.
 - The poll clerk will keep score on the Tally Sheet as the candidates' names are called.
 - The scrutineer then places the ballot papers for each candidate in a separate pile on the table.

NOTE: Only the scrutineer may handle the ballot papers. However, he/she must handle them in such a way that anyone present can see how each ballot is marked.

REJECTED BALLOTS:

- As each ballot paper is read, only candidates or agents of candidates may suggest that it be rejected for any of the following reasons:
 - « Ballot paper not supplied by the scrutineer;
 - « Ballot paper not marked;
 - « Ballot paper marked for more than one candidate;
 - « Ballot paper upon which the elector has made any mark or writing through which the elector could be identified; and
 - « Ballot paper marked in an area other than the circle.

BALLOTS NOT REJECTED:

- « Ballots marked in any way by a deputy returning officer;
- « Ballots marked with a sign other than a cross;
- « Ballots marked with a writing instrument other than a black lead pencil;
- « Ballots where the mark extends outside the circle; or
- « Ballots where the circle is completely filled.

NOTE: Subject to the above, a ballot paper should not be rejected if it is obvious for which candidate an elector intended to vote.

OBJECTIONS RAISED TO BALLOTS:

When an objection is raised to a ballot, the following rules apply:

- 1) The scrutineer gives a consecutive number to each objection starting at 1 and writes this same number and his initials on the back of the ballot paper in question;
- 2) Writes the name of the person making the objection in the Poll Book;
- 3) Notes the reason for the objection in the Poll Book;
- 4) Writes his decision in the Poll Book.

The scrutineer alone decides whether a ballot is to be accepted or rejected. His/her decision is final; it may only be reversed by a judge, if there is a recount.

RETURN OF BALLOT BOXES AND DOCUMENTS TO RETURNING OFFICERS:

Scrutineers are instructed to deliver ballot boxes personally to the office of the returning officers immediately after they have advised them of their preliminary results. When this is impossible because of distance, the returning officer may wish to have the boxes picked up or advise scrutineers to send them by Priority Post.

SPECIAL BALLOT

Counting the Votes Cast by Special Ballot in the Returning Officer's Office:

These votes are counted in the Returning Officer's office after the close of polls on polling day. The R.O. gives to the scrutineer, appointed to count these votes, the sealed ballot box, along with:

- (a) The copy of the complete Record of Special Ballots Issued to Electors Voting in their Electoral District;
- (b) The complete copy of the official list of electors used for the taking of the votes;
- (c) The ballots spoiled during the voting and the unused ballots remaining from the ballots reserved for this voting in envelopes; and
- (d) The kit of supplies furnished for that purpose by the Chief Electoral Officer.

The counting is done in the presence of candidates, their agents or, in their absence, two electors.

The scrutineer and poll clerk must start the verification of the documents in the ballot box at 7 p.m. on the evening of polling day. However, when a large number of votes are cast in the electoral district, the verification begins earlier.

However, the actual counting of the ballots **does not** begin until after the polls have closed in the electoral district at 8 p.m. The count proceeds in the same way as the count for the ordinary poll.

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WHAT IS THE SPECIAL VOTING RULES SYSTEM?:

The Special Voting Rules provides a mechanism for voting by Canadian citizens, 18 years of age or older, who for some reason cannot vote on polling day or at the advance polls.

HOW ELECTORS CAST THEIR VOTES:

- 1) Once an election has been called, all electors registered under the Special Voting Rules will be sent a voting kit to the mailing address provided on the application. The kit contains a write-in ballot, inner and outer envelopes, a mailing envelope along with instructions. Each voting kit contains a bar code, which identifies the voter and his or her electoral district. The many envelopes and the bar code help to ensure the secrecy of the vote and work to ensure that each voter only casts one ballot.
- 2) The ballot has a space where the elector must write in the name of the candidate for whom they are voting. It is up to the elector to find out the names of the candidates running in their electoral district.
- 3) The elector places the ballot in the envelope marked "inner envelope" and seals it.
- 4) The elector places the inner envelope in the envelope marked "outer envelope", seals it, then signs and dates the outer envelope.
- 5) The elector places the completed outer envelope in the pre-addressed return envelope, seals it, adds sufficient postage, and returns it to Elections Canada in Ottawa.
- 6) It's the elector's responsibility to ensure that his/her ballot is received by Elections Canada as soon as possible, but **no later than 4:00 p.m., Ottawa local time, on the Friday before election day.** By law, late ballots cannot be accepted.

WHO IS ELIGIBLE TO VOTE UNDER THE SPECIAL VOTING RULES:

- 1) Members of the Canadian Forces, including civilians posted outside Canada as teachers or administrative support staff in Canadian Forces schools.
- 2) Incarcerated electors, serving sentences of less than two years.
- 3) Canadians residing outside of Canada for less than five consecutive years and who intend to resume residence in Canada.

The 5 year limit does not apply to:

- Employees of the public service of Canada or of a province;
- Employees of an international organization of which Canada is a member and to which Canada contributes and spouses and dependants of these electors;
- Spouses or dependants of members of the Canadian Forces or
- Civilians posted outside Canada as teachers or support staff in Canadian Forces schools.

- 4) Canadians outside their electoral districts, inside or outside Canada, during an election.
- 5) Canadians inside their electoral districts who are unable to vote in person at either the advance polls or on regular polling day at an election.

SPECIAL VOTING RULES - COUNTING OF VOTES (Canadian Forces electors, incarcerated electors in provincial institutions, Canadians temporarily residing outside Canada and Canadians outside their electoral district (inside and outside Canada)):

The actual counting of the votes in Ottawa is done by Special Ballot Officers appointed by the Chief Electoral Officer and working in pairs, each representing different political interests. They work under the general supervision of the Special Voting Rules Administrator appointed by the Chief Electoral Officer. The votes are counted for one electoral district at a time.

FIRST COUNT

- The first count begins no later than Wednesday (Day 5) immediately preceding ordinary polling day or on a date to be fixed by the Chief Electoral Officer. The Special Voting Rules Administrator supervises the counting of the votes cast by electors and received before 9 o'clock on that morning.
- All- outer envelopes that have been received after 9 o'clock on the Wednesday immediately preceding ordinary polling day are sorted by electoral district and set aside for the second count.

Procedure:

- The Special Voting Rules Administrator gives Special Ballot Officers all outer envelopes sorted for a particular electoral district; he/she verifies that the outer envelopes belong to this particular electoral district.
- Special Ballot Officers open each outer envelope and remove the inner envelope containing the ballot. Inner envelopes are then placed, unopened, in a ballot box. This assures the secrecy of the vote.
- When all the inner envelopes for one electoral district have been placed in the ballot box, Special Ballot Officers proceed to open the ballot box and place the contents on a table.
- Inner envelopes are counted to ascertain that the number of inner envelopes corresponds to the number of outer envelopes opened for the electoral district.
- They then proceed to count the votes recording the votes for each candidate on a tally sheet.

REJECTED BALLOTS:

- All ballot papers that do not appear to have been supplied for this election;
- All ballots that have not been marked correctly or upon which an elector has made a mark by which he/she might be identified.

SECOND COUNT:

- Must be completed no later than the Saturday (Day 2) preceding ordinary polling day.
- At this count, all the outer envelopes received between 9:00 a.m. Wednesday (Day 5) and 4:00 p.m. Friday (Day 3) will be counted.

NOTE: On the second count, Special Ballot Officers do not count the votes for the same electoral districts as they did at the first count; they are assigned, if possible, electoral districts from a different region of the country to preserve the secrecy of the vote.

- Once the counting of the votes is complete for a particular electoral district, the results are given directly to the Special Voting Rules Administrator.

TRANSMISSION OF RESULTS:

1. Upon completion of the first count, but not later than the Friday (Day 3) immediately preceding ordinary polling day, the Special Voting Rules Administrator communicates to the Chief Electoral Officer,
 - a) The number of votes cast for each candidate;
 - b) The number of rejected ballots; and
 - c) The total number of votes cast for each electoral district by means of a signed hard copy of the results.

The results of the second count is transmitted to the Chief Electoral Officer in the same way as the first.

2. Upon receipt of the results, the Chief Electoral officer computes the total number of votes and then ~~merges~~ the results together by electoral district of Canadian Forces electors, incarcerated electors and Canadian citizens residing outside Canada voting under the Special Voting Rules. The merged results of the voting are communicated to the returning officers no sooner than 8:00 p.m. (local time) on polling night (Day 0).

The result of voting by resident Canadians outside their electoral district is forwarded separately to the appropriate returning officers after the close of the polls on ordinary polling day to which the returning officers merge the results of voting by resident Canadians inside their electoral districts.

Both results are displayed separately on polling day.

MEDIA POOL

MEDIA REPORTING CENTRE:

Prior to the 1992 Referendum, each of the major television and radio networks had a correspondent in the returning office.

A media correspondent was hired by Elections Canada to transmit the preliminary results to the media centre in Toronto.

The reporting centre was established on behalf of the country's national media organizations -- CBC, The Canadian Press, CTV, Global/CanWest, Société radio-Canada, Standard Broadcast News and TVA. These organizations shared the costs of results-gathering and used the results for TV and radio shows and newscasts as well as reports in newspapers.

Here, for your information, are a few of the things media correspondents were asked to provide to the Reporting Centre:

1. At about 7 p.m. local time, the final number of polls including advance, regular, split, etc.
2. Results of the first poll reporting as quickly as possible.
3. Subsequent results every five polls, or as close to five polls as they could reasonably provide. However, if more than five polls were available at about the same time, it was not necessary to break them into groups of five. The higher total was telephoned to the results centre.

The results were then released by the participating organizations to the general public while respecting the blackout regulations.

BLACKOUT

PREMATURE PUBLICATION OF ELECTION RESULTS (BLACKOUT PERIOD):

The following is the section of the *Canada Elections Act* relating to the premature publication of election results.

328. (1) No person, company or corporation shall, in any electoral district before the hour fixed by or pursuant to this Act for the closing of the polls in that electoral district, publish the results or purported result of polling in any electoral district in Canada by radio or television broadcast, by newspaper, news-sheet, poster, billboard or handbill or in any other manner.

(2) Any person, company or corporation that contravenes the provision of this section and, in the case of a company or corporation, any person responsible for the contravention thereof, is guilty of an illegal practice and of an offence.

The polls close at 8 p.m. in all 6 time zones in Canada.

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OFFICIAL ADDITION

OFFICIAL ADDITION OF THE VOTES:

Purpose:

The results of the official addition of the votes are the only ones used to declare a candidate officially elected. The compilation of the results on polling night is only preliminary. The official addition is conducted by the returning officer and the assistant returning officer no later than seven days after polling day, normally in the office of the returning officer. This cannot take place until ALL the ballot boxes have been returned from the various polling stations. Even if only one ballot box is missing, the official addition must be postponed, day by day for a maximum of two weeks, until all such boxes are in the Returning Officer's possession. If this becomes necessary, the Returning Officer must advise the Chief Electoral Officer by telephone or fax.

Time:

The date, time and place of the official addition will have been determined immediately after the issue of the writ and will have been published in the Proclamation at the beginning of the event. Therefore, the date cannot be changed unless there is a necessity for postponement. Should such a postponement be necessary, the Returning Officer must advise the **Chief Electoral Officer immediately**. Candidates must also be advised of any such postponement as they are allowed to be present or to be represented at the addition. If there is no such representation, the Returning Officer must designate two persons who are qualified as electors to witness the proceedings.

Procedure:

The recapitulation sheets (a computer print-out) that is provided by the Chief Electoral Officer for this purpose is used throughout the official addition. If this has not already been done by the Chief Electoral Officer, the first columns pertaining to the name, number and character of each polling station are inserted before the official addition begins and the results inserted as they are confirmed. As well, the last column is completed with the total number of names from the ordinary poll list, **plus the number of names added on polling day**.

The official addition of the votes is a simple but an important official function. The following steps must therefore be followed closely:

- (a) Taking one ballot box at a time, preferably in numerical order, the seal is broken and the envelope is removed.

- (b) From the information contained on the Statement of the Votes extracted from the envelope, the number of votes cast for each candidate, the number of rejected ballots and the total votes cast, are inserted on the recapitulation sheets. The Statement of the Votes are then laid aside.
- (c) Returning Officers proceed in the same manner with each ballot box.
- (d) They then enter on the recapitulation sheets the results of the votes cast under the Special Voting Rules.
- (e) The various columns are added up.
- (f) If in the above process, the number of a polling station has not been indicated on the outside of an envelope, it is done at that time.
- (g) Under normal circumstances, the envelopes containing the supplies from the polling stations should not have to be opened. If the documents were not inserted in these envelopes, they are inserted in a special large envelope provided for that purpose.
- (h) If there is a sufficient margin between the two leading candidates, indicating a judicial recount is not necessary, the large envelopes containing poll results are then put in ballot boxes but they do not have to be placed in the same box they were taken from. The Returning Officer places as many large envelopes as possible in the same ballot box. An alternative is to place the large envelopes directly into the boxes received from the Chief Electoral Officer for the return of materials. The boxes are then sealed and put aside for later shipment to Elections Canada.

Should there be any chance of a recount being requested, the large envelopes are left in their respective ballot boxes which are re-sealed.

Exceptional Procedures:

If a ballot box is known to be lost or destroyed, or if it cannot be produced within two weeks after the date originally fixed for the official addition of the votes, the Act authorizes the use of one of the copies of the Statement of the Votes furnished to candidates or their agents. The Returning Officer may ask the scrutineer or any other person who has a copy, to produce and verify it under oath.

If the Statement of the Votes is not in its envelope, the Returning Officer must look for it amongst the other materials in the ballot box. For this purpose, any envelope may be opened except those containing ballots cast for candidates or rejected ballots. The numbers written on the outside of those envelopes may be taken as evidence of the vote, and these numbers are entered on the recapitulation sheets. All papers and envelopes (except the statement of the votes), are placed in a large envelope, and a gummed paper seal is attached, signed by the returning officer, the assistant returning officer, and any other person present who wishes to sign.

Declaration of Elected Candidate:

From the information compiled on the recapitulation sheets and after adding the results, the returning officer will then certifies as to the number of votes obtained by each candidate and state which one received the highest number of votes. This must be done on the Result of Voting form. Once completed, that form is sent to the Chief Electoral Officer by fax and a copy sent by Priority Post to every candidate.

RETURN WRIT

RETURN TO THE WRIT:

Six clear days after the official addition of the votes, or, if a recount was held, then immediately after the recount, the Returning Officer completes the form printed on the back of the writ of election. This is the official declaration of the election of a candidate, and is sent at once by Priority Post to the Chief Electoral Officer, in a special envelope.

Copies of this return are prepared and delivered to each candidate. The "six clear days" are interpreted to mean for example, that if an official addition of the votes was completed and the Result of Voting was signed on a Thursday, the writ must not be dated and returned until the following Thursday, and so on.

JUDICIAL RECOUNT

Application for Recount:

Where following the official addition, there is a tie or the number of votes separating the first and any other candidate is less than one-one thousandth (1/1000) of the votes cast, the Returning Officer shall apply for a recount.

The Returning Officer makes an application to the Judge as defined in section 2 of the *Canada Elections Act* and gives written notice of the application for recount to each candidate at the election.

In all other cases, a recount may be applied for within 4 days after the date of the official addition. For example, if the official addition was completed on a Thursday, the application for recount would have to be made on or before the Monday of the next week.

The applicant for the recount must file an affidavit declaring that a scrutineer improperly counted or rejected ballots, made an incorrect statement of the votes cast or that the Returning Officer improperly added up the votes. The applicant must also deposit \$250 as security for costs.

The Time, Place and Attendance:

Where a Judge determines that a recount should take place, the Judge shall appoint a time to recount the votes, the commencement of which must normally be within 4 days following receipt of the application.

The Judge must give written notice to the candidates or their agents of the time and place at which the recount will be held.

The Judge must summon the Returning Officer to attend the recount with the used and counted, unused, rejected and spoiled ballot papers or the original statements of the poll signed by the scrutineers, as the case may be.

The Returning Officer must attend throughout the proceedings. Each candidate is entitled to be present and to have present no more than three agents. Where a candidate is not represented, three electors may attend on his or her behalf. The Judge may authorize other persons to attend.

The Recount:

Depending on the allegation, the Judge may proceed to make the recount from the statements prepared by the scrutineers or by reviewing the ballots. Upon receiving the ballots, the Judge shall open the sealed envelopes containing the ballots. The judge cannot open other envelopes containing other documents nor shall the Judge take cognizance of any other election documents.

Where the Judge proceeds to a recount of the used and counted, unused, rejected and spoiled ballot papers, he or she shall recount the votes according to the directions contained in Sections 160 to 167 of the Act. Ballots cannot be rejected merely because the counterfoil is still attached or there are no initials on them.

The Judge must, as far as practicable, proceed continuously, except on Sundays, with the recount. The standard working hours during a recount are from 9 a.m. to 6 p.m. Whenever the ballots and other documents are not being examined at the recount, they must be kept enclosed in parcels (boxes or bags) under the seal of the Judge.

The Judge may, subject to the approval of the Chief Electoral Officer, retain the services of assistants as are required for the recount. The rate to be paid to such assistants is set out in the Tariff of Fees.

Costs and Reimbursements to Candidates:

Where a recount is made at the request of the Returning Officer or where the result of any other recount brings the difference between the first and any other candidate to less than one-one thousandth of the votes, a candidate may apply to the Chief Electoral Officer for the reimbursement of costs actually and reasonably incurred in respect of the recount.

The Chief Electoral Officer determines the amount of such reasonable costs and issues a certificate to the Receiver General who upon receipt of the certificate pays out to the candidate the lesser of such amounts and 500\$ for each day or part thereof during which the recount took place.

Where a recount does not so alter the result of the poll as to affect the return, the judge shall, order the costs of the candidate appearing to be elected to be paid by the person who applied for the recount and tax those costs, following as closely as possible the tariff of costs allowed with respect to proceedings in the court in which the judge ordinarily presides.

The moneys deposited as security for costs shall, so far as necessary, be paid out to the candidate in whose favour costs are awarded and, if the deposit is insufficient, the party in whose favour the costs are awarded has his action for the balance.

Where the result of a poll gives any candidate a majority of one-one thousandth of the votes cast or more and a recount is granted, a candidate may make an application to the Chief Electoral Officer for reimbursement of the costs actually and reasonably incurred by the candidate in respect of the recount and on receipt of this application, the Chief Electoral Officer shall determine the amount of the costs actually and reasonably incurred by the candidate.

ELECTION RESULTS SYSTEM

ELECTION RESULTS SYSTEM:

The methods which have been used in the past to tabulate the results varied from office to office. In some cases, computer spreadsheets have been used; however it was most often done by employing a bank of adding machines. Each adding machine would run a cumulative total for a single candidate. After every 5 or 10 polling stations had reported, the results would be posted, poll by poll, on a wall display and the cumulative totals up to that point released to the media.

The Election Results System is a bilingual computerized tool designed to assist in the tabulation of election results and in the completion of the post-election recapitulation. It was used for the first time at the 1993 election.

The security of parallel systems on election night:

It was up to the returning officer to decide whether or not to maintain a parallel counting process on election night and, if so determine the procedures. In the same way, the returning officer had to establish procedures and the flow of documents to the Election Results System. A flow chart is attached, showing one possible arrangement for election night.

Election night in the returning office:

The returning office is specifically organized by the returning officer for maximum efficiency on this most hectic of nights. Special areas are set aside for taking the results from the polling station by telephone, for tabulating the results and, at the end of the night, for collecting the ballot boxes returned by the scrutineers. In addition, a special area is set aside to accommodate the media.

As the results are phoned in from the polling stations, the calls are taken by a group of telephone operators who record them on a tally sheet. The results are then fed into the tabulation area for the calculation of the cumulative results. At intervals throughout the night as the figures are phoned in and tabulated, the results are posted and fed to the media.

SECRET

SECRET

CONTESTED ELECTION RESULTS

If the results of an election are disputed because of fraud or irregularities, the challenge now goes before the courts under the *Controverted Elections Act*. Any candidate or voter may file a petition to contest a constituency election, making a deposit of \$1000. The petition must be submitted within 28 days of the election result being published in *The Canada Gazette* or within 28 days of a candidate or agent being convicted of election fraud.

The election is annulled, or another candidate may be declared elected, if the court determines that there were more fraudulent or irregular votes than the winning candidate's majority. The decision can be appealed on the Supreme Court of Canada. The appeal must be launched within eight days of a lower court decision, and the Supreme Court has 12 days in which to make its decision.

Polling Night - Returning Office

