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3rd SESSION, 65th GENERAL ASSEMBLY  
Province of Prince Edward Island  
67 ELIZABETH II, 2018

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**(Bill No. 38)**

## **Electoral System Referendum Act**

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Hon. Jordan K. M. Brown  
Justice and Public Safety and Attorney General

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GOVERNMENT BILL

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Carol Mayne  
Acting Queen's Printer  
Charlottetown, Prince Edward Island





## ELECTORAL SYSTEM REFERENDUM ACT

**BILL NO. 38**

**2018**

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

### INTERPRETATION

#### 1. Definitions

In this Act,

- (a) “**Chief Electoral Officer**” has the same meaning as in the *Election Act* R.S.P.E.I. 1988, Cap. E-1.1;
- (b) “**contribution**” includes
  - (i) money donated in order for a registered referendum advertiser to incur referendum expenses, or to otherwise support a registered referendum advertiser’s opposition to or support of a mixed member proportional voting system related to the referendum, as the case may be,
  - (ii) other property or services provided free of charge or at less than market value, when provided in order for a registered referendum advertiser to incur referendum expenses, or to otherwise support a registered referendum advertiser’s opposition to or support of a mixed member proportional voting system related to the referendum, as the case may be, and
  - (iii) any fees paid to a registered referendum advertiser for membership in the organization,but does not include
  - (iv) public money paid to a registered referendum advertiser under section 16, and
  - (v) any voluntary unpaid labour;
- (c) “**election ballot**” means a ballot used to vote at the general election;
- (d) “**financial agent**” means a person who is appointed as the financial agent of a registered referendum advertiser under section 9 or 15;
- (e) “**general election**” means, unless the context requires otherwise, the first general election to take place under the *Election Act* after the coming into force of this Act;
- (f) “**opponent**”, in respect of the referendum, means an organization that is registered as a registered referendum advertiser in accordance with section 10 and identifies in its

- application for registration that its members oppose a change in the voting system to a mixed member proportional voting system;
- (g) “**ordinary polling day**” means the day fixed pursuant to section 5 of the *Election Act* for holding the poll at the general election;
  - (h) “**organization**” means a group of individuals, whether incorporated or not, who are acting together by mutual consent for a common purpose;
  - (i) “**principal member**”, in relation to an organization, means
    - (i) an individual director of the organization, or
    - (ii) if there are no individual directors of the organization, the principal officers or the members that the organization identifies as the principal members of the organization in its application for registration;
  - (j) “**proponent**”, in respect of the referendum, means an organization that is registered as a registered referendum advertiser and identifies in its application for registration that its members support a change in the voting system to a mixed member proportional voting system;
  - (k) “**public money**” means money paid out under the authority of this Act to be used by registered referendum advertisers for the purposes set out in subsection 17(2), and includes, for all purposes including the repayment of the public money, any interest earned on the money;
  - (l) “**question**” and “referendum question” mean the question specified in section 3;
  - (m) “**referendum**” means the referendum required to be conducted under section 3;
  - (n) “**referendum advertiser**” means any individual who or corporation or organization that intends to incur or has incurred referendum advertising expenses during the referendum period;
  - (o) “**referendum advertising**” means a message, respecting the referendum, transmitted to the public by any means during the referendum period, that opposes or supports, directly or indirectly, one or the other of the possible answers to the referendum question, but does not include
    - (i) the transmission to the public of an editorial, a debate, a speech, an interview, a column, a letter, a commentary or news, if published in the same manner and under the same standards that prevail outside the referendum period, without payment, reward or promise of payment or reward, and the means of transmission is not established for the purpose of the referendum or with a view to the referendum,
    - (ii) the distribution of a book, or the promotion of the sale of a book, for no less than its commercial value, if it was planned that the book be made available to the public regardless of whether the referendum is being held,
    - (iii) the transmission of a document directly by a person or an organization to its members, employees or shareholders, as the case may be, and
    - (iv) the transmission by an individual, on a non-commercial basis, of his or her personal political views via the Internet;
  - (p) “**referendum advertising expense**” means an amount paid or a liability incurred for the purpose of producing or transmitting referendum advertising during the referendum period;
  - (q) “**referendum ballot**” means a ballot used to vote at the referendum;
  - (r) “**referendum ballot paper**” means the ballot paper to be used in the referendum;
  - (s) “**Referendum Commissioner**” means the person appointed as Referendum Commissioner under section 5;



- (t) “**referendum expenses**” means an amount paid or a liability incurred by or on behalf of a registered referendum advertiser, during the registration period, for the purpose of opposing or supporting, directly or indirectly, one or the other of the possible answers to the referendum question, as permitted by section 17, including
- (i) the cost of producing or transmitting referendum advertising,
  - (ii) the cost of acquiring the services of any person, including remuneration paid to the person, and
  - (iii) the cost of acquiring meeting or event space, providing refreshments and acquiring and distributing promotional material,
- but does not include
- (iv) the reasonable expenses incurred by a person, out of his or her own money, for his or her own lodging, food or transportation during a journey for purposes related to the referendum, if the expenses are not reimbursed to the person;
- (u) “**referendum period**” means the period commencing on the date of the coming into force of this Act and ending on ordinary polling day, inclusive of those days;
- (v) “**registered political party**” means a registered party as defined in the *Election Expenses Act* R.S.P.E.I. 1988, Cap. E-2.01, and includes an association or organization of a registered political party;
- (w) “**registered referendum advertiser**” means a referendum advertiser that becomes registered under section 10;
- (x) “**registration period**” means the period commencing July 1, 2018, and ending on ordinary polling day, inclusive of those days;
- (y) “**voting system**” and “**electoral system**” mean a system for electing members of the Legislative Assembly.

## PURPOSE

### 2. Purpose

The purpose of this Act is to make the process for the referendum transparent and fair, by

- (a) establishing the referendum question;
- (b) providing for the appointment of a Referendum Commissioner who is an officer of the Legislative Assembly and who will oversee related matters leading up to and after the referendum vote; and
- (c) establishing a level playing field for those who wish to publicly oppose or support a change to the voting system as set out in the referendum question, by providing for equal public funding for organizations who register as registered referendum advertisers and are opposing or supporting one or the other of the possible answers to the referendum question, and by limiting spending on paid advertising in a reasonable manner, for the public good, so that residents of the province have the opportunity to make a decision that is based on information from both points of view.

## REFERENDUM QUESTION

### 3. Referendum on electoral system required

- (1) A referendum respecting the mixed member proportional voting system shall be conducted throughout the province in conjunction with the general election.

#### Question

- (2) At the referendum, a person who is entitled to vote may indicate his or her approval or disapproval in respect of the referendum by answering the following question:

“Should Prince Edward Island change its voting system to a mixed member proportional voting system?”

#### Form of question

- (3) The question shall appear on the referendum ballot paper as set out in Schedule 1 to this Act.

#### Persons entitled to vote

- (4) Persons who are entitled to vote at the general election are entitled to vote at the referendum.

### 4. When referendum is binding

- (1) The result of the referendum is binding only if more than 50% of the electors recorded in the poll book as having voted in the general election vote the same way on the question.

#### Duty if binding

- (2) Where
  - (a) the result of the referendum is binding in accordance with subsection (1); and
  - (b) the electors referred to in that subsection vote in favour of adopting a mixed member proportional system,

the Government shall take steps that the Government considers necessary or advisable to implement the result of the referendum, including introducing the legislation needed to implement a mixed member proportional system that is substantially as described in Schedule 2 to this Act, in sufficient time for that voting system to be in place for the next following general election required under the *Election Act*.

## REFERENDUM COMMISSIONER

### 5. Referendum Commissioner

- (1) There shall be a Referendum Commissioner to guide the referendum process, including by engaging the public in the process and providing public education related to the referendum.

#### Officer of the Assembly

- (2) The Referendum Commissioner is an officer of the Legislative Assembly.

#### Appointment

- (3) The Referendum Commissioner shall be appointed by the Legislative Assembly
  - (a) on the recommendation of the Standing Committee on Legislative Management; and
  - (b) following a resolution of the Legislative Assembly supported by at least two-thirds of the members.



**Term of office**

- (4) The Referendum Commissioner holds office from June 1, 2018, until the report required by section 7 is delivered to the Speaker of the Legislative Assembly.

**Remuneration**

- (5) The Referendum Commissioner shall be paid the remuneration and allowances that are fixed by the Standing Committee on Legislative Management.

**Referendum Commissioner, responsible to**

- (6) In performing his or her duties, the Referendum Commissioner shall be responsible solely to the Legislative Assembly.

**Staff**

- (7) The Referendum Commissioner may hire legal counsel, auditors and the staff that are required, and expend the money that is required, to perform the duties of the office.

**6. Powers and duties of Referendum Commissioner**

- (1) The Referendum Commissioner shall
- (a) implement public education and information programs relating to the referendum and referendum advertising;
  - (b) take the steps that he or she considers necessary to assist individuals and eligible organizations to organize to register as registered referendum advertisers;
  - (c) take the steps that he or she considers necessary to register eligible referendum advertisers in a timely manner;
  - (d) issue to the members and financial agents of registered referendum advertisers the instructions that he or she considers necessary to ensure the effective execution of the provisions of this Act;
  - (e) announce the final result of the referendum, after the completion of the count under the *Election Act*, in a manner that the Referendum Commissioner considers will inform the public of that result;
  - (f) provide a report to the Speaker of the Legislative Assembly as set out in section 7; and
  - (g) perform such other duties as are assigned to him or her by this Act.

**Media information by Referendum Commissioner**

- (2) The Referendum Commissioner may, using any media or other means that the Referendum Commissioner considers appropriate, provide the public with information relating to the referendum, the limitations on spending by referendum advertisers, the assistance available to those interested in joining or forming an organization to register as a registered referendum advertiser and the funding that will be available to registered referendum advertisers.

**Powers of Referendum Commissioner**

- (3) The Referendum Commissioner may make inquiries, require reports and issue directions, as he or she considers necessary in order to execute the intent of this Act.

**Referendum Commissioner cannot override Chief Electoral Officer's authority**

- (4) For greater certainty, the authority of the Referendum Commissioner under this Act does not apply with respect to matters for which the Chief Electoral Officer has been given authority under this Act.

**7. Report to Speaker of Legislative Assembly**

- (1) The Referendum Commissioner shall, before or during the session of the Legislative Assembly next following the general election, and after the financing reports required to be filed under subsection 12(4) have been filed, deliver a report to the Speaker of the Legislative Assembly
- (a) related to the contents of the financing reports; and
  - (b) concerning any matter related to the referendum and the referendum process that he or she considers should be brought to the attention of the Legislative Assembly.

**Submission of report to Legislative Assembly**

- (2) The Speaker shall submit the report received from the Referendum Commissioner to the Legislative Assembly.

**REFERENDUM ADVERTISERS****8. Restriction on unregistered referendum advertisers**

- (1) A referendum advertiser that
- (a) is not eligible to be registered in accordance with section 10; or
  - (b) is eligible to be registered but is not registered in accordance with section 10,
- shall not incur referendum advertising expenses that exceed \$500 in total.

**Referendum advertiser to be identified on referendum advertising**

- (2) A referendum advertiser shall identify himself, herself or itself in any referendum advertising that he, she or it places, and shall indicate that he, she or it has authorized the advertising.

**Who is eligible to be registered referendum advertiser**

- (3) Subject to subsection (4), a referendum advertiser is eligible to be registered as a registered referendum advertiser if all of the following apply:
- (a) the referendum advertiser is an organization with no fewer than five members;
  - (b) the organization is not for profit;
  - (c) the members and any directors of the organization are not compensated for being members or directors of the organization;
  - (d) membership in the organization is voluntary and open to all;
  - (e) the organization has a *bona fide* interest in the outcome of the referendum;
  - (f) at least two-thirds of the principal members of the organization have been ordinarily resident in the province for at least six months immediately before July 1, 2018.

**Who is not eligible to be registered referendum advertiser**

- (4) An organization is not eligible to be registered as a registered referendum advertiser if
- (a) the organization is a political party or an organization or association of a political party;
  - (b) any of the principle members of the organization
    - (i) is a candidate in the general election, intends to be a candidate in the general election or is the official agent of a candidate in the general election,
    - (ii) is an election officer or a member of the staff of the Chief Electoral Officer, or





- (iii) is the Referendum Commissioner or a member of the staff of the Referendum Commissioner; or
- (c) more than one-third of the members of the organization are not ordinarily resident in the province.

## 9. Registration

- (1) Any eligible referendum advertiser that intends to incur referendum advertising expenses that exceed \$500 in total shall apply to be registered in accordance with this section, on or before July 1, 2018.

### Financial agent required

- (2) Before applying to be registered, a referendum advertiser shall appoint a financial agent.

### Who may be financial agent

- (3) An individual is eligible to be a financial agent unless any of the following circumstances apply:
  - (a) any of the circumstances set out in subclause 8(4)(b)(i), (ii) or (iii) apply with respect to the individual;
  - (b) the individual is an undischarged bankrupt;
  - (c) in the past five years, the individual has been convicted, in or out of the province, of an offence involving fraud;
  - (d) the individual does not have full capacity to enter into contracts;
  - (e) the individual is not 18 years of age or older;
  - (f) the individual's appointment as a financial agent is rescinded under this Act;
  - (g) the individual is appointed as the financial agent of another referendum advertiser.

### Application

- (4) An application shall
  - (a) if the Referendum Commissioner specifies the form of the application, be in that form;
  - (b) include the name of the organization and, if different from the name of the organization, the name that the organization proposes to use as a registered referendum advertiser;
  - (c) include a statement of the organization's mandate or mission, including whether the organization opposes or supports a mixed member proportional voting system;
  - (d) include a statement of the organization's proposed budget;
  - (e) include the address and telephone number to which notices and other communications under this Act may be delivered or made;
  - (f) include a list of the principal members of the organization, including their names, addresses and titles;
  - (g) include the name of the financial agent appointed by the organization;
  - (h) include information respecting the matters set out in subsections 8(3) and (4) and in subsection (3) of this section; and
  - (i) include a written statement, signed by two of the principal members of the organization, that the information contained in the application is, to the best of their knowledge and belief, true and complete.

**10. Registration process**

- (1) As soon as practicable after July 1, 2018, the Referendum Commissioner shall assess the applications received under section 9.

**Assessment**

- (2) An assessment under subsection (1) shall, based on the information contained in the applications, take into account all of the following criteria:
- (a) the eligibility of the organization, under section 8, to be registered;
  - (b) the eligibility of the financial agent under section 9;
  - (c) whether the name that the organization proposes to use may create confusion because of its similarity to the name of another organization or corporation, or whether the name may be, in the Referendum Commissioner's opinion, otherwise inappropriate.

**Information**

- (3) The Referendum Commissioner may request further information in respect of how the organization or its principal members, financial agent or name meet the criteria set out in subsection (2).

**Registration**

- (4) The Referendum Commissioner shall register any organization that meets the criteria referred to in subsection (2).

**Change of name**

- (5) Before registering an organization under subsection (4), the Referendum Commissioner may, on the basis of the Referendum Commissioner's assessment under subsection (2), require the organization to use another name when acting as a registered referendum advertiser.

**11. Notice**

Upon registering an organization as a registered referendum advertiser, the Referendum Commissioner shall do the following:

- (a) give written notice to the organization
  - (i) that the organization has been registered as a registered referendum advertiser, and either as an opponent or a proponent, as the case may be,
  - (ii) that the individual appointed as financial agent by the organization has the powers and duties of a financial agent, and
  - (iii) of the name the organization is required to use when acting as a registered referendum advertiser;
- (b) publish the names of the registered referendum advertisers and their financial agents in the manner that the Referendum Commissioner considers appropriate.

**12. Duties of financial agents**

- (1) Public money paid to a registered referendum advertiser under this Act shall be
- (a) deposited in a bank account established by the financial agent on behalf of the registered referendum advertiser for which the financial agent is acting, and used solely for the purposes of this Act; and
  - (b) maintained in the account until used or repaid in accordance with this Act.



**Approval of spending by financial agent**

- (2) No person other than the financial agent or a representative of a financial agent authorized in writing by the financial agent shall incur or authorize referendum expenses on behalf of the registered referendum advertiser.

**Time for submission of payment claims**

- (3) Every person who has any claim for payment in relation to a referendum expense shall submit the claim within 30 days after ordinary polling day to the financial agent of the registered referendum advertiser that incurred the referendum advertising expenses.

**Financing reports**

- (4) Financial agents shall, within 90 days after ordinary polling day, file financing reports with the Referendum Commissioner, in a form approved by the Referendum Commissioner, accompanied by the invoices, receipts and other vouchers and an affidavit of the financial agent verifying the report and stating that no payment not permitted by this Act was made with his or her knowledge and consent and that to the best of his or her knowledge and belief every expense incurred is entered in the report.

**Referendum advertiser to be identified on referendum advertising**

- (5) The financial agent of a registered referendum advertiser shall identify himself or herself and the registered referendum advertiser in any referendum advertising that he, she or it places, and shall indicate that the registered referendum advertiser has authorized the advertising.

**13. Application of *Election Expenses Act***

- (1) Subsections 3(1), except clause (d), and (4), sections 4-6, subsections 13(3) and (4) and sections 27 and 28 of the *Election Expenses Act* apply, as far as they are applicable and with any necessary changes, to registered referendum advertisers as if they were registered parties under that Act, unless the provision is excluded or modified, expressly or impliedly, by a provision in, or a direction made under, this Act, and, in particular, references in those sections
- (a) to official agents shall be construed as a reference to financial agents;
  - (b) to the Chief Electoral Officer shall be construed as a reference to the Referendum Commissioner;
  - (c) to financial returns shall be construed as a reference to financing reports;
  - (d) to election expenses shall be construed as a reference to referendum expenses;
  - (e) to two years after the date of broadcast or publication shall be construed as a reference to six months after the date of broadcast or publication; and
  - (f) to political advertisement and political advertising shall be construed as a reference to referendum advertising.

**Provisions of this Act overrule**

- (2) Subsection (1) is subject to the provisions of this Act.

**14. Adaptation for purposes of this Act**

- (1) For the purpose of carrying into effect sections 8 to 13 and 15 to 21, and related definitions, or in order to adapt any of those sections or the *Election Expenses Act*, in respect of a particular circumstance related to referendum advertisers, registered referendum advertisers or the responsibilities of the Referendum Commissioner, the Referendum Commissioner may

issue a direction as he or she considers necessary or advisable in order to execute the intent of this Act and the *Election Expenses Act*.

**Notice--when**

- (2) The Referendum Commissioner shall provide notice of the direction in accordance with subsection (3) as soon as possible after the direction is made.

**Notice--how**

- (3) The direction shall be published on a website on the Internet and copies shall be provided to the Chief Electoral Officer and the financial agents of the registered referendum advertisers.

**Effect of section and direction**

- (4) Any action taken in accordance with this section or a direction made under this section is not invalid or contrary to the law only by reason of any inconsistency with this Act or the *Election Expenses Act*.

**15. Changes in financial agent**

- (1) If a financial agent's appointment is rescinded under section 21 or a financial agent otherwise ceases to hold office, the members of the registered referendum advertiser shall immediately appoint a new financial agent who meets the eligibility requirements in subsection 9(3), and shall notify the Referendum Commissioner of his or her name, address and telephone number and include a written statement signed by two of the principal members of the organization that the new financial agent meets the eligibility requirements.

**Transfer of public money and records required**

- (2) If a new financial agent is appointed under this section, the former financial agent shall immediately transfer to the newly appointed financial agent the responsibility and all related records for the bank account referred to in section 12, the public money received by the former financial agent and the records required to be kept under this Act.

**Duties continue to apply**

- (3) Despite no longer being a financial agent, whether a new financial agent is appointed or not, the duties set out in sections 18 to 20 continue to apply to a former financial agent in respect of matters related to the period when that individual was a financial agent.

**16. Payments to registered referendum advertisers**

- (1) As soon as practicable once the registration of registered referendum advertisers is completed, the Referendum Commissioner shall make payments as set out below and in subsection (2):
- (a) \$150,000 in total shall be paid, with
    - (i) \$75,000 in total being allocated to the registered referendum advertisers that identified themselves on their registration applications as opponents, and
    - (ii) \$75,000 in total being allocated to the registered referendum advertisers that identified themselves on their registration applications as proponents;
  - (b) payments may be made to financial agents only.

**Amounts**

- (2) The total amount to be paid to each of the registered referendum advertisers shall be determined as follows:



- (a) the \$75,000 allocated under subclause (1)(a)(i) shall be divided by the number of registered referendum advertisers that identified as opponents, and the resulting amount paid to each of them;
- (b) the \$75,000 allocated under subclause (1)(a)(ii) shall be divided by the number of registered referendum advertisers that identified as proponents, and the resulting amount paid to each of them.

### **17. How public money may be used**

(1) For the purposes of this section and sections 18 and 19

- (a) **“disqualified person”** means
  - (i) an organization that is not eligible under section 8 to be a registered referendum advertiser, or
  - (ii) an individual described in subclause 8(4)(b)(i), (ii) or (iii);
- (b) **“member”** means a member of a registered referendum advertiser, and includes the financial agent of the registered referendum advertiser.

#### **Public money to be used only for permitted purposes**

(2) A member shall only use the public money received by the registered referendum advertiser for referendum expenses, and shall not incur a capital expense.

#### **Prohibition on contributions**

(3) A member shall not accept any contributions during the registration period.

#### **Prohibition on using money that is not public money**

(4) A member shall not use any money other than the public money received by the registered referendum advertiser for referendum advertising or generally for the purposes of opposing or supporting a mixed member proportional voting system, as the case may be, on behalf of the registered referendum advertiser, during the registration period.

#### **Prohibition on using public money for political purposes**

(5) A member shall not use the public money received by the registered referendum advertiser for the purpose of election advertising or making political donations, even if the election advertising or political donation would be used to oppose or support a mixed member proportional voting system.

#### **Prohibition on using public money to benefit disqualified persons**

(6) A member shall not use the public money received by the registered referendum advertiser in a manner that a reasonable person would consider

- (a) is primarily for the benefit of a disqualified person; or
- (b) features
  - (i) the name of a disqualified person,
  - (ii) the face or voice of a disqualified person, or
  - (iii) a slogan, a logo or another thing that is associated with a disqualified person,

regardless of whether the public money is also used to oppose or support a mixed member proportional voting system.

#### **Prohibition on spending more than public money received**

(7) A member shall not spend more than the amount of public money received by the registered referendum advertiser for referendum expenses of the registered referendum advertiser.

**Directions**

- (8) The Referendum Commissioner may issue directions respecting what a capital expense is, for the purpose of subsection (2).

**18. Repayment of unused public money**

- (1) A financial agent shall repay to the Referendum Commissioner public money held by the financial agent as follows:
- (a) if the financial agent receives a notice of repayment under subsection (3), repayment shall be made in the amount and within the time stated by the notice;
  - (b) if any public money is not used for referendum expenses, repayment of the amount of unused public money shall be made
    - (i) within 60 days of the end of the registration period, or
    - (ii) if debts are outstanding or in dispute, such longer period as the Referendum Commissioner permits on request;
  - (c) if public money is returned to the financial agent from any source, such as from a rebate or refund, the amount of the returned public money shall be repaid within 15 days of its receipt.

**Repayment may be required**

- (2) The Referendum Commissioner may, at any time, require a financial agent to repay all or part of the unused public money held by the financial agent if the Referendum Commissioner has reason to believe that any of the following grounds apply:
- (a) the organization on behalf of which the financial agent is acting is not eligible to be a registered referendum advertiser, or is not an opponent or proponent, as the case may be;
  - (b) the person is not eligible to be a financial agent, or has contravened any provision of this Act;
  - (c) the registered referendum advertiser or a member has contravened any provision of this Act.

**Notice of requirement to repay**

- (3) The Referendum Commissioner may require repayment under subsection (2) by delivering to the financial agent a notice of repayment setting out
- (a) the amount owed;
  - (b) the time in which the amount shall be repaid;
  - (c) the reason for the repayment; and
  - (d) the manner in which repayment shall be made.

**Amount not repaid is debt due to Government**

- (4) If a financial agent does not repay public money in accordance with this section, the amount that is not repaid is a debt due to the Government by the financial agent.

**Transfer**

- (5) An amount repaid to the Referendum Commissioner under this section or section 19 or 20 shall be transferred as soon as possible to the Minister of Finance to be paid into the Operating Fund.



**19. Misused public money or prohibited contributions**

- (1) If a financial agent has reason to believe that public money was used for a purpose or in a manner contrary to section 17, or that a contribution was accepted contrary to section 17, the financial agent shall report to the Referendum Commissioner, within 15 days of becoming aware that the public money may have been misused or the contribution may have been improperly accepted,
- (a) the amount of public money that may have been misused or the contribution that may have been improperly accepted;
  - (b) the reason the financial agent believes that the public money may have been misused or the contribution improperly accepted;
  - (c) if known, the person who may have been responsible for the doing so;
  - (d) whether the public money that may have been misused has been repaid to the financial agent or the contribution that may have been wrongly accepted has been repaid or returned to the contributor, as the case may be; and
  - (e) any other information the Referendum Commissioner requires.

**Report required**

- (2) If the Referendum Commissioner has reason to believe that public money was used for a purpose or in a manner contrary to section 17, or that a contribution was accepted contrary to section 17, the Referendum Commissioner may require a financial agent to provide to the Referendum Commissioner, within the time stated by the Referendum Commissioner, the information required by the Referendum Commissioner.

**Repayment required**

- (3) If the Referendum Commissioner has reason to believe that public money was, or was likely, misused by a member, the Referendum Commissioner may require the financial agent to repay to the Referendum Commissioner all or part of the amount that was misused.

**Repayment or return required**

- (4) If the Referendum Commissioner has reason to believe that a contribution was, or was likely, improperly accepted by a member, the Referendum Commissioner may require the financial agent to repay or return, if practicable, all or part of the contribution to the person who made the contribution.

**Notice of requirement to repay or return**

- (5) For the purposes of subsection (3) or (4),
- (a) the Referendum Commissioner may require the repayment or return by delivering to the financial agent a notice setting out
    - (i) the amount owed or the contribution to be returned,
    - (ii) the time in which the amount shall be repaid or contribution returned,
    - (iii) the reason for the repayment or return, and
    - (iv) the manner in which the repayment or return shall be made;
  - (b) the financial agent shall repay the amount or return the contribution as required in the notice; and
  - (c) if the notice concerns the repayment of public money, the amount that is not repaid is a debt due to the Government by the financial agent if
    - (i) the Referendum Commissioner has reason to believe that the financial agent knew or ought to have known at the time of disbursing the public money that the public money would be, or would likely be, misused,

- (ii) the Referendum Commissioner includes in the notice the reasons for the belief in subclause (i), and
- (iii) the financial agent does not repay the public money in accordance with this subsection.

## 20. Reconsideration of notice

- (1) A financial agent who receives a notice under section 18 or 19 may request the Referendum Commissioner to reconsider the notice by submitting to the Referendum Commissioner
  - (a) a written request for reconsideration in the form required by the Referendum Commissioner; and
  - (b) the reasons why the Referendum Commissioner should reconsider
    - (i) the issuance of the notice,
    - (ii) the amount set out in the notice, or
    - (iii) the time for repayment or return set out in the notice.

### Decision

- (2) After considering a request for reconsideration, the Referendum Commissioner may confirm, rescind or vary the notice.

### Written reasons

- (3) The Referendum Commissioner shall provide written reasons for a decision to confirm or vary the notice.

### Result

- (4) Following a decision made under subsection (2),
  - (a) if the notice is confirmed or varied, the financial agent shall repay the public money or return the contribution in accordance with the decision and, for this purpose, subsection 18(4) or 19(5), if applicable, applies; and
  - (b) no further request for reconsideration may be made.

## 21. Rescission of appointment of financial agent

- (1) If the Referendum Commissioner
  - (a) has reason to believe that a financial agent
    - (i) is not eligible to be a financial agent, or
    - (ii) has committed an offence under this Act; or
  - (b) delivers to a financial agent a notice under section 18 or 19,the Referendum Commissioner may rescind the appointment of the financial agent by delivering to the financial agent a notice of rescission setting out the reason for the rescission and the date on which it is to take effect.

### Request for reconsideration

- (2) A financial agent who receives a notice of rescission may request the Referendum Commissioner to reconsider the notice by submitting to the Referendum Commissioner
  - (a) a written request for reconsideration in the form required by the Referendum Commissioner; and
  - (b) the reasons why the Referendum Commissioner should reconsider the rescission.





**Decision**

- (3) After considering a request for reconsideration, the Referendum Commissioner may confirm, rescind or vary the notice.

**Written reasons**

- (4) The Referendum Commissioner shall provide written reasons for a decision to confirm or vary the notice.

**Result**

- (5) Following a decision made under subsection (3),
- (a) if the decision is to rescind a financial agent's appointment, the appointment of the financial agent is rescinded on the date set by the Referendum Commissioner; and
  - (b) no further request for reconsideration may be made.

**CHIEF ELECTORAL OFFICER, CONDUCT OF VOTE****22. Referendum vote to be conducted under *Election Act***

- (1) The Chief Electoral Officer is responsible for the conduct of the referendum vote and the counting of the referendum votes, in accordance with the *Election Act* and this Act.

**Application of *Election Act***

- (2) The provisions of the *Election Act*, including, for greater certainty, any rules or directions made under that Act, apply, as far as they are applicable and with any necessary changes, to the referendum as if it were a poll held for the general election, unless the provision is excluded or modified, expressly or impliedly, by a provision in, or a direction made under, this Act, and, in particular, references in those sections
- (a) to ballots or ballot papers shall be construed as a reference to referendum ballots or referendum ballot papers;
  - (b) to candidate shall be construed as a reference to response to the question; and
  - (c) to election shall be construed as a reference to referendum.

**Provisions of this Act overrule**

- (3) Subsection (2) is subject to the provisions of this Act.

**Adaptation for purposes of this Act**

- (4) For the purpose of carrying into effect this section, or section 23 or 24, or in order to adapt this section, subsection 23(1) of this Act or the relevant provisions of the *Election Act*, including rules in and directions made under that Act, in respect of a particular circumstance related to the conduct of the referendum, the Chief Electoral Officer may issue a direction as he or she considers necessary or advisable in order to execute the intent of this Act and the *Election Act*.

**Notice--when**

- (5) The Chief Electoral Officer shall provide notice of the direction in accordance with subsection (6) as soon as possible after the direction is made.

**Notice--how**

- (6) The direction shall be published on the Elections PEI website on the Internet and provided to the Referendum Commissioner.

**Effect of section and direction**

- (7) Any action taken or referendum vote held in accordance with this section or a direction made under this section is not invalid only by reason of any inconsistency with this Act or the *Election Act*.

**23. Conduct of referendum**

- (1) The referendum is to be conducted in conjunction with the general election, in accordance with the *Election Act* and this Act.

**Responsibility of Chief Electoral Officer and election officers**

- (2) The Chief Electoral Officer and other election officers responsible for the general election proceedings are also responsible for the referendum proceedings.

**Referendum voting to be on an electoral district basis**

- (3) The referendum is to be conducted in all electoral districts in the province, with the voting conducted separately for each electoral district in conjunction with the election being held for the electoral district.

**How person may vote in the referendum**

- (4) A person may vote in the referendum
- (a) at any voting opportunity at which the person is entitled to vote in the general election; or
  - (b) by mail-in ballot voting in accordance with the *Election Act*, if the individual is entitled to vote this way in the general election.

**24. Ballots**

- (1) The referendum ballots shall include the question set out in Schedule 1 to this Act and shall be printed in such a manner that, when completed and folded, they are distinguishable from the election ballots.

**Ballot boxes**

- (2) The ballot boxes for the general election are to be used for both the general election and the referendum, with both the election ballots and the referendum ballots being deposited in the same ballot boxes.

**Poll book**

- (3) The poll book for the general election is to be used for both the general election and the referendum.

**GENERAL****25. Appropriation**

Costs related to the administration of this Act and the conduct of the referendum may be paid out of the Operating Fund.

**26. Offences**

- (1) A person commits an offence who



- (a) fails to cooperate with the inquiries or to obey the requirements, notices or directions of the Referendum Commissioner;
- (b) incurs referendum advertising expenses contrary to subsection 8(1);
- (c) accepts contributions contrary to subsection 17(3);
- (d) uses money contrary to subsection 17(4);
- (e) uses or spends public money contrary to section 17; or
- (f) makes a false statement in a report filed under this Act.

**General offences and penalty**

- (2) Subject to subsection (3) or (4), if applicable, a person who contravenes any provision of this Act is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000.

**Exceeding maximum amount permitted for referendum advertising expenses**

- (3) A person who incurs referendum advertising expenses in excess of \$500 contrary to subsection 8(1) is guilty of an offence and liable on summary conviction to a fine in an amount that is the greater of
  - (a) \$10,000; and
  - (b) the amount incurred in excess of \$500.

**Exceeding maximum spending amount permitted for registered referendum advertisers**

- (4) A person who, on behalf of a registered referendum advertiser, uses or spends an amount of money on referendum expenses in excess of the amount permitted by section 17 is guilty of an offence and liable on summary conviction to a fine in an amount that is the greater of
  - (a) \$10,000; and
  - (b) the amount spent on referendum advertising in excess of the permitted amount.

**Same offence for member of registered referendum advertiser**

- (5) A member of a registered referendum advertiser commits the same offence as an offence committed by the registered referendum advertiser's financial agent, if the financial agent commits the offence with the knowledge of the member.

**Personal liability of corporate officers for offence of corporation**

- (6) Any officer, director or agent of a corporation who directs, authorizes, assents to, acquiesces in or participates in the commission of an offence under this Act by that corporation commits the same offence.

**Continuing offence**

- (7) Where a contravention of or failure to comply with any provision of this Act or any requirement, notice or direction continues for more than one day, the person is guilty of a separate offence for each day that the contravention or failure to comply continues.

### SCHEDULE 1

#### FORM OF QUESTION FOR REFERENDUM BALLOT PAPER

Should Prince Edward Island change its voting system to a mixed member proportional voting system?

NO

YES

## SCHEDULE 2

### DESCRIPTION OF THE PROPOSED MIXED MEMBER PROPORTIONAL SYSTEM

The Mixed Member Proportional (MMP) System is a form of Proportional Representation (PR). In the proposed MMP system, a reduced number of Members of the Legislative Assembly would be elected in electoral districts to represent local constituents, while the remaining Members of the Legislative Assembly would be elected through a new province-wide Party List System.

The MMP model recommended in the Report of the Special Committee of the Legislative Assembly on Democratic Renewal, dated April 15, 2016, would see a decrease in the number of PEI electoral districts from the current 27 to 18, as has been shown in the map provided in the Special Report of the Electoral Boundaries Commission, dated March 13, 2018. Each of these 18 electoral districts would be represented by a Member of the Legislative Assembly.

Nine additional Members of the Legislative Assembly would not represent an electoral district but would hold province-wide Party List seats. Voters would elect these nine Members of the Legislative Assembly from an ordered list of candidates provided by political parties.

With MMP, there are two parts to the ballot that voters must fill out on election day. On the first part of the ballot, voters mark an 'X' indicating their preferred candidate for their local electoral district. On the second part of the ballot, voters mark an 'X' indicating their preferred candidate from the list for their preferred party. These votes on the second part of the ballot would be used to determine each party's province-wide popular vote, and the number of votes each candidate on the party list receives will determine their ranking.

List seats are allocated proportionally, based on the popular vote each party receives on the second part of the ballot. The system is designed so that the list seats become "top-up" or compensatory seats to accommodate for disproportionate results in the local district FPTP elections.

Under MMP, voters would receive a two-part ballot:

- Part one would list the candidates for that electoral district
  - Voters would cast a vote to elect a single MLA for their district,
  - Voters would mark an 'X' beside the candidate of their choice,
  - The candidate with the most votes would become the Member of the Legislative Assembly to represent the constituents of that electoral district;
- Part two would list the candidates for province-wide Party List Seats as selected by political parties
  - Lists would be open - voters would cast a single vote for a province-wide Party List MLA,
  - Voters would mark an 'X' beside the candidate of their choice (they may vote for a candidate for the same party or a candidate for a different party as the district candidate they support),
  - The candidates who receive the most votes for the political party to receive additional "top up" seats would be selected. For example: If a political party has six candidates on its province-wide list and is entitled to receive three Party List seats, the three of

the party's candidates who receive the most votes are selected and become Members of the Legislative Assembly.

Election law will, pursuant to the D'Hondt method<sup>1</sup>, determine the number of list seats each party is entitled to when the popular vote results (expressed as a percentage) would give a Party a fraction of a seat.

<sup>1</sup> The D'Hondt method consists of an iterative process, where each party is given a number ( $N = V/s + 1$ ) where V is its total number of votes, and s is the number of seats it has already been allocated. At each stage, the party with the highest value of N is given a seat, and its value of s goes up by one.



## EXPLANATORY NOTES

**SECTION 1** establishes definitions for the purposes of the Act.

**SECTION 2** sets out the purpose of the Act.

**SECTION 3** requires that a referendum on the electoral system be conducted with the next general election, and sets out the question, how the question is to appear on the referendum ballot and who is entitled to vote at the referendum.

**SECTION 4** provides when the result of the referendum is binding and what that entails.

**SECTION 5** provides for a Referendum Commissioner to guide the referendum process, and provides that the Referendum Commissioner is an officer of the Legislative Assembly, appointed and remunerated as set out in the section and may hire persons and expend money as required to perform the duties of the office.

**SECTION 6** sets out the powers and duties of the Referendum Commissioner.

**SECTION 7** requires the Referendum Commission to make a report to the Legislative Assembly following the referendum.

**SECTION 8** sets out rules for referendum advertisers and eligibility criteria for referendum advertisers to register.

**SECTIONS 9 to 11** set out how to apply to be registered as a registered referendum advertiser and the eligibility requirements for financial agents for these organizations.

**SECTION 12** sets out the duties of a financial agent of a registered referendum advertiser.

**SECTION 13** provides how the *Election Expenses Act* applies.

**SECTION 14** provides authority for the Referendum Commissioner to issue directions respecting the application of the Act and the *Election Expenses Act*.

**SECTION 15** concerns how a financial agent may be changed.

**SECTION 16** provides for payments of public money to registered referendum advertisers.

**SECTIONS 17 to 20** concern the use and repayment of public money, and require the reporting of any misused public money or prohibited contributions that are received by a registered referendum advertiser.

**SECTION 21** sets out how a financial agent's appointment may be rescinded.

**SECTIONS 22 and 23** provide that the referendum vote and vote counting will be conducted by the Chief Electoral Officer under the *Election Act*, and provide related authority.

**SECTION 24** sets out the form of the referendum ballot and states that the same ballot boxes and poll book are to be used for both the general election and referendum.

**SECTION 25** authorizes that the costs related to the administration of the Act and the conduct of the referendum may be paid out of the Operating Fund.

**SECTION 26** sets out offences and penalties for the Act.

**SCHEDULE 1** sets out the form of the question for the referendum ballot paper.

**SCHEDULE 2** sets out a description of the proposed mixed member proportional system that would be the basis of legislation to be introduced by the Government, should a majority of the electors who are recorded in the poll book as having voted at the general election favour that choice in the referendum.







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(Bill No. 38)

**Electoral System Referendum Act**

<i>STAGE:</i>	<i>DATE:</i>
<i>1st Reading:</i>	May 10, 2018
<i>2nd Reading:</i>	
<i>To Committee:</i>	
<i>Reported:</i>	
<i>3rd Reading and Pass:</i>	
<i>Assent:</i>	

**SIGNATURES:**

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Honourable Antoinette Perry, Lieutenant Governor

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Honourable Francis (Buck) Watts, Speaker

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Charles H. MacKay, Clerk

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Hon. Jordan K. M. Brown  
Justice and Public Safety and Attorney General

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GOVERNMENT BILL

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2018  
3rd SESSION, 65th GENERAL ASSEMBLY