

Office of the
Chief Electoral Officer
of Ontario



Bureau du directeur
général des élections
de l'Ontario

DIRECTIVE FOR ALL ELECTORAL DISTRICTS

ON

**ACCESSIBLE VOTING EQUIPMENT AND
RELATED VOTE COUNTING EQUIPMENT**

FOR THE

2011 GENERAL ELECTION

I, GREG ESSENSA, CHIEF ELECTORAL OFFICER, under the authority of section 44.1 of the *Election Act*, R.S.O. 1990, c E.6 (as amended) do hereby direct that for the 2011 General Election:

- A. Electors shall be issued ballots that shall be counted using vote tabulators if they vote at the offices established by the returning officer for:
 - (1) advance polls held from September 21 to 30, 2011; and,
 - (2) voting in person by special ballot from October 1 to 5, 2011.
- B. Electors shall, upon request, be able to mark such ballots using a ballot marking device designed to assist electors with disabilities.
- C. In order to facilitate this use of vote tabulators and ballot marking devices, specific provisions of the *Election Act* will not be followed. The provisions that will not be followed are sections: 33(1) to (3); 34(5) and (6); 35(2) and (3); 45(4) to (6); 46(2) to (5); 47 (5) and (6); 48(1) to (2.1); 57(1) to (5); 58(1); and, 60.
- D. The following supplementary rules shall apply to the use of vote tabulators and ballot marking devices:

Supplementary Rules for Vote Tabulators and Ballot Marking Devices

Definitions

1. In these rules,

"Act" means the *Election Act*, R.S.O. 1990, c. E.6 (as amended).

"ambiguously marked ballot" means a ballot that the vote tabulator reports has almost undetectable marks and, since it is uncertain if they are marks made by an elector, is treated as a misread ballot.

"auxiliary compartment" means the separate compartment of the box to which the vote tabulator is affixed where electors' ballots are temporarily stored in the event a vote tabulator fails to operate.

"ballot box" means the box to which the vote tabulator is affixed where ballots are stored once they are accepted by the vote tabulator.

"ballot marking device" means the assistive device provided by the Chief Electoral Officer, which prints a ballot with a mark in the circular space beside a candidate's name, after an elector has followed voice prompts and selected a candidate,

(1) by pressing buttons on a key pad,

(2) by using pressure sensitive paddles, or,

(3) by sipping or puffing on a straw.

"deputy returning officer" means the person appointed by the returning officer pursuant to section 39 of the Act to perform the duties of that office for advance polls from September 21 to 30, 2011.

"memory card" means a card that is a removable, battery-sustained memory, where all tabulated vote totals and digital images of the ballots in the ballot box are stored.

"misread ballot" means a ballot that will not be accepted by the vote tabulator because the ballot is damaged, defective, or it is otherwise unreadable by the vote tabulator.

"offices established by the returning officer" means the returning office established by a returning officer and all satellite returning offices established by him or her in accordance with the direction of the Chief Electoral Officer.

“rejected ballot” means a ballot which is marked in more than one of the circular spaces or that cannot be counted for any one of the candidates.

“secrecy folder” means the folder in which a ballot can be placed so as to conceal the name of the candidates and any mark made by the voter upon the face of the ballot, but which exposes the initials of the deputy returning officer or special ballot officer.

“special ballot officer” means a person appointed pursuant to section 45.1(b) of the Act and who also performs the duties of a deputy returning officer in connection with voting in person by special ballot from October 1 to 5, 2011.

“tabulator deputy returning officer” means the person appointed by the returning officer to operate the vote tabulator and assist electors with its use under the direction of the deputy returning officer or special ballot officer.

“unmarked ballot” means a ballot where none of the circular spaces are marked.

“vote tabulator” means a machine that digitally scans a specified area on a ballot to read the elector’s vote and tabulates the results.

“zero totals report” means the report from a vote tabulator’s memory card that confirms zero vote totals for each candidate.

Matters not provided for

2. Where these rules do not provide for any matter, the procedures used shall accord with the principles and procedures of the Act as determined and directed by the Chief Electoral Officer.

Ballot Paper and form of the Ballot

3. (1) The ballot paper shall not have the security features prescribed in section 33 of the Act as the ballots are printed with timing marks which offer comparable protection.

(2) The ballots shall conform to the requirements of sections 34 and 35 of the Act except that:

1. All required information shall be printed on the front of the ballot.
2. The printer’s name shall not be printed on the ballot.
3. The ballots shall not be numbered consecutively and shall not have stubs as they shall not be stapled or stitched into units.

(3) Ballots which are to be marked manually shall be printed with the names of the candidates and their registered party's name or the words "Independent/Indépendent".

(4) With the exception of having a box for the deputy returning officer or special ballot officer's initials, ballots which are to be marked using the ballot marking device shall not be pre-printed as the front of the completed ballot is printed by the ballot marking device.

Programming of the Vote Tabulators

4. (1) The vote tabulator shall be programmed so that the following ballots are returned to the tabulator deputy returning officer:

1. A rejected ballot.
2. An unmarked ballot.
3. A misread ballot.
4. An ambiguously marked ballot.

(2) The vote tabulator shall be programmed to produce a results tape of the number of votes cast for each candidate, as well as rejected and unmarked ballots, and shall be used by the returning officer after polls close on polling day to report the results of the advance polls held in offices established by the returning officer and for special ballots cast in person from October 1 to 5 at offices established by the returning officer

Testing of Vote Tabulators and Ballot Marking Devices

5. (1) Prior to the first use of vote tabulators and ballot marking devices, the tabulator deputy returning officer shall test the vote tabulators and ballot marking devices to ensure that they accurately mark ballots and count the votes cast for all candidates.

(2) The returning officer shall give notice of the date, time and location of the testing of the vote tabulators and ballot marking devices to the candidates.

(3) Ballots for all of the candidates shall be created using each of the interfaces designed to accommodate persons with disabilities in order to verify the ballots are correctly marked by the device.

(4) The test of the vote tabulators shall be conducted by;

1. Powering up the vote tabulator and activating the vote tabulator using the secure key.
2. Inserting the memory cards into the vote tabulator.

3. Printing a zero totals report.
4. Tabulating a pre-audited group of ballots marked both manually and by the ballot marking device in accordance with (3), above, that include ballots in the following categories,
 - i. rejected ballots,
 - ii. unmarked ballots,
 - iii. misread ballots,
 - iv. ambiguously marked ballots, and,
 - v. ballots on which are recorded a predetermined number of valid votes for each candidate.
5. Printing the results from the vote tabulators.
6. Comparing the output of the tabulation against the pre-audited results.
7. Steps 2 to 6 shall be repeated to complete the testing of the different memory cards to be used by the vote tabulators for,
 - i. the advance polls, and,
 - ii. special ballots cast in person.

(4) If the tabulator deputy returning officer detects any error in the test, the cause of the error shall be ascertained and corrected and the test repeated until an errorless test is achieved and certified by the tabulator deputy returning officer.

(5) The tabulator deputy returning officer shall, at the completion of the test, ensure that the vote totals are cleared from the memory cards.

(6) The returning officer shall retain and have access to the pre-audited group of ballots, the results tapes that were produced during the test and other materials used in the programming of the vote tabulators; and

(7) The returning officer shall not alter or make changes to the materials.

Candidates and Scrutineers

6. A candidate or his or her scrutineer may be present in the offices established by a returning officer for the period of time when vote tabulators and ballot marking devices will be in use for the sole purposes of:

1. Requesting that a deputy returning or special ballot officer require an elector to declare his or her eligibility to vote prior to being issued a ballot.
 2. Signing any seals under rules 8(2) and 17(2).
7. To protect the secrecy of the vote while ballots are being deposited in the vote tabulator by the tabulator deputy returning officer, candidates or scrutineers shall not be permitted to examine or object to ballots or to the counting of ballots by a vote tabulator.

Opening procedures on September 21 and October 1, 2011

8. (1) Before the ballot box is sealed in the 15 minutes prior to the start of voting on September 21 and October 1, 2011:

1. The tabulator deputy returning officer shall inspect the ballot box and auxiliary compartment to confirm they are empty.
2. Any candidates or scrutineers present at that time may have the number of ballots counted in their presence, inspect all other materials relating to the poll, and inspect the ballot box and auxiliary compartment to confirm they are empty.
3. A copy of all totals in the vote tabulator's memory cards shall be printed, in the presence of any candidates or scrutineers then present, so as to confirm zero vote totals.

(2) If the totals are zero for all candidates:

1. The ballot box shall be sealed and the seal shall be initialled by the tabulator deputy returning officer and may be initialled by any candidate or scrutineer present.
2. The zero totals report shall remain affixed to the vote tabulator during voting and, at the close of the advance polls, it shall be placed in an envelope with the election materials.

(3) If the totals are not zero for all candidates, the tabulator deputy returning officer may then direct that:

1. Voting may commence, at the discretion of the tabulator deputy returning officer, with ballots being deposited into the auxiliary compartment until the vote tabulator is made operational or a replacement vote tabulator is made available at the location; or,
2. A replacement vote tabulator shall be used for voting in accordance with rule 13(1).

Issuing Ballots

9. (1) Every elector who is entitled to receive a ballot shall be given the ballot in a secrecy folder.

(2) Before an elector is issued a ballot, the deputy returning officer or special ballot officer shall advise the elector that a ballot can be marked manually or using the ballot marking device.

(3) An elector who wishes to mark his or her ballot manually shall be issued a ballot in the form described in rule 3(2) and (3).

(4) An elector who wishes to mark his or her ballot using the ballot marking device shall be issued a ballot in the form described in rule 3(4).

Where the Ballot is marked manually

10. (1) An elector who is issued a ballot to be marked manually shall:

1. Proceed to one of the voting screens.
2. Remove the ballot from the secrecy folder.
3. Indicate the candidate of his or her choice by marking one of the circular spaces on the ballot with a cross or other mark using the pen provided.

(2) Once the elector has marked the ballot, the elector shall:

1. Insert the ballot into the secrecy folder with the deputy returning officer's initials still visible.
2. Give the secrecy folder containing the ballot to the tabulator deputy returning officer.
3. Be asked to wait beside the tabulator deputy returning officer while the tabulator deputy returning officer deposits the ballot into the vote tabulator.

(3) For greater certainty, an elector who is unable to read or who is disabled is not required to use the ballot marking device and may be assisted in marking their ballot manually by the deputy returning officer or special ballot officer or a friend in the manner prescribed in section 55 of the Act if so desired.

Where the Ballot is marked using a Ballot Marking Device

11. (1) An elector who is issued a ballot to be marked using the ballot marking device shall:

1. In consultation with the tabulator deputy returning officer determine the type of assistance required by the elector.
2. Be instructed on how to use the ballot marking device.

(2) The tabulator deputy returning officer shall insert the ballot into the ballot marking device using the secrecy folder.

(3) The elector shall be provided with the appropriate requested assistive device to mark the ballot.

(4) After listening to the ballot marking device's instructions, the elector may select the candidate of his or her choice using the ballot marking device and, before the ballot is printed, may verify that selection using the ballot marking device's audio confirmation.

(5) Once the ballot marking device has printed the elector's ballot, the tabulator deputy returning officer shall remove the secrecy folder containing the ballot and, upon verifying the initials on the ballot, invite the elector to wait while the tabulator deputy returning officer deposits the ballot into the vote tabulator and invite the elector to use the ballot marking device's audio confirmation to verify his or her selection.

Rejected, Unmarked, Misread, or Ambiguously Marked Ballots

12. (1) When a ballot marked as described in rules 10 and 11 has been returned by the vote tabulator because it is a rejected ballot, an unmarked ballot, a misread ballot, or an ambiguously marked ballot:

1. The tabulator deputy returning officer shall advise the waiting elector and ask the elector if he or she wishes to return that ballot and receive another ballot.
2. If the elector wishes to receive another ballot,
 - i. the original ballot shall be returned to the deputy returning officer or special ballot officer,
 - ii. the deputy returning officer or special ballot officer shall mark the original ballot "cancelled", place it in the cancelled ballot envelope, and give another ballot to the elector, and,
 - iii. the deputy returning officer or special ballot officer shall instruct the elector to mark another ballot in accordance with the instructions.
3. If the elector's ballot was a rejected ballot or an unmarked ballot and the elector does not wish to receive another ballot, the tabulator deputy returning officer shall deposit the ballot into the vote tabulator.

4. If the elector's ballot was a misread ballot or an ambiguously marked ballot and the elector does not wish to receive another ballot, the ballot shall be dealt with in the manner prescribed in rule 14(4).

(2) When a ballot marked as described in rules 10 and 11 is returned by the vote tabulator and the elector has left the polling place, the ballot shall be dealt with by the tabulator deputy returning officer in the manner prescribed in rules 14(2) to (4).

Inoperative Vote Tabulators and Ballot Marking Devices

13. (1) If, in the opinion of the tabulator deputy returning officer, a vote tabulator becomes inoperable and the deputy returning officer or special ballot officer determines that voting may continue, the tabulator deputy returning officer shall replace the vote tabulator by transferring the memory cards from the inoperable vote tabulator to the replacement vote tabulator.

(2) When a vote tabulator is replaced the zero totals report shall be affixed to the replacement vote tabulator.

(3) If voting continues pending the replacement of a vote tabulator, the tabulator deputy returning officer shall insert the ballots into the auxiliary compartment.

(4) If, in the opinion of the tabulator deputy returning officer, a ballot marking device becomes inoperable and the deputy returning officer or special ballot officer determines that voting may continue, electors who are unable to read or who are disabled shall be advised by the deputy returning officer or special ballot officer that they may be assisted in marking a ballot manually by the deputy returning officer or special ballot officer or a friend in the manner prescribed in section 55 of the Act if so desired.

Opening the Auxiliary Compartment

14. (1) When the vote tabulator becomes operable, the tabulator deputy returning officer shall:

1. Remove the ballots from the auxiliary compartment.
2. Seal the auxiliary compartment.
3. Deposit the ballots into the vote tabulator.

(2) Where the vote tabulator indicates that a ballot is either unmarked or rejected, the tabulator deputy returning officer shall press the accept button so that the ballot is deposited into the ballot box.

(3) Where the vote tabulator indicates that the ballot is a misread ballot, the ballot shall be set aside and held securely by the deputy returning officer or special ballot officer.

(4) Where any ballots are set aside and held securely by the deputy returning officer or special ballot officer, they shall be dealt with in the following manner before the start of the closing procedures on the last day of the advance polls:

1. The returning officer, deputy returning officer, or special ballot officer shall cancel the original ballot and prepare a replacement ballot in full view of any candidates or scrutineers present by,
 - i. marking a new ballot with the same marks contained in the circular space(s) on the misread ballot, and the replacement ballot shall be clearly labelled "replacement" on the back of the ballot and given a unique and sequential number which shall also be recorded on the back of the misread ballot and in the poll record, and
 - ii. substituting the replacement ballot for the misread ballot and depositing the replacement ballot into the vote tabulator.
2. The original ballot shall be placed in the envelope with cancelled ballots.
3. The number of replacement ballots shall be included in the number of cancelled ballots reported to the returning officer.

Closing procedures from September 21 to 29 and from October 1 to 4, 2011

15. The tabulator deputy returning officer shall:

- (1) Provide the deputy returning officer or special ballot officer with the number of ballots accepted by the vote tabulator which shall be recorded on the form supplied by the returning officer.
- (2) Power down the vote tabulator using the secure key.
- (3) Ensure that all seals on the ballot box are intact.
- (4) Secure the vote tabulator and ballot marking device in the polling place in conjunction with the deputy returning officer or special ballot officer.

Opening procedures from September 22 to 30 and from October 2 to 5, 2011

16. Before the start of voting from September 22 to 30 and from October 2 to 5, 2011, and in the presence of any candidates or scrutineers at the location, the tabulator deputy returning officer shall:

- (1) Check all seals on the ballot box are intact.

(2) Power up the vote tabulator and activate the vote tabulator using the secure key.

(3) Confirm with the deputy returning officer or special ballot officer that the number of ballots cast has not changed from the previous day's close of voting.

Closing procedures on September 30 and October 5, 2011

17. (1) After the close of voting on September 30 and October 5, 2011, in the presence of any candidates or scrutineers, the tabulator deputy returning officer shall:

1. Ensure that the auxiliary compartment of the ballot box does not contain any ballots that have not been processed.
2. If the auxiliary compartment of the ballot box does contain any ballots, they shall be dealt with in accordance with rule 14.
3. Record the number of ballots accepted by the vote tabulator.
4. Power off the vote tabulator using the secure key.
5. Remove the the vote tabulator from the ballot box and seal the ballot box..
6. Complete the ballot reconciliation statement addressing the number of,
 - i. ballots received from the returning officer,
 - ii. ballots accepted by the vote tabulator,
 - iii. cancelled ballots,
 - iv. declined ballots, and
 - v. unissued ballots.
7. Sign and place the original copy of the statement along with other election material into the designated envelope to be returned to the returning officer.

(2) Where a seal with the deputy returning officer or special ballot officer's signature is affixed to any envelope, container, document or equipment, the candidates or scrutineers present may also affix their signatures.

Vote Tabulator Results

18. (1) The total number of the votes from vote tabulators shall not be produced until after 9:00 p.m. (Eastern Time) on polling day.

(2) The returning officer shall give candidates notice of the location designated by the returning officer for the purpose of producing the vote tabulator results.

(3) Each candidate and one scrutineer for each candidate may be present at the returning office.

(4) After 9:00 p.m. (Eastern Time), the tabulator deputy returning officer shall:

1. Print at least two copies of the results tape from the memory card in the vote tabulator that has recorded the ballots cast by in person special ballot voting.
2. Remove the copy of the results tape from the vote tabulator and sign the results tape with any candidates or scrutineers who are present and wish to sign.
3. Place the copy of the results tape into the designated envelope.
4. Complete the prescribed form.
5. Advise the candidates or scrutineers present of the results.
6. Remove the memory card that has recorded the ballots cast by in person special ballot voting and;
 - i. insert the memory card that has recorded the ballots cast in advance polls from September 21 to 30, 2011,
 - ii. print at least two copies of the results tape for this memory card,
 - iii. repeat steps 2 and 3, above in relation to this results tape, and,
 - iv. Complete the prescribed form as well the form setting out the unofficial results which is given to candidates or scrutineers.
7. Once results tapes have been generated from the memory cards for ballots cast in person and ballots cast in advance polls, the memory cards shall have their recorded results erased so that the memory cards can be tested in the vote tabulators in accordance with rule 19.

Post Election Testing of Vote Tabulators and Ballot Marking Devices

19. (1) Before the official tabulation, the tabulator deputy returning officer shall test the vote tabulators and ballot marking devices in accordance with rules 5(2) and (3) to ensure that they accurately marked ballots and counted the votes cast for candidates.

(2) In the event that the tests under (1) are inconsistent, the returning officer shall immediately advise the Chief Electoral Officer to obtain direction in accordance with subsection 44.1(8) of the Act.

Retention of records

20. The returning officer shall retain the memory cards, test materials and ballots in the manner described for election documents and materials in the Act.

Dated at the City of Toronto,
in the Province of Ontario
this 30th day of August, 2011.

Greg Essensa
Chief Electoral Officer