



# Elections Ontario

Media Backgrounder

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## **Technical backgrounder: voting process and judicial recounts**

TORONTO, February 27, 2020 - This document provides an overview of the:

- Voting process for the 2020 Ottawa—Vanier and Orléans by-elections
- Recount process and the Chief Electoral Officer's recommendations on how recounts should be conducted.

### **Part one: The voting process for the 2020 Ottawa—Vanier and Orléans by-elections**

#### **A. Background**

The *Election Act*, R.S.O. 1990, c. E.6 (as amended) governs the voting process for provincial elections.

The Chief Electoral Officer (CEO) of Ontario, who is appointed by the Lieutenant Governor in Council as an officer of the Legislative Assembly, is responsible for the administration of the *Act*. Under the authority granted to him by the *Act*, the CEO issued directives for the 2020 Ottawa—Vanier and Orléans by-elections regarding the use of:

- vote tabulators and ballot marking devices
- special ballots
- ePoll books

This by-election involves two provincial electoral districts: Ottawa—Vanier and Orléans. There is one Returning Officer appointed for each electoral district. Returning Officers act under the direction of the CEO. An Election Clerk is appointed to assist the Returning Officer. In each electoral district, there is at least one returning office.

Each electoral district is divided into polling divisions by the Returning Officers, under the direction of the CEO by considering the distribution of the population in the electoral district. Elections Ontario prepares and publishes electoral district maps showing the polling division boundaries.

Polling places for each polling division are selected by the Returning Officer by considering the location's capacity, proximity and convenience for electors, any significant geographical barriers and the extent to which electors are familiar with the location.

Polling places are also setup on the premises of institutions such as hospitals, retirement homes, long term care homes and other institutions of 20 beds or more.

## **B. Voting, counting and reporting results**

There were two forms of ballots that were cast in the 2020 Ottawa—Vanier and Orléans by-elections:

- write-in ballots
- tabulator ballots

Table 1 describes:

1. How, when, and where these ballots were cast.
2. Which election officials were involved in the issuing and counting of these ballots.
3. Where that issuing and counting of ballots took place.

These election officials reported the results of the counting to the Returning Officer for the electoral district and (except in the case of write-in ballots mailed to Elections Ontario's headquarters) were responsible for securing all the election documents and delivering them to the Returning Officer.

Scrutineers were entitled to be present when ballots were cast because voting was supervised by election officials. Most write-in ballots that were mailed or delivered to a returning office or to Elections Ontario headquarters were not filled out by an elector under the supervision of election officials. The exception was that election officials were present at home visits to assist electors with their write-in ballots; scrutineers were not allowed to be present in these settings to respect the privacy of electors.

When write-in ballots were counted, scrutineers could be present and may have made objections to the officials present with respect to how a ballot was counted. Scrutineers were entitled to be present when vote tabulators were tested, used for voting, and generated results.

When all ballots were counted, results were reported in the following categories:

- **Votes given for each candidate respectively:** the ballots, cast by electors, which were accepted as valid for a candidate. The *Act*, and

the directive for vote tabulators, set out the rules for a validly marked ballot and the manual and instructions provided to election officials contained explanatory examples.

- **Unmarked ballots:** the ballots, cast by electors, which had no markings on them.
- **Rejected ballots:** the ballots, cast by electors, which were invalid.
- **Cancelled ballots:** the ballots, not cast by electors, because they were improperly printed, or were inadvertently dealt with in such a manner that they could not be used, or, they were returned by electors because they objected to the ballot or because the electors marked the ballot in an unintended way (i.e. the electors changed their minds and were issued a new ballot).
- **Declined ballots:** the ballots that were issued to electors, which they returned to an official, and indicated that they wished to decline, and which resulted in forfeiture of the vote.
- **Unissued ballots:** the blank ballots that were not issued to electors.

After February 27, 2020, upon receiving the required reports from all the election officials who had counted ballots in the electoral district (and the report from Elections Ontario headquarters about write-in ballots for that electoral district), the Returning Officer will conduct an official tabulation.

At the official tabulation, the Returning Officer will compile the results for each candidate from the reported results from each polling place. Ballots are not counted at the official tabulation because they were sealed and secured immediately after they were counted by the election officials who counted the ballots at the various polling places in the electoral district.

Candidates and their scrutineers are entitled to be present at the official tabulation. At the conclusion of the official tabulation, the Returning Officer will declare the candidate with the most votes to be elected. The Returning Officer will report these results to the CEO and returned these election documents to the CEO.

**Table 1: Forms of ballots**

| BALLOTS                    |  |  |  |
|----------------------------|--|--|--|
| When voting took place     | Where the elector voted  | Officials involved in issuing and counting the elector's ballot        | How and where votes were counted on February 27, 2020                        |
| February 19 to February 21 | In person at an area advance poll located anywhere in the elector's electoral district | An Advance Poll Revision Deputy Returning Officer and Tabulator Deputy | By the tabulator at the returning office or other location determined by the |

|   |  |  |  |
|---|--|--|--|
|   |  | Returning Officer  | Returning Officer  |
| February 16 to February 21                  | In person at the returning office (or any satellite returning office) advance poll in the elector's electoral district                       | An Advance Poll Revision Deputy Returning Officer and Tabulator Deputy Returning Officer   | By the tabulator at the returning office or other location determined by the Returning Officer                 |
| February 22 to February 26                  | In person by special ballot tabulator voting at the returning office (or any satellite returning office) in the elector's electoral district | A Special Ballot Officer and a Tabulator Deputy Returning Officer  | By the tabulator at the returning office or other location determined by the Returning Officer                 |
| February 27, 2020                           | In person at the assigned polling place for an elector's residential address   | For tech polls, a Supervising Deputy Returning Officer, Revision Deputy Returning Officer, a Deputy Returning Officer and a Tabulator Deputy Returning Officer<br><br>For non-tech polls a Deputy Returning Officer (assisted by a Poll Clerk) | By the tabulator at the polling place for a tech poll<br><br>Manually at the polling place for a non-tech poll |
| <b>WRITE-IN BALLOTS</b>                     |  |  |  |
| <b>When voting took place</b>               | <b>Where the elector voted</b>   | <b>Officials involved in issuing and counting the elector's ballot</b>   | <b>How and where votes were counted on February 27, 2020</b>   |
| January 30 to February 21                   | In person at the returning office (or any satellite returning office) in the elector's electoral district                                    | A Special Ballot Officer at the returning office (or any satellite returning office)   | Manually in the returning office (or the satellite returning office)   |
| January 30 to February 26                   | Home visit for disabled electors unable to get to a polling place and who request assistance   | Two Special Ballot Officers  | Manually in the returning office (or the satellite returning office)   |
| Any time before 6 p.m. on February 27, 2020 | Returned by mail to the returning office for the elector's electoral district  | Special Ballot Officers at the Returning Office  | Manually in the returning office (or the satellite returning office)   |
| Any time before 6 p.m. on February 27, 2020 | Returned by mail to Elections Ontario's headquarters   | Special Ballot Officers at Elections Ontario's headquarters  | Manually at Elections Ontario's headquarters   |

## **Part two: recount process**

### **A. Background**

The process for recounting ballots is prescribed in sections 69 to 79 of the *Election Act*. For there to be a recount of the ballots cast by electors, an

application must be made to a judge of the Ontario Court of Justice.

Within four days (Sunday being excluded) of a Returning Officer's close of the official tabulation and declaration of a winning candidate, an application for a recount:

- A. Must be made by the Returning Officer for an electoral district if the difference between the number of votes cast for the candidate with the largest number of votes and the candidate with the next largest number is less than 25.
- B. May be made by a candidate or elector in an electoral district if he or she believes that:
  - a. a deputy returning officer has improperly counted any ballot or improperly rejected any ballot or made an incorrect statement of the number of ballots cast for any candidate; or,
  - b. the returning officer has improperly tabulated the votes.

If the judge denies the application for a recount, the applicant, the Chief Electoral Officer, the Returning Officer and Election Clerk, and each candidate in the electoral district are notified.

If the judge grants the application for a recount:

- 1. the applicant, the Chief Electoral Officer, the Returning Officer and Election Clerk, and each candidate in the electoral district are notified; and,
- 2. the recount must be held within 10 days of the judge's hearing of the application.

The judge supervises the recount and appoints the time and place where it is held. The Returning Officer and the Election Clerk must be present, and each candidate is entitled to be present and to be represented by counsel (and have as many scrutineers as allowed by the judge). No one else is permitted to be present without permission of the judge.

At the recount, all the sealed envelopes containing ballots from the electoral district may be opened and counted by hand. Additionally, tabulator ballots are counted by hand.

The judge certifies the result of the recount to the Returning Officer unless, within two days of the completion of the recount, the judge receives a notice of appeal. When the Returning Officer receives the judge's certificate, the Returning Officer declares the candidate having the

largest number of votes to be elected.

## **B. Chief Electoral Officer's recommendations for conducting recounts**

A recount of the ballots cast by electors in an electoral district is conducted under the *Election Act* according to the process decided by the presiding judge.

If a recount is ordered, to assist with its fair and efficient conduct, the Chief Electoral Officer generally recommends that, if the application for the recount is granted, the judge immediately direct:

1. The Returning Officer to secure and equip a suitable and convenient location for the recount in or near the electoral district in coordination with the clerk of the court.
2. The sealed envelopes containing write-in ballots for the electoral district, which were received by the Chief Electoral Officer and are in his custody, be delivered into the custody of the Returning Officer for the purposes of the recount.
3. The Returning Officer to retain and equip enough persons as Recount Officials to assist the judge with:
  - a. Organizing, sorting, and tracking the sealed envelopes containing all the ballots for the electoral district.
  - b. Opening the sealed envelopes containing ballots.
  - c. Manually counting the ballots in the presence of scrutineers.
  - d. Sorting, tracking, and recording the ballots that scrutineers identify as being in dispute.
  - e. Completing the recount by re-sealing all ballots in the proper envelopes.

In respect of this recommendation, the Chief Electoral Officer suggests that no fewer than 20 counting teams, each composed of two officials retained by the Returning Officer, be established to assist with the manual count of all ballots. This will ensure that the counting of ballots can be completed in one, or at most, two days.

4. The clerk of the court notifies each candidate that he or she may be present and have up to 20 scrutineers present, one to observe each counting team and make objections, and one or two Chief Scrutineers.

The Chief Electoral Officer, at the hearing of the application for a recount, through his counsel may also request permission from the judge:

1. To have counsel attend the recount to represent the Returning Officer, Election Clerk, and the Chief Electoral Officer.
2. To personally attend the recount, or to have the Deputy Chief Electoral Officer or other member of his headquarters senior staff present to offer administrative and procedural support to the judge.
3. To make available support staff from his headquarters staff to serve as the:
  - **Disputed Ballots Officer:** to assist the judge in organizing, sorting, and tracking disputed ballots
  - **Official Results Recorder:** to assist the judge by data entering the results as they have been recorded for each candidate on the Ballot Recount Reconciliation form, into the Official Recount Result electronic form.

The Chief Electoral Officer generally recommends that the following process be used at a recount:

1. At the date and hour set for the recount to begin, the judge should issue an oath/affirmation of secrecy to those participating and may wish to brief those in attendance on the process and the schedule for the recount.
2. The recount should begin with recount officials distributing poll return envelopes, one at a time, from the room where the envelopes are secured to each counting team, recording at the Ballot Box Control Table which ones are being issued.
3. Counting teams should then:
  - a. Open the poll return envelope and remove the sealed envelopes containing ballots.
  - b. Open each ballot envelope, starting with the Envelope 1, containing the ballots marked for a candidate and count only the ballots found in each envelope at any one time.
  - c. Count the ballots found in the Rejected and Unmarked Ballot Envelopes.
  - d. At the discretion of the judge, count ballots in envelopes

which contain the declined and cancelled ballots. These ballots were not cast by electors, so it is not recommended that they be included in the results for candidates in the recount.

4. To verify the count, a member of the counting team will hold up each ballot for viewing by the candidates' scrutineers. If agreement is reached, the ballot will be placed on the table and this will proceed until all ballots are reviewed. If, however, the scrutineers cannot decide on the validity or the rejection of the ballot, they will raise a special card, calling over the Chief Scrutineers for each candidate who will review the ballot as to validity or rejection.
5. If the Chief Scrutineers for each candidate cannot decide on the validity or rejection of a ballot, the judge may wish to decide in advance as to the process that should then be followed. The two suggested options are:
  - a. **Option one:** Have the Chief Scrutineers ask the recount official to mark the poll number on a poll return envelope and place the ballot in the envelope which will be placed in the judge's custody.
  - b. **Option two:** Have the Chief Scrutineers request that the judge come to the counting team's table, and if possible, rule on the ballot on the spot. The judge could decide if it is a valid ballot for a candidate or a rejected ballot and have the ballot placed in the proper envelope. This result would then be reflected on the count sheet. If a Chief Scrutineer asks, however, that a ballot be set aside, the judge should indicate on an envelope what poll and what envelope the ballot came from and then place the ballot into that envelope (for possible review on appeal).
6. If there is no disagreement on any ballot, a member of the counting team, in the presence of the scrutineers, should complete the recount result form for that poll and request that the scrutineers sign the form. All ballot envelopes should then be re-sealed and placed in their original poll return envelope, which is sealed and returned to the recount officials at the ballot box control table. The recount officials shall make note of the return, and return the poll return envelope to the room where the envelopes are secured.
7. This process should be followed until all ballots are re-counted in accordance with the steps described above.
8. When the count is verified in a poll, the count sheet should be taken to the judge for verification.



9. The judge should also be provided with the ballot count sheet for the polls where ballots are in dispute so the judge may, if he or she wishes, record that on the poll by poll sheet.
10. The judge may wish to set aside disputed ballots and then after a brief adjournment, or on a subsequent day, receive submissions from counsel as to whether certain ballots should be accepted or rejected.

As noted, the steps above are only recommended by the Chief Electoral Officer based on the experience of the office over the years; the process for conducting a recount of the ballots cast by electors in an electoral district is conducted under the *Election Act* according to the process ordered by the presiding judge. Table 2, below, lists the recounts that have occurred since 1975.

**Table 2: Recounts since 1975**

| <b>Election</b>       | <b>Electoral district</b>   |
|-----------------------|---|
| 1975 General Election | <ul style="list-style-type: none"> <li>• Niagara Falls</li> <li>• Downsview</li> </ul>  |
| 1981 General Election | <ul style="list-style-type: none"> <li>• Cochrane North</li> <li>• Parry Sound</li> <li>• Dovercourt</li> </ul>   |
| 1987 General Election | <ul style="list-style-type: none"> <li>• Cambridge</li> </ul>   |
| 1990 General Election | <ul style="list-style-type: none"> <li>• Brampton North</li> <li>• Durham East</li> <li>• Essex South</li> <li>• Peterborough</li> <li>• St. George-St. David</li> <li>• Wentworth North</li> <li>• York North</li> </ul> |
| 1995 General Election | <ul style="list-style-type: none"> <li>• Rainy River</li> </ul>   |
| 2002 By-election      | <ul style="list-style-type: none"> <li>• Nipissing</li> </ul>   |
| 2007 General Election | <ul style="list-style-type: none"> <li>• Thunder Bay-Atikokan</li> </ul>  |
| 2014 General Election | <ul style="list-style-type: none"> <li>• Thornhill</li> </ul>   |

Elections Ontario is the non-partisan agency responsible for administering provincial elections, by-elections and referenda. For more information, visit [elections.on.ca](http://elections.on.ca) or call 1-888-668-8683 (TTY: 1-888-292-2312).

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