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Submitted via e-mail: investigations@elections.bc.ca

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Re: Open letter of complaint to the Chief Electoral Officer of British Columbia.

- [1]. I am a Canadian citizen and I am a registered voter in the Mid Island-Pacific Rim electoral district on Vancouver Island, British Columbia.
- [2]. This formal complaint is filed in accordance with the information provided on the Elections BC website.¹
- [3]. The integrity of the proceedings is in question because order EA-ORD008-2020 contains a potential serious statutory referencing error and because order EA-ORD008-2020 purports to remove a voter's right to obtain a ballot. The integrity of the proceedings is further compromised for the additional reasons provided in this complaint. In brief, it is advanced that the emergency powers of the Chief Electoral Officer have not been exercised in a manner that is consistent with the purposes of the *Election Act*.
- [4]. I am therefore requesting the current election proceedings in Mid Island-Pacific Rim be adjourned until such time as the integrity of our electoral process is restored.

Definitions used

Election Act, RSBC 1996, c. 106. ("*Election Act*").

Constitution Act, RSBC 1996, c. 66. ("*Constitution Act*").

¹ Elections BC. (2020). *How to make a complaint*. Available at:
<https://elections.bc.ca/resources/investigations/how-to-make-a-complaint/>

Complaint

- [5]. The purpose of the *Election Act* Section 12(2)(a) is arguably to ensure that required recommendations for legislative amendments, within the prior knowledge of the Chief Electoral Officer, are impartially and transparently brought before the Speaker for legislative debate. The Chief Electoral Officer had prior knowledge of the need to make recommendations for statutory amendments in order to facilitate an election during a pandemic.
- [6]. However, contrary to Section 13(1)(d) of the *Election Act*, the Chief Electoral Officer did not cause a report regarding said amendment recommendations to be put before the Legislature. Instead, to facilitate the current rushed election proceedings, the Chief Electoral Officer exercised extraordinary emergency powers under Section 280 of the *Election Act*.
- [7]. In exercising those powers, the Chief Electoral Officer issued various orders which removed large protective provisions of the *Election Act*, contrary to the purpose of those protective provisions and the overall purpose and intent of the *Election Act*.
- [8]. Of specific note, a portion of order EA-ORD008-2020 (page 4) cites an incorrect piece of legislation, inappropriately removing a voter's right to obtain a ballot under what appears to be an error in statutory referencing.
- [9]. The authorities invested in the Chief Electoral Officer under Section 280 of the *Election Act* have not been exercised in manner "consistent with the purposes of this Act [*Election Act*]", thereby violating the principles, intent, and purpose of the *Election Act*.
- [10]. The integrity of the election proceedings is now in question and requires adjournment because these proceedings are poised to seriously infringe on the rights of voters and the democratic process more broadly.

Discussion

- [11]. The current election proceedings are commenced contrary to the *Constitution Act* and contrary to the Confidence and Supply Agreement (2017) for two reasons.
- [12]. First, because the (now) Lieutenant Governor exercised the general powers invested in the head of state and dissolved the Legislature (at the Premier's request). This resulted in the issuance of a writ of election² prior to the next scheduled election under the *Constitution Act* (October 2021) as agreed to in the Confidence and Supply Agreement.

² Elections BC. (2020). *The writs of election*. Available by electoral district at: <https://elections.bc.ca/provincial-elections/election-resources/the-writs-of-election/>

- [13]. Second, because the Chief Electoral Officer exercised extraordinary powers invested in his position and effectively reversed large portions of the *Election Act*, removing various protective provisions that would otherwise have potentially adjourned the proceedings.
- [14]. These two factors combined together have far reaching impacts on democracy in the province because they set a precedent of deviating from the *Election Act* and the *Constitution Act*, as well as, provide a working roadmap for political parties on how to exercise extraordinary emergency authorities and seize power amid provincial crises.
- [15]. When the public record is reviewed, there are two key factors which contributed to the decision making of the Chief Electoral Officer. These are: A) a statutory amendment report was not put before the Legislature; and B) an exercise of extraordinary emergency powers. Each of these factors is further addressed below.

A. Report not put before the Legislature.

- [16]. Section 12(2)(a) of the *Election Act* provides the power to the Chief Electoral Officer “to make recommendations to the Legislative Assembly respecting amendments to this Act or other enactments affecting election matters.”³
- [17]. Pursuant to Section 13(1)(d) of the *Election Act*, the Chief Electoral Officer “must present” a report to the Speaker respecting any recommendation under 12(2)(a) “respecting amendments to this Act or another enactment affecting election matters.”⁴
- [18]. In accordance with Section 13(3) of the *Election Act* “The Speaker must lay a report of the Chief Electoral Officer before the Legislative Assembly as soon as possible.”⁵
- [19]. Therefore, it is clear that recommendations on required statutory amendments, within the prior knowledge of the Chief Electoral Officer, must be brought before the Legislature.
- [20]. Pursuant to a Confidence and Supply Agreement dated 2017 (between the BC NDP and the BC Green Party), it was mutually agreed that the next general election would be held pursuant to Section 23 of the *Constitution Act* in October of 2021.⁶

³ *Election Act*, s. 12(2)(a). Available at:

https://www.bclaws.ca/civix/document/id/complete/statreg/96106_02#section12

⁴ *Election Act*, s. 13(1)(d). Available at:

https://www.bclaws.ca/civix/document/id/complete/statreg/96106_02#section13

⁵ *Election Act*, s. 13(3). Available at:

https://www.bclaws.ca/civix/document/id/complete/statreg/96106_02#section13

⁶ Confidence and Supply Agreement Secretariat. (2020). *Confidence and supply agreement*. Available at:

<https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/organizational-structure/central-government-agencies/government-communications-public-engagement/confidence-and-supply-agreement-secretariat/1 - casa - may 30 2017.pdf>

- [21]. The Confidence and Supply Agreement stated, “The Leader of the New Democrats will not request a dissolution of the Legislature during the term of this agreement, except following the defeat of a motion of confidence.”⁷
- [22]. The COVID-19 pandemic began in late 2019. In March 2020 a provincial health emergency was declared. Once declared, the Province of BC (currently under the leadership of the BC NDP), is able to continually extend the state of emergency.
- [23]. Therefore, the declaration of a state of emergency, and the continuance of any such ‘emergency’ declaration is within the control of the ruling political party. Concerningly, this power to declare emergencies can potentially be used for partisan purposes – although one would hope this would never be the case.
- [24]. Anticipating a scheduled election in October 2021, in April 2020 (one year early), the Chief Electoral Officer sent a letter to various political parties in British Columbia through the Election Advisory Committee (a committee made up of political party representatives and not elected officials).⁸
- [25]. In this letter, it was suggested that, should the pandemic continue into the next scheduled election (2021) or earlier, certain amendments to the *Election Act* would be needed. In this letter, the Chief Electoral officer suggested an election could be “six” months away (i.e., October 2020).
- [26]. The Chief Electoral Officer was therefore aware (as early as April 2020 but possibly also before) and had knowledge of the need to make recommendations on required statutory amendments in order to conduct a provincial election during a pandemic, regardless of when such an election would be held.
- [27]. The Chief Electoral Officer then caused certain election planning research to be conducted between May 2020 and June 2020. As well as the specific identification of statutory weaknesses resulting from the COVID-19 pandemic.
- [28]. This research surveyed provincial voters and captured data pertaining to voter preferences, expected voter behaviours during a pandemic, and other factors. The broad results of this research were then shared with the political parties represented on the Election Advisory Committee, providing the broad interpretation of sensitive voter behaviour information in the process. Some of this information was posted publicly on the Elections BC website, other information was provided to news outlets via quotes.

⁷ At para 4 item 2 of the *Confidence and supply agreement* referenced in the above link.

⁸ Elections BC. (2020). *EBC file: 15120-02*. Available at: <https://www.bcliberals.com/wp-content/uploads/2020/06/EBC-Letter-COVID-Election-22Apr2020.pdf>

- [29]. Despite having knowledge of the need to amend the *Election Act* prior to the next scheduled election, the Chief Electoral Officer did not cause a report on these amendments to come before the Speaker.
- [30]. It follows that the Chief Electoral Officer may not have properly exercised the provisions of his office by bringing known required recommendations on statutory amendments forward to the Legislature in early 2020.
- [31]. Because the Chief Electoral Officer had prior knowledge of required recommendations for statutory amendments, and because he did not cause a report to come before the Speaker, a contravention of the *Election Act* has potentially occurred.
- [32]. The Legislature should have been consulted on the amendments needed to the *Election Act* in order to hold an election during a pandemic. This would have facilitated open and transparent debate in the Legislature and ensured that a democratic process was followed, if not immediately at the very least by the next scheduled election under the *Constitution Act* (2021).

B. Extraordinary emergency authorities exercised.

- [33]. The Elections BC website states that “The Election Act establishes requirements for the electoral process and does not contemplate administering an election during a pandemic.”⁹
- [34]. As a result, the Chief Electoral Officer exercised unprecedented and extraordinary emergency powers under Section 280 of the *Election Act*, unilaterally removing protective provisions of the *Election Act* without the Legislature’s involvement – a situation which is arguably contrary to the overall intent and purpose of the *Election Act* and which affects all British Columbians.
- [35]. These emergency powers saw multiple orders issued under the sole authority of the Chief Electoral Officer. These orders have, in part, removed or altered various protective provisions around ballot security, voter verification, scrutineers, and other matters.¹⁰
- [36]. Of specific interest to me is order EA-ORD008-2020. This order was issued with the following rationale from the Chief Electoral Officer:

In response to the COVID-19 pandemic, a provincial health emergency and a general state of emergency have been declared in British Columbia.

⁹ Elections BC. (2020). *Orders of the CEO*. Available at: <https://elections.bc.ca/provincial-elections/election-resources/ceo-orders/>

¹⁰ Elections BC. (2020). All orders available at: https://elections.bc.ca/docs/EA-ORD006-2020toEA-ORD013-2020_September21_2020.pdf

I find that an emergency situation and extraordinary circumstances exist within the meaning of s. 280 of the *Election Act* R.S.B.C. 1996, c. 106 (the Act), and the requirements and processes applicable to alternative absentee voting under ss 75(3), 87, 102, 105, 106, 107, 134, 257 and 274(2) of the Act have been adversely affected by the COVID-19 pandemic.

Due to the emergency situation, extraordinary circumstances and Provincial Health Officer direction resulting from the ongoing pandemic, I find that the requirements currently in place for alternative absentee voting under the Act are inadequate to address the anticipated significant and material increase in demand for alternative absentee voting. I also find that the current processes for alternative absentee voting would require shared touch points between individuals and election officials, presenting risks to personal and public health and to the ability to carry out the functions of the election. Further, the modifications established in this Order will reduce the need for voters who may be at risk of contracting or transmitting COVID-19 from attending to vote in person.

In my opinion, these circumstances make the following Order necessary.

- [37]. The order then made multiple deviations from the *Election Act* under various headings. Of note, the order stated:

Despite the requirements of s. 105(6) of the Act, the Chief Electoral Officer or District Electoral Officer is not required to mail an alternative absentee voting package to an individual who has applied if the officer considers that there is insufficient time for the alternative absentee voting package to be received by the individual and returned to a location specified by the Chief Electoral Officer before the close of general voting.

- [38]. This is incorrect. Section 105(6) does not address the requirement of the Chief Electoral Officer to mail a voter an absentee voting package. In actuality, this is found in the previous section of the statute.

- [39]. **It follows that order EA-ORD008-2020 has been, in part, inappropriately and incorrectly issued.**

- [40]. Despite the above error, I will presume that the Chief Electoral Officer intended to deviate from Section 105(5) of the *Election Act*, which states “[t]he election official responsible must mail or otherwise provide an alternative absentee voting package prepared under section 87”.

- [41]. **This deviation must not be allowed.** A voter’s right to vote is a fundamental and cardinal principle of a democratically elected government. Section 105(5) is a protective provision that must not, under any circumstances, be deviated from – especially when the Chief Electoral Officer is aware that election proceedings during a pandemic rely heavily on absentee ballots. The compressed timeline issue in this election is not the fault of voters. Access to voting must be ensured. There is no practical purpose to such an order as the one noted above. Continuing with such an emergency order, with the existence of known statutory referencing errors within it, is contrary to the purpose of the *Election Act*.
- [42]. Under the heading of *Emergencies and Other Extraordinary Circumstances*, Section 208 of the *Election Act* allows for the Chief Electoral Officer to, by order, “[...] make exceptions to this Act and the regulations under this Act [...]”¹¹
- [43]. However, the orders issued under Section 280 of the *Election Act* must be “[...] in accordance with the purposes of this Act [...]”¹²
- [44]. Emergency provisions are for unforeseen and unknown issues, extraordinary circumstances (as evidenced by the title of the legislative heading for this section). They are not (and must not be used) for addressing known issues which could have been otherwise properly placed before the Legislature at first instance.
- [45]. It is not the role of the Chief Electoral Officer to calculate manners in which to circumnavigate our established and democratically achieved laws on election. Failing to put a statutory amendment report and recommendations before the Legislature when issues and concerns are known, and instead exercising extraordinary emergency powers to remove multiple protective provisions of the *Election Act*, usurps the authority of the Legislature and places the Chief Electoral Officer in a position of extreme power and authority beyond the purpose or intent of the *Election Act*.
- [46]. The COVID-19 pandemic was a well-known issue. While it is an ‘emergency’, the status of ‘emergency’ is within the control of the ruling party. A factor which has now formed the rationale for the issuance of emergency orders which were not put before the Legislature and which now deviate from the *Election Act* and purport, in part, to remove a voter’s right to obtain a ballot because of potential compressed election timelines.
- [47]. For all of the above reasons, **it cannot be said that the powers exercised under Section 280 of the Act conformed with the overall intent and purposes of the *Election Act*.**

¹¹ *Election Act*, s. 280. Available at: https://www.bclaws.ca/civix/document/id/complete/statreg/96106_13#section280

¹² *Election Act*, s. 280. Available at: https://www.bclaws.ca/civix/document/id/complete/statreg/96106_13#section280

Concluding remarks

- [48]. The position of Chief Electoral Officer is one of a societal safety net. The keeper of democracy in our province. The assurer of impartiality and transparency for all voters.
- [49]. The COVID-19 pandemic is certainly having an impact on election proceedings around the world. British Columbia is no different. Voters throughout this province are distracted, suffering, and often struggling just to get through the day to day needs of pandemic living. It is important to recognize this.
- [50]. However, **this is not the time to experiment with democracy. The political profit from people's pain must be avoided at all costs.**
- [51]. Voter engagement is a critical element of a functioning democracy. With the Confidence and Supply Agreement, and a scheduled election pursuant to the *Constitution Act*, British Columbians had time. There was time for the Chief Electoral Officer to put the necessary recommendations for *Election Act* amendments before the Legislature. There was time to plan voter engagement initiatives, especially for the most vulnerable in our society. There was time to ensure that open processes for policy and platform debate were enshrined in the new normal.
- [52]. Instead, a political party in this province received inside knowledge of weaknesses within our election legislation and decided to take advantage of the situation. The result was a suspension of major protective provisions of the *Election Act* and compressed election timelines favouring the ruling party – as evident by the immediacy of their candidacy announcements.
- [53]. Legislative debate and open discussion are important parts of democracy which have been removed from this election. Access to voting and efficient counting and scrutinizing of ballots is also a concern. Election officers and scrutineers have been reduced in voting areas and accountability checks altered. The advertisement of certain election proceedings and locations has also been modified. A voter's right to obtain a ballot and participate in the election has been potentially removed – all without the involvement of the Legislature.
- [54]. The integrity of our democratic processes is under siege in British Columbia. Our democracy is being held captive by a systematic failure of safety nets, largely ending with the Chief Electoral Officer circumnavigating the Legislature.
- [55]. The practical result is that British Columbia has now published (for the world) a working roadmap on how to kill democracy and establish a dictatorship. **This is not an election; it is cookbook for a modern coup d'état.**

- [56]. Nowhere on the public record is it provided that the Lieutenant Governor was properly informed that the Chief Electoral Officer intended to exercise extraordinary and broad sweeping powers to render nugatory large protective sections of the *Election Act*. The Lieutenant Governor General should have been made aware of this prior to issuing the writ of election.
- [57]. For all of the aforementioned reasons, I say that the powers of the Chief Electoral Officer invested through Section 280 of the *Election Act* have not been exercised in a manner “consistent with the purposes of this Act [*Election Act*].”
- [58]. Because of the extraordinary manner in which these powers were used contrary to the purpose of the *Election Act*, and the number of times they were used to remove certain protective provision of the *Election Act*, as well as the apparent statutory referencing errors within EA-ORD008-2020 and the attempt to remove a voter’s right to obtain a ballot, **it would be appropriate to adjourn the current proceedings until such time the provisions of the *Election Act* and integrity of the election process are restored.**
- [59]. Should you have any further question or comments, or should you wish to discuss this matter with me more fully, I can be reached at the below contact information.
- [60]. Although I can only address the proceedings in my own electoral district, I encourage all registered voters to formally contact your office should they have similar concerns in their areas.

Sincerely,



Bryce J. Casavant
Registered voter, Mid Island-Pacific Rim

p/c

Lieutenant Governor
Leader of the BC NDP
Leader of the BC Liberals
Leader of the BC Greens