

Fourth Session – Forty-Second Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Legislative Affairs

Chairperson
Mr. Dennis Smook
Constituency of La Vérendrye

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MANITOBA LEGISLATIVE ASSEMBLY
Forty-Second Legislature

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ADAMS, Danielle	Thompson	NDP
ALTOMARE, Nello	Transcona	NDP
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BRAR, Diljeet	Burrows	NDP
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<i>Vacant</i>	Fort Whyte	

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LEGISLATIVE AFFAIRS

Tuesday, November 30, 2021

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Dennis Smook
(La Vérendrye)

VICE-CHAIRPERSON – Mr. Rick Wowchuk
(Swan River)

ATTENDANCE – 6 QUORUM – 4

Members of the committee present:

Hon. Messrs. Goertzen, Reyes

*Ms. Fontaine, MLA Marcelino, Messrs. Smook,
 Wowchuk*

APPEARING:

*Ms. Shipra Verma, Chief Electoral Officer,
 Elections Manitoba*

MATTERS UNDER CONSIDERATION:

*Annual Report of Elections Manitoba for the year
 ending December 31, 2020.*

* * *

Clerk Assistant (Mr. Tim Abbott): Good morning, everybody. Let's get started. Will the Standing Committee on Legislative Affairs please come to order.

Before the committee can proceed with its business before it, we must elect a new Chairperson. Are there any nominations for this position?

Mr. Rick Wowchuk (Swan River): I nominate MLA Smook to the Chair position.

Clerk Assistant: Mr. Smook has been nominated. Are there any other nominations?

Hearing none, Mr. Smook, please take the Chair.

Mr. Chairperson: Our next item of business is the election of a new Vice-Chairperson. Are there any nominations?

Hon. Kelvin Goertzen (Minister of Legislative and Public Affairs): It's my distinct honour to nominate the esteemed—our esteemed MLA, Mr. Wowchuk.

Mr. Chairperson: Mr. Wowchuk has been nominated. Are there any other nominations? Hearing no further nominations, Mr. Wowchuk is elected Vice-Chairperson.

This meeting has been called to consider the Annual Report of Elections Manitoba for the year ending December 31st, 2020.

Before we get started, are there any suggestions from Cabinet—from the committee as to how long we should sit this morning?

The honourable—Ms. Fontaine?

Ms. Nahanni Fontaine (St. Johns): Until the work of the committee is done.

Mr. Chairperson: It has been suggested that we run this meeting until the work of the committee has been fulfilled. Is that agreed? *[Agreed]*

Does the honourable minister wish to make an opening statement? The honourable minister of—whatever—Legislative Affairs.

Mr. Goertzen: Yes, I have a hard time remembering too sometimes, week to week, what I'm doing.

Thanks very much, Mr. Chairperson. Pleasure to welcome Ms. Verma to the committee and to thank you for the work that you do. I think all of us at this—and it'd be repeated, I'm sure, by my colleagues—have great respect for the work that you do with Elections Manitoba. I know we're in a bit of a slower period right now when it comes to elections, although there'll be a by-election in the relatively near future.

But thanks for appearing before the committee, thank you for the work that you do and we look forward to engaging with you in a meaningful dialogue this morning.

Mr. Chairperson: We thank the honourable minister for his words.

Does the critic for the official opposition have an opening statement?

MLA Malaya Marcelino (Notre Dame): I'd just like to say good morning to Ms. Shirpa *[phonetic]* and her staff as well as to the rest of the members of the committee. I want to congratulate Ms. Shirpa *[phonetic]*

and her team for the tremendous efforts to facilitate voter access and participation on election day throughout 2020 during a global pandemic.

With the recent approval of motions by the standing committee to move forward the vote anywhere proposal, it's a step forward to modernizing Manitoba's electoral system. And on behalf of our NDP team, we look forward to implementation during our next general elections and commend your office for this visionary improvement.

Additionally, 2020 marked a tremendous milestone: 40 years of Elections Manitoba. We as legislators would not be here today if it weren't for the work of the office of Elections Manitoba and their continued dedication to a democratic society and delivering free and fair elections to Manitobans.

It is unfortunate that as a result of the pandemic, no in-person celebrations could be had to commemorate the 40-year anniversary, but that only means come the next major milestone, a bigger celebration will be had.

With that, I look forward to today's discussion on the 2020 annual report.

Thank you.

Mr. Chairperson: We thank the member for those words.

Does the Chief Electoral Officer, Ms. Shipra Verma, wish to make an opening statement?

And if she has any staff in attendance, if she could introduce them.

Ms. Shipra—oh, Ms. Verma, sorry.

Ms. Shipra Verma (Chief Electoral Officer, Elections Manitoba): Thank you, Mr. Chairperson and members of the committee. Thank you for inviting me and my staff to discuss our annual report. I'm joined today by Debbie MacKenzie, deputy chief electoral officer, and Jeanne Zwiep, director of electoral operations.

In addition to the annual report, I'll speak about the proposal to modify the process which was recently approved by the committee as well as our preparation for the upcoming Fort Whyte by-election

First, the annual report. As stated in 2020, we marked the 40th anniversary of Elections Manitoba. The independent office of the Chief Electoral Officer came into being through an amendment to The Elections Act which came into force on

November 15th, 1980. Before this time, the clerk of the Legislative Assembly carried out the role on a part-time basis. Our annual report celebrates this milestone.

The report also provides an overview of our activities in that year, including a strategic planning process, the vote anywhere in your electoral division proposal, and the financial returns for the 42nd general election for candidates and parties. Most of the recommendations in our report have been or are in the process of being adopted.

I also wanted to note that the Commissioner of Elections filed a report at the same time. While not required by the legislation, the commissioner's report provides an overview of his activities from April 2018 to December 2020. The report was distributed to the members at the same time as our annual report and is posted on his website.

I move now to our proposals to modify the voting process. I'd like to first acknowledge the prompt attention of this committee to these proposals. We greatly appreciate the committee's understanding of the need for timely decisions to allow us to implement the changes.

The proposal to allow voters to cast their ballot on election day at any poll in their electoral division has received the support of the committee. We are very appreciative of the attention of all elected officials in examining these proposals.

This will support our goal of modernizing the electoral process for Manitobans. The process will be in effect for the next general election to use technology to improve service to voters and parties. It will also allow us to achieve administrative efficiencies while respecting the integrity of the electoral process.

* (10:10)

Vote anywhere in your electoral division is the second in our three-step vision that we shared in the annual report, with a view to make voting more accessible and convenient for Manitobans.

The final step, which is envisioned for the 44th general election, is to allow voters to cast their ballot at any poll on election day, similar to advance voting.

Coming to by-election, with the vacancy in the Fort Whyte electoral division, we have been preparing for a by-election. As per The Legislative Assembly Act, a vacancy must not be longer than six months, which makes March 29th the last possible election

day. Considering the COVID-related public health and safety concerns and experience of elections held federally and in other jurisdictions, we submitted a proposal to extend eligibility for voting by mail in the upcoming by-election to all eligible voters. This will support the safe conduct of the election in that electoral division while pandemic conditions persist. The committee approved this proposal on October 13th. We are developing the vote-by-mail process, anticipating approximately 20 per cent of eligible voters will use this method.

In order to apply for a vote-by-mail kit, voters must be registered in the Fort Whyte electoral divisions. They'll be able to register and apply for the vote in one place on our website. We have built several safeguards to ensure security and integrity of the process. To receive a ballot, voters must provide ID, confirm their date of birth and sign the oath of a voter. They'll be struck off the list once a mail package is issued, and the voters will not be able to request another package or vote in person. Voting materials include security features including bar codes. Scrutineers will be able to witness the count at the returning office on election night.

In developing our vote-by-mail proposal and the processes, we have drawn on best practices of other jurisdictions and benefitted from the lessons learned. We are also consulting with the Chief Provincial Public Health Officer to develop safety and health protocols for voters, candidates and election officials in this by-election.

Before I close today, I would like to speak on the recommendations in the report. The following have been adopted already through changes to legislation: allowing for use of electronic signatures for forms filed under The Elections Act and The Election Financing Act; ensuring consistency among voters' lists provided to parties and candidates and providing voters' lists to candidates on request. Our recommendation to adopt the three modifications to the voting processes implemented in the 2019 election in the legislation has been approved by the committee.

The following recommendations are still under consideration: the use of telephone voting to ensure access to voting, particularly for Canadian Forces stationed overseas; extending leave-of-absence provisions to work in an election to include returning office staff; to change the filing date for constituency association to be consistent with that of registered parties and, as a related recommendation, change the date at which late filing fee for the constituency

associations would come into effect; specify a deadline for the recovery of the late filing fees and reimburse candidates for 100 per cent of eligible disability and child-care expenses; lastly, establish a single address authority for Manitoba to support accuracy of the Manitoba Voter Register.

A single address authority would improve efficiency not just for electoral purposes but public safety would also be impacted as fire, ambulance and police services would use standardized addresses. This authority, we recommend, must be recognized in provincial law which would require that anybody producing address data conform to the standard. Legislation should define the role, responsibility and jurisdictional powers of the address authority. Under a centralized address authority, some addresses would need to change. In developing this, it would be essential that First Nation leadership be consulted with respect to addressing in First Nation communities.

That concludes my remarks, and I would be happy to answer any questions.

Mr. Chairperson: We thank the Chief Electoral Officer for that information.

Floor is now open for questions.

MLA Marcelino: This is regarding the by-election coming up. At a prior standing committee, Ms. Verma explained that discussions still needed to be had with public health officials to determine what public health measures would need to be in place for the upcoming by-election.

I'm wondering if she could provide the committee with an update on whether those discussions have been had and, if so, what was decided.

Ms. Verma: We have had one meeting with the public health officer and the safety measures that we are looking at are: the basic sanitization requirement which would be there at the voting places and the returning office, safe distancing, wearing of masks at the voting place and returning office. We're also looking at ensuring the returning officer and assistant returning officer—all the returning office staff will be double vaccinated. Any election official who'll be visiting home care, like a personal-care home or for homebound voting, should also be double vaccinated. Regular cleaning and sanitization would be in place and any other advice which the public health official provides us will be followed.

MLA Marcelino: This will be about the returning officers and on-reserve voting, the next series of questions.

This past federal election, we saw many instances where there were not enough staff to operate voting stations on election day. Additionally, a lack of experienced staff and a lack of staff overall led to long lines and delays at many voting stations.

Could Ms. Verma explain if she has any concerns about being able to adequately staff voting stations for the next general election?

Ms. Verma: The next general election on a fixed date is scheduled for October, 2023 and considering the public health situation and how fluid it is, we are closely monitoring the situation and our preparations are flexible with—to respond to the necessary changes.

We, in the past, we have done our best to ensure advance voting and election day voting opportunities are available at all First Nation communities, which are 63 in Manitoba, and we are working towards the same voter service for the next election.

With regard to availability of voting officers, one change which we are looking for the vote by by-election, is to have a single voting officer administer the vote, to address the public health requirement and that may continue, depending on the situation.

So, if that's the case, we will—we'll probably follow the similar process for the general election, but at this time it will be difficult to commit to that approach because the public health situation is fluid and it's changing. But what we try to do is: whatever service we provide at any urban, rural voting station, the same service is provided at any First Nation community, too.

MLA Marcelino: Are there any barriers that make it difficult to attract or retain returning officers and other election staff for the upcoming general election?

Ms. Verma: Generally, our returning officers and assistant returning officers are in the demographic of 60 years-plus. So with every four years of election, people do change their residence, relocate or may have other interests to follow.

So our general retention for—of returning officers and assistant returning officers ranges between 35 to 45 per cent. That's a pattern that we have seen consistently in the past 20 years. So we are not seeing any change in the pattern with regard to election officials. Also, the returning officers, when they start recruiting,

they get a list of the staff who have previously worked and all of them are contacted. Depending on their availability, those staff are recruited, re-hired for the next election and provided proper training.

So, at this point, if the COVID situation—will there be any concerns? Again, our election is still 18 months to 20 months before we'll start the hiring process. Things may change. Looking at experiences from other jurisdictions, it was challenging to find people to work at election and hence the approach for a single-voting-officer method was adopted by other—like in the recent federal election, too.

* (10:20)

So we are watching closely and we are hiring and training programs respond to the environment and the situation which we'll be presented with.

MLA Marcelino: After hearing about at least three First Nations in Ontario not having polling stations during the recent federal election, my colleague, the MLA for Keewatinook, wrote to you to inquire about plans in place to ensure equitable voting in rural and remote First Nations.

I want to begin by thanking you for your prompt reply. In it, you explain that efforts have already begun to recruit returning officers, community liaison officers and securing office space. Are there particular communities that Elections Manitoba had difficulty staffing during the 2019 election?

Ms. Verma: There was no particular First Nation community that we had challenges in recruitment. There were, out of 63 locations—First Nations communities, we had five on election day where a voting station was not provided, but that was done in consultation with the local leadership and they were not available on election day because they chose to vote at the adjacent communities.

So those five First Nation communities which were there were: Birch River, Gambler First Nation, Elphinstone, Swan Lake and Lynn Lake. The population was either low or they were very close to the next community and they chose to select that voting place for voting purposes.

But consultation was made with all the communities and we tried to have a returning office in the local, most central area of that electoral division. We worked with the First Nation leadership and also provided the community liaison officers, as stated in my letter.

MLA Marcelino: Have any returning officers or community liaison officers been hired for the next general election in these communities, and are there any contingency plans in place in the event that Elections Manitoba cannot find enough staff to run a polling station in these communities?

Ms. Verma: We are in the process of hiring returning officers and assistant returning officers. Our ads were released in the month of October and November 15th was the closing date for applications. We have started the screening process and interviews are in progress.

There are still one or two electoral divisions where we are having challenges so the next phase of recruitment will begin in January, where we will be trying alternate approaches to hire returning officers and assistant returning officers.

A contingency plan usually is we hire spares. So if there are 57 returning officers, 57 assistant returning officers, we have pool of around 15 to 20 spare returning officers that we hire and train. In some areas, we also have two—like, an additional assistant returning officer, so in a First Nation, maybe in The Pas-Kameesak depending, or the Keewatinook area, depending on where the returning office is located, we may have a satellite office.

In case of a vacancy, we have the spares to reassign. Sometimes they may not be of—belonging from the same electoral division because they are spares, but we do relocate them for the electoral purposes.

MLA Marcelino: Page 51 of the annual report explains a finding from the Commissioner of Elections, specifically, quote: "The Department of Health wrongly published information about its programs and activities during the election period of the September 10th, 2019 general election. Specifically, during that period, the Department of Health published an update regarding a series of ongoing changes in the Health Care system. The commissioner received and investigated a complaint. He found that, although there was no intent to promote the government's activities, the publication was nonetheless a breach of section 92(1) of The Election Financing Act."

My question is: Do—does Ms. Verma have any recommendations or changes to improve government advertising restrictions to ensure a fair election?

Ms. Verma: There was a recommendation by the commissioner to improve government advertising provision. It was to ensure that the legislation clarifies

the intent of government advertising restriction as the government resources should not be used for the purposes of government—of advertising.

I believe changes have been made to the government advertising provision. A bill was passed last year to strengthen and clarify government advertising provisions.

MLA Marcelino: Is Bill 32, The Election Financing Amendment and Elections Amendment Act, on government advertising did pass. Changes included shortening the advertising restriction from 90 days to 60 days. Additionally, it allowed the government to advertise or publish information about public health or safety matters, requests for proposals or tenders and government employment without having to demonstrate that the advertisements or publications are required at the time. A similar exception is provided for advertisements and publications concerning ongoing programs.

I'm wondering if Ms. Verma could provide her opinion on these changes, particularly if she's concerned with the broad exemptions for permissible government advertising.

Ms. Verma: What my understanding is that the required, at the time, provisions, were at times difficult to interpret with regard to public health guidelines. So that was one of the reasons why the requirement, at that time, was removed.

The remaining exemptions are similar to what was there in the legislation. So if it's required, like public health requirements, tenders and employment purposes were the exemptions which were present in the previous sections, too.

MLA Marcelino: Could Ms. Verma explain how she interprets, quote, ongoing programs. End quote. In other words, would these be programs that have been ongoing for at least a year or a month, et cetera.

Ms. Verma: It would be difficult to provide an interpretation of ongoing because whenever the cases are reviewed, it's the full context which is reviewed; so what is the program's scope, was it started, was it commenced, what is the intent of the program. These provisions are specific to the commissioner and Elections Manitoba does not provide an opinion on the provisions because they are reviewed by the commissioner.

MLA Marcelino: An additional amendment allows ministers to speak publicly if no government resources are used. Could Ms. Verma explain how

ministers would be monitored during election periods to ensure that messages are not partisan.

Could the minister, for example, speak publicly about a government budget recently brought forward if they aren't using government resources.

Ms. Verma: I believe it won't be within my scope to monitor the minister's activities. If there would be any complaint, then the complaint would directly go to the commissioner. We do not interfere in the complaint or the investigation process, which the commissioner handles, but the commissioner, in a previous noting, did say that a minister may be wearing multiple hats. They may be a candidate in the next election or they may still be continuing in the role of the minister.

So the tightening of the words, which was they're not using government resources, came from the recommendation of the commissioner.

MLA Marcelino: I believe my colleague for St. Johns has some questions.

Mr. Goertzen: Yes, the MLA for—the colleague from Steinbach. I know we get confused a lot with the colleague from St. Johns.

Just a couple of questions. Again, thank you for your work and your recommendations.

On the recommendation regarding lowering the threshold to receive 100 per cent reimbursement on disability and child-care fees; I mean, as parties, we're recruiting candidates and so we hear different challenges for folks who are looking to run.

Is this something that you've heard a lot, that that threshold of 5 per cent of the vote and not being able to then get back child-care expenses or disability expenses is a significant barrier?

*(10:30)

Ms. Verma: There aren't that many candidates who are persons with a disability who are running as candidates. There were a few candidates who had child-care expenses. We did not hear directly from them that it was a major barrier, but we just—our recommendation is that it could be perceived as a barrier, and hence the recommendation was made.

Mr. Goertzen: I mean, that's a fair comment and I think it's one of the best things that goes back many years now, that this committee and through recommendations of probably past electoral officers—I can't remember when the recommendation came—but to provide, you know, greater expenses back for child-

care expenses and then I think subsequently for disability expenses. That made a lot of sense, and I think it's been well received over the last decade or two that it's been in place.

Turning a little bit to mail-in ballots, and so I know that we've approved that for the upcoming by-election at a specific date. I think it was specific to, you know, the spring, and we want to see how the pandemic, you know, proceeds and, hopefully, it's over and we can have a bit more normal elections and normal life in the not-too-distant future. But what's been the experience that you've seen in other provinces on by-elections with mail-in ballots? Is it—seemed to work okay federally, but what's been the experience broadly?

Ms. Verma: The experience in other jurisdictions, namely, I would say, British Columbia and Saskatchewan, has been quite an increase in the mail-in ballot options. They did conduct the general election during the pandemic. Also, British Columbia has experience in mail-in ballot voting because of previous referendum. So there was a significant increase—whatever increase we have seen in British Columbia is not to the same scale in other jurisdictions.

The challenge is the processing the count of the mail-in ballots. So, in some areas, it has taken more than the election night. It could range between a week to two weeks before the count is completed. Is it something that we would see in—for the next general election? I'm not sure about it because we want to monitor, again, the situation, the public health situation, which is there and also see the experience of Manitobans, of what the feedback we receive from them.

It is a more accessible option. It could be taken up by seniors or people who have concerns in coming in-person for voting. But it does pose additional measures that we require when it comes to the counting and also the processing of the return packages because there is a security question which the voters have to complete, which is the date of birth, and they have to sign the oath. If this information is incomplete, then the vote cannot be counted. So another measure that—performance measure we could save is what we'll be monitoring is what are the number of rejected ballots which we have to do because of this requirement in the by-election?

Mr. Goertzen: Just a couple more questions. Yes, certainly on the mail-in ballots, I mean, I think it's important for the Fort Whyte by-election because of

where we are still in the pandemic. It would be interesting to see going forward its value beyond that, and it's relatively, you know compact riding, urban riding, and so, not sure if people will be using it more as a convenience issue, probably less so than in a rural area, or if it's because of, you know, concern about going out in the pandemic. So that'd be an interesting experience. So I look forward to you reporting back after the Fort Whyte by-election.

Question regarding—it's sort of been tradition or law, I suppose, maybe not tradition, and I'm not sure where it began, but the publication of the home addresses of candidates who are running in election, and I know this has become an issue in the past and members have raised this as an issue for a variety of security reasons. Can you speak a bit about what the rationale for that was? I think it pre-exists both of our times in terms of how it came about, but you might have more of a historical understanding of why that was done.

Ms. Verma: So we have received this question in the past from candidates as to the reason as to why the residential address has to be published. Currently under The Elections Act, it states, one's nomination closes, then the CEO must publish the name of the candidate, the political party which is endorsing the candidate—or an independent—the residential address of the candidate and the official agent.

When we researched back, it looks—it's like a legacy provision. It could be from the times pre-existing from 1982, when The Elections Act was brought in. It could be because of the reason—and I'm making an educated guess here—it could be the communication mediums were limited, so knowing the residential address of the candidate and the potential MLA would provide some ease in contacting the concerned candidate or MLA. It also could be this—other mediums of communication were limited, so they needed their address for correspondence purposes.

Other jurisdictions, they have a similar—some jurisdictions still have a similar requirement but they're also reviewing the provision to see how best to continue with accessibility while safeguarding the privacy of the candidate. So it could be if—also another reason could be that—to understand if the candidate resides in that electoral division, so they may have a—depending on the residency, how familiar they are with the issues of that electoral division.

That's where we can provide a bit of a background. Our suggestion—like, we did raise this matter

with the advisory committee, didn't get a clear consensus on it, and it—since it's a policy matter, didn't bring it up as a recommendation either.

If the will of the members is to have information as to if the candidate resides in the electoral division or not, we could do with a disclosure, which states resident of the electoral division or not, and not include—and not publish the home address. We would still need the address for correspondence and sometimes to serve legal notices, if necessary. That information is still needed to be filed along with the nomination papers, but publication may not be a necessity.

Mr. Goertzen: And I thank you for that clarification, and you know why I'm asking the question. And there have been issues that have come up, and I think that there was a change in provision at one point where a candidate can apply to not have their address published but, I mean, that then presumes that, you know, something has happened in the past, but it's very difficult to predict what might happen in the future. And then the address has already been published.

So just finally on that issue though, from a operational perspective from Elections Manitoba, am I hearing you right that there isn't—obviously the candidate has to provide the address to Elections Manitoba so they can have materials sent and that sort of thing, but from a public publication perspective, there isn't anything that impedes the operations of Elections Manitoba by not publishing the home address of a candidate?

Ms. Verma: That's correct. Publication of the candidate's residential address is simply a requirement that we meet because it's stated in the legislation. It's not required for our operation purposes.

Mr. Chairperson: The honourable minister?

Mr. Goertzen: No, I'm very satisfied with the responses from the—

Mr. Chairperson: MLA Marcelino.

MLA Marcelino: Just one more question. During the standing committee, when the committee passed two motions to advance the vote-anywhere proposal, one recommended that legislation be brought forward to implement all aspects of the electronic tabulators.

Could the minister or Ms. Verma update the committee on when we can expect to see this legislation before the House?

Ms. Verma: Would the minister like to respond to that?

Mr. Goertzen: I probably should take that one. I think our expectation is that we would bring—that the agreed-upon legislation—and I obviously prefer when any legislation, particularly elections legislation, is agreed upon by all members. So I think our expectation—we'd bring it forward in the spring for hopeful passage, then, either before the House rises in the summer or the fall.

And, you know, I've committed to have discussions with the opposition House leaders just, you know, on the broad content of the legislation so there aren't any surprises. I do that wherever we can, particularly on elections legislation, because it's important—I think it's—where we can, to have consensus.

So, that's a long answer to say the expectation is the spring. But I'm happy to have discussions with you before that.

Mr. Chairperson: MLA Marcelino, did you have any more questions?

MLA Marcelino: No, not at this time. Thank you.

Mr. Chairperson: Are there no further questions?

Hearing no further questions, I will now put the question on the report.

I now invite all virtual committee members to unmute themselves so that their response to the question can be heard.

Annual Report of Elections Manitoba for the year ending December 31, 2020—pass.

This concludes the business before us.

The hour being 10:41, what is the will of the committee?

An Honourable Member: Committee rise.

Mr. Chairperson: Committee rise.

COMMITTEE ROSE AT: 10:41 a.m.

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