

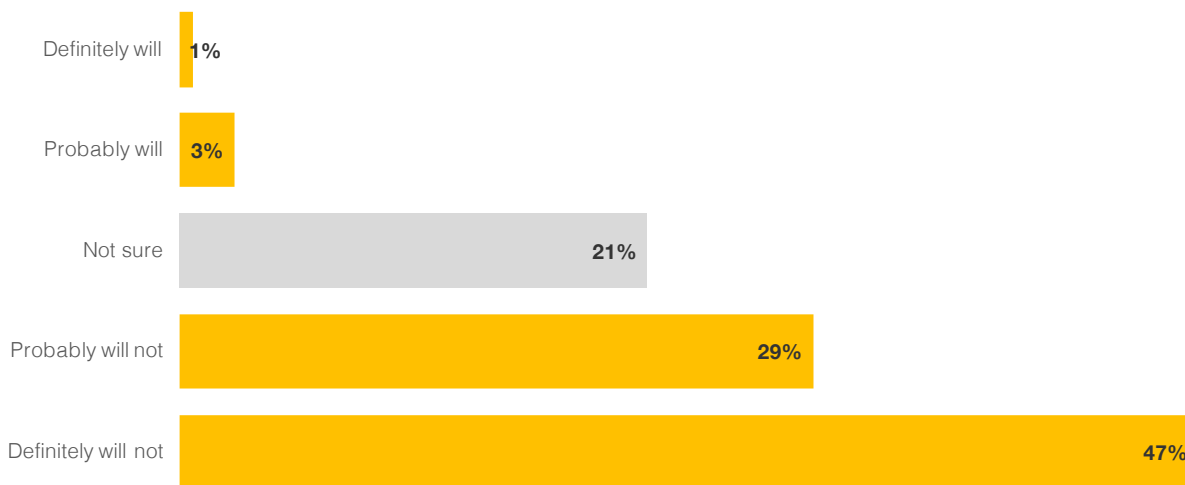
AMCTO COMMENTS *on* RANKED BALLOT REGULATIONS

BACKGROUND

This submission contains AMCTO’s comments on two regulatory proposals posted by the government that would create the framework for municipalities who want to use ranked ballots in future local elections. The regulations are part of the Bill 181, the *Municipal Elections Modernization Act*, which amended the *Municipal Election Act* and was passed into law in June of 2016.

When AMCTO appeared before the Standing Committee on Finance and Economic Affairs in May of 2016 to comment on Bill 181, we indicated that there is significant apprehension amongst election administrators about moving from first-past-the post (FPTP) to ranked ballots. As seen in Figure 1, when AMCTO surveyed clerks in April of 2016, only 4% indicated that they were likely to recommend using ranked ballots for the 2018 municipal election.

Figure 1:
How likely are you to recommend that your municipality use ranked ballots for the 2018 municipal election? (n = 165)



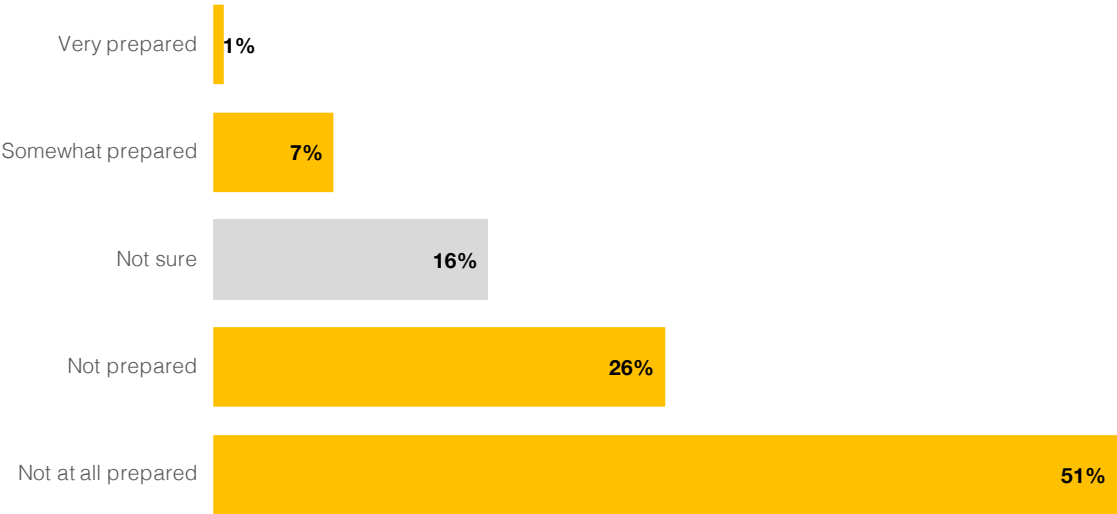
Source: AMCTO. (April 2016). Bill 181 Survey.

While ranked ballots aren’t completely new to Ontario—several political parties use them to select their leader, and some municipalities use them to the determine membership of committees or

boards—they represent a significant change for candidates, administrators and electors. On the administrative side, there are a number of hurdles. Any Ontario municipality that transitions from FPTP to ranked ballots in 2018 will need to invest heavily in new technology and ballot design, significantly update vote counting equipment, upgrade their IT infrastructure, and substantially expand their communications and voter education efforts. In 2018 ranked ballots are also only an option for municipal elections and not school boards, which means that a municipality would have to run two types of elections, ranked ballots for council and FPTP for school board.

Perhaps the biggest administrative hurdle, however, is the tight timeline to get all of this done before the 2018 election. In our survey of clerks only 8% responded that they feel prepared to administer a ranked ballot election in 2018. Some clerks do not think it is possible to orchestrate a ranked ballot election within the next two years.

Figure 2:
Ranked Ballots: If your council decided in favour of using ranked ballots for the 2018 election, how prepared would you feel? (n = 165)



Source: AMCTO. (April 2016). Bill 181 Survey.

Within the context of these challenges, it is important for the regulations governing ranked ballots to be as effective as possible. This submission contains technical recommendations that we believe will help strengthen the ranked ballot framework.

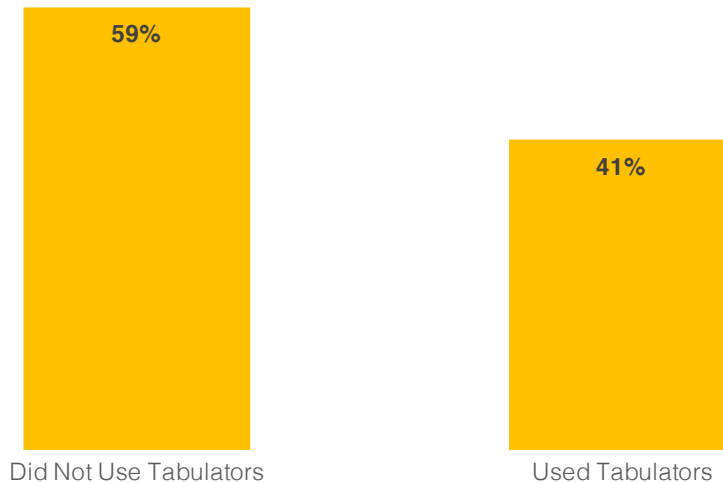
VOTE-COUNTING REGULATION

Our overall impression of and concern with the vote counting regulation is that it appears to have been drafted primarily with a paper ballot election in mind. There are a number of sections that don't seem readily or easily applicable to vote tabulators. For instance, Section 11, Schedule 9(2)3.ii reads that the clerk shall reject a vote that "contains writing or marks that may identify the elector, or is torn, defaced or otherwise dealt with by the elector in a way that may identify him or her." However, this is not something that can be programmed into a tabulator. Municipalities that use tabulators don't review every individual ballot, and as a result some ballots may contain writing or marks, they may be torn or defaced, but they will still be counted.

The incompatibility of these regulations with tabulators is concerning given the number of municipalities in Ontario that currently use them. As seen in Figure 3, more than 40 percent of municipalities surveyed in AMCTO's 2014 post-election survey indicated that they used tabulators.

Figure 3:

Use of tabulators in the 2014 municipal election (n = 136)



Source: AMCTO. (January 2015). 2014 Post-Election Survey.

Include clear definitions of key terms

The draft regulations would also benefit from a clear definition of the key terms that are used often and interchangeably throughout.

Among others, it would be useful to have definitions for:

- “Exhausted ballot”
- “Rejected ballot”
- “Transferred vote”
- “Received vote”
- “Continuing candidate”

There is an important difference between definitions that can be understood and correctly interpreted by the clerk, and information that is appropriately clear for voters and candidates. While clerks, who possess a sophisticated understanding of election administration, are able to parse the difference and meaning of these terms, there is a broader constituency for these regulations. Ordinary voters, candidates and councillors all need to be able to understand these regulations and the differences between these terms. Moreover, it's helpful for clerks to have clearer, plain-language definitions that they can use as for the extensive public education that will be necessary to make a ranked ballot election a success.

Give municipalities more flexibility for how to communicate instructions to electors

The requirements for ballots include three important instructions for electors: (1) the number of candidates to be elected for each office; (2) voter instructions on how to rank preferences; and, (3) the maximum number of preferences that can be ranked for each office. However, there is limited space on the ballot and already a number of prescribed requirements. It may be more effective for municipalities to communicate this information to voters using an alternative to the ballot, such as a handout. We would recommend that this requirement be amended to still require that clerks communicate this information to voters, but give them more flexibility about how to do so.

Clarify equations

There are a number of equations through the regulation that instruct the clerk to multiply a whole number by 1. For instance section 8(5)(2) states that:

“For each vote cast for the successful candidate (a “successful vote”), calculate the surplus portion of the vote using the formal,

$$G \times H$$

in which,

‘G’ is the transfer ratio for the successful candidate, and

‘H’ is one vote.”

It's not entirely clear to us the purpose of these equations, as multiplying any whole number by one will create no change. It would be useful to have the utility of these equations explained within the regulation, and contextualized within the broader vote counting process for ranked ballots.

Clarify Sec. 5.2

Section 5(2) of the regulation states that a ballot cast by an elector is exhausted if “the elector’s highest ranking for a continuing candidate in the next round cannot be determined.” However, under the current first-past-the-post system in municipal elections, voters who incorrectly mark their ballot are given the opportunity to correct their mistake. We would recommend that this section be clarified, and that electors are given every opportunity to cast an appropriately marked ballot.

Add “Neither meets the required threshold” to Sec. 6(7)2

Section 6(7)2 currently states that “If only two candidates remain, the clerk shall...” We would recommend that this language be clarified to state that if two candidates remain *and neither meets the required threshold*, to resolve any potential confusion.

Clarify Sec. 8(3)(1)

Section 8(3)(1) instructs the clerk following the first round of voting to “Count the number of votes cast for each candidate as indicated by each elector’s *highest ranking* on their ballot.” However, it is our understanding that following the first round of voting the clerk should count voters’ first choice, rather than the highest ranking. If an elector fails to include a first choice ranking, in theory this provision would instruct the clerk to count either their second or third choice ranking. It would be useful to have this section clarified. This relates to our comments on section 17(3), below.

Replace “Deputy Returning Officer” with “Clerk” in Sec. 15(3)1

Currently section 15(3)1, under rules that ballots must comply with states that instructions to electors about the following must appear on the ballot: “How to mark the ballot so that the ranking of candidates can be read by the deputy returning officer conducting the count or by the voting equipment or vote-counting equipment to be used to count the votes.” However, it is our impression that in a ranked ballot election vote counting would need to be done centrally in order to count accurately over multiple rounds. The counts from individual polls could not simply be aggregated, but would need to be combined and counted across the entire municipality or ward to allow for multiple rounds of counting. As a result the role of the Deputy Returning Officer would no longer maintain this responsibility.

Clarify Sec. 17.3

Currently section 17.3 states “If the ballot is marked to indicate the rankings among the candidates, but there is no mark that indicates one or more of the rankings that could be assigned, the relative rankings that are marked indicate which candidate is ranked as the highest.” Our understanding is that this section indicates that if a voter doesn’t pick a first choice, then their second or third choice automatically “move up” and are considered the voters’ first or second choice. It would be worth clarifying whether or not this is actually the intent. If it is it may prove difficult for municipalities who use tabulators.

BY-LAW REGULATION

Add to and clarify matters to be considered by council in section 5(1)

Section 5 of the draft regulation, under “Matters to be considered by council” outlines council’s responsibilities before passing a by-law. There are a few provisions of this section that need to be clarified as well as one gap. Item 1 requires council to consider “the public interest,” but doesn’t include a clear definition or delineation of what that is. We would recommend that the government include a clearer or more specific definition of what constitutes the “public interest” when it comes to ranked ballots.

Item five indicates that before passing a by-law a municipality needs to consider “administrative practices and procedures that would be required to conduct the election.” We believe that it is possible for this provision to be misconstrued in two ways. First, it could be argued that it gives council a role in determining how the election will be administered, despite the fact that this is clearly within the purview of the clerk. Second, it could also be interpreted as requiring municipalities to develop detailed plans, practices, and procedures before their municipality has decided whether to continue using FPTP, or switch to ranked ballots. The administrative considerations for ranked ballots and FPTP are not the same, however.

A recent report prepared by the City of Mississauga estimated that adopting ranked ballots would require a significantly larger budget than a more traditional FPTP election. This includes new rental agreements, IT support and upgrades, the development and roll-out of comprehensive education and outreach programs, new ballot design, and a possible expansion of voting locations (City of Mississauga, 2016, Appendix 2, Page 2). While clerks will generally factor administrative considerations into recommendations to council, it should be clarified that the regulation neither requires clerks to develop detailed plans prior to council deciding whether or not to use ranked ballots, nor that it gives council the authority to establish either administrative practices and procedures, as this is clearly the responsibility of the clerk.

We would also recommend that the principles of the MEA be included as one of the matters for council to consider. In *DiBiase v. Vaughan (City)*, 2007, the Honourable Justice Peter Howden of the Ontario Superior Court wrote that in reaching his ruling he relied upon a set of principles

identified in *Haig v. Canada, 1993* (a previous decision of the Supreme Court of Canada), including:

- The secrecy and confidentiality of the voting process is paramount
- The election shall be fair and non-biased
- The election shall be accessible to the voters
- The integrity of the voting process shall be maintained throughout the election
- There is to be certainty that the results of the election reflect the votes cast
- Voters and candidates shall be treated fairly and consistently
- The proper majority vote governs by ensuring that valid votes be counted and invalid votes be rejected so far as is reasonably possible (Rust-D'Eye, Bar-Moshe, and James, 2011).

These principles are fundamental to the administration and exercise of elections, and should be part of council's consideration of ranked ballots.

Clarify the language in section 2 so that it better aligns with the MEA

Currently sec. 2 of the proposed regulation states that the “council of a single-tier and lower-tier municipality is hereby authorized to conduct ranked ballot elections for offices on the council....” However the corresponding section of the *Municipal Elections Act* (Section 41.2) states that the “council of a municipality may pass by-laws with respect to the use of ranked ballot elections for offices on a council if such elections are authorized by a regulation.” We would recommend that the draft regulation be amended to match the language in the *MEA*.

Clarify section 8

While the intent of section 8 seems to be clear, the structure of the proposed language in the regulation seems overly complicated. We would recommend simplifying the language, especially in section 8(1)(a) so that the dates, deadlines, and requirements can be more easily understood by administrators, councillors, prospective candidates and the general public.

SOURCES:

AMCTO. (April 2016). *Bill 181 Survey*.

AMCTO. (January 2015). *2014 Post-Election Survey*.

City of Mississauga. (June 7, 2016). *Corporate Report: Potential enhancements for the 2018 Municipal Election: Internet Voting, Ranked Choice Elections and Vote Anywhere*.

Rust-D'Eye, Bar-Moshe, and James. (2011). *Ontario's Municipal Law: A User's Manual*.

About AMCTO:

AMCTO represents excellence in local government management and leadership. AMCTO has provided education, accreditation, leadership and implementation expertise for Ontario's municipal professionals for over 75 years.

With approximately 2,200 members working in 98 per cent of municipalities across Ontario, AMCTO is Canada's largest voluntary association of local government professionals, and the leading professional development organization for municipal administrative staff.

Our mission is to provide management and leadership service to municipal professionals through continuous learning opportunities, member support, and legislative advocacy.

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