

# Special ballot ruling appealed as N.L. House of Assembly special sitting looms

James McLeod (jmcleod@thetelegram.com)

**Published:** Oct 13, 2017 at 7:13 p.m.

**Updated:** Oct 14, 2017 at 7 a.m.

In a bizarre twist to a long-running legal saga, the province's Chief Electoral Officer is appealing a ruling which struck down part of the province's election law, just days before the House of Assembly convenes for a special sitting to fix the law.

Justice Minister Andrew Parsons acknowledged that it creates a rather tangly situation.

"This whole situation is a tad unusual, I would say," Parsons told The Telegram.

A close-fought election in 2011 on the Burin Peninsula sparked a court case challenging the constitutional validity of the NL Elections Act special ballot provisions. Unlike in every other province, in Newfoundland and Labrador voters were allowed to cast ballots up to four weeks before the election was called, even before candidates were officially accredited and election spending rules were put in place.

The court case dragged on for years, but in September Justice Gillian Butler delivered a ruling that declared that the special ballot provisions were a violation of the Canadian Charter of Rights and Freedoms, because they infringed on a voter's right to participate in an open and fair election.

But with the special ballot portion of the Elections Act struck down, the provincial government was in a pickle, because holding an election with no special ballots at all is also unconstitutional.

Then Mount Pearl North MHA Steve Kent resigned to take another job, which means that a byelection must be held imminently to replace him.

In the face of all this, the provincial government announced that the House of Assembly would open Monday to amend the Elections Act.

Lawyer Will Hiscock, who represents losing NDP candidate Julie Mitchell was taken aback by the notice of appeal filed Friday.

"I'm deeply disappointed in the decision to appeal this. I think Justice Butler's ruling was very sound at law," Hiscock said.

"We will absolutely be fighting it."

Nobody from Elections NL was available Friday afternoon to comment on what sparked the appeal.

Parsons said that the House of Assembly will still be convening Monday to make the Elections Act compliant with the Butler ruling, and when the provincial governments go to the Court of Appeal, they won't be trying to overturn all aspects of Butler's ruling.

"I have no interest in defending pre-writ voting," Parsons said, referring to the strange practice of allowing voters to cast a ballot before the election is called.

However, there are other nitty gritty issues that Parsons said they're looking at.

The notice of appeal filed with the NL Court of Appeal lays out nine different points for the appeal, indicating that Elections NL disagrees with quite a few different aspects of the Butler ruling.

All of this is happening against the backdrop of the looming Mount Pearl North byelection.

On Friday, Jim Lester, owner of Lester's Farm Chalet, formally announced that he was seeking the PC Party nomination in the upcoming byelection.

Lester previously ran for the Tories in 2015 in the adjacent district of Mount Pearl-Southlands. He said he was stepping forward again because he feels that there needs to be a strong opposition to the Liberal government in the coming years.

Lester is competing with Chuck Nurse for the Tory nomination; Nurse said he wants to be a strong constituency MHA, and stressed his deep connection to the district, and his involvement in business and community organizations.

The NDP has also picked a candidate for the not-yet-called byelection — Nicole Kieley, an anti-violence advocate who works as executive director of the NL Sexual Assault Crisis and Prevention Centre.

[jmcleod@thetelegram.com](mailto:jmcleod@thetelegram.com)