



## Review of the Fair Elections Act, Bill C-23

### **Background:**

In May 2013 a [report](#) commissioned by Elections Canada highlighted that more than 165,000 people seemed to vote improperly in the 2011 federal general election. This report was commissioned after a challenge of election results in the federal riding of Etobicoke Centre that made its way to the Supreme Court.<sup>1</sup> The report states:

“This report is delivered to the Chief Electoral Officer of Canada to fulfill the commission mandate. Its contents and recommendations are expected to be given due consideration from senior management at Elections Canada as they set priorities and develop plans to prepare for the 42<sup>nd</sup> general election, scheduled for October 19, 2015, and for the elections that follow.”<sup>2</sup>

The report also notes “legislative change within the next year is essential if the recommendations detailed in this report are to be made effective.”<sup>3</sup> Marc Mayrand, Canada’s Chief Electoral Officer said in response to the report:

“Mr. Neufeld notes, and Elections Canada agrees, that there is insufficient time to fully implement new voting services model for the 2015 general election, assuming that Parliament were to agree to a new model. The magnitude of change required would pose significant risk and extensive testing will be essential to demonstrate that the new model works before adopting it on a national scale.”<sup>4</sup>

The Chief Electoral Officer stated in his response to the Compliance Review that a new voting services model would address compliance issues by 2019 and that some immediate improvements to existing programs would reduce but not fully resolve compliance problems in the 2015 election.

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<sup>1</sup> Maher, S. *More than 165,000 voted improperly in last election, study finds ‘serious errors’ in voter*

<sup>2</sup> Neufeld, H. *Compliance Review: Final Report and Recommendations: A Review of Compliance with Election Day Registration and Voting Process Rules*. <http://www.scribd.com/doc/138876498/Compliance-Review-Final-Report-and-Recommendations>

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

The Fair Elections Act, Bill C-23, was introduced February 4<sup>th</sup>, 2014 by Hon. Pierre Poilievre, Minister of State (Democratic Reform). CASA is committed to ensuring that more young people participate in Canada's democratic process and institutions. To that end, CASA has compiled a list of concerning sections and makes recommendations for changes that must be made to continue to encourage young people to vote.

The Canadian Alliance of Student Associations (CASA) has reviewed the proposed amendments and the ongoing analysis of other organizations, specifically with an eye to ensuring that post-secondary students' right to vote is not impinged upon. CASA has highlighted specific amendments which should be reviewed as they may disproportionately and unjustly affect students in upcoming elections.

## **Areas of Concern:**

### **Vouching:**

What is vouching and why is it important? Vouching is the act of having another individual sign a sworn statement that another individual is whom they claim to be, and lives where they claim to live.

“Vouching is the option that the Canada Elections Act provides for electors without the required pieces of identification to prove their identity and address before registering to vote at a polling station or before voting. However, restrictions on vouching, which were adopted to protect the integrity of the vote, diminish the usefulness of this option in some circumstances.”<sup>5</sup>

In an article on the topic, MacLean's reporter Aaron Wherry had this to say:

“There were no doubt problems with vouching in the 2011 election. The Neufeld report counts 120,171 voters who were vouched for in 2011 (one percent of total voters). Of those vouchings, there were 45,868 cases in which the record in the poll book did not identify both a voter and a voucher, 4,866 cases in which the voucher was not from within the voter's polling division (not to be confused with a riding) and 361 cases in which the voucher vouched more than once.”<sup>6</sup>

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<sup>5</sup> Elections Canada. “*Responding to Changing Needs – Recommendations from the Chief Electoral Officer of Canada Following the 40th General Election.*” July 20, 2010.

<http://www.elections.ca/content.aspx?section=res&dir=rep/off/r40&document=part1&lang=e#1.11>

<sup>6</sup> Wherry, A. *The cases for and against vouching.* Beyond the Commons. MacLeans.ca. February 24, 2014. <http://www2.macleans.ca/2014/02/24/the-cases-for-and-against-vouching/>

In 2012, a widely publicized debate erupted over the seat in Etobicoke Centre. The election of Ted Opitz, the sitting Conservative MP, was challenged by Boris Wrzesnewskyj, the defeated Liberal incumbent. This court challenge made its way to the Supreme Court of Canada where one part of that ruling stated:

“The procedural safeguards in the Act are important; however, they should not be treated as ends in themselves. Rather, they should be treated as a means of ensuring that only those who have the right to vote may do so. It is that end that must always be kept in sight.”<sup>7</sup>

Keeping this ruling in mind, some have called the Fair Elections Act unconstitutional for eliminating the ability to vouch for an elector. This case set the precedent that voting must be allowed and that the procedures that protect voting cannot be used to prevent electoral participation from happening. In effect, some adult, Canadian citizens, with every right to vote, may have that opportunity taken away because they were not made adequately aware of their identification requirements or polling area. In CASA’s mind, this is unacceptable. It is especially troubling given the fact that the Chief Electoral Officer is having powers to communicate about elections and to encourage voting stripped by the same piece of legislation.

### **Voter ID and VICs**

CASA is occasionally asked to speak on behalf of youth because we are an organization that largely represents people in the 15-24 age bracket. When Elections Canada needs to get feedback from young Canadians they typically solicit CASA for advice. Although this is not explicitly federal post-secondary education policy our members have repeatedly expressed support for CASA to continue this work. CASA’s National Director attended a number of roundtable discussions on youth electoral engagement between the last federal election and the summer of 2013. As a result, CASA was asked to provide feedback to Elections Canada that pertained to voter identification requirements and the use of the Voter Information Card at polling stations. CASA’s recommendations were as follows:

#### *CASA Recommendations in July 2013 (Response to Elections Canada Questionnaire)*

- a) Students face a particular challenge at the polls that begins well before they arrive there. In most instances it seems that the challenge is not [that young people do not possess] the proper identification, but rather [they are not] aware of what identification is necessary for casting a ballot.*
- b) In CASA’s view, no additional documents are needed at this time to further assist students. That said, the more documentation available to prove identity*

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<sup>7</sup> Opitz v. Wrzesnewskyj, 2012 SCC 55, [2012] 3 S.C.R. 76. OCTOBER 25, 2012. [HTTP://SCC-CSC.LEXUM.COM/SCC-CSC/SCC-CSC/EN/ITEM/12635/INDEX.DO](http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12635/index.do)

*and address, the better. CASA does not view redundancy as a weakness at this point in time.*

- c) *It is important to retain the current level of specificity, but also to communicate which documents are necessary as widely as possible. Categories are useful when outlining the separate options to electors, as they are outlined on the Elections Canada website, however the categories may confuse people if not laid out in a complementary way.*
- d) *The use of the VIC is useful, however we have no ability to quantify or verify the scope of usage. We are aware that in the past this had been identified as an issue of concern. As a proof of address it only makes sense that this would align with the other requirements for some form of mail addressed to the recipient to confirm address. One suggestion we would like to make is that for students living in residence whose polls are located off-campus that the VIC still be considered a valid proof of address.*

The Fair Elections Act imposes no new restrictions on identification that can be used by students to prove their identity. It does however remove the option of using a Voter Information Card as a piece of Identification, which was an option in some pilot projects in previous elections. To reiterate, CASA has already called for the voter information card to be made available as a proof of residence, but not as proof of identity.

Pursuant the release of proposed amendments from the Chief Electoral Officer, the case for VICs has been further strengthened:

C-23 Clause	CEA1 Provision	C-23 Proposal	Analysis	Proposed Amendments
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48(3) VIC as proof of identity or residence	143(2.1)	The voter information card (VIC) is not to be used as proof of identity or residence.	Some groups of electors (e.g. seniors in seniors' residences, individuals in long-term care facilities, students on campus, First Nations electors on reserve, and individuals who have recently moved) face difficulties proving their residence. One way to alleviate this problem is to add the VIC to the list of authorized pieces of identification. Since 2010,	The VIC should be allowed to be used to prove residence in combination with one other piece of identification.
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			<p>Elections Canada has been testing the VIC as proof of residence in certain specific locations (e.g. in long-term care facilities, on reserves and on campuses). The initiative was successful and well received by electors, institutions and reserve administrators. Allowing voters to use a VIC to prove their residence will reduce reliance on vouching.</p>	
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Source: <http://www.elections.ca/content.aspx?section=med&dir=c23/pro&document=index&lang=e>

CASA sees the recommendations of the Chief Electoral Officer as further support for the continued use VICs as a form of voter identification.

### **Restrictions on Voting Pilot Projects:**

The Fair Elections Act introduces new restrictions in the ability of Elections Canada to implement new pilot projects with regards to using electronic voting. The act states:

“The enactment further amends the Act to permit the Chief Electoral Officer to seek approval from parliamentary committees to test an alternative voting process (but where such a pilot project is to test a form of electronic voting, the Chief Electoral Officer must first obtain the approval of the Senate and House of Commons).”<sup>8</sup>

CASA has always supported innovation and political participation. two key issues of interest to youth in the political process. Making it more difficult to test new and innovative methods that make it easier to vote runs against the goals of our electoral system.

The new limitations state that any new pilot project that uses electronic voting must first seek the approval of both the House of Commons and Senate.<sup>9</sup> While it is important to ensure that any innovation in voting mechanisms ensures the integrity of the vote, singling out one mechanism as requiring this level of approval uniquely increases the level of scrutiny and discourages the possibility of using new methods to reach youth.

<sup>8</sup> House of Commons of Canada. *Bill C-23: An Act to amend the Canada Elections Act and other Acts and to make consequential amendments to certain acts*. Feb. 4, 2014.

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6404810&File=>

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<sup>9</sup> Ibid.

## Chief Electoral Officer communication limitations

Bill C-23 limits the ability of the Chief Electoral officer to perform outreach and educational campaigns. Non-partisan promotion of voting is an important role for Elections Canada, especially to groups that are traditionally less likely to vote. Further, promotion of voting is restricted by the proposed provisions related to registered third parties.

Previously, the Chief Electoral Officer was instructed,

- 18. (1) The Chief Electoral Officer may implement public education and information programs to make the electoral process better known to the public, particularly to those persons and groups most likely to experience difficulties in exercising their democratic rights.
  - (2) The Chief Electoral Officer may, using any media or other means that he or she considers appropriate, provide the public, both inside and outside Canada, with information relating to Canada's electoral process, the democratic right to vote and how to be a candidate.
  - (3) The Chief Electoral Officer may establish programs to disseminate information outside Canada concerning how to vote under Part 11.<sup>10</sup>

Under the Revised act however, this has been changed to:

- 18. (1) The Chief Electoral Officer may provide the public, both inside and outside Canada, with information on the following topics only:
  - (a) how to become a candidate;
  - (b) how an elector may have their name added to a list of electors and may have corrections made to information respecting the elector on the list;
  - (c) how an elector may vote under section 127 and the times, dates and locations for voting;
  - (d) how an elector may establish their identity and residence in order to vote, including the pieces of identification that they may use to that end; and
  - (e) the measures for assisting electors with a disability to access a polling station or advance polling station or to mark a ballot.<sup>11</sup>

The new act eliminates the mission for Elections Canada to perform outreach to groups that otherwise have difficulty in exercising their democratic rights, despite the effectiveness of those activities. There have been many successful examples of outreach campaigns by Elections Canada, such as getting high school students to practice voting

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<sup>10</sup> Government of Canada. *Canada Elections Act* (S.C. 2000, c. 9). Last modified Feb. 17, 2014. Accessed March 1, 2014. <http://laws-lois.justice.gc.ca/eng/acts/E-2.01/page-5.html#docCont>

<sup>11</sup> House of Commons. *Bill C-23*. 2014.

in mock elections.<sup>12</sup> Outreach in schools is a vital element to ensuring lifetime participation in elections - research has demonstrated clear linkages between encouragement towards voting behaviour during youth, and voting behaviour later on.<sup>13</sup>

For young Canadians these changes are worrisome. When a change in legislation or procedure takes place communication to the public is more, not less, important.

### **Third-Party Registration**

CASA has in past elections, registered as an active third party in electoral campaigns. Certain restrictions exist pertaining the involvement of third parties during elections. Two specific amendments are highlighted.

Third parties cannot incur elections advertising expenses of more than \$150,000 in a single election. They cannot incur more than \$3,000 in advertising expenses in a single riding during a by-election.

### **Registration of Live Voice Calling efforts during an election**

During an election, registered third parties are required to register live calling operations with the Canadian Radio-television and Telecommunications Commission. The Canadian Radio-Television and Telecommunications Commission will be responsible for the maintaining a registry, the Voter Contact Registry, which, 30 days following the election, will make public all registrants. Third Parties, like political parties, are required to keep a copy of any scripts used for at least one year after the end of the elections period.

### **Voter Contact Calling Services (Third party spending limits applied)**

While restrictions on partisan spending by third-parties is relevant and necessary, there are questions as to whether the act applies these restrictions equally to entirely non-partisan activities, such as “get out the vote” campaigns and information campaigns about where, when and how to vote. It is important for groups to be able to spend money on encouragement towards democratic participation, especially given the increased restrictions on communications through Elections Canada.

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<sup>12</sup> Elections Canada. *Welcome Teachers*. August 2013.

<http://www.elections.ca/content.aspx?section=vot&dir=yth/tea&document=index&lang=e>

<sup>13</sup> Parliamentary Review, *Why youth do not vote?* 2010,

<http://www.revparl.ca/english/issue.asp?param=198&art=1383>

Given present levels of voter turnout, limiting the ability of groups to perform outreach of this kind will not help to counteract the low levels of participation seen among many groups, especially youth. Reducing the number of voices calling on Canadians to vote will only continue to diminish interest and participation in the political process.

### **Restrictions on Get out the Vote campaigns like keeping scripts**

With regards to voter contact calling, the restrictions that have been applied to these campaigns such as keeping scripts and a higher amount of detail in paperwork, may result in higher costs related to running outreach campaigns. This would limit the ability of third parties even further, especially if the additional restrictions of spending limits also apply.