



LIBRARY of PARLIAMENT  
BIBLIOTHÈQUE du PARLEMENT

## BACKGROUND PAPER



# The Canadian Electoral System

**Publication No. 2013-81-E**  
**15 September 2008**  
*Revised 22 October 2015*

**Dara Lithwick**  
**Sebastian Spano**

Legal and Social Affairs Division  
Parliamentary Information and Research Service

Library of Parliament ***Background Papers*** provide in-depth studies of policy issues. They feature historical background, current information and references, and many anticipate the emergence of the issues they examine. They are prepared by the Parliamentary Information and Research Service, which carries out research for and provides information and analysis to parliamentarians and Senate and House of Commons committees and parliamentary associations in an objective, impartial manner.

© Library of Parliament, Ottawa, Canada, 2015

*The Canadian Electoral System*  
(Background Paper)

Publication No. 2013-81-E

Ce document est également publié en français.

# CONTENTS

1	INTRODUCTION.....	1
2	BACKGROUND.....	1
3	THE CHIEF ELECTORAL OFFICER .....	2
4	CALLING ELECTIONS.....	4
5	THE RIGHT TO VOTE .....	5
6	VOTER REGISTRATION.....	7
7	VOTER IDENTIFICATION .....	8
8	POLITICAL PARTIES.....	9
9	CAMPAIGN FINANCE .....	10
9.1	The 1974 <i>Election Expenses Act</i> .....	11
9.2	2003: Limits on Contributions and Quarterly Allowances for Political Parties .....	11
9.3	2007: The <i>Federal Accountability Act</i> .....	12
9.4	2011: The Beginning of the End of the Per-vote Subsidy to Political Parties .....	13
9.5	2014: The Fair Elections Act.....	13
10	CONSTITUENCIES AND REDISTRIBUTION .....	14
10.1	History .....	15
10.2	The <i>Electoral Boundaries Readjustment Act</i> .....	15
11	ELECTORAL CANDIDACY.....	17
12	ADVERTISING AND BROADCASTING DURING AN ELECTION CAMPAIGN .....	18
13	THE TREATMENT OF THIRD PARTIES.....	19
14	SELECTED ASPECTS OF CANADIAN ELECTION CAMPAIGNS.....	21
14.1	Media Coverage.....	21

14.2	Voter Contact Calling Services .....	21
14.3	Election Debates .....	22
14.4	Opinion Polls .....	22
14.5	Elections and the Public Service.....	22
14.6	Meetings and Rallies.....	22
14.7	Corrupt and Illegal Practices.....	23
15	ELECTION DAY PROCEDURES .....	24
15.1	Election Day and Advance Polls .....	24
15.2	Compilation and Reporting of Election Results .....	25
15.3	Challenges to Election Results .....	26
16	CONCLUSION .....	26

# THE CANADIAN ELECTORAL SYSTEM\*

---

## 1 INTRODUCTION

This paper provides an overview of the nature and operation of the Canadian electoral system,<sup>1</sup> with a focus on elections for the federal Parliament. In keeping with Canada's federal system of government, each province has its own system for elections to its legislatures. The federal and provincial electoral processes are independent of each other.

The main body of Canadian federal election law is contained in the *Canada Elections Act*, but many other statutes – including the *Constitution Act, 1867*, the *Electoral Boundaries Readjustment Act*, the *Broadcasting Act*, the *Parliament of Canada Act*, the *Income Tax Act* and the *Criminal Code* – also contain provisions regarding the Canadian electoral process.

## 2 BACKGROUND

Canadian electoral law has grown in complexity and is constantly evolving. The current electoral system is the result of cumulative changes in both law and practice that have been taking place since the formation of Canada in 1867. In the early years after Confederation, the administration of elections was haphazard and highly politicized. The right to vote was severely limited: only white men could vote, and even then they had to satisfy certain property qualifications. Elections were held at different times across the country, and there was no such thing as a secret ballot. As the right to vote was extended and virtually all adult men and, later, women were enfranchised, the public became less tolerant of partisan excesses and frequent occurrences of electoral fraud and manipulation. Reform became necessary in order for the system to gain and retain legitimacy and public support.

Since Confederation, in addition to the extension of the right to vote, the evolution of the Canadian electoral process has been shaped by two fundamental developments: first, the creation of a non-partisan electoral system governed by highly specific procedures overseen by an independent election agency; and, second, the regulation of political party campaigning, particularly campaign financing. The latter development is comparatively recent.

Many of the changes in the electoral process have followed in-depth studies by government bodies. One study of particular significance was conducted by the Royal Commission on Electoral Reform and Party Financing (the "Lortie Commission") in 1992. The Commission published a four-volume report recommending fundamental changes to the electoral system in a number of areas, including campaign financing. The Chief Electoral Officer also presents reports to Parliament on a regular basis, and these often include recommendations for legislative changes. The House of Commons Standing Committee on Procedure and House Affairs has conducted thorough reviews of the recommendations for electoral reform proposed by the Chief Electoral Officer after a number of general elections, including, most recently,

the 39<sup>th</sup>, 40<sup>th</sup>, and 41<sup>st</sup> general elections.<sup>2</sup> The Committee's studies of such recommendations have, at times, led to further refinements and improvements to the *Canada Elections Act*.<sup>3</sup>

In May 2000, Parliament enacted a new *Canada Elections Act*.<sup>4</sup> Although this legislation represented the first full-scale overhaul of federal electoral law in almost 30 years, it did not radically change Canada's federal electoral process so much as bring it up to date. In addition, the new Act was an attempt to respond to a number of electoral matters that had been the subject of court decisions in recent years. The Act has already been amended on several occasions, most notably in 2003, when new electoral finance provisions were introduced.<sup>5</sup> In 2007, voter identification rules were enacted, further changes to campaign finance rules were made, and a fixed-date process was set for federal elections.<sup>6</sup> In 2014, numerous amendments were made in relation to the office of the Chief Electoral Officer, the office of the Commissioner of Canada Elections, communications with electors, voter identification, campaign financing, and the prohibitions and enforcement provisions of the Act, among other matters.<sup>7</sup>

### 3 THE CHIEF ELECTORAL OFFICER

As noted earlier, one of the most significant developments in the history of the Canadian political system is that the administration and organizing of elections have been progressively removed from partisan political control and intervention. The electoral system is now administered by impartial and independent election officials, although the laws continue to be passed by politicians.

The Canadian public have well-ingrained expectations for the neutrality of election officials: they must not be seen as closely associated with the government of the day, or as working toward the re-election of the incumbents. To establish the electoral system's independence and neutrality, politicians have forgone their previous prerogative of administering or interfering with the electoral machinery to their own advantage. This has reinforced the legitimacy and efficiency of the electoral system.

The position of Chief Electoral Officer was first created by the *Dominion Elections Act* of 1920. In 1927, the law was amended so that this individual would be appointed by resolution of the House of Commons, rather than by the government of the day. It was thus recognized that the office needed to have the confidence of all political parties represented in the House of Commons.

To this end, the *Canada Elections Act* gives the Chief Electoral Officer considerable security of tenure. He or she is responsible to Parliament, rather than to the government; holds office for a non-renewable term of 10 years;<sup>8</sup> and can be removed only for cause and only by the Governor General upon a joint address of the House of Commons and the Senate.<sup>9</sup> The procedure is designed to prevent arbitrary removal and reduce the influence of the government. The salary of the Chief Electoral Officer is also protected, in that it is equal to that of a judge of the Federal Court and cannot be raised or reduced without legislation. The fact that, since 1920, there have been only six Chief Electoral Officers has contributed to continuity and professionalism in the conduct of elections in Canada.

Elections Canada, under the direction of the Chief Electoral Officer, is responsible for the general direction and supervision of the preparation, administration and reporting of federal elections and for administering the election expenses provisions of the *Canada Elections Act*. In addition to his or her overall responsibility for the administration of the electoral process, the Chief Electoral Officer has discretionary powers to adapt the process prescribed in the Act in the light of unusual circumstances; effectively, he or she has the authority to circumvent the requirements of the legislation “for the sole purpose of enabling electors to exercise their right to vote or enabling the counting of votes” in cases where “an emergency, an unusual or unforeseen circumstance or an error makes it necessary.”<sup>10</sup> As well, following passage of the *Fair Elections Act* in 2014, the Chief Electoral Officer must now issue non-binding guidelines and interpretation notes to the various political entities whose electoral activities are regulated by the Act. The Chief Electoral Officer must also provide binding written opinions on the application of the *Canada Elections Act* at the request of registered political parties.<sup>11</sup>

Responsibility for actually conducting an election resides primarily within each electoral district, where it is exercised by a hierarchy of officials. These officials swear oaths of impartial conduct upon assuming office and are governed by the detailed provisions of the *Canada Elections Act*. One returning officer is appointed for each electoral district. The returning officer is the top election official in an electoral district and has ultimate responsibility for overseeing the conduct of elections within the district. As a result of amendments to the *Canada Elections Act* brought about by Bill C-2, An Act providing for conflict of interest rules, restrictions on election financing and measures respecting administrative transparency, oversight and accountability, the *Federal Accountability Act*,<sup>12</sup> which came into force in 2007, the Chief Electoral Officer is responsible for the appointment of all returning officers using a merit-based process, as well as for their removal. The appointment is for a 10-year term that may end sooner in cases of death, resignation, or removal from office for reasons prescribed in the Act, such as mental or physical incapacity or engaging in partisan conduct. The term may also be extended for a further 10 years in some circumstances. Before passage of the bill, returning officers were appointed or removed by Order in Council.

When the election process formally begins – that is, when a writ of election is issued – the returning officer for each electoral district appoints a deputy returning officer and poll clerk for each polling station. The appointment of deputy returning officers is made from lists submitted by the party that finished first in a given riding in the previous election, and the appointment of poll clerks is made from lists submitted by the parties whose candidates finished second. The returning officer is free to make his or her own appointments if the lists are not provided by the deadline prescribed in the legislation, or if he or she determines that the individuals proposed by the parties are unsuitable.<sup>13</sup> A number of other election officials are appointed by returning officers to perform specific functions; these include revising agents, registration clerks, information officers and central poll supervisors. The Chief Electoral Officer may also appoint additional election officers to fulfil other roles.<sup>14</sup>

Finally, the Commissioner of Canada Elections is the independent officer who ensures compliance with and enforcement of the *Canada Elections Act* and the *Referendum Act*.<sup>15</sup> The Commissioner of Canada Elections used to be appointed

by the Chief Electoral Officer.<sup>16</sup> The position is now appointed by the Director of Public Prosecutions for a non-renewable term of seven years (removable only for cause). The Commissioner's position is within the Office of the Director of Public Prosecutions. The Director of Public Prosecutions cannot consult the Chief Electoral Officer when appointing the Commissioner.<sup>17</sup>

#### 4 CALLING ELECTIONS

Under the *Constitution Act, 1982*, the maximum duration of the House of Commons, as well as of all provincial legislative assemblies, is five years. By tradition, however, elections to the House of Commons are usually held at approximately four-year intervals. (The other house of Parliament, the Senate, is appointed.) Only the Governor General, who represents the Queen as the head of state, has the power under the Constitution to dissolve Parliament on the advice of the prime minister. This process is set in motion when the prime minister requests the Governor General to dissolve Parliament and to request the issue of a writ by the Chief Electoral Officer. The *Canada Elections Act* stipulates that the writ shall not be issued or dated later than the 36<sup>th</sup> day before polling day, making the minimum period for a federal election 36 days. Until 1997, the minimum election period was 47 days, largely because of the requirement for a door-to-door enumeration to be conducted during the campaign. It was argued that this period was unnecessarily long, particularly in view of modern communications technology, and contributed to the expense of federal elections. Although the minimum period has been shortened, it is unlikely that it could be shortened further. Other countries, such as the United Kingdom, have shorter minimum election periods; however, Canada's size probably necessitates a reasonably long campaign to give party leaders an opportunity to visit different regions and constituencies.

It should also be noted that, in the United States, where election dates are fixed under the Constitution and no campaign period is specified, candidates for the presidency or other major offices can spend a year or more pursuing election. In Canada, the idea of holding elections at fixed intervals garnered some interest in the early 2000s, particularly at the provincial level. It has been argued that elections at fixed intervals, or on fixed dates, facilitate planning, ensure predictability and remove the discretion and advantage of the governing party. Contrary arguments hold that such a system would be inconsistent with a parliamentary system and the confidence convention, whereby if a government loses the confidence of a majority of the members of the House of Commons it must tender its resignation.

On 3 May 2007, Royal Assent was given to Bill C-16, An Act to amend the Canada Elections Act, which imposed fixed election dates for federal elections while preserving the prerogative of the Governor General to dissolve Parliament at a date not prescribed by the legislation. The *Canada Elections Act* now provides that, subject to an earlier dissolution of Parliament, a general election must be held on the third Monday in October in the fourth calendar year after the polling day of the last general election. The powers of the Governor General, including the discretionary power to dissolve Parliament, remain unaffected by the bill.<sup>18</sup> The legislation set the date for the first general election as Monday, 19 October 2009. However, the wording



of the bill allowed for the four-year period to begin before 19 October 2009 in the event of an earlier dissolution of Parliament. A general election was, in fact, held on 14 October 2008. Thus, the next general election after the 2008 general election should have been held on the third Monday in October 2012, barring an earlier dissolution of Parliament. The Prime Minister, however, chose to seek dissolution of Parliament before the prescribed term. An election was thus held on 2 May 2011, approximately 17 months sooner than the prescribed date. After that election, the fixed date for the subsequent election was 19 October 2015, being the third Monday of October in the fourth calendar year following polling day for the 2011 general election.

A number of provinces and one territory have enacted fixed-date election laws, each of which preserves the powers of the Lieutenant Governor to dissolve a legislature at his or her discretion.<sup>19</sup>

## 5 THE RIGHT TO VOTE

The importance of the right to vote cannot be overstated. One text expresses it as follows:

The franchise – the right to vote for one’s representative – is the fundamental political right. It produces the most direct verdict by citizens on the performance of those who govern them. It is ... “the key stone in the arch of the modern system of political rights in this country.”<sup>20</sup>

This is recognized by the constitutionally entrenched right to vote in section 3 of the *Canadian Charter of Rights and Freedoms* (Charter), which states: “Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.” This right, as expressed in the Charter, has been interpreted in very broad terms by the Supreme Court of Canada as the right to effective representation and the right to play a meaningful role in the electoral process. This was the basis for the Court striking down the 50-candidate threshold in the *Canada Elections Act* at issue in *Figueroa v. Canada (Attorney General)*.<sup>21</sup>

The *Canada Elections Act* sets out the qualifications and disqualifications for voting in federal elections; these combine to establish a virtually universal adult franchise. It is important to appreciate that this is a relatively recent phenomenon and the product of a gradual evolution. That evolution has been underpinned by two major changes:

- First, the franchise – after having been defined by provincial legislation in the absence of federal legislation (except during the period 1885 to 1898) – was uniformly defined in federal legislation by 1920.
- Second, a variety of restrictions on the right to vote that were present in the years immediately after Confederation have been loosened or entirely removed. For instance, women were given the right to vote in federal elections in 1918, and Aboriginal Canadians living on reserves in 1960.

Until 1970, the minimum voting age was 21 years. When it was proposed that the voting age should be lowered to 18 years, concern was expressed in some quarters as to whether 18-year-olds were sufficiently well informed or mature to vote

responsibly. Today, otherwise eligible Canadians who are 18 years of age on or before the day of an election may vote.<sup>22</sup>

Only those who hold Canadian citizenship may vote in federal elections. Because of the historical relationship with the United Kingdom, British subjects were allowed to vote in Canadian elections until the mid-1970s.

The election of members of Canada's House of Commons is based on geographical electoral districts, or ridings. As such, the right to vote in Canada is limited largely to those who maintain normal year-round residency within a given riding. Although residency normally means "place of ... habitation," special provision is made for members of the Canadian Forces and public-service workers, together with their dependants, who are absent from their place of residence for extended periods by virtue of their jobs. Special provision is also made for those who move during an election, employees or students temporarily residing in a location, transient residents and members of Parliament. Concerns have been expressed that groups such as the homeless and the poor may be effectively disenfranchised by the current rules for residency. A provision now permits persons with no other residence to be considered resident in temporary quarters such as shelters or hostels that provide food, lodging or other social services to the homeless.<sup>23</sup>

Except for the removal of the right to vote from British citizens, the trend in Canada has been toward extending the franchise and removing voting restrictions. The passage of the *Canadian Charter of Rights and Freedoms* in 1982 encouraged this trend. As noted above, the Charter guarantees the right of every Canadian citizen to vote in federal elections, subject only "to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

The *Canada Elections Act* also sets out categories of persons disqualified from voting. These include certain officials, such as the Chief Electoral Officer and the Assistant Chief Electoral Officer. Judges and mentally disabled persons were also barred from voting but, after a series of successful court challenges of these prohibitions, the law was amended in 1993 to remove them. Prisoners also used to be prohibited from voting; in 1993, this prohibition was restricted to inmates serving sentences of two years or more. The entire prohibition has since been struck down by the courts.<sup>24</sup>

An area of concern about the right to vote involves people who are absent from their homes on the day of an election. The *Canada Elections Act* provides for the holding of advance polls and, for certain classes of individuals, for mail-in ("special") ballots. The latter may be used by Canadian Forces members serving abroad, Canadians living abroad and electors in Canada who are unable to vote in the electoral district in which they normally reside.<sup>25</sup>

Since 1993, Canadian citizens who reside outside Canada have been permitted to vote in federal elections provided they have been absent for no more than five years and plan to return to Canada. This is in line with the practice in many other countries – including Australia, France, Germany, the United Kingdom and the United States – that make provision for non-resident citizens to vote in national elections. Previously

in Canada, only certain non-resident citizens – such as armed forces personnel and public-service workers posted abroad – were permitted to vote in federal elections.

In recent years the five-year limitation for Canadians living abroad has been subject to both debate and scrutiny in Canada. In 2005, the Chief Electoral Officer recommended that the five-year limitation be removed as a potential violation of the Charter right to vote in federal elections.<sup>26</sup> The following year the House of Commons Standing Committee on Procedure and House Affairs studied the issue and agreed that the five-year limitation should be eliminated.<sup>27</sup> In response, the Government of Canada suggested that the committee conduct a more fulsome review of special voting rules in general.<sup>28</sup>

Nonetheless, after the 2006 federal general election, Elections Canada changed the manner in which it calculated the residency requirement for Canadians living abroad, indicating that a visit to Canada would not be considered a resumption of residence in Canada and would not interrupt the five-year period. In his report following the 41<sup>st</sup> general election in 2011, the Chief Electoral Officer explained that this change to how the five-year period is calculated was made in order “to more closely respect the text of the legislation.”<sup>29</sup>

In a judgment rendered on 2 May 2014 in *Frank et al. v. Attorney General of Canada*, Justice Michael Penny of the Ontario Superior Court held that provisions of the *Canada Elections Act* that prevented Canadian citizens who were absent from Canada for more than five years from voting violated those citizens’ democratic right to vote, as guaranteed by section 3 of the Charter (which guarantees every citizen “the right to vote in an election of members of the House of Commons or of a legislative assembly”), and were not saved by section 1 of the Charter (which allows limitations to Charter rights so long as they are prescribed by law and demonstrably justified in a free and democratic society). He declared those provisions to be of no force or effect.<sup>30</sup> The Attorney General of Canada appealed the decision. On 20 July 2015 the Ontario Court of Appeal, in a split 2-1 ruling, allowed the appeal and overturned the trial decision.<sup>31</sup> Leave is being sought to appeal the decision to the Supreme Court of Canada.

## 6 VOTER REGISTRATION

A permanent voters’ list for federal elections has been in place since 1997, when the National Register of Electors was established. Previously, a door-to-door enumeration of voters was conducted within the first days after an election was called. Although this enabled very accurate voters’ lists to be compiled, it was time-consuming, labour-intensive and expensive. The National Register of Electors, on the other hand, is a continually updated database of qualified voters that contains each voter’s name, mailing address, electoral district, gender and date of birth.

Canadians are very mobile, and about 17% of the information on the National Register of Electors changes every year.<sup>32</sup> The Register is updated with information from existing federal and provincial databases, including information obtained from qualified voters who file a tax return with the Canada Revenue Agency and indicate their qualification to vote. Elections Canada has also established an online voter registration process. In addition, voters may register to vote on polling day or at

an advance poll if they have the identification documents required by the *Canada Elections Act* (see the section 7, “Voter Identification,” in this paper).

The National Register of Electors is used to produce the preliminary list of voters for federal elections, by-elections and referendums. These lists are made available to political parties earlier than was possible previously. This system also allows electoral lists to be shared among federal, provincial, territorial, municipal and school board jurisdictions, thereby minimizing duplication and increasing cost savings. Elections Canada has entered into agreements with various provincial authorities for the sharing of information.

## 7 VOTER IDENTIFICATION

Amendments to the *Canada Elections Act*, which came into force in 2007, now require that voters provide appropriate identification when they cast a ballot. In 2014 further amendments were made to the Act to modify the identification requirements.

To register and vote in a federal election, voters must prove their identity and address.<sup>33</sup> There are three ways that this can be done:

- **Option 1:** A voter may provide one piece of identification, issued by any level of government, containing their photograph, name and address. Examples of this type of identification include a provincial/territorial driver’s licence, a provincial/territorial identification card, or, in some cases, a provincial/territorial health card.<sup>34</sup>
- **Option 2:** Alternatively, the voter may present two non-photo pieces of identification, each of which establishes his or her name, and one of which establishes his or her address, provided that these documents fall within the types of identification authorized by the Chief Electoral Officer.<sup>35</sup>
- **Option 3:** Finally, a voter may prove his or her identity and residence by providing two types of identification authorized by the Chief Electoral Officer that prove his or her identity, and may then prove his or her residency by taking a written oath. In this case the voter must be accompanied by another voter whose name is on the list of electors for the same polling division, who knows the voter personally, and who attests to the voter’s residence. That accompanying voter must have the required pieces of identification to prove both identity and residence, must not have attested for any other voters, and must also take an oath.<sup>36</sup>

Voters in some parts of the country, particularly rural voters, whose identification documents do not contain a civic address, are permitted to vote if the address that appears on the documentation being presented is consistent with the information that appears on the list of electors. The residence of the voter is by this means deemed to have been proven.

The voter identification requirements in the *Canada Elections Act* that first came into force in 2007 were the subject of a challenge in British Columbia under section 3 of the Charter. The plaintiffs in the case asserted that individuals who lack the necessary

documentary proof of identity and residence would be unfairly prevented or impeded from exercising their right to vote as guaranteed in the Charter. Although the Supreme Court of British Columbia agreed that the identification requirements interfered with the right to vote, it considered the interference to be a reasonable limit pursuant to section 1 of the Charter. The Court relied in large part on the fact that various options are available to voters to provide proof of identity.<sup>37</sup> Moreover, the voter identification provisions of the legislation were considered to be a proportionate response to a concern about voter impersonation and other kinds of electoral fraud. The court concluded that, even though it might not be possible to know the dimensions of the problem, the legislation was a justifiable attempt to preserve the integrity of the electoral process.<sup>38</sup> The plaintiffs appealed the decision, and in 2014 the British Columbia Court of Appeal dismissed the appeal.<sup>39</sup>

## 8 POLITICAL PARTIES

Political parties are an integral part of the Canadian political process. However, in a parliamentary system voters cast their ballots, both legally and theoretically, for individual candidates. They are not electing a particular government, party or leader; rather, they are voting for a person to represent their constituency in Parliament. The reality, though, is quite different: most serious candidates belong to political parties, and generally only representatives of the dominant parties are elected.

In the United Kingdom, the development of a party system began in the middle of the 18<sup>th</sup> century and became fully developed in the period between 1832 and 1867. In Canada, similar party politics emerged in the 1840s. Originally, political parties were informal entities, and it is only relatively recently that they acquired legal status.<sup>40</sup>

Until 1970, election ballots listed the names, addresses and occupations of candidates, but there was no provision for identifying their political affiliations. Therefore, a voter had to know before entering the voting booth which candidate represented a particular party. There was great scope for voter confusion, whether inadvertent or consciously orchestrated by candidates. The law was changed in 1970 to allow the political affiliation of candidates to be shown on the ballots and to delete the address and occupation of candidates. These changes not only assisted voters, but also accorded better with the reality of modern political campaigns. The changes coincided with the enactment of legislation that, for the first time, formally recognized political parties as entities that are subject to regulation by Elections Canada when they engage in activities related to the electoral process.

The legal status of political parties continues to evolve. Although they retain their common-law status as voluntary or unincorporated associations without legal personality or status,<sup>41</sup> their integration in a complex statutory electoral scheme greatly enhances their identity and status in law within the electoral process.<sup>42</sup>

The legal recognition and registration of political parties that wish to contest elections is a relatively recent development in Canada. Registration under the *Canada Elections Act* is not mandatory, but it does bring significant benefits and opportunities; with

these rights come corresponding duties and obligations, including the requirement to provide certain reports.

The *Canada Elections Act* was amended in June 2001 to allow the political affiliation of candidates who do not belong to registered parties to be indicated on the ballot, provided the group nominates at least 12 candidates. The Ontario Court of Appeal had previously ruled that it was unconstitutional to prohibit all political affiliations except those of registered parties from being shown on ballots. Registration, however, remains the key to being eligible for other benefits accruing to parties. These benefits include:

- entitlement to issue tax receipts;
- reimbursement of election expenses;
- access to copies of the voters lists on an annual basis; and
- access to broadcasting time.

Until recently, a political party was required to nominate at least 50 candidates in a general election in order to qualify as a registered party. In June 2003, however, the Supreme Court of Canada ruled in *Figuroa* that the 50-candidate threshold was unconstitutional under section 3 of the *Canadian Charter of Rights and Freedoms*. The Court held that a threshold higher than one candidate diminished citizens' rights to play a meaningful role in the electoral process and to make an informed choice. The Supreme Court suspended the decision for 12 months, until 27 June 2004, to afford Parliament the opportunity to amend the legislation. A bill to address the decision received Royal Assent on 14 May 2004.<sup>43</sup>

The bill amended the requirements for application for registration. Under the provisions of the bill, a party is eligible for registration if it has at least one candidate whose nomination has been confirmed for an election and its application to become registered was made at least 60 days before the issue of a writ for that election. The bill included, for the first time, a definition of a "political party" as an organization "one of whose fundamental purposes is to participate in public affairs by endorsing one or more of its members as candidates and supporting their election."<sup>44</sup> It provided for the name of the political party that has endorsed a candidate to be listed on the ballot under the name of the candidate, if the party is a registered party. This amendment eliminated the requirement that a party have candidates in a minimum of 12 electoral districts in a general election. Parties that fail to run a single candidate in a general election, however, will be automatically deregistered.

## 9 CAMPAIGN FINANCE

Federal campaign finance rules have evolved since the 1970s, when the *Election Expenses Act* first set out a comprehensive regime for election financing in Canada. The most recent campaign finance reforms were passed in 2014. The objectives of campaign finance legislation have generally been to increase public confidence in the electoral process by establishing a clear playing field and set of rules for political actors.

## 9.1 THE 1974 *ELECTION EXPENSES ACT*

The 1974 *Election Expenses Act* established a new regime for the financing of federal elections in Canada. It was a response to a growing concern over the political fundraising and financing of parties and election campaigns, and the culmination of more than a decade of debate about and re-examination of the fundamental principles of the Canadian electoral process. The main purpose of this legislation was to control election spending by parties and candidates. The Act introduced a degree of financial equivalency among different candidates and provided assistance to parties and candidates. In return, controls and requirements were imposed to enable public scrutiny and encourage greater public confidence in the political and electoral process. Premised on the notion that the financing of elections ought to be open to public scrutiny, the Act:

- imposed spending limits;
- provided for the disclosure of campaign expenses and contributions;
- introduced a system of partial public financing;
- regulated political broadcasting by parties and candidates; and
- implemented various other changes designed to equalize the political process.

The *Election Expenses Act* extended the system of party registration that had been established in 1970. This was required in order to permit the other aspects of the legislation to operate properly. The Act imposed limits on the amount of money that registered political parties and candidates were able to spend. These limits are based on the number of electors on the preliminary list of voters.

## 9.2 2003: LIMITS ON CONTRIBUTIONS AND QUARTERLY ALLOWANCES FOR POLITICAL PARTIES

In January 2003, the government introduced Bill C-24, An Act to amend the Canada Elections Act and the Income Tax Act (political financing).<sup>45</sup> This initiative implemented a commitment by then Prime Minister Jean Chrétien in June 2002 that the government would strengthen legislation governing the financing of political parties and candidates, in order to enhance the fairness and transparency of the electoral system. The bill represented the most significant reform to Canada's electoral and campaign finance laws since the 1974 law.

Before the introduction of Bill C-24, various issues had emerged with respect to campaign and electoral finance. Concerns were expressed about the unregulated expenses of nomination and leadership campaigns, and also about the continued influence of major donors, including corporations, unions and other entities. Proposals had been put forward to limit donations or the sources of donations. Since 1977, the Province of Quebec, and, since 2000, the Province of Manitoba, have had very stringent laws regarding political donations; it had been urged, by the Lortie Commission in 1991 and by others, that similar rules should be enacted at the federal level.

Bill C-24, which received Royal Assent on 19 June 2003, had several general components or themes:

- Annual limits on corporate and union donations of \$1,000 to candidates, nominations contestants and riding associations collectively and \$1,000 to independent candidates.
- A ban on corporate and union contributions to political parties.
- Limits on individual (citizens and permanent residents) contributions as follows:
  - \$5,000 to registered parties, candidates, constituency associations and nomination contestants within the same political family;
  - \$5,000 to leadership contestants; and
  - \$5,000 to independent candidates.
- The registration of constituency associations, with reporting requirements. Under the bill, constituency associations – referred to as “electoral district associations” – were required to register with Elections Canada, to provide certain information and to report annually.
- The extension of regulation to nomination and leadership campaigns. The bill extended spending limits to nomination contestants, setting the limit at 20% of the amount to which the candidate in that riding was subject during the last election period. With respect to leadership campaigns, contestants were required to be registered with Elections Canada and to comply with various reporting and auditing requirements. No spending limits were imposed on such campaigns, but a \$5,000 annual limit for individuals’ contributions to leadership campaigns was introduced.
- Enhanced public financing of the political system, particularly at the level of political parties. Bill C-24 contained significant public financing measures, in part to compensate parties for the removal of corporate and union donations. The rate of reimbursement of electoral expenses for parties was raised from 22.5% to 50%. The bill also made provision for registered parties with a minimum level of electoral support to receive an annual allowance in the amount of \$1.75 per vote received by the party in the previous general election. As an incentive to encourage contributions by individuals, the bill also amended the *Income Tax Act* to double, from \$200 to \$400, the amount of an individual’s political donation that is eligible for a 75% tax credit and to increase accordingly each other bracket of the tax credit, to a maximum tax credit of \$650 for political donations of \$1,275 or more.

### **9.3 2007: THE *FEDERAL ACCOUNTABILITY ACT***

Further reforms were introduced in January 2007 under the *Federal Accountability Act*.

The major changes brought about by the *Federal Accountability Act* included a complete ban on union and corporate donations and a reduction in the amount that individuals may contribute to political campaigns. The individual contribution limits prescribed by the legislation were as follows:

- \$1,000 in any calendar year to each registered party;



- \$1,000 in any calendar year to the electoral district associations, nomination contestants and candidates of each registered party;
- \$1,000 to leadership contestants in a particular leadership contest; and
- \$1,000 to an independent candidate in an election.

These contribution limits were adjusted annually to take account of inflation.

#### **9.4 2011: THE BEGINNING OF THE END OF THE PER-VOTE SUBSIDY TO POLITICAL PARTIES**

In 2011, legislation was enacted to phase out the per-vote subsidy to political parties (sometimes referred to as the quarterly allowance) by January 2015.<sup>46</sup> Before the reductions, the amount of the subsidy was \$0.4375 per vote received, per quarter, adjusted annually for inflation. The first stage in the reduction became effective 1 April 2012, when the subsidy was reduced to \$0.3825 per vote received in the 2011 general election. The amount was reduced to \$0.255 per vote effective 1 April 2013. As of 1 April 2014, the amount was reduced to \$0.1275 per vote. Finally, the allowance was terminated after the fourth instalment of 2014 was paid on 1 January 2015.

#### **9.5 2014: THE FAIR ELECTIONS ACT**

The *Fair Elections Act* made a number of significant changes to the campaign financing rules in federal elections, rewriting and reorganizing Part 18 (Financial Administration) of the *Canada Elections Act*. Part 18 of the Act serves as a mini-code to regulate the financing of political campaigns. Changes brought about by the *Fair Elections Act* include:

- An increased individual contribution limit. As of January 2015, individual annual contribution limits (to registered parties, electoral district associations and party candidates, party leadership contestants, and independent candidates in an election) increase from \$1,000 (indexed to inflation) to \$1,500. The limit is no longer indexed to inflation but increases by \$25 each year.<sup>47</sup>
- Increased election spending limits for political parties, candidates and nomination contestants. Before the *Fair Elections Act*, limits on spending by political parties during an election were determined by multiplying \$0.70 by the number of names on the preliminary list of electors for constituencies in which the party has endorsed a candidate. Now the political party spending limit has been increased to \$0.735 if the election period lasts the statutory minimum of 37 days (beginning with the issuance of the writ and ending on polling day).<sup>48</sup> However, the spending limit increases if the election period exceeds 37 days. In this case, the spending ceiling increases by 1/37 of the maximum amount determined for a 37-day election period for each additional day following the first 37 days.<sup>49</sup>
- Financial penalties for candidates and political parties that exceed the election spending limit. The *Fair Elections Act* implemented a recommendation first considered by the Chief Electoral Officer and the House of Commons Standing Committee on Procedure and House Affairs to penalize candidates who

overspend during an election by reducing the amount by which they are reimbursed for their election expenses. Political parties and candidates who exceed their spending limits during an election will see their expense reimbursement reduced according to the scale shown in Table 1:<sup>50</sup>

**Table 1 – Scale of Reductions in Election Expenses Reimbursements**

Percentage Spending in Excess of the Spending Limit	Reduction of Candidate's or Party's Reimbursement
Less than 5%	One dollar for each dollar exceeding the limit
Between 5% and less than 10%	Two dollars for each dollar exceeding the limit
Between 10% and less than 12.5%	Three dollars for each dollar exceeding the limit
12.5% and more	Four dollars for each dollar exceeding the limit

- A regulatory regime that imposes tighter regulation of campaign loans and that limits loans by individuals. After contribution limits were reduced and corporate and union contributions were banned, loans became an increasingly important source of campaign financing. In a special report issued in 2007, the Chief Electoral Officer noted that a deficiency existed in the campaign finance regime whereby loans that remained unpaid or forgiven could have served as a means to circumvent contribution limits and restrictions.<sup>51</sup> The *Fair Elections Act* imposed limits and other restrictions on lending money to political entities. Loans from individuals are subject to a limit (\$1,500 per calendar year, or per election for independent candidates). Loans in excess of the limit may be made only by registered banks or by political parties and their electoral district associations to each other and their candidates (but not to nomination contestants or leadership contestants). A three-year period now applies for the repayment of loans, subject to extensions being granted by the Chief Electoral Officer or a judge to candidates, nomination contestants, and leadership contestants.<sup>52</sup>
- Finally, the *Fair Elections Act* modified the way that third parties may conduct their election advertising campaigns. Previously, third parties could spend a maximum of \$150,000 *during an election period*. To ensure that third parties do not circumvent the limits on election advertising expenses by incurring expenses before the issuance of an election writ (particularly given the new reality of fixed-date elections), the *Canada Elections Act* was amended to require that the spending limit apply *in relation to a general election*. Of that amount (which is adjusted for inflation), not more than \$3,000 may be incurred to promote or oppose the election of one or more candidates in any given electoral district. Where the period of a general election exceeds 37 days, the limits on third-party advertising spending are increased by 1/37 of the maximum spending amounts in effect – \$150,000 in total for an election and \$3,000 per electoral district – for each day the election period exceeds 37 days.<sup>53</sup>

## 10 CONSTITUENCIES AND REDISTRIBUTION

Each of the members of the House of Commons – including the prime minister and cabinet ministers, the leader of the Opposition and the Speaker – is elected to represent a particular constituency. As noted above, elections in Canada are organized on a constituency basis and are administered mainly at this level.

The Canadian Constitution requires that federal electoral districts be reviewed after each decennial census (a census conducted every 10 years) in order to reflect changes in Canada's population.<sup>54</sup> After the latest readjustment, the number of members in the House of Commons increased from 308 in the 41<sup>st</sup> Parliament to 338 in the 42<sup>nd</sup> Parliament.

## 10.1 HISTORY

In the early years of Confederation, boundary lines were drawn by the government, with the result that boundaries were usually set with a view to maximizing the electoral success of the governing party. The *Representation Act* of 1903 placed the readjustment of constituency boundaries in the hands of a non-partisan committee of the House of Commons, although the governing party continued to exercise a greater influence through its majority on the committee. In any event, the drawing of such boundaries by politicians ensured that partisan considerations continued to prevail. There were no guidelines or principles to guide the frequently acrimonious deliberations. Changes to this process were not implemented until the early 1960s.

## 10.2 THE *ELECTORAL BOUNDARIES READJUSTMENT ACT*

The *Electoral Boundaries Readjustment Act*, first passed in 1964, now governs the establishment of constituency boundaries in Canada.<sup>55</sup> This legislation ensures that the drawing of electoral boundaries is in the hands of formally non-partisan bodies operating under specified general principles and provides for the appointment of Electoral Boundaries Commissions in each province. Each Commission consists of a chairperson, who is normally a provincial court judge appointed by the chief justice of the province, and two residents of the province appointed by the Speaker of the House of Commons.

After the completion of each decennial census, the Chief Electoral Officer calculates the total number of House of Commons seats and their distribution among the provinces and territories, according to a constitutionally entrenched formula. This information is forwarded to each Electoral Boundaries Commission, which then has one year in which to recommend any changes to constituency boundaries. The process of preparing new electoral boundaries must include publicizing the proposed boundaries, and at least one public hearing at which interested persons may make representations to the Commission in response to its proposals.

When each Commission's report has been completed, it is forwarded to the Chief Electoral Officer and the Speaker of the House of Commons. Members of Parliament can register objections to a report; if ten members or more do so, the objection must be debated in a committee of the House of Commons within 30 days. Copies of the objection and related House debates are then forwarded to the appropriate Electoral Boundaries Commission for consideration. After such consideration, or in the absence of objection, a draft representation order specifying the number of members to be elected by the province and the boundaries of each constituency is proclaimed. There is a one-year delay before the new boundaries come into effect; this provides

time for returning officers to be appointed and for party constituency organizations to be reconstituted in ridings where there is a boundary change.

The *Electoral Boundaries Readjustment Act* specifies that a Commission is to draw constituency boundaries in such a way that the population of each constituency is as close as possible to the quotient obtained by dividing the provincial population of eligible voters by the number of seats allocated to the province. No constituency is permitted to have a population smaller than 75% or greater than 125% of this figure. Commissions may vary the size of constituencies within this range on the basis of “special geographic considerations,” such as the density of population in various regions of the province, and the accessibility, size and shape of such regions. Variations may also be allowed if “any special community or diversity of interests of the inhabitants of various regions” appears to warrant them.<sup>56</sup>

Issues that add complexity to the adjustment of constituency boundaries in Canada include the following:

- First, as noted above, redistribution is conducted on the basis of decennial censuses. The process, however, is so lengthy that a great deal of time can elapse between a census and the coming into force of new boundaries. For example, the redistribution formulated on the basis of the 1981 Census was not in effect until the 1988 federal general election. During the intervening period, a great deal of population movement and change had occurred; this is particularly likely to happen on the outskirts of major cities and in certain regions of economic growth or decay. The result is that the new boundaries may be out of date by the time they are instituted.
- Another issue involves the distinction between rural and urban areas. In the 19<sup>th</sup> century, it became accepted that urban constituencies could have a greater population (and hence proportionately lower per-capita representation) than rural constituencies. There is some merit to treating urban and rural areas differently: urban ridings are much more compact, whereas rural ridings usually have much sparser populations, making communication and transportation more difficult. However, the permissible variation in constituency populations is open to abuse and can give a disproportionate voice to rural areas and concerns. Challenges to such policies were launched, and some courts struck down provincial attempts to favour rural constituencies. The Supreme Court of Canada, however, has upheld legislation that permitted reasonable differences in constituency populations.
- For some time there has been a certain amount of dissatisfaction with the electoral boundary readjustment process, which has never proceeded without some delay or controversy. Part of the problem is that the process involves change and challenges to the status quo. At the same time, efforts to revise the system are invariably tinged with political considerations. A 1995 effort to modify the electoral boundaries readjustment system ultimately failed. As a result, the process remains the same. In 2004, a parliamentary committee tabled a report outlining its concerns with the system and recommending changes.<sup>57</sup>

After the most recent federal redistribution process, which began in 2012 in light of the 2011 Census, an additional 30 electoral districts were added, bringing the total number of seats in the House of Commons for the 42<sup>nd</sup> Parliament to 338. The

representation order describing and naming the new and reorganized electoral districts was completed in October 2013 (with the new electoral districts applying to the first general election called after 1 May 2014).<sup>58</sup>

## 11 ELECTORAL CANDIDACY

The qualifications and disqualifications for candidacy in a federal election are contained primarily in the *Canada Elections Act*.<sup>59</sup> They are closely related to the provisions that govern the right to vote. With some exceptions, anyone who is entitled to vote can also become a candidate for election; a candidate must be at least 18 years of age, a citizen of Canada and have established residency somewhere in the country (although not necessarily in the constituency of his or her candidacy).<sup>60</sup>

The *Canada Elections Act* also sets out a series of disqualifications that apply exclusively to electoral candidacy. Previously, persons involved in a contractual relationship with the Crown were disqualified, but this restriction was removed in 1993. Current disqualifications include the following:

- A person found guilty of an illegal or corrupt electoral practice (as defined in section 502 of the *Canada Elections Act*) is disqualified from contesting a federal election for either five or seven years and, if he or she has been elected, may be required to vacate his or her seat in the House of Commons. Illegal practices include wilfully exceeding the spending limit or obstructing the electoral process. Corrupt practices include voting more than once or accepting a prohibited gift or other advantage.
- Persons who were candidates in a previous election and failed to file an auditor's report or statement of election expenses forfeit the right to run again.
- Certain officials (sheriffs, county or judicial district Crown attorneys) are also disqualified, as are members of provincial legislatures and territorial councils.

The prohibitions against persons who have been found guilty of election offences have been challenged under the Charter. In one case, a provincial legislator who had been convicted of a criminal offence in connection with his official duties was evicted from office. An effort to bar him from running in the ensuing by-election, however, was disallowed by the courts.<sup>61</sup>

In another case, the successful candidate in an election to the New Brunswick legislature was expelled from the legislature after being found guilty of an illegal act (inducing an underage person to vote) under New Brunswick's election legislation. The individual challenged the expulsion under the Charter and on the basis of parliamentary privilege. The Supreme Court of Canada upheld the lower court's dismissal of the challenges.<sup>62</sup>

The formal process of nomination requires the preparation of a nomination paper containing the name and address of the candidate, the candidate's agent (who is legally responsible for the receipt, disbursement and account of expenses) and the candidate's auditor. The paper must contain a statement, signed under oath by the candidate, of consent to the nomination. It must also be signed by 100 electors

accredited within the electoral district (50 electors for more remote electoral districts), and each signature must be witnessed by a qualified person. The nomination paper, accompanied by a deposit of \$1,000, must be submitted to the returning officer on or by the 28<sup>th</sup> day before polling day. The deposit is returned when the candidate files the required auditor's report and statement of election expenses.<sup>63</sup>

Where the candidate has the endorsement of a registered political party, an instrument stating this fact and signed by the leader of the party (or a delegated person) must be submitted with the nomination papers. In the absence of this consent, the candidate will be listed on the ballot as an "independent" or without any designation. This procedure is, thus, tied to the designation of affiliation of candidates and is designed to ensure that only officially sanctioned candidates run under a party's name.

The selection of candidates by registered parties is governed by the nomination procedures of each party, although the *Canada Elections Act* imposes some rules on the conduct of campaigns. Local nominating conventions may be open to all members of the party, may be closed to all except delegates hand-picked by the party executive, or may fall somewhere in between these two extremes. Limits on spending by *nomination contestants* are 20% of the spending limit established for electoral candidates. Expenses incurred by persons seeking a nomination are not entitled to reimbursement, unlike the expenses incurred by political parties and candidates, nor are contributions to nomination campaigns entitled to a tax deduction.

## 12 ADVERTISING AND BROADCASTING DURING AN ELECTION CAMPAIGN

The *Canada Elections Act* imposes some restrictions on party election broadcasting during an election campaign, mainly with respect to its date and place of origin. The legislation prohibits election advertising by any person, including registered parties, on polling day until the close of voting. "Election advertising" means advertising promoting or opposing any registered party or candidate by any means. Advertising on the Internet would not be prohibited if the message was created before the prohibited period and had not changed. Another noteworthy restriction is that any advertising by a candidate or registered political party must indicate that the transmission of the advertising was authorized by official agents of the party or candidate. It is also an offence for any person to use broadcasting media outside Canada for campaigning.

The *Fair Elections Act* modified the definition of "election advertising" found in the *Canada Elections Act* by specifying that "the making of telephone calls to electors only to encourage them to vote" does not in and of itself constitute "election advertising."<sup>64</sup>

Amendments to the *Canada Elections Act* made in 2014 repealed the clause (section 329) that had prohibited all persons, including political parties and candidates, from communicating the results of the vote in one electoral district to another electoral district before the close of polls in the latter electoral district. This restriction had been challenged under the Charter as a limit to the right to freedom of

expression under section 2(b). The Supreme Court of Canada, in a 5–4 split decision, upheld the restriction.<sup>65</sup> In the dissenting opinion, Justice Abella posited that the ban found in section 329 of the *Canada Elections Act* “impairs the right both to disseminate and receive election results at a crucial time in the electoral process.”<sup>66</sup> She added that “Canadians are entitled to know, as soon as possible, who their elected representatives are.”<sup>67</sup>

An attempt is made, within the electoral process, to ensure that the parties have fair access to the major media. The *Canada Elections Act* stipulates that every broadcaster must make available 6.5 hours of time, between the issue of the writs and the end of the day before polling, for purchase by the registered parties.<sup>68</sup> The Broadcasting Arbitrator – an official appointed by the Chief Electoral Officer – is responsible for allocating this time among the parties. In the absence of an agreement among the various registered political parties, the Broadcasting Arbitrator is required to allocate the time in proportion to the strength of the various parties in the previous election, subject to considerations of fairness and the public interest.<sup>69</sup>

In addition to regulating the purchase of broadcasting time by registered parties, the Act provides them with access to free time. During the phase of the election in which parties are allowed to advertise, networks are required to make available a certain amount of free time in accordance with rules set out in the legislation.

The *Canada Elections Act* also safeguards party access to the media by stipulating that broadcasting time to which the parties are entitled must be sold to them at regular rates. This requirement also applies to advertising space. The fundraising success of political parties and candidates, as well as the limits on election expenses, influences whether the parties are able to take advantage of the advertising opportunities to which they are entitled.

### 13 THE TREATMENT OF THIRD PARTIES

For the purposes of the *Canada Elections Act*, third parties are defined as individuals and groups who are neither candidates nor political parties.

In recent years, third parties have played an increasing role in election campaigns, often incurring advertising and other expenditures to oppose or support individual candidates or parties. The argument has been made that, because spending by political parties and candidates is carefully regulated to ensure fairness and a level playing field, other groups and individuals should also be subject to certain limits and restrictions. At the other extreme is the position that any restrictions on third parties constitute an unwarranted infringement of freedom of expression and other rights under the *Canadian Charter of Rights and Freedoms*. Previous attempts to impose restrictions on third parties under the *Canada Elections Act* have been challenged successfully in court, although these cases were not appealed to the Supreme Court of Canada. In a 1997 ruling on Quebec’s referendum legislation, however, the Supreme Court found that restrictions on third-party spending could be constitutionally justified.<sup>70</sup> Assuming that a blanket prohibition on such spending is rejected, the difficulty lies in determining what kinds of restrictions to impose, be they spending

limits (and, if so, the reasonableness of the limits), registration requirements, or requirements for the reporting and disclosure of contributions and/or expenses.

The 2000 *Canada Elections Act* introduced a new system of regulation for third-party advertising during election periods, including spending limits and reporting and disclosure requirements. Such individuals or groups are required to register with the Chief Electoral Officer if they incur election advertising expenses totalling \$500 or more.<sup>71</sup> The provisions regarding third-party spending restrictions and regulations were challenged in the courts, but were upheld by the Supreme Court of Canada in a decision rendered on 18 May 2004.<sup>72</sup>

The *Fair Elections Act* imposed new residency requirements for third parties wishing to register with Elections Canada. Individual third parties must now certify that they are Canadian citizens or permanent residents, or that they reside in Canada. In the case of corporations and groups, an officer of the corporation must certify that the corporation carries on business in Canada, while a person responsible for a group must certify that he or she is a Canadian citizen or a permanent resident or resides in Canada.<sup>73</sup> Third parties wishing to register with Elections Canada (and spend more than \$500 on election advertising) must now establish their connection to Canada in order to be able to register.<sup>74</sup>

As well, and as noted above in Section 9, “Campaign Finance,” the *Fair Elections Act* modified the way that third parties may conduct their election advertising campaigns. To ensure that third parties do not circumvent the limits on election advertising expenses by incurring expenses before the issuance of an election writ (particularly given the new reality of fixed date elections), the *Canada Elections Act* was amended to require that the spending limit apply *in relation to a general election*. As well, not more than \$3,000 (adjusted for inflation) can be incurred to promote or oppose the election of one or more candidates in any given electoral district. However, where the period of a general election exceeds 37 days, the limits on third-party advertising spending are increased by 1/37 of the maximum spending amounts in effect – \$150,000 in total for an election and \$3,000 per electoral district – for each day the election period exceeds 37 days.<sup>75</sup>

Registered third parties are required to keep records of all contributions during an election period and to authorize all election advertising. Within four months of the election, they are required to file election advertising reports containing a list of election advertising expenses, the time and place of the broadcast or publication of the advertisements, and details of contributions received in the period beginning six months before the issue of the writ and ending on polling day. These reports must include the names and addresses of persons contributing more than \$200.<sup>76</sup> The Chief Electoral Officer is required to publish the names and addresses of third parties as they were registered, together with the election advertising reports, within one year of the issue of the writ.



## 14 SELECTED ASPECTS OF CANADIAN ELECTION CAMPAIGNS

### 14.1 MEDIA COVERAGE

Although advertising is regulated during federal election campaigns, no effort is made to regulate or monitor news coverage or the editorial content of broadcasters or print media. However, the Canadian Radio-television and Telecommunications Commission (CRTC) – which regulates broadcasting in Canada – has promulgated rules and guidelines for election coverage and can receive complaints regarding uneven or biased coverage. With respect to print media, there are fewer opportunities for redress, although most provinces have press councils that can investigate complaints.

### 14.2 VOTER CONTACT CALLING SERVICES

Amendments to the *Canada Elections Act* in 2014 created a new Part 16.1, “Voter Contact Calling Services,” comprising sections 348.01 through 348.19 of the Act.<sup>77</sup> “Voter contact calling services” are defined as services involving the making of calls during an election period for any purpose related to an election, including:

- promoting or opposing a party or candidate;
- encouraging electors to vote or refrain from voting;
- providing information about election voting hours and the location of polling stations;
- gathering information about past voting practices; and
- raising funds for a party or contestant.

Political entities and other persons or groups using calling service providers to call voters, either live or using an automatic dialing and announcing device (often referred to as “robocalls”), must now register with the CRTC within 48 hours of making the first call during an election or by-election. As well, anyone using their own internal services to make automated calls must also register within 48 hours of making the first call during an election or by-election. Contact calling service providers must now keep copies of scripts used (live and recorded), the dates on which scripts were used, and a recording of each message conveyed via automatic dialing and announcing devices for a period of three years (those using internal services to make such calls must keep the information for a period of one year). Failure to follow the new obligations set out in the Act could result in administrative monetary penalties or being found guilty of an offence punishable on summary conviction.

These new sections addressed some of the concerns raised, and recommendations made, by the Chief Electoral Officer in his 2013 report to Parliament on automated and live telephone communications with voters.<sup>78</sup> The Chief Electoral Officer’s report stemmed from allegations that some telephone communications with voters during the 41<sup>st</sup> general election had falsely claimed to originate from Elections Canada and had misled voters about the location of polling stations. Elections Canada had neither made nor authorized the calls.<sup>79</sup>

Among other changes, the amendments created a Voter Contact Registry established and maintained by the CRTC in order to ensure that those who contact voters during an election do so transparently.

### **14.3 ELECTION DEBATES**

The leaders of the major political parties generally engage in televised debates at some point during the election campaign. There is usually at least one debate in each of the two official languages. However, there is no statutory requirement that such debates be held, although some commentators have suggested that they should be made mandatory. Such debates are a relatively recent development, and their format tends to change on the basis of negotiations between the parties and the television networks, the parties' relative strengths and weaknesses, and other factors. Smaller and "fringe" parties have often objected to their exclusion from such debates. Many debates among candidates are also scheduled at the constituency level.

### **14.4 OPINION POLLS**

Except for prohibiting the release of opinion-poll results on election day, there are generally no restrictions or prohibitions on the conduct of opinion polls during an election campaign or on the publication of their results. Opinion polls are quite common, and many newspapers and television networks sponsor several polls during the election period. The *Canada Elections Act* requires the disclosure of certain information about such opinion polls, such as who paid for them and what questions were asked.<sup>80</sup> An earlier prohibition on polls during the last weekend of an electoral campaign was struck down by the Supreme Court of Canada.<sup>81</sup>

### **14.5 ELECTIONS AND THE PUBLIC SERVICE**

The rights of public-sector workers to run in and otherwise participate in elections have been the subject of much discussion and several court cases.<sup>82</sup> On the one hand is the desire for a permanent, non-partisan public service that does not become involved in political campaigns; on the other is the need to respect the rights of public-sector workers, as private citizens, to participate in elections in the same ways as other Canadians. Federal public servants (except deputy heads) are permitted to engage in various political activities.<sup>83</sup> Some public servants may also be permitted to run for elected office with the approval of the Public Service Commission of Canada. The factors that are considered by the Commission in determining the appropriateness of a public servant running for office include the nature of the election, the nature of the employee's duties and the level and visibility of the employee's position.<sup>84</sup>

### **14.6 MEETINGS AND RALLIES**

The holding of meetings and rallies as an expression of freedom of association and assembly is not subject to general restrictions other than those intended to protect public order, such as the prohibitions in the *Criminal Code* against unlawful assembly or riot. The *Criminal Code* also contains general safeguards, such as the prohibition

against having weapons at a public meeting. It is an offence under the *Canada Elections Act* to act or conspire to act in a disorderly manner intended to interfere with an election meeting during the period beginning with the issue of the writs and ending the day after polling day.

#### **14.7 CORRUPT AND ILLEGAL PRACTICES**

The *Canada Elections Act* contains a series of provisions relating to corrupt or illegal practices applicable to candidates and their official agents, such as the following:

- obstructing an election officer;
- voting more than once;
- wilfully exceeding the spending limit;
- accepting a prohibited gift or other advantage;
- offering a bribe; and
- taking or inducing a false oath.

In addition to specific penalties, the Act provides that any person found guilty of a corrupt or illegal practice shall be barred from being elected to or sitting in the House of Commons for five years or seven years depending upon the nature and severity of the prohibited practice.

The previous *Canada Elections Act* could be enforced only through the criminal courts. Under the 2000 Act, however, the Commissioner of Canada Elections has the authority to resolve contraventions through remedial rather than punitive measures in appropriate cases. As an alternative to prosecution, the Commissioner has the authority to conclude a compliance agreement with anyone the Commissioner believes on reasonable grounds has committed or will commit an offence. Such agreements are based on the voluntary agreement of the violator to comply with the requirements of the Act and to publish the agreement. The Commissioner may also seek an injunction from a court to put an immediate end to an activity or situation that, in the Commissioner's opinion, could compromise the fairness of an election campaign.

As a result of the *Federal Accountability Act*, the Director of Public Prosecutions is now responsible for initiating and conducting prosecutions of offences under the Act on behalf of the Crown. The Commissioner of Canada Elections continues to investigate possible offences under the Act, on the recommendation of the Chief Electoral Officer, and can refer the matter to the Director of Public Prosecutions, who will decide whether to initiate a prosecution. The Commissioner also retains the power to enter into compliance agreements.

## 15 ELECTION DAY PROCEDURES

### 15.1 ELECTION DAY AND ADVANCE POLLS

The *Canada Elections Act* contains detailed provisions with respect to the actual conduct of voting on election day. These provisions pertain to the location of polling stations, the officials who oversee the voting, the procedure whereby voters get their ballots and the boxes in which the ballots are placed. Until 1993, the Act prohibited the sale of intoxicating beverages while the polls are open; this was a holdover from the unruly early days of elections, when it was common to win the favour of voters by buying them a drink.

There are six time zones in Canada and, until 1996, polls opened and closed on the basis of local time; thus, results were often being announced for ridings in the eastern part of the country well before the polls had closed in the west. Amendments made to the *Canada Elections Act* in December 1996 provide that the polls will be open for 12 consecutive hours, but the times vary by time zone. The hours of voting (local time) are now as follows:

- 8:30 a.m. to 8:30 p.m. in the Newfoundland and Atlantic time zones (Newfoundland and Labrador, Nova Scotia, Prince Edward Island and New Brunswick);
- 9:30 a.m. to 9:30 p.m. in the Eastern time zone (Quebec and Ontario);
- 8:30 a.m. to 8:30 p.m. in the Central time zone (Manitoba, parts of Saskatchewan, and Nunavut);
- 7:30 a.m. to 7:30 p.m. in the Mountain time zone (parts of Saskatchewan, Alberta and the Northwest Territories); and
- 7:00 a.m. to 7:00 p.m. in the Pacific time zone (British Columbia and the Yukon).

Polls are open during the day, and employees must be given at least three consecutive hours off work in order to vote. Elections in Canada are held on a Monday (unless it is a statutory holiday), rather than on weekends or holidays, as in many European jurisdictions. Unlike the case in some countries, such as Australia, voting is not mandatory in Canada. The participation rate in federal general elections has varied over the years. The highest voter turnouts were in 1958, 1962 and 1963, when over 79% of eligible voters cast their ballots. The lowest voter turnout on record was in 2008, when 58.8% of eligible voters cast their ballots. While there has been a general decline in voter turnout over the past two decades, the October 2015 election saw 68.5% of eligible voters cast their ballots, a 7% increase over the 61.1% of eligible voters who voted in the 2011 election. This was the highest voter turnout since 1993 (when turnout was 69.6%).<sup>85</sup>

Provision is made for advance polls. There are also special voting procedures for persons voting outside the area where they are normally resident.

Voters cast their ballot for only one candidate. The Canadian electoral system is of the “first past the post” or “single member plurality” type. In other words, the candidate

who gets the most votes in a particular constituency is the winner. There is no requirement that the winner get an absolute majority of the votes cast, or of the votes capable of being cast. The result has been that, in some cases, governments are elected with only a small percentage of the popular vote, while, in other cases, parties secure a substantial percentage of the popular vote but only a few parliamentary seats. Various proposals have been put forward with respect to different types of electoral systems – including some form of proportional representation, ranking of candidates and so forth.

## 15.2 COMPILATION AND REPORTING OF ELECTION RESULTS

The *Canada Elections Act* sets out extensive provisions for the compilation and reporting of election results. The fact that these procedures are specific and comprehensive, combined with the fact that the vote count is open to scrutiny and objections by representatives of the contending parties, mitigates bias or the appearance of bias.

Immediately after the closing of the poll, and in the view of the poll clerk and designated party agents or candidates, the deputy returning officer of each polling division must carry out several counts to ascertain that all the ballot papers received from the Chief Electoral Officer are accounted for. The number of votes given to each candidate is then tallied by the deputy returning officer, and the attending party representative has the opportunity to examine each ballot and to keep score on supplied tally sheets.

The Act provides specific instructions for the rejection of ballots. Unmarked, double-marked and improperly marked ballots, as well as ballots that identify the elector, must be rejected, as must any ballot not supplied by the deputy returning officer. The Act also specifies instructions for problematical cases, such as ballots that the deputy returning officer accidentally neglected to sign prior to the vote.

If objections are raised by candidates or their representatives, the deputy returning officer is required to record these for future reference and to make a decision so that the count can proceed. After the completion of the count, an official statement of the results of the poll must be prepared. Copies of this statement must be enclosed in the ballot box for use by the returning officer, delivered to the representative of each candidate and mailed to each candidate. The ballot boxes, sealed and containing the ballots and other materials, must be conveyed to the returning officer.

The official count is conducted by the returning officer. If the official count indicates that two candidates have received an equal number of votes, or are separated by less than one one-thousandth of the total votes cast, the returning officer is required to apply to a district court judge for an official recount. Other persons can also apply for a judicial recount within four days of the announcement of the official results. All candidates can apply for the reimbursement of the costs incurred with respect to such a recount. Also, as noted earlier, provisions in the *Canada Elections Act* enable a voter to contest an election result on the basis of irregularities in the process or unlawful conduct that can be shown to have affected the result.

Six days after the official count, or immediately after a judicial recount, the returning officer must formally declare elected the candidate with the highest number of votes. The returning officer is then required to return the writ of election, along with a post-election report and other documentation, to the Chief Electoral Officer, who publicizes the results, provides Parliament with a report on the conduct of the election and retains the forwarded documents in case the election is contested.

### 15.3 CHALLENGES TO ELECTION RESULTS

The Act allows challenges to elections in certain circumstances.<sup>86</sup> In extreme cases, the results of an election can be nullified, but this is quite rare, as was confirmed by the Supreme Court of Canada in a recent application contesting an election in the federal riding of Etobicoke Centre.<sup>87</sup> An eligible voter in a riding may apply to a court to nullify an election in that riding on the grounds that there were irregularities or unlawful acts (fraud or illegal or corrupt practices) that affected the results. In the Etobicoke Centre case, the unsuccessful candidate in the 41<sup>st</sup> general election alleged that votes had been cast improperly as a result of polling day irregularities, including improper voter identification and polling day registration, and improper vouching for voters who lacked the required identification. The margin of victory in that riding was 26 votes, while 180 votes were alleged to have been improperly cast. The Supreme Court, by a slim majority (5–4), overturned the lower court's decision to nullify the election result, holding that courts should not interfere with the results of an election unless there is evidence that ineligible voters cast ballots or fraudulent practices occurred and that these activities likely affected the results of an election.

Other examples of contested elections include a challenge by seven voters in the Federal Court of Canada alleging unlawful acts (the use of automated or live telephone calls misdirecting voters on where to vote), rather than irregularities, that affected the outcome in seven ridings. The Federal Court in those cases found that, although there was evidence of massive fraud in the use of automated calls to misdirect voters on where to vote, there was insufficient evidence that the unlawful acts affected the results of the election.<sup>88</sup>

Contested elections are distinguished from judicial recounts, which are required by law and initiated by a returning officer where the margin of victory in a riding is less than one one-thousandth of all votes cast in an electoral district, or which may be requested by a voter within four days of the certified result of an election.

Finally, as noted earlier, a finding of guilt in respect of an illegal or corrupt act, as defined in the *Canada Elections Act*, will also result in an elected Member of Parliament losing his or her right to sit in the House of Commons, creating a vacancy and requiring a by-election.

## 16 CONCLUSION

Although the Canadian electoral system is very complex, it is closely regulated and virtually every aspect of it is the subject of detailed provisions. The many interrelated features of the system have been shaped by historical precedent, administrative

convenience and philosophical conviction. The Canadian electoral system is not static; it is continually evolving in response to new challenges and circumstances.

The Canadian electoral system is characterized as non-partisan and is administered in a neutral way by the Chief Electoral Officer. The activities of political parties are closely regulated to ensure fairness. Most Canadians are entitled to vote in federal elections, but certain groups are disqualified under provisions that, like other aspects of the electoral system, are increasingly being challenged under the *Canadian Charter of Rights and Freedoms*.

---

## NOTES

- \* James R. Robertson of the Library of Parliament contributed to the preparation of an earlier version of this publication.
- 1. For more detailed information on the Canadian electoral system, see Elections Canada, [The Electoral System of Canada](#), 3rd ed.; Paul Howe, Richard Johnston, André Blais, eds., *Strengthening Canadian Democracy*, Institute for Research on Public Policy, Montréal, 2005; Louis Massicotte, André Blais and Antoine Yoshinaka, *Establishing the Rules of the Game: Election Laws in Democracies*, University of Toronto Press, Toronto, 2004; J. Patrick Boyer, *Election Law in Canada: The Law and Procedure of Federal, Provincial and Territorial Elections*, Butterworths, Toronto, 1987; J. Patrick Boyer, *Money and Message: The Law Governing Election Financing, Broadcasting and Campaigning in Canada*, Butterworths, Toronto, 1983. See also Andre Barnes, Michel Bédard and Sebastian Spano, [Canada's Electoral Process: Frequently Asked Questions](#), Publication no. 2005-46-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 25 July 2012; and James R. Robertson and Sebastian Spano, [Electoral Rights: Charter of Rights and Freedoms](#), Publication no. 2008-50-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 29 September 2008.
- 2. See, for example, Elections Canada, [Report of the Chief Electoral Officer of Canada on the 39<sup>th</sup> General Election of January 23, 2006](#); Elections Canada, [Responding to Changing Needs – Recommendations from the Chief Electoral Officer of Canada Following the 40<sup>th</sup> General Election](#); Elections Canada, [Report of the Chief Electoral Officer of Canada on the 41<sup>st</sup> general election of May 2, 2011](#).
- 3. [Canada Elections Act](#), S.C. 2000, c. 9. See, for example, House of Commons, Standing Committee on Procedure and House Affairs, [Improving the Integrity of the Electoral Process: Recommendations for Legislative Change](#), Thirteenth Report, 1<sup>st</sup> Session, 39<sup>th</sup> Parliament, June 2006. This study was conducted in response to the Chief Electoral Officer's report after the 39<sup>th</sup> general election, which resulted in a number of legislative changes through [Bill C-31: An Act to amend the Canada Elections Act and the Public Service Employment Act](#), 1<sup>st</sup> Session, 39<sup>th</sup> Parliament.
- 4. See James R. Robertson, [Bill C-2: The Canada Elections Act](#), Publication no. LS-343E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 9 March 2000.
- 5. [Bill C-24: An Act to amend the Canada Elections Act and the Income Tax Act \(political financing\)](#), S.C. 2003, c. 19, received Royal Assent on 19 June 2003, and most of its provisions came into effect on 1 January 2004. The Act, discussed in Section 9, Campaign Finance, made substantial changes to the political financing provisions of the *Canada Elections Act*, banning political donations by corporations and trade unions, and limiting contributions by individuals.

6. [An Act to amend the Canada Elections Act and the Public Service Employment Act](#), S.C. 2007, c. 21 (formerly Bill C-31), received Royal Assent on 22 June 2007. This Act, discussed under section 7, “Voter Identification,” in this paper changed the voter identification requirements in the *Canada Elections Act*. [An Act to amend the Canada Elections Act \(verification of residence\)](#), S.C. 2007, c. 37 (formerly Bill C-18), which received Royal Assent on 14 December 2007, further amended the voter identification requirements by allowing a form of vouching for verification of residence. [An Act providing for conflict of interest rules, restrictions on election financing and measures respecting administrative transparency, oversight and accountability \(Federal Accountability Act\)](#), S.C. 2006, c. 9 (formerly Bill C-2) received Royal Assent on 12 December 2006. This Act, portions of which came into effect in June 2007, reduced the limits on annual contributions to political entities (among other amendments). Finally, as discussed under section 4, “Calling Elections,” in this paper, [An Act to amend the Canada Elections Act](#), S.C. 2007, c. 10 (formerly Bill C-16), which received Royal Assent on 3 May 2007, set out that, subject to an earlier dissolution of Parliament, a general election must be held on the third Monday in October in the fourth calendar year following a previous general election.
7. The [Fair Elections Act](#), S.C. 2014, c. 12 (formerly Bill C-23) received Royal Assent on 19 June 2014 and came into force in stages between 19 June 2014 and 1 January 2015. For a detailed analysis of the *Fair Elections Act*, please consult: [Legislative Summary of Bill C-23: An Act to amend the Canada Elections Act and other Acts and to make consequential amendments to certain Acts](#), Publication no. 41-2-C23-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 11 September 2014.
8. Before the *Fair Elections Act* was enacted, the Chief Electoral Officer held office until age 65.
9. *Canada Elections Act*, s. 13.
10. *Canada Elections Act*, s. 17 as amended by the *Fair Elections Act*. If this power is used during an election, the Chief Electoral Officer must report this in one of the post-election reports he or she is required to table in Parliament in accordance with the legislation.
11. *Canada Elections Act*, ss. 16.1 and 16.2.
12. [Federal Accountability Act](#), S.C. 2006, c. 9.
13. *Canada Elections Act*, ss. 34–36.
14. *Canada Elections Act*, s. 22, lists the various election officers who may be appointed.
15. Commissioner of Canada Elections, [Enforcing the Canada Elections Act](#).
16. The position was amended by the *Fair Elections Act*.
17. *Canada Elections Act*, ss. 509–509.2.
18. *Canada Elections Act*, s. 56.1.
19. These include British Columbia, Newfoundland and Labrador, Ontario, the Northwest Territories, New Brunswick, Saskatchewan, Prince Edward Island and Manitoba. See Barnes et al. (2012), Table 6.
20. J. Patrick Boyer, *Political Rights: The Legal Framework of Elections in Canada*, Butterworths, Toronto, 1981, p. 121.
21. [Figueroa v. Canada \(Attorney General\)](#), [2003] 1 S.C.R. 912. See section 8, “Political Parties,” in this paper for a more detailed discussion of this issue.
22. The age requirement of 18 years for voting in local elections in Alberta was challenged unsuccessfully under section 3 of the *Canadian Charter of Rights and Freedoms*. It is likely that a similar challenge to the age requirement under the *Canada Elections Act* would fail as well. See *Fitzgerald v. Alberta*, 2002 ABQB 1086.
23. *Canada Elections Act*, s. 8.



24. [Sauvé v. Canada \(Chief Electoral Officer\)](#), [2002] 3 S.C.R. 519.
25. See Part 11 of the *Canada Elections Act*, which establishes the special voting rules.
26. Elections Canada, Recommendation 1.16, “[Voting by Electors Absent from the Country for More Than Five Consecutive Years](#),” in *Completing the Cycle of Electoral Reforms – Recommendations from the Chief Electoral Officer of Canada on the 38<sup>th</sup> General Election*, Ottawa, 2005. The report noted that:  
 The absence of a mechanism to allow those who have been absent from Canada for five consecutive years or more to vote effectively deprives this latter group of individuals of their right to vote, a right protected by the *Canadian Charter of Rights and Freedoms*.  
 It added that:  
 The Special Voting Rules found in Part 11 of the Act should consequently be adjusted to allow individuals who have been absent for five years or more and who intend to resume residence in Canada to apply for registration or to remain listed in the register of electors absent from Canada, which is maintained by the Chief Electoral Officer.
27. House of Commons, Standing Committee on Procedure and House Affairs, [Improving the Integrity of the Electoral Process: Recommendations for Legislative Change](#), Thirteenth Report, 1<sup>st</sup> Session, 39<sup>th</sup> Parliament, June 2006, p. 2. The report stated:  
 The majority of the Committee agrees that the five-year limitation period is arbitrary and should be removed. It would, however, go further, and propose that all Canadian citizens who are absent from Canada should be able to vote in accordance with Part 11 of the *Canada Elections Act*. The requirement that there be an intention to return to Canada should be dropped.
28. [Government Response to the Thirteenth Report of the Standing Committee on Procedure and House Affairs: Improving the Integrity of the Electoral Process](#), 1<sup>st</sup> Session, 39<sup>th</sup> Parliament.
29. Elections Canada, *Report of the Chief Electoral Officer of Canada on the 41<sup>st</sup> General Election of May 2, 2011*, Ottawa, August 2011, p. 31.
30. [Frank et al. v. AG Canada](#), 2014 ONSC 907.
31. [Frank v. Canada \(Attorney General\)](#), 2015 ONCA 536. Writing for the majority, Ontario Chief Justice Strathy noted that:  
 Canada’s political system is based on geographically defined electoral districts ... Permitting all non-resident citizens to vote would allow them to participate in making laws that affect Canadian residents on a daily basis, but have little to no practical consequence for their own daily lives. This would erode the social contract and undermine the legitimacy of the laws. [paras 5–6]
32. Elections Canada, [Description of the National Register of Electors](#).
33. For more information see Elections Canada, [Policy on Voter Identification with Regard to Registering and Voting in Person in Federal Electoral Events](#).
34. *Canada Elections Act*, s. 143(2)(a).
35. *Canada Elections Act*, ss. 143(2)(b), 143(2.1).
36. *Canada Elections Act*, s. 143(3). The attestation process was introduced in the *Fair Elections Act*. Before 2014, a voter without suitable identification was able to take a prescribed oath provided that he or she was vouched for by another person whose name was on the list of electors in the same polling division. The vouching elector had to have the identification prescribed by the Act and had to vouch for the other elector by taking an oath.

37. [Henry v. Canada \(Attorney General\)](#), 2010 BCSC 610, para. 369.
38. *Ibid.*, paras. 394–405.
39. [Henry v. Canada \(Attorney General\)](#), 2014 BCCA 30.
40. See John C. Courtney, “Recognition of Canadian Political Parties in Parliament and in Law,” *Canadian Journal of Political Science*, Vol. 11, No. 1, March 1978.
41. See *Longley v. Canada (Attorney General)*, 2007 ONCA 852.
42. [Ahenakew v. MacKay](#), 2004, 12397 (ON CA), para. 32.
43. See Megan Furi, [Legislative Summary of Bill C-3: An Act to amend the Canada Elections Act and the Income Tax Act](#), Publication no. LS-461E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, revised 18 May 2004.
44. *Canada Elections Act*, s. 2(1). The Act did not previously attempt to define or describe what a political party is. Some provincial jurisdictions in Canada have attempted to define this in statutes, while others make no such attempt. Most jurisdictions have opted for a procedural definition, i.e., an organization is a political party if it has been registered in compliance with the procedures set out in the relevant legislation.
45. This bill received Royal Assent on 19 June 2003 as [An Act to amend the Canada Elections Act and the Income Tax Act \(political financing\)](#), S.C. 2003, c. 19.
46. See [Bill C-13: An Act to implement certain provisions of the 2011 budget as updated on 6 June 2011 and other measures](#). It became the [Keeping Canada’s Economy and Jobs Growing Act](#), S.C. 2011, c. 24.
47. *Canada Elections Act*, s. 367.
48. *Canada Elections Act*, s. 430(1). According to section 57(1.2)(c) of the Act, an election period must be a minimum of 36 days after the day the writ was issued, or 37 days in total.
49. *Canada Elections Act*, s. 430(2). See also Pundits’ Guide to Canadian Elections, [Re-up-UPDATED: How a little-noticed clause in the Fair Elections Act up-ends all conventional election timing speculation](#), 15 January 2015.
50. *Canada Elections Act*, s. 477.74(3).
51. Elections Canada, [Recommendations of the Chief Electoral Officer of Canada to the House of Commons Standing Committee on Procedure and House Affairs Respecting Specific Issues of Political Financing](#), 26 January 2007.
52. *Canada Elections Act*, s. 373.
53. *Canada Elections Act*, s. 350.
54. [The Constitution Act, 1867](#) (U.K.), 30 & 31 Victoria, c. 3.
55. [Electoral Boundaries Readjustment Act](#), R.S.C., 1985, c. E-3.
56. See [Reference re Prov. Electoral Boundaries \(Sask.\)](#), [1991] 2 S.C.R. 158 on the Charter issues relating to minimum and maximum variances. See also [Raïche v. Canada \(Attorney General\)](#), 2004 F.C. 679, [2005] 1 FCR 93 on the question of what constitutes a community of interest in the linguistic context.
57. See House of Commons, Standing Committee on Procedure and House Affairs, [Sixteenth Report](#), 3<sup>rd</sup> Session, 37<sup>th</sup> Parliament, 2 April 2004.
58. For more information on how the process to redistribute electoral districts works, please consult Elections Canada, [Redistribution of Federal Electoral Districts](#).
59. However, public office holders convicted of frauds against the Crown, as set out in section 750 of the *Criminal Code*, lose their office.

60. *Canada Elections Act*, s. 65.
61. *MacLean v. Attorney General of Nova Scotia* (1987), 35 D.L.R. (4<sup>th</sup>) 306 (N.S.S.C.).
62. [Harvey v. New Brunswick \(Attorney General\)](#), [1996] 2 S.C.R. 876.
63. *Canada Elections Act*, s. 66.
64. See *Canada Elections Act*, s. 319 (as amended).
65. [R. v. Bryan](#), 2007 SCC 12, [2007] 1 S.C.R. 527.
66. *Ibid.* at para. 128.
67. *Ibid.* at para. 129.
68. See the *Canada Elections Act*, s. 335.
69. The allocation of broadcast time by the Broadcasting Arbitrator during the 2011 general election is set out in the [Broadcasting Guidelines: Federal General Election – May 2, 2011](#), issued 28 March 2011.
70. [Libman v. Quebec \(Attorney General\)](#), [1997] 3 S.C.R. 569.
71. *Canada Elections Act*, ss. 351.1–353.
72. [Harper v. Canada \(Attorney General\)](#), [2004] 1 S.C.R. 827, 2004 SCC 33.
73. *Canada Elections Act*, s. 353.
74. *Canada Elections Act*, s. 351.1.
75. *Canada Elections Act*, s. 350.
76. *Canada Elections Act*, s. 359.
77. For a detailed analysis of the provisions regarding contracts with voter contact calling services, please consult Part 2.4.3 of [Legislative Summary of Bill C-23: An Act to amend the Canada Elections Act and other Acts and to make consequential amendments to certain Acts](#), Publication no. 41-2-C23-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 11 September 2014.
78. Chief Electoral Officer of Canada, [Preventing Deceptive Communications with Electors: Recommendations from the Chief Electoral Officer of Canada Following the 41<sup>st</sup> General Election](#), Ottawa, 2013. See also House of Commons, Standing Committee on Procedure and House Affairs, [Evidence](#), 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 28 May 2013, 1105 (Mr. Marc Mayrand, Chief Electoral Officer, Elections Canada).
79. This issue was also the subject of a proceeding in the Federal Court of Canada seeking to invalidate the elections in seven electoral districts on the basis that the automated calls constituted fraudulent or unlawful acts that may have affected the election results in those electoral districts: [McEwing v. Canada \(Attorney General\)](#), 2013 FC 525. In the case Justice Mosley determined that electoral fraud had occurred during the 41<sup>st</sup> general election but he was not satisfied that it had been established that the fraud affected the outcomes in the subject ridings. He therefore declined to exercise his discretion to annul the results in those districts.
80. *Canada Elections Act*, ss. 326–328.
81. [Thompson Newspapers Co. v. Canada \(Attorney General\)](#), [1998] 1 S.C.R. 877.
82. See [Osborne v. Canada \(Treasury Board\)](#), [1991] 2 S.C.R. 69, in which the Supreme Court of Canada struck down legislation that had the effect of unduly restricting the political activities in which public servants could engage.
83. See the [Public Service Employment Act](#) [PSEA], Part 7, ss. 111–122.
84. See *Ibid.*, s. 115(3); and [Political Activities Regulations](#), SOR/2005-373, s. 2(1).

85. Elections Canada, [\*Voter Turnout at Federal Elections and Referendums\*](#).
86. See Sebastian Spano, "[The Legal Process for Contested Elections in Canada](#)," *HillNote*, Library of Parliament, Ottawa, 2 May 2012.
87. [\*Opitz v. Wrzesnewskyj\*](#), 2012 SCC 55.
88. *McEwing v. Canada (Attorney General)*.