

CHARTER CHALLENGE TO NEW FEDERAL VOTER ID RULES

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About a year ago, Bill C-31 was introduced into the House of Commons. After undergoing some minor amendments it received Royal Assent on June 22 2007.

The part of the Bill we are concerned about creates new rules for voting in Canadian parliamentary elections. They say that even if you are a registered voter, you will be refused a ballot on election day unless you can meet documentation and identification requirements.

The rules require every voter to prove both their identity and their residential address. They provide limited ways of doing this.

First, you can produce government-issued ID with your photo and current address. The only such kind of ID that most adult Canadian citizens carry is a driver's licence. So, for example, a Passport would not qualify, because it is not issued with your address printed on it. Similarly, a First Nations Status Card does not qualify because it does not show an address.

I would like to point out the irony, that if you walk into the polling place with a driver's license, which is not evidence that you are eligible to vote, that's all you need to be given a ballot. But if you carry a

passport or a status card, which are surely the best evidence that you are eligible, you will be turned away unless you can fit the other requirements.

If you don't have a driver's licence, or a BCID card, perhaps, you will not be allowed to vote unless you can piece together confirmation of your identity and current address from a list of approved secondary documents posted on the Elections Canada website.

Many voters are used to bringing their voter card to the polls with them, which they get in the mail from Elections Canada before each election, confirming their name on the list, then casting a ballot. That will no longer work and people who come expecting this to be adequate will be turned away.

If you don't have the required documentation, you can have another voter vouch for you. But the rules for vouching are so narrow that this will leave many citizens unable to vote. One voter can only vouch for one other. That means my neighbour cannot vouch for both my spouse and me, though we have lived next door for over twenty years. And it just about has to be your next door neighbour – under the new rules, you can only vouch for someone who lives in your own polling district. In the West End (which is Vancouver Centre riding) a polling division can be as small as a half a block. In some cases it is a single building.

These rules will disenfranchise thousands of citizens. The former Chief Electoral Officer, Jean-Pierre Kingsley, estimated conservatively that 5% of voters would run into problems voting. We get more than 14 million voters in a federal election. That means more than 700,000 citizens are likely to be unable to vote under these rules.

There are many ways people will run into problems with the new rules. Many people will simply show up without bringing the right documents. If it's late in the day and there isn't time for a second trip to the polls, they just lost the right to vote. If you have limited mobility, because of age or a disability, and arranging a second trip is a problem, you may well have just lost the right to vote.

Many people don't possess drivers' licenses or other government photo ID. Many elderly seniors have stopped driving, many people with disabilities do not drive, and many low income people can't afford to drive. They are far more likely to lose the right to vote than others.

Many people do not have a residential address. That includes people in many rural areas where street numbers are not assigned, and many rural Aboriginal reserves. Thousands of people do not have an address because they are homeless. All of these people will lose the right to vote if the new restrictions stand.

People who have moved shortly before an election are at risk of being disenfranchised. They often will not have ID with their new address, and they are less likely to know the neighbours well enough yet to find someone qualified to vouch for them. For that reason, people who move addresses more often, like many renters and students, will be at greater risk of losing the right to vote.

Why are they doing this? The government (along with many opposition MPs) try to justify it in order to “preserve the integrity of our electoral process.” But is there any evidence that the integrity of the process is at risk? It is already a serious offence to vote fraudulently, carrying a maximum \$5,000 fine and 5 years in prison. Because the parties have scrutineers present in polling places, voting day is watched closely and Elections Canada investigates complaints carefully. In the last two decades there have been two prosecutions for fraudulent voting in federal elections.

In the Parliamentary Debate, much was made about the situation in the Toronto riding of Trinity Spadina in the last election. 11,000 voters registered on the voters’ list at the polling places in that riding on election day. This was an enormous number, the MPs said, and demonstrates something suspicious was going on. It so happens that Trinity Spadina is the home of Canada’s largest university, the University of Toronto, Thousands of students live there, many of whom come of age to vote for the first time while at school, and register for the first time in any given election.

Elections Canada looked into the situation, and found, initially, that there may have been one person who voted in Trinity Spadina and shouldn't have, out of the 11,000. Later, the new Chief Electoral Officer, Mr. Mayrand, reported to the Senate committee that there were no wrongful ballots cast in that riding. Zero.

I suggest that if you want to undermine the integrity of our democratic electoral process, the best way to do that is to stop eligible citizens from casting their votes. Our problem is not that too many people vote – it is that not enough Canadians participate in our democratic process.

Section 3 of the Charter of Rights guarantees Canadian citizens the right to vote in federal elections. It is one of the most powerful sections of the Charter. It is immune from the “notwithstanding” clause. It is not subject to any other countervailing rights – unlike freedom of expression, for instance, which gets weighed against the rights of others who can be affected by malicious speech. The right to vote is about as absolute as any right we have under our constitution. There was a landmark decision by the Supreme Court of Canada in 2002 that struck down the section of the Elections act which barred federal prison inmates from voting.

We filed our challenge to the new rules on Thursday November 1 2007 in the Vancouver registry of the BC Supreme Court. We are

asking the court to strike down the voting restrictions. We hope to achieve that before a general election happens.

This challenge is brought by two individual voters and four organizations that speak for members of our communities who are at high risk of losing the right to vote because of these restrictions.

They are:

- Rose Henry, an activist for the rights of people who are homeless in Victoria
- Clyde Wright, a resident of the Downtown Eastside and a VANDU executive member
- the BC Coalition of People with Disabilities
- the Council of Senior Citizens' Organizations of BC
- the Tenant Resource and Advisory Centre
- the Vancouver Area Network of Drug Users (VANDU)